

**As Passed by the Senate**

**126th General Assembly  
Regular Session  
2005-2006**

**Sub. H. B. No. 25**

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**A B I L L**

To amend sections 145.06, 742.05, 2743.02, 3307.06, 1  
3309.06, and 5505.042 of the Revised Code and to 2  
amend Section 5 of Sub. S.B. 133 of the 125th 3  
General Assembly to allow a state officer or 4  
employee who in a civil action is alleged to lack 5  
immunity from personal liability to participate in 6  
proceedings to determine whether the officer or 7  
employee is entitled to personal immunity, and to 8  
revise the law governing the filling of a vacancy 9  
on a state retirement system board. 10

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 145.06, 742.05, 2743.02, 3307.06, 11  
3309.06, and 5505.042 of the Revised Code be amended to read as 12  
follows: 13

**Sec. 145.06.** (A) If a vacancy occurs in the term of any 14

employee member of the public employees retirement board, the 15  
remaining members of the board shall elect a successor employee 16  
member from the employee group lacking representation because of 17  
the vacancy. On certification of the election results in 18  
accordance with rules adopted under section 145.058 of the Revised 19  
Code, the successor employee member shall hold office until the 20  
first day of the new term that follows the next board election 21  
that occurs not less than ninety days after the successor employee 22  
member's election. 23

Any employee member of the board who fails to attend the 24  
meetings of the board for three months or longer, without valid 25  
excuse, shall be considered as having resigned, and the board 26  
shall declare the employee member's office vacated as of the date 27  
of the adoption of a proper resolution. 28

(B) If a vacancy occurs during the term of office of a 29  
retirant member of the board, the remaining members of the board 30  
shall elect a successor retirant member who shall be a former 31  
member of the public employees retirement system who is eligible 32  
for election under section 145.04 of the Revised Code as a 33  
retirant member of the board. On certification of the election 34  
results in accordance with rules adopted under section 145.058 of 35  
the Revised Code, the successor retirant member shall hold office 36  
until the first day of the new term that follows the next board 37  
election that occurs not less than ninety days after the successor 38  
retirant member's election. 39

If a retirant member of the board fails to attend the 40  
meetings of the board for three months or longer, without valid 41  
excuse, the retirant member shall be considered as having 42  
resigned, and the board shall declare the member's office vacated 43  
as of the date of the adoption of a proper resolution. 44

If as a result of changed circumstances a retirant member 45  
would no longer qualify for membership on the board as the 46

retirant member, the retirant member's office shall be considered 47  
vacant, and a successor retirant member shall be chosen in the 48  
manner specified in this division. 49

(C) Elections under this section to fill a vacancy on the 50  
board shall be conducted in accordance with rules adopted under 51  
section 145.058 of the Revised Code. 52

**Sec. 742.05.** Any vacancy occurring in the term of a member of 53  
the board of trustees of the Ohio police and fire pension fund who 54  
is the fiscal officer of a municipal corporation shall be filled 55  
by appointment by the governor for the unexpired term of such 56  
member. 57

If a vacancy occurs in the term of an employee or retirant 58  
member of the board, all the remaining members of the board shall 59  
elect a successor employee or retirant member. On certification of 60  
the election results in accordance with rules adopted under 61  
section 742.045 of the Revised Code, the successor member shall 62  
hold office until the first day of the new term that follows the 63  
next board election that occurs not less than ninety days after 64  
the successor member's election. 65

Elections under this section to fill a vacancy on the board 66  
shall be conducted in accordance with rules adopted under section 67  
742.045 of the Revised Code. 68

If a member of the board who is the fiscal officer of a 69  
municipal corporation ceases to be a fiscal officer of a municipal 70  
corporation, a vacancy shall exist. 71

If an employee member of the board ceases to be a member of 72  
the fund, a vacancy shall exist. 73

If as a result of changed circumstances a retirant member no 74  
longer qualifies for membership on the board as a retirant member, 75  
a vacancy shall exist. 76

Any elected or appointed member of the board who fails to 77  
attend three consecutive meetings of the board, without valid 78  
excuse, shall be considered as having resigned from the board and 79  
the board shall declare the member's office vacated and as of the 80  
date of the adoption of a proper resolution a vacancy shall exist. 81

**Sec. 2743.02.** (A)(1) The state hereby waives its immunity 82  
from liability, except as provided for the office of the state 83  
fire marshal in division (G)(1) of section 9.60 and division (B) 84  
of section 3737.221 of the Revised Code and subject to division 85  
(H) of this section, and consents to be sued, and have its 86  
liability determined, in the court of claims created in this 87  
chapter in accordance with the same rules of law applicable to 88  
suits between private parties, except that the determination of 89  
liability is subject to the limitations set forth in this chapter 90  
and, in the case of state universities or colleges, in section 91  
3345.40 of the Revised Code, and except as provided in division 92  
(A)(2) or (3) of this section. To the extent that the state has 93  
previously consented to be sued, this chapter has no 94  
applicability. 95

Except in the case of a civil action filed by the state, 96  
filing a civil action in the court of claims results in a complete 97  
waiver of any cause of action, based on the same act or omission, 98  
which the filing party has against any officer or employee, as 99  
defined in section 109.36 of the Revised Code. The waiver shall be 100  
void if the court determines that the act or omission was 101  
manifestly outside the scope of the officer's or employee's office 102  
or employment or that the officer or employee acted with malicious 103  
purpose, in bad faith, or in a wanton or reckless manner. 104

(2) If a claimant proves in the court of claims that an 105  
officer or employee, as defined in section 109.36 of the Revised 106  
Code, would have personal liability for the officer's or 107

employee's acts or omissions but for the fact that the officer or 108  
employee has personal immunity under section 9.86 of the Revised 109  
Code, the state shall be held liable in the court of claims in any 110  
action that is timely filed pursuant to section 2743.16 of the 111  
Revised Code and that is based upon the acts or omissions. 112

(3)(a) Except as provided in division (A)(3)(b) of this 113  
section, the state is immune from liability in any civil action or 114  
proceeding involving the performance or nonperformance of a public 115  
duty, including the performance or nonperformance of a public duty 116  
that is owed by the state in relation to any action of an 117  
individual who is committed to the custody of the state. 118

(b) The state immunity provided in division (A)(3)(a) of this 119  
section does not apply to any action of the state under 120  
circumstances in which a special relationship can be established 121  
between the state and an injured party. A special relationship 122  
under this division is demonstrated if all of the following 123  
elements exist: 124

(i) An assumption by the state, by means of promises or 125  
actions, of an affirmative duty to act on behalf of the party who 126  
was allegedly injured; 127

(ii) Knowledge on the part of the state's agents that 128  
inaction of the state could lead to harm; 129

(iii) Some form of direct contact between the state's agents 130  
and the injured party; 131

(iv) The injured party's justifiable reliance on the state's 132  
affirmative undertaking. 133

(B) The state hereby waives the immunity from liability of 134  
all hospitals owned or operated by one or more political 135  
subdivisions and consents for them to be sued, and to have their 136  
liability determined, in the court of common pleas, in accordance 137

with the same rules of law applicable to suits between private 138  
parties, subject to the limitations set forth in this chapter. 139  
This division is also applicable to hospitals owned or operated by 140  
political subdivisions which have been determined by the supreme 141  
court to be subject to suit prior to July 28, 1975. 142

(C) Any hospital, as defined in section 2305.113 of the 143  
Revised Code, may purchase liability insurance covering its 144  
operations and activities and its agents, employees, nurses, 145  
interns, residents, staff, and members of the governing board and 146  
committees, and, whether or not such insurance is purchased, may, 147  
to such extent as its governing board considers appropriate, 148  
indemnify or agree to indemnify and hold harmless any such person 149  
against expense, including attorney's fees, damage, loss, or other 150  
liability arising out of, or claimed to have arisen out of, the 151  
death, disease, or injury of any person as a result of the 152  
negligence, malpractice, or other action or inaction of the 153  
indemnified person while acting within the scope of the 154  
indemnified person's duties or engaged in activities at the 155  
request or direction, or for the benefit, of the hospital. Any 156  
hospital electing to indemnify such persons, or to agree to so 157  
indemnify, shall reserve such funds as are necessary, in the 158  
exercise of sound and prudent actuarial judgment, to cover the 159  
potential expense, fees, damage, loss, or other liability. The 160  
superintendent of insurance may recommend, or, if such hospital 161  
requests the superintendent to do so, the superintendent shall 162  
recommend, a specific amount for any period that, in the 163  
superintendent's opinion, represents such a judgment. This 164  
authority is in addition to any authorization otherwise provided 165  
or permitted by law. 166

(D) Recoveries against the state shall be reduced by the 167  
aggregate of insurance proceeds, disability award, or other 168  
collateral recovery received by the claimant. This division does 169

not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.

(E) The only defendant in original actions in the court of claims is the state. The state may file a third-party complaint or counterclaim in any civil action, except a civil action for two thousand five hundred dollars or less, that is filed in the court of claims.

(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. The officer or employee may participate in the immunity determination proceeding before the court of claims to determine whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

(G) Whenever a claim lies against an officer or employee who is a member of the Ohio national guard, and the officer or

employee was, at the time of the act or omission complained of, 201  
subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 202  
U.S.C. 2671, et seq., then the Federal Tort Claims Act is the 203  
exclusive remedy of the claimant and the state has no liability 204  
under this section. 205

(H) If an inmate of a state correctional institution has a 206  
claim against the state for the loss of or damage to property and 207  
the amount claimed does not exceed three hundred dollars, before 208  
commencing an action against the state in the court of claims, the 209  
inmate shall file a claim for the loss or damage under the rules 210  
adopted by the director of rehabilitation and correction pursuant 211  
to this division. The inmate shall file the claim within the time 212  
allowed for commencement of a civil action under section 2743.16 213  
of the Revised Code. If the state admits or compromises the claim, 214  
the director shall make payment from a fund designated by the 215  
director for that purpose. If the state denies the claim or does 216  
not compromise the claim at least sixty days prior to expiration 217  
of the time allowed for commencement of a civil action based upon 218  
the loss or damage under section 2743.16 of the Revised Code, the 219  
inmate may commence an action in the court of claims under this 220  
chapter to recover damages for the loss or damage. 221

The director of rehabilitation and correction shall adopt 222  
rules pursuant to Chapter 119. of the Revised Code to implement 223  
this division. 224

**Sec. 3307.06.** (A) Annually on the first Monday of May, one 225  
contributing member, as defined in division (D) of section 3307.05 226  
of the Revised Code, shall be elected by ballot to the state 227  
teachers retirement board, except that, beginning with the annual 228  
election for contributing members in May, 1978, and in the annual 229  
election of each fourth year thereafter, two contributing members 230  
shall be elected to the board. Elected contributing members shall 231



begin their respective terms of office on the first day of 232  
September following their election and shall serve for a term of 233  
four years. 234

(B) The retired teacher members of the board, as defined in 235  
division (E) of section 3307.05 of the Revised Code, shall be 236  
elected for a term of four years. The retired teacher members 237  
shall be elected to the board at the annual election for 238  
contributing members of the board, as provided in division (A) of 239  
this section, in the year in which the term of the current retired 240  
teacher members would expire. The retired teacher members shall 241  
begin their respective terms of office on the first day of 242  
September following their election. 243

No contributing member of the board who retires while a 244  
member of the board shall be eligible to become a retired teacher 245  
member of the board for three years after the date of the member's 246  
retirement. 247

(C) If a vacancy occurs during the term of office of any 248  
elected member of the board, the remaining members of the board 249  
shall elect a successor member. On certification of the election 250  
results in accordance with rules adopted under section 3307.075 of 251  
the Revised Code the successor member shall hold office until the 252  
first day of the new term that follows the next board election 253  
that occurs not less than ninety days after the successor member's 254  
election. The successor member shall qualify for board membership 255  
under the same division of section 3307.05 of the Revised Code as 256  
the member's predecessor in office. Elections under this division 257  
shall be conducted in accordance with rules adopted under section 258  
3307.075 of the Revised Code. 259

(D) If as a result of changed circumstances an elected member 260  
of the board would no longer qualify for board membership under 261  
that division of section 3307.05 of the Revised Code on the basis 262  
of which the member was elected, or if such a member fails to 263

attend the meetings of the board for four months or longer, 264  
without being excused, the member's position on the board shall be 265  
considered vacant, and a successor member shall be elected, under 266  
division (C) of this section, for the remainder of the unexpired 267  
term. 268

**Sec. 3309.06.** (A) Elections for employee and retirant members 269  
of the school employees retirement board shall be held on the 270  
first Monday of March. Terms of office of the employee and 271  
retirant members of the board shall be for four years each, 272  
commencing on the first day of July following the election and 273  
ending on the thirtieth day of June. The initial terms of the 274  
first retirant member and the new employee member shall commence 275  
on July 1, 1984, and end on June 30, 1988. 276

(B) The initial election of the second retirant member shall 277  
be held at the first election that occurs later than ninety days 278  
after ~~the effective date of this amendment~~ September 15, 2004. 279  
Subsequent elections shall be held each fourth year thereafter. 280

(C) If a vacancy occurs during the term of an elected member 281  
of the board, the remaining members of the board shall elect a 282  
successor member. On certification of the election results in 283  
accordance with rules adopted under section 3309.075 of the 284  
Revised Code, the successor member shall hold office until the 285  
first day of the new term that follows the next board election 286  
that occurs not less than ninety days after the successor member's 287  
election. The successor member shall qualify for board membership 288  
under the same division of section 3309.05 of the Revised Code as 289  
the member's predecessor in office. Elections under this division 290  
shall be conducted in accordance with rules adopted under section 291  
3309.075 of the Revised Code. 292

(D) Employee members or retirant members of the board who 293  
fail to attend the meetings of the board for four months or 294

longer, without being excused, shall be considered as having  
resigned and successors shall be elected for their unexpired terms  
pursuant to division (C) of this section. If as a result of  
changed circumstances the retirant member would no longer qualify  
for membership on the board as a retirant member, the office shall  
be considered vacant, and a successor retirant member shall be  
elected pursuant to division (C) of this section.

**Sec. 5505.042.** Except as provided in section 5505.043 of the  
Revised Code, any vacancy occurring in the term of a retirant  
member of the state highway patrol retirement board or an employee  
member of the board shall be filled by an election conducted in  
the same manner as other retirant member and employee member  
elections under section 5505.041 of the Revised Code. On  
certification of the election results in accordance with rules  
adopted under section 5505.047 of the Revised Code, the retirant  
member or employee member elected shall hold office until the  
first day of the new term that follows the next board election  
that occurs not less than ninety days after the member's election.

**Section 2.** That existing sections 145.06, 742.05, 2743.02,  
3307.06, 3309.06, and 5505.042 of the Revised Code are hereby  
repealed.

**Section 3.** That Section 5 of Sub. S.B. 133 of the 125th  
General Assembly be amended to read as follows:

**Sec. 5.** Nothing in ~~this act~~ Sub. S.B. 133 of the 125th  
General Assembly shall affect the term of any elected member of a  
state retirement board serving on the effective date of ~~this act~~  
Sub. S.B. 133 of the 125th General Assembly.

The additional members of the state retirement systems to be  
appointed pursuant to ~~this act~~ Sub. S.B. 133 of the 125th General

Assembly shall be appointed and take office not later than ninety 324  
days after the effective date of ~~this act~~ Sub. S.B. 133 of the 325  
125th General Assembly, except that an investment expert member 326  
appointed jointly by the Speaker of the House of Representatives 327  
and the President of the Senate shall not immediately take office 328  
if taking office would result in an even number of members on that 329  
state retirement board. The member shall take office at the 330  
earliest time that taking office will result in an odd number of 331  
members on that board. 332

Not later than ninety days after the effective date of ~~this~~ 333  
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 334  
shall appoint the initial additional retirant member of the public 335  
employees retirement board created by ~~this act~~ Sub. S.B. 133 of 336  
the 125th General Assembly. The retirant member shall hold office 337  
until the first day of the new term that follows the next board 338  
election that occurs not less than ninety days after the 339  
appointment. 340

Not later than ninety days after the effective date of ~~this~~ 341  
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 342  
shall appoint the initial additional retired teacher member 343  
position created by ~~this act~~ Sub. S.B. 133 of the 125th General 344  
Assembly. The retired teacher member shall hold office until the 345  
first day of the new term that follows the next board election 346  
that occurs not less than ninety days after the appointment. 347

Not later than ninety days after the effective date of ~~this~~ 348  
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 349  
shall appoint the initial additional retirant member of the school 350  
employees retirement board created by ~~this act~~ Sub. S.B. 133 of 351  
the 125th General Assembly. The retirant member shall hold office 352  
~~until the next board election that occurs not less than ninety~~ 353  
~~days after the appointment~~ through June 30, 2005, as directed in 354  
Section 6 of Am. H.B. 10 of the 126th General Assembly. 355

Not later than ninety days after the effective date of ~~this~~ 356  
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 357  
shall appoint the initial additional retirant member of the state 358  
highway patrol retirement board created by ~~this act~~ Sub. S.B. 133 359  
of the 125th General Assembly. The retirant member shall hold 360  
office until the first day of the new term that follows the next 361  
board election that occurs not less than ninety days after the 362  
appointment. 363

**Section 4.** That existing Section 5 of Sub. S.B. 133 of the 364  
125th General Assembly is hereby repealed. 365

**Section 5.** Section 2743.02 of the Revised Code as amended by 366  
this act shall take effect on the ninety-first day after the 367  
effective date of this act. 368