

As Reported by the Senate Judiciary--Civil Justice Committee

126th General Assembly

Regular Session

2005-2006

Sub. H. B. No. 25

Representatives Wagner, J. Stewart, Hartnett, Carano, Otterman, Latta, Widener, Aslanides, S. Patton, Buehrer, Wolpert, Combs, Kearns, Webster, McGregor, Reidelbach, Law, Core, Schaffer, Faber, Chandler, Cassell, Hagan, Wagoner, Martin, Gilb, Allen, Barrett, Blessing, Book, Carmichael, Coley, Collier, Daniels, DeBose, Dolan, Domenick, C. Evans, Fessler, Flowers, Gibbs, Harwood, Hughes, Key, Mason, Miller, Perry, Schneider, Seaver, Seitz, D. Stewart, Strahorn, Taylor, Walcher, Willamowski, Williams, Yates, Yuko

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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, to 8
revise the law governing the filling of a vacancy 9
on a state retirement system board, and to declare 10
an emergency. 11

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

Section 1. That sections 145.06, 742.05, 2743.02, 3307.06, 12
3309.06, and 5505.042 of the Revised Code be amended to read as 13
follows: 14

Sec. 145.06. (A) If a vacancy occurs in the term of any 15
employee member of the public employees retirement board, the 16
remaining members of the board shall elect a successor employee 17
member from the employee group lacking representation because of 18
the vacancy. On certification of the election results in 19
accordance with rules adopted under section 145.058 of the Revised 20
Code, the successor employee member shall hold office until the 21
first day of the new term that follows the next board election 22
that occurs not less than ninety days after the successor employee 23
member's election. 24

Any employee member of the board who fails to attend the 25
meetings of the board for three months or longer, without valid 26
excuse, shall be considered as having resigned, and the board 27
shall declare the employee member's office vacated as of the date 28
of the adoption of a proper resolution. 29

(B) If a vacancy occurs during the term of office of a 30
retirant member of the board, the remaining members of the board 31
shall elect a successor retirant member who shall be a former 32
member of the public employees retirement system who is eligible 33
for election under section 145.04 of the Revised Code as a 34
retirant member of the board. On certification of the election 35
results in accordance with rules adopted under section 145.058 of 36
the Revised Code, the successor retirant member shall hold office 37
until the first day of the new term that follows the next board 38
election that occurs not less than ninety days after the successor 39
retirant member's election. 40

If a retirant member of the board fails to attend the 41
meetings of the board for three months or longer, without valid 42
excuse, the retirant member shall be considered as having 43
resigned, and the board shall declare the member's office vacated 44
as of the date of the adoption of a proper resolution. 45

If as a result of changed circumstances a retirant member 46
would no longer qualify for membership on the board as the 47
retirant member, the retirant member's office shall be considered 48
vacant, and a successor retirant member shall be chosen in the 49
manner specified in this division. 50

(C) Elections under this section to fill a vacancy on the 51
board shall be conducted in accordance with rules adopted under 52
section 145.058 of the Revised Code. 53

Sec. 742.05. Any vacancy occurring in the term of a member of 54
the board of trustees of the Ohio police and fire pension fund who 55
is the fiscal officer of a municipal corporation shall be filled 56
by appointment by the governor for the unexpired term of such 57
member. 58

If a vacancy occurs in the term of an employee or retirant 59
member of the board, all the remaining members of the board shall 60
elect a successor employee or retirant member. On certification of 61
the election results in accordance with rules adopted under 62
section 742.045 of the Revised Code, the successor member shall 63
hold office until the first day of the new term that follows the 64
next board election that occurs not less than ninety days after 65
the successor member's election. 66

Elections under this section to fill a vacancy on the board 67
shall be conducted in accordance with rules adopted under section 68
742.045 of the Revised Code. 69

If a member of the board who is the fiscal officer of a 70
municipal corporation ceases to be a fiscal officer of a municipal 71
corporation, a vacancy shall exist. 72

If an employee member of the board ceases to be a member of 73
the fund, a vacancy shall exist. 74

If as a result of changed circumstances a retirant member no 75

longer qualifies for membership on the board as a retirant member,
a vacancy shall exist.

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

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

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

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(2) If a claimant proves in the court of claims that an

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officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

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

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

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

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

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

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

(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political

subdivisions and consents for them to be sued, and to have their
liability determined, in the court of common pleas, in accordance
with the same rules of law applicable to suits between private
parties, subject to the limitations set forth in this chapter.
This division is also applicable to hospitals owned or operated by
political subdivisions which have been determined by the supreme
court to be subject to suit prior to July 28, 1975.

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

(D) Recoveries against the state shall be reduced by the

aggregate of insurance proceeds, disability award, or other
collateral recovery received by the claimant. This division does
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, subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 2671, et seq., then the Federal Tort Claims Act is the exclusive remedy of the claimant and the state has no liability under this section.

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

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

Sec. 3307.06. (A) Annually on the first Monday of May, one contributing member, as defined in division (D) of section 3307.05 of the Revised Code, shall be elected by ballot to the state teachers retirement board, except that, beginning with the annual election for contributing members in May, 1978, and in the annual

election of each fourth year thereafter, two contributing members 231
shall be elected to the board. Elected contributing members shall 232
begin their respective terms of office on the first day of 233
September following their election and shall serve for a term of 234
four years. 235

(B) The retired teacher members of the board, as defined in 236
division (E) of section 3307.05 of the Revised Code, shall be 237
elected for a term of four years. The retired teacher members 238
shall be elected to the board at the annual election for 239
contributing members of the board, as provided in division (A) of 240
this section, in the year in which the term of the current retired 241
teacher members would expire. The retired teacher members shall 242
begin their respective terms of office on the first day of 243
September following their election. 244

No contributing member of the board who retires while a 245
member of the board shall be eligible to become a retired teacher 246
member of the board for three years after the date of the member's 247
retirement. 248

(C) If a vacancy occurs during the term of office of any 249
elected member of the board, the remaining members of the board 250
shall elect a successor member. On certification of the election 251
results in accordance with rules adopted under section 3307.075 of 252
the Revised Code the successor member shall hold office until the 253
first day of the new term that follows the next board election 254
that occurs not less than ninety days after the successor member's 255
election. The successor member shall qualify for board membership 256
under the same division of section 3307.05 of the Revised Code as 257
the member's predecessor in office. Elections under this division 258
shall be conducted in accordance with rules adopted under section 259
3307.075 of the Revised Code. 260

(D) If as a result of changed circumstances an elected member 261
of the board would no longer qualify for board membership under 262

that division of section 3307.05 of the Revised Code on the basis 263
of which the member was elected, or if such a member fails to 264
attend the meetings of the board for four months or longer, 265
without being excused, the member's position on the board shall be 266
considered vacant, and a successor member shall be elected, under 267
division (C) of this section, for the remainder of the unexpired 268
term. 269

Sec. 3309.06. (A) Elections for employee and retirant members 270
of the school employees retirement board shall be held on the 271
first Monday of March. Terms of office of the employee and 272
retirant members of the board shall be for four years each, 273
commencing on the first day of July following the election and 274
ending on the thirtieth day of June. The initial terms of the 275
first retirant member and the new employee member shall commence 276
on July 1, 1984, and end on June 30, 1988. 277

(B) The initial election of the second retirant member shall 278
be held at the first election that occurs later than ninety days 279
after ~~the effective date of this amendment~~ September 15, 2004. 280
Subsequent elections shall be held each fourth year thereafter. 281

(C) If a vacancy occurs during the term of an elected member 282
of the board, the remaining members of the board shall elect a 283
successor member. On certification of the election results in 284
accordance with rules adopted under section 3309.075 of the 285
Revised Code, the successor member shall hold office until the 286
first day of the new term that follows the next board election 287
that occurs not less than ninety days after the successor member's 288
election. The successor member shall qualify for board membership 289
under the same division of section 3309.05 of the Revised Code as 290
the member's predecessor in office. Elections under this division 291
shall be conducted in accordance with rules adopted under section 292
3309.075 of the Revised Code. 293

(D) Employee members or retirant members of the board who 294
fail to attend the meetings of the board for four months or 295
longer, without being excused, shall be considered as having 296
resigned and successors shall be elected for their unexpired terms 297
pursuant to division (C) of this section. If as a result of 298
changed circumstances the retirant member would no longer qualify 299
for membership on the board as a retirant member, the office shall 300
be considered vacant, and a successor retirant member shall be 301
elected pursuant to division (C) of this section. 302

Sec. 5505.042. Except as provided in section 5505.043 of the 303
Revised Code, any vacancy occurring in the term of a retirant 304
member of the state highway patrol retirement board or an employee 305
member of the board shall be filled by an election conducted in 306
the same manner as other retirant member and employee member 307
elections under section 5505.041 of the Revised Code. On 308
certification of the election results in accordance with rules 309
adopted under section 5505.047 of the Revised Code, the retirant 310
member or employee member elected shall hold office until the 311
first day of the new term that follows the next board election 312
that occurs not less than ninety days after the member's election. 313

Section 2. That existing sections 145.06, 742.05, 2743.02, 314
3307.06, 3309.06, and 5505.042 of the Revised Code are hereby 315
repealed. 316

Section 3. That Section 5 of Sub. S.B. 133 of the 125th 317
General Assembly be amended to read as follows: 318

Sec. 5. Nothing in ~~this act~~ Sub. S.B. 133 of the 125th 319
General Assembly shall affect the term of any elected member of a 320
state retirement board serving on the effective date of ~~this act~~ 321
Sub. S.B. 133 of the 125th General Assembly. 322

The additional members of the state retirement systems to be 323
appointed pursuant to ~~this act~~ Sub. S.B. 133 of the 125th General 324
Assembly shall be appointed and take office not later than ninety 325
days after the effective date of ~~this act~~ Sub. S.B. 133 of the 326
125th General Assembly, except that an investment expert member 327
appointed jointly by the Speaker of the House of Representatives 328
and the President of the Senate shall not immediately take office 329
if taking office would result in an even number of members on that 330
state retirement board. The member shall take office at the 331
earliest time that taking office will result in an odd number of 332
members on that board. 333

Not later than ninety days after the effective date of ~~this~~ 334
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 335
shall appoint the initial additional retirant member of the public 336
employees retirement board created by ~~this act~~ Sub. S.B. 133 of 337
the 125th General Assembly. The retirant member shall hold office 338
until the first day of the new term that follows the next board 339
election that occurs not less than ninety days after the 340
appointment. 341

Not later than ninety days after the effective date of ~~this~~ 342
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 343
shall appoint the initial additional retired teacher member 344
position created by ~~this act~~ Sub. S.B. 133 of the 125th General 345
Assembly. The retired teacher member shall hold office until the 346
first day of the new term that follows the next board election 347
that occurs not less than ninety days after the appointment. 348

Not later than ninety days after the effective date of ~~this~~ 349
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 350
shall appoint the initial additional retirant member of the school 351
employees retirement board created by ~~this act~~ Sub. S.B. 133 of 352
the 125th General Assembly. The retirant member shall hold office 353
~~until the next board election that occurs not less than ninety~~ 354

days after the appointment through June 30, 2005, as directed in 355
Section 6 of Am. H.B. 10 of the 126th General Assembly. 356

Not later than ninety days after the effective date of ~~this~~ 357
~~act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor 358
shall appoint the initial additional retirant member of the state 359
highway patrol retirement board created by ~~this act~~ Sub. S.B. 133 360
of the 125th General Assembly. The retirant member shall hold 361
office until the first day of the new term that follows the next 362
board election that occurs not less than ninety days after the 363
appointment. 364

Section 4. That existing Section 5 of Sub. S.B. 133 of the 365
125th General Assembly is hereby repealed. 366

Section 5. Section 2743.02 of the Revised Code as amended by 367
this act shall take effect on the ninety-first day after the 368
effective date of this act. 369

Section 6. This act is hereby declared to be an emergency 370
measure necessary for the immediate preservation of the public 371
peace, health, and safety. The reason for such necessity is that, 372
to provide consistent governance of the Public Employees 373
Retirement System, State Teachers Retirement System, School 374
Employees Retirement System, and State Highway Patrol Retirement 375
System, the continuity of the membership of the systems' boards 376
must be maintained. Therefore, this act shall go into immediate 377
effect. 378