

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 72

Representatives Hottinger, Dodd

**Cosponsors: Representatives Huffman, Pryor, Luckie, Domenick, Evans,
Letson**

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To amend sections 148.02, 148.04, and 3105.87 and to 1
enact section 148.05 of the Revised Code to 2
provide for confidentiality of certain records 3
maintained by the Ohio Public Employees Deferred 4
Compensation Board, to require the Treasurer of 5
State to be the custodian of contributions into 6
the deferred compensation program, to require new 7
employees to be notified of the deferred 8
compensation program and provided with the 9
opportunity to elect to participate or not 10
participate in the program, and to make other 11
changes to the Deferred Compensation Law. 12

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

Section 1. That sections 148.02, 148.04, and 3105.87 be 13
amended and section 148.05 of the Revised Code be enacted to read 14
as follows: 15

Sec. 148.02. The Ohio public employees deferred compensation 16
board shall be comprised of a member of the house of 17
representatives and a member of the senate, who shall not be of 18

the same political party, each to be appointed to serve at the 19
pleasure of the member's respective leadership, and the members of 20
the public employees retirement board as constituted by section 21
145.04 of the Revised Code, who are hereby created as a separate 22
legal entity for the purpose of administering a deferred 23
compensation system for all eligible employees. The public 24
employees retirement board may utilize its employees and property 25
in the administration of the system on behalf of the Ohio public 26
employees deferred compensation board, in consideration of a 27
reasonable service charge to be applied in a nondiscriminatory 28
manner to all amounts of compensation deferred under this system. 29

The Ohio public employees deferred compensation board may 30
exercise the same powers granted by section 145.09 of the Revised 31
Code necessary to its functions. The attorney general shall be the 32
legal adviser of the board. The treasurer of state shall be the 33
custodian of contributions into the deferred compensation program. 34

Sec. 148.04. (A) The Ohio public employees deferred 35
compensation board shall initiate, plan, expedite, and, subject to 36
an appropriate assurance of the approval of the internal revenue 37
service, promulgate and offer to all eligible employees, and 38
thereafter administer on behalf of all participating employees and 39
continuing members, and alter as required, a program for deferral 40
of compensation, including a reasonable number of options to the 41
employee for the investment of deferred funds, ~~including life 42
insurance, annuities, variable annuities, pooled investment funds 43
managed by the board, or other forms of investment approved by the 44
board,~~ always in such form as will assure the desired tax 45
treatment of such funds. The members of the board are the trustees 46
of any deferred funds and shall discharge their duties with 47
respect to the funds solely in the interest of and for the 48
exclusive benefit of participating employees, continuing members, 49
and their beneficiaries. With respect to such deferred funds, 50

section 148.09 of the Revised Code shall apply to claims against 51
participating employees or continuing members and their employers. 52

(B)(1) Whenever an individual becomes employed in a position 53
paid by warrant of the director of budget and management, the 54
individual's employer shall do both of the following at the time 55
the employee completes the employee's initial employment 56
paperwork: 57

(a) Provide information to the employee either verbally or in 58
writing regarding the benefits of long-term savings through 59
deferred compensation; 60

(b) Secure, in writing, the employee's election to 61
participate or not participate in a deferred compensation program 62
offered by the board. 63

If the employee elects to participate in the deferred 64
compensation program, the employee also shall execute a 65
participation agreement to become a member of the program. 66

An election regarding participation under this section shall 67
be made in such manner and form as is prescribed by the Ohio 68
public employees deferred compensation program and shall be filed 69
with the program. 70

The employer shall forward each election completed under this 71
division to the deferred compensation program not later than 72
thirty days after the date on which the employee's employment 73
begins. 74

(2) Every employer of an eligible employee shall contract 75
with the employee upon the employee's application for 76
participation in a deferred compensation program offered by the 77
board. ~~Every retirement system serving an eligible employee shall 78~~
~~serve as collection agent for compensation deferred by any of its 79~~
~~members and account for and deliver such sums to the board. 80~~

(C) The board shall, subject to any applicable contract provisions, undertake to obtain as favorable conditions of tax treatment as possible, both in the initial programs and any permitted alterations of them or additions to them, as to such matters as terms of distribution, designation of beneficiaries, withdrawal upon disability, financial hardship, or termination of public employment, and other optional provisions.

(D) In no event shall the total of the amount of deferred compensation to be set aside under a deferred compensation program and the employee's nondeferred income for any year exceed the total annual salary or compensation under the existing salary schedule or classification plan applicable to the employee in that year.

Such a deferred compensation program shall be in addition to any retirement or any other benefit program provided by law for employees of this state. The board shall adopt rules pursuant to Chapter 119. of the Revised Code to provide any necessary standards or conditions for the administration of its programs, including any limits on the portion of a participating employee's compensation that may be deferred in order to avoid adverse treatment of the program by the internal revenue service or the occurrence of deferral, withholding, or other deductions in excess of the compensation available for any pay period.

Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the retirement system of such employee. Any sum so deferred shall not be included in the computation of any federal and state income taxes withheld on behalf of any such employee.

(E) This section does not limit the authority of any municipal corporation, county, township, park district, conservancy district, sanitary district, health district, public

library, county law library, public institution of higher 113
education, or school district to provide separate authorized plans 114
or programs for deferring compensation of their officers and 115
employees in addition to the program for the deferral of 116
compensation offered by the board. Any municipal corporation, 117
township, public institution of higher education, or school 118
district that offers such plans or programs shall include a 119
reasonable number of options to its officers or employees for the 120
investment of the deferred funds, including annuities, variable 121
annuities, regulated investment trusts, or other forms of 122
investment approved by the municipal corporation, township, public 123
institution of higher education, or school district, that will 124
assure the desired tax treatment of the funds. 125

Sec. 148.05. (A)(1) As used in this division, "personal 126
history record" means information maintained by the Ohio public 127
employees deferred compensation board on an individual who is a 128
participating employee or continuing member that includes the 129
address, telephone number, social security number, record of 130
contributions, records of benefits, correspondence with the Ohio 131
public employees deferred compensation program, or other 132
information the board determines to be confidential. 133

(2) The records of the board shall be open to public 134
inspection, except that the following shall be excluded, except 135
with the written authorization of the individual concerned: 136

(a) Information pertaining to an individual's participant 137
account; 138

(b) The individual's personal history record. 139

(B)(1) All medical reports, records, and recommendations of a 140
participating employee or a continuing member that are in the 141
possession of the board are privileged. 142

(2) All tax information of a participating employee, 143
continuing member, or former participant or member that is in the 144
possession of the board shall be confidential to the extent the 145
information is confidential under Title LVII or any other 146
provision of the Revised Code. 147

(C) Notwithstanding the exceptions to public inspection in 148
division (A)(2) of this section, the board may furnish the 149
following information: 150

(1) If a participating employee, continuing member, or former 151
participant or member is subject to an order issued under section 152
2907.15 of the Revised Code or is convicted of or pleads guilty to 153
a violation of section 2921.41 of the Revised Code, on written 154
request of a prosecutor as defined in section 2935.01 of the 155
Revised Code, the board shall furnish to the prosecutor the 156
information requested from the individual's personal history 157
record or participant account. 158

(2) Pursuant to a court or administrative order issued 159
pursuant to Chapter 3119., 3121., 3123., or 3125. of the Revised 160
Code, the board shall furnish to a court or child support 161
enforcement agency the information required under that section. 162

(3) Pursuant to an administrative subpoena issued by a state 163
agency, the board shall furnish the information required by the 164
subpoena. 165

(4) The board shall comply with orders issued under section 166
3105.87 of the Revised Code. 167

(D) A statement that contains information obtained from the 168
program's records that is signed by the executive director or the 169
director's designee and to which the board's official seal is 170
affixed, or copies of the program's records to which the signature 171
and seal are attached, shall be received as true copies of the 172
board's records in any court or before any officer of this state. 173

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Sec. 3105.87. The court may order a public retirement program 175
or the Ohio public employees deferred compensation program to 176
provide information from a participant's personal history record 177
necessary to determine the amounts described in division (D) of 178
section 3105.82 of the Revised Code. 179

Section 2. That existing sections 148.02, 148.04, and 3105.87 180
of the Revised Code are hereby repealed. 181