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Bill Analysis
Legislative Service Commission

Sub. H.B. 8

127th General Assembly
(As Reported by H. State Government & Elections)

Reps. R. Hagan, Hite, Skindell, Lundy, Driehaus, Domenick, D. Stewart

BILL SUMMARY

- Requires a court, in sentencing a person for committing a designated felony on or after the bill's effective date, to impose a forfeiture order against the right to receive a disability benefit or the employer-based portion of a public pension if the court determines that both of the following apply:
 1. The person is a member of a state retirement system or participant in a public alternative retirement plan;
 2. The person committed the offense while engaged in duties related to public employment.
- Requires a court to impose a forfeiture order for the following felonies: extortion, bribery, perjury, theft in office, unlawful interest in a public contract, and engaging in a pattern of corrupt activity; or conspiracy or attempt to commit any of those offenses.
- Provides that, in any case in which a court is required to impose a forfeiture order, the person may request a hearing prior to sentencing to determine whether there is good cause for a forfeiture not to be issued.
- Specifies that a forfeiture order does not affect eligibility for a return of accumulated contributions, health care coverage, or survivor benefits.

CONTENT AND OPERATION

Forfeiture order for certain felonies

(sec. 2901.43(B))

The bill creates a penalty for any public employee who is convicted of or pleads guilty to committing certain felony offenses (called "designated offenses" in the bill) while engaged in duties related to public employment. The penalty is that the offender forfeits the right to receive a disability benefit or the pension portion of a retirement allowance¹ from the public retirement system in which the offender is a member. The retirement systems whose members are subject to the bill are the five state retirement systems,² the City of Cincinnati Retirement System, and any alternative retirement plan established under Revised Code Chapter 3305.³

What crimes are considered designated offenses?

(sec. 2901.43(A))

The bill defines the following felony offenses as "designated offenses":

- (1) Extortion, bribery, perjury, obstructing justice, theft in office, unlawful interest in a public contract, and engaging in a pattern of corrupt activity;
- (2) Conspiracy or attempt to commit any of the offenses listed above.

The bill specifies that, in the case of a designated offense that includes a course of conduct or an occurrence of multiple acts, the offense is considered to have occurred on or after the bill's effective date if, on or after that date, the course of conduct continues, one or more of the multiple acts occurs, or the offender's

¹ A retirement allowance is comprised of two parts: the pension portion and the annuity portion. The pension portion of a retirement allowance is the portion derived from contributions made to the retirement system or alternative retirement plan by an employer, including earnings on those contributions. The annuity portion is derived from contributions made by the employee.

² The state's public retirement systems are the Public Employees Retirement System, Ohio Police and Fire Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System.

³ For a description of alternative retirement plans, see **COMMENT 1**.

accountability for the course of conduct or for one or more of the multiple acts continues.

Imposing the order

(secs. 2901.43(B) and (C); 145.27, 742.41, 3305.20, 3307.20, 3309.22, and 5505.22)

The bill requires the court, in sentencing an offender for a designated offense committed on or after the bill's effective date, to do all of the following:

(1) Determine whether the offender is a member of a public retirement system or participant in an alternative retirement plan. (The court may request confirmation from a public retirement system or alternative retirement plan of an offender's status in the system or plan. The system or plan must provide the information requested from the offender's personal history record.)

(2) Determine whether the offender committed the offense while engaged in duties related to public employment;

(3) If the offender requests a hearing to determine whether there is good cause based on evidence presented by the offender for the forfeiture order not to be issued (as described below), conduct the hearing;

(4) If the offender does not request a hearing or, if the court conducts a hearing but does not determine that there is good cause for the forfeiture order not to be issued, order the forfeiture to the public retirement system or alternative retirement plan of the offender's right to receive a disability benefit or the pension portion of a retirement allowance.

(5) Send a copy of the journal entry imposing the sentence on the offender to the public retirement system or alternative retirement plan in which the offender is a member or participant.

The bill requires the court to impose a forfeiture order in addition to any other sanction ordered for the offense and specifies that the forfeiture is part of, and must be included in, the offender's sentence. However, a forfeiture order may be imposed only to the extent that the offender's disability benefit or retirement allowance has not vested in accordance with Ohio or federal law.⁴

⁴ Under federal law, a retirement allowance vests when the member reaches normal retirement age, completes the required years of service, and meets any other reasonable requirements set forth by the retirement system or plan. Under Ohio's five public retirement systems, an allowance generally vests on the granting of the allowance. There

Hearing to determine good cause not to issue forfeiture order

(sec. 2901.43(D))

The bill provides that, in any case in which a court is required to impose a forfeiture order, the offender may request a hearing to consider whether there is good cause not to issue the forfeiture order. To request a hearing, the offender must deliver a written request for a hearing to the court prior to sentencing. The court must conduct the hearing if the offender requests it prior to sentencing. On receiving a request for a hearing, the court must notify all of the following:

- (1) The offender;
- (2) The prosecutor who handled the case in which the offender was convicted of or pleaded guilty to the designated offense for which the forfeiture order was imposed;
- (3) The retirement system or alternative retirement plan in which the offender is a member or participant or, if the offender is a member of or participant in more than one system or plan, the applicable combination thereof.

The hearing must be limited to a consideration of whether there is good cause, based on evidence presented by the offender, for the forfeiture order not to be issued. If the court determines that there is good cause not to issue the forfeiture order, the court must not issue the order. If the court determines that there is no good cause not to issue the order, or if the offender does not request a hearing, the court must issue the forfeiture order.

Public retirement systems required to comply with forfeiture orders

(secs. 145.56, 145.572, 145.82, 145.95, 742.463, 742.47, 3305.07, 3305.11, 3307.372, 3307.41, 3309.66, 3309.672, 3309.82, 3309.95, 5505.05, and 5505.262)

A forfeiture order issued under the bill affects only the right to receive a disability benefit or the pension portion of the retirement allowance. The bill specifies that a forfeiture order does not affect any of the following:

- (1) An offender's right to receive payment of accumulated contributions standing to the offender's credit in the retirement system or plan;⁵

is, however, an exception for the member-directed defined contribution plans offered under PERS and STRS: under such a plan, a benefit vests after five years.

⁵ As used in the bill, "accumulated contributions" refers to the portion of a public employee's contributions to a public retirement system or alternative retirement plan

(2) Any portion of a retirement allowance or payment of accumulated contributions subject to withholding pursuant to a division of marital property order or child support order;

(3) Any portion of a retirement allowance or payment of accumulated contributions that is subject to withholding pursuant to a restitution order for theft in office or certain sex offenses;

(4) Eligibility of an offender or the offender's spouse or qualified dependents, as appropriate, to receive health care coverage from a public retirement system or alternative retirement plan;

(5) Payment of a survivor benefit to the offender's spouse, beneficiaries, or qualified dependents under existing law.

Once a court issues a forfeiture order against an offender, the bill requires the public retirement system or alternative retirement plan to comply with the order as follows:

(1) If the offender has applied for, but is not yet receiving a retirement allowance or disability benefit, as soon as is practicable;

(2) If the offender has applied for, but has not yet received a payment of accumulated contributions, as soon as practicable;

(3) If the offender has not applied for a retirement allowance, disability benefit, or payment of accumulated contributions, on application by the offender for a retirement allowance, disability benefit, or payment of accumulated contributions.

The bill permits each public retirement system to adopt rules as necessary to implement the bill's provisions.

COMMENT

deducted from the employee's compensation plus some interest earned by the contributions. (Contributions to a public retirement system or alternative retirement plan made on the employee's behalf by the employer are not considered part of the employee's accumulated contributions. For additional information regarding contribution rates, see **COMMENT 2.**) "Accumulated contributions" also includes any amounts the employee paid to purchase service credit and any additional voluntary contributions the employee has made to the retirement system or plan.

1. Alternative retirement plans

Current law requires each public institution of higher education⁶ to offer certain full-time employees the option of participating in an alternative retirement plan, rather than in the state retirement plan that would otherwise cover the employee's position: the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS). To be eligible to participate, the employee must have commenced employment on or after a date determined by statute or have completed less than five years of service covered by PERS, STRS, or SERS on that date.

The law requires that an alternative retirement plan be a defined contribution plan⁷ under which a portion of a participating employee's compensation and a contribution from the employer are deposited in an individual account created for the employee. The employee directs the investment of those contributions. Each alternative retirement plan must be offered pursuant to a contract between the employer and a provider designated by the Superintendent of Insurance. It must be a qualified plan under section 401(a) of the U.S. Internal Revenue Code. (R.C. 3305.02, not in the bill.)

2. Contributions to a state retirement system

Ohio law requires public employees to contribute a percentage of their earnings to one of the five state retirement systems.⁸ Which retirement system an employee contributes to depends on the employer and, in some cases, the nature of the employment. In addition to the employee contribution, the law requires public employers to contribute to a state retirement system an amount equal to a

⁶ "Public institution of higher education" includes state universities, the Northeastern Ohio universities college of medicine, university branches, technical colleges, state community colleges, community colleges, and municipal universities (R.C. 3305.01).

⁷ A defined contribution plan is a type of retirement plan in which the amount of the annual contributions are specified. Individual accounts are set up for each participant, and benefits are based on the amounts credited to these accounts (through employer contributions and, if applicable, employee contributions), plus any investment earnings on the money in the account. (U.S. Department of Labor, Bureau of Labor Statistics Glossary, <http://www.bls.gov/bls/glossary.htm>, visited 12-12-06.

⁸ The law permits certain public employees, who would otherwise contribute to PERS, STRS, or SERS, to elect to participate in an alternative retirement plan, or ARP. Employees who participate in an ARP and their employers must contribute at the same rate at which they would otherwise contribute to PERS, STRS, or SERS.

percentage of each employee's earnings. The employee and employer contribution rates for each retirement system are shown in the following table:

Retirement System	Employee Rate	Employer Rate
PERS – State ⁹	9.50%	13.77%
PERS – Local	9.50%	13.85%
PERS-LE, Group A ¹⁰	9.75%	17.17%
PERS-LE, Group B ¹¹	10.10%	17.17%
OP&F – Firefighters	10.00%	24.00%
OP&F – Police officers	10.00%	19.50%
STRS	10.00%	14.00%
SERS	10.00%	14.00%
SHPRS	10.00%	25.50%

The benefits retirement system members receive at retirement or by reason of disability are funded by employee contributions, employer contributions, and investment earnings.

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, H. State Government & Elections	06-12-07

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⁹ PERS employee and employer contributions are scheduled to increase in 2009 to the maximum amounts permitted by statute: employee contributions 10.00%; employer contributions 14.00%.

¹⁰ PERS-LE Group A consists of Hamilton County Municipal Court bailiffs and law enforcement officers whose duties are other than to preserve the peace, protect life and property, and enforce the laws.

¹¹ PERS-LE Group B consists of all other law enforcement personnel in the law enforcement division.