



## *Bill Analysis*

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*Legislative Service Commission*

### **Sub. S.B. 3\***

127th General Assembly

(As Reported by H. State Government and Elections)

**Sens. Faber, Schaffer, Stivers, Jacobson, Carey, Grendell, Schuring, Cafaro, Cates, Clancy, Fedor, Goodman, Harris, Mason, Morano, Niehaus, Padgett, Roberts, Sawyer, Wilson, Gardner, Mumper**

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### **BILL SUMMARY**

- Provides that the restoration of the rights and privileges to a person convicted of a crime who has completed the penalty for the crime does not extend to the privilege of holding an office of honor, trust, or profit if the person was convicted of or pleaded guilty to any of a number of felonies specified.
- Provides that a person granted an administrative release by the Adult Parole Authority may apply for a commutation of sentence for the purpose of regaining the rights and privilege forfeited by conviction, except that the privilege of holding an office of honor, trust, or profit may not be restored to a person who was convicted of or pleaded guilty to committing on or after the bill's effective date any of a number of felonies specified.
- Requires the prosecutor of a case in which a person is charged with committing any of a number of felonies specified who has knowledge that the person committed the offense while serving in a position of honor, trust, or profit to notify the public retirement system or alternate retirement plan of which the person is a member.
- Prohibits a person from registering as a legislative agent, retirement system lobbyist, or executive agency lobbyist if the person is convicted of or pleads guilty on or after the effective date of the bill to any of a

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\* This analysis was prepared before the report of the House State Government and Elections Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

number of felonies specified; provides that the ban is lifetime; and requires the Joint Legislative Ethics Committee to terminate the registration of a registered agent or lobbyist who is convicted of or pleads guilty to any such felony.

- Requires a sentencing court to order the forfeiture to the applicable public retirement system or alternative retirement plan of the person's right to a retirement or disability benefit, or other right or benefit, other than payment of the person's accumulated contributions, if the person is being sentenced for any of a number of felonies committed on or after the bill's effective date, the person committed that offense while serving in a position of honor, trust, or profit, and, at the time of the offense, was a member of the applicable retirement system or alternative retirement plan.
- Requires the Inspector General to investigate the management and operation of the office of the Attorney General to determine whether misconduct or wrongful acts or omissions have been or are being committed by the Attorney General or by present or former employees of or contractors with that Office.
- Makes an appropriation to the office of Inspector General.
- Declares an emergency.

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## CONTENT AND OPERATION

### *Lifetime ban*

The bill prohibits a person from registering as a legislative agent, a retirement system lobbyist, or an executive agency lobbyist if the person is convicted of or pleads guilty on or after the effective date of the bill to any of the following offenses that is a felony: (1) bribery (R.C. 2921.02), intimidation (R.C. 2921.03), retaliation (R.C. 2921.05), theft in office (R.C. 2921.41), or engaging in a pattern of corrupt activity (R.C. 2923.32), (2) tampering with records (R.C. 2913.42), intimidation of an attorney, victim, or witness in a criminal case (R.C. 2921.04), perjury (R.C. 2921.11), tampering with evidence (R.C. 2921.12), obstructing official business (R.C. 2921.31), or obstructing justice (R.C. 2921.32) if the person committed the offense while in a public office and the offense was related to the duties of the public office or to the person's actions as a public official, (3) a violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any violation listed in clause (1), (4) a violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any violation listed in clause (2) if the person committed the violation while serving in a public office and the conduct was related to the duties of the public office or to actions as a public official, (5) a conspiracy to commit, attempt to commit, or complicity to commit any offense listed in clause (1) or described in clause (3), or (6) a conspiracy to commit, attempt to commit, or complicity in committing any offense listed in clause (2) or described in clause (4), if the person committed the violation while serving in a public office and the conduct constituting the offense that was the subject of the conspiracy, would have constituted the offense attempted, or constituting the violation in which the person was complicit was or would have been related to the duties of the person's public office or to the person's actions as a public official holding that public office.

The ban is a lifetime ban, and the offender is forever disqualified from registering as a legislative agent, a retirement system lobbyist, or an executive agency lobbyist.

If a legislative agent, retirement system lobbyist, or executive agency lobbyist has registered with the Joint Legislative Ethics Committee and is convicted of or pleads guilty to any of the above-mentioned offenses, the bill requires the Joint Legislative Ethics Committee immediately on becoming aware of the conviction or guilty plea to terminate the person's registration as an agent or lobbyist; thereafter, the ban applies to the person.

An offense that includes as an element a course of conduct or the occurrence of multiple acts is "committed on or after the effective date of the bill" if the course of conduct continues, one or more of the multiple acts occurs, or the person's accountability for the course of conduct or for one or more of the multiple acts continues, on or after the bill's effective date. (R.C. 101.721, 101.921, and 121.621.)

### **Restoration of rights and privileges to certain prisoners and persons**

#### **Background**

Existing law contains provisions that require forfeiture of certain rights and privileges if the person has been convicted of specified criminal offenses. Among these are:

(1) Generally, a person convicted of a felony in Ohio, any other state, or the United States is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. When a person is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an elector during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector following final discharge.

A person convicted of a felony under the laws of Ohio, any other state, or the United States is incompetent to circulate or serve as a witness for the signing of a declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition. (R.C. 2961.01, not in the bill.)

(2) A person who is convicted of a "disqualifying offense" (see below) is incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the office or position or serving as a volunteer involves substantial management or control over the property of a state agency, political subdivision, or private entity. This does not apply if a conviction of a disqualifying offense<sup>1</sup> is reversed, expunged, or annulled. (R.C. 2961.02, not in the bill.)

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<sup>1</sup> "Disqualifying offense" means an offense that is a felony theft offense or is a felony under the laws of Ohio state, another state, or the United States, is not a felony theft offense, and involves fraud, deceit, or theft, and that is an offense for which the laws of Ohio state, another state, or the United States do not otherwise contain a provision specifying permanent disqualification, or disqualification for a specified period, from

(3) A public official or party official who is convicted of or pleads guilty to theft in office is forever disqualified from holding any public office, employment, or position of trust in Ohio. (R.C. 2921.41, not in the bill.)

**Restoration--prisoners and certain other persons**

**Existing law.** The following prisoners or persons are restored to the rights and privileges forfeited by a conviction: (1) a prisoner who has served the entire prison term that comprises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions, (2) a prisoner who has been granted a final release by the Adult Parole Authority of the Department of Rehabilitation and Correction (APA) as described in the next paragraph, and (3) a person who has completed a community control sanction or combination of community control sanctions imposed by the sentencing court.

Generally, when a paroled prisoner has performed the conditions and obligations of parole and obeyed the applicable rules and regulations adopted by the APA, the APA, on the recommendation of the Superintendent of Parole Supervision, may enter a final release and must issue a certificate of final release, but the APA cannot grant a final release earlier than one year after release from the institution on parole, and, in the case of a paroled prisoner whose minimum sentence is life imprisonment, the APA cannot grant a final release earlier than five years after the paroled prisoner is released from the institution on parole.

When a prisoner who has been released under a period of post-release control has performed the conditions and obligations of the post-release control sanctions and obeyed the applicable rules and regulations adopted by the APA or has the period of post-release control terminated by a court, the APA, on the recommendation of the Superintendent of Parole Supervision, may enter a final release and must issue to the prisoner a certificate of final release.

In the case of a prisoner who has been released under a period of post-release control, the APA cannot grant a final release earlier than one year after the prisoner is released from the institution under a period of post-release control. In the case of a released prisoner whose sentence is life imprisonment, the APA cannot grant a final release earlier than five years after the prisoner is released from the institution under a period of post-release control. (R.C. 2967.16.)

**Operation of the bill.** The bill enacts a limitation on the provision that provides for the restoration to a prisoner or person, of the rights and privileges

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holding a public office or position of public employment, or from serving as an unpaid volunteer, as a result of conviction of the offense. (R.C. 2961.02(A)(1).)

forfeited by the prisoner's conviction. Under the bill, the restoration does not extend to holding an *office of honor, trust, or profit* if the prisoner was convicted of or pleaded guilty to any of the offenses described above in "**Lifetime ban**" that is a felony.<sup>2</sup>

### **Restoration--parole violators**

**Existing law.** Under existing law the APA may grant an administrative release to any of the following: (1) a parole violator or release violator serving another felony sentence in a correctional institution in or outside Ohio for the purpose of consolidation of the records or if justice would best be served, (2) a parole or release violator at large whose case has been inactive for at least ten years following the date of declaration of the parole violation or the violation of a post-release control sanction, or (3) a parolee taken into custody by the Immigration and Naturalization Service and deported from the United States.

An administrative release does not restore the rights and privileges forfeited by conviction. A person granted an administrative release may apply for a commutation of sentence, except that the privilege of circulating or serving as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition forfeited may not be restored. (R.C. 2967.17.)

**Operation of the bill.** The bill enacts an additional limitation upon restoration, in specified circumstances, of the rights and privileges forfeited by the prisoner's conviction. Under the bill, a person granted an administrative release may subsequently apply for a commutation of sentence, except that the privileges mentioned in the preceding paragraph and the privilege of holding a *position of honor, trust, or profit* may not be restored to a person who was convicted of or pleaded guilty to on or after the bill's effective date any of the offenses described above in "**Lifetime ban**" that is a felony. (R.C. 2967.17(B).)

### **Prosecutor's notice to public retirement system**

The bill provides that, on the filing of charges alleging that the person committed on or after the bill's effective date any of the offenses specified below, if the person allegedly committed the offense while serving in a position of honor,

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<sup>2</sup> "Position of honor, trust, or profit" means any of the following: (a) an elective office of the state or any political subdivision of the state, (b) a position on any board or commission of the state that is appointed by the Governor or the Attorney General, (c) a position as a public official or employee, who is required to file a disclosure statement under R.C. 102.02, (d) a position as a prosecutor, or (e) a position as a peace officer, or as the superintendent or a trooper of the State Highway Patrol. (R.C. 2929.192(F).)

trust, or profit and the person participates in an alternative retirement plan<sup>3</sup> or is a member of a public retirement system,<sup>4</sup> the prosecutor must send written notice that charges have been filed to the alternative retirement plan or the public retirement system. The written notice must specifically identify the person charged.

### **Forfeiture of retirement system benefits**

#### **Forfeiture order as part of criminal sentence**

The bill provides that, if a person is sentenced for a felony offense specified below that was committed on or after the bill's effective date, if the person committed the offense while serving in a position of honor, trust, or profit, and if the person, at the time of the commission of the offense, was a member of any public retirement system or participant in an alternative retirement plan, the court, in addition to any other penalty it may impose, generally must order the forfeiture to the public retirement system or alternative retirement plan of the right to a retirement or disability benefit, other than payment of the person's accumulated contributions.<sup>5</sup> A forfeiture is part of, and must be included in, the sentence of the

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<sup>3</sup> An alternative retirement plan is a defined contribution plan under which a portion of a participating employee's compensation and a contribution from the employer are deposited into 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 Internal Revenue Code. (R.C. 3305.02, not in the bill.)

Current law requires each public institution of higher education to offer certain full-time employees the option of participating in an alternative retirement plan instead of the retirement system that would otherwise cover the employee's position: PERS, STRS, or 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.

<sup>4</sup> "Public retirement system" means the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), Ohio Police and Fire Pension Fund (OP&F), State Highway Patrol Retirement System (SHPRS), or a municipal retirement system of a municipal corporation of Ohio (R.C. 2901.43, by reference to existing R.C. 2907.15--not in the bill).

<sup>5</sup> "Accumulated contributions" are the portion of an employee's contributions to a state retirement system deducted from the employee's compensation plus interest earned by the contributions. It also includes any amounts the employee paid to purchase service credit and any additional voluntary contributions the employee has made to the retirement

offender. The court must send a copy of the person's sentence to the appropriate system or plan in which the person was a member or participant.

If a sentencing court is required to order forfeiture of a person's right to a retirement or disability benefit, the person may request a hearing by delivering to the court, prior to sentencing, a written request for a hearing. If the request is made prior to sentencing, the court must conduct the hearing before sentencing. The court must notify the person, the prosecutor who handled the criminal case, and the appropriate retirement system or alternative retirement plan provider. The hearing is limited to a consideration of whether there is good cause based on evidence presented by the person for the forfeiture order not to be issued. If the court so determines, the court cannot issue the forfeiture order.

If the person does not request a hearing prior to sentencing or if the court conducts a hearing but does not determine that there is good cause for the forfeiture order not to be issued, the court must order the forfeiture and send a copy of the sentence to the appropriate retirement system or plan.

On receipt of a copy of a journal entry imposing sentence that contains an order of forfeiture, the public retirement system or alternative retirement plan must comply with the forfeiture order on application for a refund of the accumulated contributions of the member or participant.

The forfeiture provisions apply to a person who is convicted of or pleads guilty to any of the following offenses committed on or after the bill's effective date that is a felony and if the offense was committed while the person was serving in a position of honor, trust, or profit: (1) bribery (R.C. 2921.02), engaging in a pattern of corrupt activity (R.C. 2923.32), or theft in office (R.C. 2921.41) that is a felony of the third degree, (2) a violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any violation above, or (3) a conspiracy to commit, attempt to commit, or complicity in committing any of the above-mentioned offenses.

### **Retirement system provisions**

The bill enacts provisions governing the various public retirement systems that relate to forfeiture orders.

The bill provides that if the court orders a forfeiture, PERS must comply with the forfeiture order at the time the member or contributor applies for payment

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system. Contributions to a state retirement system made on the employee's behalf by the employer are not considered part of the employee's accumulated contributions.



of accumulated contributions. Upon payment of contributions and cancellation of any corresponding service credit, a person who is subject to the forfeiture order may not restore any cancelled service credit under PERS or the other state retirement systems. (R.C. 145.572(A).)

The bill provides that if the court orders a forfeiture, OP&F, STRS, SERS, SHPRS, and the statutes governing providers of alternative retirement plans must comply with that order. Upon payment of accumulated contributions and cancellation of the corresponding service credit, a person who is subject to the forfeiture may not restore the cancelled service credit. (R.C. 742.463(A), 3305.11(A), 3307.732(A), 3309.672(A), and 5505.262(A).)

If the system or provider receives notice that a person who has accumulated contributions standing to the person's credit is charged with any offense described above in "**Forfeiture order as part of criminal sentence**," all of the following apply (R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.732(B), 3309.672(B), and 5505.262(B)):

(1) No payment of accumulated contributions or of any other amount or amounts to be paid to a person on the withdrawal of contributions may be made prior to whichever of the following is applicable: (a) if the person is convicted of or pleads guilty to the charge and forfeiture is ordered, the day on which the system or provider receives from the court a copy of the journal entry of the offender's sentence under that section, or (b) if the charge against the person is dismissed, the person is found not guilty of the charge, or the person is found not guilty by reason of insanity of the charge, the day on which the system or provider receives notice of the final disposition of the charge.

(2) The system or provider cannot process an application for payment prior to the final disposition of the charge.

The bill provides that if a court orders a forfeiture, a person who is eligible to retire must obtain spousal consent on application for a refund of employee contributions. Consent is valid only if it is signed and witnessed and signed by a notary public. The applicable retirement board may waive the consent requirement if the spouse is incapacitated, cannot be located, or for any other reason specified by the board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

### **Reference in other laws**

The bill modifies a number of existing laws that generally protect the right of a member of PERS, OP&F, STRS, SERS, or SHPRS to receive a benefit free from execution, garnishment, attachment, the operation of bankruptcy or

insolvency laws, or other legal process, subject to specified exceptions, to include the provisions described above in "**Forfeiture provision**" within the list of specified exceptions (R.C. 145.56, 742.47, 3307.41, 3309.66, and 5505.22).

It modifies two provisions that address the right of a member of PERS or SERS, with specified exceptions, to payments or benefits to include the provisions above in "**Forfeiture provision**" within the list of specified exceptions (R.C. 145.95 and 3309.95).

It permits the boards of PERS, OP&F, STRS, and SERS to furnish to a prosecutor information requested from an individual's personal history record if the person is a member, former member, contributor, former contributor, or retirant from the system who is subject to a forfeiture order described above in "**Forfeiture order as part of criminal sentence**" (R.C. 145.27(D)(1), 742.41(E)(1), 3307.20(E)(1), and 3309.22(D)(1)).

It specifies that the PERS and SERS defined benefit plan provisions that require the retirement systems to comply with a forfeiture order at the time the member or contributor applies for payment of accumulated contributions also apply to PERS and SERS defined contribution plans. (R.C. 145.82(B) and 3309.82(B).)

In a provision that specifies that a person's right to a pension, benefit, annuity, retirement allowance, or accumulated contributions, a person's right to a participant account in any deferred compensation program, or a person's other accrued or accruing rights generally are exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, the bill provides an exception, in addition to a few existing exceptions, in cases in which a forfeiture order described above in "**Forfeiture order as part of criminal sentence**" has been issued (R.C. 2329.66(A)(10)).

### **Requirement for the Inspector General to investigate the office of Attorney General**

Current law does not give the Inspector General authority to investigate the offices of Auditor of State, Secretary of State, Treasurer of State, or Attorney General (R.C. 121.41(D)(3), not in the bill). The bill makes an exception to this provision by requiring the Inspector General to investigate the management and operation of the office of the Attorney General to determine whether misconduct or wrongful acts or omissions have been or are being committed by the Attorney General or by present or former employees of or contractors with that Office. The bill defines "wrongful act or omission" in the same manner as does the current Inspector General Law.

The Inspector General and each deputy inspector general may administer oaths, examine witnesses under oath, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all kinds of books, records, paper, and tangible things. Upon refusal of a witness to be sworn or answer any question put to the witness, or if a person disobeys the subpoena, the Inspector General must apply to the court of common pleas for a contempt order, as in the case of disobedience to the requirements of a subpoena issued from the court of common pleas, or refusal to testify in court.

The Inspector General must identify other state officers and agencies that are also conducting contemporaneous investigations, audits, reviews, or evaluations of the office of the Attorney General. The Inspector General is entitled to coordinate and manage these reinvestigations, audits, reviews, and evaluations. A state officer or agency that is doing so must cooperate with the Inspector General in this regard. The Inspector General and each state officer or agency that is conducting such an investigation, audit, review, or evaluation must share information and avoid duplication of effort. (Section 3(A).)

At the conclusion of the investigation, the Inspector General is required to prepare a detailed final report of the results of the investigation. The Inspector General must submit the final report to the Governor, House Speaker, and Senate President. The authority vested in the Inspector General terminates when the final report has been submitted. (Section 3(B).)

The Inspector General may enter into any contracts necessary to complete the investigation. The contracts may include contracts for the services of persons who are experts in a particular field and whose expertise is necessary to successful completion of the investigation. (Section 3(C).)

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## HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary - Criminal Justice	05-16-07
Passed Senate (32-0)	05-16-07
Reported, H. State Gov't & Elections	---

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