



# Ohio Legislative Service Commission

## Bill Analysis

Daniel M. DeSantis

### Sub. S.B. 219

128th General Assembly  
(As Passed by the Senate)

**Sens.** Grendell, Schaffer, Wagoner, Buehrer, Cafaro, Cates, Faber, Fedor, Gibbs, Harris, Hughes, Husted, D. Miller, R. Miller, Morano, Niehaus, Turner, Wilson

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## BILL SUMMARY

- For purposes of the law that requires forfeiture of the right to receive future retirement benefits for conviction of a felony offense of bribery, engaging in a pattern of corrupt behavior, or theft in office while serving in a "position of honor, trust, or profit," expands that definition to include a position in which, in the course of public employment, an employee has control over the expenditure of public funds of \$100,000 or more annually.
- Authorizes the termination of the existing disability benefit of a member of the Public Employees Retirement System, Ohio Police & Fire Pension Fund, State Teachers Retirement System, School Employees Retirement System, State Highway Patrol Retirement System, or Cincinnati Retirement System, or of a participant in an alternative retirement plan, who is convicted of one of those aforementioned felony offenses while serving in a position of honor, trust, or profit, and the disabling condition arose out of the commission of the felony.
- Requires a public retirement system or alternative retirement plan provider, after receiving notice from the prosecutor that a member or plan participant has been charged with one of the specified felonies, to notify the prosecutor whether the member or plan participant has been granted a disability benefit and to submit to the court the documents relied upon in granting the disability benefit.
- Requires the court to hold a hearing regarding the condition for which the offender was granted a disability benefit prior to sentencing the offender to determine whether the offender's disabling condition arose out of the commission of the felony the offender was convicted of or pled guilty to.

- Authorizes the public retirement system or alternative retirement plan provider to recover the disability benefit paid to the offender, if the court orders termination of the benefit.
- Provides that the notice regarding an offender's disability benefit status, and the documents relied upon in granting an offender's disability benefit, may be provided to the prosecutor and court, respectively.

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## **CONTENT AND OPERATION**

### **Background**

#### **Vesting of retirement benefits in general**

(R.C. 145.561, 145.95, 742.46, 3305.07(B), 3307.42, 3309.661, and 3309.95)

Continuing law provides that the granting of a pension, annuity, retirement allowance, or other payment or benefit to a person by action of the Public Employees Retirement System (PERS), Ohio Police & Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS) vests a right in the person to that benefit.<sup>1</sup> Likewise, payments or benefits based on member contributions under a PERS, STRS, or SERS defined contribution or benefit option plan are nonforfeitable.

Under an alternative retirement plan, payments or benefits must be paid to a plan participant according to the plan offered by the participant's employer.<sup>2</sup>

#### **Protection of retirement benefits**

(R.C. 145.56, 145.95, 742.47, 2329.66(A)(10), 2929.192(D) and (F), 3305.09 (not in the bill), 3307.41, 3309.66, and 5505.22)

Generally, the right of a member or re-employed retirant to a pension, an annuity, a retirement allowance, or an optional benefit from PERS,<sup>3</sup> OP&F, STRS, SERS, or the State Highway Patrol Retirement System (SHPRS) (hereinafter collectively

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<sup>1</sup> State Highway Patrol Retirement System law does not address vesting as such. OP&F law also provides that the right to obtain and receive benefits under a deferred retirement plan option vests when the person ceases participation.

<sup>2</sup> Employees of public institutions of higher education who would normally make contributions to STRS may elect to participate instead in an alternative retirement plan under R.C. Chapter 3305.

<sup>3</sup> Under PERS law, these protections extend to retirement benefits paid by the Cincinnati Retirement System.

referred to as "public retirement systems") and the right of a participant to a payment or benefit under an alternative retirement plan, is protected from execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other processes of law, and is unassignable, except under certain circumstances. In addition, these retirement benefits are exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, except when a court, in certain cases, issues an order for restitution.

## **Forfeiture of future retirement benefits**

(R.C. 2929.192(F))

Under continuing law, one of the exceptions to protecting retirement benefits from processes of law or from court-ordered restitution is when a member or re-employed retirant of a public retirement system or a participant in an alternative retirement plan who is employed in a "position of honor, trust, or profit" is convicted of or pleads guilty to a felony offense of bribery, engaging in a pattern of corrupt behavior, or theft in office (including conspiracy or complicity in committing any of these offenses) that was committed while the person was a member or participant. That offender must forfeit the right to future retirement benefits.<sup>4</sup> In other words, the offender must forfeit the right to receive a retirement allowance, pension, disability benefit, or other right or benefit, except for contributions made by the offender and earnings on those contributions.

Current law defines a "position of honor, trust, or profit" as any of the following:

- (1) An elective office of the state or any of its political subdivisions;
- (2) A position on any state board or commission that is appointed by the Governor or the Attorney General;
- (3) A position as a public official or employee required to file a financial disclosure statement under the Ethics Law;
- (4) A position as a prosecutor; or
- (5) A position as a peace officer or State Highway Patrol Superintendent or trooper.

The bill expands the definition of "position of honor, trust, or profit" to include, on and after the bill's effective date, a position in which, in the course of public

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<sup>4</sup> If the offender requests one, a hearing must be held under continuing law's hearing procedures before these future retirement benefits are forfeited according to a court order.

employment, an employee has control over the expenditure of public funds of \$100,000 or more annually. Thus, under the bill, such an employee would be subject to the forfeiture provisions and would forfeit the right to receive retirement benefits if the employee is convicted of or pleads guilty to any felony specified above that was committed while the offender was a public retirement system member or re-employed retirant, or a participant in an alternative retirement plan.

### **Termination of a granted disability benefit**

(R.C. 145.573, 145.82, 742.464, 2929.193, 3305.12, 3307.373, 3309.673, 3309.82, and 5505.265)

The bill also revises the retirement benefit vesting provisions and the laws that provide protection from processes of law and from court-ordered restitution as they apply to disability benefits that have already been granted to certain offenders by a public retirement system (including the Cincinnati Retirement System) or an alternative retirement plan provider, under specific conditions described below.<sup>5</sup> The bill requires a court to order a public retirement system or alternative retirement plan provider to terminate the disability benefit of an offender, if the court determines, based on certain documents submitted to it, that the disabling condition arose out of the commission of the offense. The bill further provides that a disability benefit may be terminated under a court order, and the public retirement system or alternative retirement plan provider must comply with the order and terminate the member's or plan participant's disability benefit.

#### **Offenders subject to disability benefit termination**

(R.C. 2929.193(A), (B), and (C)(1))

The offenders subject to disability benefit termination are those to whom all of the following apply:

(1) The offender is being sentenced for a felony offense of bribery, engaging in a pattern of corrupt behavior, or theft in office that was committed on or after the bill's effective date;<sup>6</sup>

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<sup>5</sup> The disability benefits subject to termination include benefits paid as disability retirement (consisting of an annuity and a pension), benefits paid as a disability allowance (which generally terminate when a member reaches retirement age), and disability benefits based on combined PERS, SERS, or STRS service credit.

<sup>6</sup> A course of conduct or the occurrence of multiple acts is committed on or after the bill's effective date if the course of conduct continues, one or more of the multiple acts occurs, or the offender's accountability

(2) The offense was committed while the offender was serving in a "position of honor, trust, or profit."

(3) At the time of the offense, the offender was a member or re-employed retirant of a public retirement system or a participant in an alternative retirement plan; and

(4) Prior to the final disposition of the case, the offender was granted a disability benefit by a public retirement system or an alternative retirement plan provider.

### **Notice and hearing procedures regarding disability benefit termination**

(R.C. 145.573, 145.82, 742.464, 2929.193(C), 3305.12, 3307.373, 3309.673, 3309.82, and 5505.263)

Under continuing law, a prosecutor is required to give written notice to the appropriate public retirement system or alternative retirement plan provider when a member of the retirement system or plan participant is charged with a felony offense of bribery, engaging in a pattern of corrupt behavior, or theft in office that was committed while serving in a position of honor, trust, or profit.<sup>7</sup> The bill provides that if a retirement system or plan provider receives this notice from the prosecutor, the system or plan provider must determine whether the member has been granted a disability benefit. If so, the system or plan provider must send written notice to the prosecutor assigned to the case that a disability benefit has been granted to the offender and the benefit may be subject to termination under the bill.

Prior to sentencing an offender, the bill requires that the court hold a hearing regarding the condition for which the offender was granted a disability benefit. Not later than ten days before the scheduled date of the hearing, the court must give written notice of the hearing to the offender, the prosecutor, and the appropriate public retirement system, alternative retirement plan provider, or, if more than one is providing a disability benefit, the applicable combination of these. The hearing is limited to a consideration of whether the offender's disabling condition arose out of the commission of the offense the offender was convicted of or pled guilty to.

The system or plan provider must submit to the court the offender's medical reports and recommendations, and the offender's disability application. If the court determines, based on those documents, that the disabling condition arose out of the

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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. 2929.193(D)).

<sup>7</sup> R.C. 145.572, 742.463, 2901.43, 3305.11, 3307.372, and 3309.672 (not in the bill).

commission of the felony the offender was convicted of or pled guilty to, the court must order the system or plan provider to terminate the offender's disability benefit.

### **Recovery of payments**

(R.C. 145.563 (not in the bill), 742.64, 2929.193(C)(2), 3305.22, 3307.47 (not in the bill), 3309.70 (not in the bill), and 5505.34)

Any disability benefit paid the offender prior to its termination under the bill's procedures may be recovered in accordance with continuing law regarding recovery of erroneously paid benefits.

### **Exceptions to privileged information**

(R.C. 145.27(B), 742.41(C), 3305.20, 3307.20(C), 3309.22(B), and 5505.04(D))

Current law provides that all medical reports and recommendations maintained by a public retirement system or an alternative retirement plan provider are privileged information, except under certain limited circumstances. The bill provides that the documents on which an offender's disability benefit was granted is privileged information, except that they may be provided to the court holding the disability benefit termination hearing.

### **Notice requirement**

(R.C. 145.27(D)(7), 742.41(E)(7), 3305.20, 3307.20(E)(7), 3309.22(D)(7), and 5505.04(E)(7))

The bill provides that the written notice prepared by a system or plan provider indicating that a member has been granted a disability benefit must be provided to the prosecutor assigned to a disability benefit termination case.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	12-08-09
Reported, S. Government Oversight	02-24-10
Passed Senate (33-0)	02-24-10

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