



# Ohio Legislative Service Commission

## Bill Analysis

Andrea Holmes

### H.B. 323

129th General Assembly  
(As Reported by H. Criminal Justice)

**Reps.** Dovilla and Anielski, Baker, Henne, Newbold, Boose, Slaby, Hayes, Bubp, Uecker, Sprague

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## BILL SUMMARY

- Adds felony offenses of extortion and perjury that are committed within the context of the offender's public employment to the crimes committed by a public retirement system member or alternative retirement plan participant while serving in a "position of honor, trust, or profit" that may result in forfeiture of a future retirement or disability benefit or termination of an existing disability benefit.
- Specifies, with regard to the additional offenses, that the bill applies only to offenses committed on or after its effective date.
- Clarifies that existing law and the bill apply to retirants contributing to a public retirement system due to re-employment by a public employer.

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## CONTENT AND OPERATION

### Forfeiture and termination of retirement and disability benefits – the bill

The bill adds the felony offenses of extortion and perjury that are committed within the context of the offender's public employment to the offenses committed by a public retirement system member or alternative retirement plan participant while serving in a "position of honor, trust, or profit" for which the member or participant may forfeit a future retirement or disability benefit or have an existing disability benefit terminated.<sup>1</sup> (See "**Definitions**," below, for definitions of "public retirement system" and "alternative retirement plan.") With regard to the added offenses, the bill applies only to offenses committed on or after its effective date. It clarifies that the existing and new

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<sup>1</sup> R.C. 2929.192(D)(2) and 2929.193(B)(1)(b).

provisions apply to public retirement system contributors – retired members who have been re-employed by a public employer (see "**Definitions**," below, for further discussion of contributors).

The offenses to which benefit forfeiture or termination applies currently are (1) felony offenses of bribery or engaging in a pattern of corrupt activity, or theft in office of property or services of \$5,000 or more in value (a felony of the third degree), or (2) conspiracy, complicity, or an attempt to commit any of those offenses.<sup>2</sup> "Position of honor, trust, or profit" includes all 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 who is required to file a financial disclosure statement under Ohio's ethics law;
- (4) A position as a prosecutor;
- (5) A position as a peace officer or State Highway Patrol Superintendent or trooper;
- (6) 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.<sup>3</sup>

### **Forfeiture of future retirement or disability benefits – current law**

Current law requires a court to order the forfeiture of a future retirement allowance or disability benefit to be paid to a person who is a public retirement system member or alternative retirement plan participant if all of the following apply: (1) the person is convicted of or pleads guilty to one of the offenses specified above, (2) the offense was committed while serving in a position of honor, trust, or profit, and (3) at the time of the offense, the person was a member or participant.

A person subject to an order forfeits the right to receive any payment under a pension, annuity, allowance, or other type of benefit from the system or plan, except a return of accumulated contributions or contributions made as a re-employed retirant. (See "**Definitions**," below for the definition of "accumulated contributions.")

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<sup>2</sup> R.C. 2929.192(D)(1) and 2929.193(B)(1)(a).

<sup>3</sup> R.C. 2929.192(F).

## **Notice and hearing requirements**

The prosecutor must send written notice to the applicable retirement system or alternative retirement plan when a system member or plan participant is charged with one of the above specified offenses.<sup>4</sup>

Prior to sentencing, a person subject to a forfeiture order may request a hearing. The hearing must be limited to consideration of whether there is good cause based on evidence presented by the person for the order not to be issued. If the court determines based on evidence presented by the person that there is good cause for the order not to be issued, the court is not to issue the order. If the person does not request a hearing prior to sentencing, or if the court conducts a hearing and fails to find good cause for the order not to be issued, the court must order the forfeiture.<sup>5</sup>

## **Suspension of retirement account activity**

The system or plan is prohibited from paying any accumulated contributions or any other amount prior to either one of the following:

(1) If the person is convicted of or pleads guilty to the charge, the day on which the system or plan receives from the court a copy of the journal entry of the person's sentence;

(2) 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, the day on which the system or plan receives notice of the final disposition of the charge.

The system or plan is prohibited from processing any application for payment from the person prior to the final disposition of the charge.<sup>6</sup>

## **Compliance with forfeiture order**

As discussed above, a public retirement system member or contributor or alternative retirement plan participant subject to a forfeiture order may receive only a return of accumulated contributions or contributions made as a re-employed retiree. The system or plan is to comply with the forfeiture order at the time the person applies for payment of accumulated contributions. A member's survivors or beneficiaries may still be eligible for benefits under certain conditions.

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<sup>4</sup> R.C. 2901.43.

<sup>5</sup> R.C. 2929.192(B).

<sup>6</sup> R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.562(B).

Once a return of contributions and cancellation of corresponding credit occurs, the person subject to the order may not restore credit in any public retirement system.<sup>7</sup>

### **Termination of existing disability benefits – current law**

Current law requires a court to order the termination of an existing disability benefit granted to a person who is a public retirement system member or contributor or an alternative retirement plan participant if all of the following apply: (1) the person is convicted of one of the offenses specified above, (2) the offense was committed while serving in a position of honor, trust, or profit, (3) at the time of the offense, the person was a system member or contributor or a plan participant, and (4) the court determines that the disability arose out of the commission of the offense.<sup>8</sup>

### **Notice and hearing requirements**

The prosecutor must notify the applicable system or plan when a person who is a system member or contributor or plan participant is charged with one of the specified offenses. The retirement system or plan provider must then determine whether the person has been granted a disability benefit. If so, the system or provider must send written notice to the prosecutor assigned to the case that a disability benefit has been granted to the person and the benefit may be subject to termination.<sup>9</sup>

Prior to sentencing, the court must hold a hearing regarding the condition for which the person was granted a disability benefit. The hearing is limited to a consideration of whether the person's disabling condition arose out of the commission of the offense the person was convicted of or pled guilty to.

The system or plan provider must submit to the court the person's medical reports and recommendations, and the person's disability application. If the court determines, based on those documents, that the disabling condition arose out of the commission of the felony the person was convicted of or pled guilty to, the court must order the system or plan provider to terminate the person's disability benefit. Any disability benefit paid to the person prior to the termination of those benefits may be recovered in accordance with the law regarding recovery of erroneously paid benefits.<sup>10</sup>

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<sup>7</sup> R.C. 145.572(A), 742.463(A), 3305.11(A), 3307.372(A), 3309.672(A), and 5505.562(A).

<sup>8</sup> R.C. 2929.193(B).

<sup>9</sup> R.C. 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.

<sup>10</sup> R.C. 2929.193(C).

## Definitions

(1) "Public retirement system" – the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS).

(2) "Contributor" – a re-employed retirant. Except for SHPRS, continuing law permits a person receiving a retirement benefit from one of the state's public retirement systems to be employed after retirement in a position subject to a public retirement system. In some cases a disability benefit recipient from one system may be employed under another system, such as a disabled police officer employed in a different capacity under PERS. Retired public employees are generally not considered retirement system members but must contribute to a public retirement system if employed by a public employer.

(3) "Alternative retirement plan" – a defined contribution plan available to certain full-time employees at public institutions of higher education.<sup>11</sup>

(4) "Accumulated contributions" – generally, the contributions deducted from a member's salary, plus interest on those contributions. Accumulated contributions also include any voluntary contributions made by the member, including any amounts made for the purchase of service credit. Accumulated contributions do not include any contributions made by the employer.<sup>12</sup>

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## HISTORY

ACTION	DATE
Introduced	09-13-11
Reported, H. Criminal Justice	01-25-12

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<sup>11</sup> R.C. Chapter 3305.

<sup>12</sup> R.C. 145.01, 742.37, 3307.50, 3309.01, and 5505.01.

