



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

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(As Introduced)

Reps. Dovilla and Anielski, Buchy, Thompson, Hackett, Ruhl, Grossman, Becker, Patmon, Baker, Johnson, C. Hagan, Perales

BILL SUMMARY

- Adds the following offenses 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" that may result in the forfeiture of a future retirement or disability benefit, other than accumulated contributions, or the termination of an existing disability benefit:
 - (1) The felony offenses of extortion and perjury and a conspiracy to commit, attempt to commit, or complicity in committing either offense;
 - (2) The federal offenses of racketeering activity, theft or bribery concerning programs receiving federal funds, interference with commerce by threats or violence in violation of the "Hobbs Act," and devising a scheme or artifice to defraud by mail or carrier or by wire, radio, or television, or a conspiracy to commit any of those offenses.
- 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.
- Applies existing provisions pertaining to notice, court hearing prior to sentencing, retirement system or alternative retirement plan compliance with the court's forfeiture order, and the suspension of retirement account activity to the offenses described in (1), above.
- Establishes separate mechanisms for the forfeiture of a future retirement or disability benefit, other than accumulated contributions, or the termination of an

existing disability benefit of a system member or contributor or a plan participant who was convicted of or pleaded guilty to a federal offense described in (2), above, committed while serving in a position of honor, trust, or profit.

- Prescribes the requirements for notice and a hearing by the appropriate public retirement system or alternative retirement plan prior to the system or plan ordering the forfeiture or termination described in the preceding dot point in regard to the covered federal offense.
- Requires a public retirement system member or contributor or an alternative retirement plan participant who is charged with a covered federal offense committed while the person was serving in a position of honor, trust, or profit to send written notice of the charge to the system or plan and written notice of the person's conviction or guilty plea.
- Prohibits any person from knowingly failing to send either written notice described in the preceding dot point and makes a violation of the prohibition the offense of "failure to report a charge or conviction to a public retirement system or an alternative retirement plan."
- Prohibits the retirement system or alternative retirement plan from paying any accumulated contributions prior to specified time periods depending upon the disposition of the criminal charge involved.

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CONTENT AND OPERATION

Forfeiture and termination of retirement and disability benefits – the bill

The bill adds the following offenses 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 the offender's right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the offender's "accumulated contributions" or have an existing disability benefit terminated (see "**Definitions**," below, for definitions of the terms in quotation marks):¹

(1)(a) The felony offenses of extortion and perjury, (b) 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 the felony offense of extortion or perjury, or (c) a conspiracy to commit, attempt to commit, or complicity in committing any of the offenses described in (a) or (b);²

(2) The federal offenses of racketeering activity, theft or bribery concerning programs receiving federal funds, interference with commerce by threats or violence in violation of the "Hobbs Act," and devising a scheme or artifice to defraud, including to deprive another of the intangible right of honest services, by mail or carrier or by wire, radio, or television, or a conspiracy to commit any of the offenses described in this paragraph in violation of federal law.³

With regard to the above added offenses, the bill applies only to offenses committed on or after its effective date. The bill provides that the offense of "engaging in a pattern of corrupt activity" ("corrupt activity" in existing law means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in conduct defined as federal racketeering activity or conduct constituting extortion or perjury among other state offenses⁴) or any other violation or 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 this amendment" if the course of conduct continues, one or more of the multiple acts occurs, or the offender's

¹ R.C. 2929.192(A) and 2929.193(B).

² R.C. 2929.192(D)(2).

³ R.C. 2901.432(B)(1).

⁴ R.C. 2923.31(I) – not in the bill.



accountability for the course of conduct or for one or more of the multiple acts continues on or after the effective date of the bill.⁵

The bill clarifies that the existing and new provisions apply to public retirement system contributors – retired members who have been re-employed by a public employer.⁶ 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.

With regard to the added offenses described in paragraph (1), above, the bill applies the provisions of existing law discussed below in "**Notice and hearing requirements**" under "**Forfeiture of future retirement or disability benefits by a court – current law**," "**Notice and hearing requirements**" under "**Termination of existing disability benefits by a court – current law**," "**Compliance with forfeiture order**," and "**Existing law**" under "**Suspension of retirement account activity**," to a public retirement system member or contributor or an alternative retirement plan participant who committed any of those offenses.

With regard to the federal offenses described in paragraph (2), above, the bill establishes separate mechanisms described below for the forfeiture of an offender's right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the offender's accumulated contributions, or for the termination of an offender's existing disability benefits.

Forfeiture of future retirement or disability benefits by a court – current law

Forfeiture required

Current law requires a court to order the forfeiture of an offender's right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the offender's accumulated contributions, earned by reason of the offender being a member of a public retirement system or alternative retirement plan if all of the following apply:⁷

⁵ R.C. 2901.43(A)(2)(b), 2929.192(E)(2), and 2929.193(D)(2).

⁶ R.C. 2901.43(B)(3)(b), 2901.432(B)(3)(b), and 2929.192(A)(3)(b).

⁷ R.C. 2929.192(A) and (D)(1).



(1) The offender is convicted of or pleads guilty to: (a) the felony offense of bribery or engaging in a pattern of corrupt activity, or theft in office of property or services of \$7,500 or more (a felony of the third degree), (b) 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 of the above offenses, or (c) a conspiracy to commit, attempt to commit, or complicity in committing any of the offenses described in (a) or (b).

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

(3) At the time of the offense, the person was a member of any public retirement system or a participant in an alternative retirement plan.

Notice and hearing requirements

The prosecutor who is assigned to the case must send written notice to the applicable public retirement system or alternative retirement plan when a system member or plan participant is charged with any of the above specified offenses committed while the offender was serving in a position of honor, trust, or profit. The notice must specifically identify the person charged.⁸

Prior to sentencing, an offender who is subject to a forfeiture order may request the court in writing for a hearing. If such a request is made, the court must conduct the hearing before sentencing. The court must notify the offender, the prosecutor who handled the case, and the appropriate public retirement system or alternative retirement plan provider, whichever is applicable, of the hearing. The hearing must be limited to 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 based on evidence presented by the offender that there is good cause for the forfeiture order not to be issued, the court must not issue the order. If the offender does not request a hearing prior to sentencing, or if the court conducts a hearing but does not find based on evidence presented by the offender that there is good cause for the order not to be issued, the court must order the forfeiture. The court must send a copy of the journal entry imposing sentence on the offender to the appropriate public retirement system or alternative retirement plan.⁹

⁸ R.C. 2901.43(C).

⁹ R.C. 2929.192(B).

Termination of existing disability benefits by a court – current law

Current law requires a court, after a hearing, to order the termination of a 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 being sentenced for any of the offenses specified above, (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 system member or contributor or a plan participant, (4) prior to the final disposition of the case, the offender was granted a disability benefit by the system or plan, and (5) the court determines that the offender's disabling condition arose out of the commission of the offense.¹⁰

Notice and hearing requirements

The prosecutor assigned to the case must send written notice to the applicable retirement system or alternative retirement plan when a person who is a system member or plan participant is charged with one of the specified offenses. The retirement system or the 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 that a disability benefit has been granted to the person and the benefit may be subject to termination.¹¹

Prior to sentencing, the court must hold a hearing regarding the condition for which the person was granted a disability benefit. Not later than ten days prior to the scheduled hearing date, the court must give written notice of the hearing to the offender, the prosecutor who handled the case, and the appropriate public retirement system or alternative retirement plan provider. 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 pleaded guilty to.

The retirement system or the 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 commission of the offense the person was convicted of or pleaded guilty to, the court must order the system or the plan provider to terminate the person's disability benefit. Any disability benefit paid to the offender prior to the

¹⁰ R.C. 2929.193.

¹¹ R.C. 2901.43, 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.



termination of those benefits may be recovered in accordance with the law regarding recovery of erroneously paid benefits.¹²

Notices of charge of federal offense and of conviction or guilty plea

The bill requires that on the filing of charges against a person for allegedly committing any of the federal offenses described above in paragraph (2) in "**Forfeiture and termination of retirement and disability benefits – the bill**," if the person was serving in a position of honor, trust, or profit and was a member of or a contributor to a public retirement system or a participant in an alternative retirement plan at the time of the offense, the person must send written notice to the system or plan that charges have been filed against the person. Upon the person's conviction of or guilty plea to the federal offense, the person must send written notice to the system or plan of the person's conviction or guilty plea. Both notices must specifically identify the person.¹³

The bill prohibits any person from knowingly failing to send either written notice described in the preceding paragraph. A violation of the prohibition is the offense of "failure to report a charge or conviction to a public retirement system or an alternative retirement plan," a misdemeanor of the fourth degree.¹⁴

Forfeiture of future retirement or disability benefits by public retirement system or alternative retirement plan

Separate forfeiture mechanism

The bill establishes a separate mechanism for the forfeiture of future retirement or disability benefits with regard to the federal offenses described above in paragraph (2) in "**Forfeiture and termination of retirement and disability benefits – the bill**."

Procedure for forfeiture order

The bill requires the appropriate public retirement system or alternative retirement plan to order the forfeiture of a person's right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the person's accumulated contributions, if all of the following apply:¹⁵

- (1) The person is convicted of or pleads guilty to any of those federal offenses.

¹² R.C. 2929.193(C).

¹³ R.C. 2901.432(C) and (D).

¹⁴ R.C. 2927.28.

¹⁵ R.C. 145.575(B), 742.465(B), 3305.13(B), 3307.374(B), 3309.674(B), and 5505.264(B).



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

(3) At the time of the offense, the person was a member of or a contributor to the system or a participant in the plan.

The person may request a hearing regarding the forfeiture by submitting to the system or plan a written request for a hearing. The system or plan must schedule the hearing if there is a timely request. Not later than ten days prior to the scheduled date of the hearing, the system or plan must give written notice of the hearing to the person and the federal prosecutor who handled the case. The hearing must be 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 system or plan determines based on evidence presented by the person that there is good cause for the forfeiture order not to be issued, the system or plan must not order the forfeiture. If the person does not make a timely request for a hearing or if a hearing is held and the system does not determine based on evidence presented by the person that there is good cause for the forfeiture order not to be issued, the system must order the forfeiture.¹⁶

Termination of existing disability benefits by public retirement system or alternative retirement plan

The bill establishes a separate mechanism for the termination of existing disability benefits with regard to the federal offenses described above in paragraph (2) in "**Forfeiture and termination of retirement and disability benefits – the bill.**"

Procedure for termination order

The bill requires the appropriate public retirement system or alternative retirement plan, after a hearing, to order the termination of a person's disability benefit if all of the following apply:¹⁷

(1) The person is convicted of or pleads guilty to any of those federal offenses.

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

(3) At the time of the offense, the person was a member of or a contributor to the system or a participant in the plan.

¹⁶ R.C. 145.575(C) and (D), 742.465(C) and (D), 3305.13(C) and (D), 3307.374(C) and (D), 3309.674(C) and (D), and 5505.264(C) and (D).

¹⁷ R.C. 145.576(B), 742.466(B), 3305.14(B), 3307.375(B), 3309.675(B), and 5505.265(B).

(4) Prior to the final disposition of the case, the person was granted a disability benefit by the system or plan.

The retirement system or the entity providing the alternative retirement plan must hold a hearing regarding the condition for which the member was granted a disability benefit. Not later than ten days prior to the scheduled date of the hearing, the system or entity must give written notice of the hearing to the member or participant and the federal prosecutor who handled the case. The hearing must be limited to a consideration of whether the member's or participant's disabling condition arose out of the commission of the offense the member or participant was convicted of or pleaded guilty to. The system or entity must consider the member's or participant's medical reports and recommendations, and the member's or participant's disability application. If the system or entity determines based on those documents that the disabling condition arose out of the commission of the offense the member or participant was convicted of or pleaded guilty to, the system or entity must terminate the disability benefit. Any disability benefit paid to the member or participant prior to its termination may be recovered in accordance with the applicable law.¹⁸

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 retirant. Under current law, the applicable retirement system or alternative retirement plan provider must comply with the forfeiture order at the time the person applies for payment of accumulated contributions. Upon payment of the person's contributions and cancellation of corresponding service credit, the person subject to the order may not restore any cancelled service credit in any public retirement system or alternative retirement plan. The bill applies these provisions in current law to its provisions regarding a forfeiture order by a court for the added offenses of extortion and perjury and related offenses and a forfeiture order by a public retirement system or an alternative retirement plan for a covered federal offense.¹⁹

Suspension of retirement account activity

Existing law

Under current law, if a public retirement system or alternative retirement plan receives the notice from a prosecutor that a person who has accumulated contributions

¹⁸ R.C. 145.576(C), 742.466(C), 3305.14(C), 3307.375(C), 3309.675(C), and 5505.265(C).

¹⁹ R.C. 145.572(A), 742.463(A), 3305.11(A), 3307.372(A), 3309.672(A), and 5505.262(A).



standing to the person's credit is charged with a specified offense, the system or plan is prohibited from paying any accumulated contributions or any other amount to be paid upon withdrawal of contributions, prior to either one of the following:

(1) If the person is convicted of or pleads guilty to the charge and forfeiture is ordered by the court, the day on which the system or plan receives from the court a copy of the journal entry of the offender'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.²⁰

The bill

The bill applies the above provisions in current law to a forfeiture order by a court for the added offenses of extortion and perjury and related offenses. With regard to a forfeiture order by a public retirement system or alternative retirement plan for a covered federal offense, the bill prohibits the system or plan from paying any accumulated contributions or any other amount to be paid upon withdrawal of contributions, prior to either one of the following:

(1) If the person is convicted of or pleads guilty to the federal offense and forfeiture is ordered by the system or plan, the day on which the system or plan receives from the person the written notice of conviction of or plea of guilty to the federal offense as required by the bill;

(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.²¹

The system or plan is prohibited from processing any application for payment from the person prior to the final disposition of the charge.²²

²⁰ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

²¹ The bill has no provision requiring notice to the system or plan of the final disposition of the charge if the charge is dismissed, the person is found not guilty of the charge, or the person is found not guilty by reason of insanity.

²² R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

Conforming changes

The bill makes conforming changes to existing provisions in the applicable public retirement system and alternative retirement plan laws to reflect the new provisions pertaining to the forfeiture of future retirement or disability benefits or the termination of existing disability benefits as ordered by the applicable system or plan.²³

Definitions

The following definitions in existing law apply in the bill:

(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), State Highway Patrol Retirement System (SHPRS), or a municipal retirement system of a municipal corporation of this state.²⁴

(2) "Alternative retirement plan" – a defined contribution plan available to certain full-time employees at public institutions of higher education under R.C. Chapter 3305.²⁵

(3) "Position of honor, trust, or profit" includes all of the following:²⁶

(a) An elective office of the state or any of its political subdivisions;

(b) A position on any state board or commission 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 financial disclosure statement under Ohio's ethics law;

(d) A position as a prosecutor;

(e) A position as a peace officer or State Highway Patrol Superintendent or trooper;

²³ R.C. 145.56, 145.561, 145.82, 145.95, 742.46, 742.47, 3305.08, 3307.41, 3307.42, 3309.66, 3309.661, 3309.82, 3309.95, and 5505.22.

²⁴ R.C. 2901.432(A)(1) and 2929.192(F)(2), by reference to R.C. 2907.15, not in the bill.

²⁵ R.C. 2901.432(A)(1), by reference to R.C. 2907.15, not in the bill.

²⁶ R.C. 145.575(A), 145.576(A), 742.465(A), 742.466(A), 2901.432(A)(2), 3305.13(A), 3305.14(A), 3307.374(A), 3307.375(A), 3309.674(A), 3309.675(A), 5505.264(A), and 5505.265(A), by reference to R.C. 2929.192(F)(1).



(f) 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.

(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.²⁷

HISTORY

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Introduced	05-14-13

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²⁷ R.C. 2929.192(F)(3) and R.C. 145.01, 742.37, 3305.06, 3307.50, 3309.01, and 5505.01, not in the bill.

