



Ohio Legislative Service Commission

Bill Analysis

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Reps. Dovilla and Anielski, Buchy, Thompson, Hackett, Ruhl, Grossman, Becker, Patmon, Baker, Johnson, C. Hagan, Perales, Antonio, Blair, Brown, Budish, Burkley, Carney, Conditt, Derickson, DeVitis, Green, Hall, Hayes, McClain, Romanchuk, Rosenberger, Smith, Sprague, Terhar, Wachtmann, Winburn, Young, Batchelder

BILL SUMMARY

Benefit forfeiture and termination

- Adds additional offenses to those committed by a public retirement system member or contributor or alternative retirement plan participant that may result in forfeiture of a future retirement or disability benefit or termination of an existing disability benefit. The offenses added are:
 - (1) Felony offenses of extortion and perjury;
 - (2) 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 mail, wire, and honest services fraud.
- For the offenses added, specifies that the bill applies only to offenses committed on or after its effective date.
- Establishes separate procedures for forfeiture of a retirement or disability benefit or for termination of disability benefit if the offense is one of the federal offenses specified above.
- Requires the Ohio Attorney General to bring an action for forfeiture or termination of a benefit if the federal court does not order forfeiture or garnishment for conviction or a guilty plea for one of the federal offenses.
- Extends to a person who is convicted of or pleads guilty to the added offenses existing provisions allowing a person to request a hearing and present evidence for

the court to consider in determining whether to order forfeiture, and in the case of termination of an existing disability benefit, requires the court to hold a hearing.

- Requires a person charged with one of the federal offenses to send written notice to the appropriate retirement system or plan and the Attorney General when charges have been filed and on conviction or guilty plea to the charges.
- Creates the criminal offense of "failure to report a charge or conviction to a public retirement system or an alternative retirement plan," a fourth degree misdemeanor.
- Clarifies that existing law and the bill apply to retirants contributing to a public retirement system due to re-employment by a public employer.

Long-term care insurance

- Provides that the Public Employees Retirement System, Ohio Police and Fire Pension Fund, School Employees Retirement System, and State Highway Patrol Retirement System are permitted, rather than required, to offer coverage for long-term care insurance.

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CONTENT AND OPERATION

BENEFIT FORFEITURE AND TERMINATION

Offenses

The bill adds additional offenses to the offenses committed by a public retirement system member or contributor or alternative retirement plan participant while serving in a "position of honor, trust, or profit" for which a future retirement allowance or disability benefit may be forfeited or an existing disability benefit may be terminated. The offenses added are:¹

(1) Felony offenses of extortion and perjury (including local and former laws that are substantially equivalent to those offenses) or conspiracy, complicity, or attempt to commit either of those offenses;²

(2) 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 mail, wire, and honest services fraud, or a conspiracy to commit any of those offenses.³

With regard to the offenses added, the bill applies only to offenses committed on or after its effective date.

The offenses to which benefit forfeiture or termination applies currently are felony offenses of bribery or engaging in a pattern of corrupt activity, or theft in office of property or services of \$7,500 or more in value (a third degree felony) and conspiracy, complicity, or an attempt to commit any of those offenses.⁴

For the bill to apply, the offenses specified in current law and added by the bill must be committed in the context of the offender's public employment, as well as in a position of honor, trust, or profit.⁵

"Position of honor, trust, or profit" means all of the following:

¹ R.C. 2929.192(A) and 2929.193(B) (see "**Definitions**," below, for definitions of "public retirement system" and "alternative retirement plan").

² R.C. 2929.192(D)(2).

³ R.C. 2901.432(B)(1).

⁴ R.C. 2929.192(D)(1).

⁵ R.C. 2901.432(B)(2), 2901.433(B)(1)(b), 2901.434(B)(2), 2929.192(A)(2), and 2929.193(B)(2).



- (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.⁶

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), as well as to members.⁷

Federal offenses – procedures

With regard to the federal offenses added by the bill, the bill establishes separate procedures for forfeiture of future retirement or disability benefits and for termination of existing disability benefits.

Forfeiture of future benefits

Notice requirements

The bill requires a person who is subject to the bill to send written notice to the public retirement system or alternative retirement plan and to the Ohio Attorney General when applicable federal charges are filed against the person. On conviction or guilty plea to the federal offense, the person must send written notice to the system or plan and to the Attorney General. Both notices must specifically identify the person.⁸

The bill prohibits any person from knowingly failing to send either of the notices. A violation of this prohibition is the offense of "failure to report a charge or conviction

⁶ R.C. 2929.192(F).

⁷ R.C. 2901.43(B)(3), 2901.432(B)(3), 2901.433(B)(1), 2901.434(B)(3), and 2929.192(A)(3). See "**Definitions**," below for further discussion of "contributors."

⁸ R.C. 2901.432(C) and (D).



to a public retirement system or an alternative retirement plan," a fourth degree misdemeanor.⁹

Attorney General

The procedures for a forfeiture resulting from a conviction of or plea of guilty to a covered federal offense are similar to the continuing law procedures for a forfeiture resulting from a conviction of or plea of guilty to a covered state offense except for the involvement of the Attorney General.¹⁰ The bill requires that on receipt of the notice of a conviction of or guilty plea to one of the specified federal offenses, the Attorney General must determine whether the federal court that is charged with sentencing the person has issued a forfeiture order or writ of garnishment on the retirement allowance, pension, disability benefit, or other right or benefit. If the federal court has not issued that order or writ, the Attorney General must bring an action in the Franklin County Court of Common Pleas requesting the court to order a forfeiture of a future retirement allowance, pension, disability benefit, or other right or benefit. The court must notify the person of the action and order the forfeiture if all of the following apply:

- The person has been convicted of or pleaded guilty to a covered federal offense that was committed on or after the bill's effective date.
- The offense was committed within the context of the person's public employment in a position of honor, trust, or profit.
- At the time of the offense, the person was a member of or contributor to a public retirement system or a participant in an alternative retirement plan.

A person subject to a forfeiture order forfeits the right to receive a retirement allowance, pension, disability benefit, or other right or benefit, except a return of payment of accumulated contributions or contributions made as a re-employed retirant.¹¹

The court must send a copy of the journal entry imposing the forfeiture order to the appropriate public retirement system or alternative retirement plan in which the person was a member, contributor, or participant.¹²

⁹ R.C. 2927.28.

¹⁰ See "**State offenses – continuing law**," below.

¹¹ See "**Definitions**," below for the definition of "accumulated contributions."

¹² R.C. 2901.433(B).



Hearing

A person subject to a forfeiture order described immediately above may request a hearing regarding the forfeiture by delivering to the court a written request for a hearing not later than 30 days after receipt of the notice of the action from the court. If such a request is made, the court must conduct the hearing. The court must notify the person, the U.S. attorney who handled the federal case, the Attorney General, and the appropriate public retirement system or plan provider of the hearing. 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 court determines that there is good cause for the order not to be issued, the court must not issue the order.

If the person does not request a hearing or if the court conducts a hearing but does not determine that there is good cause for the order not to be issued, the court must order the forfeiture and send a copy of the journal entry imposing the order to the appropriate public retirement system or plan. On receipt of a copy of that journal entry, the system or plan must comply with the forfeiture order on application for a refund of the accumulated contributions of the member, contributor, or participant.¹³

Termination of existing disability benefit

Notice requirements

The bill requires that on receipt of the above described notice of a person's conviction of or guilty plea to a covered federal offense, the public retirement system or alternative retirement plan determine whether the person has been granted a disability benefit. If so, the system or plan must send written notice to the Attorney General that the person has been granted a disability benefit and may be subject to an order terminating the benefit.¹⁴

Termination procedure

The procedures for terminating an existing disability benefit if a person has been convicted of or pleaded guilty to a covered federal offense are similar to those established under the bill for the forfeiture of a future retirement allowance, pension, disability benefit, or other right or benefit (these procedures are also similar to the existing disability benefit termination procedures involving covered state law offenses). As with the forfeiture procedures, the Attorney General must bring an action to terminate existing disability benefits if the federal court did not issue a forfeiture order

¹³ R.C. 2901.433(C) and (D).

¹⁴ R.C. 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.



or writ of garnishment of those benefits. However, this action applies only if, in addition to the criteria described under "**Attorney General**," above, prior to the final disposition of the case, the person was granted a disability benefit by a system or provider.

Another difference between the forfeiture procedures and the disability benefit termination procedures is that, unlike the forfeiture procedures, a hearing must be held prior to issuing the order terminating the disability benefit. The court must send notice of the hearing not later than ten days prior to the hearing to the same parties who receive notice of a forfeiture hearing under the bill. Similar to the forfeiture hearing, the hearing must be 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.¹⁵

The system or provider must submit to the court the person's medical reports and recommendations, and the person's disability application. Although medical reports and recommendations generally are privileged, the bill requires them to be released to a court that is conducting a hearing regarding the possible termination of the person's disability benefit.¹⁶

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 provider to terminate the person's disability benefit. Any disability benefit paid to the person prior to its termination may be recovered in accordance with applicable law.¹⁷

State offenses – continuing law

Forfeiture of future benefits

With respect to the added state law offenses for which a person may be subject to a forfeiture or termination of a retirement allowance, pension, disability benefit, or other right or benefit under the bill, the bill applies the continuing law procedures for forfeiture or termination. Continuing law requires a court to order the forfeiture of a future retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the accumulated contributions, to be paid to a person who is a public

¹⁵ R.C. 2901.434(C)(1).

¹⁶ R.C. 2901.434(C), 145.27(B)(2), 742.41(C)(2), 3305.20(B), 3307.20(C)(1)(b), 3309.22(B)(2), and 5505.04(D)(2).

¹⁷ R.C. 2901.434(C).



retirement system member or alternative retirement plan participant if all of the following apply:

(1) The person is convicted of or pleads guilty to any of the following: (a) the felony offenses of bribery or engaging in a pattern of corrupt activity, or theft in office of property or services of \$7,500 or more (a third degree felony), (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 offense was committed on or after May 13, 2008, while serving in a position of honor, trust, or profit.

(3) At the time of the offense, the person was a member or participant or contributor, as added by the bill.¹⁸

Upon filing charges against a person, the prosecutor 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 specified offenses.¹⁹

Prior to sentencing, a person subject to a forfeiture order may request a hearing. If such a request is made, the court must conduct the hearing before sentencing. The court must notify the person, the prosecutor who handled the case, and the appropriate public retirement system or plan provider of the 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 must not issue the order. If the person 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 person 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 to the appropriate system or plan.²⁰

¹⁸ R.C. 2929.192(A) and (D)(1).

¹⁹ R.C. 2901.43(C).

²⁰ R.C. 2929.192(B).



Termination of existing disability benefits

Continuing law requires a court 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 committed on or after July 29, 2011, (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 system member or contributor or a plan participant, (4) prior to the final disposition of the case, the person was granted a disability benefit by the system or plan, and (5) the court determines that the person's disabling condition arose out of the commission of the offense.²¹

The prosecutor must notify the applicable retirement system or alternative retirement 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 that a disability benefit has been granted to the person and the benefit may be subject to termination.²²

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 person, the prosecutor who handled the case, and the appropriate retirement system or 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 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 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 person prior to the termination of those benefits may be recovered in accordance with the law regarding recovery of erroneously paid benefits.²³

²¹ R.C. 2929.193.

²² R.C. 2901.43, 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.

²³ R.C. 2929.193(C).



PERS disability benefits

The law governing PERS contains special provisions that expand the limited provisions regarding the forfeiture of a future disability benefit and the termination of an existing disability benefit explained above. The provisions apply to a PERS member convicted of a felony committed on or after January 7, 2013, that caused the member's physical or mental disability.²⁴ The provision applies only to cases to which the other forfeiture and termination provisions do not apply.²⁵

If a PERS member is being sentenced for a felony offense that caused a physical or mental disability in the member and was committed on or after January 7, 2013, in addition to any other sanction, the court must order forfeiture of any right to a PERS disability benefit based on that disability. The forfeiture must be ordered regardless of whether a disability benefit has been requested or granted. The forfeiture is part of, and must be included in, the sentence.²⁶

The prosecutor must notify PERS when felony charges have been filed against a PERS member. PERS is prohibited from granting the member a disability benefit unless it determines that the member's disability was not caused by commission of the felony. If the member qualifies for PERS disability coverage or has already been granted a disability benefit, the retirement system must notify the prosecutor that the member may be subject to forfeiture of any right the member may have to a disability benefit.²⁷

Like the other forfeiture provisions, a PERS member may request a hearing regarding the forfeiture. The hearing is limited to determination of whether the member's disability resulted from commission of the offense. If a disability benefit has already been granted, PERS must submit to the court documentation of the evidence on which the benefit was granted.

If the member does not make a timely request for a hearing or if a hearing is held and the court determines that the disability resulted from commission of the offense, the court is required to order the forfeiture of any right the member may have to a PERS disability benefit that is based on that disability. If the disability benefit has already been granted, the court must order termination of the benefit.²⁸

²⁴ R.C. 145.573 and R.C. 145.574 and 2929.194, not in the bill.

²⁵ R.C. 2929.194(A), not in the bill.

²⁶ R.C. 2929.194(B), not in the bill.

²⁷ R.C. 145.574 and 2901.431, not in the bill.

²⁸ R.C. 2929.194(C) and (D).



Suspension of retirement account activity

With regard to a forfeiture order for a covered federal offense, the bill prohibits the public retirement system or alternative retirement plan from paying any accumulated contributions or any other amount, prior to whichever of the following is applicable:

(1) If the person is convicted of or pleads guilty to the federal offense 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 imposing the forfeiture order;

(2) As under current law, 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.²⁹

The system or plan is prohibited from processing any application for payment from the person prior to the final disposition of the charge of a covered state or federal offense.

Under continuing law, with regard to a forfeiture order for a covered state offense, the system or plan is generally 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 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.³⁰

As long as a PERS member is not subject to the general forfeiture and termination provisions, the special PERS forfeiture and termination provisions explained above do not prevent a PERS member from withdrawing the member's contributions prior to the disposition of the case.³¹

²⁹ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

³⁰ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

³¹ R.C. 145.574, not in the bill.



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 public retirement system or alternative retirement plan provider must comply with the forfeiture order at the time the person applies for payment of accumulated contributions. On 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. The bill applies these provisions to its provisions regarding a forfeiture order for the offenses added by the bill. (A member's survivors or beneficiaries may still be eligible for benefits under certain conditions.³²)

Exclusions from property interests exempt from execution

Current law provides that an order of forfeiture of retirement or disability benefits or a termination of disability benefits is an exception to a provision that generally protects those benefits from execution, garnishment, or attachment. The bill extends this exception to the forfeiture and termination provisions added by the bill.³³

Definitions

The following definitions in existing law apply to forfeiture and termination of retirement or disability benefits:

(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 an Ohio municipal corporation.

(2) "Alternative retirement plan" – a defined contribution plan available to certain full-time employees at public institutions of higher education under continuing law.³⁴

(3) "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

³² R.C. 145.572(A), 742.463(A), 3305.11(A), 3307.372(A), 3309.672(A), and 5505.262(A).

³³ R.C. 2329.66(A).

³⁴ R.C. 2901.432(A), 2901.433(A), and 2901.434(A), by reference to R.C. 2907.15, not in the bill.



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.

(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.³⁵

LONG-TERM CARE INSURANCE

Under the bill, PERS, OP&F, SERS, and SHPRS are permitted, instead of required, to offer coverage for long-term care insurance.

Long-term care insurance generally covers care that is not covered by health insurance or Medicare. Depending on the policy, it may cover home care, assisted living, adult daycare, hospice care, and nursing home care.³⁶

HISTORY

ACTION	DATE
Introduced	05-14-13
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³⁵ R.C. 2901.433(A)(3), by reference to R.C. 2929.192.

³⁶ R.C. 145.581, 742.53, 3309.691, and 5505.33.

