



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

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(As Reported by H. Judiciary)

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 within the context of the offender's public employment 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 within the context of the offender's public employment in a position of honor, trust, or profit.
- Prescribes the requirements for the Attorney General to bring an action in the Franklin County Court of Common Pleas and for notice and a hearing by the court prior to 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 within the context of the offender's public employment in a position of honor, trust, or profit to send written notice of the charge to the system or plan and to the Attorney General 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.
- Excludes cases in which an order of forfeiture or termination of retirement or disability benefits was issued in regard to an added state offense or a covered federal offense from the law exempting from execution, garnishment, attachment, or sale to satisfy a judgment a person's rights to a pension, benefit, or retirement allowance.
- Makes the establishment of a long-term care insurance program by an applicable public retirement system discretionary.

TABLE OF CONTENTS

Forfeiture and termination of retirement and disability benefits – the bill	3
Forfeiture of future retirement or disability benefits with regard to state offenses – current law ..	5
Forfeiture required.....	5
Notice and hearing requirements	5
Termination of existing disability benefits with regard to state offenses – current law.....	6
Notice and hearing requirements	6



Forfeiture and termination of retirement or disability benefits with regard to federal offenses	7
Notices of charge of federal offense and of conviction or guilty plea	7
Procedure for forfeiture of retirement benefits	8
Notice to Attorney General of existing disability benefit	9
Procedure for termination of disability benefits	9
Compliance with forfeiture order	11
Suspension of retirement account activity	11
Definitions	12
Exclusions from property interests exempt from execution	13
Long-term care insurance program	13

CONTENT AND OPERATION

Forfeiture and termination of retirement and disability benefits – the bill

The bill modifies current law and adds the following offenses to the offenses committed by a "public retirement system" member or *contributor* or "alternative retirement plan" participant *within the context of the offender's public employment in a "position of honor, trust, or profit"* (instead of while serving in a "position of honor, trust, or profit" in current law) for which the member, *contributor*, 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

¹ R.C. 2929.192(A) and 2929.193(B).

² R.C. 2929.192(D)(2).

³ R.C. 2901.432(B)(1).



With regard to the above added offenses, the bill applies only to offenses committed on or after its effective date. The bill provides that, for purposes of its provisions and those of current law, the offense of "engaging in a pattern of corrupt activity" (an offense for which under current law a member or participant may forfeit the right to a retirement allowance, pension, disability benefit, or other right or benefit, other than the offender's accumulated contributions, or have an existing disability benefit terminated) 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" (or "of this section") if the course of conduct continues, one or more of the multiple acts occurs, or the offender's 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.⁴

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.⁵ Except for the State Highway Patrol Retirement System (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 the Public Employees Retirement System (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 with regard to state offenses – current law**," "**Notice and hearing requirements**" under "**Termination of existing disability benefits with regard to state offenses – current law**," as modified by the bill as described above, 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.

⁴ R.C. 2901.43(A)(2)(b), 2901.433(E), 2901.434(D), 2929.192(E)(2), and 2929.193(D)(2).

⁵ R.C. 2901.43(B)(3)(b), 2901.432(B)(3)(b), and 2929.192(A)(3)(b).



Forfeiture of future retirement or disability benefits with regard to state offenses – 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:⁶

(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 specified offenses. The notice must specifically identify the person charged.⁷

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

⁶ R.C. 2929.192(A) and (D)(1).

⁷ R.C. 2901.43(C).



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.⁸

Termination of existing disability benefits with regard to state offenses – 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.⁹

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.¹⁰

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

⁸ R.C. 2929.192(B).

⁹ R.C. 2929.193.

¹⁰ R.C. 2901.43, 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.

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 termination of those benefits may be recovered in accordance with the law regarding recovery of erroneously paid benefits.¹¹

Forfeiture and termination of retirement or disability benefits with regard to federal offenses

The bill establishes separate mechanisms for the forfeiture of future retirement or disability benefits and 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.**"

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 these federal offenses within the context of the person's public employment in a position of honor, trust, or profit, if the person 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 and to the Attorney General 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 and to the Attorney General of the person's conviction or guilty plea. Both notices must specifically identify the person.¹²

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.¹³

¹¹ R.C. 2929.193(C).

¹² R.C. 2901.432(C) and (D).

¹³ R.C. 2927.28.

Procedure for forfeiture of retirement benefits

The bill provides that on receipt of the notice of a person's conviction of or guilty plea to a covered federal offense as described above, the Attorney General must determine whether the federal court that is charged with sentencing the offender for the federal offense has issued an order of forfeiture of or writ of garnishment on the retirement allowance, pension, disability benefit, or other right or benefit of the offender who is a member, contributor, or participant in a public retirement system or alternative retirement plan. If the federal court has not issued that order or writ, the Attorney General must bring an action in the Court of Common Pleas of Franklin County requesting the court to order a forfeiture to the retirement system or plan in which the offender was a member, contributor, or participant of 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. The court must notify the offender of the action and order the forfeiture if all of the following apply:¹⁴

- The offender 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 offender's public employment in a position of honor, trust, or profit.
- At the time of the offense, the offender was a member of a public retirement system, a contributor to a public retirement system eligible to receive a benefit under applicable law, or a participant in an alternative retirement plan.

The court must send a copy of the journal entry imposing the forfeiture order to the appropriate retirement system or plan in which the offender was a member, contributor, or participant.¹⁵

In any case in which the court is required to order forfeiture under the above provisions, the offender 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 offender, the United States attorney who handled the case in which the offender was convicted of or pleaded guilty to the federal offense for which the forfeiture order will be imposed, the Attorney General who commenced the

¹⁴ R.C. 2901.433(B)(1).

¹⁵ R.C. 2901.433(B)(2).

action in the court, and the appropriate retirement system or plan provider, whichever is applicable, or, if more than one is specified in the action, the applicable combination of these, of the hearing. A hearing scheduled must be limited to a 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 that there is good cause for the forfeiture order not to be issued, the court must not issue the forfeiture order. If the offender does not request a hearing 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 journal entry imposing the forfeiture order to the appropriate retirement system or plan in which the offender was a member, contributor, or participant. Upon 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.¹⁶

Notice to Attorney General of existing disability benefit

The bill provides that on receipt of the above described notice of a system member's or plan participant's conviction of or guilty plea to a covered federal offense, the public retirement system or alternative retirement plan must determine whether the member or participant has been granted a disability benefit. If so, the system or plan must send written notice to the Attorney General that the member or participant has been granted a disability benefit and may be subject to an order terminating the benefit.¹⁷

Procedure for termination of disability benefits

The bill provides that on receipt of the notice of a person's conviction of or guilty plea to a covered federal offense as described above in "**Notices of charge of federal offense and of conviction or guilty plea**," the Attorney General must determine whether the federal court that is charged with sentencing the offender for the federal offense has issued an order of forfeiture of or writ of garnishment on the disability benefit of the offender who is a member, contributor, or participant in a public retirement system or alternative retirement plan. If the federal court has not issued that order or writ, the Attorney General must bring an action in the Court of Common Pleas of Franklin County requesting the court to order a termination of the offender's

¹⁶ R.C. 2901.433(C) and (D).

¹⁷ R.C. 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.



disability benefit. The court must notify the offender of the action and order the termination of the offender's disability benefit if all of the following apply:¹⁸

- The offender 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 offender's public employment in a position of honor, trust, or profit.
- At the time of the offense, the offender was a member of a public retirement system, a contributor to a public retirement system receiving or eligible to receive a benefit under applicable law, or a participant in an alternative retirement plan.
- 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.

Prior to issuing the order, the court must hold a hearing regarding the condition for which the offender was granted a disability benefit. Not later than ten days prior to the scheduled date of the hearing, the court must give written notice of the hearing to the offender, the United States attorney who handled the case in which the offender was convicted of or pleaded guilty to the federal offense for which the order to terminate the disability benefit will be imposed, the Attorney General, 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 must be 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 pleaded guilty to. The system or 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 offender was convicted of or pleaded guilty to, the court must order the system or provider to terminate the disability benefit. Any disability benefit paid to the offender prior to its termination may be recovered in accordance with applicable law.¹⁹

The bill modifies each of the laws governing the public retirement systems to provide that all medical reports and recommendations required by the applicable law are privileged except that documentation required by the above provisions must be

¹⁸ R.C. 2901.434(B) and (C).

¹⁹ R.C. 2901.434(C).

provided to a court holding a hearing under those provisions.²⁰ It modifies the law governing alternative retirement plans to provide that the entity providing the plan must provide documentation required by the above provisions to a court holding a hearing under those provisions.²¹

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. 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 state offenses of extortion and perjury and related offenses and a forfeiture order for a covered federal offense.²²

Suspension of retirement account activity

The bill applies the provisions in current law described below 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 the Franklin County Court of Common Pleas 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 to be paid upon withdrawal of contributions, prior to whichever of the following is applicable:²³

(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) 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.

²⁰ R.C. 145.27(B)(2), 742.41(C)(2), 3307.20(C)(1)(b), 3309.22(B)(2), and 5505.04(D)(2).

²¹ R.C. 3305.20(B).

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

²³ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

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 current law, with regard to a forfeiture order for an applicable state offense if a public retirement system or alternative retirement plan receives the notice from a prosecutor that a person who has accumulated contributions 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:²⁴

(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.

Definitions

The following definitions in existing law apply in the bill's provisions pertaining to the 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 a municipal corporation of this state.²⁵

(2) "Alternative retirement plan" – a defined contribution plan available to certain full-time employees at public institutions of higher education under R.C. Chapter 3305.²⁶

(3) "Position of honor, trust, or profit" includes all of the following:²⁷

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

²⁴ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

²⁵ R.C. 2901.432(A)(1), 2901.433(A)(1), and 2901.434(A)(1), by reference to R.C. 2907.15, not in the bill.

²⁶ R.C. 2901.432(A)(1), 2901.433(A)(1), and 2901.434(A)(1), by reference to R.C. 2907.15, not in the bill.

²⁷ R.C. 2901.432(A)(2), 2901.433(A)(2), and 2901.434(A)(2), by reference to R.C. 2929.192(F)(1).

(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;

(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.²⁸

Exclusions from property interests exempt from execution

The bill excludes from current law that exempts from execution, garnishment, attachment, or sale to satisfy a judgment a person's rights to or interests in a pension, benefit, annuity, or retirement allowance, cases in which an order of forfeiture of retirement or disability benefits or an order of termination of disability benefits was issued with regard to the added state offenses and to the covered federal offenses and only to the extent provided in the order.²⁹

Long-term care insurance program

The bill permits, instead of requires as in current law, PERS to establish a long-term care insurance program under which: (1) it makes long-term care insurance available to any person who participated in a policy of long-term care insurance for which the state or a political subdivision contracted under the Department of Administrative Services Law and is the recipient of a pension, benefit, or allowance from PERS; or (2) a recipient of a pension, benefit, or allowance from PERS who is not eligible for such insurance under (1) may participate in a contract for long-term care

²⁸ R.C. 2901.433(A)(3), by reference to R.C. 2929.192.

²⁹ R.C. 2329.66(A)(10)(a).



insurance.³⁰ It permits, instead of requires under current law, the board of trustees of the Ohio Police and Fire Pension Fund, the School Employees Retirement Board, and the State Highway Patrol Retirement Board (hereafter "appropriate public retirement system") to establish a program under which members of the appropriate public retirement system, employers on behalf of members, and persons receiving service or disability pensions or survivor benefits are permitted to participate in contracts for long-term care insurance.³¹

The bill permits, instead of requires under current law, the PERS board and the board of the appropriate public retirement system to adopt rules governing a long-term care insurance program that the applicable board establishes.³²

HISTORY

ACTION	DATE
Introduced	05-14-13
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³⁰ R.C. 145.581(B), (C), and (D)(1).

³¹ R.C. 742.53(B), 3309.691, and 5505.33(B).

³² R.C. 145.581(D)(2), 742.53(D), 3309.691, and 5505.33(D).

