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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 27\*  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Insurance

**Primary Sponsor:** Sen. Hottinger

Kailey Henry, Research Analyst

### SUMMARY

- Authorizes automatic enrollment of new state government employees in the Ohio Public Employees Deferred Compensation Program, and prescribes procedures for an employing authority to elect or cease automatic enrollment for new employees.
- Requires the Ohio Public Employees Deferred Compensation Board to establish the deferral amounts from the compensation of employees automatically enrolled in the program and investment options in which those amounts will be invested.

### DETAILED ANALYSIS

#### Ohio Public Employees Deferred Compensation Program

The bill authorizes employers of state employees to automatically enroll new employees in the Ohio Public Employees Deferred Compensation Program (see **COMMENT**).<sup>1</sup> Both state and local government employees may elect to participate or not participate in the program under continuing law. Under the program, a portion of a participating employee's income is deferred and invested for retirement free of federal and state income tax until these amounts are paid to the employee. The Ohio Public Employees Deferred Compensation Board must administer the program to result in favorable tax treatment under the federal Internal Revenue Code (I.R.C.).<sup>2</sup> The Board has established the plan under I.R.C. 457(b), which permits pretax

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\* This analysis was prepared before the report of the Senate Insurance Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

<sup>1</sup> R.C. 148.042.

<sup>2</sup> R.C. 148.04 and Ohio Public Employees Deferred Compensation Program, *Frequently Asked Questions*, <https://www.ohio457.org/faq>.

deferrals, and adopted a plan document that governs the plan.<sup>3</sup> The program is distinct and separate from the state retirement systems, and any contributions to it are voluntary and in addition to contributions to the retirement systems.<sup>4</sup>

## Automatic enrollment

Under the bill, an employing authority may not elect automatic enrollment, or elect to cease it, if doing so would conflict with a collective bargaining agreement between the employer and an exclusive representative (essentially, a union) representing its employees. The Supreme Court, House of Representatives, Senate, Legislative Service Commission, Secretary of State, State Auditor, State Treasurer, or Attorney General is the employing authority for their employees, and the Director of Administrative Services is the employing authority for other state officials and employees who are paid by Office of Budget and Management (OBM) Director warrant.<sup>5</sup>

An employing authority that elects automatic enrollment for new employees must notify the Board. Automatic enrollment begins as soon as administratively practical for the Board and the employing authority. An eligible employee is automatically enrolled in the program if one of the following occurs on or after the date the employing authority begins automatic enrollment:

- The employee initially begins employment with the employing authority;
- An employee who had but is not currently contributing to the program separates from employment with an employing authority and begins employment with an employing authority that has elected automatic enrollment;
- An employee employed in a state government position transfers employment from an employing authority that has not elected automatic enrollment to another state government position with an employing authority that has elected automatic enrollment (this does not apply to an employee who is already participating in the program).<sup>6</sup>

An employing authority that elects automatic enrollment must provide an employee subject to it with notice of the employee's rights and obligations in the manner prescribed by the Board.<sup>7</sup> The bill does not indicate whether an employee who is automatically enrolled may

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<sup>3</sup> 26 United States Code 457(b) and Ohio Public Employees Deferred Compensation Program, *Amended Plan Document as of March 1, 2020*, [https://www.ohio457.org/assets/newsAndPublications/ReportsAndDocuments/Plan%20Document%20\\_3.1.2020.pdf](https://www.ohio457.org/assets/newsAndPublications/ReportsAndDocuments/Plan%20Document%20_3.1.2020.pdf).

<sup>4</sup> See Ohio Public Employees Deferred Compensation Program, *Frequently Asked Questions*, <https://www.ohio457.org/faq>.

<sup>5</sup> R.C. 148.042(A) and (F), by reference to R.C. 4117.01, not in the bill.

<sup>6</sup> R.C. 148.042(B)(1) and (C).

<sup>7</sup> R.C. 148.042(E).

choose not to participate. However, the plan document specifies that the employee has 90 days after notice of enrollment is given to make an affirmative election to “opt-out” before deferrals are made.<sup>8</sup>

An employing authority may cease automatic enrollment of its employees by notifying the Board and specifying the date it will cease, which must be at least 90 days after the notice is sent. Cessation of automatic enrollment does not affect the employees already enrolled. Employees who begin employment after automatic enrollment ceases may still choose to enroll. An employing authority that ceases automatic enrollment may subsequently elect automatic enrollment by notifying the Board.<sup>9</sup>

## Deferral amounts and investment options

Under the bill, the Board establishes the amounts that will be deferred from the compensation of employees automatically enrolled. Deferral amounts are not to exceed the lesser of 10% of an employee’s compensation or the maximum contribution permitted by federal law.<sup>10</sup> For 2021, the general limit on the amount that may be deferred is the lesser of the participant’s annual compensation or \$19,500, although participants who are within three years of normal retirement age or wish to “catch up” may have higher amounts deferred.<sup>11</sup> (Contributions to the program are in addition to the contributions employees must make to the state retirement systems. Employee contributions to the retirement systems range from 10% of salary for most members of the Public Employees Retirement System (PERS) to 14% of salary for members of the State Teachers Retirement System.<sup>12</sup> Employers also contribute on behalf of employees, with contributions ranging from an amount equal to 14% of employee salaries (PERS) to an amount equal to 26.5% (State Highway Patrol Retirement System).<sup>13</sup>)

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<sup>8</sup> Ohio Public Employees Deferred Compensation Program, *Amended Plan Document as of March 1, 2020*, Section 2.02, [https://www.ohio457.org/assets/newsAndPublications/ReportsAndDocuments/Plan%20Document%20\\_3.1.2020.pdf](https://www.ohio457.org/assets/newsAndPublications/ReportsAndDocuments/Plan%20Document%20_3.1.2020.pdf).

<sup>9</sup> R.C. 148.042(B)(2).

<sup>10</sup> R.C. 148.042(D).

<sup>11</sup> Internal Revenue Service, *Retirement Topics – 457(b) Contribution Limits*, <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-457b-contribution-limits>.

<sup>12</sup> R.C. 145.47 and 3307.26, not in the bill, and Ohio Public Employees Retirement System, *Reference Tables: “Contribution Rates,”* <https://www.opers.org/employers/tables/index.shtml>.

<sup>13</sup> R.C. 145.48 and 5505.15, not in the bill, and Ohio Public Employees Retirement System, *Reference Tables: “Contribution Rates,”* <https://www.opers.org/employers/tables/index.shtml>.

The bill also requires the Board to specify the investment options into which deferred amounts will be invested for employees who are automatically enrolled.<sup>14</sup> Currently, participants choose the options in which the deferred amounts are invested.<sup>15</sup>

## **Tax treatment**

The Board is required by current law to undertake to obtain as favorable conditions of tax treatment as possible regarding distribution of deferred amounts and earnings, beneficiary designations, and optional provisions. Under the bill, instead of being subject to “applicable contract provisions,” the Board’s action in this regard is subject to the program plan. The bill adds a new requirement that the Board take all actions necessary to ensure that the program qualifies as an eligible deferred compensation plan under I.R.C. 457(b).<sup>16</sup>

## **Informational materials**

The bill retains a provision of current law that requires government employers, at the time each new employee completes the employee’s initial employment paperwork, to do both of the following:

- Provide the employee with materials provided by the Board regarding the advantages of long-term savings through deferred compensation;
- Secure, in writing or by electronic means, the employee’s election to participate or not participate in the program.

The bill provides, however, that these requirements do not apply for employees who will be automatically enrolled in the program. Also, if an eligible employee who is already a program participant transfers employment from one position paid by OBM Director warrant to another such position, the employer is not required to secure the employee’s election of whether to participate.

Under continuing law, the Board must provide informational materials and participation forms to employers. An election must be forwarded to the Board not later 45 days after the date the employee’s employment begins.<sup>17</sup>

## **Contract**

The bill changes the requirement that an employer contract with an employee on the employee’s application for participation in the program to a requirement that the employer enroll the employee on the employee’s application to participate, on the employee’s election on first being employed, or on the employee’s being automatically enrolled. The bill also

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<sup>14</sup> R.C. 148.042(D).

<sup>15</sup> R.C. 148.04(A) and Ohio Public Employees Deferred Compensation Program, “*Investments: Understanding Investment Options*,” <https://www.ohio457.org/investments>.

<sup>16</sup> R.C. 148.04(C).

<sup>17</sup> R.C. 148.041 (relocated from R.C. 148.04(B) and (C)(1)).

changes the definition of “participating employee” from an eligible employee who is having compensation deferred pursuant to a contract to an eligible employee who is having compensation deferred pursuant to either an agreement entered into with the employee’s employer and the Board or automatic enrollment in the program.<sup>18</sup>

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## COMMENT

Neither the I.R.C. nor related regulations specifically authorize automatic enrollment in 457(b) plans. However, the Internal Revenue Service concluded in a private letter ruling that including automatic enrollment in a county’s 457(b) plan did not cause the plan to be in violation of federal law.<sup>19</sup> A private letter ruling applies only to the party requesting it, but is an indication of how the Internal Revenue Service views a particular issue.<sup>20</sup>

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## HISTORY

Action	Date
Introduced	01-26-21
Reported, S. Insurance	---

S0027-RS-134/ts

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<sup>18</sup> R.C. 148.01(A)(3) and 148.04(B).

<sup>19</sup> Internal Revenue Service, PLR 201743002, October 27, 2017, <https://www.irs.gov/pub/irs-wd/201743002.pdf>.

<sup>20</sup> See *Wolpaw v. Commissioner of Internal Revenue*, 47 F.3d 787, 792 (6<sup>th</sup> Cir. 1995).