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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

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsor:** Sen. Hottinger

**Effective date:** September 7, 2021

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### SUMMARY

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

### DETAILED ANALYSIS

#### Public Employees Deferred Compensation

The act authorizes employers of state employees to automatically enroll new state employees in the Ohio Public Employees Deferred Compensation Program.<sup>1</sup> Under continuing law, both state and local government employees may elect whether to participate in the program. 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 deferrals, and

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

<sup>2</sup> R.C. 148.04 and Ohio Public Employees Deferred Compensation Program, *Frequently Asked Questions*, available [here](#).

adopted a plan document that governs the plan.<sup>3</sup> The program is distinct and separate from the state retirement systems.<sup>4</sup>

## Automatic enrollment

Under the act, an employing authority cannot elect or cease automatic enrollment if doing so conflicts 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. The Director of Administrative Services is the employing authority for other state officials and employees who are paid by Director of Budget and Management warrant (OBM 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 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 been but is not currently contributing to the program separates from employment and begins employment with the same or a different employing authority that has elected automatic enrollment.
- A state employee 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 (but, 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 act does not indicate whether an employee who is automatically enrolled may choose not to participate. However, the plan document specifies the employee has 90 days after notice of automatic enrollment is given to make an affirmative election to opt-out before deferrals are made.<sup>8</sup>

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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*, available [here](#).

<sup>4</sup> R.C. 148.04(D). See Ohio Public Employees Deferred Compensation Program, *Frequently Asked Questions*, available [here](#).

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

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

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

<sup>8</sup> Ohio Public Employees Deferred Compensation Program, *Amended Plan Document as of March 1, 2020*, Section 2.02, available [here](#).

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 employing authority sends the notice. Ceasing automatic enrollment does not affect the employees already enrolled. An employee who begins 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 act, the Board establishes the amounts to be deferred from the compensation of employees automatically enrolled. The Board cannot establish deferral amounts that 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 have reached age 50 and who wish to "catch up" may have higher amounts deferred.<sup>11</sup>

These contributions are in addition to the contributions employees must make to the state retirement systems. State retirement system employee contributions range from 10% of salary for most members of the Public Employees Retirement System to 14% of salary for State Teachers Retirement System members.<sup>12</sup> Employers also contribute to the state retirement systems.

The act also requires the Board to specify the investment options into which deferred amounts will be invested for employees who are automatically enrolled.<sup>13</sup> Under continuing law, an employee who elects to participate initially chooses the options into which the deferred amounts are invested.<sup>14</sup> After enrollment, whether automatically or by election, the plan document permits an employee to change the investment option allocation of the deferred amounts.<sup>15</sup>

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<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*, available [here](#).

<sup>12</sup> R.C. 145.47 and 3307.26, not in the act, and Ohio Public Employees Retirement System, *Reference Tables: "Contribution Rates,"* available [here](#).

<sup>13</sup> R.C. 148.042(D).

<sup>14</sup> R.C. 148.04(A) and Ohio Public Employees Deferred Compensation Program, *Investments*, available [here](#).

<sup>15</sup> Ohio Public Employees Deferred Compensation Program, *Amended Plan Document as of March 1, 2020*, Section 2.06, available [here](#).

## Tax treatment

The Board is required by continuing 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 act, the Board's duty in this regard is subject to the program plan, rather than being subject to "applicable contract provisions" as under former law. The act adds a new requirement that the Board take all actions necessary to ensure the program qualifies as an eligible deferred compensation plan under I.R.C. 457(b).<sup>16</sup>

## Informational materials

Continuing law, relocated under the act, requires state government employers, at the time each new employee completes initial employment paperwork, to both:

- Provide the employee with materials supplied by the Board regarding the benefits of long-term savings through deferred compensation; and
- Secure, in writing or electronically, the employee's election to participate or not participate in the program.

Under the act, however, these requirements do not apply for employees who will be automatically enrolled. Also, if an employee who is already a program participant transfers employment from one position paid by OBM warrant to another such position, the new employer is not required to secure the employee's election of whether to participate.<sup>17</sup>

## Contract

The act eliminates the requirement that an employer contract with an employee on the employee's application for participation in the program. It instead requires an employer to enroll an employee in the program on the employee's application to participate, on the employee's election to participate on first being employed, or by automatic enrollment if the employer has elected to do so under the act.

Under continuing law, a "participating employee" means an eligible employee who is having compensation deferred under the program. Under the act, that compensation is deferred pursuant to either (1) an agreement entered into with the employee's employer and the Board (rather than a contract, as under former law) or (2) automatic enrollment in the program.<sup>18</sup>

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<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)).

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

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## HISTORY

Action	Date
Introduced	01-26-21
Reported, S. Insurance	03-02-21
Passed Senate (32-1)	03-10-21
Reported, H. Insurance	05-19-21
Passed House (76-18)	05-26-21

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