



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Dovilla and Anielski, Baker, Becker, Buchy, Derickson, DeVitis, Ginter, Green, Grossman, Hall, T. Johnson, Manning, Patmon, Pelanda, Romanchuk, Ruhl, Sears, Thompson

BILL SUMMARY

- 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 for 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.

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CONTENT AND OPERATION

Offenses

The bill adds additional offenses to the offenses committed by a public retirement system member or contributor or alternative retirement plan participant 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 R.C. 2929.192(A) and 2929.193(B).

(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 and in a position of honor, trust, or profit.⁵

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

(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;

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).



(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 the Ohio Attorney General when applicable federal charges are filed against the person. On conviction of or guilty plea to the federal offense, the person must send written notice to the system or plan and 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 to a public retirement system or an alternative retirement plan," a fourth degree misdemeanor.⁹

Attorney General

The procedures for benefit forfeiture for a conviction or guilty plea to a covered federal offense are similar to continuing law's procedures for forfeiture for a conviction or guilty plea to a covered state offense except for the Attorney General's involvement (see "**State offenses – continuing law**," below). On receipt of notice of a conviction or guilty plea to a covered federal offense, the bill requires the Attorney General to determine whether the federal court sentencing the person has issued a forfeiture order

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).

⁸ R.C. 2901.432(C) and (D).

⁹ R.C. 2927.28.



or writ of garnishment on the person's retirement allowance, pension, disability benefit, or other right or benefit.¹⁰

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 seeking 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 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 (see "**Definitions**," below for the definition of "accumulated contributions").

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.¹¹

Hearing

A person subject to a forfeiture order may request a hearing regarding the forfeiture by making a written request for a hearing not later than 30 days after the person receives notice that the Attorney General has brought an action in the Franklin County Court of Common Pleas. The hearing requirements are similar to those of continuing law regarding forfeiture for a conviction of or guilty plea to a covered state offense. If 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 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

¹⁰ R.C. 2901.433.

¹¹ R.C. 2901.433(B).

by the person for the forfeiture order not to be issued. If the court finds good cause, it must not issue the order.

If the person does not request a hearing or if the court conducts a hearing but does not find 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 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.¹²

Termination of existing disability benefit

Notice requirements

On receipt of the notice of a person's conviction of or guilty plea to a covered federal offense, the bill requires the public retirement system or alternative retirement plan to 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.¹³

Termination procedure

The procedures for terminating an existing disability benefit of a person who 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. As with the forfeiture procedures, the Attorney General must bring an action to terminate an existing disability benefit if the federal court did not issue a forfeiture order or writ of garnishment of those benefits. However, a hearing must be held before issuing the order terminating the disability benefit. The court must send notice of the hearing not later than ten days prior to it to the same parties who receive notice of a forfeiture hearing under the bill. 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.¹⁴

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

¹² R.C. 2901.433(C) and (D).

¹³ R.C. 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.

¹⁴ R.C. 2901.434(C)(1).

court that is conducting a hearing regarding the possible termination of the person's disability benefit.¹⁵

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.¹⁶

State offenses – continuing law

Forfeiture of future benefits

With respect to the bill's added state offenses for which a person may be subject to forfeiture or termination of a future retirement allowance, pension, disability benefit, or other right or benefit the bill applies continuing law procedures for forfeiture or termination.

Continuing law requires a court to order forfeiture of a future retirement allowance, pension, disability benefit, or other right or benefit, other than payment of accumulated contributions, of a person who is a public retirement system member or alternative retirement plan participant if all of the following apply:

- The person is convicted of or pleads guilty to any of the following:
 - (1) 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);
 - (2) 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;
 - (3) A conspiracy to commit, attempt to commit, or complicity in committing any of the offenses described in (1) or (2).
- The offense was committed on or after May 13, 2008, while serving in a position of honor, trust, or profit.

¹⁵ 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).

¹⁶ R.C. 2901.434(C).



- At the time of the offense, the person was a member or participant or contributor, as added by the bill.¹⁷

Upon filing charges, the prosecutor must send written notice to the applicable public retirement system or alternative retirement plan.¹⁸

Continuing law's hearing procedures for forfeiture involving a person who is convicted of or pleaded guilty to a covered state offense are generally the same as those described above for a person who committed a federal offense. The primary differences are that the Attorney General is not required to be involved in the hearing process and if person subject to a forfeiture order requests a hearing, the hearing must be requested before sentencing. Another difference is that the prosecutor who handled the criminal case, rather than the U.S. attorney, must be notified of the hearing and the Attorney General is not required to be notified.¹⁹

Termination of existing disability benefits

Continuing law requires a court to order termination of an existing disability benefit granted a person who is a public retirement system member or contributor or an alternative retirement plan participant if all of the following apply:

- The person is being sentenced for any of the offenses specified above committed on or after July 29, 2011 ;
- The offense was committed while the person was serving in a position of honor, trust, or profit;
- At the time of the offense, the person was a system member or contributor or plan participant;
- Before the final disposition of the case, the person was granted a disability benefit by the system or plan;
- The court determines that the person's disabling condition arose out of the commission of the offense.²⁰

¹⁷ R.C. 2929.192(A) and (D)(1).

¹⁸ R.C. 2901.43(C).

¹⁹ R.C. 2929.192(B).

²⁰ R.C. 2929.193.



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.²¹

Continuing law's hearing procedures for terminating an existing disability benefit for a person who is convicted of or pleads guilty to a covered state offense are generally the same as those specified above for terminating a disability benefit for a covered federal offense. The exceptions are that the Attorney General is not required to be involved and that the hearing for terminating the disability benefit is held before sentencing.²²

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.²³ The provision applies only to cases to which the other forfeiture and termination provisions do not apply.²⁴

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. As with the other forfeiture provisions, a PERS member may request a hearing regarding the forfeiture.²⁵ The bill does not change these provisions.

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

²¹ R.C. 2901.43, 145.573, 742.464, 3305.12, 3307.373, 3309.673, and 5505.263.

²² R.C. 2929.193(C).

²³ R.C. 145.573 and R.C. 145.574 and 2929.194, not in the bill.

²⁴ R.C. 2929.194(A), not in the bill.

²⁵ R.C. 2929.194(B), not in the bill.



accumulated contributions or any other amount, before 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.²⁶

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.

The bill applies the above provision to the state offenses added by the bill.²⁷

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 continuing 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

²⁶ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).

²⁷ R.C. 145.572(B), 742.463(B), 3305.11(B), 3307.372(B), 3309.672(B), and 5505.262(B).



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.²⁸)

Exclusions from property interests exempt from execution

Continuing 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.²⁹

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.³⁰

(3) "Contributor" – a re-employed retiree. 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.

(4) "Accumulated contributions" – generally, the contributions deducted from a member's salary, plus interest on those contributions. Accumulated contributions also

²⁸ R.C. 145.572(A), 742.463(A), 3305.11(A), 3307.372(A), 3309.672(A), and 5505.262(A).

²⁹ R.C. 2329.66(A).

³⁰ R.C. 2901.432(A), 2901.433(A), and 2901.434(A), by reference to R.C. 2907.15, not in the bill.

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.³¹

HISTORY

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³¹ R.C. 2901.433(A)(3), by reference to R.C. 2929.192.

