OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis Lynda J. Jacobsen

H.B. 708

132nd General Assembly
(As Introduced)

Reps. Becker, Leland, Hood, Vitale, Thompson, Brinkman, Keller, Riedel, Zeltwanger, Roegner, Romanchuk, Dever, Dean, Kick, McClain

BILL SUMMARY

- Creates a new re-employment penalty for a state retirement system member who retires on or after the bill's effective date and becomes employed in a position covered by the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS).

- During the period of employment, causes a retired member (retirant) subject to the new penalty to forfeit the employer-funded portion of the retirement allowance and have the employee-funded portion suspended.

- Provides for the retirement allowance to resume the month following termination of employment and for the suspended portion of the allowance to be used to recalculate the retirement allowance after employment ends.

- Subjects elective officials and certain retirants who, under current law, are exempt from re-employment penalties, to the same re-employment penalty as other retirants.

- For members retired before the bill's effective date, retains current law's re-employment penalties that apply to (1) a retirant who has received a retirement allowance for less than two months when re-employment commences or (2) certain PERS retirants employed as independent contractors.

CONTENT AND OPERATION

Background

A public employee who retires under one of the state's retirement systems (retirant) receives a monthly retirement allowance funded by contributions made by the employee and employer before the employee's retirement and earnings from the retirement system's investment of those contributions. The retirement allowance consists of an annuity portion and a pension portion. The annuity is referred to in this analysis as the employee-funded portion.[1] The pension, which is funded by employer contributions and investment earnings, is referred to in this analysis as the employer-funded portion of the allowance.

Current law permits a state retirement system member to retire and subsequently be employed in a position covered by one of four of the state's retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS). (There is no provision for re-employment under the State Highway Patrol Retirement System.) Currently, re-employment penalties apply when one of the following occurs:

(1) A retirant who has received a retirement allowance for less than two months begins employment with a public employer;

(2) Unless certain conditions are met, a PERS retirant who retired from elective office is elected or appointed to the same office for the remainder of the existing term of office or the next term;

(3) A PERS retirant is employed as an independent contractor with a public employer.[2]

The re-employment penalties do not apply to a retirant employed in any of the following: (1) a position appointed by the Governor with the Senate's advice and consent, (2) a position as the head of a state department, or (3) certain positions in the General Assembly or specified state agencies.[3]

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[1] R.C. 145.01(L) and (P) and R.C. 3307.01(N), not in the bill.

[2] R.C. 145.38(B) and (C), 742.26(D), 3307.35(F), and 3309.341(C).

[3] R.C. 145.382, repealed by the bill.

New re-employment penalty

The bill creates a new penalty, replacing the re-employment penalties that currently apply to public employees who retire under a state retirement system and are subsequently employed by a public employer. The new penalty applies to public employees who retire on or after the bill's effective date. It causes a retirant to forfeit the employer-funded portion of the retirement allowance and have the employee-funded portion suspended.[4] The penalty applies as long as re-employment continues. The result is that the retirant receives no retirement allowance during the period of re-employment.

This new penalty applies to all retirement system members, including elected officials. Like the current penalty, it applies to any re-employed retirant, regardless of the type of prior public employment, whether the re-employment is full or part time, or the length of time the retirant plans to be re-employed. For example, the re-employment penalty would apply to both a retired judge who is re-elected to a full-time judgeship and to a retired teacher who works five days per month as a substitute teacher.

For all members retiring on or after the bill's effective date, forfeiture of the employer-funded portion of a retirement allowance and suspension of the employee-funded portion begins on the first day of the month following the month employment begins and extends to the first day of the month following the month in which employment ends. The employee-funded portion that was suspended during re-employment is to be used to recalculate the retirement allowance after the employment ends.[5]

The bill applies the re-employment penalties to employees currently exempted: those re-employed in positions appointed by the Governor with the advice and consent of the Senate, in positions as heads of state departments, and in certain positions in the General Assembly and specified state agencies.[6]

During re-employment, neither the retirant subject to the new penalty nor the retirant's employer is to contribute to the retirement system on the retirant's behalf. In contrast, current law requires the retirant and the retirant's employer to contribute to

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[4] Federal law prohibits the forfeiture of the employee-funded portion of the retirement allowance (26 United States Code 411(e); *see also* "State and Local Pension Plans and Fiscal Distress: A Legal Overview," Congressional Research Service, 2011).

[5] R.C 145.38(D), 742.26(D), 3307.35(C), and 3309.341(C).

[6] R.C. 145.382, repealed by the bill.

the retirement system for the period of re-employment. The retirant later receives an annuity or a lump sum payment based on those contributions.[7]

The bill specifies that for purposes of the re-employment provisions (new and existing), "employ" and "employment" include providing personal services pursuant to a contract or as a consultant, as well as direct employment.[8]

The following table shows the difference in salary and retirement allowance payable under current law and under the bill to a teacher who retires with a monthly retirement allowance of $4,000 and works five days per month as a substitute teacher.[9] The table shows a teacher's monthly income while retired and re-employed.

Retired teacher	Existing law	Under the bill
Salary for substitute teaching	$500.00	$500.00
Retirement allowance	$4,000.00	$0[10]
Total monthly income during re-employment	$4,500.00	$500.00

Existing re-employment penalties

Current law's re-employment penalties for retirants who return to public employment less than two months after retirement and PERS retirants who act as independent contractors for public employers continue to apply under the bill to members who retired before the bill's effective date, even if their re-employment commences after the bill takes effect. The penalties are explained below.

The bill retains in part a provision under which retirants whose employment commenced before the bill's effective date contribute to a retirement system and receive

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[7] R.C. 145.38(B) and (D), 145.384, 742.26(D) and (G), 3307.35(B) and (C), 3307.352, 3309.341(B) and (C), and 3309.344.

[8] R.C. 145.38(A)(3), 742.26(A)(4), 3307.35(A)(2), and 3309.341(A)(3).

[9] For this example, the table uses the substitute teacher salary for the East Cleveland City Schools. The daily pay rate for a substitute teacher in that school district is $100. https://renhill.tedk12.com/hire/ViewJob.aspx?JobID=313.

[10] Although the retirement allowance is shown as $0, the teacher remains entitled to receive the teacher's **employee** contributions into the state retirement system once re-employment ends (R.C 145.38(D), 742.26(D), 3307.35(C), and 3309.341(C)).

a separate benefit based on those contributions (this provision does not apply to certain PERS retirants employed as independent contractors with public employers).[11]

Two-month forfeiture

Current law provides that a retirant who has received a retirement allowance for less than two months when public employment begins forfeits the retirement allowance for any month of employment during the two-month period. On termination of the employment or on the retirant's death, the contributions made during that period are refunded. The retirant's service and contributions during the two-month period cannot be used in calculating a benefit for employment with that employer.[12]

PERS retirants employed as independent contractors

A PERS retirant who enters into a contract as an independent contractor with a public employer covered by PERS is subject to a penalty under current law if one of the following applies:

(1) At the time of retirement, the retirant was employed by the contracting public employer;

(2) Less than two months after retirement, the retirant enters into a contract with a public employer other than the retirant's employer at the time of retirement.

If either of the above applies, the retirant is subject to a penalty during the entire period of service under the contract. From the first day of the month following the month in which services under the contract begin until the first day of the month following the month in which the services end, the retirant forfeits the employer-funded portion of the retirement allowance and payment of the employee-funded portion of the allowance is suspended. The suspended payments accumulate to the retirant's credit and are paid in a single payment after service under the contract terminates.

A retirant subject to this penalty is ineligible to contribute to PERS and is therefore ineligible to receive a benefit for the period of employment under the contract.[13]

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[11] R.C. 145.38(B), 742.26(C), 3307.35(B), and 3309.341(B).

[12] R.C. 145.38(B)(2), 742.26(C)(2), 3307.35(B)(2), and 3309.341(B)(2).

[13] R.C. 145.38(C).

PERS retirants who hold elective office

A member who retires after the bill takes effect and later is elected to any public office will, while in office, forfeit the employer-funded portion of the retirement allowance and have the employee-portion suspended. Current law provides this forfeiture for a state or local elective official who retires while holding office and who is elected or appointed to the same office for the remainder of the term or for a subsequent term. However, the existing penalty does not apply in any of the following circumstances:

(1) The official retires at least 90 days before the election;

(2) The official files with the county board of elections not less than 90 days before the primary election or, if no primary is scheduled, 90 days before the date on which the primary would have been held, a written declaration of intent to retire before the end of the term;

(3) In the case of a person appointed to an elective office, the person notifies the appointing authority that the person is already retired or intends to retire before the end of the term for which the appointment is made.[14]

The bill eliminates these exceptions. As a result, a member who retires after the bill takes effect and is later appointed or elected to office will not receive a retirement allowance while in office.

The table below shows the difference in salary and retirement allowance payable to a municipal court judge with a monthly salary of $11,012.50 ($132,150 annually)[15] who retires with a $7,000 monthly retirement allowance and is re-elected to the same position. The table shows the judge's monthly income while retired and re-employed. The existing law column presumes that the judge filed the required intent-to-retire statement so that the judge is eligible to receive both the judicial salary and a retirement allowance.

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[14] R.C. 145.38(C) in current law.

[15] Supreme Court of Ohio, "Judge's Salary Chart," https://www.supremecourt.ohio.gov/Judiciary/salary/default.asp.

Retired judge	Existing law	Under the bill
Salary	$11,012.50	$11,012.50
Retirement allowance	$7,000.00	$0[16]
Total monthly income during re-employment	$18,012.50	$11,012.50

Elimination of specified re-employment provisions

The bill eliminates the existing requirement that a board, commission, or local legislative authority filling a position that requires a vote of its members do both of the following if it proposes to continue the employment of a person who is retiring from the position or employ a person who has retired from it:

(1) At least 60 days before the employment is to begin, give public notice that the person is or will be retired and is seeking employment in the position;

(2) Between 15 and 30 days before the employment is to begin, hold a public meeting on the issue of the employment.[17]

Bill title

The bill specifies that it will be known as the "Double Dippers Inappropriately Privileged (DDIP)" act.[18]

HISTORY

ACTION	DATE
Introduced	06-20-18

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[16] Although the retirement allowance is shown as $0, the judge remains entitled to receive the judge's **employee** contributions into the state retirement system once re-employment ends (R.C 145.38(D), 742.26(D), 3307.35(C), and 3309.341(C)).

[17] R.C. 145.381, 3307.353, and 3309.345, all repealed by the bill.

[18] Section 3.