

# OR SC

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## Voting Members

### Senators

Lynn Wachtmann, *Vice-Chair*  
Teresa Fedor  
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### Representatives

Michelle Schneider, *Chair*  
Todd Book  
Clyde Evans

### Governor's Appointees

Doug Gillum  
Cheryl Grossman  
Dale Van Vyven

## Non-Voting Members

### Executive Directors

Damon Asbury, *STRS*  
Richard Curtis, *HPRS*  
William Estabrook, *OP&F*  
Laurie Fiori Hacking, *PERS*  
James R. Winfree, *SERS*

### Director

Aristotle L. Hutras

# *Analysis*

## **Sub. S.B. 133 - Sen. Wachtmann (As Enacted by the General Assembly)**

February 16, 2005

## ORSC Position

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Sub. S.B. 133 is an omnibus pension reform bill that is intended to improve accountability, oversight and ethical standards with respect to the governance of the five state retirement systems in Ohio: the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Ohio Police & Fire Pension Fund (OP&F) and the Highway Patrol Retirement System (HPRS).

A description of the numerous changes follows:

### **Retirement System Lobbying Registration and Disclosure**

- Requires retirement system lobbyists and their employers to file a registration statement, along with any statement of expenditures and details of financial transactions, with the Joint Legislative Ethics Committee (JLEC). This requirement is modeled after existing law governing executive agency lobbyists. (R.C. §§101.90 to 101.99)

The initial registration statement shall be filed within 10 days following the engagement, and shall include the following: (1) the name, business address and occupation of the retirement system lobbyist; (2) the name and business address of the employer or the real party in interest on whose behalf the lobbyist is acting; (3) a brief description of the retirement system decision to which the engagement relates; and (4) the name of the retirement system(s) to which the engagement relates. Updated registration statements, including statements of expenditures and details of financial transactions, shall be filed no later than the last day of January, May and September of each year that confirm the continuing existence of the engagement and that list the specific retirement decisions the lobbyist sought to influence under the engagement during the period covered by the statement. Within 30 days following termination of any engagement, the lobbyist shall send written notice of the termination to the Joint Legislative Ethics Committee. A fee of \$25 shall be charged for filing an initial registration statement and a registration card shall be issued. The registration shall be valid from the date of issuance until the 31st day of January of the following year.

The statement of expenditures shall include the following information: (1) the name of the board member, state retirement system investment official or employee whose position involves substantial and material exercise of discretion in the investment of funds to whom the expenditures were made; (2) the total amount of the expenditures made; (3) a brief description of the expenditures made; (4) the approximate date the expenditures were made; (5) the retirement system decision, if any, sought to be influenced; and (6) the identity of the client on whose behalf the expenditures were made. (Expenditures filed by a retirement system lobbyist shall not include payment for meals and beverages to a board member, investment official or employee that, when added to previous payments in the same calendar year, are less than \$50; also, expenditures filed by an employer shall not include expenses for maintaining office facilities or compensation paid to retirement system lobbyists.) At least 10 days before filing the statement of expenditures, each retirement system lobbyist or employer shall deliver a copy thereof to the board member, investment official or employee listed in the statement as having received the expenditure. Retirement system lobbyists and employers shall retain receipts or maintain records for all expenditures required to be reported for a period ending on the last day of the second calendar year following the year in which the expenditures were made.

Details of financial transactions shall include the following information: (1) the name of the board member, state retirement system investment official or employee whose position involves substantial and material exercise of discretion in the investment of funds involved in the transaction with the retirement system lobbyist or employer; (2) the purpose and nature of the transaction; and (3) the date the transaction was made. At least 10 days before

filing the details of the transaction, each retirement system lobbyist or employer shall deliver a copy thereof to the board member, investment official or employee involved in the transaction.

If an employer who engages a retirement system lobbyist is the recipient of a contract, grant, lease or other financial arrangement to which funds of the state or retirement system are allocated, any failure on the part of such employer or lobbyist to comply with the above registration and disclosure requirements shall be considered a breach of a material condition of the contract, grant, lease or other financial arrangement. Each retirement system may require certification from any person seeking the award of a contract, grant, lease or other financial arrangement and such person's employer of compliance with the registration and disclosure requirements required above.

If a dispute arises between a board member, state retirement system investment official or employee and an employer or retirement system lobbyist with respect to an expenditure or financial transaction, the same may file a complaint with the Ohio Ethics Commission at least three days prior to the time the statement is required to be filed with JLEC. The Commission shall investigate the complaint, and notify the parties of its final decision by certified mail. If the Commission decides that the disputed expenditure or financial transaction should be reported, the employer or retirement system lobbyist shall include the matter in an amended statement and file it no later than 10 days after receiving notice of the decision. An employer or retirement system lobbyist who files a false statement of expenditures or financial transactions is liable in a civil action to any board member, official or employee who sustains damage as a result.

The above filing requirements do *not* apply to efforts to influence retirement system decisions or conduct retirement system lobbying activities through any of the following: (1) appearances at public hearings of a retirement system or any other public meetings; (2) news, editorial, and advertising statements published in bona fide newspapers, journals or magazines, or broadcast over radio or television; (3) gathering and furnishing information and news by bona fide reporters, correspondents, or news bureaus to news media; and (4) publications primarily designed for and distributed to members of bona fide associations or charitable or fraternal nonprofit corporations. Also, the above filing requirements do *not* prohibit a board member from soliciting or accepting a contribution from or an expenditure by any person if such contribution or expenditure is reported in accordance with the campaign finance laws.

The bill provides that no person shall engage any person to influence retirement system decisions or conduct retirement system lobbying activities on a contingent fee basis. However, this provision does *not* prohibit compensating retirement system lobbyists pursuant to an incentive compensation plan if such plan is the same plan used to compensate similarly situated sales employees who are not retirement system lobbyists.

The executive director of JLEC shall be responsible for reviewing registration statements and determining whether they include all the information required under the bill. JLEC shall send written notice by certified mail to the person who filed the statement of any deficiencies or to the person who failed to file the statement of such failure. Any person so notified shall, no later than 15 days after receiving such notice, file a registration statement or an amended registration statement that includes all the required information. JLEC shall assess a late filing fee of \$12.50 per day, up to a maximum fee of \$100, upon any person who fails to file such statement or amended statement within this fifteen-day period, though the JLEC may waive the late filing fee for good cause shown.

No later than the fifteenth day of March of each year, the JLEC shall publish a report

containing statistical information on the registration statements filed with it during the preceding year. The JLEC shall keep on file all statements required to be filed with it, which shall be public records and open to public inspection. The JLEC shall computerize these statements to make them readily available to the general public. The JLEC shall provide copies of such statements to the general public upon request, and may charge a reasonable fee not to exceed the cost of copying and delivering the statements. No later than the last day of February and October of each year, the JLEC shall compile a complete and updated list of registered retirement system lobbyists and their employers, and distribute such list to each member of the General Assembly, elected executive official, and the director of each retirement system who shall distribute the list to the appropriate personnel under the director's jurisdiction. The JLEC shall also provide copies of the list to the general public upon request.

The JLEC shall prescribe and make available the appropriate form for filing the statements required above. The form shall include the following notice in boldface: "ANY PERSON WHO KNOWINGLY FILES A FALSE STATEMENT IS GUILTY OF FALSIFICATION UNDER SECTION 2921.13 OF THE REVISED CODE, WHICH IS A MISDEMEANOR OF THE FIRST DEGREE." The JLEC shall also publish a handbook that explains in clear and concise language the above filing requirements and make it available free of charge to retirement system lobbyists, employers and any other interested persons.

The bill provides that the Attorney General or any assistant or special counsel designed by the Attorney General may investigate compliance with the above filing requirements and, in the event of an apparent violation, shall report the findings of such investigation to the prosecuting attorney in Franklin County, who shall institute appropriate proceedings.

Any person who knowingly fails to register, keep a receipt or maintain a record, or file a statement of expenditures or details of financial transactions is guilty of a misdemeanor of the fourth degree, along with any person who engages or is engaged as a retirement system lobbyist on a contingent fee basis. Any person who knowingly files a false statement is guilty of a misdemeanor of the first degree.

### **Financial Disclosure Statements Filed with Ohio Ethics Commission**

- Requires the board members and investment officers of the five state retirement systems to file a financial disclosure statement with the Ohio Ethics Commission. Investment officers include the chief investment officer, assistant investment officers, and any person in charge of a class of assets or in a substantially equivalent position. In addition, the bill requires members of the Ohio Retirement Study Council (ORSC) who are appointed by the Governor and ORSC employees other than employees who perform purely administrative and clerical duties to file financial disclosure statements. The financial disclosure statements would be considered public records because they are required to be filed pursuant to statute rather than administrative rule. (R.C. §102.02)

Currently, the chief executive officer of each system is required by statute to file a financial disclosure statement; board members of each system are required by administrative rule to file financial disclosure statements with the Ohio Ethics Commission and, therefore, such statements are considered confidential under current law.

The bill prohibits board members, investment officers and employees of the retirement systems whose position involves substantial and material exercise of discretion in the investment of retirement funds from accepting or soliciting payment of actual travel expenses, including lodging, meals, food and beverages. (R.C. §103.03)

The bill permits the Ohio Ethics Commission to share information gathered in the course of any investigation of a board member of any of the five state retirement systems who is accused of violating the Ohio ethics laws with the Attorney General and Auditor of State. The Commission shall report its findings to the ORSC if the Commission finds by a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of the Ohio ethics laws (R.C. §102.06).

### **Civil Actions Filed by Attorney General for Breach of Fiduciary Duty**

- Authorizes the Attorney General to file a civil action against a board member of the five state retirement systems for breach of fiduciary duty. The Attorney General may recover damages or be granted injunctive relief, which shall include the enjoinder of specified activities and the removal of the member from the board. Any damages awarded shall be paid to the retirement system. The bill specifies that this authority is in addition to any other authority granted to the Attorney General under any other provision of the Revised Code. (R.C. §§109.98, 145.114, 742.114, 3307.152, 3309.157, 5505.065)

The Attorney General currently serves as the legal adviser for each retirement system.

### **Board Elections**

- Requires the retirement boards, following consultation with the Secretary of State, to adopt rules in accordance with Chapter 119 of the Revised Code governing the administration of elections of board members to the five state retirement systems; nominating petitions for elections; certification of the validity of nominating petitions for elections; and certification of the results of elections. Each board may contract with the Secretary of State or an independent firm to administer the elections, certify the validity of nominating petitions, and certify the results of the election. The Secretary of State and independent firm shall perform these services in accordance with rules adopted by the retirement boards. Each board shall provide information necessary for the Secretary of State or independent firm to certify the election, notwithstanding any other provision of retirement law that would otherwise prohibit the disclosure of such information. If the board contracts with an independent firm to administer the election, the Secretary of State may audit the election. (R.C. §§145.058, 742.045, 3307.075, 3309.075, 5505.047)

Currently, all elections of board members are conducted under the supervision of the retirement boards.

- Provides that a successor employee or retiree board member who is elected to fill a vacancy shall hold office until the next board election that occurs not less than 90 days after the successor's election to the board. (R.C. §§145.06, 742.05, 3307.06, 3309.06, 5505.042)

Under existing law, the successor employee or retiree board member holds office for the remainder of the predecessor's term.

### **Reporting to ORSC**

- Requires the Ohio Ethics Commission to report its findings, in addition to the appropriate prosecuting authority and the appointing or employing authority of the accused under existing law, to the Ohio Retirement Study Council (ORSC) with respect to any violation of the ethics laws committed by a board member of the five state retirement systems under R.C. Chapter 102 of the Revised Code, including having an unlawful interest in a public contract under R.C. §2921.42 and soliciting or receiving improper compensation under R.C. §2921.43. (R.C. §102.06)

- Requires the Auditor of State to report to the ORSC on the results of an audit, including any special audit, of the five state retirement systems. (R.C. §117.10)

### **Board Composition**

- Removes the Attorney General and Auditor of State as statutory members of the PERS, STRS, SERS, and OP&F boards. The Auditor is also removed from the HPRS board; unlike the other four retirement boards, the Attorney General is not a statutory member of the HPRS board. Also, the municipal officer appointed by the Governor is removed from the OP&F board.

The bill adds the Treasurer of State's investment designee to each retirement board, who shall be appointed by the Treasurer of State for a term of four years and meet all of the following qualifications:

- must be a resident of the state;
- must not have been employed within three years immediately preceding the appointment by any of the five state retirement systems or any person, partnership or corporation that has provided services of a financial or investment nature thereto;
- must have direct experience in the management, analysis, supervision or investment of assets; and
- must not be currently employed by the state or any political subdivision thereof.

The bill adds two investment experts to each retirement board, one of whom shall be appointed by the Governor and the other shall be appointed jointly by the President of the Senate and the Speaker of the House of Representatives for four-year terms. The initial additional investment experts shall be appointed not later than 90 days after the effective date of the act, except that the investment expert appointed jointly by the President and Speaker shall not take office immediately if taking office would result in an even-number board. The investment experts shall continue in office subsequent to the expiration date of their terms until their successors take office or 60 days elapses, whichever occurs first. Each investment expert shall meet all of the following qualifications:

- must be a resident of the state;
- must not have been employed within three years immediately preceding the appointment by any of the five state retirement systems or any person, partnership or corporation that has provided services of a financial or investment nature thereto; and
- must have direct experience in the management, analysis, supervision or investment of assets.

The bill adds one additional retiree member to the PERS, STRS, SERS and HPRS boards; the OP&F board currently includes two retiree members, one representing retired police officers and the other representing retired firefighters. Not later than 90 days after the effective date of the act, the Governor shall appoint the initial additional retiree member to these boards, who shall hold office until the next board election that occurs not less than 90 days after the appointment.

The bill adds one additional employee member to the HPRS board.

The bill provides that the superintendent of public instruction may designate a person to serve on the STRS board in lieu of the superintendent who meets all of the following qualifications:

- must be a resident of the state;
- must not have been employed within three years immediately preceding the appointment by any of the five state retirement systems or any person, partnership or corporation that has provided services of a financial or investment nature thereto; and
- must have direct experience in the management, analysis, supervision or investment of assets.

The bill provides that any board member who is replaced as a result of the bill by an elected or appointed member shall remain in office until the replacement member is appointed or elected. However, the bill fails to specify who replaces whom on the boards.

(See the attached table for a comparison of the board compositions before and after the enactment of Sub. S.B. 133.)

(R.C. §§145.04, 742.03, 3307.05, 3309.05, 5505.04, Section 5, Section 7)

The bill would also provide that if a vacancy of an employee or retirant member of the OP&F board occurs, all of the remaining members of the board shall elect a successor employee or retirant member. Current law provides that such election shall be made by only the remaining employee or retirant members of the board. (R.C. §742.05)

- Requires at least one of the three current gubernatorial appointees to the ORSC to be a person with investment expertise. The bill also provides that gubernatorial appointees shall continue in office until their successors are appointed and qualified, notwithstanding the expiration of the appointee's term of office. (R.C. §171.01)

Currently, the ORSC is composed of 14 members as follows: three Senators appointed by the President of the Senate, no more than two of whom may be of the same political party; three Representatives appointed by the Speaker of the House, no more than two of whom may be of the same political party; three members appointed by the Governor, with the advice and consent of the Senate, one representing the state and its employees, one representing non-state governments and their employees and one representing educational employers and their employees, no more than two of whom may be of the same political party; and the five executive directors of the retirement systems as non-voting members. Also, gubernatorial appointees may remain in office subsequent to the expiration of their terms for a period not to exceed 60 days.

- Specifies that the Attorney General is the legal adviser of the ORSC. (R.C. §171.06)

The Attorney General has served as the legal adviser for the ORSC since its creation in 1968.

### **Orientation and Continuing Education Program**

- Requires the boards of the five state retirement systems to jointly develop an orientation and

continuing education program for board members and submit it to the ORSC. The education program shall cover the following topics: board member duties; member benefits and health care management; ethics and governance processes; actuarial soundness; investments; and any other subject matter reasonably related to the duties of board members. The boards shall jointly pay the costs associated with establishing and conducting the education programs which shall be held in Ohio. (R.C. §171.50)

- Requires each newly-elected board member and each individual appointed to fill a vacancy on the board to complete the orientation program established by the retirement boards no later than 90 days after commencing service as a board member. The bill also requires board members who have served one or more years to attend continuing education programs established by the retirement boards not less than twice each year. (R.C. §§145.041, 742.031, 3307.051, 3309.051, 5505.064)

### **Travel Expenses of Board Members**

- Provides that a person who has served as an elected or appointed member of the retirement boards for one or more entire fiscal years in 2000, 2001 and 2002 shall be ineligible for reelection or reappointment to the board if the person accepted reimbursements for travel and travel-related expenses that average more than \$10,000 annually for those fiscal years. (R.C. §§145.042, 742.032, 3307.052, 3309.052, 5505.49)

### **Campaign Financial Disclosure**

- Requires each candidate or campaign committee that receives contributions or in-kind contributions or makes expenditures totaling \$1,000 or more in connection with the candidate's election to the boards of the five state retirement systems to file with the Secretary of State two complete, accurate and itemized statements setting forth in detail the contributions, in-kind contributions and expenditures relative to the board election. The first statement shall be filed no later than twelve days before election day, and shall reflect contributions and in-kind contributions received and expenditures made to the close of business on the twentieth day before the election. The second statement shall be filed no sooner than eight days after the election and no later than 38 days after the election, and shall reflect contributions and in-kind contributions received and expenditures made during the period beginning on the nineteenth day before the election and ending on the close of business on the seventh day after the election. Every expenditure shall be vouched for by a receipted bill stating the purpose of the expenditure; a canceled check with a notation of the purpose of the expenditure shall be deemed a receipted bill.

The bill also requires each individual, partnership, or other entity that makes an independent expenditure in connection with the candidate's efforts to be elected to a retirement board to file such statements with the Secretary of State detailing the expenditures.

The Secretary of State shall prescribe forms for the campaign finance disclosure statements and the independent expenditure statements.

"Contribution" is defined to mean a loan, gift, deposit, forgiveness of indebtedness, denotation, advance, payment, transfer of funds, or transfer of anything of value, including the transfer of funds from an inter vivos or testamentary trust or decedent's estate, and the payment by any person other than the person to whom the services are rendered for personal services to another person, which contribution is made, received or used for the purpose of influencing the results of a board election. "Contribution" does not include services provided without compensation by individuals volunteering a portion or all of their



time on behalf of a person; ordinary home hospitality; and the personal expenses of a volunteer paid for by that volunteer campaign worker.

“In-kind Contribution” is defined to mean anything of value other than money that is used to influence the results of a board election or is transferred to or used in support of or in opposition to a candidate and that is made with the consent of, in coordination, cooperation or consultation with, or at the request or suggestion of the benefitted candidate. The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or of any written, graphic or other form of campaign materials prepared by the candidate, the candidate’s campaign committee, or their authorized agents is an in-kind contribution.

“Expenditure” is defined to mean the disbursement or use of a contribution for the purpose of influencing the results of a board election or the results of an election to fill a vacancy on the board.

“Independent expenditure” is defined to mean an expenditure by an individual, partnership, or other entity advocating the election or defeat of a candidate(s) that is not made with the consent of, in coordination, cooperation or consultation with, or at the request or suggestion of any candidate. An independent expenditure shall not be construed as being a contribution. (R.C. §§111.30, 145.053, 742.042, 3307.072, 3309.072, 5505.044)

- No person shall knowingly fail to file a complete and accurate campaign finance or independent expenditure statement. Whoever violates this provision shall be subject to a fine of not more than \$100 per each day of the violation. Any fines imposed shall be paid into the Ohio Ethics Commission fund. (R.C. §§111.30, 145.054, 145.99, 742.043, 742.99, 3307.073, 3307.99, 3309.073, 3309.99, 5505.045, 5505.99)
- No person, during the course of a person seeking nomination for or during the campaign for election to the retirement board, shall knowingly and with intent to affect the nomination or outcome of the campaign do any of the following by means of campaign materials, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release or otherwise:
  - with regard to a candidate, identify the candidate in a manner that implies that the candidate is a member of the board or use the term “re-elect” when the candidate is not currently a member of the board;
  - make a false statement concerning the formal schooling or training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned or held by a candidate; or the period of time during which a candidate attended any school, college, community technical school, or institution;
  - make a false statement concerning the professional, occupational, or vocational licenses held by a candidate or concerning any position held by the candidate for which salary or wages were received;
  - make a false statement that a candidate or public official has been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;
  - make a statement that a candidate has been indicted for any crime or has been the subject of a finding by the Ohio Elections Commission without disclosing the

outcome of any legal proceedings resulting from the indictment or finding;

- make a false statement that a candidate or official has a record of treatment or confinement for mental disorder;
- make a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services;
- falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication;
- make a false statement concerning the voting record of a candidate or public official;
- post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it is false, if the statement is designed to promote the election, nomination or defeat of a candidate.

Whoever violates these provisions shall be imprisoned for not more than six months or fined not more than \$5,000, or both. (R.C. §§145.054, 145.99, 742.043, 742.99, 3307.073, 3307.99, 3309.073, 3309.99, 5505.045, 5505.99)

- Authorizes the Secretary of State or any person with personal knowledge and subject to the penalties of perjury to file a complaint with the Ohio Elections Commission alleging a violation of the campaign financial disclosure requirements. Upon receipt of the complaint, the Ohio Elections Commission shall hold a public hearing to determine whether the alleged violation has occurred. The Commission may administer oaths and issue subpoenas to any person in the state compelling the attendance of witnesses and the production of documents. Upon refusal to obey a subpoena or to be sworn and answer as a witness, the Commission may apply to the court of common pleas of Franklin County to obtain compliance. The Commission shall provide the person accused of the violation at least seven days prior notice of the time, date and place of the hearing. The accused may be represented by an attorney and shall have an opportunity to present evidence, call witnesses and cross-examine witnesses. If the Commission determines that a violation has occurred, the Commission shall either impose a fine as authorized above, refer the matter to the appropriate prosecutor, or enter a finding that good cause has been shown not to impose the fine or refer the matter to the appropriate prosecutor. (R.C. §§145.055, 742.044, 3307.074, 3309.074, 5505.046)

### **Felony Charges and Other Criminal or Ethical Violations; Vacancy & Removal**

- Provides that the office of any employee member or retirant member of the five state retirement boards who is convicted of or pleas guilty to a felony, a theft offense, a violation of the ethics laws and offenses against justice and public administration shall be deemed vacant.<sup>1</sup> A person who has pleaded guilty to or been convicted of the above offenses is

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<sup>1</sup>Theft offenses include aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; safecracking; tampering with coin machines; theft; unauthorized use of a vehicle; unauthorized use of property, computer, cable or telecommunications property or service; possession or sale of unauthorized cable television device; telecommunications fraud; unlawful use of telecommunications device; passing bad checks; misuse of credit cards; forgery and identification card offenses; criminal simulation; making or using slugs; trademark counterfeiting;

ineligible for election to the retirement boards.

- Provides that any board member of the retirement systems who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any duty imposed by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon a complaint and hearing as provided below, the board member shall have judgment of forfeiture of the office, creating a vacancy in the office to be filled as provided by existing law.

Proceedings for the removal of such board member shall be commenced by filing with the court of appeals of the district in which the board member resides a written complaint specifically setting forth the charge. The complaint shall be accepted if signed by the Governor or signed by eligible members or retirees constituting at least 10 percent of the number of votes cast in the election for such board member position with at least 20 signatures in at least five different counties (or if no election, the most recent election held for such board member position). The clerk of court shall submit the signatures to the board, which shall verify the validity of the signatures and report its finding to the court.

The clerk of court shall cause a copy of the complaint to be served on the board member at least ten days before the hearing. The court shall hold a public hearing not later than 30 days after the filing of the complaint. The court may subpoena witnesses and compel their attendance in the same manner as in civil cases. Process shall be served by the sheriff of the county in which the witness resides. Witness fees and other fees in connection with the proceedings shall be the same as in civil cases. The court may suspend the board member pending the hearing.

If the court finds that one or more of the charges in the complaint are true, it shall make a finding for removal of the board member. The court's finding shall include a full detailed statement of the reasons for the removal, and shall be filed with the clerk of court and be made a matter of public record. The board member has the right of review or appeal to the supreme court on leave first obtained. The supreme court shall hear the case in not more than 30 court days after granting leave. In all other respects, the hearing shall follow the regular procedure in appealable cases that originate in the court of appeals. No person who has been removed from the board pursuant to the above procedure shall be eligible for future board membership.

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medicaid fraud; tampering with records; securing writing by deception; impersonating an officer; defrauding creditors; insurance fraud; workers' compensation fraud; receiving stolen property; cheating; theft in office; any offense under an existing or former municipal ordinance or law of this or another state or of the United States involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit or fraud; and a conspiracy or attempt to commit, or complicity in committing any of the offenses listed above.

Offenses against justice and public administration include bribery; perjury; falsification; obstructing official business; having an unlawful interest in public contract; soliciting or receiving improper compensation; and dereliction of duty.

Ethical violations include duty to file financial disclosure statement with ethics commission; restrictions on present and former public officials and employees; compensation or services received other than from agency with which person employed; and confidentiality of information in disclosure statements.

This provision is modeled after existing law governing the removal of public officers under R.C. §3.07, et al. (R.C. §§145.057, 742.046, 3307.061, 3309.061, 5505.048)

### **Investment Officers**

- Requires each retirement board to designate a person who is a licensed state retirement investment officer to be the chief investment officer for the retirement fund. Each board shall notify the Division of Securities in writing of its designation and of any change thereto within 10 calendar days of the designation or change.

The chief investment officer shall reasonably supervise licensed state retirement system investment officers and other persons employed by the retirement fund with a view toward preventing violations of federal and state securities laws, and the rules and regulations thereunder. The duty of reasonable supervision shall include the adoption, implementation, and enforcement of written policies and procedures reasonably designed to prevent such persons from misusing material, nonpublic information in violation of these laws, rules and regulations.

No chief investment officer shall be considered to have failed to satisfy the duty of reasonable supervision if the officer has done all of the following:

- Adopted and implemented written procedures and a system for applying the procedures that would reasonably be expected to prevent and detect, insofar as practicable, any violation;
- Reasonably discharged the duties and obligations incumbent upon the chief investment officer by reason of the established procedures and system for applying the procedures when the officer has no reasonable cause to believe that there was a failure to comply with the procedures and systems;
- Reviewed, at least annually, the adequacy of the policies and procedures established and the effectiveness of their implementation;

The chief investment officer shall establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions executed on behalf of the board. No chief investment officer shall be considered to have failed to satisfy this duty if the officer has done both of the following:

- Implemented the policy adopted by the board that outlines the criteria used to select agents that execute securities transactions on behalf of the retirement system;
  - Reviewed, at least annually, the performance of agents that execute securities transactions on behalf of the retirement system. (R.C. §§145.094, 742.104, 3307.043, 3309.043, 5505.065)
- Prohibits each retirement board from employing an investment officer who does not hold a valid state retirement system investment officer license issued by the Division of Securities in the Department of Commerce, effective 90 days after the effective date of the bill. (R.C. §§145.09, 742.10, 3307.11, 3309.14, 5505.07)
  - Defines “state retirement investment officer” to mean an individual employed by a state retirement system as a chief investment officer, assistant investment officer, or the person in charge of a class of assets, or in a position substantially equivalent thereto. (R.C.

§1707.01)

- Prohibits any person from acting as a state retirement investment officers unless the person is licensed as a state retirement investment officer by the Division of Securities. The bill also prohibits a state retirement investment officer from acting as a dealer, salesperson, investment advisor or investment advisor representative. (R.C. §1707.162)
- Requires applicants for a state retirement system investment officer license to file with the Division of Securities the information, materials and forms specified in rules adopted by the Division. The bill provides that the Division may investigate any applicant and require any additional information it considers necessary to determine the applicant's business repute and qualifications to act as an investment officer. If the application requires the Division to investigate outside of this state, the applicant may be required to advance sufficient funds to pay any of the actual expenses of the investigation.
- Provides that the Division of Securities shall by rule require an applicant to pass an examination designated by the Division or achieve a specified professional designation unless the applicant meets both of the following requirements:
  - (1) acts a state retirement system investment officer on the effective date of the amendment;
  - (2) has experience or equivalent education acceptable to the Division.

If the Division finds that the applicant is of good business repute, appears to be qualified to act as a state retirement system investment officer, and has complied with Chapter 1707 and the rules adopted thereunder, the Division shall issue a license upon payment of the applicable fee. (R.C. §1707.163)

- The license fee shall be \$50.00. The license of every state retirement system investment officer shall expire on the thirty-first day of June of each year. The license may be renewed on the filing with the Division of Securities of an application for renewal and the payment of the \$50.00 fee. The Division shall give notice, without unreasonable delay, of its action on any application for renewal. (R.C. §1707.17)
- The license of a state retirement system investment officer may be refused, suspended or revoked if the Division of Securities determines that the investment officer:
  - (1) is not of good business repute;
  - (2) is conducting an illegitimate or fraudulent business;
  - (3) is, in the case of a dealer or investment adviser, insolvent;
  - (4) has knowingly violated any provision of Chapter 1707 of the Revised Code, or any regulation or order made thereunder;
  - (5) has knowingly made a false statement of a material fact or an omission of a material fact in an application for a license or in any statement made to the Division;
  - (6) has refused to comply with any lawful order or requirement of the Division;
  - (7) has been guilty of any fraudulent act in connection with the sale of any securities or in connection with acting as a state retirement system investment officer;

(8) conducts business in purchasing or selling securities at such variations from the existing market as in the light of all the circumstances are unconscionable;

(9) conducts business in violation of such rules and regulations as the Division prescribes for the protection of investors, clients, prospective clients, or state retirement systems; and

(10) has failed to furnish to the Division any information with respect to acting as a state retirement system investment officer. (R.C. §1707.19)

- If a court of Common Pleas grants an injunction against any state retirement system investment officer for violation of Ohio's securities laws, the Director of Commerce, after consultation with the Attorney General, may request that the court order the state retirement system investment officer to make restitution to the retirement system. (R.C. §1707.261)
- No state retirement system investment officer shall do any of the following:
  - (1) employ any device, scheme or artifice to defraud any state retirement system;
  - (2) engage in any action, practice or course of business that operates or would operate as a fraud or deceit on any state retirement system;
  - (3) engage in any act, practice or course of business that is fraudulent, deceptive or manipulative; (The Division of Securities may adopt rules reasonably designed to prevent such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative.)
  - (4) knowingly fail to comply with any policy adopted by the retirement systems regarding state retirement investment officers.

### **Internal Audit Committee**

- Requires each retirement board to appoint a committee to oversee the selection of an internal auditor and to employ such person(s) selected. The committee shall consist of the following board members: one retired member, one employee member, and one other member (PERS - Director of Administrative Services; STRS - ex officio member; HPRS - ex officio member). The committee shall annually prepare a report of its actions during the preceding year and submit it to the ORSC. (R.C. §§145.094, 742.104, 3007.032, 3309.032, 5505.111)

### **Travel & Compensation Policies; Operating Budget & Communication Plan**

- Requires each retirement board to review, in consultation with the Ohio Ethics Commission, its existing policies regarding travel of board members and employees and to adopt rules establishing a new or revised policy. The boards shall submit the rules to the ORSC not less than 60 days before adopting a new or revised policy.
- Requires each retirement board to adopt rules establishing a policy regard employee bonuses if the board intends to award bonuses to employees. The board shall provide copies of the rules establishing a policy for travel and employee bonuses to each member of the ORSC.

- Requires each retirement board to submit to the ORSC its proposed operating budget, along with the administrative budget for the board, for the next immediate fiscal year and to adopt such budget no earlier than 60 days after submission to the ORSC.
- Requires each retirement board to submit to the ORSC a plan describing how the board will improve the dissemination of public information pertaining to the board. (R.C. §§145.092, 742.102, 3307.041, 3309.041, 5505.062)

### **Ethics Training & Policy**

- Requires each retirement board to provide ethics training to board members and employees regarding the requirements and prohibitions under the ethics provisions under Chapter 102 of the Revised Code, along with sections 2921.42 (having an unlawful interest in a public contract) and 2921.43 (soliciting or receiving improper compensation) of the Revised Code. The bill also requires the board to adopt a procedure to ensure that each employee is informed of the procedure for filing a complaint with the Ohio Ethics Commission or appropriate prosecuting attorney.
- Requires each retirement board, in consultation with the Ohio Ethics Commission, to develop an ethics policy to govern board members and employees in the performance of their official duties and submit it to the Commission for approval. The Commission shall review the policy and, if the Commission determines that it is adequate, approve the policy. If the Commission determines that the policy is inadequate, it shall specify the revisions to be made and the board shall submit a revised policy. If the Commission approves the revised policy, the board shall adopt it. If not, the board shall make any further revisions required by the Commission and adopt the policy. The board shall submit it to the ORSC for review not less than 60 days before adopting the policy. (R.C. §§145.093, 742.103, 3307.042, 3309.042, 5505.063)

### **Investment Policy**

- Requires each retirement board to establish, at least annually, a policy with the goal to increase utilization of Ohio-qualified agents (i.e., licensed dealers) for the execution of domestic equity and fixed income trades, *provided such agents offer quality, services and safety comparable to other agents otherwise available to the board*. The board shall review the performance of the agents that execute securities transactions no less than annually, and shall determine whether an agent is an Ohio-qualified agent and whether the agent offers quality, services and safety comparable to other agents otherwise available to the board. The board's determination shall be final.

To be designated as an Ohio-qualified agent by the board, the agent must meet all of the following requirements: (1) must be subject to Ohio franchise or income tax; (2) must be authorized to conduct business in Ohio; and (3) must maintain a principal place of business in Ohio and employ at least five Ohio residents. The bill also requires each board to adopt and implement a written policy that establishes criteria and procedures used to select agents to execute securities transactions. The policy shall address all of the following: (1) commissions charged by the agent, both in the aggregate and on a per share basis; (2) execution speed and trade settlement capabilities of the agent; (3) the responsiveness, reliability and integrity of the agent; (4) nature and value of research provided by the agent; and (5) any special capabilities of the agent.

The bill requires each board to submit an annual report to the ORSC containing the following information: (1) the name of each agent designated as an Ohio-qualified agent; (2) the name of each agent that executes securities transactions on behalf of the board; (3)

the amount of equity and fixed-income trades that are executed by Ohio-qualified agents, expressed as a percentage of all equity and fixed-income trades executed by agents; (4) the compensation paid to Ohio-qualified agents, expressed as a percentage of total compensation paid to all agents that execute securities transactions; (5) the amount of equity and fixed-income trades that are executed by agents that are minority business enterprises (i.e., owned and controlled by Ohio residents who are Black, American Indian, Hispanic, or Oriental), expressed as a percentage of all equity and fixed-income trades executed by all agents; and (6) any other information requested by the ORSC regarding the board's use of agents.

- Requires each retirement board to establish, at least annually, a policy with the goal to increase utilization of Ohio-qualified investment managers, *provided such managers offer quality, services and safety comparable to other managers otherwise available to the board*. The policy shall provide for a process whereby the board can develop a list of Ohio-qualified investment managers and their products and can give public notice to Ohio-qualified investment managers of its search for an investment manager that includes the search criteria. The board shall determine whether an investment manager is an Ohio-qualified investment manager and whether the manager offers quality, services and safety comparable to other managers available to the board. The board's determination shall be final.

To be designated as an Ohio-qualified investment manager, the manager must meet both of the following requirements: (1) must be subject to Ohio franchise or income tax; and (2) must have its corporate headquarters or principal place of business in Ohio, employ at least 500 individuals in Ohio, or have a principal place of business in Ohio and employ at least 20 Ohio residents.

The bill requires each board to submit an annual report to the ORSC containing the following information: (1) the name of each investment manager designated as an Ohio-qualified investment manager; (2) the name of each manager under contract with the board; (3) the amount of assets managed by Ohio-qualified investment managers, expressed as a percentage of the total assets held by the retirement system and as a percentage of assets managed by investment managers under contract with the board; (4) the compensation paid to Ohio-qualified investment managers, expressed as a percentage of total compensation paid to all investment managers under contract with the board; and (5) any other information requested by the ORSC regarding the board's use of investment managers.

- Requires each retirement board to disclose the following information to the Ohio Ethics Commission: (1) anything of value received by the retirement system from an agent or anything given on behalf of the system by an agent; and (2) the name of any employee of the system with authority over the investment of retirement funds or any board member who deals with an agent regarding amounts described above. The disclosures shall be made annually in a report submitted by a date prescribed by the Ohio Ethics Commission. (R.C. §§145.11, 145.114, 145.115, 145.116, 742.11, 742.114, 742.115, 742.116, 3307.15, 3307.152, 3307.153, 3307.154, 3309.15, 3309.157, 3309.158, 3309.159, 5505.06, 5505.068, 5505.069, 5505.0610)

## **Public Records**

- Provides that upon the written request of any person, each retirement board shall make available all documents, including resumes, regarding the filling of a vacancy of an elected board member. The person making the request shall pay the cost of compiling, copying and mailing the documents. Such documents shall be deemed to be a public record. (R.C.



§§145.27, 742.41, 3307.20, 3309.22, 5505.04)

The bill also provides that the board shall furnish the Secretary of State with the personal history records of plan participants for purposes of certifying board elections. The Secretary of State shall maintain the confidentiality of such records.

### **ORSC Authority**

- Authorizes the ORSC to establish a uniform format for reports required to be submitted to the ORSC by the five state retirement systems and regular reporting requirements. (R.C. §171.03) The bill also requires each retirement board to submit any required reports to the ORSC in that format. (R.C. §§145.09, 742.10, 3307.03, 3309.03, 5505.122)

This was one of the recommendations made by the Auditor of State to the Joint Legislative Committee to Study Ohio's Public Retirement Plans in 1997. The purpose is to allow legislators, board members and the public to make meaningful comparisons of the retirement systems, since many public policy issues involve all five retirement systems.

- Authorizes the ORSC to request the Auditor of State to perform or contract for the performance of a financial or special audit of a retirement system; (R.C. §171.03)
- Requires the ORSC to have conducted an independent fiduciary performance audit of each retirement system at least once every ten years to be paid by the retirement system audited; (R.C. §171.04)
- Requires the ORSC to review all proposed retirement rules and submit any recommendations to the Joint Committee on Agency Rule Review. (R.C. §171.04)

This requirement was recommended in an earlier draft of H.B. 648 (eff. 9/16/98), but was substantially modified to require only that the retirement boards submit a copy of any proposed rules to the ORSC when they file them with JCARR. The purpose of this requirement is to provide a public review process of such rules, similar to the current review process for proposed legislation, given the fact that the legislature has granted the retirement boards broad rule-making authority in various substantive areas of the current retirement laws, including the disability determination process, defined contribution plans and post-retirement health care benefits.

**Incorporation of Sub. H.B. 337** - The bill would make the following changes to the alternative retirement plans (ARP) for higher education employees:

- Make all full-time employees of a public institution of higher education eligible to elect an ARP.

Current law allows only full-time faculty or unclassified administrative staff members who are not receiving a benefit from a state retirement system to elect to participate in the ARP. (R.C. §3305.01)

- Give all eligible employees employed at a public institution of higher education on the effective date of the bill who have less than five years of service in a state retirement system and who were not previously eligible to select the ARP 120 days after the bill's effective date to elect to participate in the ARP. All eligible employees hired after the effective date of the bill would have 120 days from the date of employment to elect to participate in the ARP.

When the ARP was first established, it was available to new hires and current members with less than five years of total service credit. (R.C. §§3305.05, 3305.051)

- Allow an employee who is participating in an ARP and changes providers to transfer all or part of the account balance to the new provider except that a provider need not immediately transfer any part of an account invested in a fixed annuity account if the contract under which the investment was made permits the provider to make such a transfer over a period of time not exceeding ten years and the contract was filed with and approved by the department of insurance.

Current law requires the entire balance to be transferred to the new provider. (R.C. §3305.053)

- Change the employer contribution rate to an ARP to be equal to the percentage the employer would have contributed on behalf of that employee to the state retirement system that would otherwise cover the employee minus the percentage contributed by the employer as a supplemental contribution to the retirement system.

Current law allows the board of trustees of each public institution to determine the employer contribution rate to an ARP. (R.C. §3305.06)

- Delay the effective date of this portion of the bill until August 1, 2005. (Section 4)

**Fiscal Impact** - The bill would have no measurable actuarial effect upon any of the five state retirement systems.

**ORSC Position** - At its meeting of November 13, 2003, the Ohio Retirement Study Council voted to recommend that the 125th Ohio General Assembly approve S.B. 133 upon the adoption of the following amendments:

- *that the retirement boards be given independent statutory authority to engage the services of outside legal counsel in those situations where the Attorney General is both legal adviser to the board as well as a plaintiff filing a civil action against the board; and*
- *that the provision denying the right of reelection or reappointment to the retirement boards for elected or appointed board members whose travel expenses averaged more than \$10,000 for fiscal years 2000, 2001 and 2002 be removed from the bill because of the general constitutional prohibition against the retroactive application of laws enacted by the General Assembly (Article II, Section 28, of the Constitution of Ohio)*

*Neither of the above recommendations was adopted.*

At its meeting of March 10, 2004, the Ohio Retirement Study Council voted to recommend that the 125th Ohio General Assembly approve H.B. 337 upon the adoption of the following amendments:

- *that participation in an ARP be limited to (1) full-time employees of a public institution of higher education hired after the effective date of H.B. 337, (2) current full-time employees of a public institution of higher education who were hired after the effective date of H.B. 586 (3-31-97), but before the effective date of H.B. 337 who have less than five years of service as of the effective date of H.B. 337, and (3) any eligible employee of a public institution of higher education who was employed by a public institution of higher education at the time H.B. 586 was enacted and who would have been eligible to participate under the provisions of H.B. 586 if it had been open to all full time employees; (Sub. H.B. 337 limits participation in an ARP to (1) full-time employees of a public*

*institution of higher education hired after the effective date of H.B. 337 and (2) current full-time employees of a public institution of higher education as of the effective date of Sub. H.B. 337 who have less than five years of service as of the effective date of Sub. H.B. 337 and who did not have an opportunity to elect an ARP.)*

- *that H.B. 337 be amended to exclude all state university law enforcement officers from participation in an ARP; (Sub. H.B. 337 does not include this recommendation.)*
- *that the supplemental contribution rate for the ARP be set at the same rate established by the systems for their defined contribution plans and that any change in the supplemental contribution rate for the ARP rate would be effective on the same day the rate change for the defined contribution plan takes effect. This would be consistent with the requirement that the employee and employer contribution rates for members of the ARP are tied to the contribution rates established for members of the applicable retirement system; (Sub. H.B. 337 does not include this recommendation.)*
- *that the current statutory language be clarified to state that the supplemental contribution will resume if unfunded actuarial liabilities reemerge due to actuarial losses and that it would be payable over a time period set as the funding period reported in the most recent annual actuarial valuation of the retirement system minus an adjustment to decrease that period to reflect benefit increases subsequent to March 31, 1997; (Sub. H.B. 337 does not include this recommendation.) and*
- *that the above-mentioned technical changes be made to the bill. (This recommendation was incorporated into Sub. H.B. 337.)*

**Effective Date** - September 15, 2004, except that certain provisions pertaining to the alternative retirement plan for public institutions of higher education become effective on August 1, 2005.