



The Ohio Retirement Study Council
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Analysis

H.B. 323 – Reps. Dovilla & Anielski *(As Introduced)*

January 18, 2012

ORSC Position

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H.B. 323 would require a member or contributor of the Ohio Public Employees Retirement System (OPERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Ohio Police and Fire Pension Fund (OP&F), the Highway Patrol Retirement System (HPRS), the Cincinnati Retirement System (CRS), or a participant in an Alternative Retirement Plan for higher education employees (ARP) who pleads guilty to or is convicted of extortion or perjury committed while serving in a position of honor, trust, or profit to forfeit the right to any benefit other than the member's accumulated contributions.

Staff Comments -

This bill would expand current law by allowing for the forfeiture of the right to any benefit, other than the member's accumulated contributions, by a member or contributor of one of the five statewide public retirement systems or CRS or a participant in an ARP who pleads guilty to or is convicted of extortion (R.C. §2905.11) or perjury (R.C. §2921.11) committed while serving in a position of honor, trust, or profit. Current law allows for the forfeiture of benefits of a public employee who pleads guilty to or is convicted of:

- bribery;
- engaging in a pattern of corrupt behavior;
- theft in office, or conspiracy;
- complicity in committing any of the aforementioned offenses.

Current law, which would not change under this bill, defines "position of honor, trust, or profit" as the following:

- An elective office of the state or any political subdivision of the state;
- A position on any board or commission of the state that is appointed by the governor or the attorney general;
- A position as a public official or employee, as defined in R.C. §102.01 who is required to file a disclosure statement under R.C. §102.02;
- A position as a prosecutor, as defined in R.C. §2935.01;
- A position as a peace officer, as defined in R.C. §2935.01, or as the superintendent or a trooper of the state highway patrol;
- 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.

Additionally, current law allows the offender to request a hearing prior to sentencing to determine whether there is good cause for the forfeiture order not to be issued. If the court finds there is good cause for the forfeiture order not to be issued, the court shall not issue the forfeiture order. This is not changed by the bill.

Forfeiture of a benefit from a public retirement system based on conviction of a felony was first allowed in 2008 with the enactment of S.B. 3 (eff. 5-13-08). S.B. 3 was enacted to prevent a public employee who pleads guilty to or is convicted of a specified felony while serving in a position of honor, trust, or profit from receiving a future pension, annuity, allowance, or any other benefit other than the member's accumulated

contributions. It was expanded last year as part of H.B. 123 (eff. 7-29-11), which authorized the termination of a disability benefit of a member who pleads guilty to or is convicted of a specified offense committed while serving in a position of honor, trust, or profit if the disabling condition arose out of the commission of the offense the member was convicted of or plead guilty to.

The public policy issue raised by those bills was whether employee misconduct should affect the receipt of public retirement benefits. The principal reason behind the statutory provisions exempting retirement benefits from legal process except in a limited number of circumstances is that society has an interest in ensuring that an adequate source of income exists for the support of members who are unable to earn income due to age or disability and that a source of income exists for the support of their dependents. This societal interest in securing these sources of income has historically outweighed other competing interests. However, there are instances when an offense committed by a public employee in the course of their employment could reach the level that forfeiture of the benefit could be warranted.

It is important to note that public employees do not contribute to Social Security and, therefore, rely solely on the benefit provided by the public retirement system for retirement income. If the benefit is forfeited, the member and spouse could be in a position where they would have no source of retirement income. That is why the legislature has limited the list of offenses to egregious breaches of the public trust that were committed in the context of the offender's public employment. Because perjury and extortion could occur outside the scope of the "position of honor, trust, or profit" *we recommend that H.B. 323 be amended to clarify that the act of perjury or extortion must be committed within the context of the offender's public employment in a position of honor, trust, or profit.*

Actuarial Impact – Based on actuarial analyses from prior bills making similar changes, it is anticipated that there would be no measurable financial impact on the retirement systems.

ORSC Position – The Ohio Retirement Study Council voted at its January 18, 2012 meeting to recommend that the 129th General Assembly approve H.B. 323 upon the adoption of an amendment to clarify that the act of perjury or extortion must be committed within the context of the offender's public employment in a position of honor, trust, or profit.