

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 645**

**Representatives Howse, Brent**

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**A BILL**

To enact sections 4145.01, 4145.02, 4145.04, 1  
4145.06, 4145.07, 4145.08, 4145.10, 4145.13, 2  
4145.14, 4145.16, 4145.17, and 4145.99 of the 3  
Revised Code to establish an auto-enrollment 4  
retirement savings program for private sector 5  
employees. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4145.01, 4145.02, 4145.04, 7  
4145.06, 4145.07, 4145.08, 4145.10, 4145.13, 4145.14, 4145.16, 8  
4145.17, and 4145.99 of the Revised Code be enacted to read as 9  
follows: 10

**Sec. 4145.01.** As used in this chapter: 11

(A) "Compensation" means all salary, wages, and other 12  
earnings of an employee participating in the Ohio retirement 13  
savings program but does not include reimbursement of expenses 14  
paid by the employee or benefits such as paid leave, insurance 15  
coverage, or employer contributions to a retirement program. 16

(B) "Eligible employee" means a person employed by an 17  
eligible employer, except that "eligible employee" does not 18  
include either of the following: 19

<u>(1) Employees covered under the federal "Railway Labor Act," 45 U.S.C. 151 et seq.;</u>	20
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<u>(2) Employees covered by valid collective bargaining agreements that expressly provide for a multi-employer Taft-Hartley pension plan.</u>	22
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<u>(C) (1) "Eligible employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in this state, whether or not for profit.</u>	25
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<u>(2) "Eligible employer" does not include any of the following:</u>	28
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<u>(a) The federal government;</u>	30
<u>(b) The state or any agency or instrumentality of the state;</u>	31
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<u>(c) A county, township, municipal corporation, or any other political subdivision of the state, or any agency or instrumentality of any county, township, municipal corporation, or other political subdivision of the state.</u>	33
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<u>(D) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 26 U.S.C. 1.</u>	37
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<u>(E) "Participating employer" means an eligible employer that participates in the Ohio retirement savings program.</u>	39
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<u>(F) "Automatic contribution arrangement" means an arrangement by which an employer allows employees to have payroll deduction contributions remitted to a retirement savings program.</u>	41
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<u>Sec. 4145.02. (A) There is established the Ohio retirement savings program.</u>	45
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Eligible employees who participate in the program shall be 47  
enrolled in a defined benefit retirement plan developed under 48  
section 4145.08 of the Revised Code. 49

(B) The program shall be administered by the public 50  
employees retirement board, except that for all purposes related 51  
to the program and its administration that board shall consist 52  
of the following members: 53

(1) The treasurer of state's investment designee on the 54  
public employees retirement board; 55

(2) The director of administrative services; 56

(3) The two investment expert members on the public 57  
employees retirement board; 58

(4) One member appointed by the speaker of the house of 59  
representatives to represent eligible employees; 60

(5) One member appointed by the president of the senate to 61  
represent participating employers; 62

(6) One member appointed jointly by the speaker of the 63  
house of representatives and president of the senate to 64  
represent the public. 65

(C) Terms of office of members appointed under divisions 66  
(B) (4) to (6) of this section shall be four years. Each such 67  
member shall hold office until the later of the end of the term 68  
for which the member is appointed or the date the member's 69  
successor takes office. Members appointed under divisions (B) (4) 70  
to (6) of this section shall serve without compensation but 71  
shall be reimbursed for actual and necessary expenses in the 72  
same manner as other members of the public employees retirement 73  
board. These board members are subject to the same requirements 74

and restrictions as other members of the public employees 75  
retirement board. 76

**Sec. 4145.04.** There is created a retirement savings trust 77  
known as the Ohio retirement savings fund, which is in the 78  
custody of the treasurer of state but not part of the state 79  
treasury. After sufficient funds become available for the Ohio 80  
retirement savings program to be operative pursuant to this 81  
chapter, the fund, as a self-sustaining trust, shall pay all 82  
costs of administration only out of moneys on deposit therein. 83

The public employees retirement board shall segregate 84  
moneys received by the fund into a program account and an 85  
administrative account. Moneys in the program account may be 86  
invested or reinvested by the treasurer of state or invested in 87  
whole or in part by the board, a private money manager, or both, 88  
as determined by the board. Investments shall be made in 89  
accordance with the investment policy adopted by the board. 90

Except during a transition period specified by the board 91  
or as otherwise provided in this chapter, the board shall pay 92  
all costs of administration of the fund from the administrative 93  
account. Operating costs associated with administering the fund 94  
do not include the procurement of private underwriting for the 95  
return of the retirement savings. 96

Contributions paid by employees and employers into the 97  
fund shall be used exclusively for the purpose of paying 98  
benefits to the participants in the Ohio retirement savings 99  
program, the cost of administration of the program, and 100  
investments made for the benefit of the program. 101

**Sec. 4145.06.** (A) An eligible employer that does not 102  
maintain an employer-sponsored retirement program that is tax 103

exempt under the Internal Revenue Code shall provide its 104  
eligible employees an automatic contribution arrangement to 105  
allow employee participation in the Ohio retirement savings 106  
program. 107

(B) Under the Ohio retirement savings program, an eligible 108  
employer shall enroll each eligible employee in the automatic 109  
contribution arrangement established by the employer. Unless the 110  
employee elects not to participate, the employer shall deduct 111  
from each paycheck payable to the employee a percentage of the 112  
employee's compensation specified by the public employees 113  
retirement board under section 4145.08 of the Revised Code. 114  
Amounts contributed to the program through these withholdings 115  
are in addition to the tax on wages imposed by the "Federal 116  
Insurance Contributions Act," 26 U.S.C. 3101. The employer shall 117  
promptly transmit all amounts deducted to the Ohio retirement 118  
savings trust. 119

An employee who is participating may at any time elect to 120  
cease participation but no refund of previous contributions 121  
shall be made, except as required by federal law. An election 122  
not to participate or to cease participation shall be made by 123  
completing and filing with the employer the form provided under 124  
section 4145.07 of the Revised Code. The employer shall provide 125  
additional copies of the form at an employee's request. 126

An employee who elected not to participate may change the 127  
election and become a participant at any time. An election to 128  
participate after having elected not to participate shall be 129  
made by giving notice to the employer. 130

(C) No eligible employer that is subject to division (A) 131  
of this section shall fail to comply with that division or 132  
division (B) of this section. 133

Sec. 4145.07. Before opening the Ohio retirement savings 134  
program for enrollment, the public employees retirement board 135  
shall design and disseminate to employers through the department 136  
of job and family services an employee information packet. The 137  
packet shall include background information on the program and 138  
appropriate disclosures for employees. 139

The employee information packet shall include the opt-out 140  
form for an eligible employee to elect not to participate in the 141  
program. The board shall draft the form simply and concisely and 142  
in a manner that the board considers necessary to appropriately 143  
evidence the employee's understanding that the employee is 144  
choosing not to have earnings deducted to save for retirement 145  
through the program. 146

An employer shall provide the employee information packet 147  
to each eligible employee at the time the program commences for 148  
that employer and to each new employee at the time of hiring. An 149  
employee shall acknowledge having received the packet by signing 150  
as specified in the packet. 151

Sec. 4145.08. (A) The public employees retirement board 152  
shall develop a defined benefit retirement program for the Ohio 153  
retirement savings program that qualifies for tax exempt status 154  
under the Internal Revenue Code. The board shall establish 155  
schedules of retirement eligibility and benefit amounts. 156

The board shall specify by rule adopted under Chapter 119. 157  
of the Revised Code the percentage of compensation to be 158  
deducted from employees' compensation and transmitted to the 159  
Ohio retirement savings fund. The percentage shall be not less 160  
than three per cent of compensation and not more than five per 161  
cent. The board shall periodically review the percentage and may 162  
revise it by rule adopted under Chapter 119. of the Revised 163

<u>Code.</u>	164
<u>(B) The board, in the capacity as trustee of the Ohio retirement savings fund, shall do all of the following:</u>	165
<u>(1) Make and enter into contracts necessary for the administration of the fund;</u>	166
<u>(2) Cause moneys in the fund to be held, invested, and reinvested;</u>	167
<u>(3) Accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of federal, state, or local government, or any other person or entity for deposit to the administrative account or the program account within the fund;</u>	168
<u>(4) Appoint a program administrator and determine the duties of the program administrator;</u>	169
<u>(5) Employ other staff as necessary and set their salaries;</u>	170
<u>(6) Provide for the payment of costs of administration and operation of the fund;</u>	171
<u>(7) Retain or contract with private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, or other professionals as necessary;</u>	172
<u>(8) Procure insurance against any loss in connection with the property, assets, or activities of the fund, and secure private underwriting and reinsurance to manage risk and insure the retirement savings rate of return;</u>	173
<u>(9) Procure insurance indemnifying each member of the</u>	174
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board from personal loss or liability resulting from a member's 191  
action or inaction as a member of the board; 192

(10) Collaborate and cooperate with private financial 193  
institutions, service providers, and business, financial, trade, 194  
membership, and other organizations to the extent necessary or 195  
desirable for the effective and efficient design, 196  
implementation, and administration of the Ohio retirement 197  
savings program and to maximize outreach to eligible employers 198  
and eligible employees; 199

(11) Facilitate compliance by the program or arrangements 200  
established under the program with all applicable requirements 201  
for the program under the Internal Revenue Code, including tax 202  
qualification requirements or any other applicable law and 203  
accounting requirements; 204

(12) Carry out the duties and obligations of the fund 205  
pursuant to this chapter and exercise any and all other powers 206  
as may be reasonably necessary to implement this chapter. 207

(C) The board shall adopt rules in accordance with Chapter 208  
119. of the Revised Code as it considers necessary to implement 209  
this chapter consistent with the Internal Revenue Code and 210  
regulations issued pursuant to that code to ensure that the 211  
program meets all criteria for federal tax-deferral or tax 212  
exempt benefits, or both. 213

**Sec. 4145.10.** (A) In addition to the duties imposed by 214  
section 4145.08 of the Revised Code, the public employees 215  
retirement board shall do all of the following in its 216  
administration of the Ohio retirement savings program: 217

(1) Cause the program or arrangements established under it 218  
to be designed, established, and operated, in a manner 219



<u>consistent with all of the following:</u>	220
<u>(a) In accordance with best practices for retirement savings vehicles;</u>	221
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<u>(b) To maximize participation, saving, and sound investment practices, and appropriate selection of default investments;</u>	223
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<u>(c) With simplicity, ease of administration for participating employers, and portability of benefits.</u>	226
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<u>(2) Submit progress and status reports to participating employers, eligible employees, and the general assembly;</u>	228
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<u>(3) Design and establish the process for the enrollment of program participants.</u>	230
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<u>(B) The board may arrange for collective, common, and pooled investment of assets of the fund with a view to saving costs through efficiencies and economies of scale.</u>	232
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<u><b>Sec. 4145.13.</b> No member of the Ohio public employees retirement board or program administrator or other staff employed by the board shall do any of the following:</u>	235
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<u>(A) Directly or indirectly have any interest in the making of any investment for the Ohio retirement savings program or in the gains or profits accruing from any investment made for the program;</u>	238
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<u>(B) Borrow any funds or deposits of the Ohio retirement savings fund or use those funds or deposits in any manner, for the person's self or as an agent or partner of others;</u>	242
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<u>(C) Become an endorser, surety, or obligor on investments by the board.</u>	245
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Sec. 4145.14. (A) The members of the Ohio public employees 247  
retirement board and the program administrator and staff 248  
employed by the board shall discharge their duties with respect 249  
to the Ohio retirement savings fund solely in the interest of 250  
the participants in the Ohio retirement savings program as 251  
follows: 252

(1) For the exclusive purposes of providing benefits to 253  
program participants and defraying reasonable expenses of 254  
administering the program; 255

(2) By investing with the care, skill, prudence, and 256  
diligence under the circumstances then prevailing that a prudent 257  
person acting in a like capacity and familiar with those matters 258  
would use in the conduct of an enterprise of a like character 259  
and with like aims. 260

(B) The board shall prepare and adopt a written investment 261  
policy for the assets of the fund that includes a risk 262  
management and oversight program. 263

The board shall consider the investment policy and any 264  
changes to the investment policy at a public hearing. 265

To the extent possible and prudent, the board shall invest 266  
assets of the fund in low fee index funds or create an 267  
investment portfolio that mirrors such funds. 268

(C) The primary objective of the investment policy adopted 269  
by the board shall be to preserve the safety of principal of the 270  
fund and provide a stable and low-risk rate of return. The board 271  
shall design the investment policy to mitigate risk by 272  
maintaining a balanced investment portfolio that provides 273  
assurance that no single investment or class of investments will 274  
have a disproportionate impact on the total portfolio. 275

Sec. 4145.16. No employer shall incur any liability for an 276  
employee's decision to participate in or not participate in the 277  
Ohio retirement savings program. 278

An employer shall not be a fiduciary, or considered to be 279  
a fiduciary, over the Ohio retirement savings fund or the 280  
program. An employer shall not bear responsibility for the 281  
administration, investment, or investment performance of the 282  
program. An employer shall not be liable with regard to 283  
investment returns, program design, and benefits paid to program 284  
participants. 285

Sec. 4145.17. The state shall not incur any liability for 286  
the payment of the retirement savings benefit earned by Ohio 287  
retirement savings program participants pursuant to this 288  
chapter. The state, and any of the funds of the state, shall 289  
have no obligation for payment of the benefits arising from this 290  
chapter. 291

Sec. 4145.99. Beginning six months after the date on which 292  
the public employees retirement board determines that the Ohio 293  
retirement savings program established under this chapter is 294  
operational, an employer that violates division (C) of section 295  
4145.06 of the Revised Code shall be fined by the board in the 296  
amount of one hundred dollars per eligible employee for whom the 297  
employer fails to provide an arrangement described in division 298  
(A) of that section. 299

The board shall deposit all moneys received under this 300  
section into the program account in the Ohio retirement savings 301  
fund. 302