

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

H. B. No. 326

Representative Miller, A.

A BILL

To amend sections 145.362 and 3309.41 and to enact 1
section 145.364 of the Revised Code to allow a 2
Public Employees Retirement System or School 3
Employees Retirement System disability benefit 4
recipient elected to certain offices to continue 5
receiving a disability benefit during the term 6
of office. 7

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

Section 1. That sections 145.362 and 3309.41 be amended 8
and section 145.364 of the Revised Code be enacted to read as 9
follows: 10

Sec. 145.362. A disability benefit recipient whose 11
application for a disability benefit was received by the public 12
employees retirement system before January 7, 2013, shall, 13
regardless of when the disability occurred, retain membership 14
status and shall be considered on leave of absence from 15
employment during the first five years following the effective 16
date of a disability benefit, notwithstanding any contrary 17
provisions in this chapter. 18

A disability benefit recipient whose application for a 19

disability benefit is received by the system on or after January 20
7, 2013, shall, regardless of when the disability occurred, 21
retain membership status and shall be considered on leave of 22
absence from employment during the first three years following 23
the effective date of a disability benefit, except that, if the 24
member is receiving rehabilitative services acceptable to the 25
board's examining physician, the board may permit the recipient 26
to retain membership status and be considered on leave of 27
absence from employment for up to five years following the 28
effective date of a disability benefit. 29

The public employees retirement board shall require any 30
disability benefit recipient to undergo a periodic medical 31
examination, as determined by the board's medical consultant or 32
as specified in rules adopted by the board. The board may waive 33
the medical examination if the board's medical consultant 34
certifies that the recipient's disability is ongoing or for any 35
other reason specified in rules adopted by the board. If any 36
disability benefit recipient refuses to submit to a medical 37
examination, the recipient's disability benefit shall be 38
suspended until withdrawal of the refusal. Should the refusal 39
continue for one year, all the recipient's rights in and to the 40
disability benefit shall be terminated as of the effective date 41
of the original suspension. 42

On completion of the examination by the board's examining 43
physician, the physician shall report to the board's medical 44
consultant and certify whether the disability benefit recipient 45
meets the applicable standard for termination of a disability 46
benefit. If the examining physician certifies that the recipient 47
meets the applicable standard for termination of a disability 48
benefit and the medical consultant concurs, the medical 49
consultant shall certify to the board that the recipient meets 50

the applicable standard for termination. 51

(A) Regardless of when the disability occurred, if the 52
recipient's application for a disability benefit was received by 53
the system before January 7, 2013, or, if on or after that date, 54
the recipient has been receiving the benefit for less than three 55
years or is receiving rehabilitative services acceptable to the 56
board's examining physician and considered on leave of absence, 57
or, if, at the time contributing service terminated, the 58
recipient was a PERS law enforcement officer, the standard for 59
termination is that the recipient is no longer physically and 60
mentally incapable of resuming the service from which the 61
recipient was found disabled. 62

(B) Regardless of when the disability occurred, if the 63
recipient's application for a disability benefit is received by 64
the system on or after January 7, 2013, the recipient has been 65
receiving the benefit for three years or longer, the recipient 66
was not a PERS law enforcement officer at the time contributing 67
service terminated, and the recipient is not receiving 68
rehabilitative services acceptable to the board's examining 69
physician, the standard for termination is that the recipient is 70
not physically or mentally incapable of performing the duties of 71
any position that meets all of the following criteria: 72

(1) Replaces not less than seventy-five per cent of the 73
member's final average salary, adjusted each year by the actual 74
average increase in the consumer price index prepared by the 75
United States bureau of labor statistics (U.S. city average for 76
urban wage earners and clerical workers: "all items 1982- 77
1984=100"); 78

(2) Is reasonably to be found in the member's regional job 79
market; 80

(3) Is one that the member is qualified for by experience 81
or education. 82

If the board concurs in the report that the disability 83
benefit recipient meets the applicable standard for termination 84
of a disability benefit, the payment of the disability benefit 85
shall be terminated not later than three months after the date 86
of the board's concurrence or upon employment as a public 87
employee. If the leave of absence has not expired, the 88
retirement board shall certify to the disability benefit 89
recipient's last employer before being found disabled that the 90
recipient is no longer physically and mentally incapable of 91
resuming service that is the same or similar to that from which 92
the recipient was found disabled. The employer shall restore the 93
recipient to the recipient's previous position and salary or to 94
a position and salary similar thereto, unless the recipient was 95
dismissed or resigned in lieu of dismissal for dishonesty, 96
misfeasance, malfeasance, or conviction of a felony. 97

Each disability benefit recipient shall file with the 98
board an annual statement of earnings, current medical 99
information on the recipient's condition, and any other 100
information required in rules adopted by the board. The board 101
may waive the requirement that a disability benefit recipient 102
file an annual statement of earnings or current medical 103
information if the board's medical consultant certifies that the 104
recipient's disability is ongoing or for any other reason 105
specified in rules adopted by the board. 106

The board shall annually examine the information submitted 107
by the recipient. If a disability benefit recipient fails to 108
file the statement or information, the disability benefit shall 109
be suspended until the statement and information are filed. If 110

the failure continues for one year, the recipient's right to the 111
disability benefit shall be terminated as of the effective date 112
of the original suspension. 113

~~If~~ Except as provided in section 145.364 of the Revised 114
Code, if a disability benefit recipient is restored to service 115
by, or elected to an elective office with, an employer covered 116
by this chapter, the recipient's disability benefit shall cease. 117

The board may terminate a disability benefit at the 118
request of the recipient if the board's medical consultant 119
determines that the recipient is no longer disabled. 120

If disability retirement under section 145.36 of the 121
Revised Code is terminated for any reason, the annuity and 122
pension reserves at that time in the annuity and pension reserve 123
fund shall be transferred to the employees' savings fund and the 124
employers' accumulation fund, respectively. If the total 125
disability benefit paid is less than the amount of the 126
accumulated contributions of the member transferred to the 127
annuity and pension reserve fund at the time of the member's 128
disability retirement, the difference shall be transferred from 129
the annuity and pension reserve fund to another fund as may be 130
required. In determining the amount of a member's account 131
following the termination of disability retirement for any 132
reason, the total amount paid shall be charged against the 133
member's refundable account. 134

If a disability allowance paid under section 145.361 of 135
the Revised Code is terminated for any reason, the reserve on 136
the allowance at that time in the annuity and pension reserve 137
fund shall be transferred from that fund to the employers' 138
accumulation fund. 139

If a former disability benefit recipient again becomes a contributor, other than as an other system retirant under section 145.38 of the Revised Code, to this system, the state teachers retirement system, or the school employees retirement system, and completes an additional two years of service credit, the former disability benefit recipient shall be entitled to full service credit, not exceeding five years' service credit, for the period as a disability benefit recipient, except that if the board adopts a rule requiring payment for the service credit it shall be granted only if the former disability benefit recipient pays an amount determined under the rule. The rule shall not require payment of more than the additional liability to the retirement system resulting from granting the credit. The former recipient may choose to purchase only part of the credit in any one payment.

If any employer employs any member who is receiving a disability benefit, the employer shall file notice of employment with the retirement board, designating the date of employment. In case the notice is not filed, the total amount of the benefit paid during the period of employment prior to notice shall be charged to and paid by the employer.

Sec. 145.364. Unless a disability benefit recipient otherwise meets the applicable standard for termination of a disability benefit under section 145.362 of the Revised Code, a recipient who is elected as a member of any of the following elective offices shall continue to receive the disability benefit during the recipient's term of office:

(A) A board of township trustees;

(B) A legislative authority of a village;

<u>(C) A board of education of a city, local, or exempted</u>	169
<u>village school district;</u>	170
<u>(D) A governing board of an educational service center.</u>	171
Sec. 3309.41. (A) Notwithstanding any contrary provisions	172
in Chapter 124. or 3319. of the Revised Code:	173
(1) A disability benefit recipient whose benefit effective	174
date was before the effective date of this amendment <u>January 7,</u>	175
<u>2013,</u> shall retain membership status and shall be considered on	176
leave of absence from employment during the first five years	177
following the effective date of a disability benefit.	178
(2) A disability benefit recipient whose benefit effective	179
date is on or after the effective date of this amendment <u>January</u>	180
<u>7, 2013,</u> shall retain membership status and shall be considered	181
on leave of absence from employment during the first three years	182
following the effective date of a disability benefit, except	183
that, if the school employees retirement board has recommended	184
medical treatment or vocational rehabilitation and the member is	185
receiving treatment or rehabilitation acceptable to a physician	186
or consultant selected by the board, the board may permit the	187
recipient to retain membership status and be considered on leave	188
of absence from employment for up to five years following the	189
effective date of a disability benefit.	190
(B) The board shall require a disability benefit recipient	191
to undergo an annual medical examination, except that the board	192
may waive the medical examination if the board's physician or	193
physicians certify that the recipient's disability is ongoing.	194
Should any disability benefit recipient refuse to submit to a	195
medical examination, the recipient's disability benefit shall be	196
suspended until withdrawal of the refusal. Should the refusal	197

continue for one year, all the recipient's rights in and to the 198
disability benefit shall be terminated as of the effective date 199
of the original suspension. 200

(C) On completion of the examination by an examining 201
physician or physicians selected by the board, the physician or 202
physicians shall report and certify to the board whether the 203
disability benefit recipient meets the applicable standard for 204
termination of a disability benefit. If the recipient's benefit 205
effective date is before ~~the effective date of this amendment~~ 206
January 7, 2013, or the benefit effective date is after ~~the~~ 207
~~effective date of this amendment~~ January 7, 2013, and the 208
recipient is considered on a leave of absence under division (A) 209
(2) of this section, the standard for termination is that the 210
recipient is no longer physically and mentally incapable of 211
resuming the service from which the recipient was found 212
disabled. If the recipient's benefit effective date is on or 213
after ~~the effective date of this amendment~~ January 7, 2013, and 214
the recipient is not considered on a leave of absence under 215
division (A) (2) of this section, the standard is that the 216
recipient is not physically or mentally incapable of performing 217
the duties of a position that meets all of the following 218
criteria: 219

(1) Replaces not less than seventy-five per cent of the 220
member's final average salary, adjusted each year by the actual 221
average increase in the consumer price index prepared by the 222
United States bureau of labor statistics (U.S. City Average for 223
Urban Wage Earners and Clerical Workers: "All Items 1982- 224
84=100"); 225

(2) Is reasonably to be found in the member's regional job 226
market; 227

(3) Is one that the member is qualified for by experience 228
or education. 229

If the board concurs in the report that the disability 230
benefit recipient meets the applicable standard for termination 231
of a disability benefit, the payment of the disability benefit 232
shall be terminated not later than three months after the date 233
of the board's concurrence or upon employment as an employee. If 234
the leave of absence has not expired, the retirement board shall 235
certify to the disability benefit recipient's last employer 236
before being found disabled that the recipient is no longer 237
physically and mentally incapable of resuming service that is 238
the same or similar to that from which the recipient was found 239
disabled. The employer shall restore the recipient to the 240
recipient's previous position and salary or to a position and 241
salary similar thereto not later than the first day of the first 242
month following termination of the disability benefit, unless 243
the recipient was dismissed or resigned in lieu of dismissal for 244
dishonesty, misfeasance, malfeasance, or conviction of a felony. 245

(D) Each disability benefit recipient shall file with the 246
board an annual statement of earnings, current medical 247
information on the recipient's condition, and any other 248
information required in rules adopted by the board. The board 249
may waive the requirement that a disability benefit recipient 250
file an annual statement of earnings or current medical 251
information on the recipient's condition if the board's 252
physician or physicians certify that the recipient's disability 253
is ongoing. 254

The board shall annually examine the information submitted 255
by the recipient. If a disability benefit recipient refuses to 256
file the statement or information, the disability benefit shall 257

be suspended until the statement and information are filed. If 258
the refusal continues for one year, the recipient's right to the 259
disability benefit shall be terminated as of the effective date 260
of the original suspension. 261

(E) If (1) Except as provided in division (E) (2) of this 262
section, if a disability benefit recipient is employed by an 263
employer covered by this chapter, the recipient's disability 264
benefit shall cease. 265

(2) A disability benefit recipient who is elected as a 266
member of a board of education of a city, local, or exempted 267
village school district or a governing board of an educational 268
service center shall continue to receive the disability benefit 269
in accordance with this section during the recipient's term of 270
office. 271

(F) If disability retirement under section 3309.40 of the 272
Revised Code is terminated for any reason, the annuity and 273
pension reserves at that time in the annuity and pension reserve 274
fund shall be transferred to the employees' savings fund and the 275
employers' trust fund, respectively. If the total disability 276
benefit paid is less than the amount of the accumulated 277
contributions of the member transferred into the annuity and 278
pension reserve fund at the time of the member's disability 279
retirement, the difference shall be transferred from the annuity 280
and pension reserve fund to another fund as may be required. In 281
determining the amount of a member's account following the 282
termination of disability retirement for any reason, the amount 283
paid shall be charged against the member's refundable account. 284

If a disability allowance paid under section 3309.401 of 285
the Revised Code is terminated for any reason, the reserve on 286
the allowance at that time in the annuity and pension reserve 287

fund shall be transferred from that fund to the employers' trust 288
fund. 289

The board may terminate a disability benefit at the 290
request of the recipient. 291

(G) If a disability benefit is terminated and a former 292
disability benefit recipient again becomes a contributor, other 293
than as an other system retirant as defined in section 3309.341 294
of the Revised Code, to this system, the public employees 295
retirement system, or the state teachers retirement system, and 296
completes an additional two years of service credit after the 297
termination of the disability benefit, the former disability 298
benefit recipient shall be entitled to receive up to two years 299
of service credit for the period as a disability benefit 300
recipient and may purchase service for the remaining period of 301
the disability benefit. Total service credit received and 302
purchased under this section shall not exceed the period of the 303
disability benefit. 304

For each year of credit purchased, the member shall pay to 305
the system for credit to the member's accumulated account the 306
sum of the following amounts: 307

(1) The employee contribution rate in effect at the time 308
the disability benefit commenced multiplied by the member's 309
annual disability benefit; 310

(2) The employer contribution rate in effect at the time 311
the disability benefit commenced multiplied by the member's 312
annual disability benefit; 313

(3) Compound interest at a rate established by the board 314
from the date the member is eligible to purchase the credit to 315
the date of payment. 316

The member may choose to purchase only part of such credit 317
in any one payment, subject to board rules. 318

(H) If any employer employs any member who is receiving a 319
disability benefit, the employer shall file notice of employment 320
with the retirement board, designating the date of employment. 321
In case the notice is not filed, the total amount of the benefit 322
paid during the period of employment prior to notice shall be 323
paid from amounts allocated under Chapter 3317. of the Revised 324
Code prior to its distribution to the school district in which 325
the disability benefit recipient was so employed. 326

Section 2. That existing sections 145.362 and 3309.41 of 327
the Revised Code are hereby repealed. 328