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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 416  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Howse and Brent

Paul Luzzi, Attorney

### SUMMARY

- Creates the Ohio Retirement Savings Program (ORSP) and requires participating employees to be enrolled in a defined benefit retirement plan developed by members of the Public Employees Retirement Board.
- Requires a private sector employer that does not maintain a tax-exempt employer-sponsored retirement program to deduct a percentage of an employee's paycheck established by the Board and remit it to the ORSP, unless the employee opts out.
- Prohibits an employer from failing to participate and allows the Board to fine a noncomplying employer.
- Requires deductions from employee paychecks and fines against noncomplying employers to be deposited into the Ohio Retirement Savings Fund created by the bill.
- Requires the Board to manage the fund's assets and use them to pay benefits and administrative costs.
- Prohibits the Board and its staff from having any interest in the gains or profits from any investment made for the ORSP, borrowing money from the fund, or becoming an endorser, surety, or obligor on investments.
- Specifies that an employer is not responsible for the administration, investment, or investment performance of the ORSP and that the state is not liable for retirement savings benefits earned by participants.

### DETAILED ANALYSIS

#### Ohio Retirement Savings Program

The bill creates the Ohio Retirement Savings Program (ORSP). Participating employees are enrolled in a defined benefit retirement plan developed by members of the Public

Employees Retirement Board. The plan must qualify for tax exempt status under the Internal Revenue Code, and the Board must establish retirement eligibility schedules and benefit amounts for participating employees.<sup>1</sup>

## **Participation**

Any person employed by a private sector employer is eligible to participate in the ORSP, unless the person is covered under the federal Railway Labor Act<sup>2</sup> or a collective bargaining agreement that includes a multi-employer Taft-Hartley pension plan.<sup>3</sup> A private sector employer that does not maintain a tax-exempt employer-sponsored retirement program must establish an arrangement allowing an eligible employee to have contributions deducted from the employee's paycheck and remitted to the ORSP.<sup>4</sup> The employer must enroll an eligible employee in the arrangement, unless the employee completes an opt-out form and files it with the employer. Under the arrangement, the employer deducts from the employee's paycheck no less than 3% and no more than 5% of the employee's compensation as specified in Board rule. The employer must promptly transmit the deductions to the Ohio Retirement Savings Fund created by the bill. Deductions are in addition to any taxes on wages for Social Security and Medicare.<sup>5</sup>

Before opening the ORSP for enrollment, the Board must design an employee information packet and provide it to employers through the Department of Job and Family Services. The packet must include background information on the ORSP and appropriate disclosures for employees. The packet must also include an opt-out form that an eligible employee may use to elect not to participate. The form must be simple, concise, and evidence the employee's understanding that the employee is choosing not to save for retirement through the ORSP. An employer must provide the packet to each of the employer's eligible employees at the time the ORSP begins for that employer and to each new employee at the time of hiring. An employee must acknowledge receiving the packet by signing in a manner specified by the packet.

A participating employee may elect at any time to stop participating by completing and submitting an opt-out form to the employer. The employee is not entitled to a refund of any previous contributions unless a refund is required by federal law. The employer must provide additional copies of the opt-out form when the employee requests them. An employee who elected not to participate may change the election and become a participant at any time by giving notice to the employer.<sup>6</sup>

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<sup>1</sup> R.C. 4145.02(A) and 4145.08(A).

<sup>2</sup> 45 United States Code (U.S.C.) 151 *et seq.*

<sup>3</sup> R.C. 4145.01(B) and (C).

<sup>4</sup> R.C. 4145.01(F) and 4145.06(A).

<sup>5</sup> 26 U.S.C. 3101.

<sup>6</sup> R.C. 4145.06(B), 4145.07, and 4145.08(A).

The bill prohibits a private sector employer required to participate in the ORSP from failing to participate. Beginning six months after the Board determines that the ORSP is operational, the Board must fine an employer \$100 for each eligible employee for whom the employer fails to provide an arrangement for payroll deductions. The Board must deposit all of the fines into the fund.<sup>7</sup>

An employer is not liable for an employee's decision regarding participation.<sup>8</sup>

### **Program administration**

The Public Employees Retirement Board, the Board that administers the Ohio Public Employee Retirement System (PERS), administers the ORSP. For all purposes related to the ORSP and its administration, however, the Board consists of the following members:

- The Treasurer of State's investment designee on the PERS Board;
- The Director of Administrative Services;
- The two investment expert members on the PERS Board;
- One member appointed by the Speaker of the House of Representatives representing eligible employees;
- One member appointed by the President of the Senate representing participating employers;
- One member appointed jointly by the Speaker and the Senate President representing the public.

Members appointed by the Speaker and the Senate President serve four-year terms. Each of those members hold office until the end of their term or the date the member's successor takes office, whichever is later. They serve without compensation but are reimbursed for actual and necessary expenses in the same manner as other members of the PERS Board. The members are subject to the same requirements and restrictions as other PERS Board members.<sup>9</sup>

The Board must adopt any rules it considers necessary to implement the bill consistent with the Internal Revenue Code and federal regulations to ensure that the ORSP meets all criteria for federal tax-deferral, tax exempt benefits, or both.<sup>10</sup>

In addition to the Board's other duties, it must do all of the following with respect to administering the ORSP:

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<sup>7</sup> R.C. 4145.06(C) and 4145.99.

<sup>8</sup> R.C. 4145.16.

<sup>9</sup> R.C. 4145.02(B) and (C).

<sup>10</sup> R.C. 4145.08(C).

- Cause the ORSP or arrangements established under it to be designed, established, and operated, in a manner consistent with all of the following:
  - In accordance with best practices for retirement savings vehicles;
  - To maximize participation, saving, and sound investment practices, and appropriate selection of default investments;
  - With simplicity, ease of administration for participating employers, and portability of benefits.
- Submit progress and status reports to employers, eligible employees, and the General Assembly;
- Design and establish the enrollment process.<sup>11</sup>

### **Ohio Retirement Savings Fund**

The bill creates the Ohio Retirement Savings Fund, which is a custodial fund (it is in the custody of the Treasurer of State, but it is not part of the state treasury). Contributions paid by employees and employers must be used exclusively to pay benefits and administrative costs and to make investments for the benefit of the ORSP. After sufficient funds become available for the ORSP to operate, the fund, as a self-sustaining trust, must pay all costs of administration only out of money in the fund.

The Board must segregate moneys received by the fund into a program account and an administrative account. Money in the program account may be invested or reinvested by the Treasurer or invested in whole or in part by the Board, a private money manager, or both as determined by the Board.

Except during a transition period specified by the Board or as otherwise provided in the bill, the Board must pay all of the fund's administrative costs from the administrative account. Operating costs associated with the fund do not include the procurement of private underwriting for the return of the retirement savings.<sup>12</sup>

The Board is the fund's trustee and, in that capacity, must do all of the following:

- Make and enter into contracts necessary for the fund's administration;
- Cause money in the fund to be held, invested, and reinvested;
- Accept grants, gifts, legislative appropriations, and any other money from public or private entities for deposit to the administrative or program account;
- Appoint an ORSP administrator and determine the administrator's duties;
- Employ other staff as necessary and set their salaries;

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<sup>11</sup> R.C. 4145.10(A).

<sup>12</sup> R.C. 4145.04.

- Provide for the payment of the costs of administering and operating the fund;
- Retain or contract with private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, or other professionals as necessary;
- Procure insurance against any loss in connection with the fund's property, assets, or activities, and secure private underwriting and reinsurance to manage risk and insure the retirement savings rate of return;
- Procure insurance indemnifying each Board member from personal loss or liability resulting from a member's action or inaction as a Board member;
- Collaborate and cooperate with private financial institutions, service providers, and other organizations for the effective and efficient ORSP design, implementation, and administration and to maximize outreach to eligible employers and employees;
- Facilitate compliance by the ORSP or arrangements established under it with all applicable requirements for the ORSP under the Internal Revenue Code;
- Carry out the duties and obligations of the fund pursuant to the bill and exercise any and all other powers that are reasonably necessary to implement it.<sup>13</sup>

The Board, administrator, and staff must discharge their duties with respect to the fund solely in the interest of ORSP participants. They must act for the exclusive purposes of providing benefits to participants and defraying reasonable expenses. They must also invest the fund's assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.<sup>14</sup>

The fund's assets must be invested in accordance with a written policy adopted by the Board. The investment policy must include a risk management and oversight program. The Board must consider the policy and any changes to it at a public hearing. The primary objective of the investment policy must be to preserve the safety of principal of the fund and provide a stable and low-risk rate of return. The Board must design the policy to mitigate risk by maintaining a balanced investment portfolio that provides assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio. To the extent possible and prudent, the Board must invest the assets in low fee index funds or create an investment portfolio that mirrors those funds. The Board may arrange for collective, common, and pooled investment of the fund's assets with a view to saving costs through efficiencies and economies of scale.<sup>15</sup>

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<sup>13</sup> R.C. 4145.08(B).

<sup>14</sup> R.C. 4145.14(A).

<sup>15</sup> R.C. 4145.04, 4145.10(B), and 4145.14(B) and (C).

## Liability

Under the bill, an employer is not a fiduciary, or considered to be a fiduciary, over the fund or the ORSP. An employer bears no responsibility for the ORSP's administration, investment, or investment performance. An employer cannot be held liable with regard to investment returns, program design, and benefits paid to participants.<sup>16</sup>

Additionally, the state is not liable for the payment of the retirement savings benefit earned by Program participants. Neither the state nor any state funds are obligated to pay benefits arising under the bill.<sup>17</sup>

## Prohibited conduct

The bill prohibits the Board, administrator, or staff from doing any of the following:

- Having, directly or indirectly, any interest in making any investment or in the gains or profits accruing from any investment made for the ORSP;
- Borrowing any funds or deposits from the fund or using those funds or deposits for the person's self or as an agent or partner of others;
- Becoming an endorser, surety, or obligor on investments made by the Board.<sup>18</sup>

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## HISTORY

Action	Date
Introduced	09-08-21

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H0416-I-134/ks

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<sup>16</sup> R.C. 4145.16.

<sup>17</sup> R.C. 4145.17.

<sup>18</sup> R.C. 4145.13.