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Sub. S. B. No. 277

Senator Schuring

Cosponsors: Senators Brenner, Hoagland, Wilson, Hackett, Antonio, Blessing, Burke, Craig, Dolan, Fedor, Manning, O'Brien, Peterson, Rulli, Sykes, Thomas, Yuko

A BILL

To amend sections 122.58, 135.182, 169.05, 169.07, 169.08, and 742.38 of the Revised Code to revise the Ohio Pooled Collateral Program, the Unclaimed Funds Law, and the Ohio Police and Fire Pension Fund disability determination procedures. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 122.58, 135.182, 169.05, 169.07, 169.08, and 742.38 of the Revised Code be amended to read as follows: 7
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Sec. 122.58. Moneys in the funds established pursuant to Chapter 122. of the Revised Code, except as otherwise provided in any proceedings authorizing revenue bonds or in any trust agreement securing such bonds, in excess of current needs, may be invested in notes, bonds, or other obligations which are direct obligations of or are guaranteed by the United States, or in certificates of deposit or other withdrawable accounts of banks, trust companies, ~~and~~ or building and loan or savings and 10
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loan associations organized under the laws of the state or the 18
United States, or in the manner provided in any agreement 19
entered into pursuant to section 169.05 of the Revised Code. 20

Income from all such investments of moneys in any fund 21
shall be credited to such funds as the director of development 22
determines subject to the provisions of any bond issuance 23
proceedings or trust agreement, and such investments may be sold 24
at such time as the director shall determine, provided 25
certificates of deposit or other withdrawable accounts may be 26
sold only in accordance with division (B) of section 169.05 or 27
~~divisions~~ division (E) ~~and (F)~~ of section 169.08 of the Revised 28
Code. 29

Sec. 135.182. (A) As used in this section: 30

(1) "Public depository" means that term as defined in 31
section 135.01 of the Revised Code, but also means an 32
institution that receives or holds any public deposits as 33
defined in section 135.31 of the Revised Code. 34

(2) "Public depositor" means that term as defined in 35
section 135.01 of the Revised Code, but also includes a county 36
and any municipal corporation that has adopted a charter under 37
Article XVIII, Ohio Constitution. 38

(3) "Public deposits," "public moneys," and "treasurer" 39
mean those terms as defined in section 135.01 of the Revised 40
Code, but also have the same meanings as are set forth in 41
section 135.31 of the Revised Code. 42

(B) (1) Not later than July 1, 2017, the treasurer of state 43
shall create the Ohio pooled collateral program. Under this 44
program, each institution designated as a public depository that 45
selects the pledging method prescribed in division (A) (2) of 46

section 135.18 or division (A) (2) of section 135.37 of the Revised Code shall pledge to the treasurer of state a single pool of eligible securities for the benefit of all public depositors at the public depository to secure the repayment of all uninsured public deposits at the public depository, provided that at all times the total market value of the securities so pledged is at least equal to either of the following:

(a) One hundred two per cent of the total amount of all uninsured public deposits;

(b) An amount determined by rules adopted by the treasurer of state that set forth the criteria for determining the aggregate market value of the pool of eligible securities pledged by a public depository pursuant to division (B) of this section. Such criteria shall include, but are not limited to, prudent capital and liquidity management by the public depository and the safety and soundness of the public depository as determined by a third-party rating organization.

(2) The treasurer of state shall monitor the eligibility, market value, and face value of the pooled securities pledged by the public depository. Each public depository shall carry in its accounting records at all times a general ledger or other appropriate account of the total amount of all public deposits to be secured by the pool, as determined at the opening of business each day, and the total market value of securities pledged to secure such deposits, and report such information to the treasurer of state in a manner and frequency as determined by the treasurer of state pursuant to rules adopted by the treasurer of state. A public depositor shall be responsible for periodically confirming the accuracy of its account balances with the treasurer of state; otherwise, the treasurer of state

shall be the sole public depository responsible for monitoring 77
and ensuring the sufficiency of securities pledged under this 78
section. 79

(3) If, on any day, the total market value of the 80
securities pledged by the public depository is less than that 81
specified in division (B) (1) (a) or (b) of this section, 82
whichever is applicable, the public depository shall have two 83
business days to pledge additional eligible securities having a 84
market value sufficient, when combined with the market value of 85
eligible securities already pledged, to satisfy the requirement 86
of division (B) (1) (a) or (b), as applicable, to secure the 87
repayment of all uninsured public deposits at the public 88
depository. 89

(C) The public depository shall designate a qualified 90
trustee approved by the treasurer of state and place with such 91
trustee for safekeeping the eligible securities pledged pursuant 92
to division (B) of this section. The trustee shall hold the 93
eligible securities in an account indicating the treasurer of 94
state's security interest in the eligible securities. The 95
treasurer of state shall give written notice of the trustee to 96
all public depositors for which such securities are pledged. The 97
trustee shall report to the treasurer of state information 98
relating to the securities pledged to secure such public 99
deposits in a manner and frequency as determined by the 100
treasurer of state. 101

(D) In order for a public depository to receive public 102
moneys under this section, the public depository and the 103
treasurer of state shall first execute an agreement that sets 104
forth the entire arrangement among the parties and that meets 105
the requirements described in 12 U.S.C. 1823(e). In addition, 106

the agreement shall authorize the treasurer of state to obtain 107
control of the collateral pursuant to division (D) of section 108
1308.24 of the Revised Code. 109

(E) The securities or other obligations described in 110
division (D) of section 135.18 of the Revised Code shall be 111
eligible as collateral for the purposes of division (B) of this 112
section, provided no such securities or obligations pledged as 113
collateral are at any time in default as to either principal or 114
interest. 115

(F) Any federal reserve bank or branch thereof located in 116
this state or federal home loan bank, without compliance with 117
Chapter 1111. of the Revised Code and without becoming subject 118
to any other law of this state relative to the exercise by 119
corporations of trust powers generally, is qualified to act as 120
trustee for the safekeeping of securities, under this section. 121
Any institution mentioned in section 135.03 or 135.32 of the 122
Revised Code that holds a certificate of qualification issued by 123
the superintendent of financial institutions or any institution 124
complying with sections 1111.04, 1111.05, and 1111.06 of the 125
Revised Code is qualified to act as trustee for the safekeeping 126
of securities under this section, other than those belonging to 127
itself or to an affiliate as defined in section 1101.01 of the 128
Revised Code. 129

(G) The public depository may substitute, exchange, or 130
release eligible securities deposited with the qualified trustee 131
pursuant to this section, provided that such substitution, 132
exchange, or release is effectuated pursuant to written 133
authorization from the treasurer of state, and such action does 134
not reduce the total market value of the securities to an amount 135
that is less than the amount established pursuant to division 136

(B) of this section. 137

(H) Notwithstanding the fact that a public depository is 138
required to pledge eligible securities in certain amounts to 139
secure public deposits, a qualified trustee has no duty or 140
obligation to determine the eligibility, market value, or face 141
value of any securities deposited with the trustee by a public 142
depository. This applies in all situations including, but not 143
limited to, a substitution or exchange of securities, but 144
excluding those situations effectuated by division (I) of this 145
section in which the trustee is required to determine face and 146
market value. 147

(I) The qualified trustee shall enter into a custodial 148
agreement with the treasurer of state and public depository in 149
which the trustee agrees to comply with entitlement orders 150
originated by the treasurer of state without further consent by 151
the public depository or, in the case of collateral held by the 152
public depository in an account at a federal reserve bank, the 153
treasurer of state shall have the treasurer's security interest 154
marked on the books of the federal reserve bank where the 155
account for the collateral is maintained. If the public 156
depository fails to pay over any part of the public deposits 157
made therein as provided by law and secured pursuant to division 158
(B) of this section, the treasurer of state shall give written 159
notice of this failure to the qualified trustee holding the pool 160
of securities pledged against the public deposits, and at the 161
same time shall send a copy of this notice to the public 162
depository. Upon receipt of this notice, the trustee shall 163
transfer to the treasurer of state for sale, the pooled 164
securities that are necessary to produce an amount equal to the 165
public deposits made by the public depositor and not paid over, 166
less the portion of the deposits covered by any federal deposit 167

insurance, plus any accrued interest due on the deposits. The 168
treasurer of state shall sell any of the bonds or other 169
securities so transferred. When a sale of bonds or other 170
securities has been so made and upon payment to the public 171
depositor of the purchase money, the treasurer of state shall 172
transfer such bonds or securities whereupon the absolute 173
ownership of such bonds or securities shall pass to the 174
purchasers. Any surplus after deducting the amount due to the 175
public depositor and expenses of sale shall be paid to the 176
public depository. 177

(J) Any charges or compensation of a qualified trustee for 178
acting as such under this section shall be paid by the public 179
depository and in no event shall be chargeable to the public 180
depositor or to any officer of the public depositor. The charges 181
or compensation shall not be a lien or charge upon the 182
securities deposited for safekeeping prior or superior to the 183
rights to and interests in the securities of the public 184
depositor. The treasurer and the treasurer's bonders or surety 185
shall be relieved from any liability to the public depositor or 186
to the public depository for the loss or destruction of any 187
securities deposited with a qualified trustee pursuant to this 188
section. 189

(K) ~~(1)~~— A public depositor, treasurer, or the public 190
depositor's or treasurer's bonders or surety are not liable for 191
the loss of funds if a public depository fails to comply with 192
the terms set forth in the agreement provided for in division 193
(D) of this section for the appropriate level of collateral, as 194
required under division (B) (1) (a) or (b) of this section, to 195
secure the public deposits made under that agreement. 196

(L) (1) The following information is confidential and not a 197

public record under section 149.43 of the Revised Code:	198
(a) All reports or other information obtained or created	199
about a public depository for purposes of division (B) (1) (b) of	200
this section;	201
(b) The identity of a public depositor's public	202
depository;	203
(c) The identity of a public depository's public	204
depositors.	205
(2) Nothing in this section prevents the treasurer of	206
state from releasing or exchanging such confidential information	207
as required by law or for the operation of the pooled collateral	208
program.	209
(I) <u>(M)</u> The treasurer of state may impose reasonable fees,	210
including late fees, upon public depositories participating in	211
the pooled collateral program to defray the actual and necessary	212
expenses incurred by the treasurer in connection with the	213
program. All such fees collected by the treasurer shall be	214
deposited into the state treasury to the credit of the	215
administrative fund created in section 113.20 of the Revised	216
Code.	217
(M) <u>(N)</u> The treasurer of state may adopt rules necessary	218
for the implementation of this section and sections 135.18 and	219
135.181 of the Revised Code. Such rules shall be adopted in	220
accordance with Chapter 119. of the Revised Code.	221
Sec. 169.05. (A) Every holder required to file a report	222
under section 169.03 of the Revised Code shall, at the time of	223
filing, pay to the director of commerce ten per cent of the	224
aggregate amount of unclaimed funds as shown on the report, —	225
except for aggregate amounts of fifty dollars or less in which	226

~~case one hundred per cent shall be paid.~~ The funds ~~may~~ shall be 227
deposited by the director in the state treasury to the credit of 228
the unclaimed funds trust fund, which is hereby created, ~~or~~ 229
~~placed with a financial organization.~~ The treasurer of state may 230
invest any or all of the funds within the unclaimed funds trust 231
fund in custodial accounts with the treasurer of state, outside 232
the state treasury. The limitation on investments in debt 233
interests provided in division (A)(10)(a) of section 135.143 of 234
the Revised Code shall not apply to these custodial accounts. 235
Any interest earned on money in the unclaimed funds trust fund 236
or in any custodial accounts created under this division shall 237
be credited to the ~~trust fund~~ or the custodial accounts, 238
respectively. 239

~~The remainder of the aggregate amount of unclaimed funds~~ 240
~~as shown on the report, plus earnings accrued to date of payment~~ 241
~~to the director, shall, at the option of the director, be~~ 242
~~retained by the holder or paid to the director for deposit as~~ 243
~~agent for the mortgage funds with a financial organization as~~ 244
~~defined in section 169.01 of the Revised Code, with the funds to~~ 245
~~be in income bearing accounts to the credit of the mortgage~~ 246
~~funds, or the holder may enter into an agreement with the~~ 247
~~director specifying the obligations of the United States in~~ 248
~~which funds are to be invested, and agree to pay the interest on~~ 249
~~the obligations to the state. Holders retaining any funds not in~~ 250
~~obligations of the United States shall enter into an agreement~~ 251
~~with the director specifying the classification of income~~ 252
~~bearing account in which the funds will be held and pay the~~ 253
~~state interest on the funds at a rate equal to the prevailing~~ 254
~~market rate for similar funds. Moneys that the holder is~~ 255
~~required to pay to the director rather than to retain may be~~ 256
~~deposited with the treasurer of state, or placed with a~~ 257

financial organization.	258
Securities and other intangible property transferred to	259
the director shall, within a reasonable time, be converted to	260
cash and the proceeds deposited as provided for other funds.	261
One-half of the funds evidenced by agreements, in income-	262
bearing accounts, or on deposit with the treasurer of state	263
shall be allocated on the records of the director to the	264
mortgage insurance fund created by section 122.561 of the	265
Revised Code. Out of the remaining half, after allocation of	266
sufficient moneys to the minority business bonding fund to meet	267
the provisions of division (B) of this section, the remainder	268
<u>funds</u> shall be allocated on the records of the director to the	269
housing development fund created by division (A) of section	270
175.11 of the Revised Code <u>in an amount determined by the</u>	271
<u>director</u> .	272
(B) The director shall serve as agent for the director of	273
development and as agent for the Ohio housing finance agency in	274
making deposits and withdrawals and maintaining records	275
pertaining to the minority business bonding fund created by	276
section 122.88 of the Revised Code, the mortgage insurance fund,	277
and the housing development fund created by section 175.11 of	278
the Revised Code. Funds from the mortgage insurance fund are	279
available to the director of development when those funds are to	280
be disbursed to prevent or cure, or upon the occurrence of, a	281
default of a mortgage insured pursuant to section 122.451 of the	282
Revised Code. Funds from the housing development fund are	283
available upon request to the Ohio housing finance agency, in an	284
amount not to exceed the funds allocated on the records of the	285
director, for the purposes of section 175.05 of the Revised	286
Code. Funds from the minority business bonding fund are	287

available to the director of development upon request to pay 288
obligations on bonds the director writes pursuant to section 289
122.88 of the Revised Code; except that, unless the general 290
assembly authorizes additional amounts, the total maximum amount 291
of moneys that may be allocated to the minority business bonding 292
fund under this ~~division~~ section is ten million dollars. 293

When funds are to be disbursed, the appropriate agency 294
shall call upon the director to transfer the necessary funds to 295
it. ~~The director shall first withdraw the funds paid by the~~ 296
~~holders and deposited with the treasurer of state or in a~~ 297
~~financial institution as agent for the funds. Whenever these~~ 298
~~funds are inadequate to meet the request, the director shall~~ 299
~~provide for a withdrawal of funds, within a reasonable time and~~ 300
~~in the amount necessary to meet the request, from financial~~ 301
~~institutions in which the funds were retained or placed by a~~ 302
~~holder and from other holders who have retained funds, in an~~ 303
~~equitable manner as the director prescribes. In the event that~~ 304
~~the amount to be withdrawn from any one holder is less than five~~ 305
~~hundred dollars, the amount to be withdrawn is at the director's~~ 306
~~discretion. The director shall then transfer to the agency the~~ 307
~~amount of funds requested.~~ 308

Funds deposited in the unclaimed funds trust fund are 309
subject to call by the director when necessary to pay claims the 310
director allows under section 169.08 of the Revised Code, in 311
accordance with the director's rules, to defray the necessary 312
costs of making publications this chapter requires and to pay 313
other operating and administrative expenses the department of 314
commerce incurs in the administration and enforcement of this 315
chapter. 316

The unclaimed funds trust fund shall be assessed a 317

proportionate share of the administrative costs of the 318
department of commerce in accordance with procedures the 319
director of commerce prescribes and the director of budget and 320
management approves. The assessment shall be paid from the 321
unclaimed funds trust fund to the division of administration 322
fund. 323

~~(C) Earnings on the accounts in financial organizations to 324
the credit of the mortgage funds shall, at the option of the 325
financial organization, be credited to the accounts at times and 326
at rates as earnings are paid on other accounts of the same 327
classification held in the financial organization or paid to the 328
director. The director shall be notified annually, and at other 329
times as the director may request, of the amount of the earnings 330
credited to the accounts. Interest on unclaimed funds a holder 331
retains shall be paid to the director or credited as specified 332
in the agreement under which the organization retains the funds. 333
Interest payable to the director under an agreement to invest 334
unclaimed funds in income bearing accounts or obligations of the 335
United States shall be paid annually by the holder to the 336
director. Any earnings or interest the director receives under 337
this division shall be deposited in and credited to the mortgage 338
funds. 339~~

Sec. 169.07. (A) Upon the payment of unclaimed funds to 340
the director of commerce under section 169.05 of the Revised 341
Code the holder will be relieved of further responsibility for 342
the safe-keeping thereof and will be held harmless by the state 343
from any and all liabilities for any claim arising out of the 344
transfer of such funds to the state. 345

(B) If legal proceedings are instituted against a holder 346
which has paid unclaimed funds to the director ~~or entered into~~ 347

~~an agreement as provided in section 169.05 of the Revised Code~~ 348
~~in respect to such funds,~~ such holder shall notify the director 349
in writing of the pendency of such proceedings and the director 350
shall intervene and assume the defense of such proceedings. 351
Failure to give such notice shall absolve the state from any and 352
all liability which it may have with regard to such funds. If 353
judgment is entered against such holder, the director shall, 354
upon proof of satisfaction of such judgment, forthwith reimburse 355
such organization for the amount of the judgment ~~or enter into~~ 356
~~an agreement modified to reflect the satisfaction of such~~ 357
~~judgment, if the holder retained such funds,~~ and shall reimburse 358
such holder for any legal fees, costs and other expenses 359
incurred in such proceedings in the manner provided for the 360
payment of claims under divisions (D) and (E) of section 169.08 361
of the Revised Code. 362

Sec. 169.08. (A) The director shall pay to the owner or 363
other person who has established the right to payment under this 364
section, funds from the unclaimed funds trust fund in an amount 365
equal to the amount of property delivered or reported to the 366
director, or equal to the net proceeds if the securities or 367
other property have been sold, together with interest earned by 368
the state if required to be paid under division (D) of this 369
section. Any person claiming a property interest in unclaimed 370
funds delivered or reported to the state under Chapter 169. of 371
the Revised Code, including the office of child support in the 372
department of job and family services, pursuant to section 373
3123.88 of the Revised Code, may file a claim thereto on the 374
form prescribed by the director of commerce. 375

(B) The director shall consider matters relevant to any 376
claim filed under division (A) of this section and shall hold a 377
formal hearing if requested or considered necessary and receive 378

evidence concerning such claim. A finding and decision in 379
writing on each claim filed shall be prepared, stating the 380
substance of any evidence received or heard and the reasons for 381
allowance or disallowance of the claim. The evidence and 382
decision shall be a public record. No statute of limitations 383
shall bar the allowance of a claim. 384

(C) For the purpose of conducting any hearing, the 385
director may require the attendance of such witnesses and the 386
production of such books, records, and papers as the director 387
desires, and the director may take the depositions of witnesses 388
residing within or without this state in the same manner as is 389
prescribed by law for the taking of depositions in civil actions 390
in the court of common pleas, and for that purpose the director 391
may issue a subpoena for any witness or a subpoena duces tecum 392
to compel the production of any books, records, or papers, 393
directed to the sheriff of the county where such witness resides 394
or is found, which shall be served and returned. The fees of the 395
sheriff shall be the same as that allowed in the court of common 396
pleas in criminal cases. Witnesses shall be paid the fees and 397
mileage provided for under section 119.094 of the Revised Code. 398
Fees and mileage shall be paid from the unclaimed funds trust 399
fund. 400

(D) Interest earned by the state shall be payable to 401
claimants of unclaimed funds held by the state in accordance 402
with final court orders derived from the *Sogg v. Zurz*, 121 Ohio 403
St.3d 449 (2009), line of cases and final settlement agreement 404
determining payment of interest on unclaimed funds. For 405
properties received by the state on or before July 26, 1991, 406
interest shall be paid at a rate of six per cent per annum from 407
the date the state received the property up to and including 408
July 26, 1991. No interest shall be payable on any properties 409

for the period from July 27, 1991, up to and including August 2, 410
2000. For properties held by the state on August 3, 2000, or 411
after, interest shall be paid at the applicable required rate 412
per annum for the period held from August 3, 2000, or the date 413
of receipt, whichever is later, up to and including the date the 414
claim is paid. 415

(E) Claims shall be paid from the trust fund. If the 416
amount available in the trust fund is not sufficient to pay 417
pending claims, or other amounts disburseable from the trust 418
fund, the treasurer of state shall certify such fact to the 419
director, who shall then withdraw such amount of funds from the 420
mortgage ~~accounts~~ funds as the director determines necessary to 421
reestablish the trust fund to a level required to pay 422
anticipated claims but not more than ten per cent of the net 423
unclaimed funds reported to date. 424

The director may withdraw the funds paid to the director 425
by the holders and deposited by the director with the treasurer 426
of state ~~or in a financial institution as agent for such funds.~~ 427
~~Whenever these funds are inadequate to meet the requirements for~~ 428
~~the trust fund, the director shall provide for a withdrawal of~~ 429
~~funds, within a reasonable time, in such amount as is necessary~~ 430
~~to meet the requirements, from financial institutions in which~~ 431
~~such funds were retained or placed by a holder and from other~~ 432
~~holders who have retained funds, in an equitable manner as~~ 433
~~prescribed by the director. In the event that the amount to be~~ 434
~~withdrawn from any one such holder is less than five hundred~~ 435
~~dollars, the amount to be withdrawn shall be at the discretion~~ 436
~~of the director. Such funds may be reimbursed in the amounts~~ 437
~~withdrawn when the trust fund has a surplus over the amount~~ 438
~~required to pay anticipated claims. Whenever the trust fund has~~ 439
a surplus over the amount required to pay anticipated claims, 440

the director may transfer such surplus to the mortgage ~~accounts~~ 441
funds. 442

~~(F) If a claim which is allowed under this section relates 443
to funds which have been retained by the reporting holder, and 444
if the funds, on deposit with the treasurer of state pursuant to 445
this chapter, are insufficient to pay claims, the director may 446
notify such holder in writing of the payment of the claim and 447
such holder shall immediately reimburse the state in the amount 448
of such claim. The reimbursement shall be credited to the 449
unclaimed funds trust fund. 450~~

~~(G) Any person, including the office of child support, 451
adversely affected by a decision of the director may appeal such 452
decision in the manner provided in Chapter 119. of the Revised 453
Code. 454~~

In the event the claimant prevails, the claimant shall be 455
reimbursed for reasonable attorney's fees and costs. 456

~~(H) (G) Notwithstanding anything to the contrary in this 457
chapter, any holder who has paid moneys to ~~or entered into an~~ 458
~~agreement with~~ the director pursuant to section 169.05 of the 459
Revised Code or entered into an agreement with the director on 460
certified checks, cashiers' checks, bills of exchange, letters 461
of credit, drafts, money orders, or travelers' checks, may make 462
payment to any person entitled thereto, including the office of 463
child support, and upon surrender of the document, except in the 464
case of travelers' checks, and proof of such payment, the 465
director shall reimburse the holder for such payment without 466
interest. 467~~

Sec. 742.38. (A) (1) The board of trustees of the Ohio 468
police and fire pension fund shall adopt rules establishing 469

minimum medical testing and diagnostic standards or procedures 470
to be incorporated into physical examinations administered ~~by~~ 471
~~physicians~~ to prospective members of the fund. The standards or 472
procedures shall include diagnosis and evaluation of the 473
existence of any heart disease, cardiovascular disease, or 474
respiratory disease. The rules shall specify the form of the 475
~~physician's examination~~ report and the information to be 476
included in it. 477

The board shall notify all employers of the establishment 478
of the minimum standards or procedures and shall include with 479
the notice a copy of the standards or procedures. The board 480
shall notify all employers of any changes made to the standards 481
or procedures. Once the standards or procedures take effect, 482
employers shall cause each prospective member of the fund to 483
submit to a physical examination that incorporates the standards 484
or procedures. 485

(2) Division (A) (2) of this section applies to an employee 486
who becomes a member of the fund on or after the date the 487
minimum standards or procedures described in division (A) (1) of 488
this section take effect. For each employee described in 489
division (A) (2) of this section, the employer shall forward to 490
the board a copy of the ~~physician's~~ report of a physical 491
examination that incorporates the standards or procedures 492
described in division (A) (1) of this section. If an employer 493
fails to forward the report in the form required by the board on 494
or before the date that is sixty days after the employee becomes 495
a member of the fund, the board shall assess against the 496
employer a penalty determined under section 742.353 of the 497
Revised Code. 498

(B) Application for a disability benefit may be made by a 499

member of the fund or, if the member is incapacitated as defined 500
in rules adopted by the board, by a person acting on the 501
member's behalf. Not later than fourteen days after receiving an 502
application for a disability benefit from a member or a person 503
acting on behalf of a member, the board shall notify the 504
member's employer that an application has been filed. The notice 505
shall state the member's position or rank. Not later than 506
twenty-eight days after receiving the notice or filing an 507
application on behalf of a member, the employer shall forward to 508
the board a statement certifying the member's job description 509
and any other information required by the board to process the 510
application. 511

If the member applying for a disability benefit ~~becomes~~ 512
became a member of the fund prior to the date the minimum 513
standards or procedures described in division (A) (1) of this 514
section ~~take~~ took effect, the board may request from the 515
member's employer a copy of the ~~physician's~~ report of the 516
member's physical examination taken on entry into the police or 517
fire department or, if the employer does not have a copy of the 518
report, a written statement certifying that the employer does 519
not have a copy of the report. If an employer fails to forward 520
the report or statement in the form required by the board on or 521
before the date that is twenty-eight days after the date of the 522
request, the board shall assess against the employer a penalty 523
determined under section 742.353 of the Revised Code. ~~The~~ 524

The board shall maintain the information submitted under 525
this division and division (A) (2) of this section in the 526
member's file. 527

(C) For purposes of determining under division (D) of this 528
section whether a member of the fund is disabled, the board 529

shall adopt rules establishing objective criteria under which 530
the ~~board shall make the determination~~ is to be made. The rules 531
shall include standards that provide for all of the following: 532

(1) Evaluating a member's illness or injury on which an 533
application for disability benefits is based; 534

(2) Defining the occupational duties of a police officer 535
or firefighter; 536

(3) Providing for the board to ~~assign competent and~~ 537
~~disinterested~~ do both of the following: 538

(a) Assign physicians, other health care professionals, 539
and vocational evaluators who are competent and disinterested to 540
conduct examinations of a member; 541

(b) Specify the types of health care professionals the 542
board may assign to conduct examinations of a member. 543

(4) Requiring a written report for each disability 544
application that includes a summary of findings, medical 545
opinions, including an opinion on whether the illness or injury 546
upon which the member's application for disability benefits is 547
based was caused or induced by the actual performance of the 548
member's official duties, and any recommendations or comments 549
based on the medical opinions; 550

(5) ~~Providing for the board to consider~~ Taking into 551
consideration the member's potential for retraining or 552
reemployment. 553

(D) ~~This division does not apply to members of the fund~~ 554
~~who have elected to receive benefits and pensions in accordance~~ 555
~~with division (A) or (B) of section 742.37 of the Revised Code~~ 556
~~or from a police relief and pension fund or a firemen's relief~~ 557

~~and pension fund in accordance with the rules of that fund in-~~ 558
~~force on April 1, 1947.~~The board may grant disability benefits 559
to a member based solely on a review of an application for 560
disability benefits and supporting medical documentation or may 561
require the member to undergo a medical examination, a 562
vocational evaluation, or both. Any medical examination or 563
vocational evaluation shall be conducted by a physician, other 564
health care professional, or vocational evaluator assigned in 565
accordance with rules adopted under division (C) (3) of this 566
section. 567

As used in this division: 568

"Totally disabled" means a member of the fund is unable to 569
perform the duties of any gainful occupation for which the 570
member is reasonably fitted by training, experience, and 571
accomplishments. Absolute helplessness is not a prerequisite of 572
being totally disabled. 573

"Permanently disabled" means a condition of disability 574
that is expected to last for a continuous period of not less 575
than twelve months after an application for disability benefits 576
is filed and from which there is no present indication of 577
recovery. 578

"Hazardous duty" has the same meaning as in 5 C.F.R. 579
550.902, as amended. 580

(1) A member of the fund who is permanently and totally 581
disabled as the result of the performance of the member's 582
official duties as a member of a police or fire department shall 583
be paid annual disability benefits in accordance with division 584
(A) of section 742.39 of the Revised Code. In determining 585
whether a member of the fund is permanently and totally 586

disabled, the board shall consider standards adopted under 587
division (C) of this section applicable to the determination. 588

(2) A member of the fund who is permanently and partially 589
disabled as the result of the performance of the member's 590
official duties as a member of a police or fire department 591
shall, if the disability prevents the member from performing 592
those duties and impairs the member's earning capacity, receive 593
annual disability benefits in accordance with division (B) of 594
section 742.39 of the Revised Code. In determining whether a 595
member of the fund is permanently and partially disabled, the 596
board shall consider standards adopted under division (C) of 597
this section applicable to the determination. 598

(3) (a) A member of the fund who is permanently disabled as 599
a result of heart disease or any cardiovascular or respiratory 600
disease of a chronic nature, which disease or any evidence of 601
which disease was not revealed by the physical examination 602
passed by the member on entry into the department or another 603
examination specified in rules the board adopts under section 604
742.10 of the Revised Code, is presumed to have incurred the 605
disease while performing the member's official duties, unless 606
the contrary is shown by competent evidence. The board may waive 607
the requirement that the absence of disease be evidenced by a 608
physical examination if competent medical evidence of a type 609
specified in rules adopted under section 742.10 of the Revised 610
Code is submitted documenting that the disease was not evident 611
prior to or at the time of entry into the department. 612

(b) A member of the fund who is a member of a fire 613
department, has been assigned to at least six years of hazardous 614
duty as a member of a fire department, and is disabled as a 615
result of cancer, is presumed to have incurred the cancer while 616

performing the member's official duties if the member was 617
exposed to an agent classified by the international agency for 618
research on cancer or its successor agency as a group 1 or 2A 619
carcinogen. 620

(c) The presumption described in division (D) (3) (b) of 621
this section is rebuttable in any of the following situations: 622

(i) There is evidence that the member incurred the type of 623
cancer being alleged before becoming a member of the department. 624

(ii) There is evidence that the member's exposure, outside 625
the scope of the member's official duties, to cigarettes, 626
tobacco products, or other conditions presenting an extremely 627
high risk for the development of the cancer alleged, was 628
probably a significant factor in the cause or progression of the 629
cancer. 630

(iii) There is evidence that shows, by a preponderance of 631
competent scientific evidence, that exposure to the type of 632
carcinogen alleged did not or could not have caused the cancer 633
being alleged. 634

(iv) There is evidence that the member was not exposed to 635
an agent classified by the international agency for research on 636
cancer or its successor agency as a group 1 or 2A carcinogen. 637

(v) The member is seventy years of age or older. 638

(d) The presumption described in division (D) (3) (b) of 639
this section does not apply if it has been more than fifteen 640
years since the member was last assigned to hazardous duty as a 641
member of a fire department. 642

(4) A member of the fund who has five or more years of 643
service credit and has incurred a permanent disability not 644

caused or induced by the actual performance of the member's 645
official duties as a member of the department, or by the 646
member's own negligence, shall if the disability prevents the 647
member from performing those duties and impairs the member's 648
earning capacity, receive annual disability benefits in 649
accordance with division (C) of section 742.39 of the Revised 650
Code. In determining whether a member of the fund is permanently 651
disabled, the board shall consider standards adopted under 652
division (C) of this section applicable to the determination. 653

(5) The board shall notify a member of its final action 654
awarding a disability benefit to the member within thirty days 655
of the final action. The notice shall be sent by certified mail, 656
return receipt requested. Not later than ninety days after 657
receipt of notice from the board, the member shall elect, on a 658
form provided by the board, either to accept or waive the 659
disability benefit award. If the member elects to waive the 660
disability benefit award or fails to make an election within the 661
time period, the award is rescinded. A member who later seeks a 662
disability benefit award shall be required to make a new 663
application, which shall be dealt with in accordance with the 664
procedures used for original disability benefit applications. 665

A person is not eligible to apply for or receive 666
disability benefits under this division, section 742.39 of the 667
Revised Code, or division (C) (2), (3), (4), or (5) of former 668
section 742.37 of the Revised Code unless the person is a member 669
of the fund on the date on which the application for disability 670
benefits is submitted to the fund. 671

With the exception of persons who may make application for 672
increased benefits as provided in division (D) (2) or (4) of this 673
section or division (C) (3) or (5) of former section 742.37 of 674

the Revised Code on or after July 24, 1986, or persons who may 675
make application for benefits as provided in section 742.26 of 676
the Revised Code, no person receiving a pension or benefit under 677
this section or division (C) of former section 742.37 of the 678
Revised Code may apply for any new, changed, or different 679
benefit. 680

(E) Notwithstanding the requirement of section 742.41 of 681
the Revised Code that all medical reports and recommendations 682
required are privileged, the board shall submit to the 683
administrator of workers' compensation any data necessary for 684
the report required under section 4123.86 of the Revised Code. 685

Section 2. That existing sections 122.58, 135.182, 169.05, 686
169.07, 169.08, and 742.38 of the Revised Code are hereby 687
repealed. 688

Section 3. Every holder that has been retaining an item of 689
unclaimed funds pursuant to section 169.05 of the Revised Code, 690
as that section existed prior to its amendment in Sections 1 and 691
2 of this act, shall deliver each such item to the Director of 692
Commerce not later than one year following the effective date of 693
this section. 694