

**As Passed by the House**

**134th General Assembly**

**Regular Session**

**2021-2022**

**S. B. No. 27**

**Senator Hottinger**

**Cosponsors: Senators Lang, Hackett, Yuko, Maharath, Brenner, Antonio, Blessing, Craig, Fedor, Johnson, Sykes, Thomas, Wilson Representatives Brown, Crawley, Crossman, Fraizer, Galonski, Hicks-Hudson, Jarrells, Leland, Lepore-Hagan, Liston, Miranda, O'Brien, Russo, Smith, K., Upchurch, Weinstein**

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**A BILL**

To amend sections 148.01 and 148.04 and to enact 1  
sections 148.041 and 148.042 of the Revised Code 2  
to authorize automatic enrollment of new state 3  
government employees in the Ohio Public 4  
Employees Deferred Compensation Program. 5

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

**Section 1.** That sections 148.01 and 148.04 be amended and 6  
sections 148.041 and 148.042 of the Revised Code be enacted to 7  
read as follows: 8

**Sec. 148.01.** (A) As used in this chapter: 9

(1) "Eligible employee" means any public employee, as 10  
defined in division (A) of section 145.01 of the Revised Code; 11  
any person eligible to become a member of the public employees 12  
retirement system under section 145.20 of the Revised Code; any 13  
employee, as defined in division (C) of section 742.01, division 14  
(B) of section 3309.01, or division (A) of section 5505.01 of 15  
the Revised Code; any electing employee, as defined in section 16

3305.01 of the Revised Code; and any member of the state 17  
teachers retirement system. 18

(2) "Participant account" means any of the following 19  
accounts: 20

(a) An account that is maintained by the Ohio public 21  
employees deferred compensation board and that evidences moneys 22  
that have been deferred by, or on behalf of, a continuing member 23  
or participating employee and transmitted to the board by the 24  
retirement system of the continuing member or participating 25  
employee; 26

(b) An account that is maintained by the governing board, 27  
administrator, depository, or trustee of a deferred compensation 28  
program of a municipal corporation and that evidences moneys 29  
that have been deferred by an officer or employee of that 30  
municipal corporation and transmitted to the governing board, 31  
administrator, depository, or trustee by the retirement system 32  
of the officer or employee or in another manner; 33

(c) An account that is maintained by a governing board, as 34  
defined in section 148.06 of the Revised Code, and that 35  
evidences moneys that have been deferred by an officer or 36  
employee of a government unit, as defined in that section, and 37  
transmitted to the governing board by the retirement system of 38  
the officer or employee or in another manner. 39

(3) "Participating employee" means any eligible employee 40  
who is having compensation deferred pursuant to ~~a contract~~ 41  
either of the following: 42

(a) An agreement that is ~~executed~~ entered into before the 43  
compensation is earned and that is with the eligible employee's 44  
employer and the Ohio public employees deferred compensation 45

board; 46

(b) Automatic enrollment in the Ohio public employees 47  
deferred compensation program under section 148.042 of the 48  
Revised Code. 49

(4) "Continuing member" means any former participating 50  
employee who is not currently having compensation deferred, or 51  
the former participating employee's beneficiary, to whom payment 52  
has not been made of all deferred compensation distributions. 53

(B) Notwithstanding section 145.01 of the Revised Code, 54  
the definitions of that section are applicable to this chapter 55  
only to any extent necessary to fully understand the provisions 56  
of this chapter. Reference may also be had to Chapters 742., 57  
3305., 3307., 3309., and 5505. of the Revised Code for that 58  
purpose. 59

**Sec. 148.04.** (A) The Ohio public employees deferred 60  
compensation board shall initiate, plan, expedite, and, subject 61  
to an appropriate assurance of the approval of the internal 62  
revenue service, promulgate and offer to all eligible employees, 63  
and thereafter administer on behalf of all participating 64  
employees and continuing members, and alter as required, a 65  
program for deferral of compensation, including a reasonable 66  
number of options to the employee for the investment of deferred 67  
funds, always in such form as will assure the desired tax 68  
treatment of such funds. The members of the board are the 69  
trustees of any deferred funds and shall discharge their duties 70  
with respect to the funds solely in the interest of and for the 71  
exclusive benefit of participating employees, continuing 72  
members, and their beneficiaries. With respect to such deferred 73  
funds, section 148.09 of the Revised Code shall apply to claims 74  
against participating employees or continuing members and their 75

employers. 76

~~(B) The Ohio public employees deferred compensation program shall provide informational materials and acknowledgment forms to employers required to comply with division (C) of this section.~~ 77  
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~~(C) (1) Whenever an individual becomes employed in a position paid by warrant of the director of budget and management, the individual's employer shall do both of the following at the time the employee completes the employee's initial employment paperwork:~~ 81  
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~~(a) Provide to the employee materials provided by the Ohio public employees deferred compensation program under division (B) of this section regarding the benefits of long term savings through deferred compensation;~~ 86  
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~~(b) Secure, in writing or by electronic means, the employee's acknowledgment form regarding the employee's desire to participate or not participate in a deferred compensation program offered by the board.~~ 90  
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~~An election regarding participation under this section shall be made in such manner and form as is prescribed by the Ohio public employees deferred compensation program and shall be filed with the program.~~ 94  
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~~The employer shall forward each acknowledgment form completed under this division to the deferred compensation program not later than forty five days after the date on which the employee's employment begins.~~ 98  
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~~(2) Every employer of an eligible employee shall contract with enroll the employee upon the employee's application for participation in a deferred compensation program offered by the~~ 102  
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board on the employee's application to participate, on the 105  
employee's election under section 148.041 of the Revised Code, 106  
or by automatic enrollment under section 148.042 of the Revised 107  
Code. 108

~~(D)~~ (C) The board shall take all actions necessary to 109  
ensure that the program qualifies as an eligible deferred 110  
compensation plan under section 457(b) of the Internal Revenue 111  
Code of 1986, 26 U.S.C. 457. The board shall, subject to any 112  
applicable ~~contract~~ provisions of the Ohio public employees 113  
deferred compensation program plan, undertake to obtain as 114  
favorable conditions of tax treatment as possible, both in the 115  
initial programs and any permitted alterations of them or 116  
additions to them, as to such matters as terms of distribution, 117  
designation of beneficiaries, withdrawal upon disability, 118  
financial hardship, or termination of public employment, and 119  
other optional provisions. 120

The board may establish a designated Roth account feature 121  
or any other feature in which an employee may make tax-deferred 122  
or nontax-deferred contributions to an eligible government plan 123  
in accordance with 26 U.S.C. 457, as amended. 124

~~(E)~~ (D) In no event shall the total of the amount of 125  
deferred compensation to be set aside under a deferred 126  
compensation program and the employee's nondeferred income for 127  
any year exceed the total annual salary or compensation under 128  
the existing salary schedule or classification plan applicable 129  
to the employee in that year. 130

Such a deferred compensation program shall be in addition 131  
to any retirement or any other benefit program provided by law 132  
for employees of this state. The board shall adopt rules 133  
pursuant to Chapter 119. of the Revised Code to provide any 134

necessary standards or conditions for the administration of its 135  
programs, including any limits on the portion of a participating 136  
employee's compensation that may be deferred in order to avoid 137  
adverse treatment of the program by the internal revenue service 138  
or the occurrence of deferral, withholding, or other deductions 139  
in excess of the compensation available for any pay period. 140

Both of the following apply to a deferred compensation 141  
program established under this section: 142

(1) Any income deferred under the program shall continue 143  
to be included as regular compensation for the purpose of 144  
computing the contributions to and benefits from the retirement 145  
system of an employee; 146

(2) Any sums deferred shall not be included in the 147  
computation of any federal and state income taxes withheld on 148  
behalf of an employee. Sums contributed to a Roth account 149  
feature or other feature to which nontax-deferred contributions 150  
are made shall be included in the computation of any federal and 151  
state income taxes withheld on behalf of an employee. 152

~~(F)~~ (E) This section does not limit the authority of any 153  
municipal corporation, county, township, park district, 154  
conservancy district, sanitary district, health district, public 155  
library, county law library, public institution of higher 156  
education, or school district to provide separate authorized 157  
plans or programs for deferring compensation of their officers 158  
and employees in addition to the program for the deferral of 159  
compensation offered by the board. Any municipal corporation, 160  
township, public institution of higher education, or school 161  
district that offers such plans or programs shall include a 162  
reasonable number of options to its officers or employees for 163  
the investment of the deferred funds, including annuities, 164

variable annuities, regulated investment trusts, or other forms 165  
of investment approved by the municipal corporation, township, 166  
public institution of higher education, or school district, that 167  
will assure the desired tax treatment of the funds. 168

Sec. 148.041. (A) Unless the employee will be 169  
automatically enrolled in the Ohio public employees deferred 170  
compensation program under section 148.042 of the Revised Code, 171  
whenever an eligible employee becomes employed in a position 172  
paid by warrant of the director of budget and management, the 173  
employee's employer shall do both of the following at the time 174  
the employee completes the employee's initial employment 175  
paperwork: 176

(1) Provide to the employee materials provided by the Ohio 177  
public employees deferred compensation board under division (D) 178  
of this section regarding the benefits of long-term savings 179  
through deferred compensation; 180

(2) Except as otherwise provided in division (E) of this 181  
section, secure, in writing or by electronic means, the 182  
employee's election to participate or not participate in a 183  
deferred compensation program offered by the board. 184

(B) An election regarding participation under this section 185  
shall be made in the manner prescribed by the board. 186

(C) The employer shall forward each election completed 187  
under this section to the program not later than forty-five days 188  
after the date the employee's employment begins. 189

(D) The board shall provide informational materials and 190  
participation forms to employers required to comply with this 191  
section. 192

(E) If an eligible employee transfers employment from one 193

position paid by warrant of the director of budget and 194  
management to another position paid by warrant of the director 195  
of budget and management and, at the time of transfer, is a 196  
participating employee, the employee's new employer shall not be 197  
required to secure the employee's election to participate or not 198  
participate under division (A)(2) of this section. 199

**Sec. 148.042.** (A) As used in this section, "employing 200  
authority" means both of the following: 201

(1) The supreme court, house of representatives, senate, 202  
legislative service commission, secretary of state, auditor of 203  
state, treasurer of state, or attorney general with respect to 204  
employees of those entities; 205

(2) The director of administrative services, with respect 206  
to eligible employees employed in a position paid by warrant of 207  
the director of budget and management who are not employed by a 208  
person or entity listed in division (A)(1) of this section. 209

(B)(1) An employing authority may elect to automatically 210  
enroll employees described in division (C)(1) of this section in 211  
the Ohio public employees deferred compensation program. An 212  
employing authority that elects automatic enrollment shall 213  
notify the Ohio public employees deferred compensation board of 214  
that election. Automatic enrollment shall commence as soon as 215  
administratively practical for the board and the employing 216  
authority. 217

(2) An employing authority that elects automatic 218  
enrollment may cease automatic enrollment by notifying the 219  
board. The employing authority shall specify in the notice the 220  
date on which automatic enrollment will cease, and that date 221  
must be at least ninety days after the date the employing 222

authority sends the notice. An employee who commences employment 223  
after automatic enrollment ceases may elect to participate in 224  
the program in accordance with section 148.04 or 148.041 of the 225  
Revised Code. Cessation of automatic enrollment does not affect 226  
the enrollment of employees enrolled during an automatic 227  
enrollment period. 228

An employing authority that ceases automatic enrollment 229  
may subsequently elect automatic enrollment by complying with 230  
division (B) (1) of this section. 231

(C) (1) An eligible employee employed by an employing 232  
authority that has elected automatic enrollment shall be 233  
automatically enrolled in the program if one of the following 234  
applies to the employee: 235

(a) The employee initially commences employment with the 236  
employing authority on or after the date automatic enrollment 237  
begins under division (B) of this section. 238

(b) The employee separates from employment with an 239  
employing authority, becomes a continuing member, and, on or 240  
after the date automatic enrollment begins, commences employment 241  
with that employing authority or a different employing 242  
authority. 243

(c) The employee is employed in a position paid by warrant 244  
of the director of budget and management and the employee 245  
transfers employment from an employing authority that has not 246  
elected to automatically enroll employees under this section to 247  
another position paid by warrant of the director of budget and 248  
management under an employing authority that has elected to 249  
automatically enroll employees, if the transfer occurs on or 250  
after the date automatic enrollment begins. 251

(2) An employee who, at the time of transferring from one 252  
employing authority to another as described in division (C) (1) 253  
(c) of this section, is a participating employee shall not be 254  
automatically enrolled in the program by the employing authority 255  
to which the employee transfers. 256

(D) The board shall establish the automatic deferral 257  
amounts and specify the investment options into which those 258  
deferred amounts will be invested for participating employees 259  
who are enrolled under this section. Deferral amounts shall not 260  
exceed the lesser of either ten per cent of an eligible 261  
employee's compensation or the maximum contribution that the 262  
employee is eligible to contribute under federal law. 263

(E) An employing authority that elects to automatically 264  
enroll employees under this section shall provide those 265  
employees with notice of the employee's rights and obligations 266  
in the manner prescribed by the board. 267

(F) An employing authority shall not elect to 268  
automatically enroll an eligible employee under this section, or 269  
elect to cease automatic enrollment, if that election conflicts 270  
with any collective bargaining agreement entered into between 271  
the employing authority and an exclusive representative as 272  
defined in section 4117.01 of the Revised Code. 273

**Section 2.** That existing sections 148.01 and 148.04 of the 274  
Revised Code are hereby repealed. 275