

As Introduced

133rd General Assembly

Regular Session

2019-2020

S. B. No. 135

Senator Hottinger

Cosponsor: Senator Hackett

A BILL

To amend sections 148.01 and 148.04 and to enact
sections 148.041 and 148.042 of the Revised Code
to authorize automatic enrollment of new
employees in the Ohio Public Employees Deferred
Compensation Program.

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

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

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

(1) "Eligible employee" means any public employee, as
defined in division (A) of section 145.01 of the Revised Code;
any person eligible to become a member of the public employees
retirement system under section 145.20 of the Revised Code; any
employee, as defined in division (C) of section 742.01, division
(B) of section 3309.01, or division (A) of section 5505.01 of
the Revised Code; any electing employee, as defined in section
3305.01 of the Revised Code; and any member of the state
teachers retirement system.

(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~~ 77

~~program shall provide informational materials and acknowledgment forms to employers required to comply with division (C) of this section.~~ 78
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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 board on the employee's application to participate, on the employee's election under section 148.041 of the Revised Code,~~ 102
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or by automatic enrollment under section 148.042 of the Revised
Code.

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

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

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

Such a deferred compensation program shall be in addition
to any retirement or any other benefit program provided by law
for employees of this state. The board shall adopt rules
pursuant to Chapter 119. of the Revised Code to provide any
necessary standards or conditions for the administration of its
programs, including any limits on the portion of a participating

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
will assure the desired tax treatment of the funds.

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

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

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

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

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

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

(E) If an eligible employee transfers employment from one
position paid by warrant of the director of budget and
management to another position paid by warrant of the director

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 one 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

(3) The employer of any eligible employee other than those 210
described in divisions (A) (1) and (2) of this section. 211

(B) (1) An employing authority may elect to automatically 212
enroll employees described in division (C) (1) of this section in 213
the Ohio public employees deferred compensation program. An 214
employing authority that elects automatic enrollment shall 215
notify the Ohio public employees deferred compensation board of 216
that election. Automatic enrollment shall commence as soon as 217
administratively practical for the board and the employing 218
authority. 219

(2) An employing authority that elects automatic 220
enrollment may cease automatic enrollment by notifying the board 221
. The employing authority shall specify in the notice the date 222
on which automatic enrollment will cease, and that date must be 223
at least ninety days after the date the employing authority 224

sends the notice. An employee who commences employment after 225
automatic enrollment ceases may elect to participate in the 226
program in accordance with section 148.04 or 148.041 of the 227
Revised Code. Cessation of automatic enrollment does not affect 228
the enrollment of employees enrolled during an automatic 229
enrollment period. 230

An employing authority that ceases automatic enrollment 231
may subsequently elect automatic enrollment by complying with 232
division (B) (1) of this section. 233

(C) (1) An eligible employee employed by an employing 234
authority that has elected automatic enrollment shall be 235
automatically enrolled in the program if one of the following 236
applies to the employee: 237

(a) The employee initially commences employment with the 238
employing authority on or after the date automatic enrollment 239
begins under division (B) of this section. 240

(b) The employee separates from employment with an 241
employing authority, becomes a continuing member, and, on or 242
after the date automatic enrollment begins, commences employment 243
with that employing authority or a different employing 244
authority. 245

(c) The employee is employed in a position paid by warrant 246
of the director of budget and management and the employee 247
transfers employment from an employing authority that has not 248
elected to automatically enroll employees under this section to 249
another position paid by warrant of the director of budget and 250
management under an employing authority that has elected to 251
automatically enroll employees, if the transfer occurs on or 252
after the date automatic enrollment begins. 253

(2) An employee who, at the time of transferring from one 254
employing authority to another as described in division (C) (1) 255
(c) of this section, is a participating employee shall not be 256
automatically enrolled in the program by the employing authority 257
to which the employee transfers. 258

(D) The board shall establish the automatic deferral 259
amounts and specify the investment options into which those 260
deferred amounts will be invested for participating employees 261
who are enrolled under this section. Deferral amounts shall not 262
exceed the lesser of either ten per cent of an eligible 263
employee's compensation or the maximum contribution that the 264
employee is eligible to contribute under federal law. 265

(E) An employing authority that elects to automatically 266
enroll employees under this section shall provide those 267
employees with notice of the employee's rights and obligations 268
in the manner prescribed by the board. 269

(F) An employing authority shall not elect to 270
automatically enroll an eligible employee under this section, or 271
elect to cease automatic enrollment, if that election conflicts 272
with any collective bargaining agreement entered into between 273
the employing authority and an exclusive representative as 274
defined in section 4117.01 of the Revised Code. 275

Section 2. That existing sections 148.01 and 148.04 of the 276
Revised Code are hereby repealed. 277