

## Ohio Public Law Update

July 2012

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### Report on Retirement Systems Released

On July 11 a [final report](#) prepared by actuarial consultants (the “Report”) was delivered to the Ohio Retirement Study Council (ORSC). The Report analyzes the changes previously proposed by the five Ohio public retirement systems and presents proposals that would eliminate unfunded accrued liability of the retirement systems over 30 years, while preserving a reasonable funding of retiree healthcare benefits.

ORSC is an entity created by state law that has members appointed by the Governor, the Senate and the House. The executive directors of the five state retirement systems are also members. A principal purpose of the ORSC is to review laws governing the administration and financing of the Ohio retirement systems and to recommend changes to the General Assembly with respect to pensions and benefits, the sound financing of the cost of benefits and other matters.

The Report recommends a wide range of changes be made to each of the five state retirement systems to maintain responsible funding levels for the systems. There are various proposals to reduce system liabilities by reducing pension and other benefits, including by raising retirement ages and limiting cost of living increases.

The Report also recommends increases in employee contributions, but not in employer contributions.

Finally, the Report suggests that the law be revised to provide significant discretion to the boards of each retirement system to reduce system benefits, and to make other changes as the boards may deem necessary to meet responsible actuarial funding standards without legislative approval.

The Senate already has passed five bills that would reduce certain retirement system benefits and make other changes. Hearings on the proposed bills are underway. At this point it is unclear how the Report will affect the existing bills.

### Recent Decisions of Interest

A court of appeals properly denied a newspaper’s public records request for the names and identifying information of police officers involved in a shootout with a motorcycle gang, under the Public Records Act’s privacy exception (Ohio Revised Code § 149.43(A)(1)(v)), because the motorcycle gang could use the information to retaliate. *State ex rel. Cincinnati Enquirer v. Craig*, 2012-Ohio-1999 (Ohio Supreme Court).

A non-civil-service township peace officer who has been certified as a peace officer under Ohio Revised Code § 109.77 and is appointed police chief and then terminated for a reason other than cause does not have a right to return to the position he held before his appointment as police chief, as Ohio Revised Code § 505.49(C) is inapplicable. *Blair v. Sugarcreek Twp. Bd. of Trustees*, 2012-Ohio-2165 (Ohio Supreme Court).

A limited-home-rule township created under Ohio Revised Code § 504.04(A)(1) may not impose impact fees on applicants for zoning certificates for new construction or redevelopment, because those fees would constitute a tax not authorized by general law. *Drees Co. v. Hamilton Twp.*, 2012-Ohio-2370 (Ohio Supreme Court).

Although a nonprofit corporation that leases a public market from a city and manages the public market for the city is considered a person responsible for public records under the Public Records Act, the specific terms of the commercial leases between the public market and its tenants constitute trade secrets, which are exempt from disclosure under Ohio Revised Code § 149.43(A)(1)(v). *State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 2012-Ohio-2074 (Ohio App. 1st Dist.).

The trial court erred in holding that “in order to demonstrate that the Board was conferencing with its attorney concerning disputes involving the public body that were the subject of imminent court action [and, thus, allowed to convene an executive session under Ohio Revised Code § 121.22(G)(3)], direct evidence that there was a dispute involving the public body that was the subject of imminent court action is required.” *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 2012-Ohio-2569 (Ohio App. 12th Dist.).

A public body that attempts to enter into executive session with a motion and vote stating, without further explanation, that the session is being entered into to discuss a “personal matter” was not specific enough to satisfy the requirements of Ohio Revised Code § 121.22(G)(1) that the motion and vote to hold an executive session state which one or more of the approved purposes listed in Ohio Revised Code § 121.22(G)(1) are the purposes for which the executive session is to be held. *2012 Op. Att’y General No. 2012-022*.

## Legislation of Interest

**House Bill 327** (Governor signed June 6, 2012; effective September 6, 2012.) This Bill would provide a six-year trial-period for taxpayers to receive a job creation (not job retention) tax credit for employment of employees working from their residence in Ohio if the employer employs at least 200 additional employees that are not home based and making more than 130 percent of the federal minimum wage.

**House Bill 408** (Governor signed June 6, 2012; effective September 6, 2012.) This Bill, among other things, changes the composition of the metropolitan housing authority in counties with a population between 700,000 and 900,000, including adding new members appointed by a township association and by a municipal league of the county, subject to approval of the board of county commissioners.

**House Bill 436** (Governor signed June 4, 2012; effective September 4, 2012.) This Bill creates the SiteOhio Certification Program, administered by the Department of Development. Any person or political subdivision may submit eligible projects to the department for certification. If certified, the projects would be listed on the department’s website and marketed. Eligible projects include sites and facilities primarily intended for commercial or industrial use, not residential, retail or government use. The Department of Development is to establish eligibility criteria.

**House Bill 487** (Governor signed June 11, 2012; certain provisions effective September 10, 2012, and others effective immediately.) This Bill, among many other things, extends the enterprise zone program another year, to October 15, 2013.

**Senate Bill 314** (JobsOhio II; signed by Governor June 26, 2012; effective September 28, 2012.) This Bill includes the following changes:

- Changes the name of the Ohio Department of Development to the “Development Services Agency” (the “Agency”).
- Creates the Office of TourismOhio within the Agency, and an advisory board to advise the Director of the Agency and the Director of the Ohio of TourismOhio.
- Eliminates the Development Financing Advisory Council, with any surviving duties being transferred to the Agency.
- Increases the membership of the Third Frontier Commission appointed by the Governor from six to seven persons.

- Transfers the responsibilities of the Director of the Department of Development in administering the Voluntary Action Program to the EPA Director.
- Eliminates the Water and Sewer Commission and the Water and Sewer Fund.
- Permits tax credits for certain projects that were started before receiving approval from the Ohio Tax Credit Authority.

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