



John Rau

## *Bill Analysis*

*Legislative Service Commission*

### **S.B. 194**

124th General Assembly  
(As Introduced)

**Sen. Robert Gardner**

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#### **BILL SUMMARY**

- Permits the board of education of a local or exempted village school district to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an independent agent to provide student transportation services as long as specified conditions are satisfied.
- Clarifies that an individual whose transportation staff position with a school district has been terminated under the bill's provisions is not entitled to unemployment compensation benefits for the period between the academic term in which the individual's position was terminated and the next succeeding academic term, unless the individual ultimately is not offered an employment opportunity for that next term.

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#### **CONTENT AND OPERATION**

##### **Background**

Continuing law provides that employment of nonteaching personnel in "city" school districts is controlled by the state Civil Service Law, codified in R.C. Chapter 124. Employment of such personnel in "exempted village" and "local" school districts is instead controlled by separate specific statutes.<sup>1</sup> In either case, however, unless otherwise specified, the provisions of any effective collective bargaining agreement prevail over conflicting statutes in matters that are subjects of collective bargaining.

Under the Civil Service Law, a city school district board may abolish any of its nonteaching staff positions "as a result of a reorganization for the efficient

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<sup>1</sup> R.C. 3319.081, 3319.082 (not in the bill), and 3319.083 (not in the bill).

operation of the [district], for reasons of economy, or for lack of work."<sup>2</sup> If a city school district board does abolish positions, it must do so in compliance with statutorily prescribed procedures, which include an order for layoffs based on seniority of employment, a right to displace less-senior personnel, a right to fill other vacancies, reinstatement rights, and an appeal procedure.<sup>3</sup> On the other hand, nonteaching employees in exempted village and local districts (non-Civil Service districts) may be "terminated *only* for violation of [the district board's] written rules and regulations . . . or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance."<sup>4</sup> In interpreting this provision, the Supreme Court of Ohio has held that absent any provision of a collective bargaining agreement to the contrary, the board of a non-Civil Service school district has *no* authority to lay off its nonteaching employees for economic reasons. The Court has further interpreted this provision as giving "statutory job security" to nonteaching employees.<sup>5</sup> Thus, under current law, an exempted village or local school district board may not terminate nonteaching staff positions (such as those of bus drivers) and replace them with labor supplied by independent contractors.

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<sup>2</sup> R.C. 124.321(D), *not in the bill*.

<sup>3</sup> *Employment of teachers in both Civil Service and non-Civil Service school districts is controlled by other specific statutes that provide (among other things) procedures for termination of positions when it is necessary to reduce the number of teachers for certain specified reasons (R.C. 3319.17, not in the bill).*

<sup>4</sup> R.C. 3319.081(C), *emphasis added*. The statute also specifically provides that sexual battery against a student at the school (R.C. 2907.03(A)(7)) is grounds for termination.

<sup>5</sup> *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.* (1998), 82 Ohio St.3d 222, 226. In a subsequent action in the same case, the Court clarified that certain bus drivers illegally laid off by the local school district board were entitled to reinstatement to their positions as school district-employed bus drivers with back pay and benefits. The Court also held that the board was not authorized to lay off those employees by abolishing their positions while in effect retaining those positions to be filled by contract nonpublic employees. See *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.* (2001), 93 Ohio St.3d 558, 561-562.

**Termination of transportation staff positions and replacement with services provided by an independent agent**

(R.C. 3319.081(C) and 3319.0810(A))

The bill authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts. In such case, rather than employ its own staff to transport students the board must contract with an independent agent to provide transportation services. (See **COMMENT.**) The board may enter into such a contract only under certain conditions.

First, any collective bargaining agreement between the board and the labor organization representing the terminated employees must have expired, must expire within 60 days after the termination notice, or must contain provisions permitting the termination of positions while the agreement is in force.

Second, the board must permit any employee whose position is terminated to fill any vacancy within the district's organization for which the employee is qualified. In so doing, the board must follow procedures for filling the vacancies established in the collective bargaining agreement between the labor organization representing the terminated employees and the board, if it is still in force and contains such provisions. If the agreement is not in force or does not contain provisions for reemployment of the terminated employees in new positions, then the board is required to offer reemployment on the basis of seniority.

Third, the board must permit any terminated employee to fill the employee's former position in the event the board reinstates that position within one year after the date the position is terminated. The bill specifically does not require the board to reinstate an employee under this condition if the collective bargaining agreement between the labor organization representing the terminated employees and the board, if one is in force at the time of the terminations, provides otherwise.

Fourth, the board must permit a terminated employee to appeal, pursuant to the Administrative Procedure Act (R.C. Chapter 119.), the board's decision to terminate the employee, not to reemploy the employee, or not to reinstate the employee.

Fifth, the contract entered into by the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions within the agent's organization.

Sixth, the contract between the board and the independent agent also must require the agent to recognize for purposes of collective bargaining between the former district employees and the agent any labor organization that represented those employees at the time of the terminations as long as the following additional conditions are satisfied:

- (1) A majority of the employees in the former school district bargaining unit agree to representation by that labor organization;
- (2) Federal law does not prohibit the representation; and
- (3) The labor organization is not prohibited from representing nonpublic employees either under other provisions of law or its own governing instruments.

No employee may be compelled to be included in the bargaining unit represented by that labor organization if there is another one within the agent's organization that is applicable to the employee.

**Recourse if school district board does not comply with conditions**

(R.C. 3319.0810(B))

If the school district board fails to comply with any of the conditions required under the bill, including enforcement of the required contractual obligations, the bill provides that the terminations of transportation staff positions are void. In such instances, the board is required to reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at a rate equal to their rate of compensation in those positions just prior to the terminations plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay for the period from the date of the terminations to the date of reinstatement minus any pay the employees received while the board was in compliance with the bill's provisions. The bill grants any employee aggrieved by the board's failure to comply with any of the bill's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement.<sup>6</sup>

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<sup>6</sup> Under the bill, suit may be brought in the court of common pleas for the county in which the school district is located or, if the school district is located in more than one county, in the court of common pleas for the county in which the majority of the territory of the school district is located.

**Terminated employees not entitled to unemployment compensation benefits for period between academic terms**

(R.C. 4141.29(I)(1)(b))

Nonteaching school district employees are generally not entitled to receive unemployment compensation benefits for the period between two successive academic terms, because it is presumed that they have a "reasonable assurance" of employment in the second of those two terms. If, however, an employee is not actually offered an employment opportunity for that second term, then the employee may be eligible for retroactive benefits for the period between the terms.<sup>7</sup> The bill clarifies that an individual whose transportation staff position with a school district has been terminated under the bill's provisions has a "reasonable assurance" of reemployment by an educational institution or by the nonpublic employer that contracts with the school district board to provide transportation services. Thus, the individual is not entitled to unemployment compensation benefits during the period between the academic term in which the individual's position was terminated and the next succeeding academic term, unless the individual ultimately is *not* offered an employment opportunity for that next term.<sup>8</sup>

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**COMMENT**

The bill does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to contract for at least some nonpublic personnel. For example, if a school district needed fewer bus drivers due to a substantial decline in enrollment or the opening of a new school where most or all students lived within walking distance from the school, under current law it does not appear that the district board is authorized to lay off any of its current drivers. Under the bill, in such a scenario, it appears that

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<sup>7</sup> R.C. 4141.29(I)(1)(b) first and third paragraphs. A similar provision applies to teachers (R.C. 4141.29(I)(1)(c)). The "reasonable assurance" provision appears to presume that an employee will be employed by some educational institution, whether the one the employee worked for during the first of the two successive terms or another one. Under the state education law, the board of a non-Civil Service school district must notify a nonteaching employee by June 1 if the board is not going to renew the employee's contract (R.C. 3319.083, not in the bill). But under the state unemployment compensation law, the board must notify the employee of nonrenewal by April 30 (R.C. 4141.29(I)(1)(e)). Among other various factors, in order to be eligible for unemployment benefits, an individual must not willfully reject a legitimate employment offer.

<sup>8</sup> R.C. 4141.29(I)(1)(b) second paragraph.

a district board may lay off drivers *but only* if the board contracts with a nonpublic entity for at least some transportation services.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-14-01	p. 1126

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