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ACT SUMMARY

- Implements recommendations of the Civil Service Review Commission and makes other changes to the civil service laws, including changes to the statutory provisions concerning workforce reductions, employee discipline, employee categories, classification, compensation and benefits, hiring and promotions, and appeals and due process.

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CONTENT AND OPERATION

Background

Am. S.B. 210 of the 123rd General Assembly created the Civil Service Review Commission, and directed the Commission to conduct comprehensive public hearings throughout the state concerning the current civil service laws and make recommendations about possible changes to them. On December 31, 2001, the Commission presented its report to the General Assembly.

Overview of the act

The act implements recommendations made by the Commission in its report. Additionally, it makes other changes to the civil service laws. Changes are made to provisions concerning workforce reduction; employee discipline; employee categories and classification; employee compensation and benefits; appointment, testing, hiring, promotion, and temporary and permanent transfers of positions; appeals and due process; and other civil service employment-related matters.

Workforce reduction

Layoffs

(R.C. 124.322, 124.323, and 124.326)

The act revises the order of layoff so that employees are laid off in the following order: (1) part-time probationary, (2) part-time permanent, (3) full-time probationary, and (4) full-time permanent (R.C. 124.323).

Displacement privileges

(R.C. 124.321 and 124.324)

The act eliminates a laid-off employee's ability to displace another employee with the fewest retention points within a classification that has the same or similar duties as the classification from which the employee was laid off. Thus, the act allows a laid-off employee only to displace the employee with the fewest retention points (1) within the same classification from which the employee was laid off, (2) within the classification series from which the employee was laid off, or (3) within the classification the employee held immediately prior to holding the classification from which the employee was laid off. But, with respect to category (3), the act provides that an employee cannot displace employees in a classification if the employee does not meet the minimum qualifications of the

classification or if the employee last held the classification more than three years prior to the date on which the employee was laid off, which is a decrease from the five years required by prior law. Additionally, the act applies category (3) to employees of cities, city health districts, and counties. (Employees of county departments of job and family services previously were covered by category (3).) The act eliminates an employee's right, if the position in the previously held classification no longer exists, to displace employees in a classification that the employee next previously held, and so on, and eliminates a requirement that an employee be "certified" in the previously held classification in order to displace another employee. (R.C. 124.324(A).)

The act requires that in order to displace someone, an employee must possess the "position-specific" minimum qualifications that have been established by the appointing authority and reviewed for validity by the Department of Administrative Services, or the position-specific minimum qualifications that have been established by bona fide occupational qualifications. This differs from prior law, which referred to the requisite minimum qualifications as "special" and required that they be established by a position description, classification specification, or bona fide occupational qualifications. (R.C. 124.324(D).)

The act allows a county appointing authority to establish a paper layoff process under which employees who are to be laid off or displaced may be required, before the date of their paper layoff, to preselect their options for displacing other employees. Under prior law, notwithstanding the general statutory displacement procedure, the Director of Administrative Services alone could establish such a paper layoff process. (R.C. 124.321(E).)

Retention points

(R.C. 124.324 and 124.325)

The act eliminates the requirement that retention points for efficiency in service generally be calculated by averaging the employee's latest two annual performance evaluations. The act also eliminates the special rules that employees with less than two years of service have their latest performance evaluation used and that employees with less than one year of service have their final probationary evaluation used to calculate retention points. (R.C. 124.325(C).)

Recall pursuant to reinstatement or reemployment

(R.C. 124.327)

The act gives laid-off or displaced employees, in addition to their reinstatement rights within their appointing authority, the right to reemployment



with any other state agency, board, commission, or independent institution if the employee meets all applicable position-specific minimum qualifications that have been developed by the other employing entity and reviewed for validity by the Department of Administrative Services, or, in the absence of position-specific minimum qualifications, meets the qualifications described in the applicable classification. This is similar to prior law, which provided the right to reemployment with other agencies within the layoff jurisdiction if the employee was qualified to perform the duties of the position. Under continuing law, the employee may obtain reemployment only in the same classification from which the employee was initially laid off or displaced, and layoff lists for each appointing authority must be exhausted before other jurisdiction reemployment layoff lists are used. (R.C. 124.327(C).)

The act requires that an employee who accepts or declines reemployment to the same classification and the same appointment type from which the employee was laid off or displaced, be removed from the layoff list for the jurisdiction in which the employee accepted or declined that reemployment as determined under the provisions discussed in the preceding paragraph. Prior law simply stated that such an employee must be removed from the "jurisdictional" layoff list. (R.C. 124.327(E).)

The act makes the recall jurisdiction for a non-collective bargaining unit employee ("exempt employee") who has reinstatement rights into a bargaining unit classification the counties in which the exempt employee indicates willingness to accept reinstatement as determined by the applicable collective bargaining agreement (R.C. 124.327(B)).

Under continuing law, an employee who declines reinstatement to a classification lower in the classification series than the classification from which the employee was laid off or displaced forfeits the right to reinstatement to a lower classification and can only be reinstated to a higher classification. The act provides that this rule does not apply if the employee was a full-time employee at the time of the layoff or displacement and the reinstatement to the lower classification that the employee declined was for a part-time position. (R.C. 124.327(G).)

Other provisions related to definitions

(R.C. 124.32 and 124.321)

In the context of layoffs resulting from a lack of funds, the act provides that the Office of Budget and Management is not required to transfer money between funds in order to offset a deficiency or projected deficiency in funding for programs funded by the federal government, special revenue accounts, or

proprietary accounts. Under prior law, a shortfall in federal funding was the only event that justified not transferring money. (R.C. 124.321(B)(2).)

The act states that, whenever a program receives funding through a grant or similar mechanism, a lack of funds will be presumed for the positions assigned to and the employees who work under the grant or similar mechanism if, for any reason, the funding is reduced or withdrawn (R.C. 124.321(B)(2)).

In the context of layoffs resulting from a lack of work within an appointing authority, the act changes the definition of "lack of work" to mean that an appointing authority has a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure. Under prior law, the decrease in workload had to be "temporary" and "expected to last less than one year." (R.C. 124.321(C)(2).)

The act limits the requirement that the consent of the Director of Administrative Services be obtained before transferring an employee in the classified service to a similar position in another office, department, or institution having the same pay and similar duties to only employees in the classified civil service of the state. The act also limits the requirement that the director's consent be obtained before reinstating an employee in the classified service who was separated without delinquency or misconduct on the employee's part to only employees in the classified civil service of the state. (R.C. 124.32(A) and (B).) ("Service of the state" and "civil service of the state" include all offices and positions of trust or employment with state government, but do not include offices and positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships (R.C. 124.01(K)).)

The act limits the requirement that an appointing authority file with the Director of Administrative Services a statement of rationale and supporting documentation when deciding to abolish a position to only positions in the service of the state (R.C. 124.321(D)(3)).

Under law modified by the act, an appointing authority wanting to abolish a position for reasons of economy is required to base those reasons on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position, except that the appointing authority can base those reasons on only the estimated amount of salary and benefit savings if two conditions are met: (1) its operating appropriation has been reduced by executive or legislative action or it has a current or projected deficiency in funding, and (2) it files a notice of abolishment with the Director of Administrative Services within one year of the reduced appropriation or current or projected deficiency. The act limits the condition that the appointing authority file



a notice of abolishment with the director to only positions that are in the service of the state. (R.C. 124.321(D)(2)(a).)

Employee discipline

Last chance agreements

(R.C. 124.34)

The act defines a "last chance agreement" as an agreement signed by both an appointing authority and an officer or employee of the appointing authority that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the officer or employee without the right of appeal to the State Personnel Board of Review or the appropriate civil service commission (R.C. 124.34(E)). The act limits the State Personnel Board of Review, a civil service commission, or a trial board appointed by the board or a civil service commission, when hearing an appeal of an appointing authority's removal order based upon a violation of a last chance agreement, to determining whether the employee violated the agreement and to affirming or disaffirming the judgment of the appointing authority (R.C. 124.34(B)).

Unpaid administrative leave when an employee is charged with a felony

(R.C. 124.388)

The act allows an appointing authority, in its discretion, to place an employee on unpaid administrative leave for a period not to exceed two months if the employee has been charged with a violation of law that is punishable as a felony. If the employee does not plead guilty to or is not found guilty of a felony, the appointing authority must pay the employee for the period the employee was on that leave at the employee's base rate of pay, plus interest. (R.C. 124.388(B).)

Service of order of reduction, fine, suspension, or removal

(R.C. 124.34)

The act amends the list of orders with respect to which an appointing authority must serve a copy of the order upon the affected employee to include the following in addition to orders of reduction or removal: orders imposing (1) a suspension of 40 or more work hours in the case of an employee exempt from payment of overtime compensation, (2) a suspension of 24 or more work hours in the case of an employee required to be paid overtime compensation, (3) a fine of 40 or more hours' pay in the case of an employee exempt from payment of overtime compensation, or (4) a fine of 24 or more hours' pay in the case of an employee required to be paid overtime compensation. The act removes from the

list of orders that must be served upon an affected employee, orders for a suspension of more than three working days or a fine in excess of three days' pay. And the act eliminates the requirement that the listed orders be filed with the Director of Administrative Services and the State Personnel Board of Review, or a civil service commission, as the case may be. (R.C. 124.34(B).)

Whistleblower protection

(R.C. 124.341)

The act clarifies that the Whistleblower Protection Law applies to all employees, state and local, in the classified and unclassified civil service (R.C. 124.341(A), (B), and (C)).

Communications to the Director of DAS re: certain removals

(R.C. 124.27)

The act specifies that appointing authorities are required to communicate to the Director of Administrative Services the reasons for removing only those probationary employees who are in the service of the state (R.C. 124.27(C)).

Employee categories and classification

Provisional and interim employees

(Misc. R.C. provisions)

The act eliminates the categories of provisional and interim employees. Under prior law, a provisional employee was an employee appointed to a vacancy in a position in the classified service, for which no eligible list was available, after the employee passed a noncompetitive examination; a provisional employee who remained in the same job classification or job classification series for two years of continuous service during which no competitive examination was held became a permanent employee in the classified service at the conclusion of the two-year period. An interim employee was an employee who was appointed only to fill a vacancy that resulted from an employee's temporary absence for a reason other than an interim appointment. (R.C. 124.11(A)(29), 124.134(C), 124.14(I), 124.26(B), 124.27(C), 124.30(A) and (B), 124.324(B), 124.383(A)(2), 124.384(A), 124.386(D)(3) and (E), 302.202(I), 329.02, 1513.03, 1513.34, and 5107.52(C) and R.C. 124.311-- repealed outright in Section 2 of the act.)

Intermittent employees

(R.C. 124.11(A)(29), 124.14(I), and 124.30(B))

The act removes the adjective "external" that modified the description of interim, intermittent, and temporary employees who are in the unclassified civil service and serve at the pleasure of their appointing authority. (R.C. 124.11(A)(29) and 124.30(B).)¹ (As explained above, the interim employment category is eliminated by the act.)

The Director of Administrative Services is required to set the rate of compensation for all intermittent, seasonal, temporary, emergency, and casual employees who are not considered "public employees" for purposes of the Public Employees' Collective Bargaining Law. Under the act, the director exercises this authority with regard to only employees of the named categories who are in the service of the state. (R.C. 124.14(I).)

Retention of certified status provisions

(R.C. 124.324(A)(3) and R.C. 124.311--repealed outright in Section 2 of the act)

The act eliminates the following provisions that relate to employee retention of certified status:

(1) Following any classification change within a classification series, a certified employee in the classified civil service retains certification;

(2) When an employee receives a classification change to a classification outside the series in which the employee is certified, the employee generally does not retain certified status;

(3) Whenever the Director of Administrative Services or the General Assembly changes the state classification plan, an employee retains certification in the same or similar classification the employee held immediately before the change in the classification plan so long as the employee was certified under the former plan;

(4) Whenever the position held by a classified employee is reclassified as a result of a job audit outside the classification series in which the employee is

¹ See also the related discussion of temporary appointments under the subheading "**Appointments**" under "**Appointment, testing, hiring, promotion, and temporary and permanent transfers of positions.**" below.

certified, the employee must be treated as having received a classification change and be given credit for the time the employee performed the duties of the new classification for purposes of a probationary period, except that the employee may choose not to accept the reclassified position and, in that case, (a) the employee must retain the employee's certification in the classification for which the employee was certified and (b) the appointing authority must assign the employee to a position with that classification or abolish the former position; and

(5) The duty of the Director of Administrative Services to adopt specified rules under the Administrative Procedure Act implementing the provisions described in (1) to (4) (repeal of R.C. 124.311).

Unclassified service

(R.C. 124.03, 124.11, 329.02, 5119.09, and 5155.03)

The act modifies the list of individuals within the unclassified service to additionally include: (1) the heads of all departments appointed by a board of county commissioners, (2) four clerical and administrative support employees for each board of county commissioners, (3) one clerical or administrative support employee for each county commissioner, (4) one additional clerical and administrative support employee for elective officers other than the elective state officers, and for each of the principal appointive executive officers, boards, or commissions authorized to appoint these employees (other than civil service commissions), (5) not more than five specified administrative positions within a county department of job and family services, (6) the superintendent or administrator of a county home, and (7) any other employees placed in the unclassified service by statute (R.C. 124.11(A)(3)(b), (8), and (32), 329.02, and 5155.03).

The act also limits the number of deputy county auditors in the unclassified service to five (R.C. 124.11(A)(4)).

The act states that, in an appeal of a decision about whether an employee is in the unclassified civil service, the mere failure of the employee's appointing authority to file a statement with the Department of Administrative Services indicating that the employee is in the unclassified civil service, or the mere late filing of the statement, does not prevent the State Personnel Board of Review from determining that the employee is in the unclassified civil service (R.C. 124.03(A)(1)).

The act requires the State Personnel Board of Review, in determining an appeal of a decision about whether an employee is in the unclassified civil service, to consider the inherent nature of the duties of the employee's classification during

the two-year period immediately preceding the appointing authority's appealable action relating to the employee (R.C. 124.03(A)(1)).

Appointment to an unclassified position

(R.C. 124.12)

The act requires an appointing authority that appoints an employee to an unclassified position in the service of the state to notify the Department of Administrative Services of the appointment within 90 days after the appointment (R.C. 124.12(A)).

The act also requires an appointing authority that appoints an employee to an unclassified position in the state service to do both of the following:

(1) On the date of appointment, to provide to the employee written information describing the nature of employment in the unclassified service; and

(2) Within 30 days after the date of appointment, to provide to the employee written information describing the duties of the unclassified position to which the employee has been appointed.

An appointing authority's failure to provide either type of information does not confer any additional rights upon the employee in any appellate body with jurisdiction over an appeal of the employee.

The Department of Administrative Services is required to develop and provide each appointing authority in the state service with a general written description of the nature of employment in the unclassified service for the purpose of providing the information described in (1) above. (R.C. 124.12(B) and (C).) ("State service" includes all offices and positions in the service of the state, counties, and general health districts, but does not include offices and positions in the service of cities, city health districts, and city school districts (R.C. 124.01(B)).)

Appointment evaluation system

(R.C. 124.40)

The act requires each municipal civil service commission, in adopting rules concerning the classification of positions in the civil service of the city, city school district, and city health district, to authorize each appointing authority of the city, city school district, or city health district to develop, and to administer in a manner it devises, an evaluation system for the employees it appoints (R.C. 124.40(A)).

Director of Administrative Services' rules

(R.C. 124.20)

The act eliminates a requirement that the Director of Administrative Services, with the approval of the State Personnel Board of Review, adopt rules for the classification of officers, positions, and employments in the civil service of the state and the counties (R.C. 124.20(A)). But, under other continuing law, the Director of Administrative Services still must establish by rule a "job classification plan" for all positions, offices, and employments the salaries of which are paid in whole or in part by the state (R.C. 124.14(A)(1)).

The act also eliminates a requirement that the Director of Administrative Services establish, with the approval of the State Personnel Board of Review, rules for appointment, promotions, transfers, layoffs, suspensions, reductions, reinstatements, and removals in, as well as for examinations and registrations for, offices and positions in the civil service of the counties (R.C. 124.20(A)). Only appointing authorities with officers or employees in the civil service of the state must submit personnel action information to the Department of Administrative Services under the act.

The act requires the Department of Administrative Services to make civil service personnel management rules adopted or changed under R.C. 124.20 available for public distribution, as contrasted with prior law's requirement to "print" them for that purpose (R.C. 124.20).

Specific county personnel provisions

(R.C. 124.14)

The act modifies the requirement that the Director of Administrative Services adopt rules under the Administrative Procedure Act to establish a classification plan for county agencies that elect not to use the services and facilities of a county personnel department to clarify that the director may also "modify" or "rescind" such a classification plan. Under continuing law, those rules must include a methodology for the establishment of titles unique to county agencies, the use of state classification titles and classification specifications for common positions, the criteria for a county to meet in establishing its own classification plan, and the establishment of what constitutes a classification series for county agencies. (R.C. 124.14(A)(5).)

The act revises notification and effective date of operation provisions regarding a board of county commissioners authority to adopt resolutions establishing and designating a county personnel department to exercise the

powers, duties, and functions of the Department of Administrative Services and the Director of Administrative Services (except for the powers and duties of the State Personnel Board of Review) with respect to employees for whom the board of county commissioners is the appointing or co-appointing authority. First, the board of county commissioners must deliver a certified copy of its designation resolution to the director not later than ten working days after the resolution is adopted. Second, the director, by certified mail, must inform the board of county commissioners in a writing of the date the director received the designation resolution. Third, upon the date the director received the designation resolution, the powers, duties, and functions of the department and the director are vested in and assigned to the county personnel department with respect to the employees for whom the board of county commissioners is the appointing or co-appointing authority. These provisions replace provisions under which the vesting and assigning occurred upon a board of county commissioners' certification of the designation resolution to the director, the certification could not be provided later than 120 days before July 1 of an odd-numbered year, and following the certification, the powers, duties, and functions vested in and were assigned to the county personnel department on the first day of July. (R.C. 124.14(G)(2)(a) and (b).)

After a county personnel department has assumed the powers, duties, and functions of the department and the director, any county elected official, board, agency, or other appointing authority (not including a board of county commissioners), upon notification to the director, may elect to use the services and facilities of the county personnel department. The act requires the notification to the director to be in writing. (The act repeals prior law's related provision that the notification be provided not later than 120 days before July 1 of an odd-numbered year.) The act requires the director, by certified mail, to inform the elected official, board, agency, or other appointing authority in a writing of the date of the director's acceptance of the written notification. Upon the director's acceptance of the written notification, rather than on the first day of July in an odd-number year as required by prior law, the county personnel department must exercise the powers, duties, and functions of the department and the director with respect to the employees of the county elected official, board, agency, or other appointing authority that has elected to use the services and facilities of the county personnel department. (R.C. 124.14(G)(3).)

The act allows a board of county commissioners, by resolution, to disband its county personnel department and to return to the jurisdiction of the department for civil service administration only after at least two years have passed since the county personnel department's creation. The act repeals a time restriction that required a board of county commissioners to send the director a certified copy of a disbanding resolution not later than 120 days before July 1 of an odd-numbered

year. Instead, the act requires a board of county commissioners to deliver a certified copy of a resolution disbanding a county personnel department to the director not later than ten working days after its adoption, and requires the director, by certified mail, to inform the board in a writing of the date the director received the resolution. Upon that receipt, all powers, duties, and functions previously vested in and assigned to the county personnel department return to the director. This contrasts with prior law under which the return occurred on the first day of July. (R.C. 124.14(G)(4).)

The act allows a county elected official, board, agency, or other appointing authority to return to the jurisdiction of the department for civil service administration only after at least two years have passed since the official, board, agency, or other appointing authority elected to use the services and facilities of the county personnel department. The act repeals a time restriction that required an elected official, board, agency, or other appointing authority to send the director a certified copy of the resolution stating its decision not later than 120 days before July 1 of an odd-numbered year. Instead, the act requires an elected official, board, agency, or other appointing authority to send the director a certified copy of the resolution that states its decision to return to the jurisdiction of the department for civil service administration, and requires the director, by certified mail, to inform the official, board, agency, or other appointing authority in a writing of the date the director received the resolution. Upon that receipt, all powers, duties, and functions previously vested in and assigned to the county personnel department with respect to the employees of the elected official, board, agency, or other appointing authority return to the director. This contrasts with prior law under which the return occurred on the first day of July. (R.C. 124.14(G)(5).)

Employee compensation and benefits

Active pay status and county employees

(R.C. 4111.03)

The act eliminates, for purposes of the law governing overtime pay or compensatory time off in lieu of overtime pay, the rule that the number of hours worked by a county employee in any one workweek is deemed to include, in addition to hours actually worked, all periods in an active pay status (R.C. 4111.03(B)).

Temporary pay range

(R.C. 124.14)

The act allows the Director of Administrative Services to assign a job classification to a pay range on a temporary basis for a period of six months, instead of for a time period designated in rules adopted by the director (R.C. 124.14(A)(1)).

Disciplinary actions

(R.C. 124.34)

The act includes a reduction or elimination of an officer's or employee's longevity in the list of disciplinary actions that may not be taken against an officer or employee in the classified service except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the Civil Service Law or the rules of the Director of Administrative Services or a civil service commission, any other failure of good behavior, other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. The act adds to the list of causes the violation of any policy or work rule of the officer's or employee's appointing authority (R.C. 124.34(A)).

The act provides that a denial of a one-time pay supplement or a bonus to an officer or employee is not to be considered, for purposes of the law governing disciplinary actions against officers and employees, a reduction in pay (R.C. 124.34(A)).

Disability leave, meaning of disability, and separation/reinstatement

(R.C. 124.32, 124.385, and 4112.01)

The act allows the Director of Administrative Services to delegate to any appointing authority the authority to approve disability benefits for a standard recovery period (R.C. 124.385(E)).

The act provides that a psychoactive substance use disorder resulting from the current use of alcoholic beverages is not a "disability" covered by the Civil Rights Law. (R.C. 4112.01(A)(13) and (16)(b)(iv).)

Under continuing law modified by the act, a person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct due to an injury or physical disability is entitled to be reinstated in the same or a similar office or position in the same

department within 30 days after that person files a written application for reinstatement if the person (1) passes a physical examination showing that the person has recovered from the disability and (2) applies for reinstatement within three years of the date of separation. The act modifies this provision by allowing reinstatement for psychiatric disabilities in addition to physical disabilities, subject to passing a psychiatric examination, and by reducing the time within which the person must apply for reinstatement from three years to two. (R.C. 124.32(B).)

Alternative sick, vacation, and holiday leave

(R.C. 124.38 and 325.19)

The act modifies the provision allowing an appointing authority of a county office, department, commission, board, or body, upon notification to the board of county commissioners, to establish alternative schedules of sick, vacation, or holiday leave for non-bargaining unit employees, as long as those alternative schedules are not inconsistent with the provisions of "a" collective bargaining agreement covering other employees of the appointing authority. The act refers instead to "at least one" collective bargaining agreement covering the other employees. And the act states that if no collective bargaining agreement exists, an appointing authority, upon notification to the board of county commissioners, may establish an alternative schedule of sick, vacation, or holiday leave for its employees that does not diminish the sick, vacation, or holiday leave benefits granted under relevant statutes. (R.C. 124.38 and 325.19(F).)

Alternative compensation

(R.C. 124.141)

The act permits the Director of Administrative Services to establish, by rule adopted under the Administrative Procedure Act, an appointment incentive program that allows an appointing authority to pay the following salary and benefits package that differs from the salary and benefits otherwise provided by law for that officer or employee: (1) employees appointed to administrative staff positions for which the appointing authority has statutory authority to set compensation, (2) legislative employees, (3) employees of the Legislative Service Commission, (4) employees of the office of the Governor, (5) employees in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General who are in the unclassified civil service and exempt from collective bargaining coverage, (6) employees of the Ohio Supreme Court, and (7) certain other employees and officers in the unclassified civil service. However, this program, if it is established by the director, cannot include authority for an appointing authority to provide health care benefits to a covered officer or

employee that are different from health care benefits otherwise provided by law for that officer or employee. (R.C. 124.141.)

Appointment, testing, hiring, promotion, and temporary and permanent transfers of positions

Appointments

(R.C. 124.271 and 124.30)

The act modifies the power of appointing authorities to make temporary appointments without competitive examinations due to the urgency of the need. Under prior law, there were three different reasons and accompanying methods for doing so:

(1) When there were urgent reasons for filling a vacancy but the Director of Administrative Services was unable to certify a list of eligible persons after a competitive examination, the appointing authority could nominate a person to the director, who could certify that the person was qualified after a noncompetitive examination; then the person could be appointed provisionally until a regular competitive appointment could be made, which apparently was required within six months;

(2) In the case of an emergency, the appointing authority could make an appointment without regard to the Civil Service Law, but the appointment was limited to 30 days and could not be done successively; and

(3) Where the services were temporary (not to exceed six months) and the need was important and urgent, the appointing authority could select any person from an eligible list for permanent appointments, and could not make successive temporary appointments to the same position.

The act combines these into one: when there are urgent reasons for filling a vacancy but the Director of Administrative Services is unable to certify a list of eligible persons after a competitive examination, an appointing authority may fill the position temporarily by a noncompetitive examination without regard to the Civil Service Law, but the appointment cannot continue for longer than 120 days, and successive temporary appointments cannot be made. (R.C. 124.30(A)(1) and (3).)

If a person is appointed temporarily to fill a position without competitive examination because of urgent need as explained in the preceding paragraph, or if a person is appointed without competitive examination to fill a position for which competitive examination is impracticable because of peculiar and exceptional scientific, managerial, professional, or educational qualifications, the person

nevertheless becomes a permanent appointee if the person demonstrates merit and fitness for the position by successfully completing the probationary period for the position or by remaining in the position for a period of six months of continuous service, whichever is the longer period. Under prior law, this privilege applied to only "provisional" employees who remained in the position for two years, during which time a competitive examination for the position was not held. (R.C. 124.271.) (The provisional employment category is eliminated by the act.)

Testing

(R.C. 124.22, 124.23, 124.45, and 124.48)

The act requires that notices of examinations that are to be conducted in the state classified service that are sent by the Director of Administrative Services to specified agencies and clerks, and that are to be posted in conspicuous public places, must be posted for at least two weeks before any examination (R.C. 124.23(E)).

The act allows the tests that constitute an examination for a position in the classified service to include (1) structured interviews, (2) assessment centers, (3) work simulations, (4) examinations of knowledge, skills, and abilities, and (5) any other acceptable testing methods. The act continues provisions otherwise governing the form of examinations and tests. (R.C. 124.23(C).)

The act eliminates a prohibition against rules setting up educational requirements as a condition for taking a civil service examination except for professional and other positions for which educational requirements are expressly imposed by state or federal law or for which education and training are necessary to the performance of a specific job or professional pursuit. Instead, the act authorizes the adoption of rules establishing educational requirements as a condition of taking a civil service examination only with respect to positions for which educational requirements are expressly imposed by a section of the Revised Code or a federal law or for which the director has determined that the educational requirements are job-related. (R.C. 124.22.)

The act requires a person generally to have served 48 months, not including the probationary period, rather than 24 months as under prior law, in order to be eligible to take a competitive promotional examination for the promoted rank immediately above the rank of regular firefighter (R.C. 124.45).

The act modifies the provisions governing the promotional examinations for firefighters by requiring that those examinations "include a written testing component," as opposed to generally being "in writing," as required by prior law (R.C. 124.45).

The act eliminates the right of a participant in a firefighter promotional examination, for a period of five days after the examination, to inspect the examination's questions, rating keys, or answers and to file a protest. However, the act continues a participant's right to appeal on the basis that the participant's examination papers were erroneously graded. (R.C. 124.45 and 124.48.)

Eligible lists

(R.C. 124.11, 124.44, 124.46, and 124.48)

The act clarifies that vacancies in the unskilled labor class for positions in the service of the state must be filled by appointment from lists of applicants registered by the Director of Administrative Services, while vacancies in the unskilled labor class for positions not in the service of the state must be filled from lists of applicants registered by a civil service commission (R.C. 124.11(B)(2)).

Promotions

(R.C. 124.31 and 124.44)

The act allows a municipal civil service commission to require a period of service of longer than 12 months for promotion to the rank immediately above the rank of patrol officer in a police department (R.C. 124.44).

The act requires the Director of Administrative Services, in the rules the director must adopt concerning the keeping of records of efficiency for employees in the classified service and the making of promotions based on merit, to authorize each appointing authority of a county to develop, and to administer in a manner it devises, an evaluation system for the employees it appoints (R.C. 124.31(A)).

Transfers

(R.C. 124.33)

The act provides that temporary transfers of an employee in the classified service more than once during any six-month period, or permanent transfers of an employee in the classified service, to a similar position in another office, department, or institution must be approved by the Director of Administrative Services only if the employee is in the service of the state; otherwise, the transfer must be approved by the appropriate civil service commission. Prior law required the director to approve all such transfers. (R.C. 124.33, second and fifth paragraphs.)

Veteran's preference

(R.C. 124.23 and 124.27)

The act revises the veteran's preference relative to additional credit on a classified civil service examination and in original appointments to competitive positions in the civil service, to apply to any person who has completed service in the uniformed services, who has been honorably discharged or transferred to the reserve with evidence of satisfactory service, and who is a resident of Ohio. The act defines "service in the uniformed services" and "uniform services" to have the same meanings as in the federal Uniformed Services Employment and Reemployment Rights Act of 1994. (R.C. 124.23(B) and 124.27(B).)

Appeals and due process

Right to counsel at a hearing

(R.C. 9.84)

The act eliminates the right of an appointing authority's employee to be accompanied, represented, or advised by an attorney when appearing solely as a witness in an employment interview, investigation, or proceeding conducted by or for the appointing authority (R.C. 9.84).

Jurisdiction of appeals

(R.C. 119.12 and 124.34)

The act requires that appeals under the Administrative Procedure Act from a decision of the State Personnel Board of Review or of a municipal or civil service township civil service commission must be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by the Department of Rehabilitation and Correction, to the Court of Common Pleas of Franklin County if the appeal concerns: (1) a reduction, (2) a suspension of 40 or more work hours in the case of an employee exempt from payment of overtime compensation, (3) a suspension of 24 or more work hours in the case of an employee required to be paid overtime compensation, (4) a fine of 40 or more hours' pay in the case of an employee exempt from payment of overtime compensation, (5) a fine of 24 or more hours' pay in the case of an employee required to be paid overtime compensation, or (6) a removal. (R.C. 119.12 and 124.34(B).)

Further recommendations of the Civil Service Review Commission

(Section 3 of the act)

Study of compensation and classification system

The act requires that the Department of Administrative Services, in conjunction with all appropriate stakeholder groups, study the compensation and classification system that applies to employees paid by warrant of the Director of Budget and Management and county employees in order to determine how the system could be simplified. The department must report to the General Assembly on the results of its study not later than six months after the act's effective date and at appropriate intervals thereafter. (Section 3(A) of the act.)

Alternative dispute resolution

The act requires that an ad hoc committee be formed to review, study, and encourage greater awareness of the use of mediation and other alternative dispute resolution procedures in appeals to the State Personnel Board of Review and to municipal and civil service township civil service commissions. The committee must consist of representatives of labor organizations, counties, cities, the State Personnel Board of Review, the State Employment Relations Board, the Office of Collective Bargaining, the Ohio Commission on Dispute Resolution and Conflict Management, the American Arbitration Association, and the Federal Mediation and Conciliation Service. Additionally, professors on the faculty of Ohio law schools, a professional arbitrator with experience in public sector disputes, and a plaintiff's lawyer with experience in civil service disputes should be members of the committee. The committee must report its findings and recommendations to the General Assembly within six months after the act's effective date. (Section 3(B) of the act.)

Miscellaneous

Use of Department of Administrative Services' services and facilities

(R.C. 124.07)

The act allows a state-supported college or university to use services and facilities furnished by the Department of Administrative Services that are necessary to provide and maintain payroll services and state merit standards. Prior law apparently required a state-supported college or university to use those services and facilities. (R.C. 124.07(B).)

The act permits the Director of Administrative Services to enter into an agreement with municipal corporations or other political subdivisions to furnish

services and facilities for the administration of human resources-related functions. Under prior law, the director was only authorized to enter into an agreement for the administration of a merit program. (R.C. 124.07(C).)

The act requires any money received by the Department of Administrative Services as reimbursement for human resources services and facilities so furnished to be paid into the state treasury to the credit of the Human Resources Fund, which under continuing law receives moneys that reimburse the department for payroll and merit program services performed and facilities furnished (R.C. 124.07(D)).

County department of job and family services administrators

(R.C. 329.021)

The act allows the board of county commissioners of any county to appoint administrators to oversee services provided by the county department of job and family services (hereafter, county department). This authority contrasts with prior law under which only the board of county commissioners of a county with a population of more than one million could make the administrator appointments. (R.C. 329.021(A).) Instead, the act limits the number of county department administrators that a board of county commissioners may appoint in accordance with the county's population: (1) population under 40,000--one administrator, (2) population of 40,000 to 99,999--two administrators, (3) population of 100,000 to 249,999--three administrators, (4) population of 250,000 to 499,999--four administrators, (5) population of 500,000 or more--five administrators. Under prior law, any board of county commissioners authorized to do so could make any number of appointments up to five. (R.C. 329.021(A).)

The act defines an "administrator" for purposes of the board of county commissioners appointment provisions as an assistant director, fiscal officer or director, personnel officer or director, social services administrator, income maintenance administrator, child support administrator in a combined agency, children services administrator in a combined agency, and workforce development administrator in a combined agency (R.C. 329.021(D)).

The act specifies that, although board of county commissioner-appointed administrators must be in the unclassified civil service and serve at the board's pleasure, an administrator position that is filled by a person serving in the classified service on the act's effective date cannot be placed in the unclassified service until that person vacates the position. (R.C. 329.021(B).)

Similar to provisions that generally apply to state classified service employees under the Civil Service Law (see R.C. 124.11(D)), the act allows a board of county commissioners to appoint a person who holds a certified position

in the classified service within a county department of job and family services to the position of county department administrator. If the board later removes that person as administrator, the person generally retains the right to resume the position in the classified service that the person held immediately before being appointed as county department administrator. One exception to this resumption right is that a person first appointed to a classified position in the county department on or after the act's effective date retains the right to resume that position for only six months after being appointed to the unclassified administrator position. And, any person serving as county department administrator forfeits the resumption right if the person is removed from the position of administrator due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the board of county commissioners or the county department, violation of the Civil Service Law or the rules of the Director of Administrative Services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. Finally, the act provides that, when the county department administrator's previously held classified service position no longer exists or has been placed in the unclassified service, the person must be appointed to a position in the classified service of the county department that is equivalent to that previously held classified service position, as the board of county commissioners determines with the approval of the Director of Administrative Services. (R.C. 329.021(C).)

Duties of the Director of Administrative Services

(R.C. 124.01, 124.04, 124.07, 124.09, 124.133, 124.15, 124.20, 124.31, 124.321, and 124.33)

The act expands the duties of the Director of Administrative Services to include developing and conducting supervisory training programs and best practices plans in cooperation with appointing authorities, developing merit hiring processes in cooperation with appointing authorities, and assisting appointing authorities in recruiting qualified applicants (R.C. 124.04(H) and (J)).

The act defines "service of the state" or "civil service of the state" for purposes of the Civil Service Law as including all offices and positions of trust or employment with state government, but not as including offices and positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships (R.C. 124.01(K)). The act employs these terms and, thus, applies this restrictive definition in numerous provisions of the Civil Service Law (R.C. 124.04(L), 124.07(A), 124.09(C), 124.133, 124.15(D), 124.20(A) and (B), 124.31(A), 124.321(D)(2) and (3), and 124.33). The effect of those applications occasionally is to limit the Director of Administrative Services' responsibilities or

roles under certain provisions of the Law or to clarify those responsibilities or roles.

The act limits to only employees or positions in the "service of the state" the following duties of the Director of Administrative Services: (1) to maintain a journal recording final decisions pertaining to classification or reclassification of positions in the classified service and assignment and reassignment of employees in the classified service, (2) to prepare, continue, and keep a complete roster of all persons in the classified service who are paid directly by warrant of the Director of Budget and Management, (3) to adopt rules, with the approval of the State Personnel Board of Review, for appointment, promotion, transfer, layoff, suspension, reduction, reinstatement, and removal in, and for examinations and registrations for offices and positions in, the civil service, (4) to adopt rules, with the approval of the State Personnel Board of Review, for maintaining and keeping records of the efficiency of officers and employees in the civil service, (5) to provide by rule for keeping records of efficiency of employees in the classified service and for making promotions in the classified service on the basis of merit, and (6) to provide by rule that vacancies in positions in the classified service are to be filled by promotion whenever the director judges it to be in the best interest of the service (R.C. 124.04(L), 124.09(C), 124.20(A) and (B), and 124.31(A)).

The act also limits to only those employees or positions in the "service of the state" the authority of the Director of Administrative Services to do the following: (1) adopt by rule an experimental alternative vacation, sick, disability, or personal leave program, life insurance program, or medical insurance benefits program, (2) determine, with the approval of the Director of Budget and Management, the amounts and manner of the payment an employee must make for furnished lodging, meals, laundry, or other personal services, (3) approve, with the approval of the Director of Budget and Management, an appointing authority's payment to an employee for uniforms, tools, equipment, and other requirements of the department, and (4) review collective bargaining agreements and determine whether certain benefits or payments also should be provided to exempt employees not covered by collective bargaining (R.C. 124.133 and 124.15(D)).

The act limits the requirement that appointing authorities submit personnel action information to the Director of Administrative Services to only those authorities with officers or employees in the "civil service of the state" (R.C. 124.20(A)).

State colleges and universities

(R.C. 124.14; Section 4 of the act)

The act requires the board of trustees of each state university or college to carry out all matters of governance involving the officers and employees of the university or college, including, but not limited to, the powers, duties, and functions of the Department of Administrative Services and the Director of Administrative Services, as specified in the Civil Service Law. However, under the act, officers and employees of state universities and colleges continue to have the right to appeal to the State Personnel Board of Review as provided by the Civil Service Law. Each board of trustees must adopt rules under the abbreviated rule-making procedure of R.C. 111.15 to carry out these matters of governance. Until a board adopts these rules, its university or college must continue to operate under the applicable rules adopted by the Director of Administrative Services under the Civil Service Law. The act repeals provisions of existing law that give somewhat similar authority to boards of trustees, subject, however, to periodic audits and the Director of Administrative Services' review and potential superseding of the authority. (R.C. 124.14(F)(1) and (2), and Section 4 of the act.)

The act requires the Executive Director of the Inter-University Council to coordinate the organization of a committee consisting of the president, or the president's representative, of each state-supported college or university. Ninety days after the act's effective date, the committee, in consultation with the Department of Administrative Services, must develop guidelines and standards that are to be used by the boards of trustees of those colleges and universities in adopting the rules described above concerning the matters of governance of the officers and employees of their college or university. The guidelines must address, at a minimum, classification plans; compensation plans; recruitment, selection, and appointment processes; performance, discipline, and termination processes; layoff and reduction-in-workforce processes; paid leave, holiday leave, and benefit programs; and appeals processes. The guidelines also must require the colleges and universities to adopt any changes in a controlled and incremental manner. (Section 4 of the act.)

Qualifications for tax auditor agent or agent manager

(R.C. 5703.17)

The act adds a degree in any "other business-related field" that is acceptable to the Tax Commissioner to the list of degrees that may qualify a person for the position of tax auditor agent or tax auditor agent manager. This is in addition to degrees in accounting, business, business administration, public administration, or management. (R.C. 5703.17(B)(1).)

The act also restricts the accounting, auditing, or taxation experience that may qualify a person for the position of tax auditor agent or tax auditor agent manager to only such experience as is defined in the classification specifications for the position established by the Director of Administrative Services. Under prior law, the experience was only required to be acceptable to the Department of Taxation. (R.C. 5703.17(B)(3).)

Impact on collective bargaining agreements

(Section 5 of the act)

The act states that none of the act's provisions discussed in this analysis abrogate, annul, or modify, or can be construed to abrogate, annul, or modify, any collective bargaining agreement between a public employer and an exclusive representative that was entered into before the act's effective date (Section 5 of the act).

Delayed effective date

(Section 7 of the act)

The act specifies that the act's provisions discussed in this analysis take effect on July 1, 2007 (Section 7 of the act).

HISTORY

| ACTION | DATE |
|--|----------|
| Introduced | 04-07-05 |
| Reported, H. Local & Municipal Gov't & Urban Revitalization | 12-12-06 |
| Passed House (73-25) | 12-12-06 |
| Reported, S. Insurance, Commerce, & Labor | 12-19-06 |
| Passed Senate (33-0) | 12-19-06 |
| House concurred in Senate amendments (76-11) | 12-20-06 |

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