



Ohio Legislative Service Commission

Bill Analysis

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(As Pending in S. Insurance, Commerce, and Labor)

BILL SUMMARY

The Public Employee Collective Bargaining Law

State employees and employees of state institutions of higher education

- Abolishes the collective bargaining rights of employees of the state, of any agency, authority, commission, or board of the state, and of any state institution of higher education.
- Prohibits the state, agencies, authorities, commissions, and boards of the state, and a state institution of higher education from collectively bargaining with its employees.
- Abolishes the Office of Collective Bargaining.

Police and fire department supervisors

- Removes a limitation on the definition of "supervisor" with respect to members of police and fire departments, potentially making more people supervisors and ineligible to collectively bargain.

Contract employees and employees of regional councils of government

- Excludes persons working pursuant to a contract between a public employer and private employer and over whom the National Labor Relations Board has declined jurisdiction from those persons eligible for collective bargaining.
- Excludes employees of a regional council of government from those persons eligible for collective bargaining.

Rights of public employees

- Removes continuation, modification, or deletion of an existing collective bargaining agreement from the subject of collective bargaining.
- Removes a provision granting specific authority to public school employees to collectively bargain for health care benefits.
- Authorizes public employees to refuse any representation by an exclusive representative or an employee organization.

Open shops

- Makes any agreement that purports to require that employees join any exclusive representation void and unenforceable.

Subjects for collective bargaining

- Makes the following inappropriate subjects for collective bargaining: (1) employer-paid contributions to any of the five public employee retirement systems and (2) health care benefits for which the employer is required to pay more than 80% of the cost.
- Permits public employers to not bargain on any subject reserved to the management and direction of the governmental unit, even if the subject affects wages, hours, and terms and conditions of employment.

Collective bargaining agreement provisions and approval

- Prohibits a collective bargaining agreement from prohibiting a public employer that is in a state of fiscal emergency from serving a written notice to terminate, modify, or negotiate the agreement.
- Prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the public employer, when a reduction in force is necessary, to use employee length of service as the only factor when making layoffs.
- Prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the employer to pay more than 80% of the cost paid for benefits.

Conflicting provisions of agreements

- Makes laws pertaining to the provision of health care benefits to public employees prevail over conflicting collective bargaining agreements.

School districts, educational service centers, community schools, and STEM schools

- Prohibits a public employer that is a school district, educational service center, community school, or STEM school from entering into a collective bargaining agreement that does specified things, such as establishing a maximum number of students who may be assigned to a classroom or teacher.
- Requires collective bargaining agreements between such an education-related public employer and public employees to comply with all applicable state or local laws or ordinances regarding wages, hours, and terms and conditions of employment, unless the conflicting provision establishes benefits that are less than provided in the law or ordinance.
- Requires the parties to consider, during negotiations, the financial status of the public employer at the time period surrounding the negotiations for purposes of determining the ability of the employer to pay for any agreed terms.
- Prohibits the parties from basing the ability of the employer to pay for terms of the agreement on potential future increases in the employer's income that would only be possible by the employer obtaining funding from an outside source, including the passage of a levy or a bond issue.

Dispute resolution procedures, strikes, and unfair labor practices

- Revises collective bargaining dispute resolution procedures.
- Requires the employer and the State Employment Relations Board to post in a conspicuous location on the web site maintained by the board and the employer the terms of the last collective bargaining agreements offered by the employer and the exclusive representative at specific times.
- Revises the factors that a person or group administering an alternate dispute resolution procedure must take into account.
- If either party rejects a fact finding panel's recommendations, permits the public employer to implement, in whole or in part, any of those recommendations that have been approved by the appropriate legislative authority.
- Removes the mandatory final offer settlement conciliation procedure for public employees who do not have the right to strike.
- Requires a public employer to report certain information about compensation paid to public employees under a collective bargaining agreement.

- Specifies that expressions of views, opinions, and arguments are not unfair labor practices, and cannot be used as evidence of such, without a threat.
- Repeals the provision requiring the Public Employee Collective Bargaining Law to be liberally construed.
- Allows public employers to set aside any provision in an existing collective bargaining agreement in the event of a fiscal emergency.

Public employee pay

- Requires merit-based pay for most public employees, including teachers and nonteaching school employees and board and commission members, and makes other, related changes.
- Generally eliminates statutory salary schedules and steps.

Public employee benefits

- Abolishes the School Employees Health Care Board, the School Employees Health Care Fund, and the Public Schools Health Care Advisory Committee, and allows the board of education of any school district to govern employee health care benefits in the same way as the governing board of any public institution of higher education.
- Limits public employer contributions toward health insurance premiums to 80%.
- Requires boards of education to adopt policies to provide leave with pay for school employees and abolishes statutorily provided leave for those employees.
- Abolishes continuing contracts for teachers, except for those continuing contracts in existence prior to the effective date of the bill.
- Prohibits a public employer from paying employee contributions to certain retirement systems.

Reduction in the public sector work force

- Removes consideration of seniority and of length of service, by itself, from decisions regarding a reduction in work force of certain public employees.
- Makes changes to retention point provisions, including changes concerning the calculation of retention points and the layoff procedures when retention points for two employees are the same.

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CONTENT AND OPERATION

The Public Employee Collective Bargaining Law

State employees and employees of state institutions of higher education

The bill prohibits employees of the state, any agency, authority, commission, or board of the state, or any state institution of higher education from collectively bargaining under the Public Employee Collective Bargaining Law.¹ Under current law, a public employer is required to collectively bargain with the employer's public employees. A "public employer" is the state or any political subdivision of the state located entirely within the state, including state institutions of higher education and state agencies, authorities, commissions, and boards, among others. The bill removes from the definition of "public employer" the state, any agency, authority, commission, or board of the state, and state institutions of higher education and expressly states that those employers are not public employers for purposes of the Public Employee Collective Bargaining Law.²

The bill expressly states that employees of the state, of any agency, authority, commission, or board of the state, or of any state institution of higher education do not have collective bargaining rights. The bill prohibits the state, an agency, authority, commission, or board of the state, or a state institution of higher education from bargaining collectively with its employees.³

The Office of Collective Bargaining is established under current law to negotiate with and enter into written agreements between state agencies, departments, boards, and commissions and an exclusive representative. Because the bill terminates state employee collective bargaining rights and prohibits the state from collectively bargaining with state employees, the bill abolishes the Office of Collective Bargaining upon the date the last collective bargaining agreement expires. The assets and liabilities of the Office are transferred to the Department of Administrative Services on that date, and the Department is required to complete any business of the Office in the same manner, and with the same effect, as if completed by the Office. Also on that date, all the employees of the Office cease to hold their positions of employment.⁴

¹ R.C. Chapter 4117.

² R.C. 4117.01(B).

³ R.C. 4117.03(B).

⁴ R.C. 4117.10(D) and Section 5.

The bill prohibits a member of the Ohio Elections Commission from being an employee of the state, any agency, authority, commission, or board of the state, or any state institution of higher education. Under continuing law, no member may be a person or employee who is excluded from the definition of "public employee" under the Public Employee Collective Bargaining Law.⁵

Under the bill, the "state" includes the General Assembly, the Supreme Court, and the offices of all elected state officers. "State institutions of higher education" include state universities and colleges, community colleges, state community colleges, university branches, and technical colleges.⁶

Police and fire department supervisors

The bill potentially makes more people ineligible for collectively bargaining. Under continuing law, public employees have the right to collectively bargain. A public employee generally is any person holding a position by appointment or employment in the service of a public employer, but numerous exceptions exist. One exception is that "public employee" does not include supervisors. Supervisors generally are individuals who have authority to take certain actions regarding the terms and conditions of employment of other public employees, if the exercise of that authority is not of a merely routine or clerical nature but requires independent judgment. With regard to members of a police or fire department, current law specifies that no person can be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. The bill removes that limitation, so more people may be deemed supervisors under the law, with no collective bargaining rights.⁷

Contract employees and employees of regional councils of government

The bill may make two other groups of employees ineligible for collectively bargaining. Under current law, "public employee" includes any person working pursuant to a contract between a public employer and a private employer and over whom the National Labor Relations Board has declined jurisdiction on the basis that the involved employees are employees of a public employer. The bill removes this inclusion, so this group of employees will no longer have collective bargaining rights.⁸

⁵ R.C. 3517.152.

⁶ R.C. 4117.01(Q) and (R).

⁷ R.C. 4117.01.

⁸ R.C. 4117.01(C).

Several groups are specifically excluded from the definition of "public employee" and thereby excluded from collective bargaining. The bill adds employees of a regional council of government to the list of excluded public employees.⁹

Rights of public employees

The bill removes the right of public employees to bargain collectively with their public employers to determine the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Public employees still have the right to bargain collectively to determine wages, hours, terms, and other conditions of employment and to enter into collective bargaining agreements.¹⁰

For public school employees, the bill removes their authority to bargain collectively for health care benefits.¹¹

The bill also gives public employees the right to refuse any representation by an exclusive representative or an employee organization.¹²

Any agreement that purports to require that employees join any exclusive representative is void and unenforceable under the bill.¹³

Subjects for collective bargaining

The bill expands the subjects that are inappropriate subjects for collective bargaining to include the following:

(1) Employer-paid employee contributions to any of the five public employee retirement systems (see "**Employee contributions to public employee retirement systems**" below);

(2) Health care benefits, except for the amount of the premium for which a public employer and the public employees of the public employer pays. The provision of health care benefits for which the employer is required to pay more than 80% of the cost is not an appropriate subject for collective bargaining. (See "**Health care benefits**," below.)

⁹ R.C. 4117.01(C)(12).

¹⁰ R.C. 4117.01(G), 4117.03(A)(4), and 4117.08(C).

¹¹ R.C. 4117.03(E).

¹² R.C. 4117.03(A)(6).

¹³ R.C. 4117.09(C).

Additionally, the bill permits public employers to not bargain on any subject reserved to the management and direction of the governmental unit, even if the subject affects wages, hours, and terms and conditions of employment.¹⁴

Collective bargaining agreement provisions and approval

Under the bill, no agreement entered into under the Public Employee Collective Bargaining Law can prohibit a public employer that the Auditor of State has declared to be in a state of fiscal emergency from serving a written notice to terminate, modify, or negotiate a collective bargaining agreement. If the public employer sends such a notice, the parties may bargain and enter into a new agreement.¹⁵

The bill prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the public employer, when a reduction in force is necessary, to use an employee's length of service as the only factor to determine whether to lay off the employee.¹⁶

The bill prohibits a public employer from agreeing to a provision in a collective bargaining agreement that requires the employer to pay more than 80% of the cost paid for benefits (see "**Health care benefits**," below).¹⁷

Conflicting provisions of agreements

Continuing law specifies that certain laws prevail over conflicting provisions of agreements between employee organizations and public employers. Some examples include laws pertaining to civil rights, affirmative action, and unemployment compensation. The bill adds laws pertaining to the provision of health care benefits to public employees to the list of laws that prevail over conflicting provisions of agreements.¹⁸

For school districts

The bill prohibits a public employer that is a school district, educational service center, community school, or STEM school from entering into a collective bargaining agreement that does any of the following:

¹⁴ R.C. 4117.08(B), (C), and (E) and 4117.081(C).

¹⁵ R.C. 4117.104.

¹⁶ R.C. 4117.09(F).

¹⁷ R.C. 4117.08(E).

¹⁸ R.C. 4117.10(A).

(1) Requires the public employer to employ a minimum number of total personnel or any category of personnel;

(2) Restricts the authority of the public employer or a district or service center superintendent to assign personnel to school buildings or restricts the authority of a building principal to designate the responsibilities and workloads of personnel assigned to the building;

(3) Establishes a maximum number of students who may be assigned to a classroom or teacher;

(4) Prohibits the public employer from making reductions in teachers or nonteaching employees for specified reasons or adopted in an authorized policy;

(5) Restricts the authority of the public employer, when making personnel reductions, to determine the order of layoffs;

(6) Restricts the authority of the public employer to acquire noneducational services from another public or private entity through competitive bidding;

(7) Otherwise relinquishes, impairs, or restricts the managerial rights and responsibilities of the public employer.

The bill requires a collective bargaining agreement entered into between a public employer that is a school district, educational service center, community school, or STEM school and that public employer's employees to comply with all applicable state or local laws or ordinances regarding wages, hours, and terms and conditions of employment of public employees, except that the collective bargaining agreement may include a provision that conflicts with an applicable law or ordinance if the provision establishes benefits that are less than the benefits conferred by the law or ordinance and the law or ordinance has not been expressly deemed to prevail over the conflicting provision (see "**Conflicting provisions of agreements**," above). The bill declares void any provision of the agreement that conflicts and that does not fulfill the exception.¹⁹

Considerations during negotiations

During negotiations between a public employer and an exclusive representative, the bill requires the parties to consider, for purposes of determining the ability of the public employer to pay for any terms agreed to during collective bargaining, only the financial status of the public employer at the time period surrounding the negotiations. The parties may not base the ability of the public employer to pay for those terms on

¹⁹ R.C. 4117.081.

any potential future increase in the income of the public employer that would only be possible by the employer obtaining funding from an outside source, including, but not limited to, the passage of a levy or a bond issue.²⁰

Dispute resolution procedures

The bill makes several changes to the procedures that govern the settlement of disputes between an exclusive representative and a public employer concerning collective bargaining agreements.

Duty to bargain

The bill removes any requirement that the public employer and exclusive representative collectively bargain on the continuation, modification, or termination of a provision of an existing agreement if those issues are being addressed for anything other than a successor agreement. The bill specifically allows the parties to refuse to collectively bargain on these issues under the same circumstances. Continuing law requires the parties to enter into collective bargaining under all other circumstances upon receiving a written notice from the other party of the proposed termination, modification, or successor agreement.²¹

Settlement procedures, mediation

Under continuing law, when a public employer and an exclusive representative are unable to reach an agreement in collective bargaining, they can submit the issues in dispute to any mutually agreed upon settlement procedure. The bill removes a requirement that the parties make the submission for a settlement procedure at any time prior to 45 days before the expiration date of the collective bargaining agreement.²² If, 50 days before the expiration date of the collective bargaining agreement, the parties are unable to reach an agreement, continuing law permits either party to request the State Employment Relations Board (SERB) to intervene. If the public employer and exclusive representative cannot agree on the issues in the course of good faith bargaining for 90 days under the bill, SERB must appoint a mediator to assist the parties in the collective bargaining process.²³ Current law describes this situation as an "impasse"; the bill establishes criteria for determining whether an impasse exists.

²⁰ R.C. 4117.08(D).

²¹ R.C. 4117.03(A)(4), 4117.08(A) and (B), 4117.081(E), 4117.14(B), and a conforming change in R.C. 4117.01(C).

²² R.C. 4117.14(C).

²³ R.C. 4117.14(C).

If SERB appoints a mediator, either the public employer or the exclusive representative can request the appointment of a fact-finding panel to gather facts and make recommendations for the resolution of the matter. The fact-finding panel's finding of fact and recommendations on the unresolved issues must be sent to the public employer, the employee organization, and SERB no later than 30 days (increased from 14 under current law) after the appointment of the panel, unless the parties mutually agree to an extension. The bill requires the fact-finding panel to include with its findings of fact and recommendations a written report explaining how each of the factors described in "**Citizens' conciliation council**," above, factored into the panel's findings and recommendations.²⁴

With respect to public employees who are permitted to strike, under continuing law, not later than seven days after the findings and recommendations are sent, the legislative body and the employee organization may reject the fact-finding panel's recommendations. If neither party rejects the recommendations, the recommendations constitute the final resolution of the disputed issues and a collective bargaining agreement must be executed between the parties. If either of those entities rejects the recommendations, the bill permits the public employer to implement, in whole or in part, any recommendation of the fact-finding panel approved by the legislative body.²⁵

With respect to public employees who are not permitted to strike (see "**Background--Employees who are not permitted to strike**," below), however, the bill establishes a different procedure. Under the bill, the legislative body and the public employee organization must actively accept the recommendations, within the same time that rejections must be made for other employees, by a three-fifths vote of each entity's membership in order for the recommendations to go into effect. If either party does not accept the recommendations, SERB must publicize the findings of fact and recommendations of the fact-finding panel just as it must do under continuing law when either the legislative body or the employee organization reject the panel's recommendations for other public employees. SERB also must publicize the terms of the last collective bargaining agreements offered by the parties. The bill requires either of the following when either party does not accept the panel's recommendations: (1) the parties must execute a collective bargaining agreement that contains the same terms as the collective bargaining agreement that was in effect prior to the appointment of the fact-finding panel, to continue in effect for one year, or (2) the public employer can implement, in whole or in part, any recommendation of the panel approved by the legislative body, while bargaining continues. If the negotiations are initial negotiations

²⁴ R.C. 4117.14(C)(3) to (5).

²⁵ R.C. 4117.14(C)(6)(a).

between a public employer and an exclusive representative, the bill provides for either of the following: (1) no collective bargaining agreement can be executed between the parties and the parties cannot attempt to negotiate a collective bargaining agreement again for one year, or (2) the public employer can implement in whole or in part any recommendation of the fact-finding panel approved by the legislative body while bargaining continues.²⁶

Right to strike; conciliation

If the parties are unable to reach agreement within seven days after either SERB publicizes the findings and recommendations of the fact-finding panel or the collective bargaining agreement, if one exists, has expired, most public employees have the right to strike provided certain procedures are followed.

The bill expressly permits a public employer to hire any of the following people to replace any public employee who participates in a strike (whether an authorized or unauthorized strike):

- (1) Temporary replacement workers;
- (2) Permanent replacement workers;
- (3) Employees who are not represented by an employee organization;
- (4) Contract employees;
- (5) Employees who are members of the bargaining unit who choose to work instead of participating in the strike.²⁷

Under current law, employees who do not have the right to strike instead have to submit the matter to a final offer settlement procedure with a conciliator. That procedure must be administered in accordance with certain guidelines specified in law. The bill removes the final offer settlement procedure requirement.²⁸

Alternative dispute resolution--consideration of all employees' compensation

If an alternative dispute resolution procedure is used to resolve an issue involving the compensation of public employees, the bill requires the individual administering the alternative dispute resolution procedure to take into account the

²⁶ R.C. 4117.14(C)(6)(b).

²⁷ R.C. 4117.15(D).

²⁸ R.C. 4117.14(D) and conforming changes in divisions (G) and (H).

compensation paid by the public employer to public employees who are not members of the bargaining unit represented by the exclusive representative or who are members of the bargaining unit but who are not members of the exclusive representative.²⁹

Citizens' conciliation council

The bill removes a citizens' conciliation council's authority to take into consideration the effect of the adjustments on the normal standard of public service and adds a requirement to consider as a factor the compensation paid by the public employer to the public employer's public employees who are not members of the bargaining unit represented by the exclusive representative or who are members of that bargaining unit but are not members of the exclusive representative.³⁰

Under continuing law, a citizens' conciliation council, which is a mutually agreed to alternative dispute resolution procedure, must resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following factors:

(1) Past collectively bargained agreements, if any, between the parties;

(2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The interests and welfare of the public and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(4) The lawful authority of the public employer;

(5) The stipulations of the parties;

(6) Such other factors, not confined to those listed here, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or private employment.

²⁹ R.C. 4117.14(E).

³⁰ R.C. 4117.14(G).

Publication requirements

The bill requires SERB and public employers to post in a conspicuous location on the web site maintained by SERB or the employer, respectively, the terms of the last collective bargaining agreement offered by the public employer and the terms of the last collective bargaining agreement offered by the exclusive representative at specific times. If the parties are unable to reach agreement in the course of negotiation and submit the issues in dispute to any mutually agreed upon dispute settlement procedure, then the employer must promptly post. If the parties ask SERB to intervene in the negotiations and if SERB appoints a mediator, then SERB and the employer must promptly post. If either party requests the appointment of a fact-finding panel, then SERB and the employer must promptly post. If the public employer and exclusive representative have not entered into a new collective bargaining agreement seven days after the expiration date of a collective bargaining agreement or after the expiration of a 60-day negotiation period, or a 90-day negotiation period for an initial collective bargaining agreement, SERB and the employer must promptly post.³¹

Self-interest

The bill prohibits a public official or employee from participating on behalf of a public employer in the collective bargaining process with respect to any matter in which the official or employee, or the immediate family of the official or employee, has a direct interest in the outcome of the matter. "Immediate family" is a spouse residing in the person's household or any dependent child.³²

Employee compensation reports

Beginning with the first collective bargaining agreement entered into on or after the bill's effective date between a public employer and an exclusive representative, and for each collective bargaining agreement entered into after that time, the bill requires each public employer who is a party to a collective bargaining agreement to submit a report to SERB concerning compensation paid to employees under the collective bargaining agreement. The report must list both of the following:

(1) Each provision in the collective bargaining agreement that affects the compensation paid by the public employer to its public employees;

³¹ R.C. 4117.14(C), (C)(2), (C)(3), and (J).

³² R.C. 4117.20(B) and 102.01(D).

(2) A description of the changes in compensation paid to the public employer's public employees that are not addressed in the collective bargaining agreement but will occur during the time period the collective bargaining agreement is in effect;

(3) Any material terms of the agreement.

The bill defines "compensation" as wages, salary, and other earnings paid to a public employee by reason of employment. "Compensation" includes all of the following that are provided by a public employer to a public employee: (1) allowances for food or drink, (2) allowances or stipends for clothing, (3) compensation in addition to base salary for labor performed or services rendered by the public employee, including any additional compensation paid for attending an event that occurs outside the public employee's normal work schedule, (4) payments for length of service, (5) allowances for dry cleaning services, (6) insurance coverage, including health insurance, vision insurance, dental insurance, disability insurance, or life insurance, and (7) anything of value given to a public employee by a public employer for labor performed or services rendered by the public employee.

The employer must submit the required report to SERB within 30 days after entering into the collective bargaining agreement. In that same time, the employer also must post a copy of the report in a conspicuous manner on the employer's web site. SERB also must post a copy of the report in a conspicuous manner on its web site upon receipt of the report.

If a change in compensation is to occur during the time period a collective bargaining agreement is in effect and that change was not included in the report submitted to SERB, or if the public employer and exclusive representative enter into a modified collective bargaining agreement during that time period, the public employer must submit an updated report to SERB not less than five days before the change is to take effect. The employer also must post the updated report in a conspicuous manner on its web site not less than five days before the change is to take effect. Upon receiving the updated report, SERB must post a copy of the report in a conspicuous manner on its web site as well.³³

Unfair labor practices

Under the bill, expression of any views, argument, or opinion, or the dissemination of any of those items, whether in written, printed, graphic, or visual form, cannot constitute or be evidence of a public employer's or an employee organization's engagement in an unfair labor practice under the Public Employee

³³ R.C. 4117.26.

Collective Bargaining Law if the expression contains no threat of reprisal or force or promise of benefit.³⁴

Liberally construe

The bill repeals the current law requirement that the Public Employee Collective Bargaining Law be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.³⁵

Existing collective bargaining agreements

Generally, the changes to the Public Employee Collective Bargaining Law made by the bill do not apply to agreements entered into before the effective date of the bill.³⁶ The bill does permit public employers to set aside any provision of a collective bargaining agreement in existence prior to the effective date of the bill if the Governor declares the state to be in a state of fiscal emergency, the Auditor of State declares a public entity or a school district to be in a state of fiscal emergency, or a conservator is appointed for a state university or college. The bill declares that the public purpose allowing a public employer to set aside provisions of a collective bargaining agreement in existence of the effective date of the bill is that given the current difficult economic climate a public employer who is in a state of fiscal emergency needs the flexibility to adjust payroll and staffing levels to ensure that core services are provided to the people of Ohio. Additionally, a public employer should not be hampered by provisions in a collective bargaining agreement to which the public employer did not necessarily fully agree.³⁷

Public employee pay

Merit-based pay and elimination of steps

The bill requires merit-based pay for certain employees of the state, its political subdivisions and school districts, and board and commission members. In some cases, the merit-based pay requirement replaces salary schedules that exist under current law, either in statute or with statutory authority. For exempt state employees, part-time state employees, and board and commission members, specifically, and for other

³⁴ R.C. 4117.11(C).

³⁵ R.C. 4117.22.

³⁶ Sections 4 and 8 of the bill.

³⁷ Section 3 of the bill.

persons by reference, the salary schedules that are replaced by the merit-based pay requirement exist in statute, listing specific wage and salary ranges and step values, and containing provisions for progression through the schedule. The bill removes those schedules and all related provisions.³⁸

Some salary schedules under current law do not exist in statute but are established by different governing authorities with statutory authority. In some cases, the bill removes the authority of the governing authority to establish a salary schedule.³⁹ In other cases, the bill retains the duty of the governing authority to establish pay schedules for employees, but requires that pay under those schedules and progression through the same be based upon merit.⁴⁰

Specifically, the bill requires that the following persons be paid a wage or salary based upon merit:

- Any employee whose position is included in the job classification plan that the Director of Administrative Services must establish under continuing law for all positions, offices, and employments the salaries of which are paid in whole or in part by the state;⁴¹
- Any public employee whose wage or salary can be fixed by an appointing authority without reference to the Department of Administrative Services Personnel Law or other parameters, generally;⁴²
- Board and commission members;⁴³
- Part-time employees;⁴⁴
- Exempt employees;⁴⁵

³⁸ R.C. 124.15 and 124.152; see also R.C. 109.33, 120.40, 122.40, and 122.72.

³⁹ R.C. 3317.12 and 3317.14, repealed; R.C. 5126.0220 and 5126.05.

⁴⁰ R.C. 103.74, 122.64, 307.054, 339.06, 339.07, 340.04, 505.38, 505.49, 749.082, and 749.083.

⁴¹ R.C. 124.14(A)(1).

⁴² R.C. 124.14(A)(1).

⁴³ R.C. 124.15(A).

⁴⁴ R.C. 124.15(C).

⁴⁵ R.C. 124.152.

- Regular full-time employees in positions assigned to classes within the instruction and education administration, except certificated employees on the instructional staff of the State School for the Blind or the State School for the Deaf, whose positions are scheduled to work on the basis of an academic year rather than a full calendar year;⁴⁶
- Correctional Institution Inspection Committee staff, excluding the Director;⁴⁷
- Assistants, stenographers, and clerks that the Attorney General appoints to carry out the Charitable Trust Law, to be fixed by the Attorney General;⁴⁸
- Members of the Development Financing Advisory Council;⁴⁹
- Employees of the Department of Development, Division of Economic Development;⁵⁰
- Members of the Minority Development Financing Advisory Board;⁵¹
- Seasonal and casual employees in the service of the state, except for elected officials; legislative employees; employees of the Legislative Service Commission; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; employees of the courts; employees of the Bureau of Workers' Compensation whose compensation the Administrator establishes; or employees of an appointing authority authorized by law to fix the compensation of those employees;⁵²
- Employees who are paid directly by warrant of the Director of Budget and Management and who are serving in a position that the Director of

⁴⁶ R.C. 124.15(F).

⁴⁷ R.C. 103.74.

⁴⁸ R.C. 109.33.

⁴⁹ R.C. 122.40.

⁵⁰ R.C. 122.64.

⁵¹ R.C. 122.72.

⁵² R.C. 124.14(I).

Administrative Services has determined impracticable to include in the state job classification plan, except for elected officials; legislative employees; employees of the Legislative Service Commission; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; employees of the courts; employees of the Bureau of Workers' Compensation whose compensation the Administrator establishes; or employees of an appointing authority authorized by law to fix the compensation of those employees;⁵³

- Teachers employed by a city, exempted village, local, or joint vocational school district;⁵⁴
- The Director of the State Lottery Commission;⁵⁵
- The Executive Director of the Casino Control Commission, salary to be determined by the Casino Control Commission;⁵⁶
- Only the two Self-Insuring Employers Evaluation Board members who are not also members of the Commission;⁵⁷
- The Executive Director of the Accountancy Board;⁵⁸
- Each public utilities commissioner;⁵⁹
- The Consumer's Counsel;⁶⁰

⁵³ R.C. 124.14(H).

⁵⁴ R.C. 3306.01, 3317.01, 3317.018, 3317.11, 3317.13, 3319.08, 3319.085, 3319.088, 3319.10, 3319.11, and 3319.14; R.C. 3317.12 and 3317.14, repealed.

⁵⁵ R.C. 3770.02.

⁵⁶ R.C. 3772.06.

⁵⁷ R.C. 4123.352.

⁵⁸ R.C. 4701.03.

⁵⁹ R.C. 4905.10(E).

⁶⁰ R.C. 4911.07.

- Physician specialists in the Department of Mental Health, pay to be fixed by the Director of Mental Health;⁶¹
- Employees of each county board of developmental disabilities;⁶²
- Employees of the board of trustees of a joint emergency medical services district.⁶³

Despite the removal of the statutorily specified salary schedules in R.C. 124.15 and 124.152, the bill continues to require that the following persons be paid under certain salary schedules as those schedules existed immediately prior to the bill's effective date:

- Up to five employees in policy development and implementation positions at the Office of Budget and Management; the Department of Commerce; the Department of Administrative Services; the Department of Transportation; the Department of Agriculture; the Department of Natural Resources; the Department of Health; the Department of Job and Family Services; the Department of Public Safety; the Department of Mental Health; the Department of Developmental Disabilities; the Department of Insurance; the Department of Development; the Department of Youth Services; the Department of Rehabilitation and Correction; the Environmental Protection Agency; the Department of Aging; the Department of Alcohol and Drug Addiction Services; the Department of Veterans Services; the Department of Taxation; the Department of the Adjutant General; the Department of Education; the Ohio Board of Regents; the Bureau of Workers' Compensation; the Industrial Commission; the State Lottery Commission; and the Public Utilities Commission of Ohio must be paid in reference to those former schedules. The head of each agency or department must set the compensation for those employees at a rate that is not less than the minimum compensation specified in Pay Range 41 but not more than the maximum compensation specified in Pay Range 44 of Salary Schedule E-2 prescribed in the version of R.C. 124.152 in effect immediately prior to the bill's effective date.⁶⁴

⁶¹ R.C. 5119.09.

⁶² R.C. 5126.24.

⁶³ R.C. 307.054.

⁶⁴ R.C. 124.11(A)(26).

- The attorney-inspector and control-bid attorneys in the Division of Securities of the Department of Commerce must be paid at a rate not less than Pay Range 47 in Schedule E-2 of the version of R.C. 124.152 in effect immediately prior to the bill's effective date.⁶⁵
- The Commissioner of Securities must be paid at a rate not less than Pay Range 47 in Schedule E-2 of the version of R.C. 124.152 in effect immediately prior to the bill's effective date.⁶⁶
- Personnel conducting an examination of any insurer's financial affairs must be paid at the rates provided in the Examiners' Handbook published by the National Association of Insurance Commissioners or the rates that would have been applicable to the personnel under repealed salary schedule prescribed in the version of R.C. 124.15 or 124.152 in effect immediately prior to the bill's effective date, whichever rate is higher.⁶⁷

Public employee job classifications

In accordance with the bill's requirement for merit-based pay and the removal of statutorily provided salary schedules, the bill removes the authority of the Director of Administrative Services to assign classes of public employment to appropriate pay ranges.⁶⁸ The Director must still establish a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state. And the Director also must group jobs within a classification so that the positions are similar enough in duties and responsibilities to be described by the same title, under continuing law. But the Director no longer is required, under the bill, to assign those classifications to a pay range.⁶⁹

Pay schedules

Under the bill, the salaries of the following officeholders will no longer have to be paid on a biweekly basis, with amounts computed on an hourly basis: (1) Governor,

⁶⁵ R.C. 1707.36.

⁶⁶ R.C. 1707.46.

⁶⁷ R.C. 3901.07.

⁶⁸ R.C. 124.14(A)(1).

⁶⁹ R.C. 124.14(A).

(2) Lieutenant Governor, (3) Secretary of State, (4) Auditor of State, (5) Treasurer of State, and (6) Attorney General.⁷⁰

Pay supplements for certain state employees

The bill removes two pay supplement provisions that are currently available to certain public employees. The bill also removes guidelines for computing those and other pay supplements, which are based on salary schedules that also are removed by the bill.

One pay supplement provision that the bill removes applies to employees of the office of the Treasurer of State who are exempt from collective bargaining coverage, and makes available to those employees a merit pay supplement of up to 1.5% of their step rate.⁷¹ The removed other provision applies, as do most of the other pay supplement provisions, which were retained by the bill, to employees paid in accordance with Schedule B of R.C. 124.15 or Schedule E-1 or Schedule E-1 for Step 7 only of R.C. 124.152. The removed provision makes available to those employees an automatic, annual salary adjustment after five years of service with the state or any of its political subdivisions.⁷²

The remaining pay supplement provisions that continue to be available to employees who would be paid in accordance with Schedule B of R.C. 124.15 or Schedule E-1 or Schedule E-1 for Step 7 only of R.C. 124.152 in effect immediately prior to the bill's effective date include a special hazard salary adjustment, pay for returning to work after termination of the employee's regular work schedule, a pay supplement to attract bilingual employees, shift differential, long-term higher level work, a professional achievement pay supplement, and an educational pay supplement.⁷³

The bill retains the authority of a state agency, board, or commission to give supplementary compensation to a licensed physician in its employ but removes its authority to establish a schedule for the supplementary compensation.⁷⁴

⁷⁰ R.C. 141.01.

⁷¹ R.C. 124.181(O).

⁷² R.C. 124.181(A) and (E).

⁷³ R.C. 124.181.

⁷⁴ R.C. 124.181(K).

Public employee benefits

Health care benefits

All public employees

Under the bill, public employees, including employees of the state and any of its political subdivisions, must be responsible for at least 20% of the cost of the provision of health care benefits provided by through Department of Administrative Services. "Health care benefits" include hospitalization, surgical, major medical, dental, vision, and medical care, disability, hearing aids, prescription drugs, or a combination of these benefits.⁷⁵

Jointly administered trust funds

Under continuing law, any public employer that is a political subdivision and any collective bargaining representative of the political subdivision's employees may agree in a collective bargaining agreement that health care benefits be provided through a contribution to a jointly administered trust fund. The Department of Administrative Services may enter into an agreement with a jointly administered trust fund to provide self-insurance of health care benefits. The bill requires any health care benefits provided through this fund to be the same as the health care benefits provided through the Department of Administrative Services if self-insuring, or the same as the health care benefits provided under a contract entered into between the political subdivision and the insurance company providing those benefits. The Director of Administrative Services or the political subdivision is required by the bill to make any contract for health care benefits available to the board of trustees of the jointly administered trust fund.⁷⁶

School district employees

Under current law, health care benefits for employees of the board of education of any school district are governed by the School Employees Health Care Board and the Public Schools Health Care Advisory Committee. The bill abolishes those two entities, as well as the School Employees Health Care Fund from which benefits are paid under current law. Upon the bill's effective date, all of the assets and liabilities of the Board and the Committee transfer to the Department of Administrative Services and the Department must complete any business of the Board or Commission as the Board or

⁷⁵ R.C. 124.81(H) and (I) and 124.82(F).

⁷⁶ R.C. 124.81, 505.60, and 1545.071.



Commission would. Also on that date, all employees of the Board or Committee cease to hold their positions of employment.⁷⁷

Instead, the bill permits the boards of education of Ohio's school districts to govern health care benefits for employees in the same way that the governing board of any public institution of higher education can under Ohio law. The boards of education can procure health care plans for their employees and their employees' dependents and pay up to 80% of the premiums for those plans. They must keep certain people on the payroll for purposes of providing health insurance, paying all or part of the cost of that coverage except in certain circumstances. Also, it seems the plans would have to comply with Ohio law governing public employee benefit plans, including the coverage mandates that apply to those plans.⁷⁸

The bill permits a board member to be covered under a health care plan procured by the board, at the member's option. The health care plan provider (i.e., the insurer) must certify the cost of coverage for the board member, and the board member must pay that amount to the school district. This requirement on the board member to pay the cost of the plan seems parallel to the board member's duty under current law to pay "all premiums." Under the bill, the board of education, instead of the Health Care Board under current law, can determine the manner of payment.⁷⁹

The bill also removes authority for public school employees to bargain collectively for health care benefits.⁸⁰

Employee contributions to public employee retirement systems

With regard to the five state public retirement systems, the bill prohibits a public employer from paying the statutorily required employee contribution on behalf of an employee. Public employees who contribute to the Public Employees Retirement System, the School Employees Retirement System, or the State Teachers Retirement System must pay 8% of their earnable salary or compensation to those systems under continuing law, and may be required to pay up to 10% of their compensation at the option of the appropriate governing board. Contributors to the Ohio Police and Fire Pension Fund and the State Highway Patrol Retirement System must pay 10% of their income to the appropriate retirement system. Currently, employee contributions to the

⁷⁷ R.C. 9.901, repealed; Section 6 of the bill.

⁷⁸ R.C. 9.90, 3311.19, 3313.12, 3313.202, and 3313.33; R.C. 9.901, repealed.

⁷⁹ R.C. 3313.202.

⁸⁰ R.C. 4117.03(E).

State Teachers Retirement System are the only contributions of those listed above that an employer has express authority to pay on behalf of an employee.

Employee contributions to the retirement systems listed above can be treated as employer contributions for the purposes of state and federal income tax deferred compensation provisions, under the bill.⁸¹

Board of education employee leaves

The bill abolishes the sick leave, leave of absence, and assault leave provided to all school employees, the personal leave and vacation leave provided to nonteaching employees, and the professional improvement leave provided to teachers.⁸² The bill instead requires the board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center to adopt a policy to provide leave with pay for the employees of the board who are not covered by a collective bargaining agreement. The board must include all of the following in the policy:

- (1) The types of leave the employee may use;
- (2) The reasons for which an employee may use the types of leave the board grants under the policy;
- (3) The amount of each type of leave an employee may receive;
- (4) The manner in which an employee accumulates each type of leave;
- (5) The maximum amount of each type of leave that an employee may accumulate;
- (6) The manner in which any previously accumulated leave of a person who has been separated from public service will be placed to the employee's credit upon re-employment in the public service;
- (7) The manner in which a teacher or nonteaching school employee who transfers from one public agency to another will be credited with the unused balance of the teacher's or nonteaching employee's accumulated leave up to the maximum of the leave accumulation permitted in the public agency to which the employee transfers;

⁸¹ R.C. 145.47, 742.31, 3307.27, 3309.47, and 5505.15.

⁸² R.C. 124.38, 3319.084, 3319.13, 3319.131, 3319.141, 3319.142, and 3319.143.

(8) Whether, and the manner in which, teachers and nonteaching school employees who render part-time, seasonal, intermittent, per diem, or hourly service will be entitled to leave for the time actually worked;

(9) The manner in which the board provides leave;

(10) Any other issue relating to the use and availability of leave.

An employee must obtain approval of the responsible administrative officer to use leave in accordance with the leave policy the board adopts.

The bill permits a board, in its policy, to require an employee to furnish a written, signed statement on forms prescribed by such board to justify the use of any sick leave granted under the policy. If the board requires the employee to submit a statement from a physician, falsification of a statement is grounds for suspension or termination of employment.

The board may not grant or credit sick leave to a teacher after the teacher's retirement or termination of employment in the policy.

The bill permits each board of education to establish regulations for the entitlement, crediting, and use of leave by those substitute teachers employed by such board who are not otherwise entitled to sick leave.

The leave policy adopted by the board does not interfere with any unused sick leave credit in any agency of government where attendance records are maintained and credit has been given for unused sick leave. Unused sick leave accumulated by teachers and nonteaching school employees prior to the effective date of the bill, will continue to be credited toward the maximum accumulation permitted under a policy adopted under the bill.

The board is required to post the policy in a conspicuous location on the web site maintained by the board. The board is required to review the policy on an annual basis and to post any changes to that policy in a conspicuous location on that web site.

The bill permits the board and an exclusive representative to agree to apply the policy to employees covered by a collective bargaining agreement between the two parties.⁸³

The bill requires all of the following types of leave to be awarded in accordance with the policy adopted by the board:

⁸³ R.C. 3319.141 and conforming changes in R.C. 124.38 and 124.39.

- (1) Administrative leave with pay;⁸⁴
- (2) Sick leave or leave of absence for the board treasurer;⁸⁵
- (3) Vacation leave for the board treasurer;⁸⁶
- (4) Vacation leave for the superintendent;⁸⁷
- (5) Sick leave or leave of absence for the superintendent;⁸⁸
- (6) Vacation leave for assistant superintendents, principals, assistant principals, and other administrators;⁸⁹
- (7) Vacation leave for internal auditors;⁹⁰
- (8) Sick leave for substitute teachers assigned to one specific teaching position who have served at least 60 days in that position;⁹¹
- (9) Leave of absence for a teaching or regular nonteaching school employee;⁹²
- (10) Professional leave for members of the educator standards board, the subcommittee on standards for superintendents, and the subcommittee on standards for school treasurers and business managers;⁹³
- (11) Vacation leave for nonteaching employees.⁹⁴

⁸⁴ R.C. 124.388.

⁸⁵ R.C. 3313.23.

⁸⁶ R.C. 3313.24.

⁸⁷ R.C. 3319.01.

⁸⁸ R.C. 3319.011.

⁸⁹ R.C. 3319.02.

⁹⁰ R.C. 3319.06.

⁹¹ R.C. 3319.10.

⁹² R.C. 3319.13.

⁹³ R.C. 3319.63.

⁹⁴ R.C. 3319.084.

Continuing contracts for teachers

The bill abolishes continuing contracts for teachers, except for those continuing contracts entered into prior to the effective date of the bill. The bill instead requires classroom teachers to receive limited contracts. A limited contract for a classroom teacher has a term of five years if the contract was entered into prior to the effective date of the bill. The term is one year if the contract is entered into on or after the effective date of the bill.⁹⁵

Reductions in the public sector work force

State and county employees

In general, the bill limits the use of seniority and length of service in making decisions regarding layoffs. Continuing law requires that the Director of Administrative Services adopt rules establishing a method for determining layoff procedures and an order of layoff of state and county employees. Under the bill, the order of layoff under those rules can still be based in part on length of service but cannot be based solely on the employee's length of service. Additionally, the bill requires, instead of allows, efficiency in service, appointment type, and other appropriate factors to be considered.⁹⁶

The bill also prohibits a county transit board that establishes its own civil service organization before October 25, 1995, from using an employee's length of service as the only factor in deciding layoffs.⁹⁷

School district employees

School districts are similarly limited in their considerations concerning a reduction in work force. With regard to teaching and nonteaching employees, the bill removes the authority of school districts and school district financial planning and supervision commissions to give preference to those employees who have greater seniority. Teachers and nonteachers with continuing contracts receive preference under continuing law. The bill states that after giving preference to continuing contracts, the board of a city, exempted village, local, or joint vocational school district is required to consider the relative quality of performance the principal factor in determining the order of reductions. With respect to teachers, the board is required to measure the quality of performance by considering the level of license that the teacher holds,

⁹⁵ R.C. 3319.08, 3319.11, 3319.17, and 3319.172.

⁹⁶ R.C. 124.322, 124.325, and 4117.09(F).

⁹⁷ R.C. 306.04.

whether the teacher is considered a "highly qualified teacher," the value-added measure the board uses to determine the performance of the students assigned to the teacher's classroom, the results of the teacher's performance evaluation, and any other criteria established by the board. Teachers and nonteaching employees whose continuing contracts are suspended by a city, exempted village, local, or joint vocational school district, however, have the right under continuing law to be brought back in the order of seniority.⁹⁸

Township firefighters

The bill removes a provision under which the reduction of a township's firefighting force, due to township territory being annexed by a municipal corporation, must be made under current law by dismissal of firefighters in the inverse order of seniority. The annexing municipal corporation must continue to offer employment to those dismissed firefighters as employment becomes available, but not in the inverse order of dismissal as is required under current law.⁹⁹

Retention points

The bill requires an appointing authority to calculate retention points based on length of service, efficiency of service, and similar factors. It is unclear who calculates these retention points under current law, but the Department of Administrative Services is required under current law to verify the retention points based on length of continuous service and efficiency in service.¹⁰⁰ The bill also authorizes the appointing authority to adopt rules to determine the order of layoffs between two employees who have identical retention points. Under continuing law, however, the Director of Administrative Services is responsible for establishing a system for assigning retention points for state employees and determining the order of layoffs when two state employees have identical retention points. The bill requires the system adopted by the Director to permit an appointing authority to consider the number of management and nonmanagement employees when determining which employees to lay off.¹⁰¹

⁹⁸ R.C. 3316.07(A)(11), 3319.17(C), 3319.172, and 3319.18.

⁹⁹ R.C. 709.012.

¹⁰⁰ R.C. 124.325(A).

¹⁰¹ R.C. 124.325(C).

Other

The bill makes additional technical, conforming, and nonsubstantive changes.¹⁰²

Background--Employees who are not permitted to strike

The following public employees do not have the right to strike:

- (1) Members of a police or fire department;
- (2) Members of the State Highway Patrol;
- (3) Deputy sheriffs;
- (4) Dispatchers employed by a police, fire, or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units;
- (5) An exclusive nurse's unit;
- (6) Employees of the State School for the Deaf or the State School for the Blind;
- (7) Employees of any public employee retirement system;
- (8) Corrections officers;
- (9) Guards at penal or mental institutions;
- (10) Special police officers for the Department of Mental Health or the Department of Developmental Disabilities;
- (11) Psychiatric attendants employed at mental health forensic facilities;
- (12) Youth leaders employed at juvenile correctional facilities;

¹⁰² R.C. 102.02, 120.40, 121.40, 124.03, 124.11(D), 124.14, 124.15, 124.182, 124.327, 124.34, 124.382, 124.82, 124.823, 125.211, 126.32, 141.01, 141.02, 145.012, 175.05, 917.03, 927.69, 991.02, 1349.71, 1509.35, 1513.182, 1513.29, 1551.35, 3301.03, 3304.12, 3313.42, 3319.18, 3332.03, 3701.33, 3733.49, 3737.81, 3737.90, 3773.33, 3781.07, 3901.07, 4112.03, 4117.02, 4121.121, 4121.38, 4123.352, 4301.07, 4517.30, 4701.05, 4703.03, 4703.31, 4709.04, 4715.06, 4717.02, 4723.02, 4725.06, 4725.46, 4729.03, 4730.05, 4731.03, 4732.05, 4733.05, 4734.03, 4738.09, 4741.02, 4747.03, 4753.04, 4755.01, 4757.05, 4758.12, 4759.03, 4761.02, 4763.02, 4775.05, 4906.02, 5119.071, 5119.09, 5123.08, 5139.02, 5503.03, 5703.09, 5705.412, and 5907.02.

(13) Members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board.¹⁰³

¹⁰³ R.C. 4117.14(D) and 4117.15(A).

