



Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

H.B. 654

130th General Assembly
(As Introduced)

Reps. Schuring and Slesnick, Becker, Brenner, Driehaus, Fedor, Hood, R. Hagan, Mallory, Reece, Ruhl, Sykes

BILL SUMMARY

- Prohibits an appointing authority from inquiring into or considering the criminal background of an applicant to a position in the service of a public employer until the applicant has been selected for appointment and the appointing authority is prepared to make an offer of employment.
- Authorizes an appointing authority to notify an applicant of any Ohio statute or federal law that disqualifies an individual with a particular criminal history from employment in a particular position.
- Establishes factors an appointing authority must consider before denying an applicant employment by a public employer because of a prior conviction of or plea of guilty to an offense.
- Prohibits criminal background inquiries in state civil service examination applications.
- Prohibits a felony conviction from being used against an officer or employee when a public employer is undertaking certain employment practices, unless the conviction occurs while the officer or employee is employed in the civil service.

CONTENT AND OPERATION

Limitation on considering criminal background of applicant for employment by a public employer

The bill, notwithstanding any provision of the Revised Code to the contrary, prohibits an appointing authority from inquiring into or considering the criminal

background of an applicant to a position in the service of a state agency or political subdivision of the state (collectively, "public employer") until the applicant has been selected for appointment and the appointing authority is prepared to make an offer of employment. However, the bill authorizes an appointing authority to notify an applicant of any provision of the Revised Code or federal law that disqualifies an individual with a particular criminal history from employment in a particular position.¹

Under the bill, an "appointing authority" is an officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution. A "state agency" is any organized body, office, agency, institution, or other entity established by the laws of Ohio for the exercise of any function of government. And the bill defines a "political subdivision" as a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.² The bill may not apply to municipal corporations because of the home rule authority granted to them under the Ohio Constitution (see **COMMENT**, below).

Except if an applicant is specifically disqualified from employment by any provision of the Revised Code or under federal law because of the prior conviction of or plea of guilty to a particular offense, the bill prohibits an applicant from being disqualified from employment in the service of a governmental entity³ based solely upon the prior conviction of or plea of guilty to an offense. An appointing authority may deny an applicant employment in the service of a public employer by reason of the prior conviction of or plea of guilty to an offense only after the appointing authority has considered all of the following factors:

- (1) Whether the offense directly relates to the responsibilities of the position for which the applicant applied;
- (2) The nature and severity of the offense;
- (3) The age of the applicant at the time the applicant committed the offense;
- (4) The date the offense was committed;
- (5) How long the person has lived while not incarcerated or under correctional supervision without having any additional, subsequent convictions;

¹ R.C. 9.73(A), (B), and (C).

² R.C. 9.73(A).

³ Perhaps this term should be "public employer."



(6) Any documentation or testimony demonstrating the applicant's rehabilitation.⁴

If a conviction of or plea of guilty to an offense is used as a basis for the rejection of an applicant, the appointing authority must state the rejection in writing and specifically state the evidence presented and reasons for rejection. The appointing authority must send a copy of the rejection by registered mail to the applicant.

An appointing authority is prohibited from using the record of an applicant's arrest that is not followed by a conviction or plea of guilty in connection with an application for employment.⁵

Limitation on criminal background inquiries in state civil service exam applications

When a person is applying for a job of original appointment in the state civil service, the Director of Administrative Services requires the person to complete an application for an examination. The bill prohibits the application from inquiring into the criminal background of the applicant. But the bill authorizes the Director or the Director's designee to notify an applicant of any provision of the Revised Code or federal law that disqualifies an individual with a particular criminal history from employment in a particular position.⁶

The bill removes two reasons from the list of various reasons for which the Director or the Director's designee may refuse to appoint or examine an applicant, or, after an examination, may refuse to certify the applicant as eligible. The reasons eliminated are when the applicant has been convicted of a felony or when the applicant has been guilty of infamous or notoriously disgraceful conduct.⁷

The bill prohibits the Director or the Director's designee from inquiring into or considering the criminal history of an applicant when preparing the eligible list of candidates from the returns of examinations for state civil service positions.⁸

⁴ R.C. 9.73(D).

⁵ R.C. 9.73(E) and (F).

⁶ R.C. 124.25.

⁷ R.C. 124.25.

⁸ R.C. 124.26.

Use of felony conviction in employment practices

Resuming a position in the classified civil service

Generally, civil service is divided into the unclassified service and the classified service. An employee who holds a position in the classified service and who is appointed to a position in the unclassified service retains the right to resume the position and status held in the classified service immediately prior to the employee's appointment, under certain circumstances. But the employee forfeits the right to resume a position in the classified service upon transfer to a different agency, or when the employee is removed from the position in the unclassified service due to specific misconduct, such as dishonesty or drunkenness, to name two, or for conviction of a felony.

For an employee to forfeit the right to resume a position in the classified service due to a felony conviction, the bill requires that the conviction occur while the employee is employed in the civil service. This limitation applies when:

(1) A person holds a position in the classified service of the state and is appointed to a position in the unclassified service;⁹

(2) The board of county commissioners appoints a person who holds a certified position in the classified service within the county department of job and family services to the position of administrator, which is in the unclassified service;¹⁰

(3) The Administrator of the Bureau of Workers' Compensation appoints a person who holds a certified position in the classified service within the Bureau to a position of unclassified service within the Bureau;¹¹

(4) An appointing officer appoints a person who holds a certified position in the classified service within the Department of Developmental Disabilities to a position in the unclassified service within the Department;¹²

⁹ R.C. 124.11(D)(3).

¹⁰ R.C. 329.021(C).

¹¹ R.C. 4121.121(B)(2).

¹² R.C. 5123.08.



(5) The Director of Youth Services appoints a person who holds a certified position in the classified service within the Department of Youth Services to a position as a managing officer in the Department, which is in the unclassified service.¹³

Other employment practice limitations

The bill limits when the pay or position of an officer or employee in the classified service of the state, counties, civil service townships, cities, city health districts, general health districts, and city school districts may be reduced, or when the officer or employee may be fined, suspended, or removed, or when longevity is reduced or eliminated. Under current law, these actions may be taken for conviction of a felony. The bill adds that the conviction for a felony must occur while the officer or employee is employed in the civil service. And for conviction of a felony to trigger immediate forfeiture of a person's status as a classified employee in any public employment, the conviction must occur while the person is employed in the civil service.¹⁴

The bill also requires that to use conviction of a felony as a separate basis for reducing pay or position, suspending, or removing an officer or employee, the conviction must occur while the officer or employee is employed in the civil service.¹⁵

COMMENT

The bill may not apply to municipal corporations. Generally, under the Home Rule Amendment to the Ohio Constitution,¹⁶ municipal employment matters are considered to be matters of local self-government. The Ohio Supreme Court has upheld the right of chartered municipal corporations to adopt their own civil service ordinances under their powers of local self-government¹⁷ if the charters clearly and expressly state the intent to supersede and override general state statutes.¹⁸ And the Court has ruled that nonchartered municipal corporations may adopt civil service ordinances under their powers of local self-government that supersede state statutes if the statutory requirements are substantive, rather than procedural, in nature.¹⁹ A

¹³ R.C. 5139.02.

¹⁴ R.C. 124.34.

¹⁵ R.C. 124.34.

¹⁶ Ohio Constitution, art. XVIII, sec. 3.

¹⁷ Ohio Constitution, art. XVIII, secs. 3 and 7.

¹⁸ *State ex rel. Regetz v. Cleveland Civil Serv. Comm.*, 72 Ohio St.3d 167 (1995).

¹⁹ *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma*, 61 Ohio St.2d 375 (1980). In this case, Parma, a noncharter municipal corporation, adopted an ordinance that mandated the compensation of municipal



nonchartered municipal corporation must comply with state statutory requirements that are procedural in nature.

But in some form, a city must provide for a civil service that meets the standards of Article XV, Section 10 of the Ohio Constitution.²⁰ That provision requires that appointments and promotion in the civil service of the state, counties, cities, and city school districts be based upon merit and fitness. There is, however, no such requirement for villages (a municipal corporation with a population of less than 5,000).²¹

Although the courts have established tests with respect to a municipal corporation exercising its home rule authority, the tests are not always consistently applied. It is unclear how a court would rule with regard to a municipal corporation's home rule authority as it relates to the bill.

The following provision of the Ohio Constitution deals with employment and occasionally has been held to overrule a municipal corporation's home rule authority: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power."²² The interplay between this constitutional provision and a municipal corporation's home rule authority has been very fact-specific, often depending upon the issue and the court's sophistication in the area of municipal home rule.²³

HISTORY

ACTION	DATE
Introduced	11-06-14

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employees who were on leaves of absence while in the armed forces, even though the ordinance was at variance with state law.

²⁰ *State ex rel. Bardo v. Lyndhurst*, 37 Ohio St.3d 106 (1988).

²¹ *State ex rel. Giovanello v. Lowellville*, 139 Ohio St. 219 (1942).

²² Ohio Constitution, art. II, sec. 34.

²³ See, e.g., *Lima v. State*, 122 Ohio St.3d 155 (2009) (residency requirements) and *City of Cincinnati v. Correll*, 141 Ohio St. 535 (1943) (barber shop operation hours).

