

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**S. B. No. 176**

**Senator Bocchieri**

**Cosponsors: Senators Stivers, Mumper, Padgett, Cafaro, Clancy, Schaffer,  
Roberts, Niehaus, Mason, Gardner, Fedor, Wilson, Kearney, Miller, D.,  
Grendell, Cates, Schuler, Spada, Schuring, Harris, Miller, R., Goodman,  
Sawyer, Morano, Carey, Buehrer, Coughlin, Jacobson, Austria, Smith, Faber**

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**A B I L L**

To amend sections 2311.07, 2311.08, 2743.03, 3319.13, 1  
5903.02, 5903.99, and 5923.05, to enact section 2  
2743.091, and to repeal sections 124.29 and 3  
5903.01 of the Revised Code to establish specified 4  
employment rights for private sector employees in 5  
the uniformed services, to permit a person 6  
aggrieved under the federal "Uniformed Services 7  
Employment and Reemployment Rights Act" to file a 8  
claim against the person's employer in a state 9  
court, to require the clerk of the Court to give 10  
such action priority on the Court's dockets, and 11  
to prohibit the Court from requiring a plaintiff to 12  
pay court costs. 13

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2311.07, 2311.08, 2743.03, 3319.13, 14  
5903.02, 5903.99, and 5923.05 be amended and section 2743.091 of 15  
the Revised Code be enacted to read as follows: 16

**Sec. 2311.07.** Cases in which there is an issue of fact or 17  
damages to be assessed shall be tried in the order in which they 18  
stand on the trial docket, unless by the consent of parties, or by 19  
the order of the court, they are continued or placed at the end of 20  
the docket, or for good cause shown are especially assigned for 21  
trial or hearing out of their regular order. Actions for wages and 22  
actions pursuant to section 5903.02 of the Revised Code shall be 23  
first in order for trial. 24

**Sec. 2311.08.** The court may assign for trial the cases 25  
triable to a jury, in a series, in the order in which they stand 26  
upon the docket, giving preference always to actions for wages, and 27  
actions pursuant to section 5903.02 of the Revised Code, and cases 28  
not triable to a jury, in a series in like manner. All other cases 29  
shall be heard in the order in which they stand upon the trial 30  
docket, unless the court otherwise directs. 31

**Sec. 2743.03.** (A)(1) There is hereby created a court of 32  
claims. The court of claims is a court of record and has 33  
exclusive, original jurisdiction of all civil actions against the 34  
state permitted by the waiver of immunity contained in section 35  
2743.02 of the Revised Code, exclusive jurisdiction of the causes 36  
of action of all parties in civil actions that are removed to the 37  
court of claims, and jurisdiction to hear appeals from the 38  
decisions of the court of claims commissioners. The court shall 39  
have full equity powers in all actions within its jurisdiction and 40  
may entertain and determine all counterclaims, cross-claims, and 41  
third-party claims. 42

(2) If the claimant in a civil action as described in 43  
division (A)(1) of this section also files a claim for a 44  
declaratory judgment, injunctive relief, or other equitable relief 45  
against the state that arises out of the same circumstances that 46

gave rise to the civil action described in division (A)(1) of this 47  
section, the court of claims has exclusive, original jurisdiction 48  
to hear and determine that claim in that civil action. This 49  
division does not affect, and shall not be construed as affecting, 50  
the original jurisdiction of another court of this state to hear 51  
and determine a civil action in which the sole relief that the 52  
claimant seeks against the state is a declaratory judgment, 53  
injunctive relief, or other equitable relief. 54

(3) In addition to its exclusive, original jurisdiction as 55  
conferred by division (A)(1) and (2) of this section, the court of 56  
claims has exclusive, original jurisdiction as described in 57  
division (F) of section 2743.02 ~~and~~, division (B) of section 58  
3335.03, and division (C) of section 5903.02 of the Revised Code. 59

(B) The court of claims shall sit in Franklin county, its 60  
hearings shall be public, and it shall consist of incumbent 61  
justices or judges of the supreme court, courts of appeals, or 62  
courts of common pleas, or retired justices or judges eligible for 63  
active duty pursuant to division (C) of Section 6 of Article IV, 64  
Ohio Constitution, sitting by temporary assignment of the chief 65  
justice of the supreme court. The chief justice may direct the 66  
court to sit in any county for cases on removal upon a showing of 67  
substantial hardship and whenever justice dictates. 68

(C)(1) A civil action against the state shall be heard and 69  
determined by a single judge. Upon application by the claimant or 70  
the state, the chief justice of the supreme court may assign a 71  
panel of three judges to hear and determine a civil action 72  
presenting novel or complex issues of law or fact. Concurrence of 73  
two members of the panel is necessary for any judgment or order. 74

(2) Whenever the chief justice of the supreme court believes 75  
an equitable resolution of a case will be expedited, ~~he~~ the chief 76  
justice may appoint referees in accordance with Civil Rule 53 to 77  
hear the case. 78

(3) When any dispute under division (B) of section 153.12 of the Revised Code is brought to the court of claims, upon request of either party to the dispute, the chief justice of the supreme court shall appoint a single referee or a panel of three referees. The referees need not be attorneys, but shall be persons knowledgeable about construction contract law, a member of the construction industry panel of the American arbitration association, or an individual or individuals deemed qualified by the chief justice to serve. No person shall serve as a referee if that person has been employed by an affected state agency or a contractor or subcontractor involved in the dispute at any time in the preceding five years. Proceedings governing referees shall be in accordance with Civil Rule 53, except as modified by this division. The referee or panel of referees shall submit its report, which shall include a recommendation and finding of fact, to the judge assigned to the case by the chief justice, within thirty days of the conclusion of the hearings. Referees appointed pursuant to this division shall be compensated on a per diem basis at the same rate as is paid to judges of the court and also shall be paid their expenses. If a single referee is appointed or a panel of three referees is appointed, then, with respect to one referee of the panel, the compensation and expenses of the referee shall not be taxed as part of the costs in the case but shall be included in the budget of the court. If a panel of three referees is appointed, the compensation and expenses of the two remaining referees shall be taxed as costs of the case.

All costs of a case shall be apportioned among the parties. The court may not require that any party deposit with the court cash, bonds, or other security in excess of two hundred dollars to guarantee payment of costs without the prior approval in each case of the chief justice.

(4) An appeal from a decision of the court of claims

commissioners shall be heard and determined by one judge of the court of claims.

(D) The Rules of Civil Procedure shall govern practice and procedure in all actions in the court of claims, except insofar as inconsistent with this chapter. The supreme court may promulgate rules governing practice and procedure in actions in the court as provided in Section 5 of Article IV, Ohio Constitution.

(E)(1) A party who files a counterclaim against the state or makes the state a third-party defendant in an action commenced in any court, other than the court of claims, shall file a petition for removal in the court of claims. The petition shall state the basis for removal, be accompanied by a copy of all process, pleadings, and other papers served upon the petitioner, and shall be signed in accordance with Civil Rule 11. A petition for removal based on a counterclaim shall be filed within twenty-eight days after service of the counterclaim of the petitioner. A petition for removal based on third-party practice shall be filed within twenty-eight days after the filing of the third-party complaint of the petitioner.

(2) Within seven days after filing a petition for removal, the petitioner shall give written notice to the parties, and shall file a copy of the petition with the clerk of the court in which the action was brought originally. The filing effects the removal of the action to the court of claims, and the clerk of the court where the action was brought shall forward all papers in the case to the court of claims. The court of claims shall adjudicate all civil actions removed. The court may remand a civil action to the court in which it originated upon a finding that the removal petition does not justify removal, or upon a finding that the state is no longer a party.

(3) Bonds, undertakings, or security and injunctions, attachments, sequestrations, or other orders issued prior to

removal remain in effect until dissolved or modified by the court 143  
of claims. 144

Sec. 2743.091. If a person brings an action in the court of 145  
claims pursuant to section 5903.02 of the Revised Code or section 146  
4323 of the "Uniformed Services Employment and Reemployment Rights 147  
Act of 1994," 108 Stat. 3149, 38 U.S.C. 4301, et. seq., the clerk 148  
of the court of claims shall give the action priority on the court 149  
of claims' dockets. 150

**Sec. 3319.13.** Upon the written request of a teacher or a 151  
regular nonteaching school employee, a board of education may 152  
grant a leave of absence for a period of not more than two 153  
consecutive school years for educational, professional, or other 154  
purposes, and shall grant such leave where illness or other 155  
disability is the reason for the request. Upon subsequent request, 156  
such leave may be renewed by the board. Without request, a board 157  
may grant similar leave of absence and renewals thereof to any 158  
teacher or regular nonteaching school employee because of physical 159  
or mental disability, but such teacher may have a hearing on such 160  
unrequested leave of absence or its renewals in accordance with 161  
section 3319.16 of the Revised Code, and such nonteaching school 162  
employee may have a hearing on such unrequested leave of absence 163  
or its renewals in accordance with division (C) of section 164  
3319.081 of the Revised Code. Upon the return to service of a 165  
teacher or a nonteaching school employee at the expiration of a 166  
leave of absence, the teacher or nonteaching school employee shall 167  
resume the contract status that the teacher or nonteaching school 168  
employee held prior to the leave of absence. Any teacher who 169  
leaves a teaching position for service in the uniformed services 170  
and who returns from service in the uniformed services that is 171  
terminated in a manner other than as described in section 4304 of 172  
Title 38 of the United States Code, "Uniformed Services Employment 173

and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 174  
4304, shall resume the contract status held prior to entering the 175  
uniformed services, subject to passing a physical examination by 176  
an individual authorized by the Revised Code to conduct physical 177  
examinations, including a physician assistant, a clinical nurse 178  
specialist, a certified nurse practitioner, or a certified 179  
nurse-midwife. Any written documentation of the physical 180  
examination shall be completed by the individual who conducted the 181  
examination. Such contract status shall be resumed at the first of 182  
the school semester or the beginning of the school year following 183  
return from the uniformed services. For purposes of this section 184  
and section 3319.14 of the Revised Code, "uniformed services" and 185  
"service in the uniformed services" have the same meanings as 186  
defined in section ~~5903.04~~ 5923.05 of the Revised Code. 187

Upon the return of a nonteaching school employee from a leave 188  
of absence, the board may terminate the employment of a person 189  
hired exclusively for the purpose of replacing the returning 190  
employee while the returning employee was on leave. If, after the 191  
return of a nonteaching employee from leave, the person employed 192  
exclusively for the purpose of replacing an employee while the 193  
employee was on leave is continued in employment as a regular 194  
nonteaching school employee or if the person is hired by the board 195  
as a regular nonteaching school employee within a year after 196  
employment as a replacement is terminated, the person shall, for 197  
purposes of section 3319.081 of the Revised Code, receive credit 198  
for the person's length of service with the school district during 199  
such replacement period in the following manner: 200

(A) If employed as a replacement for less than twelve months, 201  
the person shall be employed under a contract valid for a period 202  
equal to twelve months less the number of months employed as a 203  
replacement. At the end of such contract period, if the person is 204  
reemployed it shall be under a two-year contract. Subsequent 205

reemployment shall be pursuant to division (B) of section 3319.081 206  
of the Revised Code. 207

(B) If employed as a replacement for twelve months or more 208  
but less than twenty-four months, the person shall be employed 209  
under a contract valid for a period equal to twenty-four months 210  
less the number of months employed as a replacement. Subsequent 211  
reemployment shall be pursuant to division (B) of section 3319.081 212  
of the Revised Code. 213

(C) If employed as a replacement for more than twenty-four 214  
months, the person shall be employed pursuant to division (B) of 215  
section 3319.081 of the Revised Code. 216

For purposes of this section, employment during any part of a 217  
month shall count as employment during the entire month. 218

**Sec. 5903.02.** (A) ~~The determination of reinstatement and 219  
reemployment rights of permanent public employees and permanent 220  
private employees in the uniformed services shall be made in 221  
accordance with~~ As used in this section, "uniformed services" and 222  
"service in the uniformed services" have the same meanings as in 223  
the "Uniformed Services Employment and Reemployment Rights Act of 224  
1994," 108 Stat. 3149, 38 U.S.C.A. 4301, et. seq 4303. 225

(B) Any person whose absence from a position of employment is 226  
necessitated by reason of service in the uniformed services or in 227  
the Ohio organized militia has the same reinstatement and 228  
reemployment rights in this state that a person has under the 229  
"Uniformed Services Employment and Reemployment Rights Act of 230  
1994." A person who is denied a reinstatement or reemployment 231  
right pursuant to this section has a cause of action for the same 232  
remedies as a person has under the "Uniformed Services Employment 233  
and Reemployment Rights Act of 1994." The court of common pleas, 234  
notwithstanding any sum limitation established by decision of a 235  
board of county commissioners pursuant to section 2305.01 of the 236



Revised Code, shall have exclusive original jurisdiction for such 237  
actions, unless the defendant is the state, in which case the 238  
court of claims shall have exclusive original jurisdiction 239  
pursuant to division (C) of this section. 240

(C) A person who seeks reinstatement or reemployment rights 241  
with the state, pursuant to this section, may bring an action in 242  
the court of claims pursuant to this section or section 4323 of 243  
the "Uniformed Services Employment and Reemployment Rights Act of 244  
1994." 245

(D) Notwithstanding any other provision of the Revised Code, 246  
court costs may not be charged against any person claiming rights 247  
under this section. 248

(E) In any action or proceeding to enforce a provision of 249  
this section the court may award to a plaintiff who prevails in 250  
such action or proceeding reasonable attorney's fees, expert 251  
witness fees, and other litigation expenses. If the plaintiff does 252  
not receive a favorable judgment from the court in that action, 253  
the court shall not require the plaintiff to reimburse the state 254  
for attorney's fees. 255

(F) The director of administrative services shall adopt rules 256  
in accordance with Chapter 119. of the Revised Code for the 257  
implementation of this chapter with respect to persons in public 258  
service. 259

**Sec. 5903.99.** ~~Whoever violates sections 5903.01 and section~~ 260  
5903.02 of the Revised Code may be fined not more than one 261  
thousand dollars or imprisoned not more than six months, or both. 262

**Sec. 5923.05.** (A)(1) Permanent public employees who are 263  
members of the Ohio organized militia or members of other reserve 264  
components of the armed forces of the United States, including the 265  
Ohio national guard, are entitled to a leave of absence from their 266

respective positions without loss of pay for the time they are 267  
performing service in the uniformed services, for periods of up to 268  
one month, for each calendar year in which they are performing 269  
service in the uniformed services. 270

(2) As used in this section: 271

(a) "Calendar year" means the year beginning on the first day 272  
of January and ending on the last day of December. 273

(b) "Month" means twenty-two eight-hour work days or one 274  
hundred seventy-six hours within one calendar year. 275

(c) ~~"Permanent public employees" and "uniformed services"~~ 276  
~~have the same meanings as in section 5903.01 of the Revised Code~~ 277  
employee" means any person holding a position in public employment 278  
that requires working a regular schedule of twenty-six consecutive 279  
biweekly pay periods, or any other regular schedule of comparable 280  
consecutive pay periods, which is not limited to a specific season 281  
or duration. "Permanent public employee" does not include student 282  
help; intermittent, seasonal, or external interim employees; or 283  
individuals covered by personal services contracts. 284

(d) "State agency" means any department, bureau, board, 285  
commission, office, or other organized body established by the 286  
constitution or laws of this state for the exercise of any 287  
function of state government, the general assembly, all 288  
legislative agencies, the supreme court, the court of claims, and 289  
the state-supported institutions of higher education. 290

(e) "Service in the uniformed services" means the performance 291  
of duty, on a voluntary or involuntary basis, in a uniformed 292  
service, under competent authority, and includes active duty, 293  
active duty for training, initial active duty for training, 294  
inactive duty for training, full-time national guard duty, and 295  
performance of duty or training by a member of the Ohio organized 296  
militia pursuant to Chapter 5923. of the Revised Code. "Service in 297

the uniformed services" includes also the period of time for which 298  
a person is absent from a position of public or private employment 299  
for the purpose of an examination to determine the fitness of the 300  
person to perform any duty described in this division. 301

(f) "Uniformed services" means the armed forces, the Ohio 302  
organized militia when engaged in active duty for training, 303  
inactive duty training, or full-time national guard duty, the 304  
commissioned corps of the public health service, and any other 305  
category of persons designated by the president of the United 306  
States in time of war or emergency. 307

(B) Except as otherwise provided in division (D) of this 308  
section, any permanent public employee who is employed by a 309  
political subdivision, who is entitled to the leave provided under 310  
division (A) of this section, and who is called or ordered to the 311  
uniformed services for longer than a month, for each calendar year 312  
in which the employee performed service in the uniformed services, 313  
because of an executive order issued by the president of the 314  
United States, because of an act of congress, or because of an 315  
order to perform duty issued by the governor pursuant to section 316  
5919.29 of the Revised Code is entitled, during the period 317  
designated in the order or act, to a leave of absence and to be 318  
paid, during each monthly pay period of that leave of absence, the 319  
lesser of the following: 320

(1) The difference between the permanent public employee's 321  
gross monthly wage or salary as a permanent public employee and 322  
the sum of the permanent public employee's gross uniformed pay and 323  
allowances received that month; 324

(2) Five hundred dollars. 325

(C) Except as otherwise provided in division (D) of this 326  
section, any permanent public employee who is employed by a state 327  
agency, who is entitled to the leave provided under division (A) 328

of this section, and who is called or ordered to the uniformed 329  
services for longer than a month, for each calendar year in which 330  
the employee performed service in the uniformed services, because 331  
of an executive order issued by the president of the United 332  
States, because of an act of congress, or because of an order to 333  
perform duty issued by the governor pursuant to section 5919.29 or 334  
5923.21 of the Revised Code is entitled, during the period 335  
designated in the order or act, to a leave of absence and to be 336  
paid, during each monthly pay period of that leave of absence, the 337  
difference between the permanent public employee's gross monthly 338  
wage or salary as a permanent public employee and the sum of the 339  
permanent public employee's gross uniformed pay and allowances 340  
received that month. 341

(D) No permanent public employee shall receive payments under 342  
division (B) or (C) of this section if the sum of the permanent 343  
public employee's gross uniformed pay and allowances received in a 344  
pay period exceeds the employee's gross wage or salary as a 345  
permanent public employee for that period or if the permanent 346  
public employee is receiving pay under division (A) of this 347  
section. 348

(E) Any political subdivision of the state, as defined in 349  
section 2744.01 of the Revised Code, may elect to pay any of its 350  
permanent public employees who are entitled to the leave provided 351  
under division (A) of this section and who are called or ordered 352  
to the uniformed services for longer than one month, for each 353  
calendar year in which the employee performed service in the 354  
uniformed services, because of an executive order issued by the 355  
president or an act of congress, such payments, in addition to 356  
those payments required by division (B) of this section, as may be 357  
authorized by the legislative authority of the political 358  
subdivision. 359

(F) Each permanent public employee who is entitled to leave 360

provided under division (A) of this section shall submit to the 361  
permanent public employee's appointing authority the published 362  
order authorizing the call or order to the uniformed services or a 363  
written statement from the appropriate military commander 364  
authorizing that service, prior to being credited with that leave. 365

(G) Any permanent public employee of a political subdivision 366  
whose employment is governed by a collective bargaining agreement 367  
with provision for the performance of service in the uniformed 368  
services shall abide by the terms of that collective bargaining 369  
agreement with respect to the performance of that service, except 370  
that no collective bargaining agreement may afford fewer rights 371  
and benefits than are conferred under this section. 372

**Section 2.** That existing sections 2311.07, 2311.08, 2743.03, 373  
3319.13, 5903.02, 5903.99, and 5923.05 and sections 124.29 and 374  
5903.01 of the Revised Code are hereby repealed. 375