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126th General Assembly

(As Reported by S. Insurance, Commerce, and Labor)

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**BILL SUMMARY**

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

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*\* This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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## CONTENT AND OPERATION

### Background

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

### Overview of the bill

The bill implements recommendations made by the Commission in its report. Additionally, it makes other changes to the civil service laws. Changes are made to provisions concerning workforce reduction; employee discipline; employee categories and classification; employee compensation and benefits; appointment, testing, hiring, promotion, and temporary and permanent transfers of positions; appeals and due process; and other civil service employment-related matters. This analysis focuses on the changes made to each of those categories of civil service law provisions, discussing the changes in a comprehensive "dot point" manner.

### Workforce reduction

#### Layoffs

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

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

#### Displacement privileges

(R.C. 124.321 and 124.324)

- Eliminates a laid-off employee's ability to displace another employee with the fewest retention points within a classification that has the same or similar duties as the classification from which the employee was laid off. Thus, the bill allows a laid-off employee to only displace the employee with the fewest retention points (1) within the same classification from which the employee was laid off, (2) within the classification series from which the employee was laid off, or (3) within

the classification the employee *held immediately prior to* holding the classification from which the employee was laid off. But, with respect to category (3) above, the bill provides that an employee *cannot* displace employees in a classification if he or she does not meet the minimum qualifications of the classification or if the employee last held the classification *more than three years prior to the date* on which he or she was laid off. Current law contains a generally similar caveat, except that the employee cannot have held the classification more than five years before the date on which he or she was laid off. (R.C. 124.324(A).)

- Prevents an employee generally from displacing another employee for whose position or classification there are certain *position-specific minimum qualifications* established (1) by the appointing authority and reviewed for validity by DAS or (2) by bona fide occupational qualification (R.C. 124.324(D)).
- Allows a county appointing authority to establish a paper layoff process under which employees who are to be laid off or displaced may be required, before the date of their paper layoff, to preselect their options for displacing other employees. Under current law, notwithstanding the general statutory displacement procedure (see the previous two dot points and R.C. 124.324), the Director of Administrative Services alone may establish such a paper layoff process (R.C. 124.321(E)).

### **Retention points**

(R.C. 124.324 and 124.325)

- Clarifies that the Director of DAS must verify the calculation of retention points for all employees in a classification affected by the exercise of displacement rights (R.C. 124.324(A)).
- Eliminates the requirement that retention points for efficiency in service generally be calculated by averaging the employee's latest two annual performance evaluations and the special rules for employees with less than two years of service or less than one year of service (latest performance evaluation used or final probationary evaluation used, respectively) (R.C. 124.325(C)).

**Recall pursuant to reinstatement or reemployment**

(R.C. 124.327)

- Gives laid-off employees, in addition to their reinstatement rights with their appointing authority, the right to *reemployment* with any state agency, board, commission, or independent institution if the employee meets all applicable position-specific minimum qualifications developed by the other employing entity and reviewed for validity by DAS, or, in the absence of position-specific minimum qualifications, meets the qualifications described in the applicable classification, but only in the same classification from which the employee was initially laid off or displaced. Layoff lists for an appointing authority must be exhausted before other jurisdiction reemployment layoff lists are used. (R.C. 124.327(C).)
- Requires that an employee who accepts or declines *reemployment* to the same classification and the same appointment type from which the employee was laid off or displaced, be removed from the layoff list for the jurisdiction in which the employee accepted or declined reemployment as determined under the provisions discussed in the previous dot point. Current law simply states that such an employee must be removed from the "jurisdictional" layoff list. (R.C. 124.327(E).)
- Makes the recall jurisdiction for a non-bargaining unit employee ("exempt employee") who has reinstatement rights into a bargaining unit classification the counties in which the exempt employee indicates willingness to accept reinstatement as *determined by the applicable collective bargaining agreement* (R.C. 124.327(B)).
- Provides that the rule that "an employee who declines reinstatement to a classification lower in the classification series than the classification from which the employee was laid off or displaced forfeits the right to reinstatement to that lower classification" does not apply if the employee was a full-time employee at the time of the layoff or displacement and the reinstatement to the lower classification that the employee declined was for a part-time position (R.C. 124.327(G)).

*Other provisions: definitional-related and "service of the state"-related*

(R.C. 124.32 and 124.321)

- In the context of layoffs as a result of a *lack of funds*, provides that the Office of Budget and Management (OBM) is not required to transfer money between funds in order to offset a deficiency or projected deficiency in funding for programs funded by the federal government, special revenue accounts, or proprietary accounts (R.C. 124.321(B)(2)).
- States that, whenever a program receives funding through a grant or similar mechanism, a *lack of funds* will be presumed for the positions assigned to and the employees who work under the grant or similar mechanism if, for any reason, the funding is reduced or withdrawn (R.C. 124.321(B)(2)).
- In the context of layoffs as a result of *lack of work* within an appointing authority, changes the definition of the highlighted term to mean an appointing authority has a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure. The new definition eliminates the notion of a "temporary" decrease in workload, as well as the notion that it was "expected to last less than one year." (R.C. 124.321(C)(2).)
- Limits the requirement that the *consent of the Director of DAS* be obtained before (1) *transferring* an employee in the classified service to a similar position in another office, department, or institution having the same pay and similar duties, or (2) *reinstating* within a specified period of time to a vacancy in the same office or a similar position in the same department an employee in the classified service who was separated without delinquency or misconduct on his or her part, to only employees in the classified civil service of the state (R.C. 124.32(A) and (B)).
- Limits the requirement that an appointing authority file with the Director of DAS (1) a statement of rationale and supporting documentation when deciding to *abolish a position* and/or (2) a notice of a position's abolishment under certain "reasons of economy" provisions, to positions in the service of the state (R.C. 124.321(D)(2)(a)(ii) and (3)).

## **Employee discipline**

### **Last chance agreements**

(R.C. 124.34)

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

### **Unpaid administrative leave when an employee is charged with a felony**

(R.C. 124.388)

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

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

(R.C. 124.34)

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

- employee exempt from the payment of overtime compensation, or (4) a fine of 24 or more hours' pay in the case of an employee required to be paid overtime compensation (R.C. 124.34(B)).
- Eliminates the requirement that those orders must be filed with the Director of DAS and the SPBR or a civil service commission, as appropriate (R.C. 124.34(B)).

**Whistleblower protection**

(R.C. 124.341)

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

**Communications to the Director of DAS re: certain removals**

(R.C. 124.27)

- Requires (by limiting current law) that appointing authorities communicate to the Director of DAS the reasons for *removing a probationary employee* only with respect to those probationary employees who are in the service of the state (R.C. 124.27(C)).

**Employee categories and classification**

**Provisional, interim, and intermittent employees**

(Misc. R.C. provisions)

- Eliminates the categories of provisional and interim employees. Under current law, a provisional employee is an employee appointed to a vacancy in a position in the classified service, for which no eligible list is available, after the employee passes a noncompetitive examination; a provisional employee who remains in the same job classification or job classification series for two years of continuous service during which no competitive examination is held becomes a permanent employee in the classified service at the conclusion of the two-year period. (R.C. 124.11(A)(29), 124.134(C), 124.14(I), 124.26(B), 124.27(C), 124.30(A) and (B), 124.324(B), 124.383(A)(2), 124.384(A), 124.386(D)(3) and (E), 302.202(I), 329.02, 1513.03, 1513.34, and 5107.52(C) and R.C. 124.311--outright repealed in Section 2 of the bill.)

### *Intermittent employees*

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

- Retains the category of intermittent employees. Under generally continuing law (modified in a few respects by the bill), the following rules apply to those employees:

(1) They are within the unclassified civil service. The bill removes the adjective "external" that currently modifies the description of the interim (removed by the bill--see the preceding dot point), intermittent, and temporary employees who are in the unclassified civil service and serve at the pleasure of their appointing authority. (R.C. 124.11(A)(29) and 124.30(B).)<sup>1</sup>

(2) The Director of DAS must set the rate of compensation for all intermittent (as well as seasonal, temporary, emergency, and casual) employees *in the service of the state* (italicized language added by the bill) who are not considered "public employees" for purposes of the Public Employees' Collective Bargaining Law (R.C. 124.14(I)).

### *Retention of certified status provisions*

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

- Eliminates the following provisions that relate to employee retention of certified status: (1) following any classification change within a classification series, a certified employee in the classified civil service retains certification, (2) when an employee receives a classification change to a classification outside the series in which the employee is certified, the employee generally does not retain certified status, (3) whenever the Director of DAS or the General Assembly changes the state classification plan, an employee must retain certification in the same or similar classification held immediately before the change in the classification plan if the employee was certified under the former plan, (4) whenever the position held by a classified employee is reclassified as

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

a result of a job audit outside the classification series in which the employee is certified, the employee must be treated as having received a classification change and be given credit for the time the employee performed the duties of the new classification for purposes of a probationary period, except that the employee may choose not to accept the reclassified position and, in that case, (a) the employee must retain the employee's certification in the classification for which the employee was certified and (b) the appointing authority must assign the employee to a position with that classification or abolish the former position, and (5) the Director of DAS is required to adopt specified rules under the Administrative Procedure Act implementing the latter provisions (repeal of R.C. 124.311).

*Unclassified service*

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

- Modifies the list in current law of the individuals within the unclassified service to additionally include: (1) the heads of all departments appointed by a board of county commissioners, (2) "not more than five" deputy county auditors (no limit in current law), (3) four clerical and administrative support employees for each board of county commissioners, (4) one clerical or administrative support employee for each county commissioner, (5) four (instead of three as under current law) clerical and administrative support employees for elective officers other than elective state officers, and for each of the principal appointive executive officers, boards, or commissions authorized to appoint such employees (other than civil service commissions), (6) not more than five specified administrative positions within a county department of job and family services, (7) the superintendent or administrator of a county home, and (8) any other employees placed in the unclassified service by statute (R.C. 124.11(A)(3)(b), (4), (8), and (32), 329.02, and 5155.03).
- States that, in an appeal of a decision about whether an employee is in the unclassified civil service, the mere failure of the employee's appointing authority to file a statement with DAS indicating that the employee is in the unclassified civil service, or the mere late filing of the statement, does not prevent the SPBR from determining that the employee is in the unclassified civil service (R.C. 124.03(A)(1)).

- Requires the SPBR, in determining an appeal of a decision about whether an employee is in the unclassified civil service, to consider the inherent nature of the duties of the employee's classification during the two-year period immediately preceding the appointing authority's appealable action relating to the employee (R.C. 124.03(A)(1)).

**Appointment to an unclassified position**

(R.C. 124.12)

- Requires an appointing authority that appoints an employee to an unclassified position in the *service of the state* (see definition under "Miscellaneous," below) to notify DAS of the appointment within 90 days after the appointment (R.C. 124.12(A)).
- Requires an appointing authority that appoints an employee to an unclassified position in *the state service* to provide to the employee, on the date of the appointment, written information describing the nature of the employment in the unclassified civil service. DAS is required to develop and provide each appointing authority in the state service with a general written description of the nature of employment in the unclassified civil service for this purpose. Finally, within 30 days after the date of the appointment, the appointing authority must provide the employee with written information describing the duties of the unclassified position. An appointing authority's failure to provide either of the types of information mentioned above does not confer any additional rights upon the employee in any appellate body with jurisdiction over an appeal of the employee. (R.C. 124.12(B) and (C).) As used in the latter provisions, "state service" includes all offices and positions in the service of the state *as well as* of the *counties* and *general health districts* of the state, but not offices and positions in the service of the cities, city health districts, and city school districts of the state (R.C. 124.01(B)).

**Appointment evaluation system**

(R.C. 124.40)

- Requires each municipal civil service commission, in adopting rules concerning the classification of positions in the civil service of the city, city school district, and city health district, to authorize each appointing authority of the city, city school district, or city health district to develop

and administer in a manner it devises an evaluation system for the employees it appoints (R.C. 124.40(A)).

**Director of DAS rules**

(R.C. 124.20)

- Eliminates a requirement that the Director of DAS, with the SPBR's approval, *adopt rules* for the classification of officers, positions, and employments in the civil service of the state and *the counties* (R.C. 124.20(A)). But, *under other continuing law*, the Director of DAS still must establish by rule a "job classification plan" for all positions, offices, and employments the salaries of which are paid in whole or in part *by the state* (R.C. 124.14(A)(1)) and establish, with the SPBR's approval, rules for appointment, promotions, transfers, layoffs, suspensions, reductions, reinstatements, and removals in, as well as for examinations and registrations for, *offices and positions in the civil service of the state* (R.C. 124.20(A)). The latter rule adoption requirement currently apparently also extends to offices and positions in the civil service of the counties, but no longer does so under the bill. Only appointing authorities with officers or employees in the civil service of the state must submit personnel action information to DAS under the bill.
- Requires DAS to give due notice to appointing authorities *in the civil service of the state* of the contents of rules adopted or changed under R.C. 124.20 (current law has a similar due notice requirement) and to make those rules *available* for public distribution (as contrasted with current law's requirement to "print" them for that purpose) (R.C. 124.20).

**Specific county personnel provisions**

(R.C. 124.14)

- Retains (with technical amendments) current law's requirement that the Director of Administrative Services adopt rules under the Administrative Procedure Act to establish a classification plan for county agencies that elect *not to use* the services and facilities of a county personnel department. Under continuing law, those rules must include a methodology for the establishment of titles unique to county agencies, the use of state classification titles and classification specifications for common positions, the criteria for a county to meet in establishing its

own classification plan, and the establishment of what constitutes a classification series for county agencies. (R.C. 124.14(A)(5).)

- Continues the authority of a board of county commissioners to adopt resolutions (1) establishing and (2) designating a county personnel department to exercise the powers, duties, and functions of DAS and the Director of DAS (except for the SPBR's powers and duties) with respect to employees for whom the *board of county commissioners* is the appointing or co-appointing authority (R.C. 124.14(G)(1) and (2)(a)).
- With respect to the designation described in the previous dot point, establishes revised *notification* and *effective date of operation* provisions. First, the board of county commissioners must deliver to the Director of DAS a certified copy of its *designation resolution* no later than ten working days after that resolution is adopted; second, the Director of DAS must inform the board of county commissioners in a writing (sent by certified mail) of the date of the Director's receipt of the designation resolution; and third, upon the date of the Director's receipt of the designation resolution, the powers, duties, and functions of DAS and the Director are *vested in and assigned to* the county personnel department with respect to the employees for whom the board of county commissioners is the appointing or co-appointing authority. These provisions differ from current law (repealed by the bill) under which (1) the vesting and assigning is declared to occur upon a board of county commissioners' *certification* of a copy of the designation resolution to the Director (but see (3) below), (2) the certification cannot be provided later than 120 days before July 1 of an odd-numbered year, and (3) following the certification apparently in an odd-numbered year, the powers, duties, and functions are declared to vest in and be assigned to the county personnel department *on the first day of July*. (R.C. 124.14(G)(2)(a) and (b).)
- Continues the authority of any *county elected official, board, agency, or other appointing authority* (not including a board of county commissioners), after a county personnel department has assumed the powers, duties, and functions of DAS and the Director of DAS as described above and upon *notification to the Director*, to elect to use the services and facilities of the county personnel department. But, unlike current law, the bill requires the notification to the Director to be in *writing*. The bill also repeals current law's related provision that the

notification cannot be provided later than 120 days before July 1 of an odd-numbered year, and requires the Director to inform the elected official, board, agency, or other appointing authority in a writing (sent by certified mail) of the date of the Director's acceptance of the written notification. (R.C. 124.14(G)(3).)

- With respect to a county elected official's, board's, agency's, or other appointing authority's election to use the services and facilities of the county personnel department, modifies the *effective date of operation* provisions of current law. The bill (somewhat similar to current law) provides that, upon the Director of DAS' acceptance of the *written* notification (see the immediately preceding dot point), the county personnel department must exercise the powers, duties, and functions of DAS and the Director with respect to the employees of the county elected official, board, agency, or other appointing authority. But the bill repeals current law's provision stating that, following the notification in an odd-numbered year, the powers, duties, and functions of DAS and the Director with respect to the employees of the county elected official, board, agency, or other appointing authority are vested in and assigned to the county personnel department *on the first day of July*. (R.C. 124.14(G)(3).)
- Allows a board of county commissioners, by resolution, to *disband* its county personnel department and to return to the jurisdiction of DAS for civil service administration *only after two years have passed* since the county personnel department's creation. The bill repeals what may be a time restriction in current law in this regard: a board of county commissioners must send the Director of DAS a certified copy of the *disbanding resolution* no later than 120 days before July 1 of an odd-numbered year. (R.C. 124.14(G)(4).)
- In the context of the disbanding of a county personnel department, requires a board of county commissioners to deliver a certified copy of the disbanding resolution to the Director of DAS no later than ten working days after its adoption, and then requires the Director to inform the board in a writing (sent by certified mail) of the date of the Director's receipt of the copy. Upon that receipt, all powers, duties, and functions previously vested in the county personnel department return to the Director; this contrasts with current law (repealed by the bill) under which the return occurs *on the first day of July*. (R.C. 124.14(G)(4).)

- Allows a county elected official, board, agency, or other appointing authority to return to the jurisdiction of DAS for civil service administration only after *two years have passed* since the official, board, agency, or other appointing authority elected to use the services and facilities of the county personnel department. The bill repeals what may be a time restriction in current law in this regard: an elected official, board, agency, or other appointing authority must send the Director of DAS a certified copy of the *resolution stating its decision* no later than 120 days before July 1 of an odd-numbered year. (R.C. 124.14(G)(5).)
- In the context of a county elected official's, board's, agency's, or other appointing authority's decision to return to the jurisdiction of DAS for civil service administration, requires the official, board, agency, or other appointing authority to send the Director of DAS a certified copy of the resolution that states its decision, and then requires the Director to inform the official, board, agency, or other appointing authority in a writing (sent by certified mail) of the date of the Director's receipt of the copy. Upon that receipt, all powers, duties, and functions previously vested in the county personnel department with respect to the employees of the elected official, board, agency, or other appointing authority return to the Director; this contrasts with current law (repealed by the bill) under which the return occurs *on the first day of July*. (R.C. 124.14(G)(5).)

### **Employee compensation and benefits**

#### **Active pay status and county employees**

(R.C. 4111.03)

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

#### **Temporary pay range**

(R.C. 124.14)

- Allows the Director of DAS to assign a job classification to a pay range on a temporary basis for a period of six months, instead of (as under

current law) for a time period designated in rules adopted by the Director (R.C. 124.14(A)(1)).

**Reduction in benefits or pay**

(R.C. 124.34)

- Includes a reduction or elimination of an officer's or employee's *longevity* in the list of actions that may not be taken against an officer or employee in the classified service except generally for incompetency, inefficiency, dishonestly, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, *violation of any policy or work rule of the officer's or employee's appointing authority* (added by the bill), violation of the Civil Service Law or the rules of the Director of DAS or a civil service commission, any other failure of good behavior, other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony (R.C. 124.34(A)).
- States that a denial of a one-time pay supplement or a bonus to an officer or employee is not considered, for purposes of the law governing permissible actions against officers and employees, a reduction in pay (R.C. 124.34(A)).

**Disability leave, meaning of disability, and separation/reinstatement**

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

- Allows the Director of DAS to delegate to any appointing authority the authority to approve disability benefits for a standard recovery period (R.C. 124.385(E)).
- Excludes from the definition of a "physical or mental impairment" for the law governing the Ohio Civil Rights Commission (OCRC) and the unlawful discriminatory practices within its jurisdiction, psychoactive substance use disorders resulting from the *current use of alcoholic beverages* (added by the bill) as well as (under continuing law) from the current illegal use of a controlled substance. The defined term is used in the definition of a "disability" for purposes of the OCRC Law, and, therefore, disorders excluded from it, in turn, cannot be a "disability" under the OCRC Law. (R.C. 4112.01(A)(13) and (16)(b)(iv).)

- Gives a person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct and due to *psychiatric disability* (added by the bill), or due to an injury or physical disability (current law), *two years*, instead of three years as under current law, from the date of separation to file an application for reinstatement to the same office held or a position similar to that held at the time of separation (R.C. 124.32(B)).

**Alternative sick, vacation, and holiday leave**

(R.C. 124.38 and 325.19)

- Allows an appointing authority of a county office, department, commission, board, or body, upon notification to the board of county commissioners, to establish alternative schedules of sick, vacation, or holiday leave for non-bargaining unit employees, as long as those schedules are not inconsistent with the provisions of *at least one* collective bargaining agreement covering other employees of the appointing authority, rather than, as under current law, *a* collective bargaining agreement so covering. If no collective bargaining agreement exists, an appointing authority, upon notification to the board of county commissioners, may establish an alternative schedule of sick, vacation, or holiday leave for its employees that does not diminish the sick, vacation, or holiday leave benefits granted under statutory law. (R.C. 124.38 and 325.19(F).)

**Alternative compensation**

(R.C. 124.141)

- Permits the Director of Administrative Services to establish, by rule adopted under the Administrative Procedure Act, an appointment incentive program that allows an appointing authority to pay (1) employees appointed to administrative staff positions for which the appointing authority has statutory authority to set compensation, (2) legislative employees, (3) employees of the Legislative Service Commission, (4) employees of the office of the Governor, (5) employees in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General who are in the unclassified civil service and exempt from collective bargaining coverage, (6) employees of the Ohio Supreme Court, and (7) certain other employees and officers in the

unclassified civil service, a salary and benefits package that differs from the salary and benefits otherwise provided by law for that officer or employee. Under the bill, this program, if established by the Director, cannot include authority for an appointing authority to provide health care benefits to a covered officer or employee that are different from health care benefits otherwise provided by law for that officer or employee. (R.C. 124.141.)

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

**Appointments**

(R.C. 124.271 and 124.30)

- Eliminates the specific authority of an appointing authority, in the case of *an emergency*, to fill a vacancy in a position in the classified service without regard to competitive examination requirements for up to 30 days, and also eliminates the specific authority of an appointing authority to temporarily appoint a person on an eligible list for permanent appointment if the services to be rendered are for a temporary period, not to exceed six months, and the *need* of the services is *important and urgent* (R.C. 124.30(A)(1) and (3)).
- Instead, generally allows an appointing authority to fill a vacancy in a position in the classified service by noncompetitive examination *when there is an urgent reason to fill the vacancy* and the Director of DAS is unable to certify to the appointing authority a list of persons eligible for appointment to the position after a competitive examination. (Current law contains a somewhat similar authorization.) The appointing authority apparently must fill the vacancy by a *temporary appointment*, which may not continue longer than 120 days unless it is necessary by reason of the sickness, disability, or other approved leave of absence of a regular officer or employee, in which case it may continue only during the period of sickness, disability, or leave of absence, subject to the rules of the Director. In no case may such a temporary appointment be made successively. (R.C. 124.30(A)(1).)
- Provides that if (1) an employee is appointed to a position in the classified service without competition (a) because there is an urgent reason for filling the vacancy in the position and the Director of DAS is

unable to certify to the appointing authority a list of persons eligible for appointment to the position after a competitive examination (see above) or (b) because there is a vacancy in the position, it has peculiar and exceptional scientific, managerial, professional, or educational qualifications associated with it, and competition for the position is impracticable (it best being filled by selection of a person of high and recognized attainments in those qualities), and (2) the employee either demonstrates merit and fitness for the position by successfully completing the probationary period for it or remains in it for a period of six months of continuous service, whichever is longer, the employee will become a permanent appointee in the classified service at the conclusion of that period (R.C. 124.271).

### Testing

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

- Requires notices of examinations that are to be conducted in the state classified service, sent by the Director of DAS to specified agencies and clerks, to be posted in conspicuous public places for at least two weeks before any examination involved (R.C. 124.23(E)).
- Allows the tests that constitute an examination for a position in the classified service to include (1) structured interviews, (2) assessment centers, (3) work simulations, (4) examinations of knowledge, skills, and abilities, and (5) any other acceptable testing methods. The bill continues existing provisions otherwise governing the form of examinations and tests. (R.C. 124.23(C).)
- Allows rules establishing educational requirements as a condition of taking a civil service examination to be adopted only with respect to positions for which educational requirements are expressly imposed by the Revised Code or federal law or for which the Director of DAS determines that the educational requirements are job-related (R.C. 124.22).
- Requires a person generally to have served 48 months, rather than 24 months as under current law, in order to be eligible to take a competitive promotional examination for the promoted rank immediately above the rank of regular firefighter (R.C. 124.45).

- Modifies the current provisions (see next sentence) governing the promotional examinations for firefighters by instead (1) requiring that those examinations relate to those matters that test the ability of the person examined to discharge the particular duties of the position sought, (2) requiring that those examinations *include a written testing component*, and (3) permitting, if an examination is for a position that requires the operation of machines or equipment, practical demonstration tests of such operation as part of an examination. Current law includes items (1) and (3) above but otherwise mandates that the examination "be in writing." (R.C. 124.45.)
- Eliminates the right of a participant in a firefighter promotional examination, for a period of five days after the examination, to inspect the examination's questions, rating keys, or answers and to file a protest. However, the bill continues a participant's right to appeal on the basis that the participant's examination papers were erroneously graded. (R.C. 124.45 and 124.48.)

#### *Eligible lists*

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

- Specifies, in separate provisions, that vacancies in the *unskilled labor class* for positions in the service of the state must be filled by appointment from lists of applicants registered by the Director of DAS, while vacancies in the unskilled labor class for positions *not* in the service of the state must be filled from lists of applicants registered by and maintained by a civil service commission (R.C. 124.11(B)(2)). This specification seems to be consistent with current law.

#### *Promotions*

(R.C. 124.31 and 124.44)

- Allows a municipal civil service commission to require a period of service of longer than 12 months for promotion to the rank immediately above the rank of patrol officer in a police department (R.C. 124.44).
- Requires the Director of DAS, in the rules the Director must adopt concerning the keeping of records of efficiency for employees in the classified service and the making of promotions based on merit, to authorize each appointing authority of a county to develop and administer

in a manner it devises an evaluation system for the employees it appoints (R.C. 124.31(A)).

### **Transfers**

(R.C. 124.33)

- Provides that *temporary* transfers of an employee in the classified service *more than once* during any six-month period, or *permanent* transfers of an employee in the classified service, to a similar position in another office, department, or institution must be approved by the Director of DAS only if the employee is in the service of the state; otherwise, the transfer must be approved by the *appropriate civil service commission*. Current law requires the Director of DAS to approve all such transfers. (R.C. 124.33, second paragraph and fifth paragraph.)

### **Veteran's preference**

(R.C. 124.23 and 124.27)

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

### **Appeals and due process**

#### **Right to counsel at a hearing**

(R.C. 9.84)

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

### **Jurisdiction of appeals**

(R.C. 119.12 and 124.34)

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

### **Further recommendations of the Civil Service Review Commission**

#### **Study of compensation and classification system**

(Section 3 of the bill)

- Recommends that DAS, in conjunction with all appropriate stakeholder groups, study the compensation and classification system that applies to employees paid by warrant of the Director of Budget and Management and county employees in order to determine how the system could be simplified. DAS must report to the General Assembly the results of its study no later than six months after the bill's effective date and at appropriate intervals thereafter. (Section 3(A) of the bill.)

#### **Alternative dispute resolution**

(Section 3 of the bill)

- Requires that an ad hoc committee be formed to review, study, and encourage greater awareness of the use of mediation and other alternative dispute resolution procedures in appeals to the SPBR and to municipal and civil service township civil service commissions. The committee must consist of representatives of labor organizations, counties, cities, the SPBR, the State Employment Relations Board, the Office of Collective

Bargaining of DAS, the Ohio Commission on Dispute Resolution and Conflict Management, the American Arbitration Association, and the Federal Mediation and Conciliation Service. Additionally, professors on the faculty of Ohio law schools, a professional arbitrator with experience in public sector disputes, and a plaintiff's lawyer with experience in civil service disputes should be members of the committee. The committee must report its findings and recommendations to the General Assembly within six months after the bill's effective date. (Section 3(B) of the bill.)

### **Miscellaneous**

#### **Use of DAS services and facilities**

(R.C. 124.07)

- Allows a state-supported college or university or municipal corporation to use services and facilities furnished by DAS that are necessary to provide and maintain payroll services and state merit standards, and requires that they pay the cost of the services and facilities that DAS furnishes. Current law apparently requires a state-supported college or university, as well as each state agency, to use those DAS services and facilities, and provides the option to use them only to municipal corporations. (R.C. 124.07(B).)
- Permits the Director of DAS to enter into an agreement with municipal corporations or other political subdivisions to furnish services and facilities for the administration of human resources-related functions (added by the bill) as well as for the administration of a merit program (continuing law) (R.C. 124.07(C)).
- Requires any money received by DAS as reimbursement for human resources services and facilities so furnished to be paid into the state treasury to the credit of the Human Resources Fund, which under current law receives moneys that reimburse DAS for payroll and merit program services performed and facilities furnished (R.C. 124.07(D)).

#### **County department of job and family services administrators**

(R.C. 329.021)

- Allows, in addition to the county director of job and family services, the board of county commissioners *of any county* to appoint administrators to

oversee services provided by the county department of job and family services (hereafter, county department). This authority contrasts with current law under which only the board of county commissioners of a county with a population of more than 1 million may make the administrator appointments. (R.C. 329.021(A).)

- Limits the number of county department administrators that a board of county commissioners may appoint in accordance with the county's population, as follows (R.C. 329.021(A)(1) to (5)):
  - (1) Population under 40,000--one appointment;
  - (2) Population of 40,000 to 99,999--two appointments;
  - (3) Population of 100,000 to 249,999--three appointments;
  - (4) Population of 250,000 to 499,999--four appointments;
  - (5) Population of 500,000 or more--five appointments.

Under current law, the types of board of county commissioners authorized to do so may make any number of appointments *up to five* (R.C. 329.021(A)).

- Defines an "administrator" for purposes of the board of county commissioners appointment provisions as an assistant director, fiscal officer or director, personnel officer or director, social services administrator, income maintenance administrator, child support administrator in a combined agency, children services administrator in a combined agency, and workforce development administrator in a combined agency (R.C. 329.021(D)).
- Specifies, generally consistent with current law, that the board of county commissioner-appointed administrators must be in the unclassified civil service and serve at the board's pleasure. But, the bill adds that an administrator position that is filled by a person serving in the classified service on the bill's effective date *cannot be placed* in the unclassified civil service in accordance with the general rule until that person vacates the position. (R.C. 329.021(B).)
- Enacts "return to a classified position from the unclassified position" provisions for the board of county commissioner-appointed

administrators that bear similarities (but are not identical) to those that generally apply to state classified service employees under the Civil Service Law (see R.C. 124.11(D)). Specifically, the bill allows a board of county commissioners to appoint a person who holds a certified position in the classified service within a county department to the position of county department administrator. If the board later removes that person as administrator, the person *generally* retains the right to resume the position in the classified service that he or she held immediately before the appointment as county department administrator. One exception to this resumption ability is that a person first appointed to a classified position in the county department *on or after the bill's effective date* retains the right to resume that position for only six months after the appointment to the unclassified administrator position. And, any person serving as county department administrator *forfeits* the resumption right if he or she is removed from that position of administrator due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the board of county commissioners or the county department, violation of the Civil Service Law or the rules of the Director of DAS, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. Finally, the bill provides that, when the county department administrator's previously held classified service position *no longer exists* or has been placed in the unclassified service, the person must be appointed to a position in the classified service of the county department that is *equivalent* to that previously held classified service position (as the board of county commissioners determines with the Director of DAS' approval). (R.C. 329.021(C).)

### **Duties of the Director of Administrative Services**

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

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

- Defines "service of the state" or "civil service of the state" for purposes of the Civil Service Law to include all offices and positions of trust or employment with the government of the state, *and not to include* offices or positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships (R.C. 124.01(K)). The bill employs these terms and, thus, applies this restrictive definition in numerous provisions of the Law (R.C. 124.04(L), 124.07(A), 124.09(C), 124.133, 124.15(D), 124.20(A) and (B), 124.31(A), 124.321(D)(2) and (3), and 124.33). The effect of those applications occasionally is to limit the Director of DAS' responsibilities or roles under certain provisions of the Law or to clarify those responsibilities or roles.
- Limits to only employees or positions in the "service of the state" the following duties of the Director of DAS: (1) similar to current law, to *maintain a journal* recording final decisions pertaining to classification or reclassification of positions in the classified service and assignment and reassignment of employees in the classified service, (2) similar to current law, to prepare, continue, and keep a complete roster of all persons in the classified service who are paid directly by warrant of the Director of Budget and Management, (3) to adopt rules, with the SPBR's approval, for appointment, promotion, transfer, layoff, suspension, reduction, reinstatement, and removal in, and for examinations and registrations for offices and positions in, the civil service, (4) to adopt rules, with the SPBR's approval, for maintaining and keeping records of the efficiency of officers and employees in the civil service, (5) to provide by rule for keeping records of efficiency of employees in the classified service and for making promotions in the classified service on the basis of merit, and (6) to provide via rule that vacancies in positions in the classified service are to be filled by promotion whenever the Director deems it to be in the best interest of the service (R.C. 124.04(L), 124.09(C), 124.20(A) and (B), and 124.31(A)).
- Limits to only those employees or positions in the "service of the state" the Director of DAS's authority to do the following: (1) adopt by rule an experimental *alternative* vacation, sick, disability, or personal *leave* program, *life insurance program*, or *medical insurance benefits program*, (2) determine the amounts and manner of the payment an employee must make for furnished lodging, meals, laundry, or other personal services,

with the approval of the Director of Budget and Management, (3) approve, with the Director of Budget and Management, an appointing authority's payment to an employee for uniforms, tools, equipment, and other requirements of the department, and (4) similar to current law, review collective bargaining agreements and determine whether certain benefits or payments also should be provided to exempt employees (R.C. 124.133 and 124.15(D)).

- Limits the requirement that appointing authorities submit personnel action information to the Director of DAS to only those authorities with officers or employees in the "civil service of the state" (R.C. 124.20(A)).

**State colleges and universities**

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

- Requires the board of trustees of each state university or college to carry out all matters of governance involving the officers and employees of the university or college, including, but not limited to, the powers, duties, and functions of DAS and the Director of DAS, as specified in the Civil Service Law. However, under the bill, officers and employees of state universities and colleges continue to have the right to appeal to SPBR as provided by the Civil Service Law. To this end, each board must adopt rules under R.C. 111.15 to carry out these matters of governance. Until a board adopts these rules, its university or college must continue to operate under the applicable rules adopted by the Director of DAS under the Civil Service Law. The bill repeals provisions of existing law that give somewhat similar authority to boards of trustees, but subject to periodic audits and the Director of DAS' review and potential superseding of direction authority. (R.C. 124.14(F)(1) and (2) and Section 4 of the bill.)
- Requires the Executive Director of the Inter-University Council to coordinate the organization of a committee consisting of the president, or the president's representative, of each state-supported college or university. Ninety days after the bill's effective date, the committee, in consultation with DAS, must develop guidelines and standards that are to be used by the boards of trustees of these colleges and universities in adopting the previously mentioned rules concerning the matters of governance of the officers and employees of their college or university. The guidelines must address, at a minimum, classification plans,

compensation plans, recruitment, selection, and appointment processes, performance, discipline, and termination processes, layoff and reduction-in-workforce processes, paid leave, holiday leave, and benefit programs, and appeals processes. The guidelines also must require the colleges and universities to adopt changes in a controlled and incremental manner. (Section 4 of the bill.)

**Qualifications for tax auditor agent or agent manager**

(R.C. 5703.17)

- Adds a degree in any "other business-related field" that is acceptable to the Tax Commissioner to the list of degrees that may qualify a person for the position of tax auditor agent or tax auditor agent manager; currently, degrees in accounting, business, business administration, public administration, or management are specified (R.C. 5703.17(B)(1)).
- Restricts the accounting, auditing, or taxation experience that may qualify a person for the position of tax auditor agent or tax auditor agent manager to only such experience as defined in the classification specifications for the position established by the Director of DAS; currently, the experience is only required to be acceptable to the Department of Taxation (R.C. 5703.17(B)(3)).

**Impact on collective bargaining agreements**

(Section 5 of the bill)

- States that none of the bill's provisions previously discussed in this analysis (1) abrogate, annul, or modify or (2) can be construed to abrogate, annul, or modify any collective bargaining agreement between a public employer and an exclusive representative that was entered into before the bill's effective date (Section 5 of the bill).

**Delayed effective date**

(Section 7 of the bill)

- Specifies that the bill's provisions discussed in this analysis will take effect on July 1, 2007 (Section 7 of the bill).

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## HISTORY

ACTION	DATE
Introduced	04-07-05
Reported, H. Local & Municipal Gov't & Urban Revitalization	12-12-06
Passed House (73-25)	12-12-06
Reported, S. Insurance, Commerce, & Labor	---

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