



Lisa Sandberg

Bill Analysis
Legislative Service Commission

S.B. 176

127th General Assembly
(As Introduced)

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

BILL SUMMARY

- Provides that a person whose absence from a position of employment is necessitated by reason of service in the uniformed services or in the Ohio organized militia has the same reinstatement and reemployment rights in this state that a person has under the "Uniformed Services Employment and Reemployment Rights Act of 1994."
- Provides that a person who is denied such a reinstatement or reemployment right has a cause of action for the same remedies as a person has under the "Uniformed Services Employment and Reemployment Rights Act of 1994" and provides that the court of common pleas or, if the defendant is the state, the court of claims has exclusive, original jurisdiction in those actions.
- Allows the court to award to a plaintiff who prevails in any action or proceeding to enforce such a reinstatement or reemployment right reasonable attorney's fees, expert witness fees, and other litigation expenses.
- Prohibits the court from requiring the plaintiff to reimburse the state for attorney's fees if the plaintiff does not receive a favorable judgment from the court in an action or proceeding described in the prior dot point.
- Requires the court of common pleas to place actions to enforce reinstatement or reemployment rights under the bill first in order for trial and, if the court assigns for trial the cases triable to a jury, in a series, in

the order in which they stand upon the docket, requires the court to give preference to such actions.

CONTENT AND OPERATION

Reinstatement and reemployment rights of members of the uniformed services

Under existing law, the determination of reinstatement and reemployment rights of permanent public employees and permanent private employees in the uniformed services is made in accordance with the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C.A. 4301, *et seq.* (R.C. 5903.02(A)). The Director of Administrative Services is required to adopt rules for the implementation of R.C. Chapter 5903. (R.C. 5903.02(B)). Existing law also provides that any person who, at the time of holding an office or position in the public service, enters the uniformed services is entitled to reinstatement in accordance with the "Uniformed Services Employment and Reemployment Rights Act of 1994" (R.C. 124.29).

The bill repeals R.C. 124.29 and provides that any person whose absence from a position of employment is necessitated by reason of service in the uniformed services or in the Ohio organized militia has the same reinstatement and reemployment rights in this state that a person has under the "Uniformed Services Employment and Reemployment Rights Act of 1994" (see **COMMENT**). A person who is denied a reinstatement or reemployment right has a cause of action for the same remedies as a person has under the "Uniformed Services Employment and Reemployment Rights Act of 1994." The court of common pleas, notwithstanding any sum limitation established by decision of a board of county commissioners pursuant to R.C. 2305.01, has exclusive, original jurisdiction for such actions, unless the defendant is the state, in which case the court of claims has exclusive, original jurisdiction. (R.C. 5903.02(B).)

A person who seeks reinstatement or reemployment rights with the state, pursuant to the above described provisions, may bring an action in the court of claims pursuant to the provision of the bill discussed above and below or section 4323 of the "Uniformed Services Employment and Reemployment Rights Act of 1994" (R.C. 5903.02(C)). Notwithstanding any other provision of the Revised Code, court costs may not be charged against any person claiming such reinstatement or reemployment rights (R.C. 5903.02(D)).

In any action or proceeding to enforce reinstatement or reemployment rights, the court may award to a plaintiff who prevails in such action or proceeding reasonable attorney's fees, expert witness fees, and other litigation expenses. If the plaintiff does not receive a favorable judgment from the court in that action, the

court cannot require the plaintiff to reimburse the state for attorney's fees. (R.C. 5903.02(E).)

Under the bill, the Director of Administrative Services is required to adopt rules in accordance with R.C. Chapter 119. for the implementation of the above described provisions with respect to persons in public service (R.C. 5903.02(F)).

Under existing law, whoever violated R.C. 5903.01 (the definitional section for R.C. 5903.02) and 5903.02 (existing law's provisions for the reinstatement and reemployment rights discussed above) could be fined not more than \$1,000 or imprisoned not more than six months, or both. The bill removes R.C. 5903.01 from this penalty provision. (R.C. 5903.99.)

Order of hearing cases

Existing law requires that actions for wages must be first in order for trial. The bill requires that actions regarding the reinstatement and reemployment rights discussed above also must be first in order for trial. (R.C. 2311.07.)

Assignment of cases

Existing law provides that the court may assign for trial the cases triable to a jury, in a series, in the order in which they stand upon the docket, giving preference always to actions for wages and cases not triable to a jury, in a series in like manner. All other cases must be heard in the order in which they stand upon the trial docket, unless the court directs otherwise. The bill states that the court must also give preference to actions regarding the reinstatement and reemployment rights discussed above. (R.C. 2311.08.)

Court of claims

The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in R.C. 2743.02 (R.C. 2743.03(A)(1)). The court of claims also has exclusive, original jurisdiction as described in R.C. 2743.02(F) (civil action against a state officer or employee in certain specified circumstances) and R.C. 3335.03(B) (actions against the Ohio State University Board of Trustees). The bill provides that the court of claims also has exclusive, original jurisdiction in actions where a person seeks reinstatement or reemployment rights with the state. (R.C. 2743.03(A)(3).)

Under the bill, if a person brings an action in the court of claims pursuant to the provisions discussed above or section 4323 of the "Uniformed Services Employment and Reemployment Rights Act of 1994," the clerk of the court of

claims must give the action priority on the court of claims' docket (R.C. 2743.091).

Definitions

Under existing law, R.C. 5903.01 defines for use in R.C. 5903.02 "permanent public employee," "public employment," "public employer," "position," "permanent private employee," "private employer," "service in the uniformed services," and "uniformed services." The bill repeals R.C. 5903.01 and provides definitions for "permanent public employee," "service in the uniformed services," and "uniformed services" in R.C. 5923.05 (provides that permanent public employees are entitled to paid military leave) that are identical to the definitions in R.C. 5903.01 and provides that those terms as used in R.C. 3319.13 (leave of absence for teachers and regular nonteaching school employees) have the same meaning as in R.C. 5923.05. The bill provides that as used in R.C. 5903.02 "uniformed services" and "service in the uniformed services" have the same meanings as in the "Uniformed Services Employment and Reemployment Rights Act of 1994." (R.C. 3319.13, 5903.01, 5903.02, and 5923.05.)

COMMENT

Section 4301 of the "Uniformed Services Employment and Reemployment Rights Act of 1994" states that the Act's purpose is to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment that can result from such service, to minimize the disruption to the lives of persons performing services in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of service, and to prohibit discrimination against persons because of their service in the uniformed services.

HISTORY

ACTION	DATE
Introduced	05-23-07

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