



Amber Hardesty

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. S.B. 289\***

127th General Assembly

(As Reported by H. State Government and Elections)

**Sens. Spada, Harris, Stivers, Grendell, Schuler, Schuring, Seitz, Padgett, Fedor, Niehaus, Austria, Mumper, Cates, Sawyer, Wilson, Kearney, Boccieri, Cafaro, Carey, Faber, Goodman, D. Miller, Roberts, Schaffer, R. Miller, Smith, Morano**

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### **BILL SUMMARY**

#### **Department of Veterans Services**

- Creates the Department of Veterans Services and the Director of Veterans Services.
- Transfers the duties of the Governor's Office of Veterans Affairs and the Director of the Governor's Office of Veterans Affairs to the Department and its Director.
- Transfers the duties of the Ohio Veterans' Home Agency and its Board of Trustees to the Department and its Director.
- Places the Ohio War Orphans Scholarship Board under the Department.
- Creates additional functions for the Department and the Director relating to various veterans' issues and to county veterans service commissions and county veterans service officers.
- Requires a state agency or instrumentality, an agency or instrumentality of a political subdivision, or a private entity to report a person's veteran status to the Director when the agency, instrumentality, or entity finds out this information.

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\* This analysis was prepared before the report of the House State Government and Elections Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

*Employment rights for persons in uniformed services*

- 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.
- 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 and requires the court to give preference to such actions.

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## **CONTENT AND OPERATION**

### **Department of Veterans Services**

The bill creates the Department of Veterans Services and the Director of Veterans Services (R.C. 121.02). The Governor appoints the Director with the advice and consent of the Senate. The Director serves at the Governor's pleasure, for a term coinciding with the appointing Governor's term. The Director must be an honorably discharged or honorably separated veteran of the United States armed forces. (R.C. 121.03.)

Generally, the bill transfers the duties of the Governor's Office of Veterans Affairs and the Director of the Governor's Office of Veterans Affairs to the Department and its Director. Currently, the Governor's Office of Veterans Affairs must employ necessary administrative and technical personnel, who must be honorably discharged or honorably separated veterans of the United States armed forces. Each clerical staff person must also be an honorably discharged or honorably separated veteran or, if a qualified veteran is not available, the spouse, surviving spouse, child, or parent of an honorably discharged or honorably separated veteran. All these employees are in the classified civil service. Under the bill, the Department must employ necessary administrative and technical personnel and clerical staff. However, the personnel and staff are not required to be veterans or relatives of veterans and are not part of the classified civil service. However, for positions within the Department, the Director must adopt rules under the Administrative Procedure Act establishing a program, which the Director must implement, giving hiring preferences to veterans. (R.C. 5902.01.)

### **Transfer of responsibility for veterans services to the new Department**

The bill abolishes the Governor's Office of Veterans Affairs and transfers its functions, assets and liabilities, obligations, and authority to the Department of Veterans Services. The Department is successor to, and assumes the obligations and authority of, and otherwise continues, the Office. A right, privilege, or

remedy, or a duty, liability, or obligation, that accrued under the Office is neither impaired nor lost by reason of the transfer and is to be recognized, administered, performed, or enforced by the Department.

Any business that was commenced but not completed by the Office or its Director is to be completed by the Department or its Director in the same manner, and with the same effect, as if completed by the Office or its Director. A pending action or proceeding that is being prosecuted or defended in court or before an administrative agency by the Office or its Director is not affected by the transfer and is to be prosecuted or defended by the Department or its Director. Upon application to the court or agency, the Department or its Director is to be substituted as a party.

All the rules, orders, and determinations of the Office continue in effect as rules, orders, and determinations of the Department, until they are modified or rescinded by the Department. If necessary to ensure the integrity of the numbering of the Administrative Code, the Director of the Legislative Service Commission must renumber the rules of the Office to reflect their transfer to the Department.

Subject to the layoff provisions of the Civil Service Act, all employees of the Office are transferred to the Department and retain their positions and all benefits.

The Director of Budget and Management must determine the amount of unexpended balances in the appropriation accounts that pertain to the Office and recommend to the Controlling Board their transfer to appropriation accounts that pertain to the Department. The Director of the Office is to provide full and timely information to the Controlling Board as necessary to facilitate the transfer.

Whenever the Office or its Director is referred to in a statute, contract, or other instrument, the reference is to be read as referring instead to the Department or its Director as is appropriate in context. (Section 5.)

### **Transfer of existing functions**

The existing functions transferred from the Governor's Office of Veterans Affairs and its Director to the Department of Veterans Services and its Director are:

(1) Implementing the high school diploma program for certain veterans of World War II, the Korean conflict, or the Vietnam conflict and for certain women who left high school during World War II, the Korean conflict, or the Vietnam conflict (R.C. 3313.616).

(2) Upon application, assisting the general public in obtaining records of vital statistics pertaining to veterans or their dependents (R.C. 5902.02(B)).

(3) Developing and monitoring programs and agreements to enable state agencies, individually or jointly, that provide veterans services, including the veterans' homes and the Director of Job and Family Services, to address homelessness, indigency, employment, and other veteran-related issues (R.C. 5902.02(G)).

(4) Publishing annually, promulgating change notices for, and distributing a listing of county veterans service officers, county veterans service commissioners, state directors of veterans affairs, and national and state service officers of accredited veterans organizations and their state headquarters. The listing must state the organization veterans service commissioners' represent and the date their terms of office expire; the names, addresses, and telephone numbers of county veterans service officers and of the state directors of veterans affairs; and the addresses and telephone numbers of the Ohio offices and of the headquarters of state and national veterans service organizations. (R.C. 5902.02(I).)

(5) Publishing, by April 1 of each odd-numbered year, a directory of Ohio laws regarding veterans, as enacted through the conclusion of the previous session of the General Assembly, and distributing the publication to each county veterans service office and the state headquarters of each congressionally chartered veterans organization in Ohio (R.C. 5902.02(J)).

(6) Establishing a Veterans Advisory Committee to advise and assist the Department in its duties. Members include a state representative of congressionally chartered veterans organizations; a representative of any other congressionally chartered state veterans organization that has at least one veterans service commissioner in Ohio; three representatives of the Ohio State Association of County Veterans Service Commissioners, who have a combined vote of one; three representatives of the State Association of County Veterans Service Officers, who have a combined vote of one; one representative of the County Commissioners Association of Ohio, who must be a county commissioner from a different county than any of the other county representatives; and a representative of the Office of the Attorney General. The bill adds a representative of the Advisory Committee on Women Veterans and a representative of a labor organization to the membership of the Veterans Advisory Committee. The Department must submit to the Advisory Committee proposed rules for the Committee's operation. The Committee may review and revise the proposed rules prior to submitting them to the Joint Committee on Agency Rule Review. (R.C. 5902.02(K).)

(7) Microfilming or otherwise duplicating all or any part of copies of original certificates of discharge and separation submitted by Ohio veterans. (The bill removes a limiting specification that discharge and separation certificates must have been submitted in conjunction with applications for Ohio war bonuses.) The Director is authorized to prepare and maintain files of the microfilmed certificates in such a manner that they may readily be available for use by the Department, authorized veterans service officers of the congressionally chartered veterans organizations, and county veterans service officers in support of applications for compensation, pensions, medical or domiciliary care, or other state and federal benefits provided for eligible veterans or their dependents or survivors. The Director is authorized to make copies of the microfilmed certificates to assure their preservation, and to supply copies to qualified veterans or their dependents or survivors or to interested and authorized veterans organizations to aid these organizations in their aid and assistance programs for veterans. (R.C. 5902.03.)

(8) Upon application, furnishing necessary instructions and advice to Ohio veterans, their heirs, or their legal representatives, respecting their claims against the United States or Ohio for pensions, bounties, bonuses, back pay, or otherwise, by reason of military service (R.C. 5902.04(A)).

(9) Keeping a register showing the situation and disposition of any claim filed by the Department (R.C. 5902.06).

(10) Administering oaths (R.C. 5902.07).

(11) If National Guard or Reserve forces in Ohio are to be called to active duty, convening a Military Activation Task Force to determine whether federal, state, and county agencies have prepared proper support mechanisms for the military activation. The Task Force is to prepare and publish a report that states whether those mechanisms have been prepared, and that describes further actions that need to be taken to support the military activation. The Department is to provide the Task Force with necessary personnel, supplies, and services. (R.C. 5902.15.)

(12) Serving as the Ohio Veterans Hall of Fame's administrative agent. The Director is as an ex officio member of Ohio Veterans Hall of Fame executive committee, and the Department must appoint one member to the committee. The Director is not eligible for induction into the Veterans Hall of Fame until two years after the Director has left that position unless the Director is over 70 years of age and the executive committee waives the two-year waiting requirement. (R.C. 5904.01.)

### *New functions*

The bill creates the following new functions for the Department and its Director:

(1) Developing, and maintaining and improving, a resource, such as a telephone answering point or a web site, by means of which veterans and their dependents, through a single portal, can access multiple sources of information and interaction with regard to the rights of, and the benefits available to, veterans and their dependents. The Director may enter into agreements with state and federal agencies, with agencies of political subdivisions, with state and local instrumentalities, and with private entities as necessary to make the resource as complete as is possible. (R.C. 5902.02(N).)

(2) Planning, organizing, advertising, and conducting outreach efforts, such as conferences and fairs, at which veterans and their dependents may meet, learn about the organization and operation of the Department and of veterans service commissions, and obtain information about the rights of, and the benefits and services available to, veterans and their dependents (R.C. 5902.02(O)).

(3) Advertising, in print, on radio and television, and otherwise, the rights of, and the benefits and services available to, veterans and their dependents (R.C. 5902.02(P)).

(4) Developing and advocating improved benefits and services for, and improved delivery of benefits and services to, veterans and their dependents (R.C. 5902.02(Q)).

(5) Searching for, identifying, and reviewing statutory and administrative policies that relate to veterans and their dependents and reporting to the General Assembly statutory and administrative policies that should be consolidated in whole or in part within the organization of the Department to unify funding, delivery, and accounting of statutory and administrative policy expressions that relate particularly to veterans and their dependents (R.C. 5902.02(R)).

(6) Establishing advisory committees, in addition to the Veterans Advisory Committee, on veterans issues (R.C. 5902.02(U)).

(7) Developing and maintaining a relationship with the United States Department of Veterans Affairs, seeking optimal federal benefits and services for Ohio veterans and their dependents, and encouraging veterans service commissions to maximize the federal benefits and services to which veterans and their dependents are entitled (R.C. 5902.02(V)).



(8) Developing and maintaining relationships with the several veterans organizations, encouraging the organizations in their efforts at assisting veterans and their dependents, and advocating for adequate state subsidization of the organizations (R.C. 5902.02(W)).

(9) Requiring the several veterans organizations that receive funding from the state annually to report to the Director and prescribing the form and content of the report (R.C. 5902.02(X)).

### **Transfer of Ohio Veterans' Home Agency**

The bill merges the Ohio Veterans' Home Agency into the Department, and abolishes its Board of Trustees. Currently, the Board that governs the Agency has charge and custody of the Agency's facilities. (R.C. 5907.01 and 5907.02.)

The bill therefore abolishes the Ohio Veterans' Home Agency and transfers its functions, assets and liabilities, obligations, and authority to the Department of Veterans Services. The Department is successor to, and assumes the obligations and authority of, and otherwise continues, the Agency. A right, privilege, or remedy, or a duty, liability, or obligation, that accrued under the Agency is neither impaired nor lost by reason of the transfer and is to be recognized, administered, performed, or enforced by the Department.

Any business that was commenced but not completed by the Agency or its Board of Trustees is to be completed by the Department or its Director in the same manner, and with the same effect, as if completed by the Agency or its Board of Trustees. A pending action or proceeding that is being prosecuted or defended in court or before an administrative agency by the Agency or its Board of Trustees is not affected by the transfer and is to be prosecuted or defended by the Department or its Director. Upon application to the court or agency, the Department or its Director is to be substituted as a party.

All the rules, orders, and determinations of the Agency continue in effect as rules, orders, and determinations of the Department, until they are modified or rescinded by the Department. If necessary to ensure the integrity of the numbering of the Administrative Code, the Director of the Legislative Service Commission must renumber the rules of the Agency to reflect their transfer to the Department.

Subject to the layoff provisions of the Civil Service Act, all employees of the Agency are transferred to the Department and retain their positions and all benefits.

The Director of Budget and Management must determine the amount of unexpended balances in the appropriation accounts that pertain to the Agency and



recommend to the Controlling Board their transfer to appropriation accounts that pertain to the Department. The Board of Trustees of the Agency is to provide full and timely information to the Controlling Board as necessary to facilitate the transfer.

Whenever the Agency or its Board of Trustees is referred to in a statute, contract, or other instrument, the reference is to be read as referring instead to the Department or its Director as is appropriate in context. (Section 6.)

Because of the transfer, the Director generally must govern, conduct, and care for veterans' homes, the property of the homes, and the veterans residing in the home. Among the transferred duties is appointing a superintendent. The superintendent, with the advice and consent of the Director, must employ aides, assistants, and employees, and perform other duties that may be assigned by the Director or that become necessary in the carrying out of the superintendent's duties. The superintendent is responsible directly to the Director. The Director must make an annual report to the Governor as to all expenditures and as to the management of the veterans homes. (R.C. 5907.02.)

Additionally, the bill transfers the following authority from the Board to the Director:

(1) Expanding nursing home care and domiciliary services to veterans at sites other than the Ohio veterans' homes and nursing homes by: (1) entering into contracts or agreements to construct, lease, purchase, or otherwise acquire real property or facilities to establish a network of facilities or (2) entering into contracts with private providers (R.C. 5907.022).

(2) Adopting rules for the admittance of certain veterans into a veterans' home and to prescribe conditions under which a veterans' home can reserve a bed during the temporary absence of a resident or patient from the home. The bill clarifies that a person who served in the armed forces of the United States<sup>1</sup> is eligible for admission to a veterans' home only if the person served on active military duty and was discharged from the service under honorable conditions, and who either served on active duty for reasons other than training or, while serving on active duty for training, incurred a disability recognized by the United States Department of Veterans Affairs or Department of Defense as service-connected. (R.C. 5907.04.) The bill specifies that any resident of a veterans' home whom the U.S. Department of Veterans Affairs determines to have excess income or assets,

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<sup>1</sup> "Armed forces of the United States" means the army, air force, navy, marine corps, coast guard, and any other military service branch that is designated by Congress as a part of the armed forces of the United States.

or is denied per diem for any reason by that Department, therefore rendering the home ineligible to collect per diem grant reimbursement for days of care provided to that resident, may be required to pay an amount equal to the rate of per diem grant that the Department denied for that particular resident (R.C. 5907.141(B)).

(3) Approving the superintendent's establishment of a local fund and rules for the operation of the fund for each veterans' home to be used for the entertainment and welfare of the residents of the home (R.C. 5907.11).

(4) Utilizing, approving, recruiting, training, and supervising the services of volunteers to assist in attending to and caring for residents and resident activities, caring for veterans' homes' buildings and grounds, and participating in any other services that accomplish any of the Director's purposes related to veterans' homes. The Director can designate volunteers as state employees for the purpose of motor vehicle accident liability insurance and indemnification from liability incurred in the performance of their duties. (R.C. 5907.12.)

(5) Subject to Controlling Board approval, adopting rules for determining a resident's ability to pay a portion of the expenses of their support, based upon the level of care provided to the resident. Each resident must furnish the Director statements of income, assets, debts, and expenses that the Director requires. (R.C. 5907.13.)

Additionally, the bill carries forward the exemption of the Agency from the provisions of the Sunset Review Committee Law (R.C. 5907.023). The bill also allows any person appointed or designated by Congress to inspect and supervise the management and control of veterans' homes for appropriation purposes to exercise the privileges of the Director (R.C. 5907.03).

The bill repeals the requirement that the Director visit each veterans' home and the National Military Home at Dayton at least once every three months, and other veterans facilities as necessary. The bill also repeals the requirement that, at the discretion of the Governor, the Director or the Director's representative must visit the several governmental departments at Washington, D.C., or elsewhere, as may be necessary. (R.C. 5902.05.)

### **Ohio War Orphans Scholarship Board**

The bill also makes the Ohio War Orphans Scholarship Board part of the Department, and adds the Director or the Director's designee as a Board member. The Board currently determines the number of scholarships to be made available, receives scholarship applications, passes upon the eligibility of applicants, and decides which applicants are to receive scholarships. (R.C. 5910.02.)

**Department of Veterans Services duties related to veterans service commissions and officers**

The bill transfers and creates functions for the Department and its Director that are specifically related to county veterans service commissions and county veterans service officers (R.C. 5901.02, 5901.021, 5901.07, and 5901.09).

**Transfer of existing functions**

Existing functions relating to county veterans service commissions and county veterans service officers that are transferred are:

(1) Furnishing the veterans service commissions of all counties copies of the Ohio laws, rules, and legislation relating to the operation of the commissions and their offices (R.C. 5902.02(A)).

(2) Adopting rules under the Administrative Procedure Act pertaining to minimum qualifications for hiring, certifying, and accrediting county veterans service officers and pertaining to their required duties (R.C. 5902.02(C)).

(3) Adopting rules under the Administrative Procedure Act for the education, training, certification, and duties of veterans service commissioners (R.C. 5902.02(D)).

(4) Developing and monitoring programs and agreements enhancing employment and training for veterans in single or multiple county areas (R.C. 5902.02(E)).

(5) Developing and monitoring programs and agreements to enable county veterans service commissions to address homelessness, indigency, and other veteran-related issues, individually or jointly (R.C. 5902.02(F)).

(6) Establishing and providing statistical reporting formats and procedures for county veterans service commissions (R.C. 5902.02(H)).

(7) Adopting, with the advice and assistance of the Veterans Advisory Committee, policy and procedural guidelines that veterans service commissions must adhere to in the development and implementation of rules, policies, procedures, and guidelines. The Department may not adopt guidelines or rules regulating the purposes, scope, duration, or amounts of financial assistance provided to applicants by veterans service commissions. The Director is authorized to obtain opinions from the Attorney General regarding rules, policies, procedures, and guidelines of the veterans service commissions, and is authorized to enforce a commission's compliance with the veterans service commission law. (R.C. 5902.02(L).)

(8) Receiving copies of form DD214 from members of veterans service commissions and from county veterans service officers (R.C. 5902.02(M)).

(9) Examining the files of any veterans service commission that pertain to applicants for, or to recipients or former recipients of, assistance or benefits to determine the custody, use, or confidentiality of any documents in those files. The information or documents obtained are public records of the Department. The Director can disclose information or documents that personally identify an applicant, recipient, or former recipient if necessary to enforce compliance with veterans services laws and for the purposes and under the circumstances authorized by a signed consent-to-release form. In all other cases, the Director must maintain the confidentiality of information or documents that personally identify an applicant, recipient, or former recipient. (R.C. 5902.04(B) and (C).)

(10) Prescribing a manner by which veterans service commissions may compile certain statistical data and a form on which a veteran may consent to the release by a veterans service commission of any information in an application for financial assistance, statement, or other document (R.C. 5901.09(A)).

### *New functions*

The bill creates the following new functions for the Department and its Director regarding veterans service commissions and veterans service officers:

(1) Encouraging veterans service commissions to innovate and otherwise to improve efficiency in delivering benefits and services to veterans and their dependents and to report successful innovations and efficiencies to the Director (R.C. 5902.02(S)).

(2) Publishing and encouraging adoption of successful innovations and efficiencies veterans service commissions have achieved in delivering benefits and services to veterans and their dependents (R.C. 5902.02(T)).

(3) Investigating complaints against county veterans services commissioners and county veterans service officers if the Director reasonably believes the investigation to be appropriate and necessary (R.C. 5902.02(Y)).

(4) Adopting rules under the Administrative Procedure Act pertaining to revocation of the certification of county veterans service officers (R.C. 5902.02(C)). The commission may remove a veterans service officer who fails to maintain accreditation or whose certification is revoked by the Director (R.C. 5901.07).

(5) Adopting rules under the Administrative Procedure Act for the revocation of the certification of a veterans service commissioner (R.C.

5902.02(D)). The appointing authority, a common pleas court judge, must remove a member who fails to maintain certification or whose certification is revoked by the Director (R.C. 5901.02).

### **Director of Veterans Services not to accept fees or rewards**

The Director of Veterans Services is prohibited from receiving, directly or indirectly, a fee or reward of any kind from a claimant or other person for services the Director renders or is to render relating to any of the duties imposed under the Department of Veterans Services chapter or in any manner connected with those duties (R.C. 5902.08).

### **Chapter name**

The Revised Code chapter concerning veterans is named "Department of Veterans Services" by the bill (Section 3).

### **Reports concerning veterans**

The bill requires the person in charge of a state agency or instrumentality, an agency or instrumentality of a political subdivision, or a private entity, such as a nursing home, that provides law enforcement, health, or welfare services to individuals, other than the Ohio Veterans' Home and veterans service organizations, to ask an individual with whom the agency, instrumentality, or entity interacts if the individual is a veteran or is or was the dependent of a veteran. If the individual claims to be such an individual, the person in charge must report the individual's name, address, telephone number, and e-mail address; the agency's, instrumentality's, or entity's name, address, telephone number, and e-mail address; the nature of the agency's, instrumentality's, or entity's interaction with the individual; and the date on which the interaction occurred to the Director. The Director must inform the veterans service commission having jurisdiction about the veteran or dependent and the interaction. The commission must inquire about, and offer benefits and services appropriate to, the veteran or dependent. (R.C. 5902.09.)

### **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 Ohio that a person has under the "Uniformed Services Employment and Reemployment Rights Act of 1994."<sup>2</sup> 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 the Administrative Procedure Act for the implementation

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<sup>2</sup> 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.



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, 4112.01, 5903.01, 5903.02, and 5923.05.)

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### **HISTORY**

ACTION	DATE
Introduced	02-05-08
Reported, S. Finance & Financial Institutions	04-16-08
Passed Senate (31-0)	04-16-08
Reported, H. State Gov't & Elections	---

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