



Ohio Legislative Service Commission

Bill Analysis

Daniel M. DeSantis

Sub. H.B. 449

128th General Assembly
(As Passed by the House)

Reps. Ujvagi, Yuko, Goyal, Belcher, Boose, Boyd, Brown, Carney, Celeste, Chandler, DeBose, Domenick, Dyer, Evans, Fende, Foley, Garland, Hackett, Harris, Harwood, Heard, Letson, Luckie, Lundy, Mallory, Murray, Oelslager, Otterman, Patten, Pillich, Pryor, Reece, Schneider, Skindell, Stewart, Sykes, Szollosi, Weddington, B. Williams, Winburn

BILL SUMMARY

- Permits the use of the federal DD form 93, "Record of Emergency Data Form," to satisfy the written declaration requirements for designating a person who is authorized to direct disposition of a person's remains.
- Establishes criteria for determining military leave pay for publicly employed firefighters and emergency medical technicians with nontraditional work schedules.
- Adds, to the membership of the Veterans Advisory Committee, a member of the Military Officers Association of America.

CONTENT AND OPERATION

Right of disposition of a person's remains

(R.C. 2108.72 and 2108.73)

Under current law, an adult who is of sound mind may execute a written declaration assigning to a representative the right to direct the disposition, after death, of the declarant's body. The law specifies information that must be included in the declaration, and specifies that the declaration must be signed and dated by the declarant in the presence of either a notary public or two witnesses who are not related to the declarant.

The bill declares that completion of a federal Record of Emergency Data Form, DD Form 93, or its successor form, is sufficient to constitute a written declaration under

Ohio law if section 13a of the form, entitled "Person Authorized to Direct Disposition," has been properly completed by a member of the military who has subsequently died while under active duty orders as described in federal law¹ (R.C. 2108.72(C)). A "DD Form 93" is established for use by military personnel and Department of Defense civilian and contractor personnel. If a person uses DD Form 93 for the purposes of a written declaration under Ohio law, it must be signed and dated in the presence of whomever the form requires (R.C. 2108.73(C)).

Military leave for firefighters and emergency medical technicians

(R.C. 5923.05(A)(2)(b) and (g))

Under current law, permanent public employees² who are members of the Ohio organized militia or members of other reserve components of the armed forces of the United States, including the Ohio National Guard, are entitled to a leave of absence from their respective positions, without loss of pay, for periods of up to one month for each calendar year in which they are performing service in the uniformed services. Furthermore, any permanent public employee who is employed by a political subdivision or by a state agency, who is called or ordered³ to the uniformed services for longer than a month, is protected from loss of income during that service in the following manner: Employees of the state are entitled to the difference between their gross monthly wage or salary as a permanent public employee and the sum of their gross uniformed pay and allowances received that month. Employees of a political subdivision are entitled to the same benefit except that the benefit is limited to a monthly maximum per employee of \$500.

Current law defines "month" as 22 eight-hour work days or 176 hours within one calendar year for state and political subdivision employees generally. The bill revises the definition to accommodate certain public safety employees who have nontraditional work schedules. Under the bill, "month" for a public safety employee who is employed as a firefighter or emergency medical technician means 17 twenty-four-hour days or 408 hours within one calendar year.

¹ 10 U.S.C. § 1481.

² "Permanent public employee" means any person holding a position in public employment that requires working a regular schedule of 26 consecutive biweekly pay periods, or any other regular schedule of comparable consecutive pay periods, which is not limited to a specific season or duration.

³ The call or order must be pursuant to an executive order issued by the President of the United States, an act of Congress, or an order to perform duty issued by the Governor.

The military leave of absence and compensation entitlements, however, have limited applicability with respect to municipal corporations and other political subdivisions (see **COMMENT**).

Veterans Advisory Committee

(R.C. 5902.02(K))

Current law requires the Director of Veterans Services to establish a Veterans Advisory Committee to advise and assist the Department of Veterans Services in its duties. Members must include a state representative of congressionally chartered veterans organizations,⁴ 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 not from the same county as any of the other county representatives), a representative of the Advisory Committee on Women Veterans, a representative of a labor organization, and a representative of the Office of the Attorney General.

The bill adds as a member of the Veterans Advisory Committee a member of the Military Officers Association of America who is an Ohio resident.

COMMENT

The military leave statute, R.C. § 5923.05, does not apply to municipal corporations, despite its clear language which suggests otherwise. In *N. Ohio Patrolmen's Benevolent Assn. v. Parma*, Ohio St.2d 375 (1980), the Ohio Supreme Court held that an ordinance adopted by a municipality pursuant to its constitutional home-rule authority (see Ohio Constitution Article XVII, section 3) regarding military leave of its employees prevails over conflicting state law. The court concluded that the ability to determine the salaries to be paid to city employees was a fundamental exercise of substantive local self-government.

⁴ The applicable congressionally chartered veterans organizations are the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the AMVETS, the Military Order of the Purple Heart of the U.S.A., the Vietnam Veterans of America, and the Korean War Veterans Association (R.C. 5901.02, not in the bill).

The military leave entitlement statute, R.C. § 5923.05, also includes a provision that states that no collective bargaining agreement may afford fewer rights and benefits than are conferred in the statute. This provision, however, conflicts in part with the Public Employees Collective Bargaining Law (PECBL), which sets forth the following:

The law pertaining to the leave of absence and compensation provided under section 5923.05 of the Revised Code prevails over any conflicting provisions of such agreements if the terms of the agreement contain benefits which are less than those contained in that section or the agreement contains no such terms and the public authority is the state or any agency, authority, commission, or board of the state or if the public authority is another entity listed in division (B) of section 4117.01⁵ of the Revised Code that elects to provide leave of absence and compensation as provided in section 5923.05 of the Revised Code. (R.C. § 4117.10.)

Therefore, according to PECBL, all counties, municipal corporations, and townships with a population of at least 5,000, and public or special districts,⁶ may elect to provide leave of absence and compensation as provided in R.C. § 5923.05. The language of PECBL suggests that if the political subdivision does not make such an election, then R.C. § 5923.05 would not prevail over a collective bargaining agreement. This is in conflict with the language of R.C. § 5923.05, which clearly proposes to create a benefit entitlement for all permanent public employees and mandate their employers to provide it.

This conflict is of no consequence, with respect to municipal corporations, because of the constitutional home-rule authority discussed above. But with respect to counties, townships, and public or special districts, the military leave statute which creates an entitlement for public employees is in conflict with a collective bargaining statute that says otherwise.

⁵ Other entities include municipal corporations or townships with a population above 5,000, and public or special districts.

⁶ The phrase public or special district is not defined in PECBL, but may refer to joint emergency medical services districts created under R.C. 307.052, and fire and ambulance districts created under R.C. 505.375.

HISTORY

ACTION

DATE

Introduced	02-11-10
Reported, H. Veterans Affairs	03-03-10
Passed House (95-3)	03-10-10

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