Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 5 of the 129th G.A.

Date: March 30, 2011

Status: As Enacted

Sponsor: Sen. Jones

Local Impact Statement Procedure Required: No

Contents: Revises the Public Employee Collective Bargaining Law and makes changes to compensation and terms of employment for public sector employees

State and Local Fiscal Highlights

Employee compensation and benefit changes affecting all public employees

- **Performance pay.** The bill replaces salary schedules and longevity pay supplements with performance-based pay ranges for employees of the state and political subdivisions, except for teachers, whose compensation the bill requires to be based on performance criteria alone. As a result of these changes, state and local government employers could incur new costs to review job classifications and employee performance guidelines.
- **Health insurance premiums.** The bill prohibits state and local government employers from paying more than 85% toward the cost of employee health benefit premiums. Currently, the state pays 85% toward employees' health insurance premiums. Numerous state colleges and universities, political subdivisions, and school districts cover more than 85% of employee health premiums. Their health insurance costs will be reduced as a result of this cap.
- **Pension contributions.** The bill prohibits public employers from paying employee contributions to any of the five state retirement systems. The provision would decrease benefit costs for government employers that make such contributions. Total employee retirement contributions in FY 2009 were approximately $2.9 billion.

Changes affecting the collective bargaining process

- **State collective bargaining.** The bill limits mandatory subjects of collective bargaining for state and local government employees to matters pertaining to wages, hours, terms, conditions of employment, and, for certain employees, safety equipment. According to the State Employment Relations Board (SERB), as of June 30, 2010, the number of employees covered by collective bargaining agreements was approximately 42,000 in state government, 19,500 in institutions of higher education, 102,000 in local governments, and 196,000 in school districts.

- **Last best offers placed on the ballot.** The bill specifies conditions under which the last best offers made by public employee unions and political subdivisions under the final dispute resolution procedure in the bill are to be placed on the ballot. If last best offers are placed on the ballot, county boards of elections will incur costs for advertising the language and holding elections.
- **Fiscal emergency and fiscal watch.** If a municipality, county, school district, or the state is declared to be in fiscal emergency or in fiscal watch, the bill authorizes that entity to alter a collective bargaining agreement. Contracts currently in effect would not be subject to this provision. As of March 31, 2011, there were 27 political subdivisions and 14 school districts in either fiscal emergency or fiscal watch.
- **Strike prohibition.** The bill prohibits public employees from striking. Employees violating this prohibition will be subject to dismissal. For public employees who choose to strike, their pay will be deducted at twice their daily rate for each day, in part or in whole, missed while striking. In addition to the strike prohibition, the bill authorizes public employers to seek an injunction in the courts against strikes. Violators of such an injunction could be subject to further penalties.
- **State Employment Relations Board (SERB).** The bill makes changes to the law that may increase SERB's administrative responsibilities and costs. First, the bill allows the process of decertifying a representative organization to be initiated if it can be shown that 30% of the bargaining unit supports decertification. Second, the bill requires all public employers to report the terms of a collective bargaining agreement to SERB and for SERB to publish these reports on its web site.

Detailed Fiscal Analysis

Overview

The bill modifies the terms of compensation for state and local government employees and makes extensive changes to the state's collective bargaining law. The bill limits mandatory subjects of collective bargaining for state and local government employees to matters pertaining to wages, hours, terms, and conditions of employment. It also prohibits public employees from striking and eliminates the process of binding arbitration that is used to resolve negotiating impasses between political subdivisions and public safety forces.

Table 1 below summarizes information concerning public sector employment obtained from the State Employment Relations Board's (SERB) annual report for FY 2010. For that fiscal year, there were approximately 360,000 employees throughout state and local government covered by 3,290 collective bargaining contracts. The state employed approximately 59,000 state employees, with roughly 42,000 covered under collective bargaining contracts in FY 2010. The remaining 17,000 employees were exempt. According to the Ohio Administrative Knowledge System (OAKS), total wages paid to state employees in FY 2010 were $2.64 billion. Comprehensive wage information for employees of political subdivisions is not available.

Table 1. Collective Bargaining Employees by Employer Type, June 30, 2010

Employer	Number of Employers	Collective Bargaining Contracts	Collective Bargaining Employees
State	1	11	41,991
Higher Education	37	70	19,540
City	250	1,013	48,842
County	1,027	572	34,836
Township	155	214	3,191
Boards of Education	718	1,224	195,670
Special District	207	76	2,312
Local Government - Other	339	110	11,894
Total	**2,734**	**3,290**	**358,276**

The first section of this analysis deals with provisions of the bill that relate to public employee compensation. Perhaps the most significant change for public employees is the requirement that public employers replace salary schedules and step increases with a system of merit-based pay ranges. Although it is unclear what effect this change will have on wages paid to public employees, it could require the state and political subdivisions to make changes to their human resources management operations. Another provision of the bill that affects public employee compensation is a prohibition on employers from contributing more than 85% of the premium costs for health, dental, and vision benefits offered to public employees. The bill also prohibits public employers from paying any share of an employee's retirement contribution. Together, these restrictions will provide public employers with some additional control over fringe benefit costs.

The second section of this analysis deals more specifically with the provisions of the bill that modify the Public Employees Collective Bargaining Law. First, the bill limits mandatory subjects of collective bargaining for state and local government employees to matters pertaining to wages, hours, terms, and conditions of employment. Next, the bill prohibits public employees from striking and prohibits the use of mandatory conciliation, commonly referred to as binding arbitration, when negotiations reach an impasse. Additionally, the bill prohibits continuing contracts for teachers. Finally, the bill allows for a collective bargaining agreement to be altered if a municipality, county, school district, or the state is declared to be in fiscal emergency or fiscal watch.

Employee compensation and benefit changes

Performance pay

The bill requires that the state and political subdivisions replace salary schedules and step increases with a system of performance-based pay for both bargaining unit and exempt employees. The bill requires the Department of Administrative Services (DAS) to develop a performance pay system that applies generally to most public employees except for teachers. For teachers, the bill requires boards of education to conduct performance evaluations based upon a framework adopted by the Department of Education and to use the evaluations to make decisions about compensation, termination, and professional development for teachers.

Replacing salary schedules with a performance-based pay system could result in some administrative costs for the state and political subdivisions. The primary cost will be for revising compensation plans to tie job performance characteristics with employee pay. School districts will likely incur some additional expense to develop and carry out the evaluations required under the bill, as will the Department of Education, which is required to develop the evaluation framework and provide technical assistance to school districts for designing these plans.

The Human Resources Division within DAS, which oversees matters related to state employee pay plans and job classifications, could incur new costs for converting to a performance-based pay system. Currently, the Division funds the payroll and classification plan services it provides to state agencies by charging a fee of $11.55 per paycheck issued to employees. These receipts are deposited into the Human Resources Operating Fund (Fund 1250). Overall Human resources Division Operating expenses were $21.0 million in FY 2010.

Employee health insurance premiums

The bill prohibits state and local government employers, including school districts and institutions of higher education, from paying more than 85% toward the cost of employee health insurance premiums. The bill also specifies that health benefits in general are an inappropriate subject for collective bargaining, except when employers pay less than 85% of the premium cost. Under the bill, in addition to medical coverage, health benefits include dental, vision, and prescription benefits. This provision would affect a substantial number of public employers, many of which pay more than 85% toward the cost of employee health insurance premiums. The state currently pays 85% of the premium costs for medical plans and 100% of the premium cost for dental and vision benefits for full-time employees. The state pays a lesser, pro-rated amount for the benefits of part-time employees.

Table 2 below shows health benefit expenses incurred by the state and local governments that paid more than 85% of employee health care premiums in FY 2010. The state costs for health benefits were obtained from OAKS. Because the state currently pays for 85% of employees' medical insurance coverage, the $45.1 million in state costs reflects only the payments that the state makes for vision and dental benefits. The information pertaining to school districts and other local governments is collected by SERB, but is entirely self-reported by those entities. Thus, it may be that there are more political subdivisions that pay more than 85% of their employees' health care. LSC was not able to obtain health benefit expenditure data from institutions of higher education.

Table 2. Health Benefit Costs for Public Employers, FY 2010		
Employer	**# that Pay More than 85%**	**Total Health Premium Expenditures for >85% Plans**
State	--	$45,146,606
School Districts	335	$55,305,060
Local Governments	221	$46,898,170
Total	**557**	**$147,389,836**

Employee pension contributions

The bill prohibits a public employer from paying employee contributions to any of the five state retirement systems, except where the employer reduces the employee's salary by the same amount for tax purposes.[1] The five state retirement systems are: the

[1] Under current federal law, a public employer may designate employee contributions as being paid by the employer and treated as employer contributions for tax purposes. The employee would receive higher take home pay through deferring tax at the state and federal levels on the portion of his or her salary that equals the required employee's contribution. However, employee contributions are taxable upon retirement.

Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Ohio Police and Fire Pension Fund (OP&F), and the Highway Patrol Retirement System (HPRS). The provision would have no fiscal impact on the state because the state does not pay any employee contributions on behalf of its employees. The provision would not have any impact on the five retirement systems either because the total contributions paid toward the system would not change. The bill would, however, have a fiscal impact on many local governments. According to retirement system officials, over 2,532 local government employers[2] currently pay part or all of their employees' contributions into the systems, including contributions for tax purposes as described above. The provision would therefore reduce local government employer personnel costs for those political subdivisions that currently pay all or part of their employees' retirement contributions.

Table 3 below provides employee contribution rates and total employee contributions in FY 2009. Employee contributions in FY 2009 totaled $2.9 billion.

Table 3. Employee Contribution Rates and Contributions, FY 2009

Retirement System	Division	Required Employee Contribution Rate	Employee Contributions ($ in millions)
PERS	State	10.00%	$1,385.2
	Local	10.00%	
	PERS Public Safety	10.01%	
	PERS Law	10.01%	
STRS	n/a	10.00%	$1,085.7
SERS	n/a	10.00%	$295.8
OP&F	Police	10.00%	$168.4
	Fire	10.00%	
HPRS	n/a	10.00%	$8.6
		Total	$2,943.7

Collective bargaining provisions

Limitations on collective bargaining

The bill limits the subjects of collective bargaining for state and local government employees to matters related to wages, hours, terms, and conditions of employment. For public safety forces and other specified public employees, however, the bill specifically allows for equipment issues directly related to safety to be negotiated under collective bargaining. Otherwise, the bill expressly labels the following as

[2] A local government employer is a unit of a local government, but may not include the entire local government entity. Thus, a specific political subdivision could be counted more than once in this number.

inappropriate subjects for collective bargaining: health benefits, employee retirement contributions, privatization of services, the acquisition of services from educational service centers, and staffing levels.

According to the State of Ohio Payroll Projection System, projected base wage expenditures for bargaining unit employees in FY 2011 are expected to be approximately $1.57 billion. Wage costs for exempt employees over this period are expected to be $922.3 million. Fringe payroll expenditures are estimated to be $689.3 million for collective bargaining employees and $313.3 million for exempt employees. Similar information for local government and university employees is not currently available.

Table 4. Projected Payroll and Benefit Expenditures for State Employees, FY 2011

Employee Type	Number of Employees	Base Wages	Fringe Expenses	Total
Collective Bargaining	40,500	$1,569,380,748	$689,266,442	$2,258,647,190
Exempt	18,200	$922,308,183	$313,281,464	$1,235,589,647
Total	**58,700**	**$2,491,688,931**	**$1,002,547,906**	**$3,494,236,837**

Strike prohibition

Under the bill, bargaining unit employees are prohibited from striking. Specifically, the bill subjects these employees to possible dismissal, but otherwise requires that the pay for striking employees be deducted at twice their daily rate for each day, in part or in whole, missed while striking. The bill authorizes public employers to seek an injunction against strikes. According to SERB, there have been a total of 43 public sector strikes since CY 2000. There were two strikes in CY 2009 and no strikes in CY 2010.

Final dispute resolution procedures

The bill replaces the current process of resolving contract disputes through binding arbitration, currently used to resolve disputes involving public safety employees that are not allowed to strike, with a new mechanism. Under the bill, disputes go through arbitration and fact-finding. These two stages are similar to current law with two exceptions: (1) a single fact-finder, as opposed to a panel, is appointed and (2) the fact-finder is restricted to considering only the public employer's current financial situation. During each stage of this process, both entities make their most recent offer public via the public employer's web site or via a newspaper of general circulation. If either the public employer or the employee representation rejects the fact-finder's report, the appropriate legislative body must adopt either party's final offer in its entirety. Any contracts adopted through this process will be valid for three years. If the legislative body fails to choose a final offer, the offer of the employer is put into effect. This new mechanism will presumably slow the rate of growth of personnel costs for political subdivisions, as it is unlikely that a legislative body would adopt increases in costs that were seen as untenable.

Voter approval

The bill specifies the circumstances under which the chief financial officer of the legislative body is required to conduct an analysis of the last best contract offer selected by a legislative body, whether it be the public employer's or the bargaining representative's. If the legislative body selects the last best offer that the chief financial officer determines costs more and for which there are insufficient funds to implement, or if the chief financial officer refuses to make this determination, the bill allows either party to the agreement or any eligible constituent to proceed with steps necessary to place the last best offer from each party on the ballot. The bill, however, states that this process does not apply to bargaining contracts before the state, institutions of higher education, or those public employers that do not have a defined geographic region, such as public hospitals.

If contracts are placed on the ballot, the political subdivision will incur costs for advertising the ballot language and holding elections. These costs will vary depending on whether the issue is on the ballot at a general election or a special election. These costs and how they are to be allocated are specified in statute. Under the bill, summaries of each party's last best offer must be published in a newspaper of general circulation, one a week for two consecutive weeks. These ballot advertising costs will depend on the length of the summary language provided by both parties.

Leave policies

The bill limits the amount of vacation that public employees can accrue. Employees not covered by collective bargaining contracts are limited to five weeks annually. Correspondingly, the bill requires any employee earning vacation leave at a rate of 9.2 hours per pay period, and whose leave balance exceeds 600 hours, to forfeit the right to use, or receive compensation for, those excess hours. Collective bargaining employees are prohibited from accruing more than six weeks of vacation annually prior to 20 years of services. Additionally, the bill expressly prohibits collective bargaining contracts from containing provisions allowing employees to cash out more than 50% of accrued sick leave, with a total limit of 1,000 hours, at the time of retirement or death. Total sick-leave conversion payouts for the state during FY 2010 were $11.5 million.

School district continuing contracts

Under the bill, continuing contracts for teachers are prohibited. This is a process under which school districts may elect to enter into automatically renewed contracts with teachers that meet certain certification and longevity requirements. In these situations, teachers are provided with applicable pay raises. Their contracts can only be terminated with just cause or if the teacher chooses to resign. Under the bill, new contracts will be three years in duration, and subsequent contracts can be between two to five years. As with other collective bargaining provisions contained in the bill, the fiscal impact of these changes hinges on the actions of individual school districts. The Ohio Department of Education (ODE) indicates that there are approximately 110,000 full-time teachers working in roughly 610 school districts throughout the state. The average teacher's salary during FY 2010 was approximately $56,000.

Fiscal emergency and watch

If a municipality, county, school district, or the state is declared to be in either fiscal emergency or fiscal watch by the Auditor of State, the bill authorizes that entity to alter relevant collective bargaining agreements. Entities in fiscal emergency are authorized to modify, terminate, or negotiate agreements; entities in fiscal watch are authorized to modify or suspend salary or benefit increases. This provision would only affect future contracts; contracts already in existence would be unaffected. By providing this mechanism for altering the terms of collective bargaining contracts, the bill gives public employers more flexibility to address budget problems. As of January 31, 2011, there were 27 political subdivisions and 15 school districts in either fiscal emergency or fiscal watch.

Exempt employees

The bill contains provisions that exempt more public employees from collective bargaining. Specifically, the bill defines firefighters that have reached the rank of lieutenant or above, faculty members of institutions of higher education involved in the management of the institution, and certain unclassified clerical employees that serve in a fiduciary capacity as being exempt from collective bargaining. At the time this analysis was prepared, LSC was not able to determine the additional number of firefighters or fiduciary employees that will be affected by this change. According to the state's Higher Education Information System, in CY 2009 there were 21,167 faculty members at the state's 61 higher education campuses, with an average salary of $63,067. It is unclear exactly how many of these faculty members were involved in management as defined under the bill.

SERB

The degree to which the bill will affect the operations of SERB depends largely on the impact the bill will have on the collective bargaining process affecting state and local government employees. SERB's responsibilities involving the Public Employees Collective Bargaining Law include overseeing representation elections, certifying exclusive bargaining representatives, monitoring and enforcing statutory dispute resolution procedures, mediating collective bargaining negotiations, adjudicating unfair labor practice charges, determining unauthorized strike claims, and providing information and training to parties in contract negotiations. SERB is almost entirely GRF supported, although the agency collects a small amount of money from the sale of publications, seminar fees, and so forth. Total FY 2010 expenditures were approximately $3.6 million. The total FY 2011 appropriation is $3.9 million. SERB currently employs 32 persons, including three board members that oversee collective bargaining issues and three administrative law judges.

The bill authorizes another employer organization, current employees, or a public employer to file a petition for the decertification of a representative organization with SERB, if it can be shown that 30% of the respective bargaining unit support the petition. This will probably increase the number of decertification petitions that SERB processes each year and therefore increase SERB's costs for overseeing this process.

The bill also prohibits an informal agreement between employees and representation, such as a memorandum of understanding, from being considered when SERB determines the appropriateness of a bargaining unit or representation elections. Additionally, the bill requires public employers entering into collective bargaining agreements to report the new terms of employee compensation, including a comparison to existing terms, to SERB. The Board is consequently required to publish these reports on its web site. Because SERB already collects all collective bargaining agreements and publishes these contracts on its web site, the cost of complying with the new web posting requirements is probably minimal.

Ohio Commission for Excellence in Public Service

The bill creates the Ohio Commission for Excellence in Public Service, consisting of between seven and eleven members representing various interested parties related to public service that are to be appointed by the Director of Administrative Services. The bill requires the Commission to establish and guide the development of programs that foster best practices for developing and maintaining healthy working relationships in the public sector workplace and for producing an annual report on these matters. Although the Department of Administrative Services might incur costs for staff and technical support, the bill provides the Commission with the authority to receive funds from private and public sources, and contract for services to carry out its responsibilities. Commission members will serve without compensation, but will be reimbursed for expenses.

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