Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 5 of the 129th G.A. **Date**: February 15, 2011

Status: In Senate Insurance, Commerce & Labor **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

- **Merit pay.** The bill requires that the state and political subdivisions adopt merit-based compensation systems in place of pay schedules that provide for step increases and other automatic adjustments for public employees. This will require substantial changes to state and local government human resources management functions, including the review of job classifications and employee performance guidelines, as well as changes to payroll processing systems.
- **Eighty per cent cap on health insurance premiums.** The bill prohibits state and local government employers from paying more than 80% 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 also cover more than 80% of employee health premiums.
- **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 CY 2009 were approximately $2.9 billion.

Changes affecting the collective bargaining process

- **State collective bargaining.** The bill prohibits state agencies and institutions of higher education from bargaining collectively with employees. According to the State Employment Relations Board (SERB), as of June 30, 2010 there were approximately 42,000 bargaining unit employees in state government and 19,500 bargaining unit employees working for institutions of higher education.

- **School district and local government collective bargaining.** For other public employees, the bill more closely circumscribes rights that can be collectively bargained and alters dispute resolution procedures that apply to collective bargaining agreements. Most significantly, the bill prohibits employee health care benefits from being negotiated as part of collective bargaining. As of June 30, 2010, approximately 102,000 local government and 196,000 school district employees were covered under collective bargaining contracts.
- **Fiscal emergency.** If a municipality, county, school district, or the state is declared to be in fiscal emergency, the bill authorizes that entity to set aside any portion of a collective bargaining agreement. As of January 31, 2011, there were 24 political subdivisions and ten school districts in fiscal emergency.

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 eliminates the right of employees of state government and institutions of higher education to collectively bargain. Although the bill retains the right of employees of political subdivisions to collectively bargain, it applies conditions on the items that bargaining units and public employers may negotiate, and eliminates the process of binding arbitration that is used to resolve negotiating impasses between political subdivisions and public safety forces. Finally, the bill abolishes the School Employees Health Care Board currently housed within the Department of Education (ODE), as well as the Office of Collective Bargaining, a division within the Department of Administrative Services (DAS).

Table 1 below summarizes information concerning public sector employment obtained from the State Employment Relations Board's (SERB) annual report for FY 2010. In total, there were approximately 360,000 employees throughout state and local government covered by 3,290 collective bargaining contracts over that fiscal year period. The state employed approximately 59,000 state employees, with roughly 42,000 covered under collective bargaining contracts. 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 affect all public employees and employers. Perhaps the most significant change for public employees is the requirement that public employers replace salary schedules and step increases with a system of compensation based solely on merit. Although it is unclear what effect this change will have on wages paid to public employees, it will require the state and political subdivisions to make substantial changes to their human resources management operations, including payroll systems. Another provision of the bill that affects all public employees is a prohibition on employers from contributing more than 80% 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 payroll costs.

The second section of this analysis deals more specifically with the provisions of the bill that modify the Public Employee Collective Bargaining Law. First, the bill eliminates collective bargaining rights for employees of state government and institutions of higher education, but retains these rights for employees of political subdivisions with some significant conditions. Next, the bill prohibits the use of mandatory conciliation, commonly referred to as binding arbitration, in contract negotiations involving public safety forces. Also, the bill specifies that health benefits offered to public employees may not generally be negotiated as part of the collective bargaining process, reserving this as a matter for the public employer to manage. Additionally, the bill prohibits continuing contracts for teachers and places additional restrictions on management and staffing provisions that may be placed in bargaining contracts for school district employees. Finally, the bill allows for any provision of a collective bargaining agreement to be set aside if a municipality, county, school district, or the state is declared to be in fiscal emergency.

Employee compensation and benefit changes

Merit pay

The bill requires that the state and political subdivisions institute a merit-based compensation system for both bargaining unit and exempt employees. This will replace the system of salary schedules, step increases, and longevity supplements currently used by the state and political subdivisions. Replacing salary schedules with a merit-based pay system will result in administrative costs for state and local governments. Current payroll systems and software used by the state and most local governments are programmed to automatically implement wage increases according to salary schedules and hiring date anniversaries. Under the bill, these systems would have to be reprogrammed to allow manual input of merit-based wage increases. The employee evaluation process would also need to be revised substantially to tie job performance characteristics with employee pay. Presumably, the changes would affect larger governments, such as municipalities and counties, as well as school districts, to a greater extent than smaller political subdivisions.

As a result of these changes on the state level, the Human Resources Division within DAS will incur new costs for converting to a merit-based pay system. Currently, the Division funds the services it provides to state agencies by charging a fee of $11.55 per paycheck issued to employees. The fee revenue is deposited into the Human Resources Operating Fund (Fund 1250), which funds the Division's operations. The Division incurred expenses of $21.0 million in FY 2010. The FY 2011 appropriation is $23.9 million. The balance of Fund 1250, as of mid-February 2011, is approximately $8.1 million. The Division employs approximately 130 persons.

Employee health insurance premiums

The bill prohibits state and local government employers, including school districts and institutions of higher education, from paying more than 80% 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 80% 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 80% 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 80% of employee health care premiums in FY 2010. The state costs for health benefits were obtained from OAKS. The amounts shown include expenditures for dental, vision, and prescription 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 80% 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 80%	Total Health Premium Expenditures for >80% Plans
State	1	$443,900,922
School Districts	548	$98,442,563
Local Governments	309	$84,598,579
Total	**858**	**$626,942,064**

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 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 CY 2009. Employee contributions in CY 2009 totaled $2.9 billion.

Table 3: Employee Contribution Rates and Contributions, CY 2009

Retirement System	Division	Required Employee Contribution Rate in 2009	Employee Contributions in 2009 ($ 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

[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.

[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.

Collective bargaining provisions

Collective bargaining for state employees

The bill prohibits any state agency or institution of higher education from bargaining collectively with employees. State agencies currently bargain with five primary unions: Service Employees International Union, District 1199, the Fraternal Order of Police, the Ohio Civil Service Employees Association, the Ohio State Troopers Association, and the State Council of Professional Educators. Together, these employee organizations currently, represent approximately 40,500 employees, or 69% of the state workforce of approximately 58,700. Contracts already in place, set to expire on June 30, 2012, would not be affected under the bill, except in cases of fiscal emergency discussed below. Of the 112,800 persons employed by institutions of higher education, approximately 19,500 are represented by unions.

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 university employees is not currently available.

Table 4: Projected Payroll and Benefit Expenditures, FY 2011				
Employee Type	**Number of Employees**	**Base Wages**	**Fringe Expenditures**	**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**

Elimination of binding arbitration

The bill eliminates binding arbitration as a means of resolving contract disputes between political subdivisions and public safety forces that are not permitted to strike. Under current law, contract disputes involving public safety forces are resolved in the following manner. SERB selects an arbitrator selected by the State Employment Relations Board (SERB). On an issue by issue basis, the arbitrator chooses between either the employer's or the union's final offer. Data from SERB show that there have been 20 such situations since 2008. With regard to pay increases, the data indicate that, in these 20 situations, the arbitrator sided with employers and unions an equal number of times. The bill replaces the current process of binding arbitration with a process that permits employers to either renew the current contract for an additional year or implement fact-finding recommendations while contract negotiations continue. This new mechanism will presumably reduce personnel costs for political subdivisions, as they are unlikely to implement recommendations that increase costs.

School district collective bargaining

The bill places additional limitations on collective bargaining for school districts. Under the bill, continuing contracts for teachers would be 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. Also, the bill limits current collective bargaining contracts for teachers to no more than five years in duration, and limits future contracts to one year.

Additionally, school districts would be prohibited from entering into any agreement that in anyway inhibits the district's ability to make personnel or managerial decisions. For example, this would prohibit bargaining contracts from setting minimum staffing levels or from limiting the number of students that can be assigned to a teacher. Additionally, the bill would require that all collective bargaining agreements that pertain to teachers comply with all applicable state and local laws regarding wages and terms of employment. Under current law, the negotiated terms of collective bargaining agreements can take precedence over state and local law, except when dealing with certain topics, such as workers' compensation.

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

If a municipality, county, school district, or the state is declared to be in fiscal emergency by the Auditor of State, the bill authorizes that entity to set aside any portion of a collective bargaining agreement. By providing this mechanism for altering the terms of collective bargaining contracts, the bill could allow public employers to address budget shortfalls more rapidly. As of January 31, 2011, there were 24 local governments and ten school districts in fiscal emergency.

State agencies affected by 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 Employee 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.

Under the bill, if a public employer and a collective bargaining representative reach an impasse, both parties are required to make their most recent offers publically available via either the SERB web site or that of the public employer. This would also be required if the dispute moves to fact-finding. 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. SERB 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.

Office of Collective Bargaining

The bill abolishes DAS's Office of Collective Bargaining (OCB) on the last effective date of any existing state collective bargaining agreements, which is June 30, 2012. OCB's primary responsibility is to represent the state as an employer in labor negotiations. Additionally, OCB offers technical support to agencies when dealing with labor disputes, as well as labor-management training. OCB currently employs 37 people. The Office is supported by payroll assessments of $2.00, based on the head count of employees in all executive branch agencies except SERB. Legislative, judicial, and statewide elected officials are exempt from this charge. The proceeds are deposited into the Collective Bargaining Fund (Fund 1280). FY 2010 expenditures from the fund were $2.8 million. The FY 2011 appropriation for the Office is $3.7 million. As of mid-February 2011, the cash balance in Fund 1280 was approximately $1.0 million.

School Employees Health Care Board

The bill abolishes the School Employees Health Care Board, currently housed under ODE. The Board is responsible for exploring health care plan best practices, promoting cost containment, and finding ways to improve the health of school district employees. All such responsibilities are repealed under the bill. The Board incurred GRF expenses of $250,094 in FY 2010 and is funded with an FY 2011 appropriation of $800,000. The board has three full-time employees.

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