



Ohio Legislative Service Commission

Final Analysis

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Am. Sub. H.B. 16

128th General Assembly

(As Passed by the General Assembly)

(Excluding appropriations, fund transfers, and similar provisions)

Reps. Sykes, Dodd, Letson, Brown, Combs, Domenick, Foley, Gerberry, Goyal, Heard, Koziura, Luckie, Mallory, Pryor, Slesnick, Stewart, Szollosi, B. Williams, S. Williams, Winburn, Yates

Sens. Gillmor, Harris

Effective date: June 30, 2009; certain provisions effective September 29, 2009

ACT SUMMARY

I. Department of Administrative Services

- Allows an employee paid by warrant of the Director of Budget and Management to use available compensatory leave balances to supplement disability leave payments.
- Eliminates pay supplements for intermittent employees.
- Places a general moratorium, from June 21, 2009, through June 20, 2011, on annual step advancements for exempt state employees who are paid in accordance with Salary Schedule E-1.
- Makes intermittent employees ineligible for step advancements.
- Requires, during fiscal years 2010 and 2011, that all full-time exempt state employees participate in a total of 80 hours of mandatory cost savings through a loss of pay or holiday pay and that all part-time employees not receive holiday pay.
- Requires participation in the cost savings program described above for all employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009.

- Authorizes the Director of Administrative Services, after June 30, 2011, to implement mandatory cost savings days for exempt employees in the event of a fiscal emergency.
- Specifies that reductions in pay made as the result of mandatory cost savings days are not modifications or reductions in pay that an employee in the classified civil service can appeal to the State Personnel Board of Review under the Civil Service Law.
- Authorizes the Governor to declare a fiscal emergency if the Governor determines that the available revenue receipts and balances in any fund or across funds will likely be less than the appropriations for the year, and to issue such orders as necessary to the Director of Budget and Management to reduce expenditures, or to the Director of Administrative Services to implement personnel actions consistent therewith, including, but not limited to, mandatory cost savings days.
- Creates the Cost Savings Fund and allocates to the Fund savings accrued through employee participation in the mandatory cost savings program and in mandatory cost savings days.
- Requires that a state employee be paid at the employee's regular rate of pay for any hours of compensatory time in excess of maximum amounts specified in existing law if the employee has not used the compensatory time within 365 days after it is granted, rather than within 180 days as provided by current law.
- Specifies that part-time permanent employees receive four hours of holiday pay, rather than on a pro-rated basis as required by present law.
- Changes certain conditions governing the payment of holiday pay for state employees that relate to whether the employee worked the day immediately before or after the holiday.

II. Industrial Commission

- Adds an employer representative and a representative from the Ohio Association for Justice to the Industrial Commission Nominating Council.
- Requires the Governor to appoint the new employer representative to the Industrial Commission Nominating Council from a list of two names submitted by the National Federation of Independent Business.
- Makes confidential the records of a quality assurance committee and a peer review committee of the Industrial Commission.

- Changes the time period within which the Commission or the designated staff hearing officer must issue the order and notice denying an appeal from an order of a staff hearing officer.

CONTENT AND OPERATION

I. Department of Administrative Services

Use of compensatory time balance to supplement disability leave payments

Continuing law provides disability leave to employees who are paid by warrant of the Director of Budget and Management and meet certain qualifications. That law allows employees to use available sick leave, personal leave, or vacation leave to supplement their disability leave payments to reach up to 100% of their base rate of pay. The act allows employees also to use available compensatory time balances to supplement their disability leave payments to reach up to 100% of their base rate of pay. (R.C. 124.385(A)(6).)

Elimination of pay supplements for intermittent employees

Continuing law provides pay supplements for exempt state employees who are paid in accordance with Salary Schedule E-1. These pay supplements are for items such as service longevity, hazardous duty, call-back, shift differentials, professional achievement, and educational achievement. The act specifies that intermittent employees are not eligible for these pay supplements. (R.C. 124.181(P).) A rule of the Department of Administrative Services defines an "intermittent employee" as one who works an irregular schedule that (1) is determined by the fluctuating demands of the work, (2) is not predictable, and (3) is generally characterized as requiring less than 1,000 hours of work per fiscal year.

Moratorium on step advancements; prohibition on step advancements for intermittent employees

The act places a general moratorium, from June 21, 2009, through June 20, 2011, on the annual step advancements generally required for exempt state employees paid in accordance with Salary Schedule E-1. Generally, Schedule E-1 defines salaries for state employees who are exempt from public employee collective bargaining. The moratorium therefore applies to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees from the moratorium and so notifies the Director of Administrative Services in writing on or before July 1, 2009. (R.C. 124.15(G)(2).)

An employee who begins a probationary period before June 21, 2009, must advance to the next step in the employee's pay range at the end of the probationary period, and then become subject to the moratorium. An employee who is hired, promoted, or reassigned to a higher pay range between June 21, 2009, through June 20, 2011, cannot advance to the next step in the employee's pay range until the next anniversary of the employee's date of hire, promotion, or reassignment that occurs on or after June 21, 2011. (R.C. 124.15(G)(2)(a).)

When an employee is promoted, the step entry date will be set to account for a probationary period. When an employee is reassigned to a higher pay range, the step entry date will be set to allow an employee who is not at the highest step of the range to receive a step advancement one year from the reassignment date. (R.C. 124.15(G)(1).)

The act also specifies that employees in intermittent positions must be employed at the minimum rate established for the pay range for their classification and are ineligible for step advancements. A rule of the Department of Administrative Services defines an "intermittent employee" as one who works an irregular schedule that (1) is determined by the fluctuating demands of the work, (2) is not predictable, and (3) is generally characterized as requiring less than 1,000 hours of work per fiscal year. (R.C. 124.15(G)(3).)

Mandatory cost savings days for exempt state employees

Continuing law (1) authorizes the Director of Administrative Services to establish a voluntary cost savings program for certain employees who are paid by warrant of the Director of Budget and Management and who are exempt from the Public Employee Collective Bargaining Law and whose position is included in the Job Classification Plan the Director establishes and (2) requires the Director to adopt rules under the Administrative Procedure Act to administer this program.

In addition to the provisions described in the preceding paragraph, the act requires the Director of Administrative Services to establish a mandatory cost savings program applicable to the employees described in that paragraph. The program may include, but is not limited to, a loss of pay or loss of holiday pay as determined by the Director. The program may be administered differently among exempt employees based on their job classifications, appointment categories, appointing authorities, or other relevant distinctions.

The act requires each full-time exempt employee to participate in the mandatory cost savings program for a total of 80 hours of mandatory cost savings during both fiscal years 2010 and 2011. Similarly, the act requires each part-time employee to participate in the mandatory cost savings program by not receiving holiday pay during

both fiscal years 2010 and 2011. The act requires participation in the cost savings program described above for all employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009. (R.C. 124.392(C)(1).)

After June 30, 2011, the act authorizes the Director of Administrative Services, in consultation with the Director of Budget and Management, to implement mandatory cost savings days for exempt employees in the event of a fiscal emergency. Each employee of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General must participate in these mandatory cost savings days unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in the manner the Director of Administrative Services prescribes by rule. (R.C. 124.392(C)(2).)

The act authorizes the Governor to declare a fiscal emergency if the Governor determines that the available revenue receipts and balances in any fund or across funds will likely be less than the appropriations for the year, and to issue orders as necessary to the Director of Budget and Management to reduce expenditures, or to the Director of Administrative Services to implement personnel actions consistent therewith, including, but not limited to, the mandatory cost savings days described above (R.C. 126.05).

The act specifies that modifications or reductions in pay made as the result of voluntary or mandatory cost savings days are not modifications or reductions in pay that an employee in the classified civil service can appeal to the State Personnel Board of Review under the Civil Service Act (R.C. 124.34).

Continuing law prohibits an employee whose salary or wage is paid in whole or in part by the state from being paid for a state holiday unless the employee was in active pay status on the scheduled work day immediately preceding the holiday. The act provides that such an employee need not be in active pay status on that work day in order to be paid for the holiday if the employee is participating in a voluntary or mandatory cost savings day on that work day. (R.C. 124.18(B)(3).)

Creation of the Cost Savings Fund to account for savings from employee participation in the mandatory cost savings program and cost savings days

The act creates the Cost Savings Fund in the state treasury. Savings accrued through employee participation in the mandatory cost savings program and in mandatory cost savings days that the act requires are to be allocated to the Fund. The

Fund may be used to pay employees who participated in the program or in these days. Any investments earnings of the fund must be credited to the Fund. (R.C. 124.392(E).)

Changes in payment of holiday pay and the use of compensatory leave

Continuing law generally requires that employees whose salary or wage is paid in whole or in part by the state or by any state-supported college or university and who are required to work more than 40 hours in any calendar week are entitled to overtime pay or compensatory time. An employee may accrue compensatory time up to a maximum of 240 hours, except that public safety employees and other employees who meet the criteria established in the federal Fair Labor Standards Act of 1938 may accrue a maximum of 480 hours. An employee formerly had to be paid at the employee's regular rate of pay for any hours of compensatory time accrued in excess of these amounts if the employee had not used the compensatory time within 180 days after it was granted. The act extends this time period to 365 days. (R.C. 124.18(A).)

An employee paid by warrant of the Director of Budget and Management who is scheduled to work on a holiday and who does not report to work the day before, the day of, or the day after the holiday due to an illness of the employee or a member of the employee's immediate family does not receive holiday pay unless the employee can provide documentation of extenuating circumstances that prohibited the employee from reporting to work. The act limits this provision to the holidays of New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. The act also specifies that if an employee works a shift between the employee's scheduled shift and the holiday, the employee must be paid for the holiday. (R.C. 124.15(B)(2).)

Former law provided that part-time permanent employees received holiday pay on a pro-rated basis, based upon the daily average of actual hours worked, excluding overtime hours, in the previous calendar quarter. The act instead grants part-time permanent employees four hours of holiday pay regardless of the employee's work shift and work schedule. (R.C. 124.15(B)(7).)

II. Industrial Commission

Industrial Commission Nominating Council

The Industrial Commission Nominating Council is required to make recommendations to the Governor for the appointment of members to the Industrial Commission. The act expands the membership of the Council from 10 to 12 members. Under law largely retained by the act, the Council consists of four employer representatives, four labor representatives, and two members of the public. The act adds two members to the Council: a new employer representative and a representative from the Ohio Association for Justice. Under the act, the Governor is required to select

all employer representatives from a list of ten names submitted by the "Ohio industry organizations." Each Ohio industry organization must submit two names on the list, and the Governor must choose at least one appointment from each Ohio industry organization. The Ohio industry organizations are the Ohio Self-Insurers' Association, the Ohio Manufacturers' Association, the Ohio Council of Retail Merchants, the Ohio Chamber of Commerce, and the National Federation of Independent Business. Under former law, members representing employers were selected from a list of eight names submitted jointly by the major statewide Ohio industry organizations representing self-insuring employers, manufacturers, retail merchants, and chambers of commerce, provided that these organizations were in existence since prior to November 3, 1974, and further provided that from the list submitted from the organizations representing industry, the Governor had to appoint at least one member from each of the organizations that represented self-insuring employers, manufacturers, retail merchants, and chambers of commerce. Of the list submitted by organizations representing industry, two individuals from each of the organizations that represented self-insuring employers, manufacturers, retail merchants, and chambers of commerce had to be included in the list. The new employer representative serves a term of four years, as do the other members under continuing law.

The Governor is required to select the member representing the Ohio Association for Justice from a list of two names submitted by the Ohio Association for Justice. The act specifies that the Ohio Association for Justice representative serves for a term of four years, each term ending on October 20 of the appropriate year. The Governor is required, under the act, to fill a vacancy on the Council for the Ohio Association for Justice representative in the same manner as the original appointment. The act also requires that the individuals appointed to the Council to represent the public each be of a different political party. (R.C. 4121.04(A), (B), and (F).)

The act does not affect the terms of members serving on the Council on the effective date. The act requires the Governor to appoint to the Council the two new members not later than 14 days after the effective date, and those members must take office not later than 90 days after the effective date. The Governor must choose the new employer representative from a list of two names selected by the National Federation of Independent Business and must appoint that employer representative to a term ending October 20, 2013. The Governor must appoint the representative from the Ohio Association for Justice to a term ending October 20, 2010. (Section 210.)

Quality Assurance Committee and Peer Review Committee

Under continuing law, any information, data, reports, or records made available to a quality assurance committee of the Bureau of Workers' Compensation (BWC) responsible for reviewing the professional qualifications and the performance of

providers conducting medical examinations or file reviews for BWC are confidential and must be used by the committee and the committee members only in the exercise of the proper functions of the committee. The act extends the same protections and limitations to a quality assurance committee of the Industrial Commission. (R.C. 2305.24.)

Under continuing law, proceedings and records within the scope of a BWC peer review committee responsible for reviewing the professional qualifications and the performance of providers conducting medical examinations or file reviews for BWC must be held in confidence and are not subject to discovery or introduction in evidence in any civil action against a health care entity or health care provider, including both individuals who provide health care and entities that provide health care, arising out of matters that are the subject of evaluation and review by the peer review committee. An individual who attends a meeting of a peer review committee, as described above, serves as a member of such a peer review committee, works for or on behalf of such a peer review committee, or provides information to such a peer review committee is prohibited from being permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any finding, recommendation, evaluation, opinion, or other action of the committee or a member thereof. Information, documents, or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were produced or presented during proceedings of a peer review committee, but the information, documents, or records are available only from the original sources and cannot be obtained from the peer review committee's proceedings or records. An individual who testifies before a peer review committee, serves as a representative of a peer review committee, serves as a member of a peer review committee, works for or on behalf of a peer review committee, or provides information to a peer review committee must not be prevented from testifying as to matters within the individual's knowledge, but the individual cannot be asked about the individual's testimony before the peer review committee, information the individual provided to the peer review committee, or any opinion the individual formed as a result of the peer review committee's activities. An order by a court to produce for discovery or for use at trial the proceedings or records described above is a final order. The act extends these provisions to apply to a peer review committee of the Industrial Commission. (R.C. 2305.25, in the act, and 2305.252, not in the act.)

Denial of appeal

Under continuing law, the appeal of the decision of the Administrator of Workers' Compensation to allow or deny a claim commences with a district hearing

officer. In turn, the district hearing officer's decision can be appealed to a staff hearing officer. The staff hearing officer's decision may be appealed to the Industrial Commission. Upon the filing of a timely appeal of an order of the first staff hearing officer (14 days after the order is issued), the Commission or a designated second staff hearing officer, on behalf of the Commission, must determine whether the Commission will hear the appeal. Under former law, if the Commission or the designated staff hearing officer determined not to hear the appeal, within 14 days after the filing of the notice of appeal, the Commission or the designated staff hearing officer was required to issue an order to that effect and notify the parties and their respective representatives in writing of that order. The act instead requires the Commission or the designated staff hearing officer to provide the requisite notice and order within 14 days after the expiration of the period in which an appeal of the order of the staff hearing officer may be filed. Since an appeal may actually be made at any time earlier than the 14-day appeal deadline, the practical effect of the amendment is potentially to lengthen by several days the timeframe within which the Commission or staff hearing officer must issue the order stating that an appeal will not be heard. (R.C. 4123.511(E).)

HISTORY

ACTION	DATE
Introduced	02-17-09
Reported, H. Insurance	02-26-09
Re-referred to H. Finance & Appropriations	02-26-09
Re-reported, H. Finance & Appropriations	03-24-09
Passed House (96-2)	03-24-09
Reported, S. Insurance, Commerce, & Labor	06-16-09
Passed Senate (32-0)	06-29-09
House concurred in Senate amendments (95-2)	06-30-09

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