Ohio Legislative Service Commission

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Office of Research and Drafting

Legislative Budget Office

H.B. 238
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Cera and Scherer

Local Impact Statement Procedure Required: Yes

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Highlights

- Changes made by the bill concerning the enforcement of Ohio's Whistleblower Protection Law (OWPL) and Public Employee Whistleblower Law (PEWL) could have fiscal effects for public employers. For example, allowing courts to award employees damages up to three times the amount of actual damages for particular violations of the PEWL could add significant costs for public employers.
- However, the potential fiscal effects of the bill are difficult to quantify, as they would be dependent on the nature of each specific case.
- The overall number of whistleblower cases involving either law filed each year, either with the courts or with the State Personnel Board of Review (SPBR), is quite small. For example, SPBR heard 13 cases involving the PEWL between January 1, 2017 and May 28, 2019. It is not clear that the changes made under the bill would add to the number of such cases.

Detailed Analysis

The bill makes changes to Ohio's Whistleblower Protection Law (OWPL) and the Public Employee Whistleblower Law (PEWL). Together these laws provide both private and public employees protection from disciplinary and retaliatory action by an employer in response to an employee's reporting of unlawful or unethical behavior by a supervisor, fellow employee, or the employer. Changes made by the bill include (1) modifying the reporting procedure an employee must follow to be protected under the bill and (2) outlining the specific prohibited disciplinary or retaliatory actions of an employer. These changes, which have little if any fiscal effect, are discussed in detail in the LSC Bill Analysis. The fiscal effects identified in the highlights above, some of which could be significant for public employers, are discussed in more detail below.

Ohio's Whistleblower Protection Law

OWPL provides protection for private employees and certain public employees from prohibited actions by an employer in response to an employee's report of unlawful or unethical behavior by a supervisor, fellow employee, or the employer. Under current law, an employee injured by an alleged violation of OWPL may file a lawsuit within 180 days after the prohibited action was taken. Upon conclusion of the lawsuit, current law allows the court to award costs and reasonable attorney's fees to a prevailing party. If the injured employee prevails, current law also allows the court to award other fees. Under the bill, an employee may file the lawsuit for any legal or equitable relief that will effectuate the employee's rights within one year of the alleged violation, and if the employee prevails, the court is required to award the employee costs and reasonable attorney's fees. The bill eliminates a provision that allows the court, if the court determines that an employer deliberately violated OWPL, to include interest on an award of back pay.

Because the bill eliminates the provision allowing the court to award costs and attorney's fees to the prevailing party to the lawsuit, public employers that prevail in such lawsuits may not be able to recover the costs of a suit, thus increasing their overall costs. However, eliminating the authority of the court to include interest on an award of back pay in cases in which the employee prevails may reduce costs to public employers that lose whistleblower cases. Under the bill, the specific costs a public employer could face are indeterminate and would depend on the nature of each particular case. Additionally, the bill specifies that remedies under OWPL are not exclusive of other available remedies and nothing in the bill prevents an employee who sues under OWPL from bringing a lawsuit under the PEWL. As a result, public employers could face an increased number of lawsuits, further increasing costs.

Public Employee Whistleblower Law

Although some public employees are provided whistleblower protection under OWPL, public employees in the classified or unclassified civil service are granted protections under the PEWL. Under current law, an employee who is disciplined or retaliated against in violation of the PEWL may file an appeal with the State Personnel Board of Review (SPBR) within 30 days after the employee receives notice of the action but is excluded from seeking a remedy for the violation under any other provisions of law, including OWPL. Under the bill, an employee would be able to file a lawsuit in a court of competent jurisdiction for any legal or equitable relief that will effectuate the employee's rights. Under the bill, the lawsuit must be filed within one year after the alleged violation. If the employee prevails in the lawsuit, the court must award the employee costs and reasonable attorney's fees, and may award the employee damages up to three times the amount of actual damage if the court determines that the violation of the PEWL was willful or malicious, involved a criminal violation, or an effort to obtain personal gain.

These changes could result in significant costs to public employers found to have violated the PEWL that they would otherwise not incur under current law. As with OWPL cases, it is difficult to determine the extent of costs a public employer might face as they would depend on the nature of each case. However, changes made by the bill do not appear to increase the likelihood that cases for violations of the PEWL would be filed. Under current law, few such cases are filed with SPBR each year. From January 1, 2017 through May 28, 2019, a total of 13 whistleblower cases had been brought before the Board.