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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

S.B. 52
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 52's Bill Analysis](#)

Version: As Reported by House Transportation and Public Safety

Primary Sponsor: Sen. Gavarone

Local Impact Statement Procedure Required: No

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Highlights

- The bill appropriates \$100,000 in FY 2019 and \$550,000 in FY 2020 in GRF money to the Adjutant General for expenses related to establishing and operating the Ohio Cyber Reserve.
- It is unlikely that adding individuals protected by the state's reemployment and reinstatement law will generate any ongoing direct fiscal effects on the state or any of its political subdivisions given the denial of these rights by the state or a political subdivision is likely to be extremely rare.
- Any increase in expenditures for Ohio Cyber Reserve pay should be no more than minimal annually for state and local governments because: (1) members are unlikely to engage in service that exceeds 176 hours of military leave per calendar year, and (2) members largely are expected to come from the private sector.
- County boards of elections could incur some added costs for conducting post-election audits for every election, not just general elections in even-numbered years, and for presidential primaries as required now under current Secretary of State directive.

Detailed Analysis

Ohio Cyber Reserve

The bill requires the Governor to organize and maintain a state civilian cyber security reserve force, to be known as the Ohio Cyber Reserve, to educate and protect state, county, and local governmental agencies; critical infrastructure (including election systems), businesses, and citizens from cyber attacks.

The Reserve will be part of the Ohio organized militia (the Ohio National Guard, Ohio Naval Militia, and the Ohio Military Reserve) under the Adjutant General's Department. Similar to the other components of the Ohio organized militia, the Governor may order Reserve members or units into state active duty or training.

The Adjutant General will experience an increase in annual operating costs to provide administration, oversight, and maintenance of the Ohio Cyber Reserve. The bill appropriates \$100,000 in FY 2019 and \$550,000 in FY 2020 to GRF line item 745503, Ohio Cyber Reserve, for that purpose.

Members are afforded the same protections as those under the "Servicemembers Civil Relief Act" and the "Uniformed Services Employment and Reemployment Rights Act" if ordered into state active duty, during which time members receive a rate of pay determined and provided by rule by the Adjutant General. As part of the Ohio organized militia, presumably members will receive the same rate of pay and allowances as like officers and enlisted personnel in the armed forces as required by continuing law. Members are to serve without compensation, or in an unpaid volunteer status, while performing any drill or training.

Uniformed Services Employment and Reemployment Rights Act

Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) law prohibits discrimination against persons because of their service in the uniformed services, and provides that such a person that is denied a reinstatement or reemployment right has a cause of action in a federal court. Ohio law extends those rights to the Ohio organized militia.

Current experience would suggest that a denial of this right by an employer is relatively infrequent. It does not appear that the bill will make such denials more likely or frequent. Thus, the USERRA provision is not expected to result in ongoing direct fiscal effects on the state or any of its political subdivisions.

A person who is denied reemployment or reinstatement rights may seek redress through a court of common pleas unless the defendant is the state, in which case the Court of Claims has jurisdiction. The bill is not likely to generate a discernible increase in the annual operating expenses of any given court of common pleas or the Court of Claims because the few cases likely to be filed annually can be easily handled utilizing existing staff and resources.

The state or a political subdivision may, as a defendant, incur costs related to a case in which a favorable judgement is found for a public employee. Financial liabilities include court costs and possibly attorney's fees, expert witness fees, and other litigation expenses. LBO's research into this matter suggests that denial of reemployment and reinstatement rights by a government entity is extremely rare. Thus, it seems reasonable to expect that the state and political subdivisions generally will comply with the bill's extended protections and rarely incur financial settlement costs.

An aggrieved individual may follow the path of filing a complaint with the Ohio Civil Rights Commission, as opposed to the filing of a civil action, which would likely resolve the case through mediation. The Commission indicates that allegations of discrimination on the basis of military status make up a relatively small portion of their total caseload, which again suggests broad compliance. It is unlikely that the bill will significantly increase the number of discrimination charges filed annually with the Commission. Any resulting fiscal effect will be negligible.

Military leave

Generally, with exceptions, a public employee is entitled to take 176 hours of military leave with pay per calendar year. Service is not required to be for one continuous period of time. Service means any performance of duty on a voluntary or involuntary basis and includes active duty, active duty training, initial active duty training, inactive duty for training, full-time National Guard duty, and performance of a duty or training by a member of the Ohio organized militia.

A public employee called to duty for longer than these time periods is entitled to pay in addition to paid military leave. A state employee receives, for each month of leave, the difference between the public employee's gross monthly pay and the sum of gross uniformed pay and allowances. A political subdivision employee receives the lesser of the difference between the employee's gross monthly pay and the sum of gross uniformed pay and allowances or \$500. Expenditures for governments with employees called to duty or training may increase to some degree depending on the number, position, and salaries of employees called to active duty or training and the length of time activated.

Any increase in expenditures should be no more than minimal annually for state and local governments for the following reasons: (1) members are unlikely to engage in service that exceeds 176 hours of military leave per calendar year, and (2) members largely are expected to come from the private sector.

Secretary of State – chief information security officer

The bill requires the Secretary of State to appoint a chief information security officer to advise the Secretary on matters of information security and perform any other duties assigned by the Secretary of State. The bill does not specifically require the hiring of an additional person to fill this role; therefore, it is possible that these functions could be performed by an individual already within the Secretary of State's information technology staff. As of late February 2019, there were 22 persons listed as serving on the Secretary of State's information technology staff.

County boards of elections – post-election audits

The bill requires a county board of elections to audit the official results of primary and general elections held in even-numbered years. It also establishes a timeline for carrying out these audits, as well as procedures for conducting the audit, and procedures related to observers appointed under Election Law and other members of the media and public. Either a risk-limiting audit protocol or a percentage-based audit protocol may be used. Although existing statute does not require post-election audits, the Secretary of State has required these audits by directive for every even-numbered year general election and for every presidential primary election. The audits generally occur no sooner than six days after the election results are certified and must be completed no later than 21 days after the election results are certified. Three contests must be audited: (1) "Top of the Ticket" races, (2) at least one other statewide race, and (3) at least one nonstatewide race. Because the provision requires that these audits be undertaken in the same manner as is required by the Secretary of State's directive, there are likely to be no additional costs for carrying out these audit procedures. Overall, 34 states require election results to be validated through an audit process, whether a traditional percentage-based, risk-limiting, or some other format.