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OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 228
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Schaffer

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SUMMARY

- Prohibits the Governor or the Director of Job and Family Services from entering into an agreement or issuing a special or standing order to implement new voluntary programs created under federal law providing for unemployment compensation, assistance, or allowances under certain circumstances.
- Allows the General Assembly, by adopting a concurrent resolution, to authorize the Governor or the Director to enter into an agreement or issue an order otherwise prohibited by the bill.
- Allows the General Assembly to rescind those agreements or orders, in whole or in part, by adopting a concurrent resolution.
- Specifies that the bill takes effect on January 1, 2022.

DETAILED ANALYSIS

Legislative oversight – new federal unemployment programs

The bill prohibits the Governor or the Director of Job and Family Services from entering into an agreement or issuing a special or standing order to implement a voluntary program created on or after the bill's effective date under any federal law providing for compensation, assistance, or allowances with respect to unemployment if the program does any of the following:

1. Subjects employers to requirements that are in addition to the requirements with which employers must comply under Ohio's Unemployment Compensation Law¹;

¹ R.C. Chapter 4141.

2. Increases the weekly benefit amount to which an individual is entitled under Ohio's law;
3. Increases or decreases the duration for which benefits are payable to individuals under Ohio's law;
4. Provides to any individual benefits that are in addition to the benefits available to individuals under Ohio's law;
5. Requires the Director to create new administrative processes or systems that are in addition to processes or systems created pursuant to Ohio's law.

Currently, the Director must cooperate with the U.S. Department of Labor (which enforces federal unemployment law) to the fullest extent consistent with Ohio's Unemployment Compensation Law, and take any action, through the adoption of appropriate rules, regulations, and administrative methods and standards, as may be necessary to secure to Ohio and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, the Federal-State Extended Unemployment Compensation Act of 1970, and the Workforce Innovation and Opportunity Act.²

Exception

If the Governor or the Director wishes to enter into an agreement or issue an order to implement a program generally prohibited by the bill, the Governor or the Director must submit a request to the Speaker of the House of Representatives and the President of the Senate. The General Assembly, by adopting a concurrent resolution, may allow the Governor or the Director to enter into an agreement or issue an order to implement a program described above.³

Rescission of agreements or orders

If the Governor or the Director enters into any agreement or special or standing order to implement a program discussed above, the bill allows the General Assembly to rescind that agreement or order, in whole or in part, by adopting a concurrent resolution.⁴

Effective date

The bill specifies that it takes effect on January 1, 2022.⁵

COMMENT

The bill allows the General Assembly to grant authority to enter into an agreement or issue an order otherwise prohibited by the bill, and to rescind those agreements or orders, by

² R.C. 4141.433(A), with a conforming change in R.C. 4141.43.

³ R.C. 4141.433(B).

⁴ R.C. 4141.433(C).

⁵ Section 3.

concurrent resolution. Because the Ohio Constitution specifies that, “The General Assembly shall enact no law except by bill,” the bill might be vulnerable to a constitutional challenge on the grounds that the legislature cannot take such an action by resolution. In interpreting that provision, the Ohio Supreme Court has ruled that a joint resolution cannot have the effect of law.⁶ A reviewing court might find that the General Assembly cannot take an action with legal effect except by passing a bill, which must be presented to the Governor for approval and which, unless an exception applies, is subject to the referendum.

In addition, by authorizing the General Assembly both to allow the Governor or the Director to enter into an agreement or issue an order, and to determine how that law is enforced by rescinding the agreement or order, via resolution rather than bill, a separation of powers concern may arise. The Constitution gives the General Assembly the power to enact laws, and gives the Governor the power to execute them.⁷ A reviewing court might examine whether the bill attempts to give the General Assembly a legislative veto power in violation of the separation of powers among the governmental branches. Ohio’s courts appear not to have addressed the constitutionality of the legislative veto, but the U.S. Supreme Court and courts in several other states have ruled legislative veto laws unconstitutional on this basis.⁸

HISTORY

Action	Date
Introduced	09-14-21

S0228-I-134/ts

⁶ Ohio Constitution, Article II, Section 15 and *Cleveland Terminal and Valley Railroad Company v. State*, 85 Ohio St. 251, 281 (1912). The Ohio Constitution specifically allows legislative action by resolution in some cases, such as to place a constitutional amendment on the ballot.

⁷ Ohio Const., art. II, sec. 1 and art. III, sec. 6. See also *South Euclid v. Jemison*, 28 Ohio St.3d 157, 158 (1986).

⁸ *Bowsher v. Synar*, 478 U.S. 714, 733 (1986). See, e.g., *Commonwealth v. Sessoms*, 516 Pa. 365 (1987); *State ex rel. Meadows v. Hechler*, 195 W. Va. 11 (1995); and *Blank v. Department of Corrections*, 462 Mich. 103 (2000).