



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dan DeSantis

H.B. 747

132nd General Assembly
(As Passed by the House)

Reps. Romanchuk and Lanese, Lang, Seitz, Henne, Duffey, Lipps, Kick, Craig, Brown, Landis, Miller, Perales, T. Smith, Young, Anielski, Carfagna, Cupp, Faber, Hambley, Johnson, Koehler, Reineke, Rogers, Ryan, Schaffer, Scherer, Slaby, Sprague, R. Smith

BILL SUMMARY

- Requires the Governor to organize, maintain, and expand as needed state civilian cyber security reserve forces, to be known as the Ohio Cyber Reserve, to protect government, critical infrastructure, businesses, and citizens from cyber attacks.
- Makes the Reserve part of, and Reserve members civilian volunteers for, the Ohio organized militia under the Adjutant General's department.
- Permits the Reserve to become a civilian component of the Ohio National Guard, but does not authorize the Reserve to be called into national military service.
- Prohibits any non-U.S. citizen, person who is not a legal permanent resident, or anyone who has been expelled or dishonorably discharged from the Armed Forces from joining the Reserve.
- Prohibits the disqualification of a person from acceptance into the Ohio Cyber Reserve on the basis that the person is an employee of the state or of a political subdivision, or is an employee or proprietor of a private entity that conducts business with the state or a political subdivision.
- Requires Reserve members to be subject to an appropriate background check before admittance.
- Permits the Governor to order Reserve members or units into state active duty, during which time members are:

- Afforded the same protections as those under the "Service members Civil Relief Act" and "Uniformed Services Employment and Reemployment Rights Act."
- Subject to the full force of the Ohio Code of Military Justice.
- Permits the Adjutant General to establish Reserve members' rates of pay in state active duty, and requires Reserve members to receive a rate of pay determined by the Adjutant General.
- Requires Reserve members to serve in unpaid volunteer status while training.
- Permits the Governor to accept the resignation of, or remove, any Reserve member.
- Permits the Governor to require reimbursement for training, equipment, and uniforms if a member does not serve the full term, unless due to disability or a disabling medical condition.
- Permits the Governor to adopt rules consistent with the bill's provisions governing the Reserve, and requires a copy of the rules to be publicly available in the Adjutant General's office.
- Permits the Governor, for Reserve use, to requisition equipment from the U.S. Department of Defense and make available state armory facilities, equipment, and other premises and property.
- Specifies that members of the Reserve are entitled to the same liability protections as members of the Ohio organized militia.

CONTENT AND OPERATION

Ohio Cyber Reserve operation

Establishment, organization, and maintenance

Under the bill, the Governor must organize and maintain Ohio civilian cyber security reserve forces, to be known as the Ohio Cyber Reserve. The Reserve must be able to be expanded and trained to educate and protect state, county, and local governmental agencies, critical infrastructure, including election systems, businesses, and Ohio citizens from cyber attacks. The Governor must expand the Reserve as needed in the case of an emergency proclaimed by the Governor or caused by illicit actors or imminent danger.

Under the bill, the Reserve is to be part of the Ohio organized militia under the Adjutant General's department. Under current law, the Ohio organized militia generally consists of the nonhandicapped members of the Ohio National Guard, the Ohio Naval Militia, and the Ohio Military Reserve. Members of the Ohio Cyber Reserve are to be civilian volunteers of the Ohio organized militia.¹ The bill permits the Ohio Cyber Reserve to become a civilian component of the Ohio National Guard. The bill states that it does not authorize the Ohio Cyber Reserve to be called or ordered into the military service of the United States.²

Membership

Admittance

The bill prohibits any person who is not a U.S. citizen or legal permanent resident, or who has been expelled or dishonorably discharged from the Armed Forces, from being accepted into the Ohio Cyber Reserve. Members are to be subject to an appropriate background check, in accordance with rules adopted by the Governor and Adjutant General, before admittance into the Reserve (see **COMMENT 1**).

The bill expressly states that, notwithstanding any other provision of law, no person may be disqualified from acceptance into the Ohio Cyber Reserve on the basis that the person is an employee of the state or a political subdivision of the state, or an employee or proprietor of a private entity that conducts business with the state or a political subdivision of the state.³

State active duty

Under the bill, the Governor, as Commander-in-Chief of the Ohio organized militia, may order individuals or units of the Ohio Cyber Reserve to state active duty to perform duty or training as the Governor determines necessary. Under state active duty, Reserve members must have the same protections afforded by the federal "Service members Civil Relief Act" and the federal "Uniformed Services Employment and Reemployment Rights Act."⁴ The bill requires that whenever the Reserve, or any part thereof, is ordered out for active service, the Ohio Code of Military Justice is in full force in respect to those forces.⁵

¹ R.C. 5922.01, 5923.01(A) and (B), 5923.03(D), and 5924.01.

² R.C. 5922.04.

³ R.C. 5922.05.

⁴ R.C. 5922.08.

⁵ R.C. 5922.06 and 5924.01.



Rates of pay

The bill contains language that both (1) *permits* the Adjutant General to establish and revise the rates of pay for members of the Ohio Cyber Reserve while on state active duty⁶ and (2) *requires* those members to receive a rate of pay determined and provided by rule by the Adjutant General. Continuing law generally requires members of the Ohio organized militia to receive the same pay and allowances as like officers and enlisted personnel in the Armed Forces when the militia is ordered to state active duty.⁷ (See **COMMENT 2.**) While performing any drill or training, members of the Ohio Cyber Reserve must serve in an unpaid volunteer status.⁸

Removal or resignation

The bill allows the Governor to accept the resignation of any member of the Ohio Cyber Reserve at any time. Additionally, members are to serve at the pleasure of the Governor and may be removed from the Reserve in accordance with rules adopted by the Governor. The Governor may require reimbursement for training, equipment, and uniforms if a member does not serve the full term of the membership agreement and the inability to serve out the term was not due to disability or a similar disabling medical condition.⁹

Adoption of rules

The bill permits the Governor to adopt rules consistent with the bill's provisions governing the Reserve's membership, organization, administration, equipment, and maintenance. A copy of the rules must be available to the public in the Adjutant General's office.¹⁰

Equipment requisition

The bill permits the Governor to requisition equipment from the U.S. Department of Defense that may be in possession of and can be furnished by the Department, for Reserve use. Additionally, the Governor may make available for

⁶ R.C. 5922.01.

⁷ R.C. 5923.12.

⁸ R.C. 5922.01.

⁹ R.C. 5922.02 and 5922.07.

¹⁰ R.C. 5922.02.



Reserve use state armory facilities, equipment, and other state premises and property that may be available.¹¹

Liability protection

The bill specifies that members of the Ohio Cyber Reserve are entitled to the same liability protections as members of the Ohio organized militia are entitled to under continuing law.¹²

COMMENT

1. The bill states that Reserve *members* are to be subject to background checks before admittance as members.¹³ The bill may benefit from an amendment clarifying that *applicants* are to be subject to background checks.

2. The bill is unclear as to whether the Adjutant General must establish rates of pay for members of the Ohio Cyber Reserve. Also, the bill makes the Reserve part of the Ohio organized militia and continuing law already provides for pay and allowances for Ohio organized militia members who are ordered to state active duty.¹⁴ This language concerning Reserve member rate of pay may benefit from further clarification.

HISTORY

ACTION	DATE
Introduced	10-18-18
Reported by H. Armed Services, Veterans Affairs & Homeland Security	11-28-18
Passed House (84-5)	11-28-18

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¹¹ R.C. 5922.03.

¹² R.C. 5923.37(A).

¹³ R.C. 5922.05.

¹⁴ R.C. 5922.01 and 5923.12.

