



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 747 of the 132nd G.A.

**Status:** As Passed by the House

**Sponsor:** Reps. Romanchuk and Lanese **Local Impact Statement Procedure Required:** No

**Subject:** Ohio Cyber Reserve

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### State & Local Fiscal Highlights

- The Adjutant General's Department estimates that the three-year cost to build and maintain the Ohio Cyber Reserve will be "up to" amounts as follows: \$450,000 in year one, \$620,000 in year two, and \$820,000 in year three. It is likely that the Adjutant General will need additional funds appropriated for that purpose.
- 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 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.

### Detailed Fiscal Analysis

#### Ohio Cyber Reserve

The bill requires the Governor to organize, maintain, and expand a state civilian cyber security reserve force, to be known as the Ohio Cyber Reserve, to protect government, critical infrastructure, 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's Department estimates that, over a three-year period, the cost to build and maintain the Ohio Cyber Reserve will be as follows: \$450,000 in year one, \$620,000 in year two, and \$820,000 in year three. These estimates are probably best viewed as "up to" amounts that will be dependent upon need, funding, and volunteers. It is likely that the Adjutant General will need additional funds appropriated for that purpose.

The three-year cost increase reflects the possible expansion of the Reserve from as many as four, ten-person teams of volunteers and one full-time equivalent staff in year one to 12, ten-person teams of volunteers and five full-time equivalent staff by the close of year three. Money would also be allocated for equipment, training, and state active duty payments.

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. LSC'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 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.