



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 423 of the 131st G.A.                      **Date:** December 6, 2016  
**Status:** As Reported by Senate State & Local                      **Sponsor:** Rep. Perales  
Government

**Local Impact Statement Procedure Required:** No

**Contents:** Exempts call to service orders from disclosure, and extends reemployment and reinstatement protection to certain specified militia members

### State and Local Fiscal Highlights

- The bill's public records exemption provision may minimally increase the annual costs that a given state or local government agency incurs: (1) to train staff in public records policy, and (2) to expend additional staff time and effort to ensure that, in response to any given public records request, exempted information is not disclosed.
- It is unlikely that the bill's reemployment and reinstatement protection provision will generate any ongoing direct fiscal effects on the state or any of its political subdivisions given: (1) the relatively small number of additional individuals entitled to employment and reemployment rights under the bill, and (2) the denial of these rights by the state or a political subdivision is likely to be extremely rare.

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### Detailed Fiscal Analysis

#### Public records

The bill adds to the list of records that are not "public records" orders for active military service or other documentation regarding the call to order of an individual serving or with previous service in the U.S. Armed Forces, including a reserve component, or the Ohio organized militia (the Ohio National Guard, Ohio Naval Militia, and the Ohio Military Reserve). Thus, these call-to-service orders are exempt from disclosure under the Public Records Act until 15 years after the published date or effective date of the call to order. LSC estimates that the number of individuals to whom this record disclosure exemption applies totals over 900,000, including active duty and reserve military and veterans.

The bill will affect state and local government agencies with staff responsible for complying with public records requests, as these individuals may require additional training related to the disclosure exemption. However, LSC's research into this matter

suggests that the cost to adjust existing public records training and records policy is not likely to exceed minimal.

It is uncertain whether a given government agency will experience an increase in workload related to ensuring that exempted information is not disclosed, as the volume of requests for these records varies by office. Presumably, any increase in administrative work, including additional time and effort to comply with the exemption, will be minimal and easily handled utilizing existing staff and resources.

### **Reemployment and reinstatement protections**

The bill extends reemployment and reinstatement protection to a person who works in Ohio but who is absent from employment due to service in a militia outside of Ohio. Current Ohio law provides for the same reemployment and reinstatement rights that the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides to members of the uniformed services<sup>1</sup> and also extends the same rights to a member of the Ohio National Guard, the Ohio Naval Militia, or the Ohio Military Reserve, collectively referred to as the Ohio Organized Militia.

#### **Civil remedy**

The bill's civil remedy will affect the courts of common pleas and the Court of Claims, and possibly the state or a political subdivision if either has allegedly denied reemployment or reinstatement rights. Given the relatively small number of additional individuals entitled to these rights and the infrequency that protections would be denied, the bill 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.

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<sup>1</sup> Uniformed services include members of the armed forces, Army National Guard or Air Force National Guard members, and the Commissioned Corps of the Public Health Services.

### **Criminal prohibition**

Any employer that denies reemployment or reinstatement rights to a qualifying person may be fined up to \$1,000, imprisoned for up to six months, or both. This offense is an unclassified misdemeanor that falls under the subject matter jurisdiction of a municipal or county court. There should be no discernible prosecution, adjudication, and sanctioning costs for any given county or municipality to process the few criminal cases that might arise annually. There may also be occasional revenue gained for the state, counties, and municipalities in the form of court costs, fees, and fines.

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