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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 130
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. J. Miller and Blackshear

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SUMMARY

- Allows a police department to fill a vacant position in the classified civil service without a competitive examination if the department presents evidence that competition is impracticable and the position can best be filled by a person holding a specialized certification or possessing peculiar and exceptional qualifications.

DETAILED ANALYSIS

Fill vacant police position in classified civil service without exam

Under the bill, the Director of Administrative Services may suspend the requirement to conduct a civil service examination to fill a vacancy in a police department where competition is impracticable in that special case. To have the examination suspended, the appointing authority must submit satisfactory evidence to the Director that competition is impracticable and the position can best be filled by a person holding a specialized certification or possessing peculiar and exceptional qualifications. A suspension cannot be general in its application.¹

The Ohio Constitution requires that appointments to the civil service of the state or a county or city be made “according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations.” It also requires that laws be passed to enforce that requirement.² Ohio law generally requires all applicants for a position in the classified civil service to pass an examination to be eligible for hire.³ A city must apply the Ohio civil service

¹ R.C. 124.30(A)(3).

² Ohio Constitution, Article XV, Section 10.

³ R.C. 124.23, not in the bill.

law unless its charter expressly allows it to exercise its power of local self-government in a way that contradicts the law.⁴

Current law allows the Director to suspend the requirement that an examination be conducted to fill a position of a scientific, managerial, professional, or educational character requiring peculiar and exceptional qualifications. To receive the suspension, the appointing authority must provide evidence that competition in each special case is impracticable and the position can best be filled by a person of high and recognized attainments relevant to the position.⁵ The Ohio Supreme Court has held that an appointing authority must demonstrate “extraordinary circumstances” to make an appointment to a position with exceptional qualifications without an examination.⁶ Determining whether extraordinary circumstances justify suspending a competitive examination requires an individualized analysis of the facts in each case.⁷

Current law also permits an appointing authority to make a temporary appointment to a vacant position in the classified civil service by noncompetitive examination. A temporary appointment must be made for urgent reasons and cannot last longer than 120 days, unless it is considered necessary according to the Director’s rules.⁸ Security concerns resulting from understaffing are considered a valid “urgent reason” for making a temporary appointment.⁹ However, the appointing authority must administer an examination within six months of making a temporary appointment for the appointment to become permanent.¹⁰ A temporary appointee serves at the pleasure of the appointing authority. If the temporary appointee is permanently appointed to the position, the temporary service does not count toward the appointee’s probationary service in the permanent position.¹¹

⁴ Ohio Const., art. XVIII, secs. 2 and 3 and *State ex rel. Regetz. v. Cleveland Serv. Comm.*, 72 Ohio St.3d 167 (1995). See also *Northern Ohio Patrolmen’s Benevolent Ass’n. v. Parma*, 61 Ohio St.2d 375 (1980)).

⁵ R.C. 124.30(A)(2).

⁶ *Moore v. Agin*, 12 Ohio St.3d 173, 175 (1984).

⁷ Compare *Moore* at 174-175 (finding extraordinary circumstances) with *Ohio Patrolmen’s Benevolent Ass’n v. Fostroria Civ. Serv. Comm’n*, 2006-Ohio-4193, ¶12-14 (3rd Dist. 2006) (refusing to find extraordinary circumstances).

⁸ R.C. 124.30(A)(1).

⁹ *State ex rel. Charlton v. McFaul*, 8th Dist. Cuyahoga No. 68678, 1995 Ohio App. LEXIS 5284 (November 30, 1995).

¹⁰ *Mines v. Warren*, 11th Dist. Trumbull Case Nos. 90-T-4453, 90-T-4454, 1991 Ohio App. LEXIS 1838 (April 26, 1991).

¹¹ R.C. 124.30(B) and (C), with conforming changes in R.C. 124.11.

HISTORY

Action	Date
Introduced	02-17-21
