

2011 AGA Professional Development Conference

Legislative Update

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Presented by:

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Senator Jim Hughes, State Senator 16th Senate District

Eugene L. Hollins Biography



- **Practice Areas:** Municipal & Local Government; Real Property; Zoning and Land Use.
- **Admitted:** 1988, Ohio
- **Law School:** The Ohio State University, JD., 1988 (Order of the Coif)
- **College:** Vanderbilt University, B.A. 1983
- **Member:** Columbus (Member: Real Property Law Committee), Ohio State Bar Association, American Bar Association, Ohio Municipal Attorneys Association, International Municipal Lawyers Association.
- **Biography:** Articles Editor, Ohio State Law Journal.
- **Born:** Orange, Texas, February 21, 1962.

Senator James M. Hughes biography



- **Practice Areas:** Probate; Estate Planning; Contracts; Real Estate; Business; Torts.
- **Admitted:** 1994, Ohio and U.S. District Court, Southern District of Ohio
- **Law School:** Capital University, J.D., 1994.
- **College:** The Ohio State University, B.S.B.A., 1987.
- **Member:** Columbus and Ohio State Bar Associations.
- **Biography:** State Representative, Ohio, 2000—.
- **Born:** Columbus, Ohio, September 17, 1964.

Public Employee's Collective Bargaining Law

Am. Sub. S.B. 5

129th General Assembly

All information compiled from the Ohio Legislative Service Commission, Final Analysis.

Status of S.B. 5

Senate Bill Five was signed into law by Governor John Kasich on March 31, 2011. A statewide referendum to repeal the law, known as Issue 2, will suspend the effective date of the law until after the November 8, 2011 election.

Text of the Referendum

Issue 2

Referendum

REFERENDUM ON NEW LAW RELATIVE TO GOVERNMENT UNION CONTRACTS AND OTHER GOVERNMENT EMPLOYMENT CONTRACTS AND POLICIES

A majority yes vote is necessary for Amended Substitute Senate Bill No. 5 to be approved. Amended Substitute Senate Bill No. 5 is a new law relative to government union contracts and other government employment contracts and policies.

A "YES" vote means you approve the law.

A "NO" vote means you reject the law.

Striking

- Prohibits public employees from striking.
- Requires the public employer to deduct from the compensation of a striking employee an amount equal to twice the employee's daily rate of pay for each day or part thereof that the employee engaged in a strike.
 - A public employee generally is any person holding a position by appointment or employment in the service of a public employer, public employee does not include supervisors
 - With more people being deemed supervisors, the employer is under no duty to collectively bargain unless the employer elects to do so. See Ability to Bargain slide.

Ability to Bargain

- Expands the definition of supervisor with respect to members of a fire or police department.
- Expands the definition of supervisor and management level employee with respect to faculty of a state institution of higher education to include those involved in certain decisions.
- Limits the ability of specified other employees to collectively bargain with their public employers, including regional council of government employees and certain members of the unclassified civil service, to allow the employees to bargain only if the public employer elects to do so.

Bargaining Units and Exclusive Representatives

- Changes the time limitations within which the State Employment Relations Board must act upon a request for recognition.
- Prohibits State Employment Relations Board with respect to members of a fire department from designating as appropriate for collective bargaining a unit that includes rank and file members with members who are of the rank lieutenant and above.
- Revises recognition procedures.
- Permits certain groups to file a decertification petition demonstrating that 30% of the employees in the described bargaining unit support the petition.

Subjects of Collective Bargaining

- Expands the list of subjects that are inappropriate for collective bargaining including,
 - Employer paid employee contributions to any of the five public employee retirement systems.
 - Health care benefits, except for the amount of the premium for which a public employer and the public employees of the public employer pays. The provision of health care benefits for which the employer is required to pay more than 85% of the cost is not an appropriate subject for collective bargaining.
 - The privatization of a public employer's services or contracting out of the public employer's work;
 - The number of employees required to be on duty or employed in any department, division, or facility of a public employer.
- Permits public employers to not bargain on any subject reserved to the management and direction of the governmental unit, even if the subject affects wages, hours, and terms and conditions of employment.
- Prohibits an existing provision of a collective bargaining agreement that was modified, renewed, or extended that does not concern wages, hours, and terms and conditions from being a mandatory subject of collective bargaining.

Subjects of Collective Bargaining, continued

- Allows a public employer to engage in specified employment related actions at the employer's discretion unless the public employer specifically agrees otherwise in an express written provision of a collective bargaining agreement, with certain exceptions concerning equipment.

Dispute Resolution

- Eliminates the ability of the parties to submit disputes to an agreed upon dispute resolution procedure.
- Extends the timelines involved in the dispute resolution process.
- Expands the list of factors a fact finder must consider in resolving disputes, and requires the fact finder to consider as the primary factor the interests and welfare of the public and the ability of the public employer to finance and administer the issues proposed.
- Eliminates the final offer settlement procedure.
- Requires the legislative body of the public employer to be the final decision maker with respect to any dispute that is unresolved during the fact finding process, and prescribes procedures and requirements for the legislative body to make a determination.
- Requires any agreement determined by the legislative body to be in effect for three years.
- Requires if the legislative body fails to select a last best offer the public employer's last best offer to become the agreement between the parties.
- Allows for certain public employers, if the legislative body selects the last best offer that costs more and the chief financial officer of the legislative body determines insufficient funds exist or refuses to determine whether sufficient funds exist to cover the agreement, the last best offers to be submitted to the voters for selection.
- Prescribes procedures to place the last best offers on the ballot and for that election.

Unfair Labor Practices

- Expands the list of unfair labor practices that may be committed by an employee, organization, its agents, or public employees and the remedies that may be applied for unfair labor practices committed by those entities.
- Revises the procedures regarding hearings on unfair labor practice charges.

Public Employee Pay

- Eliminates statutory schedules and steps
- Requires performance based pay for most public employees including board and commission members, teachers.
 - Performance based pay for teachers based, in part, on evaluations conducted under a policy that is based on a framework for teacher evaluations that has been recommended by the Superintendent of Public Instruction and adopted by the State Board of Education.

Public Employee Benefits

- Limits public employer contributions toward health care benefit costs to 85%.
- Requires health care benefits provided to management level employees to be the same as any health care benefits provided to other employees of the same public employer.
- Prohibits a public employer from paying employee contributions to the five public employee retirement systems.
- Requires death benefits paid under the Police and Fire Pension Fund to be paid in accordance with salary schedules and increases that were in existence prior to the effective date of the act.
- Abolishes continuing contracts for teachers, except for those continuing contracts in existence prior to the effective date of the act and revises the law relating to limited contracts.
- Caps vacation leave for certain public employees at 7.7 hours per biweekly pay period and limits total accrual for those public employees currently accruing 9.2 hours per pay period.

Senate Bill 178

Ohio Revised Code, sections 149.381, 149.39,
149.41, 149.411, 149.412, 149.42, 109.43, 307.801,
1901.41, 3313.29

Summary

- Senate Bill 178 contains a measure to limit local government liability in private lawsuits seeking damages for documents destroyed in violation of arcane state record retention procedures.

The old system...

- Local governments that destroyed public records in violation of the state's retention system were liable to any "aggrieved citizen" for \$1000.00 per destroyed record and uncapped attorney fees.
- The result: Lawsuits by citizens requesting records from Ohio local governments fishing for admissions that the records were destroyed.



The new system...

- Limits damages to \$1,000 per destroyed record, with a maximum \$10,000 cap.
- Limits attorney fees to \$10,000 to successful plaintiffs.
- Ensures that multiple plaintiffs cannot sue over destruction of the same record – only the first to sue can recover.
- Changes the state records retention law to require fewer notifications to the OHS to destroy records in the ordinary course of local government business.
- Provides that no suit may be brought more than five years after the record was destroyed, regardless of when the plaintiff discovered the improper destruction.
- Limits the definition of persons who are “aggrieved” by the improper destruction and requires proof of a bona fide interest in recovering the documents.

House Bill 153

129th General Assembly
Effective date: June 30, 2011

Local Governments in Fiscal Distress

- Creates a “fiscal caution” designation for municipal corporations, counties, and townships (referred to hereinafter as “local governments”)
- Requires local governments in **fiscal watch** to provide a financial recovery plan that identifies the actions to be taken, includes a schedule detailing the approximate dates for beginning and completing those actions, and provides a five-year forecast reflecting the effects of those actions.
- Provides that the Auditor of State is to be reimbursed for all expenses incurred with respect to a fiscal emergency, fiscal watch, or fiscal caution from an appropriation for that purpose, and that the Controlling Board may provide sufficient funds if necessary.

Local Governments in Fiscal Emergency

- Eliminates the requirement that, upon a fiscal emergency, a financial planning and supervision commission be established for all local governments and, instead, specifies that for villages or townships with a population of less than 1,000, the Auditor of State will serve as the financial supervisor with all the powers and responsibilities of a commission;
- Requires that a local government's financial plan include a five-year forecast reflecting the effects of the actions specified in the plan and that the plan be updated annually;
- If a local government fails to submit a financial plan, or fails to substantially comply with it, and the commission gives its certification, requires that all state funding (other than benefit assistance to individuals) be escrowed until a plan is submitted or compliance is achieved;
- In addition to its ongoing authority to limit a local government's general fund expenditures, permits a commission to limit expenditures from any other fund if deemed prudent;
- Adds that, if an officer of a local government in fiscal emergency is convicted of certain violations of ongoing law, the officer is ineligible to hold any public office in Ohio or be employed by a public entity in Ohio for seven years after the conviction;
- Provides for the dissolution of municipal corporations and townships that are in fiscal emergency and meet specified conditions.

Cost Savings & Modified Work Weeks

- Extends, from through fiscal year 2011 to through fiscal year 2013, the authority for a county appointing authority to establish a mandatory cost savings program in which its exempt employees must participate, and expands the program to apply to townships and municipal corporations.
- Expands the definition of fiscal emergency for purposes of a county, township, or municipal corporation implementing mandatory cost savings days for its exempt employees in the event of a fiscal watch or fiscal emergency occurring in fiscal year 2014 or later.
- Allows a county, township, or municipal corporation appointing authority to establish a modified work week schedule program applicable to its exempt employees.

Construction Reform

- General Contracting Delivery Model
 - Ohio Revised Code Section 153.50 has been rewritten to define general contracting as the “means of constructing and managing an entire public improvement project, including the branches of classes of work specified in (B) of this section, under the award of a single aggregate lump sum contract. The branches or classes of work defined in division (B) are mechanical, electrical, and plumbing trades work.
 - Under the new statute, public owners can now hire a design professional to create drawings and specifications and then advertise for bids to build the entire project. This general contracting model provides that the general contractor is responsible for the entire building, regardless of how the responsibilities for mechanical, electrical, and plumbing work are split up.
 - Public owner is removed from contractual disputes between various contractors.

Construction Reform, cont.

- Construction Manager at Risk
 - Public owners have the option of hiring a CMAR
 - “A person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure or other improvement and who provides the public authority with a guaranteed maximum price.”
 - Provides pre-construction services, schedules, and estimates of construction costs. They also provide advice on issues of constructability and value engineering (cost savings to the design).
 - Allows for trouble shooting of possible design issues early in the project to correct problems.

Construction Reform, cont.

- Design-Build
 - Allows public owners to enter into a contract with a single entity that will provide both design services and construction services.
 - O.R.C. §153.693(A)(4) requires that a public owner “rank the selected firms based on the public authority’s evaluation of the value of each firm’s pricing proposal, with such evaluation considering each firm’s proposed cost and qualifications”.
 - To assist in selecting a design-builder, the public owner is required to engage the services of a criteria architect or criteria engineer.

Township Mergers

- Authorizes one or more townships to merge into a contiguous township, creating a new township, by initiative petition of the voters of each township proposed for merger.
- Authorizes the boards of township trustees to submit a question of merger to the voters of the townships to be merged, for their approval.
- Requires merging townships to enter into a merger agreement that contains specific terms and conditions of the merger, but if no agreement is entered into or if only partial agreement is reached, requires the new township to function under default terms and conditions prescribed by the act.
- Prohibits a merger from being proposed again for at least three years if the merger was disapproved by the voters.

County Spending Plans

- Authorizes a board of county commissioners to adopt a quarterly spending plan or amended spending plan for appropriations from any county fund for any county office, department, or division under certain circumstances.
- Authorizes the board also to adopt a two-year spending plan or amended spending plan with a quarterly schedule of expenses and expenditures of appropriations for personal services and payrolls from any county fund, for any county office, department, or division under certain circumstances.
- Requires the board of county commissioners to give written notice to the county office, department, or division for which it intends to adopt a plan.

Township Expenses

- Allows townships to compensate the township fiscal officer and township trustees from various township funds, in addition to the township general fund, based on the proportion of time the fiscal officer or township trustee spends providing services related to each fund.
- Requires the township fiscal officer and township trustees to certify the percentage of time spent working on matters to be paid from the township general fund and other township funds.
- Permits a board of township trustees to request that expenses incurred by a county board of elections in relation to a township tax levy ballot issue be withheld from a particular township fund credited with tax revenue in a tax settlement.

Senate Bills 35/150

128th General Assembly

Illegal Immigration and Enforcement

- Authorizes a county sheriff, at the direction of the board of county commissioners and upon the request of federal immigration officials, to take custody of persons being detained for deportation or who are charged with civil violations of federal immigration law.
- Authorizes a county sheriff to render assistance to federal immigration officials, upon the request of those officials, in matters (1) related to the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law and (2) related to the investigation of businesses suspected of employing aliens who violate criminal or civil provisions of federal immigration law.
- Clarifies that state and local employees, when rendering assistance to federal immigration officials, may assist in the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law.
- Directs the Ohio Attorney General to pursue a memorandum of agreement with the United States Attorney General concerning the enforcement of federal immigration laws in Ohio.
- Requires the Ohio Attorney General to designate the appropriate law enforcement officers to be trained, as specified in the memorandum, in the enforcement of the relevant federal immigration laws.

Senate Bill 4

129th General Assembly

Act Summary

- Requires the Auditor of State to conduct performance audits of at least four state agencies each biennium.
- Exempts the Attorney General, Auditor of State, Governor, Secretary of State, Treasurer of State, and agencies of the legislative and judicial branches from the performance audits.
- Requires an audited state agency to accept comments regarding a performance audit from interested parties.
- Requires a state agency to implement the recommendations of a performance audit and to file a report and provide testimony if it does not do so.
- Requires the Auditor of State to submit an annual report to the Governor and certain members of the General Assembly describing whether state agencies have implemented the performance audit recommendations and the cost savings achieved as a result.
- Creates the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund, to be administered by the Auditor of State.
- Authorizes the Auditor to make loans from the Fund to state agencies and local public offices to pay for performance audits.

Senate Bill 125

129th General Assembly

Act Summary

- Authorizes political subdivisions to enter into agreements to perform certain services for one another.
 - Included in final version of HB 153, the state operating budget.
 - Limits the authority in that a political subdivision can not enter into an agreement to levy a tax or perform investment functions with regard to public monies.

House Bill 225

129th General Assembly

Bill Summary

- Authorizes county auditors and boards of township trustees to adopt direct deposit payroll policies.
- Authorizes counties to increase the amount credited to rainy day reserve balance accounts to 1/6 expenditures made in the previous FY.
 - Allows reserve balances for use to pay certain BWC claims, and could reduce financial burden on other funds used to currently pay such costs.