

OEA Governmental Services Senate Bill 5 Analysis: AS SIGNED BY THE GOVERNOR

SB 5 would impact CBAs entered into on or after the effective date of the bill (90 days after filing with Sec. of State).

IMPACT ON EMPLOYEES OF SCHOOL DISTRICTS & EDUCATION SERVICE CENTERS:

Scope of bargaining: K-12 school employees may bargain wages, hours and terms and conditions of employment. HOWEVER, the bill outlines extensive restrictions and prohibitions on bargaining and removes leverage in negotiations.

- No “affects” bargaining; CBA provisions do not become mandatory bargaining matters because they are in a previous contract. Removes from mandatory bargaining the continuation, modification, or deletion of an existing CBA
- Each CBA covering public employees of school districts shall comply with all applicable state or local laws regarding wages, hours, and terms and conditions of employment of public employees.

Teacher Salaries: Statutory salary schedule eliminated. Teacher salaries must be based on the following performance based measures:

- Level of teacher license; whether the teacher is a “highly qualified teacher” under law; the value-added measure the board uses to determine the performance of the students assigned to the teacher’s classroom; the results of the teacher’s performance evaluations, any peer review program created by an agreement between the board and teachers association, or another system of evaluation used by the board; any other criteria established by the board.

Non-teaching school employee salaries: Statutory salary schedule eliminated. Pay must be determined by performance based measures, which are undefined. Hourly overtime rates that exceed the rate required by the Fair Labor Standards Act are prohibited.

Teacher Evaluation: Not later than July 1, 2013, every board of education, in consultation with teachers, shall adopt a policy for the evaluation of teachers that complies with the framework to be established by the State Board of Education. The framework adopted by the State Board shall require at least 50% of each evaluation to be based on measures of student academic growth specified by ODE.

School District and Education Service Center Employees specifically prohibited from bargaining the following:

- Requirement that the employer employ a minimum number of total personnel or any category of personnel.
- Restrictions on the authority of the public employer to assign personnel or workload to school buildings.
- Establishment of a maximum number of students who may be assigned to a classroom or teacher.
- Prohibitions on employer from making reductions in teachers or nonteaching employees for statutory reasons.
- Restrictions on the authority of the public employer to determine the order of layoffs.
- Restrictions on the authority of the public employer to acquire non-educational services from another public or private entity through competitive bidding.
- Restrictions on statutory public employer management rights.
- Restrictions on public employer’s authority to acquire products/programs/services from and ESC.

Teacher Contracts: An initial limited contract for a classroom teacher entered into on or after the effective date of the bill shall not exceed three years. Any subsequent limited contract: not less than 2 years and not more than 5 years. No continuing contracts may be entered into on or after the effective date of the bill.

School Employee Leave: The bill abolishes statutory provisions for sick leave, leave of absence, and assault leave provided to all school employees, the personal leave and vacation leave provided to nonteaching employees, and the professional improvement leave provided to teachers. The school board/ESC must adopt a policy covering these leave provisions for employees not covered by a CBA. Leave is still subject to bargaining.

Teacher and Non-teaching Employee Layoffs:

- Prohibits any CBA provision that requires an employee's length of service as the only factor in a RIF or that restricts the authority of the public employer to determine the order of layoffs.
- Subject to a preference for teachers with a continuing contract, the principal factor in teacher RIFs must be a school board's consideration of the relative quality of performance, including type of license held, "highly qualified" status, use of a value-added measure and results of the teacher's performance evaluation, and any peer review program created by an agreement entered into by a board of education and representative of teachers employed by that board.
- Subject to a preference for non-teaching employees with continuing contracts, the principal factor in RIFs must be the relative quality of performance as measured by the board.

PROVISIONS APPLICABLE TO ALL PUBLIC EMPLOYEES:

- **Right to Strike Eliminated:** Prohibits public employee strikes and establishes penalty of \$1,000 fine for engaging in an illegal strike, as well as a compensation deduction of twice the daily rate of pay for each day of engagement in an illegal strike. A court may still jail an individual for violating an injunction against an illegal strike.
- **Final Dispute Resolution Procedure:** If the parties are unable to reach agreement within 20 days after the publication of fact-finder or expiration of a CBA, the legislative body of the public employer shall conduct a public hearing to consider the last best offer of each party and shall vote to accept one of the last best offers. Except for state employers and state institutions of higher education, if the chief financial officer of the public employer determines that new revenue must be generated to fund the agreement, either party to the agreement or any constituent in geographic area of the public employer may submit the last best offer from each party to the electors for a decision on which should be the agreement between the parties. Until the resolution of such as vote, the last best offer of the employer shall be implemented.
- **Decertification of an Exclusive Representative:** Another employee organization, employees currently represented by the employee organization, or the public employer may file a petition for decertification with SERB demonstrating that at least 30% of the employees support the decertification petition. The petition may be submitted any time subsequent to 120 days prior to the expiration of the CBA.
- **Sick Leave Payout:** Prohibits payout of an accumulated paid sick leave balance that exceeds 50% of total sick leave accumulations or for accumulated sick leave in excess of 1,000 hours.
- **Health Care:** No bargaining on health care benefits or anything less than a 15% employee premium. Benefits for employees must be the same as management level employees.
- **Pension Pickup:** Employer prohibited from paying any part of the employee's share of contribution to a state retirement system (i.e. employee must pay full 10% share, employer continues to pay 14% share.)
- **Fair Share Fees:** Prohibits any CBA from requiring fair share fee be paid as a condition of employment.
- **Automatic Contributions to Political Action Committees (PACs):** Prohibits any public employer from agreeing to a provision that provides for the payroll deduction for any contributions to a PAC, e.g. FCPE, using any other method than prescribed in Campaign Finance Law (currently allows auto deductions to PACs).
- **Unfair Labor Practice:** Creates ULP's for insisting that a permissive subject of bargaining be bargained to impasse; inducing a secondary boycott; restraining or coercing public employers in their rights under 4417; any communication that contains a threat of reprisal, force or promise of benefit.
- **Leave Accrual:** Prohibits accrual of leave credits in excess of 6 weeks annual paid vacation prior to 20 years of service, 12 paid holidays annually, and 3 paid personal days annually.
- **Fiscal Watch and Emergency:** Allows a public employer that is in a state of fiscal watch to suspend wage/benefit increases; if in fiscal emergency may terminate or modify a CBA.
- **Liberally Construe:** Repeals current law requiring the Collective Bargaining Law be liberally construed for the purpose of promoting orderly and constructive relationships between employer and employees.

IMPACT ON EMPLOYEES OF STATE AGENCIES (SCOPE), COUNTY GOVERNMENTS (DD) and NON-FACULTY HIGHER EDUCATION:

Higher Education Faculty Can No Longer Bargain: Higher education faculty are excluded from collective bargaining by being defined as “supervisors” or “management level” employees and ineligible to collectively bargain.

Scope of Bargaining for State Agency, County and Non-Faculty Higher Education Employees: May bargain wages, hours and terms and conditions of employment, subject to restrictions. No “affects” bargaining; CBA provisions do not become mandatory bargaining matters because they are in a previous contract. Removes from mandatory bargaining the continuation, modification, or deletion of an existing CBA.

- **Salaries:** Eliminates statutory salary schedules and requires the Department of Administrative Services to adopt rules to develop a performance pay system.

Leave:

- Caps vacation leave accumulation at 7.7 hours per biweekly pay period after 19 years of service (current cap is 9.2 hrs./bi-weekly pay period after 24 yrs. of service), which supersedes CBA’s entered into on or after the effective date of the bill. Reduces sick leave accrual from 4.6 (3 weeks) hours to 3.1 (2 weeks) hours per biweekly pay period. State agency employees already at 3.1.
- Requires an employee who is accruing vacation leave at a rate of 9.2 hours per pay period and whose vacation leave balance exceeds 600 hours on the bill’s effective date to forfeit the employee’s right to take or be paid for any vacation leave credit that is in excess of 720 hours.

Layoff: Prohibits an agency from using an employee’s length of service as the only factor to determine whether to lay off the employee. Layoffs to be determined by a system of retention points for each employee, based on length of service, efficiency of service and other similar factors the director considers appropriate.

Updated April 1, 2011