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Senate Bill 5: A Comprehensive Overview of its Impact on the Public Sector in Ohio

Senate Bill 5, which was signed by Governor Kasich on March 31, 2011, is game-changing legislation for public employers. It becomes law on July 1, 2011, unless a referendum is scheduled for November 2011. While much of the media focus has dealt with the collective bargaining provisions of the law, this broad measure impacts numerous aspects of public employment, affecting all public sector employers and employees. Indeed, Senate Bill 5 provides some of the most sweeping reforms governing the relationship between public sector employees and employers in decades.

Senate Bill 5 makes significant changes in the civil service law, including ones that affect fire and police supervisors and declassify certain employees. It greatly expands public employers' ability to control bargaining issues, benefits, layoffs, leaves and compensation. It reduces their liability to contribute to health care benefits and pensions. A new dispute resolution procedure for bargaining impasse gives public employers (and, in some cases, voters) the ultimate authority to resolve negotiation disputes. Moreover, all public employees are prohibited from striking.

Read Squire Sanders' [comprehensive overview of Senate Bill 5](#) (PDF) and its impact on non-school district public entities.

Recent Legislation of Interest

Amended Substitute House Bill No. 114 was signed by

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Ohio Offices

Cincinnati
513.361.1200

Cleveland
216.479.8500

Columbus
614.365.2700

Contacts:

[Jeffrey A. Bomberger](#)

[Victoria Grunthaler Bowser](#)

[Alexander G. Burlingame](#)

the Governor March 30, 2011. Certain provisions of the Bill are effective immediately and others are effective June 29, 2011. This Bill makes appropriations and contains authorizations for state transportation programs. Among other things, it includes the authorization for the Ohio Department of Transportation to enter into public-private partnership agreements (P3s) with private entities regarding any aspect of transportation facilities, including their development, construction or operation. An affected public entity also may be a party to a P3 agreement.

The Bill increases the competitive bid requirement threshold for port authorities from \$25,000 to \$100,000 (which amount increases with inflation). The Bill further expands the types of projects transportation improvement districts may construct and operate to include parking facilities and freight rail tracks and related freight rail facilities.

Recent Decisions of Interest

The prevailing wage law applies to improvements made by a private entity to property leased by a public entity, even if no public funds were used to fund the improvements. *Zurz v. 770 West Broad AGA, L.L.C.*, 2011-Ohio-832 (Ohio App. 10th Dist.)

A public records request for access to 24-hour tapes used by a police department to record 9-1-1 calls "during the time that such a tape recording system was used" was overbroad and, thus, invalid. *State ex rel. Davila v. City of East Liverpool, et al.*, 2011-Ohio-1347 (Ohio App. 7th Dist.). *NOTE: On April 20, 2011, the Ohio Supreme Court heard oral arguments on a case (Case No. 2010-0963) with similar facts but with a different issue (i.e., generally whether a person who requested the public records was "aggrieved" under R.C. 149.351(B)(2)).*

A county engineer's office may pay the deductible for damage to its truck to the County Risk Sharing Authority from funds derived from the registration, operation and use of vehicles and fuel (MVGT funds) but may not reimburse its portion of premiums paid by the county for its participation in the County Risk Sharing Authority with MVGT funds. *Stockberger, et al. v. Henry*, 2011-Ohio-1710 (Ohio App. 5th Dist.)

A tax increment financing ordinance that a city enacted under R.C. 5709.40 could not diminish (i) the outside millage imposed by a township on real property on which a township levied taxes under R.C. 709.023(H) and that remained located in a township following a type-2 annexation, under 709.023, or (ii) the revenue from that outside millage to which the township was entitled. *Sugarcreek Twp. v. City of Centerville*, 2011-Ohio-1830

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(Ohio App. 2d Dist.)

A political subdivision's performance of operational steps in an operating plan does not automatically render the operational activity a governmental function immune from liability under R.C. Chapter 2744, even where the operational activity is statutorily classified as a proprietary function. *Inland Prods., Inc. v. Columbus*, 2011-Ohio-2046 (Ohio App. 10th Dist.)

Income received from seasonal crop production activities is subject to both (i) a joint economic development district income tax levied under R.C. 715.74(C)(1), as long as the contract creating the joint economic development district does not exempt such activities, and (ii) a municipal income tax levied under R.C. Chapter 718. *2011 Op. Att'y General No. 2011-007*

As long as the formal statutory process for changing a township's boundaries under R.C. 5709.19 has been followed, a township may levy property taxes on all property within the territory of the township, including territory that a city had annexed under R.C. 709.023. A political subdivision that erroneously or improperly levied a tax on property in another political subdivision is not subject to a claim of unjust enrichment. A political subdivision, however, is subject to an unjust enrichment claim where it erroneously or improperly receives taxes levied by another political subdivision. *2011 Op. Att'y General No. 2011-009*

A "provisional ballot envelope is a 'public record' subject to release once the time has passed during which a board of elections is required to preserve ballots under seal." *2011 Op. Att'y General No. 2011-012*

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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