

# Budget and Bargaining Update

**School Law Workshop**  
**10:30 a.m.-11:15 a.m.**

**C 210-212**  
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If anything, 2011 shaped up as the year that put collective bargaining on the front page in Ohio. Equally important is the practical effects the legislation had on school districts and their finances. Obviously, the two most important legislative enactments were SB 5 (collective bargaining reform) and HB 153 (budget bill). The former garnered headlines and strong reactions from every public sector union in the state while the latter slipped through in comparative obscurity. Both addressed some traditionally sacrosanct bargaining issues, yet in different manners. And both left a rather distinct footprint in Ohio's public school history.

Governor John Kasich signed senate Bill 5 into law on March 3, 2011. Intended as a broad, sweeping overhaul of the state's collective bargaining laws, it would significantly impact the negotiating rights and abilities of all public employees. The effective date of the new law was set to be 90 days after his signing, but a referendum was successfully placed on the state ballot to be voted on in the November 8, 2011 election. The referendum therefore delayed the effective date of the law's provisions until that date, if ever.

While SB5 greatly limited the bargaining rights of public school employees, it also significantly impacted the basic operations of public school districts in Ohio. More specifically, SB5 contained provisions that address assignment rights, class size, grievances, community schools, acquisition of non-educational services, expanding management rights, past practices and maintaining the *status quo ante* during negotiations, overtime, retirement "pick-ups," and privatization/subcontracting, to name a few.

Not surprisingly, the law itself is extensive and lengthy. Since SB 5's provisions are Ohio law specific, the following is a general summary of its scope, with a focus on provisions pertaining to schools.

## **Strikes**

- Prohibits "public employees" from striking, primarily school employees.
- 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.

**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.
- Prohibits employees of community schools from collectively bargaining, except for conversion community schools.
- Allows the governing authority of a conversion community school to opt out of collectively bargaining with the community school's employees.
- 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.

**Right to bargain**

- Removes continuation, modification, or deletion of an existing collective bargaining agreement from the subject of collective bargaining.

**Bargaining units and exclusive representatives**

- Changes the time limitations within which the State Employment Relations Board must act upon a request for recognition.
- Prohibits an appropriate unit of firefighters from including 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.
- 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.
- 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.
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- 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.
- Prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date from containing provisions for certain types of leave to accrue above listed amounts or to pay out for sick leave at a rate higher than specified amounts.
- Prohibits a collective bargaining agreement entered into or renewed on or after the act's effective date from containing certain provisions regarding the deferred retirement option plan.
- Limits the previously required grievance procedure to unresolved grievances that are based on the disputed interpretations of the written provisions of the agreement.

### **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.

### **Miscellaneous changes in the Public Employee Collective Bargaining Law**

- Requires a public employer to report certain information about compensation paid to public employees under a collective bargaining agreement.

- Repeals the provision requiring the Public Employee Collective Bargaining Law to be liberally construed.

### **Public employee pay**

- Generally eliminates statutory salary schedules and steps.
- Requires performance-based pay for most public employees, including board and commission members, and makes other, related changes.
- Requires 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.
- Requires health care benefits provided through a jointly administered trust fund to be the same as the health care benefits provided to other public employees.
- Requires boards of education to adopt policies to provide leave with pay for school employees and abolishes statutorily provided leave for those employees.
- 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.
- 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.
- 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.
- Reduces sick leave accrual for most public employees from 4.6 hours to 3.1 hours per biweekly pay period.

### **Reduction in force**

- Removes consideration of seniority and length of service, by itself, from decisions regarding a reduction in work force of certain public employees.

As mentioned, the school unions' response to SB 5 was negative, quick and efficient. A referendum was successfully placed on the statewide ballot followed by a massive media campaign encouraging voters to repeal the fledgling law before it could take effect. School unions, in particular, also responded by strongly encouraging their members to quickly sign new negotiated agreements before the law would impact their members. They were also acutely aware of the negative impact difficult and protracted negotiations

would have on the “Vote No” campaign. So, the contracts agreed upon in 2011 were extremely board friendly, containing wage/salary schedule freezes and health insurance changes heretofore unprecedented in Ohio. The long-term effect of these financial concessions for school districts is yet to be seen, but in the short-term, it is certainly a fortuitous event.

A more direct financial footprint can be found in the enactment of HB 153, the state’s most recent budget bill. Effective on September 29, 2011 (except for appropriation provisions, which were effective immediately), the bill as enacted by the general assembly also addressed more than state finances.

### **K-12 School Funding:**

- “All funds” reductions of \$2.9 billion over biennium are a result of cuts to Tangible Personal Property tax “hold harmless” payments, elimination of state fiscal stabilization funds, reduction in federal stimulus funding for IDEA, reduction in the Kilowatt Hour tax reimbursement and other education line item cuts. When compared to FY 11, there is a \$1.2 billion “all funds” reduction in FY 12 and \$1.7 billion “all funds” reduction in FY 13.
- Allocates \$30 million to an incentive program for districts rated excellent as a (\$17 per pupil supplement).
- Repeals Evidence-Based Model for school funding and eliminates the School Funding Advisory Council.
- Restores gifted funding to 2009 appropriation levels.
- Allocates funding to joint vocational school districts (JVSD) in FY 2012 and FY 2013 equal to the JVSD's total state funding allocation for the previous fiscal year. Funding for JVSDs totals approximately \$263 million in each FY.
- Specifies that the state funding allocated in each fiscal year for special education and related services and for career-technical education for each district be equal to the amounts allocated for those purposes in FY 11.
- Diverts more funding from local school districts by expanding charter schools and vouchers.

### **Teacher Evaluations:**

- The State Board is required to develop a standards-based framework for the evaluation of teachers by December 31, 2011 that provides for multiple evaluation factors, including student academic growth as 50% of each evaluation. Teachers are to be distinguished between four levels of performance: "accomplished," "proficient," "developing," and "ineffective."
- All school districts and Educational Service Centers (ESCs) are required to adopt a teacher evaluation policy that conforms to the State Board framework by July 1, 2013. However, the bill specifies that the policy takes effect at the expiration of the collective bargaining agreement in effect on the provision's effective date (90 days after the filing of HB 153 with Secretary of State) and shall be included in any renewal or extension of such an agreement.

**Teacher Performance Pay:**

- Districts receiving Race to the Top funds: Requires teachers to be paid according to a performance-based schedule based on new State Board evaluation framework, including student academic growth as 50% of evaluation, and allows for payment of additional compensation to teachers who agree to perform duties that the employer determines warrant additional compensation. RTTT districts shall comply with this section in accordance with the timeline contained in the board's scope of work.
- Districts NOT receiving Race to the Top funds: Requires school districts *not* receiving Race to the Top funds to comply either with the bill's requirements for a performance-based salary schedule or with current law. (Current law requires a district's or ESC's salary schedule for teachers to be based on years of service and educational training, and to comply with minimum salary requirements.)

**Teacher Layoffs and Seniority:**

- Prohibits giving preference based on seniority in determining the order of layoffs or in rehiring teachers when positions become available again, except when choosing between teachers with comparable evaluations.

**Employee Benefits:**

- Requires the Department of Administrative Services (DAS) to study the feasibility of providing health care plans to school district employees through mandatory or voluntary pooling.
- Eliminates the School Employees Health Care Board and transfers its duties to DAS. Requires school employee health plans to comply with best practice standards adopted by the Board or DAS.
- Retains current law on pension contribution rates (2% shift from employer to employee not in the bill).
- Exempts substitutes, seasonal and intermittent employees from requirement of 15 days of sick leave.

**Charter Schools:**

- Does not include numerous provisions added in the House that would expand for-profit charter schools and reduce accountability and transparency for charter school operators.
- Strengthens triggers for automatic closure of a charter schools.
- Adds to the definition of "challenged school districts" any district in the lowest 5%.
- Repeals moratorium on new e-schools but requires adoption of statewide operating standards.
- A sponsor can sponsor additional charter schools only if the entity is not ranked in the lowest 20% on an annual ranking of sponsors by their composite index scores.
- Prohibits collective bargaining in conversion charters sponsored by the Cleveland school district. The House version prohibited collective bargaining in all charter schools.
- Does not include language added by the Senate that would allow charters to open outside challenged districts as long as 75% of populations were gifted or special needs.

**Voucher Expansion:**

- Raises cap on the number of EdChoice vouchers from 14,000 to 60,000 over the next two years and expands eligibility to students from schools in the lowest 10% based on performance index scores. Eff. immediately.
- Creates a new voucher program for special education students. The number of vouchers is capped at 5% of students statewide with an IEP (approximately 13,000 students). Voucher amounts can be up to \$20,000.
- Increases the eligibility and the voucher amount for the Cleveland voucher program.

**Education Policy:**

- Requires teachers in core subjects at schools that rank in the lowest 10% based on performance index to retake licensure tests in their subject. Teachers shall not be responsible for the cost of the test if the teacher passes the exam, they do not have to retake for three years.
- Creates a pilot project in the Columbus City Schools for a parent-initiated takeover of a school that has been ranked in the lowest 5% of statewide performance index scores for three or more consecutive years.
- Allows any school, with support of administration, teachers and staff assigned to the school, to be deemed an innovation school and waive requirements under law or a collective bargaining agreement.
- Emphasizes distance learning through a clearinghouse of interactive courses for students.
- Removes requirements that academic standards specify the development of 21st Century skills and removes senior project from graduation requirements.
- Allows a principal or other employee to serve as a district's gifted education coordinator.
- Authorizes districts to make up a maximum of three calamity days through lessons posted online or distributed to students. Requires the written consent of the teacher's union.
- Prohibits rules regarding career-technical teaching licensure from requiring the completion of a degree.
- Facilitates privatization of transportation employees in non-Civil Service districts (local or exempted village) by permitting termination of employees for reasons of economy and efficiency and contracting with an independent agent, but only if the CBA has expired or will expire within 60 days and has not been renewed.

As noted earlier, the budget bill was unique in that of the 5000+ pages, only approximately 1000 actually dealt with appropriations. The remainder focused on policy changes with education receiving a significant amount of the attention. Several issues or themes were similar to SB5, but tackled in an entirely different manner, such as teacher evaluations, compensation, RIFs, seniority and - to a lesser degree- outsourcing. The recent election's outcome will now mean that some of these very same issues will also have to be reconciled or addressed in the 2012 legislative session once again.