



COUNTY ADVISORY BULLETIN

CAB

Published by: County Commissioners Association of Ohio

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BULLETIN 2000-03

JUNE 2000

HOUSE BILL 544 ALLOWS COUNTIES TO ADDRESS SICK LEAVE TRANSFER AND VACATION ACCRUAL FOR FORMER COUNCIL OF GOVERNMENT EMPLOYEES

Effective Date: June 14, 2000. *(An emergency clause was included in the bill.)*

Revised Code Sections Affected: 9.44, 124.13, 124.38, 325.19

Lead Sponsor: Peterson (R-Delaware).

House Co-Sponsors: Schuler (R-Cincinnati), Calvert (R-Medina), Grendell (R-Chesterland), Terwilleger (R-Maineville), Tiberi (R-Columbus), Taylor (R-Norwalk), Buehrer (R-Delta), Robinson (R-Columbus), Hartnett (D-Mansfield), Young (R-Leroy), Harris (R-Ashland), Winkler (R-Cincinnati), O'Brien (R-Cincinnati), Clancy (R-Cincinnati), Krebs (R-Camden), Widener (R-Springfield), Trakas (R-Independence), Olman (R-Maumee), Hoops (R-Napoleon), Amstutz (R-Wooster), Stevens (D-Massillon).

Senate Co-Sponsors: Schafrath (R-Loudonville), Kearns (R-Springfield), White (R-Manchester), Gardner (R-Madison), Herington (D-Kent).

OVERVIEW

The COG provision of H.B. 544 grants counties permissive authority to transfer any or all sick leave and to count time in service with a Council of Government (COG) for determining vacation time when hiring an employee who previously worked for a COG formed under ORC § 167.

BACKGROUND

The COG provision of H.B. 544 of the 123rd General Assembly is just one component of this local government "fix-it" bill that was originally introduced to address unintended consequences of previous modifications to the membership of county planning commissions. For a detailed analysis of the other provisions contained in H.B. 544, please see CAB Bulletin 00-2.

The language affecting Council of Government (COG) employees was added to H.B. 544

in response to confusion about whether counties could transfer sick and past service time for an individual's vacation accrual rate for an employee who had been working under a COG structure for the purposes of the federal Job Training Partnership Act (JTPA). JTPA was replaced by the federal Workforce Investment Act (WIA) effective July 1, 2000. While the COG amendment was prompted by the ending of JTPA, the provision in HB 544 applies to all types of COGS.

According to Ohio Attorney General Opinion 92-079, a person who becomes a county employee is not entitled to be credited with benefits earned while employed by a COG because councils of government are separate entities from the political subdivisions that create them. Therefore, COGS are not "political subdivisions" as that term is used in the corresponding benefits sections of the Ohio Revised Code. But does "not entitled" mean counties are prohibited from transferring benefits? Preliminary discussions with the Attorney General's office indicated that "not entitled" could likely be interpreted to conclude that counties lacked the authority to transfer these benefits.

Counties could arguably negotiate a higher level of benefits with former COG employees that would be comparable to a direct transfer under their power to establish rates of compensation, which includes the power to determine fringe benefit levels. However, H.B. 544 permits a more direct approach when hiring former COG employees.

VACATION LEAVE

Ohio Revised Code sections 325.19 and 124.13 spell out the rate at which various state and county employees are to be granted vacation leave. These vacation schedules allow full-time employees to accrue two weeks of vacation until year eight of employment, at which time the amount is raised to three weeks. Another week of vacation is added after fifteen years of service and again after 25 years of service. Language was added to these sections that permits *all or any part* of prior service with a COG established under Chapter 167 of the Ohio Revised Code to be considered as prior service with the county. The language is permissive in nature and allows for partial as well as total transfers of prior service. So, for example, if a COG employee seeks to transfer with 7 years of service, the county could decide to allow those seven years to transfer thus allowing the employee to begin earning a third week of vacation after working for the county for only one year.

COMPUTING VACATION LEAVE AFTER AN EMPLOYEE HAS RETIRED

According to ORC § 9.44, once a person retires from the state or any political subdivision of the state, an employee cannot have prior service with the state or political subdivision counted for the purpose of computing vacation leave. For example, if a county hires a retired state employee already collecting PERS benefits, his years of prior service to the state do not count in determining how many weeks of vacation he will receive as a new county employee. H.B. 544 amends this section so that prior service of retired COG employees is also included in the prohibition for the purposes of computing vacation leave.

SICK LEAVE

Ohio Revised Code § 124.38 establishes the general sick leave policy for county employees. This section was amended to permit *all or any part* of a person's accrued but unused sick leave acquired during service with a COG established under ORC § 167 to be credited to the employee upon employment by the county. Again, counties are not required to transfer unused sick leave and partial transfers are allowable. For example, if a COG employee has accrued 120 hours of sick leave, this provision would allow counties to transfer the 120 hours or any part of the 120 hours.

EMPLOYEES THAT ARE AFFECTED BY THE STATUTORY CHANGES

It is important for counties to note that the provisions in H.B. 544 are designed to address employees not covered by a collective bargaining agreement. If the position contemplated for the new employee is within a current bargaining unit and the issues of prior service credit and/or sick leave credit are addressed in the collective bargaining agreement, then the terms of the agreement apply for the new hire.

CONCLUSION

CCAO would like to thank Representative Jon Peterson for his sponsorship of H.B. 544 and also for his willingness to address the COG issue as an amendment to the bill. If you have any questions about this Bulletin, please direct them to Suzanne Alexander, CCAO Research Associate, at (614) 221-5627 OR e-mail Suzanne at salexander@ccao.org.