FISCAL IMPACT REPORT

SPONSOR Szczepanski/Alcon

LAST UPDATED
ORIGINAL DATE 3/2/2023

SHORT TITLE Public Employee Probation Period

BILL NUMBER House Bill 502

ANALYST Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Increased Payroll	Up to $35.0	$2,352.0 - $3,851.4	$1,568.0 - $3,851.4	$3,955.0 - $7,737.80	Recurring	General Fund
Increased Payroll		$2,448.0 - $4,008.6	$1,632.0 - $4,008.6	$4,080.0 - $8,017.2	Recurring	Other State Funds and Federal Fund
1 FTE Admin. Law Judge		$140.0	$140.0	$280.0	Recurring	General Fund (SPO Operating Budget)
Total	**Up to $35.0**	**$4,940.0 - $8,000.0**	**$3,340.0 - $8,000.0**	**$8,315.0 - $16,035.0**		

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

<u>Responses Received From</u>
State Personnel Office (SPO)
Office of the Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 502

House Bill 502 (HB502) would amend the Personnel Act to lower the probationary period for classified state employees from one year to 90 days. Additionally, the law would provide that an employee who has completed the initial probationary period would not be required to complete an additional probationary period if they transfer or otherwise move to another service assignment.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The State Personnel Office reports employees who complete probation are eligible for legislative pay increases and additional leave of two hours a week for fitness and two personal days a year. Given variations in the level of annual pay increases and in the number of new employees each year, it is difficult to provide a precise estimate of how much this could increase state agency payroll costs. Records from SPO indicate state agencies hired about 3,000 people from outside state government in FY22 and the state is on track to hire a similar number in FY23. Those individuals would be eligible for annual pay raises about 20 pay periods earlier than they otherwise would by reducing the probationary period from one year to 90 days.

Using the average hourly pay rate of $25.37 for classified state employees and percentage increases of between 3 percent and 5 percent, LFC staff estimate annual raises average between $80 and $130 per person per pay period, including additional benefits costs. For 20 additional pay periods at the increased rate, this amount would total between $1,600 and $2,600 per person. For the roughly 3,000 external hires each year, this would indicate between $4.8 million and $7.8 million per year in additional payroll costs. However, if the number of new employees were to decline, this estimate would also fall. For example, for 2,000 new employees, costs could be as low as $3.2 million. For FY24, the fiscal impact listed above bases estimates on current new employee numbers but for FY25 includes the possibility of reduced turnover leading to lower costs.

In addition, employees who have completed their probation and are in "career status" can appeal disciplinary actions, including termination, likely increasing the number of appeals before adjudicators. SPO suggests this could require the agency to hire an additional administrative law judge. LFC staff estimate the cost on one additional administrative law judge at $140 thousand per year, including the cost of benefits.

SIGNIFICANT ISSUES

Analysis SPO argues state employers need more than 90 days to properly assess a new employee and points to data that shows agencies terminated 280 probationary employees in 2021 and 2022, with most (65 percent) terminated after 90 days. However, it is unclear how this data should be interpreted. It is possible employers would terminate employees more quickly with a shorter probationary period, making it unclear if total number of probationary employee terminations would fall. Further, while 280 employees were fired, only 61 percent of new employees successfully complete their probationary period. With a shorter probationary period, it is possible probationary employees would be less likely to quit.

SPO notes current Personnel Board rules require employees to undergo an additional probationary period when they have a break in service of at least one day. Employees who transfer to another assignment without a break in employment do not repeat their probationary period. It is unclear if the intent of the bill is to prohibit an employee with a lengthy break in service from repeating a probationary period or if it intended to allow a person with a minimal break in service from repeating a probationary period. If the former, this could have significant policy implications for state agencies, particularly if the person returning to state service is in a new job classification with little resemblance to their former employment.

PERFORMANCE IMPLICATIONS

The percentage of classified state employees who successfully complete their probationary period is among the performance measures for the Personnel Board. Reducing that period would likely increase that number, but to maintain consistent data on turnover within one year the Legislature may wish to change this performance measure were HB502 to pass.

TECHNICAL ISSUES

The Office of the Attorney General comments:

> The bill is a little unclear with respect to the phrase "provided that…" in Section 1(E). As amended, it reads, paraphrased, that a public employee will be on probation for 90 days provided that, i.e., only if, the employee is not required to do any additional probationary time should that employee transfer. The phrase "provided that" implies a contingency that should be achieved prior to the completion of the 90 day probation period, not after. Removing this phrase would resolve this issue.

JWS/al/ne