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WORK SESSION

Assembly Committee on Government Affairs

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

SENATE BILL 331

(First Reprint)

Makes various changes to employment practices governing state personnel.
(BDR 23-983)

Sponsored by: Senator Amodei
Date Heard: May 8, 2003

Senate Bill 331 authorizes the Employee-Management Committee to issue a subpoena to compel testimony and attendance if the Committee finds that the witness has direct personal knowledge of the issues in an employee grievance. The subpoena may also require the production of books, papers, and other relevant items. If a person fails or refuses to attend or testify after being subpoenaed, the Committee may petition the district court to order the person to appear before the Committee. The bill also sets forth other matters relating to the subpoena process.

In addition, Senate Bill 331 specifies that a state employee who is the subject of an internal administrative investigation that could lead to termination or suspension must be provided written notice of the allegations against him. Upon receipt of the notice, the employee must be afforded the right to an attorney at any hearing or questioning and must be given at least two business days to obtain representation.

Amendments: Clarifying amendments were proposed by the Teamsters Local 14 to correct some problems identified with the Senate amendments and to address concerns of the Department of Personnel.

A mock-up of the proposed amendments is attached.

Opposition: None

Fiscal Impact: Local Government: No
State Government: Yes (attached)

5/15/2003

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ASSEMBLY GOVERNMENT AFFAIRS *DI-8*
DATE: *5/16/03* ROOM: *3143* EXHIBIT *D*
SUBMITTED BY: *Susan Senoiley*

MOCK-UP

PROPOSED AMENDMENT TO
SENATE BILL NO. 331
FIRST REPRINT

PREPARED FOR COMMITTEE ON GOVERNMENT AFFAIRS
MAY 12, 2003

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) ~~green bold dashed underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 284 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2. 1.** *In carrying out the provisions of subsection 5 of NRS*
4 *284.073, the Chairman of the Employee-Management Committee may*
5 *issue subpoenas to compel the attendance and testimony of a person that*
6 *the Committee finds, based upon its information and belief, has direct*
7 *personal knowledge of the issues presented in the grievance, and to*
8 *compel the production of books, papers and other items that are relevant*
9 *to a matter being investigated or considered by the Committee.*

10 **2.** *If a person named in a subpoena fails or refuses to attend or*
11 *testify before the Committee, to answer any questions propounded by the*
12 *Committee or to produce the books, papers or other items required by the*
13 *subpoena, the Chairman of the Committee may petition the district court*
14 *to enter an order compelling the person to attend and testify before the*
15 *Committee, to answer the questions propounded by the Committee or to*
16 *produce the books, papers or other items required by the subpoena. The*
17 *petition filed by the Chairman must set forth that:*

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PROPOSED AMENDMENT TO SB331_R1

1 (a) Due notice has been given to the person named in the subpoena
2 of the time and place for his attendance and testimony before the
3 Committee or for the production of the books, papers or other items
4 required by the subpoena;

5 (b) The person has been subpoenaed by the Committee pursuant to
6 this section; and

7 (c) The person has failed or refused to attend or testify before the
8 Committee, to answer certain questions propounded by the Committee or
9 to produce the books, papers or other items required by the subpoena.

10 3. Upon such a petition, the court shall enter an order directing the
11 person named in the subpoena to:

12 (a) Appear before the court at the place and time designated in the
13 order. The time designated by the court must be not later than 10 days
14 after the date of the order.

15 (b) Show cause why the person has failed or refused to attend or
16 testify before the Committee, to answer the questions propounded by the
17 Committee or to produce the books, papers or other items required by the
18 subpoena.

19 A certified copy of the order must be served upon the person named in
20 the subpoena.

21 4. If it appears to the court that the subpoena was regularly issued
22 by the Committee and properly served, the court shall enter an order
23 directing the person named in the subpoena to appear before the
24 Committee at the place and time designated in the order and to testify
25 before the Committee, to answer the questions propounded by the
26 Committee or to produce the books, papers or other items required by the
27 subpoena. Failure to obey the order constitutes contempt of court.

28 **Sec. 3. 1.** A subpoena issued by the Employee-Management
29 Committee extends to all parts of this state and must be served in
30 accordance with the provisions of N.R.C.P. 4(c). The Committee may not
31 require a person named in a subpoena to attend at a place outside the
32 county in which the person resides unless:

33 (a) The location of the place is less than 100 miles from the person's
34 primary residence; or

35 (b) A party, by affidavit, shows that the testimony of the person is
36 material and necessary to the proceedings and the Committee endorses
37 on the subpoena an order requiring the person to attend at the place
38 named in the subpoena, regardless of its location in this state.

39 2. A person who appears before the Committee pursuant to a
40 subpoena is entitled to receive fees and mileage in the same amounts and
41 under the same circumstances as prescribed by law for a witness in a
42 civil action in the district court, unless the person is a party to the
43 proceeding or an officer or employee of this state or any of its political
44 subdivisions.

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PROPOSED AMENDMENT TO SB331_R1

1 3. If a person who is entitled to receive fees and mileage pursuant to
2 subsection 2 must appear at a hearing before the Committee at a place
3 located so far from his primary residence that it is not reasonable for the
4 person to return to that residence from day to day, the person is entitled,
5 in addition to fees and mileage, to receive the per diem compensation for
6 subsistence and transportation authorized by NRS 281.160 for each day
7 of actual attendance at such a hearing and for each day necessarily
8 occupied in traveling to and from such a hearing.

9 4. Except as otherwise provided in subsection 5, a party who
10 requests that the Committee issue a subpoena to a person shall pay to the
11 Committee the amount of any compensation for subsistence and
12 transportation that the person is entitled to receive from the Committee
13 pursuant to subsection 3.

14 5. As part of an award of costs to the party who prevails in a
15 proceeding, the Committee may require the party who did not prevail in
16 the proceeding to pay to the Committee the amount of any compensation
17 for subsistence and transportation that the prevailing party would have
18 otherwise been required to pay to the Committee pursuant to subsection
19 4.

20 **Sec. 4.** ~~1.~~ An employee who is the subject of an internal
21 administrative investigation that could lead to disciplinary action against
22 him pursuant to NRS 284.385 must be ~~provided:~~

23 ~~1. Provided notice in writing of the allegations against him;~~

24 ~~2. Upon receipt of notice pursuant to subsection 1 the employee~~
25 ~~must be~~

26 ~~(a) before he is questioned regarding the allegations; and~~

27 ~~2. Afforded the right to have a lawyer or other representative of his~~
28 ~~choosing present with him at any hearing held pursuant to NRS 284.390~~
29 ~~and at any time that he is questioned regarding such charges; and~~

30 ~~(b) Given those allegations. The employee must be given not fewer~~
31 ~~than 2 business days to obtain such representation, unless he waives his~~
32 ~~right to be represented.~~

33 **Sec. 5.** This act becomes effective on July 1, 2003.

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PROPOSED AMENDMENT TO SB331_R1

EXECUTIVE AGENCY
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 28, 2003Agency Submitting: Department of Personnel

Items of Revenue or Expense, or Both	Fiscal Year 2002-03	Fiscal Year 2003-04	Fiscal Year 2004-05	Effect on Future Biennia
Costs for EMC to issue subpoenas (Expense)		\$2,389	\$2,389	\$4,778
Cost Savings for Restricting Competitive Recruitment (Revenue)		\$19,636	\$20,583	\$41,167
Costs for Arbitration of Grievances in lieu of EMC (Expense)		\$33,423	\$33,423	\$66,846
Costs for Additional Hearings by Department of Personnel Hearings Officers (Expense)		\$755,850	\$755,850	\$1,511,701
Total		(\$772,026)	(\$771,079)	(\$1,542,158)

Explanation (Use Additional Sheets of Attachments, if required)

This bill has a number of amendments that would result in increased expense. The expenses have been summarized in attachments and include: Authorization for the Employee Management Committee to subpoena witnesses to testify in hearings before the Committee; Arbitration to resolve grievances of State employees; and hearings before a hearing officer of the Department of Personnel before disciplinary actions involving dismissals, demotions and suspensions can be implemented.

It would also result in a net savings in recruitment costs related to open competitive recruitments if vacancies in State government were filled only by promotion from within State government.

Name Carol L. ThomasTitle Chief Personnel Manager

DEPARTMENT OF ADMINISTRATION'S COMMENT

Date April 01, 2003

Agency's response and fiscal impact analysis appears reasonable.

Name John P ComeauxTitle Director

Analysis for BDR 23-983

Summary of Projected Costs for BDR 23-983				
	Fiscal Year 2003	Fiscal Year 2004	Fiscal Year 2005	Effect of Future Biennia
Sections 2 & 3 - Costs for EMC to Issue Subpoenas	-0-	\$2,389.15	\$2,389.15	\$4,778.30
Section 5 – Less Cost Savings for Restricting Competitive Recruitment	-0-	-\$19,636.60	-\$20,583.60	-\$41,167.20
Section 8 – Costs for Arbitration of Grievances in lieu of EMC	-0-	\$33,423.40	\$33,423.40	\$66,846.80
Section 9 – Costs for Additional Hearings by Department of Personnel Hearings Officers	-0-	\$755,850.92	\$755,850.92	\$1,511,701.84
Total Costs for BDR 23-983	-0-	\$772,026.87	\$771,079.87	\$1,542,159.74

Costs for EMC to Issue Subpoenas

Sections 2 and 3 of BDR 23-983 allow the Employee Management Committee to issue subpoenas to require witnesses to attend grievance hearings. Hearings are currently held in Las Vegas and Sparks; it is assumed that six employees a year would be subpoenaed from Carson City and would require travel to Sparks, and two employees each would be subpoenaed from Elko and Ely with one employee from each location traveling to Sparks and one from each location traveling to Las Vegas. Any Las Vegas employees subpoenaed would testify locally, and there would be no associated travel costs.

Section 3(2) requires the party requesting a non-State employee to be subpoenaed pay the witness' travel expenses. It is assumed that four non-State employees (including retirees) would be subpoenaed annually to testify with three traveling from Carson City to Sparks and one traveling from Elko to Las Vegas. It is also assumed that the State of Nevada would request two of these subpoenas; as a result estimated costs for non-State employee travel costs are divided by two.

Description	Itemized Costs	Fiscal Year 2004	Fiscal Year 2005	Effect on Future Biennia
Travel Expenses for Carson City employees traveling to Sparks				
Mileage (personal cars)	6 employees x 60 miles x \$0.36 per mile	129.60	129.60	259.20
Per diem	6 employees x \$6.50	39.00	39.00	78.00
Travel expenses for Elko employees, with one each traveling to Sparks and Las Vegas				
Roundtrip airfare – Elko to Reno	\$286 x 1 employee	286.00	286.00	572.00
Roundtrip airfare – Elko to Las Vegas	\$429 x 1 employee	429.00	429.00	858.00
Motor Pool cars, 1 each in Reno and Las Vegas	2 cars x \$19.00 per day + \$.135 per mile x 40 miles	48.80	48.80	97.60
Per diem	2 employees x \$26.00 per day	52.00	52.00	104.00
Travel expenses for Ely employees, with one each traveling to Sparks and Las Vegas				
Mileage from Ely to Elko (personal vehicle)	2 employees x 380 miles x \$0.36	273.60	273.60	547.20
Roundtrip airfare – Elko to Reno	\$286 x 1 employee	286.00	286.00	572.00
Roundtrip airfare – Elko to Las Vegas	\$429 x 1 employee	429.00	429.00	858.00
Motor Pool cars, 1 each in Reno and Las Vegas	2 cars x \$19.00 per day + \$.135 per mile x 40 miles	48.80	48.80	97.60
Per diem	2 employees x \$26.00 per day	52.00	52.00	104.00

Expenses for four non-State employee witnesses, costs are based on witness fees for civil actions in district court of \$25.00 per day and a mileage reimbursement rate of \$.19 per mile.				
Roundtrip Airfare – Elko to Las Vegas	1 witness at \$429	429.00	429.00	858.00
Per diem for Elko witness	1 witness x \$26	26.00	26.00	52.00
Mileage for three non-State employee witnesses traveling from Carson City to Sparks.	3 witnesses x 60 miles x \$0.19 per mile	34.20	34.20	68.40
Per diem for Carson City witnesses	3 witnesses x \$6.50	19.50	19.50	39.00
Witness Fee	4 witnesses x \$25.00 per day	100.00	100.00	200.00
Rental Car Inc. mileage for witness traveling from Elko	1 witness x \$22.00 per day	22.00	22.00	44.00
Less 50% of travel costs		-315.35	-315.35	-630.70
Sub-total Costs for EMC Subpoenas		\$2,389.15	\$2,389.15	\$4,778.30

Cost Savings for Restricting Competitive Recruitment

Section 5 confines recruitment to qualified promotional applicants within the department/division where the vacancy exists. If there are no qualified applicants within the department/division, the Personnel Commission is authorized to approve competitive lists at public hearings.

Therefore, in projecting costs for this section, it is assumed that the Personnel Commission would meet for two hours on a monthly basis, using video conferencing to curtail travel costs, to approve necessary competitive recruitments. This represents an increase of eight meetings over the four meetings currently conducted by the Personnel Commission. Attorney General costs were based on an hourly rate of \$78.00 per hour including fringe benefits.

It is also assumed that the majority of the open-competitive recruitments currently conducted by the State would be eliminated. Thus, a cost savings is projected in eliminating the expenses associated with printing and mailing competitive recruitment announcements.

Overall, there would be direct cost savings for Section 5; however, in the long term there may be a significant cost to agencies in terms of efficiency resulting from the inability to hire the most qualified candidate.

Description	Itemized Costs	Fiscal Year 2004	Fiscal Year 2005	Effect on Future Biennia
Cost of Eight Additional Personnel Commission Meetings				
Mileage	3 Commissioners x 60 miles x \$0.36 x 8 meetings	518.40	518.40	1,036.80
Per Diem	3 Commissioners x 6.50 per day x 8 days	156.00	156.00	312.00
Daily Stipend	5 Commissioners x \$80.00 x 8 meetings	3,200.00	3,200.00	6,400.00

Video Conferencing	8 hours x \$25 per hour x 8 meetings	1,600.00	1,600.00	3,200.00
CD Recording	8 meetings x \$10.00 per meeting	80.00	80.00	160.00
Printing (Agenda)	8 meetings x \$248.00 per meeting	1,984.00	1,984.00	3,968.00
Attorney General salary	8 hearings x 2 hours x \$78 per hour	1,248.00	1,248.00	2,496.00
Open Competitive Recruitment Cost Saving				
Printing Cost Savings		25,599.00	26,546.00	53,092.00
Postage Cost Savings		2,824.00	2,824.00	5,648.00
Sub-total Savings for Limiting Competitive Recruitments (cost savings less costs for 8 additional Personnel Commission meetings)		\$19,636.60	\$20,583.60	\$41,167.20

Costs for Arbitration of Grievances in lieu of EMC

Section 8(b) allows for the arbitration of employee grievances to be heard by an arbitrator from the American Arbitration Association. Costs are based on the projected arbitration of approximately 20% or 6 of the 28 grievances currently heard on average by the Employee-Management Committee (EMC) per calendar year. It is assumed that 40% of the grievances will be from Carson City/Reno, 40% from Las Vegas, 10% from Ely, and 10% from Elko. Of these hearings, it is estimated that the State of Nevada would pay half of all costs other than AG costs. Based on information received from the Employee-Management Relations Board, it is estimated that each grievance will require an average of three days of an arbitrator's time, two days for hearings and one day for study and deliberation.

As any hearings referred to an arbitrator would not be heard by the EMC, we have reduced EMC costs by 20%, the assumed reduction in EMC hearings.

Description	Itemized Costs	Fiscal Year 2004	Fiscal Year 2005	Effect on Future Biennia
Administrative fee per grievance to be paid by each party	\$100 x 2 parties x 6 hearings	1,200.00	1,200.00	2,400.00
Average arbitrators fee per day	\$3,000 per day x 3 days x 6 hearings	54,000.00	54,000.00	108,000.00
Annual cost of arbitrator's list		100.00	100.00	200.00
Less 50% of hearing costs		-27,650.00	-27,650.00	-55,300.00
Attorney General salary	\$78 per hour x 2 days x 6 hearings	7,488.00	7,488.00	14,976.00
Cost to State for grievance hearings		\$35,138.00	\$35,138.00	\$70,276.00

It is assumed that a local arbitrator will conduct all Las Vegas hearings and an arbitrator from San Francisco will travel to Sparks for all other hearings. Costs are based on a two-day hearing with the arbitrator flying to Reno the evening before the hearing and returning to San Francisco the evening of the second day of the hearing.

Travel Costs for Arbitrator				
Description	Itemized Costs	Fiscal Year 2004	Fiscal Year 2005	Effect on Future Biennia
Carson City Hearings				
Airfare, lodging, auto (package deal)	\$540 x 4 hearings	2,160.00	2,160.00	4,320.00
Per diem	\$26 per day x 3 days x 4 hearings	312.00	312.00	624.00
Less 50% of Travel Costs		-1,236.00	-1,236.00	-2,472.00
Travel Costs		1,236.00	1,236.00	2,472.00
Reduction in Employee Management Committee Hearing Expenses				
Estimates are based on 20% of actual 2002 costs. AG cost savings are based on a reduction of six hearings annually x their hourly charge of \$78. It is assumed that each hearing lasts 3 ½ hours				
Per diem	\$1007.50 x .20	201.50	201.50	403.00
Motor Pool	\$492.36 x .20	98.47	98.47	196.94
Mileage/Parking	\$434.15 x .20	86.83	86.83	173.66
Air fare	\$4,629 x .20	925.80	925.80	1,851.60
Attorney General salary	6 hearings x 3.5 hours x \$78 per hour	1,638.00	1,638.00	3,276.00
EMC Savings		2,950.60	2,950.60	5,901.20
Sub-total Arbitration Costs		\$33,423.40	\$33,423.40	\$66,846.80

Cost of Additional Hearings by Department of Personnel Hearings Officers

Section 9 would require a hearing before a hearing officer of the Department of Personnel before an appointing authority dismisses, demotes or suspends a classified employee. This section also allows an employee who is a threat to other employees or the public safety to be placed in another assignment or on administrative leave until the hearing officer renders his decision

Based on a survey sample, it is projected that an additional 137 hearings lasting an average of one day each would be required if this provision is enacted into law. It also assumed that 5% of these employees would be placed on administrative leave for a period of 45 days.

Description	Itemized Costs	Fiscal Year 2004	Fiscal Year 2005	Effect on Future Biennia
In 2002 the hearing officers of the Department of Personnel heard 16 cases at a cost of \$72,331.90 or \$4,520.74 (\$72,331.90/16) per case.	137 hearings x \$4,520.74 average cost per hearing.	619,341.38	619,341.38	1,238,682.76

AG costs	137 hearings x 8 hours per hearing x \$78 per hour	85,488.00	85,488.00	170,976.00
Administrative leave costs based on the average daily salary for classified employees of \$165.52	137 hearings x .05 x \$165.52 average salary x 45 days	51,021.54	51,021.54	102,043.08
Sub-total Additional Hearings		755,850.92	755,850.92	1,511,701.84