

SENATE BILL NO. 387—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE GOVERNOR)

MARCH 23, 2009

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to officers and employees of the Executive, Judicial and Legislative Branches of State Government. (BDR 23-1166)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to State Government; making various changes relating to officers and employees of the Executive, Judicial and Legislative Branches of State Government; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

With the exception of variable workweek scheduling, existing law requires that the offices of all state officers, departments, boards, commissions and agencies maintain at least a 40-hour workweek and be open during regular business hours. (NRS 281.110) **Section 1** of this bill provides an additional exemption, allowing the Governor, if a fiscal emergency exists, to order a shorter workweek and shorter or different business hours. **Section 1** also allows the Governor, if a fiscal emergency exists, to order employees to work less than a 40-hour workweek.

Existing law provides, with certain exceptions, that the salary of state employees must not exceed 95 percent of the salary of the Governor. For the purposes of this 95-percent limitation, the term "salary" is currently defined to include certain extra amounts paid to state employees for things such as being on-call, to compensate for any rises in the cost of living and to encourage continuity of service. (NRS 281.123) **Section 2** of this bill eliminates the consideration of such extra amounts so that only base salary is considered for the purposes of the 95-percent limitation. At the present time, officers and employees of the Nevada System of Higher Education are exempt from the 95-percent limitation. (NRS 281.123) **Section 2** eliminates this exemption so that the 95-percent limitation applies to officers and employees of the Nevada System of Higher Education unless those officers and employees are full-time dentists or physicians.

Under existing law, paid-leave status is considered as time worked in calculating overtime. (NAC 284.245) **Section 3** of this bill provides that, with respect to public employees who are typically scheduled to work a regular 40-hour



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workweek, only hours actually spent working, and not hours spent on paid leave, may be considered in determining whether an employee has reached the threshold at which the employee begins to earn overtime.

Existing law provides that when an appointing authority lays off employees in the classified service, the appointing authority is required to consider status, service rating and particularly seniority in determining the order of layoffs. (NRS 284.380; NAC 284.614) **Section 4** of this bill expands the list of factors that an appointing authority is required to consider in determining the order of layoffs.

Existing law sets forth that if a state agency is required to reduce the number of its employees, it is also required to purchase retirement credit for service for certain of the employees whose employment is terminated by the reduction. (NRS 286.3007) **Section 5** of this bill eliminates the requirement to purchase credit for service for such employees.

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

Section 1. NRS 281.110 is hereby amended to read as follows:

281.110 1. Unless required for the efficient transaction of business and the convenience of the persons with whom business is transacted, *and except as otherwise provided in subsection 2*, the offices of all state officers, departments, boards, commissions and agencies must:

(a) Maintain not less than a 40-hour workweek.

(b) Be open for the transaction of business at least from 8 a.m. until 12 p.m. and from 1 p.m. until 5 p.m. every day of the year, with the exception of Saturdays, Sundays and legal holidays.

2. *Except as otherwise provided in subsection 3, if a fiscal emergency exists and the Governor makes a declaration stating that such an emergency exists, the Governor may order that:*

(a) *The offices of some or all state officers, departments, boards, commissions and agencies maintain less than a 40-hour workweek.*

(b) *The offices of some or all state officers, departments, boards, commissions and agencies be open for the transaction of business for hours fewer than or different from those specified in paragraph (b) of subsection 1.*

(c) *Some or all of the employees of some or all state officers, departments, boards, commissions and agencies work less than a 40-hour workweek.*

3. *The provisions of subsection 2 do not authorize the Governor to:*

(a) *Abrogate or impair a valid collective bargaining agreement;*

(b) *Abrogate or impair the conditions of a valid contract; or*



(c) Exercise the powers set forth in that subsection in any manner which would result in a loss of money from the Federal Government.

4. Variable workweek scheduling may be required in those agencies where coverage is needed on Saturdays, Sundays and legal holidays or on other days or during other hours, as necessary.

~~{3}~~ 5. The offices of all state officers, departments, boards, commissions and agencies that are open on the days and during the hours set forth in paragraph (b) of subsection 1 must remain open during the noon hour of each working day if any such office has more than one person on its staff.

6. As used in this section, "fiscal emergency" means a set of conditions that would allow money to be appropriated from the Fund to Stabilize the Operation of the State Government pursuant to subsection 4 of NRS 353.288.

Sec. 2. NRS 281.123 is hereby amended to read as follows:

281.123 1. Except as otherwise provided in subsection 3 or NRS 281.1233, or as authorized by statute referring specifically to that position, the salary of a person employed by the State or any agency of the State must not exceed 95 percent of the salary for the office of Governor during the same period.

2. As used in subsection 1, the term "salary" ~~f~~:

~~(a) Includes any:~~

~~—— (1) Payment received by an employee for being available to work although he was not actually required to perform the work;~~

~~—— (2) Increase in salary provided to compensate for a rise in the cost of living;~~

~~—— (3) Payment received under a plan established to encourage continuity of service; and~~

~~—— (4) Payment received as compensation for purportedly performing additional duties.~~

~~(b) Excludes any:~~

~~(1) excludes any:~~

(a) Payment received as compensation for overtime even if that payment is otherwise authorized by law; and

~~{2}~~ (b) Rent or utilities supplied to an employee if he is required by statute or regulation to live in a particular dwelling.

3. The provisions of subsection 1 do not apply to the salaries of ~~f~~:

~~(a) Dentists} dentists~~ and physicians employed full-time by the State ~~f~~; or

~~(b) Officers and employees of~~, including, without limitation, dentists and physicians employed full-time by the Nevada System of Higher Education.



Sec. 3. NRS 284.180 is hereby amended to read as follows:

284.180 1. The Legislature declares that since uniform salary and wage rates and classifications are necessary for an effective and efficient personnel system, the pay plan must set the official rates applicable to all positions in the classified service, but the establishment of the pay plan in no way limits the authority of the Legislature relative to budgeted appropriations for salary and wage expenditures.

2. Credit for overtime work directed or approved by the head of an agency or his representative must be earned at the rate of time and one-half, except for those employees described in NRS 284.148.

3. Except as otherwise provided in subsections 4, 6, 7, **9** and ~~9~~**12**, overtime is considered time worked in excess of:

(a) Eight hours in 1 calendar day;

(b) Eight hours in any 16-hour period; or

(c) A 40-hour week.

4. Firefighters who choose and are approved for a 24-hour shift shall be deemed to work an average of 56 hours per week and 2,912 hours per year, regardless of the actual number of hours worked or on paid leave during any biweekly pay period. A firefighter so assigned is entitled to receive 1/26 of his annual salary for each biweekly pay period. In addition, overtime must be considered time worked in excess of:

(a) Twenty-four hours in one scheduled shift; or

(b) Fifty-three hours average per week during one work period for those hours worked or on paid leave.

➔ The appointing authority shall designate annually the length of the work period to be used in determining the work schedules for such firefighters. In addition to the regular amount paid such a firefighter for the deemed average of 56 hours per week, he is entitled to payment for the hours which comprise the difference between the 56-hour average and the overtime threshold of 53 hours average at a rate which will result in the equivalent of overtime payment for those hours.

5. The Commission shall adopt regulations to carry out the provisions of subsection 4.

6. For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in 1 week.

7. Employees who are eligible under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., to work a variable 80-hour work schedule within a biweekly pay period and who choose and are approved for such a work schedule will be considered eligible for overtime only after working 80 hours biweekly, except those



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1 eligible employees who are approved for overtime in excess of one
2 scheduled shift of 8 or more hours per day.

3 8. An agency may experiment with innovative workweeks
4 upon the approval of the head of the agency and after majority
5 consent of the affected employees. The affected employees are
6 eligible for overtime only after working 40 hours in a workweek.

7 9. This section does not supersede or conflict with existing
8 contracts of employment for employees hired to work 24 hours a
9 day in a home setting. Any future classification in which an
10 employee will be required to work 24 hours a day in a home setting
11 must be approved in advance by the Commission.

12 10. All overtime must be approved in advance by the
13 appointing authority or his designee. No officer or employee, other
14 than a director of a department or the chairman of a board,
15 commission or similar body, may authorize overtime for himself.
16 The chairman of a board, commission or similar body must approve
17 in advance all overtime worked by members of the board,
18 commission or similar body.

19 11. The Budget Division of the Department of Administration
20 shall review all overtime worked by employees of the Executive
21 Department to ensure that overtime is held to a minimum. The
22 Budget Division shall report quarterly to the State Board of
23 Examiners the amount of overtime worked in the quarter within the
24 various agencies of the State.

25 *12. Except as otherwise provided in this subsection, for the*
26 *purposes of this section only hours actually spent working, and*
27 *not hours spent on paid leave, may be considered in determining*
28 *whether an employee has reached the threshold at which the*
29 *employee begins to earn overtime. The provisions of this*
30 *subsection:*

31 *(a) Apply only with respect to employees who are typically*
32 *scheduled to work a regular 40-hour workweek.*

33 *(b) Do not apply to the extent that they:*

34 *(1) Abrogate or impair a valid collective bargaining*
35 *agreement;*

36 *(2) Abrogate or impair the conditions of a valid contract; or*

37 *(3) Would result in a loss of money from the Federal*
38 *Government.*

39 **Sec. 4.** NRS 284.380 is hereby amended to read as follows:

40 284.380 1. In accordance with regulations, an appointing
41 authority may lay off an employee in the classified service
42 whenever he deems it necessary by reason of shortage of work or
43 money or of the abolition of a position or of other material changes
44 in duties or organization.



2. ~~[Among other factors, an]~~ An appointing authority shall consider, in the manner provided by regulation, the ~~[status, seniority and service rating of employees]~~ following factors in determining the order of layoffs ~~[]~~ of employees:

- (a) Seniority;
- (b) Work performance;
- (c) Record of attendance;
- (d) Record of discipline;
- (e) The relative importance and availability of an employee's skills; and
- (f) Any other factor that the appointing authority determines to be relevant.

3. Within a reasonable time before the effective date of a proposed layoff, the appointing authority shall give written notice thereof to the Director. The Director shall make such orders relating thereto as he considers necessary to secure compliance with the regulations.

4. The name of every regular employee so laid off must be placed on an appropriate reemployment list.

Sec. 5. NRS 286.3007 is hereby amended to read as follows:

286.3007 Except as otherwise required as a result of NRS 286.537:

1. A state agency may enter into an agreement to pay the cost of purchasing credit for service pursuant to NRS 286.300 on behalf of a member if:

(a) The agency enters into the agreement before the member is employed;

(b) The member is employed upon the condition that the employer pay the cost of purchasing the credit; and

(c) The agreement to pay the cost of purchasing the credit is in writing, becomes part of the personnel records of the employee and is approved in advance by the State Board of Examiners.

2. If a state agency is authorized to purchase credit pursuant to subsection 1, it shall not do so until the member has completed 1 year of service in its employ.

~~[3. If a state agency is required to reduce the number of its employees, it shall purchase credit for service pursuant to NRS 286.300 for any member who:~~

~~—(a) Is eligible to purchase credit;~~

~~—(b) Is eligible to retire or will be made eligible by the purchase of the credit;~~

~~—(c) Agrees to retire upon completion of the purchase; and~~

~~—(d) Has been employed by the agency for 5 or more years.~~

~~4. If a state agency is required to purchase credit pursuant to subsection 3, it shall pay 5 percent of the cost of purchasing the~~



- 1 ~~credit and an additional 5 percent of the cost for each year that the~~
2 ~~person has been employed by the agency in excess of the minimum~~
3 ~~requirement of 5 years.]~~
4 **Sec. 6.** This act becomes effective on July 1, 2009.

