MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Eightieth Session
February 25, 2019

The Senate Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:10 p.m. on Monday, February 25, 2019, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator James Ohrenschall, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Yvanna D. Cancela
Senator Heidi Seevers Gansert
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Kevin Powers, Committee Counsel
Diane Rea, Committee Secretary

OTHERS PRESENT:

Peter Long, Administrator, Division of Human Resource Management, Department of Administration
Steven Cohen
Michael Morton, Nevada Gaming Control Board

Chair Ohrenschall opened the hearing with a Committee introduction of Bill Draft Request (BDR) 24-970. He said the BDR is a request made by the Secretary of State and revises provisions relating to the security of elections.

BILL DRAFT REQUEST 24-970: Revises provisions relating to the security of elections. (Later introduced as Senate Bill 237.)

Chair Ohrenschall stated he would be interested in a motion to make an introduction and reminded members that the motion to move a BDR is not an indication of support. The Committee's approval is needed to get the bill in process, assigned a bill number and referred to a committee.

SENATOR PICKARD MOVED TO INTRODUCE BDR 24-970.

SENATOR CANCELA SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

Chair Ohrenschall opened the hearing on Senate Bill (S.B.) 31, requested by the Division of Human Resources Management, stating Peter Long, Administrator of the Division is available.

SENATE BILL 31: Makes various changes relating to the State Personnel System. (BDR 23-184)

Peter Long, Administrator, Division of Human Resource Management (DHRM), Department of Administration stated section 1 proposes to remove language from *Nevada Revised Statutes* (NRS) 284.305, which is out of alignment with federal law. An employee who develops a disability and is no longer able to perform the essential functions of his or her position is, per federal law, entitled to move to a position for which he or she meets the minimum qualifications and can perform the essential functions at or below his or her current grade level. Federal law does not require the approval of the appointing authority to make this move, nor does it require an employee to be a permanent employee. The individual can be a probationary employee.

Senator Pickard questioned why delete the language. He said there are federal laws and asked if Nevada is concerned with losing federal funds that are contingent on conformance with federal law. Or why should Nevada defer to them? He stated his concern is with respect to the deletion of section 1, under subsection 2, paragraph (a) where any employee is entitled to receive a job even if he or she has not finished a probationary period. He said he is concerned, as an employer, if he had an employee who was not making it, is in a probationary

period and becomes disabled, now he is required to hire them or move them to another job whether or not he or she has completed the probationary period.

Mr. Long explained from the DHRM standpoint there is no concern of agencies losing any federal funding based on this revision. The reassignment law is trying to be in compliance with the federal law. This was put into regulation a couple of years ago, and if an employee does go into another position, he or she would serve a new probationary period. If he or she cannot perform the duties of the position, that appointing authority could release him or her from the probationary period.

Senator Pickard replied his understanding is this would not reduce the probationary time. Each employee would remain in a probationary period for the same duration, and he asked how that works.

Mr. Long said an employee who is in a probationary period and is transferred to a different job class at the same grade or demoted to a class in a different grade would serve either a new probationary period or the remainder of his or her current probationary period.

Mr. Long moved to section 2, stating the bill is proposing to amend NRS 284.4061 screening tests for controlled substances. Section 2, subsection 2, paragraph (b) makes testing for drugs similar to or the same as testing for alcohol. Breath or blood may be used to detect alcohol, but only urine can be used to detect the presence of a controlled substance or any other drug. He stated that DHRM is being proactive, particularly in the area of marijuana, which is now legal both medicinally and recreationally in Nevada. Positions that require a Commercial Driver's License (CDL) and Department of Transportation CDL laws for pre- or postemployment testing use DHRM standards. There is no test to determine for marijuana, to show someone is impaired, or a universally recognized test like there is for alcohol. The Division is trying to be proactive so when a test is developed, whether urine, blood or other bodily substance, the Division can be prepared to use that test. If that substance is detected, individuals are determined to be under the influence.

Senator Pickard stated a bill is in the Legislature proposing to omit preemployment screening for marijuana. He asked if that bill passes, does this become obsolete. Do we then have to take the provision out, or does the screening test imply something higher?

Mr. Long replied this would also include post hires. The Division has no tolerance for impairment while at work. The bill Senator Pickard is referring to is proposing that law or practice not stay in effect.

Senator Pickard asked when talking screening test if this eliminates the ability to test prior to hiring. He asked if at least testing could be done after hiring.

Mr. Long replied yes.

Senator Gansert asked when someone is appointed to a new position, would the same probationary period continue or reset and start over. She added the bill does not say that and talks about establishing regulation. She wanted to make sure that it is clear on the record or adding whether a probationary period would either continue or reset based on the new position.

Mr. Long stated those provisions are already in *Nevada Administrative Code* (NAC) on probationary periods and transferring to the same grade or demoting to another position, saying NAC is extremely detailed as to what would happen.

Senator Gansert stated this looks like it is an exception the way it is written. It takes out all probationary language. She said she is not sure if having it in regulations has the same effect as having something in statute.

Chair Ohrenschall asked for the page and line Senator Gansert was referencing.

Senator Gansert said section 1, lines 10 through 13, takes out the language that says "has successfully completed a probationary period for any class he or she has held during continuous classified service; and becomes unable to perform." She said basically it says you do not have to complete a probationary period to be placed in a new position, but it does not say once you are in a new position, if you finish the same or remaining duration of probationary period or if it resets for the new position.

Chair Ohrenschall stated it is addressed in NAC.

Mr. Long stated NAC specifically refers to a reassignment, which is what this is, and what probationary period would be required.

Chair Ohrenschall stated section 3 requires the screening test be given after some suspicion that an employee is under the influence. The bill adds to NRS 284.4065 new language for blood or bodily substance to be used for the testing. If someone appears under the influence to a supervisor, a hair test is run. The hair test shows a month ago there was use of a substance but does not necessarily show the person is under the influence that day at work. He asked what would happen under the proposed change to the statute.

Mr. Long stated under current law and regulation, if an employee is perceived to be impaired while at work and there is a witness, he or she can be tested. If substance is found in the employee's system he or she would be determined to be under the influence and would go through the appropriate counseling with the Employee Assistance Program. He or she would return to work when a counselor said they were ready.

Chair Ohrenschall stated that with the hair test previous use of something might be determined, and asked if a problem would arise with the new language.

Mr. Long responded DHRM is proposing when a test comes out, the Division would be able to address that, and if drug use is 30 days old, DHRM would not do anything. The test would determine an employee is not impaired.

Steven Cohen stated his concern is conflicts between the Americans with Disabilities Act and right-to-work. He stated he was terminated on an original 700-hour hire.

Chair Ohrenschall stated he could talk about the bill, but the administration cannot talk about any specific case right now and asked him to proceed with any opinions on the bill.

Mr. Cohen stated his concern with the language is whether a probationary employee has rights. He said his situation is going through the appropriate legal process at this point but has been a headache. He is hoping anything that addresses permanence specifically can be taken out of the bill so language is broader.

Chair Ohrenschall asked Mr. Cohen to email to the Committee any suggested language he had for the bill that might address his concerns.

Kevin Powers, Committee Counsel, stated, for the record and to follow up on Senator Gansert's question, the particular provision of NAC 284.444 specifically provides that a probationary employee who trains first within the same class must serve the remaining portion of the probationary period, or if moving from one class to another class, must serve a new probationary period.

Chair Ohrenschall closed the hearing on S.B. 31. He opened the hearing on S.B. 51.

SENATE BILL 51: Makes various changes regarding the State Personnel System. (BDR 23-183)

Mr. Long stated on page 4, section 2, the bill proposes to add verbiage to NRS 284.145 to allow an unclassified position to be overlapped for up to 90 days. These are high-level positions that when one person vacates, a new person comes in, and there is little to no chance for knowledge transfer of these positions. The intent would be for the overlap to be paid for out of salary savings in the agency's budget. In talking with the budget office, there would have to be a conforming change made in the pay bill. Some classified positions are single and unique, while others can be overlapped at their salary savings. The pay bill sets a maximum that can be paid for an unclassified position, so if a position has been filled the entire time, there is no savings. There would be no way to fill the position now. What is proposed in section 2 is to allow an agency to have two people in the same unclassified position for up to 90 days so there can be a transfer of knowledge.

Senator Pickard asked if this is already budgeted, stating it sounds like there is something already in the budget to cover the costs. He questioned if somebody moves from one position to another within the State government, are we paying that person for two different jobs. He said there is a need to transfer the information, but hopefully there is enough good planning and record keeping by the State so the person leaving has left behind the bulk of necessary information. He asked how this works, and what is the justification for that person getting paid for two different jobs.

Mr. Long explained one person would not be getting paid for two jobs. It would be two people getting paid for one job so the outgoing person would be in the

position with the new person coming in, and the outgoing person would transfer his or her knowledge before leaving.

Chair Ohrenschall asked if with the proposal that would be for 90 days.

Mr. Long replied in the proposed language it would be for no more than 90 days.

Senator Pickard asked if Mr. Long was appointed to be a different department head and would be leaving, would the person being appointed to his position be on salary for the administrative position, or would each person get a piece of that salary?

Mr. Long stated per the pay bill there is a maximum that can be paid for any position. The agency would not be able to utilize the provisions proposed unless it had salary savings from other positions that could be used to pay for the overlap position.

Senator Pickard stated he is struggling to understand what sounds like the outgoing administrator is going to be paid to remain behind to transfer the knowledge and the new administrator is being paid for that position. This is additional dollars paying the outgoing administrator something so he can stay behind to transfer the knowledge, and that would be on top of his new salary.

Mr. Long stated that was not correct. The outgoing administrator would not be performing two jobs at the same time. The individual would stay in the current job, not taking the promotion or transfer to the new position until he or she completed the task of the current job.

Mr. Long stated sections 1, 3, 4, 8 and 10 conform to statute. *Nevada Revised Statute* 284.148 details which positions are eligible for overtime and which are not. The Division proposes that the specific language be removed and be determined in regulation by the Personnel Commission. Only certain positions in the unclassified service can be exempted from overtime. No one in the private or public sector in comparable positions would be eligible for overtime. This would allow DHRM to promulgate regulations that could address overtime. There is no intention of removing overtime from anyone, only to put it into regulation so overtime could apply to the higher-level positions.

Chair Ohrenschall asked if this were to pass and it changed regulation, would there be any change in the employees who would currently be eligible for overtime, either expanded or contracted.

Mr. Long said there would not be any immediate change. The intent would be to follow the Fair Labor Standards Act which can exempt administrative, executive and professional levels. This would not happen without workshops and working with the agencies that have those classified employees to determine if the agencies are receptive to eliminating overtime.

Mr. Long continued on page 6, section 5, which proposes eligible lists for appointment and promotion should contain the names of applicants who meet the minimum qualifications of positions, removing the requirement to rank the list based on the relative excellence in their respective examinations. Last Session, due to budget restraints, DHRM eliminated all written testing. There is no way of ranking employees or applicants except through the Training and Experience Rating Instrument, which is not very accurate. It is used for supervisors and managers and is more of a hard-skill-set type of rating. The Division believes it should provide a list of applicants who have met the minimum qualifications, and supervisors can determine who is the best fit for a particular job through the interview process.

Mr. Long moved on to page 7, section 6, and subsection 6. New employees to the State have to wait six months before they can use annual leave. The proposal is to delete the requirement for both recruitment and retention purposes so an employee, as soon as he or she earns annual leave, can use annual leave. It applies to sick leave right now. Employees may have plans before accepting employment and would have to take leave without pay even though they have annual leave on the books. This will help in recruitment and retention.

Mr. Long continued with page 8 where the bill proposes changes to sections of NRS 284.384 for filing grievances. On page 9, the bill removes the verbiage for defining grievance, which is basically any "act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice." The Division proposes section 7, subsection 1 read: "An employee who has attained permanent status and feels that an injustice has occurred" based on the "result of a violation of a policy adopted by the agency … or state or federal law." The Division is asking that employees be more specific as to what their

grievance entails, what employees are grieving. This would not allow a grievance to be filed for something addressed under other state or federal jurisdiction such as the Equal Employment Opportunity Commission or under the Family Medical Leave Act.

Senator Cancela stated she finds these changes concerning for a couple of reasons and is looking for clarification of the need for the language. She feels the grievance process is important for workers to be able to get information on the formal venue where they need to file a complaint for discrimination or workplace safety and to be able to talk to a manager and be directed to the appropriate place. She stated she would like to know what the emphasis is for these changes and what would happen if an employee has an issue that is not covered by policy. Where would he or she go in that event?

Mr. Long replied the impetus for the change is because in December 2017, former Governor Brian Sandoval asked the Department of Administration and the Division of Human Resource Management to put together a working group of all large department directors. The Division spent a year working on issues DHRM felt they could correct through practice, policy, regulation or statute. This is one of those, and nothing like workplace safety or working conditions would be affected by this. The specific of this is an employee grieving a standard or above performance appraisal, which has zero effect on his or her pay, but requires a lot of time for an agency to respond to the steps of a grievance. The employee management committee hearing the grievance and making the determination has never granted a grievance on an employee appraisal because the supervisor has the best knowledge of that employee and how he or she should be rated. Hopes are brought up on the employees' part when that type of grievance is not granted. They would still get their merit salary increase.

Senator Cancela stated that makes sense in theory, but in practice it is important for employees to have that venue to have the conversation. She stated she would be interested in hearing from employees who have gone through the grievance process, reviews and find whether they felt better in understanding the reviews. She said she is concerned if there is a manager playing favoritism and the employees' issues are not covered in policy, where would an employee go to address that issue?

Mr. Long replied he is not sure if this situation would be covered in regulation, statute or policy, so that is an example of what may not be allowed to be grieved under this proposed verbiage.

Senator Cancela stated her biggest concern with this language is that employees are being left to function on their own without having a process by which they can adequately address workplace concerns and when they are stripped of their ability to communicate their issues in the workplace, workplaces are made less employee-friendly.

Chair Ohrenschall stated if an employee files a grievance and it is determined that employee could have contacted another agency, is DHRM going to throw the grievance out? If DHRM is wrong and the person could lose the opportunity, there could be some negative consequences.

Mr. Long replied the DHRM cannot remove a grievance from the pipeline unless it is clear and specific that there is another avenue for employees to obtain a fair hearing and DHRM does not have the authority to hear that grievance.

Chair Ohrenschall asked if someone got a paycheck and it was ten hours short, would he or she be required to go to the Labor Commissioner to file a complaint, or would the employee be able to file a grievance?

Mr. Long responded an employee would not go to the Labor Commissioner. The Labor Commissioner does not have the authority over State employees, but they could try to work it out at the lowest possible level, which is to let their supervisor know he or she did not get ten hours that they had worked. That would be covered by law and regulation. An employee could grieve that, and the employee management has to, if determined the employee was shorted pay, award back pay.

Senator Pickard stated he had concerns for employees who are not part of a union nor represented and do not fall under the Labor Commissioner's jurisdiction and are looking at a definition of grievance. He is concerned about constraining it significantly to only grievances DHRM handles with the existing written policy. Senator Pickard asked if the Committee were to ask for an amendment to this change, what would that do to the substance of the bill. Would it significantly be detrimental or prevent proper operation? If there is no

appetite to pass the bill with this language, where does the Committee go to find some middle ground, or is there middle ground?

Mr. Long replied each of the provisions in the bill are basically separate and distinct, so if this bill has little or no chance with the proposed section 7 but has a chance with the other portions, DHRM would be happy for suggestions to remove verbiage.

Chair Ohrenschall asked if section 7 passed, if someone felt he or she had to go to the Nevada Equal Rights Commission (NERC), would it change his or her right to go there without filing a grievance.

Mr. Long replied the NERC investigates violations of Title VII, which addresses equal employment opportunity and sexual harassment issues. Nothing would prevent an employee from going to the NERC. The Division does have its own investigation unit for the State that investigates sexual harassment and discrimination. When complaints are investigated and the employee does not like the results, he or she can go to the NERC or the Equal Employment Opportunity Commission at the federal level.

Chair Ohrenschall asked if Mr. Long saw any possible roadblock for employee rights if section 7 passed.

Mr. Long stated he would not. If someone filed a sexual harassment or discrimination complaint as a grievance, the Division would advise the employee that the Sexual Harassment Unit or Equal Employment Opportunity Commission Board is the appropriate venue for that, not District Emergency Management Committee (DEMC) because DEMC does not have the expertise or authority to decide a grievance.

Chair Ohrenschall verified if that is what is done now.

Mr. Long replied yes.

Michael Morton, Nevada Gaming Control Board (NGCB), introduced a proposed amendment to the bill (Exhibit C). He reviewed section 10 of the bill dealing with NRS 463.080 and the requirements of subsection 6. He discussed proposed language in subsection 4, stating the NGCB has had the comprehensive plan since the forming of the Board. The amended language in

subsection 4 would delineate the authority with the Board and the Personnel Commission. The members of the Board and all its personnel and employees, except for clerical, are subject to the Board's human resources manual and not NRS 284. Out of the 393 NGCB employees, only 73 are classified employees who would remain under NRS 284. The rest of the employees, unclassified exempt and nonexempt, would remain under the Board's comprehensive plan as contemplated by subsection 6.

Senator Pickard said under section 10, subsection 4, and the proposed amendment does add significant violation to the intent of the bill. He asked if this is considered a friendly amendment and asked Mr. Morton to explain how this preserves the intent of the bill.

Mr. Morton replied section 10 would relate only to NGCB employees. Those employees are governed by the human resources manual that contemplates what the Board is required to establish pursuant to subsection 6 as written for NRS 463.080 and requires the Board to draft that manual and have it in place. As the Board has evolved and grown, a lot of employees in the audit, investigation and enforcement divisions are unclassified and nonexempt employees. They are authorized to earn overtime because they do overnight and weekend travel to audit, investigate and enforce the gaming laws across the State. This amendment does not seek to change any other sections of the bill that relate to all other State employees. Gaming is looking to keep board employees under the NGCB human resources manual.

Mr. Long stated the DHRM considers this a friendly amendment. The Division worked with the Legislative Counsel Bureau Legal Division and the Gaming Control Board and had an agreement that the NGCB would be exempt from this bill.

Chair Ohrenschall closed the hearing on S.B. 51. He asked if there was any further business. As there was none, he adjourned the meeting at 4:56 p.m.

RESPECTFULLY SUBMITTED:

Diane Rea,
Committee Secretary

APPROVED BY:

Senator James Ohrenschall, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	3		Attendance Roster
S.B. 51	C	2	Michael Morton / Gaming Control Board	Proposed Amendment