

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1113

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1113

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/09/09

Recorder Job Number: 6750

Committee Clerk Signature

Lou Engleson

Minutes:

Chairman Grande: We are going to start out with HB 1113.

Laurie Sterioti Hammern offered testimony in support of HB 1113. See attachment #1.

Rep. Meier: Laurie, last year how many employees actually took grievances through the state-wide process?

Laurie Sterioti Hammeren: Off the top of my head I am not even sure I can answer that question, but I certainly can get that answer to you.

Rep. Meier: That would be great.

Laurie Sterioti Hammeren: And I can also mention that Al Hoberg is here, and maybe he might have that information.

Chairman Grande: Thank you. Any other questions from the committee? .

Rep. Schneider: On the second page on the back where it says, new language "including proper service upon the division", why do you need to include that? It seems redundant when you reference "must be filed according to chapter 28-32". Why the additional language, I guess?

Laurie Sterioti Hammeren: Sometimes we are not served properly, and so I believe that that's making it required.

Rep. Schneider: It just seems when you reference "must be filed according to chapter 28-32" and then include additional language, it seems like you could go on and on about what's included there. I guess it seems redundant in the code.

Laurie Sterioti Hammeren: I don't have a law background, and I know that you do. This bill was drafted by another attorney. Tag Anderson, I don't know if you have any additional comments regarding that particular issue.

Chairman Grande: You may step forward.

Tag Anderson: My name is Tag Anderson. I am the director of Risk Management for OMB. That particular provision was added because there has been at least two cases in the last two years where the attorney has failed to serve HRMS with the notice of appeal, and HRMS, the custodian of the record, has been sitting there doing nothing because no one knows that, lawyers don't know that there's been an appeal. The attorneys representing the employees in these cases have pointed to the fact that the division is not a party as the reason they didn't serve them so this is simply to clarify that they need to be served because they are the agency of record.

Chairman Grande: Does that answer your question?

Rep. Schneider: Mr. Anderson, it also spells that out in 28-32.

Tag Nelson: Correct. I would agree with that.

Rep. Amerman: Can you give me an idea of how your grievance procedure works? Say I'm an employee, and I have a grievance. Who do I have to sit down and face?

Laurie Sterioti Hammermen: Basically we direct that agencies establish their own internal grievance procedures, of course depending on the size of the organization. Typically an employee would grieve to their supervisor, assuming that the supervisor isn't the problem, and then there's a mechanism to grieve up the chain of command to the director of that agency.

Then if the employee does not believe that the situation has been resolved, they can go to the Office of Administrative Hearings. They appeal to us and then we submit the appeal to the Office of Administrative Hearings. In the internal agency grievance procedure, if the employee feels that they would like to resolve this issue, maybe at a mediation level, prior to implementing the internal grievance procedure, they can request mediation services through our office. If management of the agency and the employee agree, we would sit down and try to resolve it at the earliest level. They also can ask for another employee or a representative of NDEA or some other association to assist them with their grievance and appeal.

Rep. Amerman: Could you give me an idea, just maybe in your opinion, or maybe you have an idea, are a lot or most grievances solved at the agency's level before they have to go to a hearing?

Laurie Sterioti Hammermen: I would guess that that's true in most cases, but there is an appeal process available should they need to go further for those instances that are identified.

Rep. Kasper: In the law you talk about the probationary employees and they're at will. Does this bill change the status of the probationary employee's from at will to classified or do they still remain at will?

Laurie Sterioti Hammermen: No. They are classified workers, but it does not change their at will status.

Representative Amerman: The change in language from hearing officer to law judge, is this, what is the significance of that.

Laurie Sterioti Hammermen: No it was just housekeeping. That change had been made some time ago.

Chairman Grande: Any other questions from the committee. Did you wish to answer the question about number of hearings?

Allen Hoberg: My name is Allen Hoberg, and I the director of the Office of Administrative Hearings. I don't have prepared remarks, but I can at least partially answer the question of Representative Meier. I can't answer the part about how many might go through the grievance procedure, but the number that come to us and are actually heard or could potentially be heard, this past biennium we had ten classified employees cases that came before the Office of Administrative Hearings. Not all of those went through the complete process and actually had a hearing with a written decision, but we had ten that came through our office. I would anticipate that this would increase it significantly. But it should be something we should be able to handle very easily.

Chairman Grande: Is there anybody else who would like to testify in favor of 1113? Is there anybody in opposition of 1113. Close the hearing on 1113.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1113

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/09/09

Recorder Job Number: 6751

Committee Clerk Signature

Lou Engleson

Minutes:

Chairman Grande: We have HB 1113 in front of us. Any discussion from the committee? Is the committee ready for a motion?

Rep. Schneider: The only thing is this additional language on the back. I don't have any objection to it. I represent public employees with appeals. I admit it is very confusing for attorneys, the service. Because you are serving not only the agency but you're also serving it on HRMS and the director of OMB and I can see frankly how attorney screw it up. Maybe this will solve the problem. I'd like to maybe just ask Tag Anderson if there is a better way to do it. Maybe this is the answer. It certainly doesn't hurt. If the committee wants to take action on this bill today, so be it. But if we could hold off on action til next week, that may give me a chance to talk to Tag about it.

Chairman Grande: I don't mind holding off on this. Be prepared for Thursday afternoon. The hearing was closed by **Chairman Grande**.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1113

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/23/2009

Recorder Job Number: 7661

Committee Clerk Signature



Minutes:

Chairman Grande: We have before us HB 1113. A note from HRMS: the number of employees who went to the OAH, I want to let you know the following: during 2007 we had 9 appeals and during 2008 we had 3 appeals that went to OAH. Not a big thing, but I just think they are looking to clean up the mechanics if I recall.

Rep. Schneider: I spoke with Todd Anderson from OMB too and we are on the same page, so I don't have any objections.

Chairman Grande: So you approve of that wording there?

Rep. Schneider: I think it is redundant, but I don't think it's a problem.

Chairman Grande: We were looking at the possible redundant wording to include proper service upon the division. What are the wished of the committee on HB 1113?

Rep. Dahl: I make a motion for a do pass.

Rep. Meier: I will second.

Chairman Grande: Discussion. The clerk called the roll on a DP.

The roll call vote was taken: Yea: 12 Nay: 0 Absent: 1

Rep. Dahl will carry HB 1113.

Date: 1-23-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1113

House **Government and Veterans Affairs** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Dahl Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich		
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 23, 2009 1:40 p.m.

Module No: HR-14-0850
Carrier: Dahl
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1113: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1113 was placed on the Eleventh order on the calendar.

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1113

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1113

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 02/27/09

Recorder Job Number: 9869

Committee Clerk Signature

Katia Oliver

Minutes:

Laurie Sterioti-Hammeren Director HRMS. See testimony #1.

Senator Dever: Is this consistent with the whistle blower statutes?

Laurie Sterioti-Hammeren: We discovered that one of the whistle blower bills failed and the other one is having an amendment suggested to it.

Senator Oehlke: On line 10, is the basic procedure different from some other kind of grievance procedure?

Laurie Sterioti-Hammeren: HRMS has established basic grievance procedure that agencies can use. A county grievance may be different than our procedure.

Senator Horne: On line 10, that implies that they don't have basic grievance procedure in place.

Laurie Sterioti-Hammeren: Most agencies have procedure in place. We would like to solve grievance at the lowest level do to the cost.

Senator Dever: This does not apply to higher education.

Laurie Sterioti-Hammeren: Correct.

Senator Nelson: A concern about the language. Would general be a better word than basic?

Senator Dever: It sounds to me like HRMS establishes the minimum and the agencies go where they need to from there.

Laurie Sterioti-Hammeren: I would not be opposed to dropping the word basic all together.

A motion was made to amend HB1113 by Senator Nelson with a second by Senator Oehlke

Senator Oehlke: The only thing I would add is that basic means different things. It might create confusion where the other would not.

Roll was taken and the motion passed 4-1. A motion was then made by Senator Nelson with a second by Senator Horne for a do pass on HB 1113 as amended. Roll was taken and the motion passed 5-0 with Senator Nelson carrying the bill.

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Adopted by the Government and Veterans
Affairs Committee
February 27, 2009


2/27/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1113

Page 1, line 10, remove "basic"

Renumber accordingly

Date: 2-27-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1113

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amended

Motion Made By Nelson Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Dick Dever	X		Dwight Cook		1
Dave Oehlke	X		Carolyn Nelson	1	
Robert M. Horne	1				

Total Yes 4 No 1

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date:
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1113

Carrie
Nelson

Senate Government and Veteran's Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Nelson Seconded By Horne

Senators	Yes	No	Senators	Yes	No
Dick Dever	/		Dwight Cook	/	
Dave Oehlke	/		Carolyn Nelson	/	
Robert M. Horne	/				

Total Yes 5 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1113: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1113 was placed on
the Sixth order on the calendar.

Page 1, line 10, remove "basic"

Renumber accordingly

2009 TESTIMONY

HB 1113

Testimony on HB 1113
Laurie Sterioti Hammeren, Director
Human Resource Management Services
Division of Office of Management and Budget
January 9, 2009

Same given to Senate.

Madam Chairman, and members of the Government and Veterans Affairs Committee, my name is Laurie Sterioti Hammeren, Director of Human Resource Management Services (HRMS). I appear today to provide information on House Bill 1113.

HRMS is primarily responsible for administering the classified system of personnel administration for State employees. HRMS adopts administrative rules that are binding on agencies that employ classified employees and facilitates employee appeals through the statewide appeals mechanism.

Lines nine through twelve strengthen existing law by requiring agencies that employ classified employees to affirmatively adopt basic internal grievance procedures so classified employee grievances can hopefully be resolved at the agency level. Most agencies already have internal grievance procedures in place, but we feel it should be an affirmative statutory obligation to have those internal procedures in place. Without internal grievance procedures in place, classified employees can immediately bring appeals through the statewide appeals mechanism.

Under current law, probationary employees do not have the ability to utilize the statewide appeals mechanism. Until an employee holding a classified position successfully completes a probationary period, the employee is considered to be at will. Applicants for positions in the classified service do have the ability to appeal claims of discrimination. Lines nineteen through twenty extends the ability to appeal claims of discrimination to probationary employees and provides that applicants and probationary employees may appeal claims of reprisal as well. Allowing claims of discrimination or reprisal to proceed through the statewide appeals mechanism is not inconsistent with the probationary employee's at will status. Rather, it provides an administrative remedy in narrow and limited circumstances. Providing an administrative remedy to applicants and probationary employees who feel they have been subjected to reprisal or discrimination helps facilitate a resolution to the claim in a faster and more cost effective manner to both the employee and the agency involved.

Finally, this bill clarifies on page two that HRMS must be served in any employee or agency appeal even though HRMS or the Office of Administrative Hearings is not considered a party to the appeal unless one of its employees is involved. HRMS is the custodian of the administrative record and must be served in order to certify the record to the district court.

This concludes my testimony. I will be happy to answer any questions you may have.

Attachment #1