

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1205 **As Engrossed: 4/3/2013** **(Amendment # H-2)**
Bill Subtitle: CONCERNING STATE EMPLOYEE GRIEVANCES AND POSSIBLE RELIEF FOR GRIEVANCES.

Basic Change :

Rep. Nickels
Senator Elliott

Amendment No. 2 to this bill does away with all sections that deal with arbitration for state employee grievances. Instead, this bill provides for a statutory procedure for a state employee to file a grievance. This bill provides that each state agency is to promulgate rules implementing a grievance procedure, including the filing, hearing, adjudication, and appeal of grievances. In addition, the bill provides for nonbinding mediation that a party may request no later than 15 business days after the conclusion of the state agency grievance procedure. This bill identifies the grievance issues that are eligible to be heard in nonbinding mediation. The nonbinding mediation must be conducted within 45 days of the request for mediation.

Amendment No. 2 to this bill provides that OPM shall promulgate rules that:

1. Provide a process for appeals of the grievance decisions of state agencies; and
2. Provide a procedure for the nonbinding mediation consistent with this subchapter, including without limitation:
 - a. The filing and form of a request for nonbinding mediation;
 - b. The method of notice of and the scheduling of the nonbinding mediation to be provided to a party;
 - c. Rules for conduct of the nonbinding mediation;
 - d. Appropriate evidence to be considered at the nonbinding mediation; and
 - e. Considerations to be made in resolving the nonbinding mediation.

The bill provides the qualifications for a mediator and provides that OPM shall maintain a roster of qualified mediators. This bill provides that a party to nonbinding mediation may be represented by an attorney or other representative. If the parties are unable to reach an agreement in mediation, a party may file an appeal with OPM within 10 days of the mediation. The mediator must report a suggested resolution to the Director of DFA within 20 days. This bill provides what the mediator is to consider when determining the suggested resolution. An employee agreeing to nonbinding mediation does not waive the right to file a claim under the Whistle-Blower Act.

The bill provides that OPM will begin offering nonbinding mediation under this act on July 1, 2014.

Revenue Impact :

Additional costs will be incurred to pay any monetary amount that may be awarded to an employee during mediation or during the grievance procedure.

Additional costs will be incurred to pay for state employees to receive mediation training.

Taxpayer Impact :

State employees will be provided with an additional avenue (nonbinding mediation) to challenge decisions to terminate, demote, or suspend the employee.

Resources Required :

Rules must be promulgated by each state agency to establish a state employee grievance procedure. Rules must be promulgated by OPM to establish a state employee grievance appeal procedure and a nonbinding mediation procedure.

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Time Required :

Unknown

Procedural Changes :

Rules must be promulgated to establish a system for state employee grievances, appeals, and nonbinding mediation.

Other Comments :

Amendment No. 2 does away with arbitration and the associated fees. Amendment No. 2 also does away with mediator fees. The mediator will conduct the mediation on a voluntary basis. This is consistent with the current process.

Page 4, line 32 and line 34, the bill should be amended to add "business" in front of the word "days".

Page 4, line 33, the bill should be amended to change the time from 20 days to 10 days.

Legal Analysis :

This bill will codify the state employee grievance procedure that is currently established by Executive Order 86-1 and Executive Order 93-01. Section 1, 21-1-701. The definition of "adverse action" and "appropriate authority" are incorporated from 21-1-602 and do not seem to carefully address the subject of the bill.

OPM is required to include in its rules the minimum qualification for a mediator, who must have a background in employer/employee relations, not be employed by the state agency that is a party to the mediation, and is not required to be an attorney. OPM is also required to maintain a list of qualified mediators. There is no provision in the bill regarding compensation of a mediator. Presumably, those who are on the list would be state employees. However, the bill does not address this issue.

A "party" can appeal to OPM within 10 days of the mediation. Then within 20 days of the mediation, the mediator is required to report to the DFA Director the mediator's suggested resolution of the mediation. Regardless of whether the mediator's suggested resolution favors the grievant and the agency does not agree, or favors the agency, the grievant's rights to appeal remain. What, if any, effect should be given to the suggested resolution that is sent to the DFA Director after the time for the grievant to appeal, is not clear.

There are drafting errors in the bill. Beginning on page 3, at line 5 - 13, both the language and the numbering contain errors.