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## COMPULSORY ARBITRATION FOR COUNTY JAIL CORRECTION OFFICERS

**House Bill 5539**

**Sponsor: Rep. Randy Richardville**  
**Committee: Employment Relations,  
Training and Safety**

**Complete to 1-29-02**

### **A SUMMARY OF HOUSE BILL 5539 AS INTRODUCED 12-13-01**

House Bill 5539 would create a new act to require compulsory arbitration for county correctional officers and their employers; to select members of arbitration panels and prescribe their authority; and, to provide for the enforcement and review of awards. Under the bill, "county corrections officer" would be defined to mean an individual employed by or under the supervision of a county sheriff while engaged in the management or control of individuals in the custody of that county sheriff. "County corrections facility" would be defined to mean any county jail or other site used to house or detain individuals in the custody of a county sheriff. A detailed explanation of the bill follows.

**Binding arbitration.** If in the course of mediation, a dispute had not been resolved within 30 days (or within additional periods the parties agree to), then employees or the employer could initiate binding arbitration, submitting a written request to the other, with a copy to the Employment Relations Commission.

**Delegates.** Within 10 days after the written request, the employer and employees' designated representative or exclusive collective bargaining representative (or if none, their previously designated representative in the mediation and fact-finding procedures) would be required to choose a delegate to a panel of arbitration. Both the employer and the employees would be required to immediately notify the other, and the mediation board, of their selections.

**Selection of impartial arbitrator.** Within 7 days after the request, the Employment Relations Commission would be required to select from its panel of arbitrators, three nominees for impartial arbitrator of the arbitration panel. Within 5 days after the selection, each party could peremptorily strike the name of one of the nominees. Within 7 days after the 5-day period, the commission would be required to designate one of the remaining nominees as the impartial arbitrator of the arbitration panel.

**Informal hearing.** The appointed arbitrator would act as chairperson of the panel of arbitration, and call a hearing (stating the time and place) within 15 days after his or her appointment. A person, labor organization, or governmental unit having a substantial interest in the arbitration could be granted leave to intervene by the arbitration panel. Oral or documentary evidence and other data could be received; however, the proceedings would be informal, and technical rules of evidence would not apply. The bill would require that a verbatim record of the proceedings be made (which would be the responsibility of the arbitrator to arrange).

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Shared expenses. The bill specifies that the expense of the proceedings, including the chairperson's fee, would be established in advance by the Labor Mediation Board, and would be borne equally by each of the parties to the dispute and the county. The delegates, if public officers or employees, would continue on the payroll of the public employer at their usual rate of pay.

Thirty-day term. The bill further specifies that the hearing could be adjourned from time to time, but unless otherwise agreed by the parties, would be concluded within 30 days after it began. The majority actions and ruling of the panel would constitute its actions and rulings.

Arbitration panel's responsibilities. Under the bill, the arbitration panel would administer oaths; require the attendance of witnesses; the production of books, papers, contracts, agreements, and material documents; and, could issue subpoenas. If any person refused to obey a subpoena, or refused to be sworn or to testify, or if anyone were guilty of any contempt, the arbitration panel could (or the attorney general, if requested, would be required to) invoke the aid of any circuit court within the jurisdiction in which the hearing was being held, and that court would be required to issue an appropriate order. Any failure to obey the order would then be punished by the court as contempt.

Remanding disputes. At any time before rendering an award, the chairperson of the arbitration panel could remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks. (Time periods specified in the act would then be extended so they were equal to the remand.) Under the bill, the chairperson would be required to notify the Employment Relations Commission of the remand.

Offers of settlement; findings of fact; written opinions. The bill specifies that at or before the conclusion of the hearing, the arbitration panel would identify the economic issues in dispute, and direct each party to submit both to the panel and to each other, its last offer of settlement on each economic issue. The panel's determination of the issues in dispute would be conclusive. Then, within 30 days after the hearing concluded (or longer if the parties agreed), the arbitration panel would be required to make written findings of fact, and issue a written opinion and order (based on the record), mail or deliver the documents to the parties and their representatives, and to the Employment Relations Commission. With regard to each economic issue, the panel would adopt the last offer of settlement which, in the opinion of the panel members, more nearly complied with the factors specified in the act, and enumerated below.

Basis of findings; applicable factors. Under the bill, the arbitration panel would be required to base its findings, opinions, and order upon the following factors, as applicable: a) the lawful authority of the employer; b) stipulations of the parties; c) the interests and welfare of the public and the financial ability of the county to meet those costs; d) comparison of the wages, hours, and conditions of employment of the employees involved in the proceedings, with the wages, hours, and conditions of employment of other employees performing similar services, and with other employees generally: (i) in public employment in comparable communities; and, (ii) in private employment in comparable communities; e) the average consumer prices for goods and services, commonly known as the cost-of-living; f) the overall compensation then received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received; g) changes in any of the circumstances described in

factors (a) to (f) during the pendency of the arbitration proceedings; and, h) any other factor which was normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public services or in private employment.

Binding decision. The majority decision of the arbitration panel, if supported by competent evidence on the whole record, would be final and binding upon the parties, and could be enforced in the circuit court in the county where the dispute arose, or in which a majority of the affected employees lived. The bill specifies that the start of a new municipal fiscal year begun before the arbitration process had been completed would not render a dispute moot, or otherwise impair the authority of the arbitration panel. Further, increases in rates of compensation, or other benefits, could be awarded retroactively to the onset of any period in dispute, any other statute or charter provisions to the contrary notwithstanding. Finally, at any time the parties, by stipulation, could amend or modify an award of arbitration.

Contempt and fines. The bill specifies that if an employee organization willfully disobeyed a lawful order of enforcement by a circuit court, or willfully encouraged or offered resistance to that order, whether by a strike or otherwise, then the punishment for each day that the contempt persisted could be a fine fixed in the discretion of the court in an amount not to exceed \$250 per day. Likewise, a public employer who willfully disobeyed a lawful order could be fined an amount not to exceed \$250 per day.

Circuit court review. Under the bill, orders of the arbitration panel could be reviewed by the circuit court, but only for the following reasons: a) the arbitration panel had been without or had exceeded its jurisdiction; b) the order was unsupported by competent, material, and substantial evidence on the whole record; or c) the order was procured by fraud, collusion, or other similar and unlawful means. Further, the bill specifies that pendency of the proceeding for review would not automatically stay the order of the arbitration panel.

During pendency. The bill specifies that during the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment could not be changed by action of either party without the consent of the other, but a party could consent without prejudice to his or her rights or position under the act.

Supplementary. Finally, the bill specifies that this act would be supplementary to the Public Employment Relations Act, and would not amend or repeal any of that act's provisions, but any provision of that act that required fact-finding would be inapplicable to disputes subject to arbitration under the bill. The bill also specifies that a person could not be sentenced to a term of imprisonment for any violation of it, or an order of the arbitration panel.

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.