

## Amendment No. 66

Senate Amendment to Senate Bill No. 124

(BDR 23-613)

**Proposed by:** Senate Committee on Legislative Operations and Elections**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date		SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

TMC/BJE



Date: 4/9/2007

S.B. No. 124—Revises provisions governing state personnel and independent contractors. (BDR 23-613)



SENATE BILL NO. 124—COMMITTEE ON LEGISLATIVE  
OPERATIONS AND ELECTIONS

(ON BEHALF OF THE DEPARTMENT OF PERSONNEL)

FEBRUARY 20, 2007

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions governing state personnel and independent contractors. (BDR 23-613)

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 governmental administration; revising provisions governing the appointment of an employee in the classified service of the State who does not attain permanent status in a position to which he was promoted; revising provisions governing independent contractors with the State; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, all overtime worked by a state employee in the classified service must be approved in advance by the appointing authority or his designee. (NRS 284.180) Section 1 of this bill authorizes overtime without prior approval in an emergency where the services provided by the employee are necessary to protect the public health or safety or for emergency management and the employee complies with certain notification requirements concerning the overtime.

Under existing law, a state employee in the classified service who is promoted to a position and who does not attain permanent status in that position for certain reasons is required to be restored to the position from which he was promoted. (NRS 284.300) ~~Section 1 of this bill authorizes the appointment of such an employee to a vacant position that is in the same or a comparable class and that has the same salary and benefits and is located in the same community as the position from which he was promoted if that former position has been filled.~~ **Section 2 of this bill removes the requirement that the employee be restored to his previous position and instead provides the appointing authority with the discretion to restore the employee to the position.**

Under existing law, elective officers and the heads of departments, boards, commissions and institutions of the Executive Branch of State Government are authorized to contract for the services of independent contractors, including the provision of security services for state agencies. (NRS 284.173, 284.174) The contracts for such services are under the regulatory authority of the Personnel Commission and are required to be awarded pursuant to the State Purchasing Act. (NRS 284.065, 284.173, chapter 333 of NRS) Pursuant to ~~sections 2-9~~ **sections 3-10** of this bill, the authority to administer and adopt regulations governing such contracts is transferred from the Personnel Commission to the Chief of the Purchasing Division of the Department of Administration.

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

**Section 1. 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 and 9, 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 eligible employees who are approved for overtime in excess of one scheduled shift of 8 or more hours per day.

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

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

10. ~~[All]~~ Except as otherwise provided in subsection 11, all overtime must be approved in advance by the appointing authority or his designee. No officer or employee, other than a director of a department or the chairman of a board, commission or similar body, may authorize overtime for himself. The chairman of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body.

11. In an emergency, an employee may work overtime without prior approval if:

(a) The services provided by the employee are necessary to protect the public health or safety or for emergency management;

(b) The employee attempts to notify an appropriate supervisor or dispatcher of the necessity for working the overtime; and

(c) The employee reports the amount of overtime worked to his supervisor as soon as practicable after working the overtime and provides reasonable justification for the necessity of working the overtime, including a description of the circumstances and scope of the emergency.

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

~~[Section 1.]~~ Sec. 2. NRS 284.300 is hereby amended to read as follows:

284.300 1. Any promotional appointee who fails to attain permanent status in the position to which he was promoted, or who is dismissed for cause other than misconduct or delinquency on his part from the position to which he was promoted, either during the probationary period or at the conclusion thereof by reason of the failure of the appointing authority to file a request for his continuance in the position, ~~[shall]~~ ~~[must]~~ may be ~~re-~~

~~(a) If the position from which he was promoted is vacant or a vacant position described in paragraph (b) is not available,]~~ restored to the position from which he was promoted. ~~or~~

~~(b) If the position from which he was promoted is filled, appointed to a vacant position that:~~

~~(1) Is in the same class as, or a comparable class to, the position from which he was promoted; and~~

~~(2) Has the same salary and benefits and is located in the same community as the position from which he was promoted.]~~

2. ~~[Before an appointing authority may appoint a person to a comparable class pursuant to paragraph (b) of subsection 1, the appointing authority must obtain approval for the appointment from the Department.]~~

~~3.]~~ Nothing contained in this section shall be construed to prevent any employee of the classified service from competing for places upon lists of persons eligible for original appointments.

~~[Sec. 2.]~~ Sec. 3. NRS 41.0307 is hereby amended to read as follows:

41.0307 As used in NRS 41.0305 to 41.039, inclusive:

1. "Employee" includes an employee of a:

(a) Part-time or full-time board, commission or similar body of the State or a political subdivision of the State which is created by law.

(b) Charter school.

(c) University school for profoundly gifted pupils described in Chapter 392A of NRS.

2. "Employment" includes any services performed by an immune contractor.

3. "Immune contractor" means any natural person, professional corporation or professional association which:

(a) Is an independent contractor with the State pursuant to ~~NRS 284.173;~~ *section 7 of this act*; and

(b) Contracts to provide medical services for the Department of Corrections.

➤ As used in this subsection, "professional corporation" and "professional association" have the meanings ascribed to them in NRS 89.020.

4. "Public officer" or "officer" includes:

(a) A member of a part-time or full-time board, commission or similar body of the State or a political subdivision of the State which is created by law.

(b) A public defender and any deputy or assistant attorney of a public defender or an attorney appointed to defend a person for a limited duration with limited jurisdiction.

(c) A district attorney and any deputy or assistant district attorney or an attorney appointed to prosecute a person for a limited duration with limited jurisdiction.

~~Sec. 3.~~ *Sec. 4.* NRS 176.0129 is hereby amended to read as follows:

176.0129 The Department of Administration shall, on an annual basis, contract for the services of an independent contractor, in accordance with the provisions of ~~NRS 284.173;~~ *section 7 of this act*, to:

1. Review sentences imposed in this State and the practices of the State Board of Parole Commissioners and project annually the number of persons who will be:

(a) In a facility or institution of the Department of Corrections;

(b) On probation;

(c) On parole; and

(d) Serving a term of residential confinement,

➤ during the 10 years immediately following the date of the projection; and

2. Review preliminary proposals and information provided by the Commission and project annually the number of persons who will be:

(a) In a facility or institution of the Department of Corrections;

(b) On probation;

(c) On parole; and

(d) Serving a term of residential confinement,

➤ during the 10 years immediately following the date of the projection, assuming the preliminary proposals were recommended by the Commission and enacted by the Legislature.

~~Sec. 4.~~ *Sec. 5.* NRS 232.548 is hereby amended to read as follows:

232.548 1. Except if a particular procedure for resolving a dispute is required by a specific statute, and except as otherwise provided in subsection 2, the Director may authorize any entity within the Department or any natural person who is subject to the authority of the Director to use alternative means of dispute resolution in any proceeding if the alternative means can be:

(a) Carried out by the available personnel of the Department or persons under contract with the Department; and

(b) Paid for with money that is available in the existing budget of the affected entity of the Department.

2. Before authorizing an entity of the Department to use alternative means of dispute resolution, the Director must notify the Attorney General. The Attorney General, within 30 days after his receipt of the notification from the Director, shall respond to the Director concerning the advisability of using alternative means of dispute resolution to resolve the dispute at issue. The Director shall consider the advice of the Attorney General but may authorize an entity of the Department to use alternative means of dispute resolution unless the Attorney General indicates in

his response that he officially opposes the use of such means. If the Attorney General fails to respond within 30 days after his receipt of the notification, the Director may authorize the use of alternative means of dispute resolution.

3. The alternative means of dispute resolution may include, without limitation, evaluation of the facts and issues in a dispute by a neutral person, fact-finding, mediation, arbitration or other collaborative problem-solving processes designed to encourage persons to work together to develop agreeable solutions to disputes in lieu of litigation or adjudication of contested cases in administrative hearings.

4. Any entity which, or natural person who, has received authorization from the director to use alternative means of dispute resolution may enter into a contract to facilitate the use of such means, subject to the approval of the Attorney General, the limitations set forth in subsection 1 and the provisions of ~~NRS 284.173.~~ *section 7 of this act.*

~~Sec. 5.~~ *Sec. 6.* Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 and 8 of this act.

~~Sec. 6.~~ *Sec. 7. 1. A using agency may contract for the services of a person as an independent contractor. Except as otherwise provided by specific statute, each such contract must be awarded pursuant to this chapter.*

*2. An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.*

*3. For the purposes of this section:*

*(a) Travel, subsistence and other personal expenses may be paid to an independent contractor, if provided for in the contract, in such amounts as provided for in the contract. Those expenses must not be paid pursuant to the provisions of NRS 281.160.*

*(b) There must be no:*

*(1) Withholding of income taxes by the State;*

*(2) Coverage for industrial insurance provided by the State;*

*(3) Participation in group insurance plans which may be available to employees of the State;*

*(4) Participation or contributions by either the independent contractor or the State to the Public Employees' Retirement System;*

*(5) Accumulation of vacation leave or sick leave; or*

*(6) Coverage for unemployment compensation provided by the State if the requirements of NRS 612.085 for independent contractors are met.*

*4. An independent contractor is not in the classified or unclassified service of the State and has none of the rights or privileges available to officers or employees of the State of Nevada.*

*5. Except as otherwise provided in this subsection, each contract for the services of an independent contractor must be in writing. The form of the contract must be first approved by the Attorney General, and except as otherwise provided in subsection 7, an executed copy of each contract must be filed with the Fiscal Analysis Division of the Legislative Counsel Bureau and the Clerk of the State Board of Examiners. The State Board of Examiners may waive the requirements of this subsection in the case of contracts which are for amounts less than \$2,000.*

*6. Except as otherwise provided in subsection 7, each proposed contract with an independent contractor must be submitted to the State Board of Examiners. The contracts do not become effective without the prior approval of*

1 the State Board of Examiners, except that the State Board of Examiners may  
2 authorize its Clerk or his designee to approve contracts which are:

3 (a) For amounts less than \$10,000 or, in contracts necessary to preserve life  
4 and property, for amounts less than \$25,000.

5 (b) Entered into by the State Gaming Control Board for the purposes of  
6 investigating an applicant for or holder of a gaming license.

7 7. Copies of the following types of contracts need not be filed or approved as  
8 provided in subsections 5 and 6:

9 (a) Contracts executed by the Department of Transportation for any work of  
10 construction or reconstruction of highways.

11 (b) Contracts executed by the State Public Works Board or any other state  
12 department or agency for any work of construction or major repairs of state  
13 buildings if the contracting process was controlled by the rules of open  
14 competitive bidding.

15 (c) Contracts executed with business entities for any work of maintenance or  
16 repair of office machines and equipment.

17 8. The State Board of Examiners shall review each contract submitted for  
18 approval pursuant to subsection 6 to consider:

19 (a) Whether sufficient authority exists to expend the money required by the  
20 contract; and

21 (b) Whether the service which is the subject of the contract could be provided  
22 by a state agency in a more cost-effective manner.

23 ↪ If the contract submitted for approval continues an existing contractual  
24 relationship, the State Board of Examiners shall ask each agency to ensure that  
25 the State is receiving the services that the contract purports to provide.

26 9. If the services of an independent contractor are contracted for to  
27 represent an agency of the State in any proceeding in any court, the contract  
28 must require the independent contractor to identify in all pleadings the specific  
29 state agency which he is representing.

30 10. The State Board of Examiners shall adopt regulations to carry out the  
31 provisions of this section.

32 ~~Sec. 7.~~ Sec. 8. 1. If personnel of the Capitol Police Division of the  
33 Department of Public Safety are not available to provide security services for a  
34 building, office or other facility of a using agency, the using agency may,  
35 pursuant to section 7 of this act, contract with one or more independent  
36 contractors to provide such services.

37 2. An independent contractor with whom a using agency contracts pursuant  
38 to subsection 1 must:

39 (a) Be licensed as a private patrolman pursuant to chapter 648 of NRS or  
40 employed by a person so licensed; and

41 (b) Possess the skills required of and meet the same physical requirements as  
42 law enforcement personnel certified by the Peace Officers' Standards and  
43 Training Commission created pursuant to NRS 289.500.

44 ~~Sec. 8.~~ Sec. 9. NRS 590.505 is hereby amended to read as follows:

45 590.505 1. The Board may adopt a seal for its own use which must have  
46 imprinted thereon the words "Board for the Regulation of Liquefied Petroleum  
47 Gas." The care and custody of the seal is the responsibility of the Secretary-  
48 Treasurer of the Board.

49 2. The Board may appoint an Executive Secretary and may employ or,  
50 pursuant to ~~NRS 284.173,~~ section 7 of this act, contract with such other technical,  
51 clerical or investigative personnel as it deems necessary. The Board shall fix the  
52 compensation of the Executive Secretary and all other employees and independent  
53 contractors. Such compensation must be paid out of the money of the Board. The

Board may require the Executive Secretary and any other employees and independent contractors to give a bond to the Board for the faithful performance of their duties, the premiums on the bond being paid out of the money of the Board.

3. In carrying out the provisions of NRS 590.465 to 590.645, inclusive, and holding its regular or special meetings, the Board:

(a) Shall adopt written policies setting forth procedures and methods of operation for the Board.

(b) May adopt such regulations as it deems necessary.

4. The Board shall submit to the Legislature and the Governor a biennial report before September 1 of each even-numbered year, covering the biennium ending June 30 of that year, of its transactions during the preceding biennium, including a complete statement of the receipts and expenditures of the Board during the period and any complaints received by the Board.

5. The Board shall keep accurate records, minutes and audio recordings or transcripts of all meetings and, except as otherwise provided in NRS 241.035, the records, minutes, audio recordings and transcripts so kept must be open to public inspection at all reasonable times. The Board shall also keep a record of all applications for licenses and licenses issued by it. The record of applications and licenses is a public record.

~~Sec. 9.~~ **Sec. 10.** NRS 284.173 and 284.174 are hereby repealed.

~~Sec. 11.~~ **Sec. 11.** This act becomes effective on July 1, 2007.

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## TEXT OF REPEALED SECTIONS

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### **284.173 Definition; contracts for services.**

1. Elective officers and heads of departments, boards, commissions or institutions may contract for the services of persons as independent contractors. Except as otherwise provided by specific statute, each contract for services must be awarded pursuant to the provisions of chapter 333 of NRS.

2. An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

3. For the purposes of this section:

(a) Travel, subsistence and other personal expenses may be paid to an independent contractor, if provided for in the contract, in such amounts as provided for in the contract. Those expenses must not be paid pursuant to the provisions of NRS 281.160.

(b) There must be no:

(1) Withholding of income taxes by the State;

(2) Coverage for industrial insurance provided by the State;

(3) Participation in group insurance plans which may be available to employees of the State;

(4) Participation or contributions by either the independent contractor or the State to the Public Employees' Retirement System;

(5) Accumulation of vacation leave or sick leave; or

(6) Coverage for unemployment compensation provided by the State if the requirements of NRS 612.085 for independent contractors are met.



4. An independent contractor is not in the classified or unclassified service of the State, and has none of the rights or privileges available to officers or employees of the State of Nevada.

5. Except as otherwise provided in this subsection, each contract for the services of an independent contractor must be in writing. The form of the contract must be first approved by the Attorney General, and except as otherwise provided in subsection 7, an executed copy of each contract must be filed with the Fiscal Analysis Division of the Legislative Counsel Bureau and the Clerk of the State Board of Examiners. The State Board of Examiners may waive the requirements of this subsection in the case of contracts which are for amounts less than \$2,000.

6. Except as otherwise provided in subsection 7, and except contracts entered into by the Nevada System of Higher Education, each proposed contract with an independent contractor must be submitted to the State Board of Examiners. The contracts do not become effective without the prior approval of the State Board of Examiners, except that the State Board of Examiners may authorize its clerk or his designee to approve contracts which are:

(a) For amounts less than \$10,000 or, in contracts necessary to preserve life and property, for amounts less than \$25,000.

(b) Entered into by the State Gaming Control Board for the purposes of investigating an applicant for or holder of a gaming license.

➤ The State Board of Examiners shall adopt regulations to carry out the provisions of this section.

7. Copies of the following types of contracts need not be filed or approved as provided in subsections 5 and 6:

(a) Contracts executed by the Department of Transportation for any work of construction or reconstruction of highways.

(b) Contracts executed by the State Public Works Board or any other state department or agency for any work of construction or major repairs of state buildings if the contracting process was controlled by the rules of open competitive bidding.

(c) Contracts executed by the Housing Division of the Department of Business and Industry.

(d) Contracts executed with business entities for any work of maintenance or repair of office machines and equipment.

8. The State Board of Examiners shall review each contract submitted for approval pursuant to subsection 6 to consider:

(a) Whether sufficient authority exists to expend the money required by the contract; and

(b) Whether the service which is the subject of the contract could be provided by a state agency in a more cost-effective manner.

➤ If the contract submitted for approval continues an existing contractual relationship, the Board shall ask each agency to ensure that the State is receiving the services that the contract purports to provide.

9. If the services of an independent contractor are contracted for to represent an agency of the State in any proceeding in any court, the contract must require the independent contractor to identify in all pleadings the specific state agency which he is representing.

**284.174 Contracts for security services when personnel of Capitol Police Division not available.**

1. If personnel of the Capitol Police Division of the Department of Public Safety are not available to provide security services for a building, office or other facility of a state agency, the state agency may, pursuant to NRS 284.173, contract with one or more independent contractors to provide such services.

2. An independent contractor with whom a state agency contracts pursuant to subsection 1 must:

(a) Be licensed as a private patrolman pursuant to chapter 648 of NRS or employed by a person so licensed; and

(b) Possess the skills required of and meet the same physical requirements as law enforcement personnel certified by the Peace Officers' Standards and Training Commission created pursuant to NRS 289.500.