

ASSEMBLY BILL NO. 338—ASSEMBLYMAN AIZLEY

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Provides for reconsideration of personnel decisions for public employees. (BDR 23-1010)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 public employees; requiring that certain procedures be followed before making a personnel decision that adversely affects a public employee; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, no state, county or municipal department, housing authority, agency or board, including the Nevada System of Higher Education, may discriminate against any person in employment because of the person's race, creed, color, national origin, sex, sexual orientation, age, political affiliation or disability, except when based upon a bona fide occupational qualification. (NRS 281.370) The Nevada Supreme Court has held that when the Nevada Legislature prescribes, by legislation, duties concerning fair treatment of personnel, and when such duties apply broadly to all state and local governing boards, such duties may also be imposed upon the Board of Regents of the University of Nevada and in no way interfere with the constitutional authority of the Board to exercise essential management and control of the University of Nevada. (*Bd. of Regents v. Oakley*, 97 Nev. 605, 608 (1981))

Section 1 of this bill requires an appointing authority to provide appropriate training, warnings and notice of a policy and of the procedure for making a personnel decision that adversely affects an employee before making such a decision against an employee. **Section 1** also requires the appointing authority to assign one supervisor to conduct a fact-finding investigation and a second supervisor to determine whether substantial evidence of the allegation exists based on the investigation, if the accused employee disputes the allegation that would form the basis of a personnel decision that adversely affects the employee.



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

Section 1. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An appointing authority may not make a personnel decision that adversely affects an employee unless:

(a) The employee has received appropriate training relating to his or her job and required duties;

(b) The appointing authority has warned the employee before making the decision, including, without limitation, by using a system of progressive discipline adopted by regulation pursuant to NRS 284.383, unless a provision of law was violated by the employee;

(c) The appointing authority has clearly communicated to the employee that a policy was in place before making the decision for a violation of the policy;

(d) The policy which the employee violated is fair, equitable, efficient and safe; and

(e) The procedure outlined in this section is followed by the appointing authority.

2. The appointing authority shall provide each employee with a procedure that explains prohibited acts, possible violations and penalties and a fair and equitable process for making a personnel decision that adversely affects a state employee. For an employee governed by chapter 284 of NRS, the procedure must be approved by the Personnel Commission.

3. If an employee denies or disagrees with an allegation that forms the basis for a personnel decision that adversely affects the employee, the appointing authority shall assign an unbiased supervisor who does not directly supervise the employee to conduct a fair and objective fact-finding investigation.

4. After the fact-finding investigation is complete, the appointing authority shall assign a second unbiased supervisor who does not directly supervise the employee to determine whether, based on the results of the investigation:

(a) Substantial evidence exists that the employee committed the alleged act or omission that forms the basis for the personnel decision that adversely affects the employee; and

(b) Enforcement of the policy alleged to have been violated was fair and equal and the employee was not subject to disparate treatment for his or her conduct.

↪ A personnel decision that adversely affects the employee may be made only if both such determinations are made.



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1 5. *The investigation and determination pursuant to this*
2 *section must be completed and the results provided to the employee*
3 *within 90 days after the employee is made aware by the appointing*
4 *authority that it intends to make a personnel decision that*
5 *adversely affects the employee.*

6 6. *As used in this section, "appointing authority" means a*
7 *state, county or municipal department, housing authority, agency,*
8 *board or appointing officer thereof. The term includes, without*
9 *limitation, any agency, bureau, board, commission, department or*
10 *division or any other unit of the Executive Department of the State*
11 *Government, including the Nevada System of Higher Education.*

12 **Sec. 2.** This act becomes effective on July 1, 2011.

