

Amendment No. 312

Senate Amendment to Senate Bill No. 62 (BDR 23-285)

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

SJA/HAC



Date: 4/19/2015

S.B. No. 62—Revises provisions governing the employment, promotion, dismissal, demotion and suspension of state employees. (BDR 23-285)



SENATE BILL NO. 62—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE DIVISION OF HUMAN
RESOURCE MANAGEMENT)

PREFILED DECEMBER 20, 2014

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions governing the employment, promotion, dismissal, demotion and suspension of state employees. (BDR 23-285)

FISCAL NOTE: Effect on Local Government: No.
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 the State Personnel System; requiring the Personnel Commission to adopt certain regulations governing the employment, promotion, dismissal, demotion or suspension of state employees; authorizing the Commission to adopt certain regulations relating to state employees with disabilities and applicants for positions affecting public safety; making various other changes relating to the State Personnel System; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill makes various changes relating to the State Personnel System. Existing law provides that certain promotional appointees who fail to attain permanent status in the position to which they were promoted, or who are dismissed for cause other than misconduct or delinquency, must be restored to the positions from which the appointees were promoted. (NRS 284.300) **Section 1** of this bill requires the Personnel Commission to adopt regulations ~~setting forth the circumstances under which such~~ **requiring that** a promotional appointee ~~may~~ **who fails to attain permanent status in the promoted position must** be: (1) restored to the position from which he or she was appointed ~~if~~ **unless doing so would displace another employee with greater seniority**; (2) placed in a **comparable** position ~~other than the position from which he or she was appointed~~ **for which a vacancy exists**; or (3) **if no such positions exist, appointed to an equal or lower position for which a vacancy exists or** placed on an appropriate reemployment list.

Existing law authorizes the Commission to adopt regulations which provide for filling, under certain circumstances, positions in the classified service of the State without competition. (NRS 284.305) **Section 2** of this bill authorizes the Commission to adopt regulations that provide for filling positions in the classified service without competition by the appointment of current employees with disabilities to certain positions.

Existing law requires an appointing authority to make continued efforts to retain an employee with a disability in state service by making reasonable accommodations. Existing

law also requires an appointing authority to consider separation from service or disability retirement if an employee with a disability can no longer perform the essential functions of his or her position with or without reasonable accommodations. (NRS 284.379) **Section 3** of this bill requires an appointing authority to also consider whether an employee with a disability can be appointed to a position at or below the grade level of the employee's current position before considering separation from service or disability retirement.

If a classified employee is dismissed, involuntarily demoted or suspended, existing law requires the appointing authority to give the employee written notice of that fact, delivered personally or mailed to the employee. (NRS 284.385) **Section 4** of this bill eliminates the requirement for delivery in person or by mail and requires the Commission to adopt regulations setting forth the procedures for properly notifying a classified employee of dismissal, involuntary demotion or suspension.

Existing law provides, with limited exception, that an employee who consumes or is under the influence of alcohol, a controlled substance or certain other drugs is subject to disciplinary action or required to be referred to an employee assistance program. (NRS 284.4062, 284.4063) **Sections 5 and 6** of this bill authorize the Commission to adopt regulations setting forth the circumstances under which a person who holds a valid registry identification card to engage in the medical use of marijuana is subject to disciplinary action or required to be referred to an employee assistance program.

Existing law authorizes, under certain circumstances, an appointing authority to ask an employee who admits to consuming a controlled substance for the name of the person who prescribed the use of the controlled substance. (NRS 284.4064) **Section 7** of this bill authorizes an appointing authority to ask an employee who admits to consuming marijuana for proof that the employee holds a valid registry identification card to engage in the medical use of marijuana.

Existing law sets forth limited circumstances under which an appointing authority may request an employee to submit to a screening test for alcohol or drugs. (NRS 284.4065) **Section 8** of this bill adds an additional circumstance to authorize an appointing authority to request that an employee submit to a screening test if the employee has or is involved in a work-related accident or injury. **Section 8** also requires the Commission to define by regulation "work-related accident or injury."

Existing law requires an appointing authority to screen an applicant for alcohol and drugs before hiring the applicant for any position of employment that affects public safety. (NRS 284.4066) **Section 9** of this bill authorizes the Commission to adopt regulations relating to applicants for such positions whose screening test indicates the presence of marijuana and who hold valid registry identification cards to engage in the medical use of marijuana.

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

Section 1. NRS 284.300 is hereby amended to read as follows:

284.300 1. ~~Any~~ *The Commission shall adopt regulations ~~setting forth the circumstances under which~~ requiring that a* promotional appointee who fails to attain permanent status in the position to which the appointee was promoted, or who is dismissed for cause other than misconduct or delinquency on the appointee's part from the position to which the appointee 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 the appointee's continuance in the position, ~~shall may~~ *must* be ~~restored~~ :

(a) *Restored* to the position from which the appointee was promoted ~~+~~ *unless the position has been filled by an employee with greater seniority;*

(b) *Placed in a position other than the position from which the appointee was promoted* ~~+~~ *and for which a vacancy exists in the class held immediately before the promotion; or*

(c) ~~Placed~~ *If no position described in paragraph (a) or (b) exists:*

(1) Appointed to a position for which a vacancy exists in a class equal to or lower than the class held immediately before the promotion; or

(2) Placed on an appropriate reemployment list.

2. 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. NRS 284.305 is hereby amended to read as follows:

284.305 1. Except as otherwise provided in subsection 2, positions in the classified service may be filled without competition only as provided in NRS 284.155, **284.300**, 284.307, 284.309, 284.310, 284.315, 284.320, 284.325, 284.327, 284.330, 284.375 and 284.3775.

2. The Commission may adopt regulations which provide for filling positions in the classified service without competition in cases involving:

(a) The appointment, upon approval of the appointing authority, of a current employee with a disability to a position at or below the grade of his or her position if the employee:

(1) Has successfully completed ~~the~~ a probationary period for any class ~~of position~~ he or she has held during continuous classified service; and

(2) Becomes unable to perform the essential functions of his or her position with or without reasonable accommodation;

(b) The demotion of a current employee;

~~(b)~~ (c) The reemployment of a current or former employee who was or will be adversely affected by layoff, military service, reclassification or a permanent partial disability arising out of and in the course of the employment of the current or former employee; or

~~(c)~~ (d) The reappointment of a current employee.

Sec. 3. NRS 284.379 is hereby amended to read as follows:

284.379 In the employment of a person with a disability in the state service, continued efforts must be made to retain the person by making reasonable accommodations that enable the person to perform the essential functions of ~~the~~ **his or her current** position and to enjoy the benefits and privileges of the ~~person's~~ position. An appointing authority shall consider separation or disability retirement if ~~an~~ :

1. An employee can no longer perform the essential functions of the position with or without reasonable accommodations ~~it~~ ; and

2. ~~The~~ Without undue hardship, as that term is defined pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., the employee cannot be appointed to a position for which a vacancy exists and for which the employee is qualified at or below the grade of the employee's current position.

Sec. 4. NRS 284.385 is hereby amended to read as follows:

284.385 1. An appointing authority may:

(a) Dismiss or demote any permanent classified employee when the appointing authority considers that the good of the public service will be served thereby.

(b) Except as otherwise provided in NRS 284.148, suspend without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days.

2. Before a permanent classified employee is dismissed, involuntarily demoted or suspended, the appointing authority must consult with the Attorney General or, if the employee is employed by the Nevada System of Higher Education, the appointing authority's general counsel, regarding the proposed discipline. After such consultation, the appointing authority may take such lawful action regarding the proposed discipline as it deems necessary under the circumstances.

3. A dismissal, involuntary demotion or suspension does not become effective until the employee is notified in writing of the dismissal, involuntary demotion or suspension and the reasons therefor. The ~~notice may be delivered personally to the employee or mailed to the employee at the employee's last known address by registered or certified mail, return receipt requested. If the notice is mailed, the effective date of the dismissal, involuntary demotion or suspension shall be deemed to be the date of delivery or if the letter is returned to the sender, 3 days after mailing.~~ *Commission shall adopt regulations setting forth the procedures for properly notifying the employee of the dismissal, involuntary demotion or suspension and the reasons therefor.*

4. No employee in the classified service may be dismissed for religious or racial reasons.

Sec. 5. NRS 284.4062 is hereby amended to read as follows:

284.4062 1. Except as otherwise provided in ~~subsection 3,~~ *subsections 3 and 4*, an employee who:

(a) Consumes or is under the influence of alcohol while on duty, unless the alcohol is an integral part of a commonly recognized medication which the employee consumes pursuant to the manufacturer's instructions or in accordance with a lawfully issued prescription;

(b) Possesses, consumes or is under the influence of a controlled substance while on duty, at a work site or on state property, except in accordance with a lawfully issued prescription; or

(c) Consumes or is under the influence of any other drug which could interfere with the safe and efficient performance of the employee's duties, unless the drug is an integral part of a commonly recognized medication which the employee consumes pursuant to the manufacturer's instructions or in accordance with a lawfully issued prescription,

is subject to disciplinary action. An appointing authority may summarily discharge an employee who, within a period of 5 years, commits a second act which would subject the employee to disciplinary action pursuant to this subsection.

2. ~~Except as otherwise provided in subsection 3,~~ *a state agency shall refer an employee who:*

(a) Tests positive for the first time in a screening test; and

(b) Has committed no other acts for which the employee is subject to termination during the course of conduct giving rise to the screening test, to an employee assistance program. An employee who fails to accept such a referral or fails to complete such a program successfully is subject to further disciplinary action.

3. *The Commission may adopt regulations setting forth the circumstances under which a person who holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS is subject to disciplinary action pursuant to subsection 1 or must be referred to an employee assistance program pursuant to subsection 2.*

4. Subsection 1 does not apply to:

(a) An employee who consumes alcohol in the course of the employment of the employee while hosting or attending a special event.

(b) A peace officer who possesses a controlled substance or consumes alcohol within the scope of the peace officer's duties.

Sec. 6. NRS 284.4063 is hereby amended to read as follows:

284.4063 1. Except as otherwise provided in *subsection 2 and* subsection 5 of NRS 284.4065, an employee who:

~~1-1~~ (a) Fails to notify the employee's supervisor as soon as possible after consuming any drug which could interfere with the safe and efficient performance of the employee's duties;

~~1-2~~ (b) Fails or refuses to submit to a screening test as requested by a state agency pursuant to subsection 1 or 2 of NRS 284.4065; or

~~1-3~~ (c) After taking a screening test which indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested by the employee's appointing authority, that the employee had taken the controlled substance as directed pursuant to a current and lawful prescription issued in the employee's name,

is subject to disciplinary action.

2. The Commission may adopt regulations setting forth the circumstances under which a person who holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS is subject to disciplinary action pursuant to this section.

Sec. 7. NRS 284.4064 is hereby amended to read as follows:

284.4064 1. If an employee informs the employee's appointing authority that the employee has consumed any drug which could interfere with the safe and efficient performance of the employee's duties, the appointing authority may require the employee to obtain clearance from the employee's physician before the employee continues to work.

2. If an appointing authority reasonably believes, based upon objective facts, that an employee's ability to perform the employee's duties safely and efficiently:

(a) May be impaired by the consumption of alcohol or other drugs, it may ask the employee whether the employee has consumed any alcohol or other drugs and, if so:

(1) The amount and types of alcohol or other drugs consumed and the time of consumption; ~~and~~

(2) If a controlled substance *other than marijuana* was consumed, the name of the person who prescribed its use ~~and~~;

(3) If marijuana was consumed, to provide proof that the employee holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS.

(b) Is impaired by the consumption of alcohol or other drugs, it shall prevent the employee from continuing work and transport the employee or cause the employee to be transported safely away from the employee's place of employment in accordance with regulations adopted by the Commission.

Sec. 8. NRS 284.4065 is hereby amended to read as follows:

284.4065 1. Except as otherwise provided in subsection 2, an appointing authority may request an employee to submit to a screening test only if the appointing authority:

(a) Reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing the employee's ability to perform the employee's duties safely and efficiently;

(b) Informs the employee of the specific facts supporting its belief pursuant to paragraph (a), and prepares a written record of those facts; and

(c) Informs the employee in writing:

(1) Of whether the test will be for alcohol or drugs, or both;

(2) That the results of the test are not admissible in any criminal proceeding against the employee; and

(3) That the employee may refuse the test, but that the employee's refusal may result in the employee's dismissal or in other disciplinary action being taken against the employee.

2. An appointing authority may request an employee to submit to a screening test if the employee:

(a) Is a law enforcement officer and, during the performance of the employee's duties, the employee discharges a firearm, other than by accident; ~~for~~

(b) During the performance of the employee's duties, drives a motor vehicle in such a manner as to cause bodily injury to the employee or another person or substantial damage to property ~~for~~ ; or

(c) Has or is involved in a work-related accident or injury.

For the purposes of this subsection, the Commission shall, by regulation, define the ~~term~~ terms "substantial damage to ~~property~~ property" and "work-related accident or injury."

3. An appointing authority may place an employee who submits to a screening test on administrative leave with pay until the appointing authority receives the results of the test.

4. An appointing authority shall:

(a) Within a reasonable time after an employee submits to a screening test to detect the general presence of a controlled substance or any other drug, allow the employee to obtain at the employee's expense an independent test of the employee's urine or blood from a laboratory of the employee's choice which is certified by the United States Department of Health and Human Services.

(b) Within a reasonable time after an employee submits to a screening test to detect the general presence of alcohol, allow the employee to obtain at the employee's expense an independent test of the employee's blood from a laboratory of the employee's choice.

(c) Provide the employee with the written results of the employee's screening test within 3 working days after it receives those results.

5. An employee is not subject to disciplinary action for testing positive in a screening test or refusing to submit to a screening test if the appointing authority fails to comply with the provisions of this section.

6. An appointing authority shall not use a screening test to harass an employee.

Sec. 9. NRS 284.4066 is hereby amended to read as follows:

284.4066 1. Each appointing authority shall, subject to the approval of the Commission, determine whether each of its positions of employment affects the public safety. The appointing authority shall not hire an applicant for such a position unless the applicant submits to a screening test to detect the general presence of a controlled substance. Notice of the provisions of this section must be given to each applicant for such a position at or before the time of application.

2. An appointing authority ~~may~~ shall consider the results of a screening test in determining whether to employ an applicant. If those results indicate the presence of a controlled substance ~~for~~ other than marijuana, the appointing authority shall not hire the applicant unless the applicant provides, within 72 hours after being requested , ~~by the appointing authority,~~ proof that the applicant had taken the controlled substance as directed pursuant to a current and lawful prescription issued in the applicant's name.

3. An appointing authority shall, at the request of an applicant, provide the applicant with the results of the applicant's screening test.

4. If the results of a screening test indicate the presence of a controlled substance, the appointing authority shall:

(a) Provide the Administrator with the results of the applicant's screening test.

1 *(b) If applicable, inform the Administrator whether the applicant holds a*
2 *valid registry identification card to engage in the medical use of marijuana*
3 *pursuant to chapter 453A of NRS.*

4 *5. The Commission may adopt regulations relating to an applicant for a*
5 *position which affects the public safety who tests positive for marijuana and holds*
6 *a valid registry identification card to engage in the medical use of marijuana*
7 *pursuant to chapter 453A of NRS.*

8 **Sec. 10.** NRS 284.4068 is hereby amended to read as follows:

9 284.4068 Except as otherwise provided in NRS 239.0115 ~~+~~ *and 284.4066*,
10 the results of a screening test taken pursuant to NRS 284.4061 to 284.407,
11 inclusive, are confidential and:

12 1. Are not admissible in a criminal proceeding against the person tested;

13 2. Must be securely maintained by the *Division, the* appointing authority ,
14 ~~+~~ the designated representative of the appointing authority *and any other person*
15 *authorized to receive the results* separately from other files concerning personnel;
16 and

17 3. Must not be disclosed to any person, except:

18 (a) Upon the written consent of the person tested;

19 (b) As required by medical personnel for the diagnosis or treatment of the
20 person tested, if the person is physically unable to give the person's consent to the
21 disclosure;

22 (c) As required pursuant to a properly issued subpoena;

23 (d) When relevant in a formal dispute between the appointing authority and the
24 person tested; ~~+~~

25 (e) As required for the administration of a plan of benefits for employees ~~+~~ ;
26 *or*

27 *(f) As may be authorized pursuant to regulations adopted by the*
28 *Commission.*

29 **Sec. 11.** 1. This section becomes effective upon passage and approval.

30 2. Sections 2, 3, 5, 6, 7, 9 and 10 of this act become effective on July 1, 2015.

31 3. Sections 1, 4 and 8 of this act become effective:

32 (a) Upon passage and approval for the purpose of adopting any regulations and
33 performing any other preparatory administrative tasks necessary to carry out the
34 provisions of this act; and

35 (b) On January 1, 2016, for all other purposes.