

SENATE BILL NO. 31—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE DIVISION OF HUMAN
RESOURCE MANAGEMENT OF THE
DEPARTMENT OF ADMINISTRATION)

PREFILED NOVEMBER 16, 2018

Referred to Committee on Legislative Operations and Elections

SUMMARY—Makes various changes relating to the State
Personnel System. (BDR 23-184)

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; revising provisions relating to filling positions in the classified service without competition in cases involving certain appointments of employees with disabilities; revising provisions governing the testing of certain employees and applicants for employment for the presence of drugs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Personnel Commission to adopt regulations which provide for filling positions in the classified service of the Executive Department of the State Government without competition in the case of 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 a probationary period for any class 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. (NRS 284.305) **Section 1** of this bill removes the requirements: (1) that the appointment be approved by the appointing authority; and (2) that the employee have successfully completed a probationary period.

Under existing law, it is state policy to ensure that employees in the classified and unclassified service of the Executive Department of the State Government do not: (1) report for work in an impaired condition as a result of the use of alcohol or drugs; (2) consume alcohol while on duty; or (3) unlawfully possess or consume any drugs while on duty, at a work site or on state property. (NRS 284.406)



Existing law authorizes an official, board or commission that has the legal authority to make appointments to positions in the classified or unclassified service to request that an employee submit to a screening test for alcohol or drugs under certain circumstances. (NRS 284.4065) Existing law also requires such 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) To detect the general presence of a controlled substance or other drug, existing law provides for the testing of a sample of a person's urine. (NRS 284.4061) **Section 2** of this bill expands the types of samples for testing to detect the presence of a drug to include a sample of a person's blood or other bodily substance. **Sections 3 and 4** of this bill make conforming changes.

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

Section 1. 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 a probationary period for any class he or she has held during continuous classified service; and~~

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

(b) The demotion of a current employee;

(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

(d) The reappointment of a current employee.

Sec. 2. NRS 284.4061 is hereby amended to read as follows:

284.4061 As used in NRS 284.406 to 284.407, inclusive, unless the context otherwise requires:

1. "Employee" means a person in the classified or unclassified service of the State.

2. "Screening test" means a test of a person's:



(a) Breath or blood to detect the general presence of alcohol; or
(b) Urine , *blood or other bodily substance* to detect the general presence of a controlled substance or any other drug,
↳ which could impair that person's ability to perform the duties of employment safely and efficiently.

Sec. 3. 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;

(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; 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 terms "substantial damage to 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 ,
~~for~~ blood *or other bodily substance* 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. 4. NRS 284.4067 is hereby amended to read as follows:
284.4067 1. A screening test:

(a) To detect the general presence of a controlled substance or any other drug, must be conducted by an independent laboratory that is certified by the United States Department of Health and Human Services.

(b) To detect the general presence of alcohol or of a controlled substance or any other drug, must be administered in such a manner as to protect the person tested from any unnecessary embarrassment.

2. Except as otherwise provided in subsection 3, a sample ~~of urine~~ provided for use in a screening test must not be used for any test or purpose without the prior written consent of the person providing the sample. The appointing authority shall ensure that the person retains possession and control of the person's sample until it is appropriately tagged and sealed with tamper-proof tape.

3. If the results of a screening test indicate the presence of any drug which could impair the ability of a person to perform the duties of employment safely and efficiently:

(a) The laboratory shall conduct another test of the same sample ~~of urine~~ to ascertain the specific substances and concentration of those substances in the sample; and

(b) The appointing authority shall provide the person tested with an opportunity to have the same sample tested at the person's expense by a laboratory of the person's choice certified by the United States Department of Health and Human Services.

Sec. 5. 1. This section and section 1 of this act become effective upon passage and approval.

2. Sections 2, 3 and 4 of this act become effective:



- 1 (a) Upon passage and approval for the purpose of adopting any
2 regulations and performing any other preparatory administrative
3 tasks that are necessary to carry out the provisions of this act; and
4 (b) On January 1, 2020, for all other purposes.

