

SENATE BILL NO. 331—SENATOR AMODEI

MARCH 17, 2003

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to employment practices governing state personnel. (BDR 23-983)

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 state personnel; authorizing the Employee-Management Committee to issue subpoenas for the attendance of witnesses and the production of books and papers; providing certain rights for employees that are the subject of or witnesses in internal administrative investigations; revising provisions relating to the filling of certain vacancies and regarding provisional appointments and reports on performance; authorizing an employee to request an arbitrator to hear a grievance; revising the provisions governing procedures for dismissals, demotions and suspensions without pay; and providing other matters properly relating thereto.

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

- 1     **Section 1.** Chapter 284 of NRS is hereby amended by adding  
2     thereto the provisions set forth as sections 2, 3 and 4 of this act.  
3     **Sec. 2. 1.** *In carrying out the provisions of NRS 284.073,*  
4     *the Employee-Management Committee may issue subpoenas to*  
5     *compel the attendance and testimony of a person and to compel*  
6     *the production of books, papers and other items that are relevant*  
7     *to a matter being investigated or considered by the Committee.*  
8     **2.** *If a person named in a subpoena fails or refuses to attend*  
9     *or testify before the Committee, to answer any questions*  
10    *propounded by the Committee or to produce the books, papers or*



1 *other items required by the subpoena, the Chairman of the*  
2 *Committee may petition the district court to enter an order*  
3 *compelling the person to attend and testify before the Committee,*  
4 *to answer the questions propounded by the Committee or to*  
5 *produce the books, papers or other items required by the*  
6 *subpoena. The petition filed by the Chairman must set forth that:*

7 *(a) Due notice has been given to the person named in the*  
8 *subpoena of the time and place for his attendance and testimony*  
9 *before the Committee or for the production of the books, papers or*  
10 *other items required by the subpoena;*

11 *(b) The person has been subpoenaed by the Committee*  
12 *pursuant to this section; and*

13 *(c) The person has failed or refused to attend or testify before*  
14 *the Committee, to answer certain questions propounded by the*  
15 *Committee or to produce the books, papers or other items required*  
16 *by the subpoena.*

17 *3. Upon such a petition, the court shall enter an order*  
18 *directing the person named in the subpoena to:*

19 *(a) Appear before the court at the place and time designated in*  
20 *the order. The time designated by the court must be not later than*  
21 *10 days after the date of the order.*

22 *(b) Show cause why the person has failed or refused to attend*  
23 *or testify before the Committee, to answer the questions*  
24 *propounded by the Committee or to produce the books, papers or*  
25 *other items required by the subpoena.*

26 *A certified copy of the order must be served upon the person*  
27 *named in the subpoena.*

28 *4. If it appears to the court that the subpoena was regularly*  
29 *issued by the Committee and properly served, the court shall enter*  
30 *an order directing the person named in the subpoena to appear*  
31 *before the Committee at the place and time designated in the order*  
32 *and to testify before the Committee, to answer the questions*  
33 *propounded by the Committee or to produce the books, papers or*  
34 *other items required by the subpoena. Failure to obey the order*  
35 *constitutes contempt of court.*

36 **Sec. 3. 1.** *A subpoena issued by the Employee-Management*  
37 *Committee extends to all parts of this state and must be served in*  
38 *accordance with the provisions of N.R.C.P. 4(c). The Committee*  
39 *may not require a person named in a subpoena to attend at a place*  
40 *outside the county in which the person resides unless:*

41 *(a) The location of the place is less than 100 miles from the*  
42 *person's primary residence; or*

43 *(b) A party, by affidavit, shows that the testimony of the person*  
44 *is material and necessary to the proceedings and the Committee*  
45 *endorses on the subpoena an order requiring the person to attend*



1 *at the place named in the subpoena, regardless of its location in*  
2 *this state.*

3 *2. A person who appears before the Committee pursuant to a*  
4 *subpoena is entitled to receive fees and mileage in the same*  
5 *amounts and under the same circumstances as prescribed by law*  
6 *for a witness in a civil action in the district court, unless the*  
7 *person is a party to the proceeding or an officer or employee of*  
8 *this state or any of its political subdivisions.*

9 *3. If a person who is entitled to receive fees and mileage*  
10 *pursuant to subsection 2 must appear at a hearing before the*  
11 *Committee at a place located so far from his primary residence*  
12 *that it is not reasonable for the person to return to that residence*  
13 *from day to day, the person is entitled, in addition to fees and*  
14 *mileage, to receive the per diem compensation for subsistence and*  
15 *transportation authorized by NRS 281.160 for each day of actual*  
16 *attendance at such a hearing and for each day necessarily*  
17 *occupied in traveling to and from such a hearing.*

18 *4. Except as otherwise provided in subsection 5, a party who*  
19 *requests that the Committee issue a subpoena to a person shall pay*  
20 *to the Committee the amount of any compensation for subsistence*  
21 *and transportation that the person is entitled to receive from the*  
22 *Committee pursuant to subsection 3.*

23 *5. As part of an award of costs to the party who prevails in a*  
24 *proceeding, the Committee may require the party who did not*  
25 *prevail in the proceeding to pay to the Committee the amount of*  
26 *any compensation for subsistence and transportation that the*  
27 *prevailing party would have otherwise been required to pay to the*  
28 *Committee pursuant to subsection 4.*

29 **Sec. 4. 1.** *An employee may not be the subject of an*  
30 *internal administrative investigation that could lead to disciplinary*  
31 *action against him unless he has been:*

32 *(a) Informed of the allegations against him; and*

33 *(b) Afforded the right to have a lawyer or other representative*  
34 *of his choosing present with him during any phase of the*  
35 *investigation.*

36 *2. Any employee who is the subject of an internal*  
37 *administrative investigation or who is a potential witness in such*  
38 *an investigation must be given not less than 48 hours to obtain*  
39 *representation, unless he waives his right to be represented.*

40 *3. If a criminal investigation is being conducted or a criminal*  
41 *action is pending which involves an act that is the subject of an*  
42 *internal administrative investigation, the internal administrative*  
43 *investigation must cease until the criminal matter is resolved.*



1     **Sec. 5.** NRS 284.295 is hereby amended to read as follows:  
2     284.295 1. Vacancies in positions must be filled ~~[so far as~~  
3 ~~practicable.]~~ by promotion within a department or agency from  
4 among persons holding positions in the classified service ~~[.] unless~~  
5 *the Director is unable to certify a qualified applicant from any*  
6 *appropriate list for the vacancy.* Promotions must be based upon  
7 merit and fitness, to be ascertained in accordance with regulations  
8 established by the Director. In such regulations the employee's  
9 efficiency, character, conduct and length of service must all  
10 constitute factors. For the purposes of this subsection, a person  
11 employed by the Legislative Branch of Government pursuant to  
12 subsection 5 of NRS 284.3775 shall be deemed to hold the position  
13 he held before the legislative session.

14     2. Eligibility for promotion must be determined on  
15 recommendation of the appointing authority and certification by the  
16 Director that the employee meets the minimum requirements and  
17 demonstrates his qualifications in accordance with regulations  
18 established by the Director.

19     3. The Director may provide, in specific cases, for competitive  
20 promotional examinations among employees of departments other  
21 than that in which a particular vacancy in a higher classification may  
22 exist ~~[.] if, in each specific case:~~

23     (a) *The Director determines that there are no eligible*  
24 *applicants in the department in which the vacancy exists to fill the*  
25 *vacancy;*

26     (b) *The Director provides documentation of his determination*  
27 *to the Commission; and*

28     (c) *Based on the documentation provided by the Director, the*  
29 *Commission approves the determination of the Director at a public*  
30 *hearing.*

31     4. An advancement in rank or grade or an increase in salary  
32 beyond the maximum fixed for the class constitutes a promotion.

33     **Sec. 6.** NRS 284.310 is hereby amended to read as follows:

34     284.310 1. Whenever there are urgent reasons for filling a  
35 vacancy in any position in the classified service and the Director is  
36 unable to certify from any appropriate eligible list for the vacancy,  
37 the Director may issue a provisional permit or certify a suitable  
38 person to fill the vacancy provisionally only until a selection and  
39 appointment can be made after competitive examination.

40     2. No person may receive more than one provisional  
41 appointment or serve more than 6 months in any 12-month period as  
42 a provisional appointee.

43     3. A provisional appointee must meet the minimum  
44 qualifications established for the class of positions involved.



1 *4. A provisional appointee may not receive any training that*  
2 *is not provided to other employees for the purpose of satisfying the*  
3 *requirements for eligibility for another position in the classified*  
4 *service.*

5 *5. After completion of a provisional appointment, an*  
6 *employee may be appointed to another position in the classified*  
7 *service, based only on his merit and fitness, after he has been*  
8 *certified from an eligible list prepared on the basis of examination*  
9 *which, except as otherwise provided in this chapter and NRS*  
10 *209.161, was open and competitive.*

11 **Sec. 7.** NRS 284.337 is hereby amended to read as follows:

12 284.337 **1.** An employee whose duties include the  
13 supervision of an employee who holds a position in the classified  
14 service shall:

15 ~~1-1~~ **(a)** For filing at the times specified in NRS 284.340,  
16 prepare reports on the performance of that employee. In preparing a  
17 report, he shall meet with the employee to discuss goals and  
18 objectives, to evaluate the employee's improvement in performance  
19 and personal development, and to discuss the report.

20 ~~2-1~~ **(b)** Provide the employee with a copy of the report.

21 ~~3-1~~ **(c)** Transmit the report to the appointing authority.

22 *2. The appointing authority or any employee of the*  
23 *appointing authority shall not require an employee who has*  
24 *prepared a report on performance to change the report.*

25 *3. After an employee has approved and signed a report on his*  
26 *performance, no additional comments may be added to or*  
27 *accompany the report or be placed in the employee's personnel file*  
28 *without the knowledge of the employee.*

29 **Sec. 8.** NRS 284.384 is hereby amended to read as follows:

30 284.384 **1.** The Director shall propose, and the Commission  
31 shall adopt, regulations which provide for the adjustment of  
32 grievances for which a hearing is not provided by NRS 284.165,  
33 284.245, 284.3629, 284.376 or 284.390. Any grievance for which a  
34 hearing is not provided by NRS 284.165, 284.245, 284.3629,  
35 284.376 or 284.390 is subject to adjustment pursuant to this section.

36 **2.** The regulations must provide procedures for:

37 **(a)** Consideration and adjustment of the grievance within the  
38 agency in which it arose.

39 **(b)** Submission to the Employee-Management Committee *or an*  
40 *arbitrator* for a final decision if the employee is still dissatisfied  
41 with the resolution of the dispute.

42 **3.** The regulations must include provisions for:

43 **(a)** Submitting each proposed resolution of a dispute which has a  
44 fiscal effect to the Budget Division of the Department of



1 Administration for a determination by that Division whether the  
2 resolution is feasible on the basis of its fiscal effects; and

3 (b) Making the resolution binding.

4 4. Any grievance which is subject to adjustment pursuant to  
5 this section may be ~~appealed~~;

6 (a) *Appealed* to the Employee-Management Committee for a  
7 final decision ~~or~~; or

8 (b) *Submitted to an arbitrator for a final decision. If an*  
9 *employee requests that a grievance be heard by an arbitrator, the*  
10 *Director or his designee shall request from the American*  
11 *Arbitration Association a list of three potential arbitrators to act as*  
12 *hearing officers. The employee requesting a hearing and the*  
13 *Director or his designee shall select a person to serve as hearing*  
14 *officer from the list provided by alternately striking one name until*  
15 *the name of only one arbitrator remains. The employee shall strike*  
16 *the first name. The arbitrator shall determine liability for the costs*  
17 *of the arbitration. In conducting a hearing pursuant to this*  
18 *paragraph, the arbitrator may issue and seek enforcement of*  
19 *subpoenas in the same manner as the Committee pursuant to*  
20 *sections 2 and 3 of this act.*

21 5. The employee may represent himself at any hearing  
22 regarding a grievance which is subject to adjustment pursuant to this  
23 section or be represented by an attorney or other person of the  
24 employee's own choosing.

25 6. As used in this section, "grievance" means an act, omission  
26 or occurrence which an employee who has attained permanent status  
27 feels constitutes an injustice relating to any condition arising out of  
28 the relationship between an employer and an employee, including,  
29 but not limited to, compensation, working hours, working  
30 conditions, membership in an organization of employees or the  
31 interpretation of any law, regulation or disagreement.

32 **Sec. 9.** NRS 284.390 is hereby amended to read as follows:

33 284.390 1. ~~[Within 10 working days after the effective date~~  
34 ~~of his dismissal, demotion or suspension pursuant to NRS 284.385,~~  
35 ~~an employee who has been dismissed, demoted or suspended may~~  
36 ~~request in writing a hearing before the hearing officer of the~~  
37 ~~Department to determine the reasonableness of the action. The~~  
38 ~~request may be made by mail and shall be deemed timely if it is~~  
39 ~~postmarked within 10 working days after the effective date of the~~  
40 ~~employee's dismissal, demotion or suspension.~~

41 ~~—2. The hearing officer shall grant the employee a hearing~~  
42 ~~within 20 working days after receipt of the employee's written~~  
43 ~~request unless the time limitation is waived, in writing, by the~~  
44 ~~employee or there is a conflict with the hearing calendar of the~~



1 ~~hearing officer, in which case the hearing must be scheduled for the~~  
2 ~~earliest possible date after the expiration of the 20 days.~~  
3 ~~—3.—~~ *The] An appointing authority may not, without affording*  
4 *an employee the opportunity for a hearing before a hearing officer*  
5 *of the Department:*  
6 *(a) Dismiss or demote any permanent classified employee; or*  
7 *(b) Except as otherwise provided in NRS 284.148, suspend*  
8 *without pay, for disciplinary purposes, a permanent employee for*  
9 *a period not to exceed 30 days.*  
10 *2. If the appointing authority has good reason to believe that*  
11 *an employee who is the subject of a hearing pursuant to this*  
12 *section is a threat to other employees or the public safety, the*  
13 *appointing authority may, at its discretion, remove the employee*  
14 *from his current duties and place him in another assignment or on*  
15 *administrative leave with pay until the hearing officer renders his*  
16 *decision.*  
17 *3. An employee may represent himself at [the] a hearing held*  
18 *pursuant to this section or may be represented by an attorney or*  
19 *other person of the employee’s own choosing.*  
20 *4. Technical rules of evidence do not apply at [the] such a*  
21 *hearing.*  
22 *5. After [the] a hearing conducted pursuant to this section and*  
23 *consideration of the evidence, the hearing officer shall render his*  
24 *decision in writing, setting forth the reasons therefor.*  
25 ~~6. If the hearing officer determines that the dismissal,~~  
26 ~~demotion or suspension was without just cause as provided in NRS~~  
27 ~~284.385, the action must be set aside and the employee must be~~  
28 ~~reinstated, with full pay for the period of dismissal, demotion or~~  
29 ~~suspension.~~  
30 ~~—7.]~~ *The decision of the hearing officer is binding on the parties.*  
31 ~~[8.]~~ *7. Any petition for judicial review of the decision of the*  
32 *hearing officer must be filed in accordance with the provisions of*  
33 *chapter 233B of NRS.*  
34 **Sec. 10.** NRS 284.385 is hereby repealed.  
35 **Sec. 11.** This act becomes effective on July 1, 2003.

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**TEXT OF REPEALED SECTION**

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**284.385 Dismissals, demotions and suspensions.**

1. An appointing authority may:



(a) Dismiss or demote any permanent classified employee when he 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. 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 him at his 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.

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

