NRS 284.327 Temporary limited appointment of persons with disabilities; limitations; regulations (Otherwise known as the 700 Hour Program)

Proposed Amendments:

Subsection 1: Delete "if possible" after shall. Replace "700" with "1,000." Add at the end, "In no case shall an appointing authority make an appointment pursuant to this chapter for greater than 0.50 full-time equivalency (FTE)."

Subsection 4: Add "financial or client" before "benefits." Clarify that an agency within the same Department and/or Division may appoint an affected candidate (e.g., other agencies within DETR besides Vocational Rehab, which is part of DETR's Rehab Division, which also contains the Bureau of Services for Persons Who Are Blind or Visually Impaired and the Bureau of Disability Adjudication). Define circumstances which would create a "conflict of interest."

Subsection 5: Replace "that there is at least one person on the staff..." with "all persons with responsibility for supervision of employees and personnel administration." Add at the end of subsection b, "including, but not limited to, requests for reasonable accommodations, which would permit the candidate..."

Subsection 7: Remove "permanent."

Subsection 8: Replace "700" with "1,000." Add "If the appointing authority does not intend to retain the candidate, after consultation with the appointing authority's relevant legal counsel, the appointing authority shall provide a minimum of 60 days' notice to the candidate" and "if the appointing authority is providing such notice because of an inability of the appointing authority to provide reasonable accommodations to the candidate, after first having engaged in a good faith interactive process with the candidate, and having evaluated the candidate for reassignment to a vacant position or soon to be vacant

position ..., the candidate shall be construed to have separated from service without prejudice, and shall be eligible for reemployment" at the end **NAC 284.364 Lists of persons with disabilities who are eligible for temporary limited appointments**

Subsection 1: Replace "may" with either "shall" or "must" in the first sentence.

What these changes will do:

Many of these changes are being brought back, after having been attached to a bill with a significant fiscal note, SB 202, during the 2019 Session. These changes, some of which were intended to have been included in the section of bill last Session, seek to improve outcomes of the Program. As of the last time easily calculable data was provided by the Rehab Division in late May, since the Program was mandated in the 2017 Session, only 58% of candidates originally appointed through it have achieved permanent employee status, and many of the position types that candidates were appointed to have subsequently been excluded from consideration under the Program.

The Legislature should note that the Federal threshold to determine that an employment policy negatively impacts a particular group of candidates or employees is 80%. In sum, the Program has not fulfilled its legislative intent, whether as originally amended in the 2017 Session, nor as "cleaned up" in the 2019 Session, through the Rehab Division's simultaneously requested bill concerning the same section of statute, SB 50. Considering the U.S. Supreme Court's recent decision which made it Federally illegal to fire an LGBT worker, proposing these changes at the first regular Session opportunity thereafter will not only improve employment outcomes for candidates and employees with disabilities, but for employees in all types of Federally protected classifications. As noted later in the changes, a plain language review of the chapter currently makes it legal to fire those in certain protected classes, but not others.

When viewed as a whole, the changes will provide quicker remedies to situations that should not even be occurring in the first instance. As an example, my case, which I discussed at greater length in written testimony over the past two Sessions, took over three years for the Federal Court to dismiss, doing so on sovereign immunity grounds. This prompts some of the requested changes to NRS 41, which appear later in this document.

NRS 284.215 Examination of persons with disabilities

Proposed Amendments: Replace "notwithstanding..." with "with or without reasonable accommodations."

Add new subsection at the end, "At such time as the Division may resume the examination requirement, the Division shall promulgate regulations for the purposes of a candidate requesting reasonable accommodations for an examination."

What these changes will do:

These changes will standardize language used in other sections of the chapter and provide a process to fully include employment candidates with disabilities in pre-employment activities.

NRS 284.290 Probationary period: Length; dismissal or demotion; notification by appointing authority regarding permanent status

Proposed Amendments:

Subsection 2: Add "and which are not related to a candidate's Federally protected status (e.g., disability, race, gender, sexual orientation, etc.)" at the end.

NRS 284.330 Reinstatement of permanent appointee after separation without prejudice Proposed Amendment: Remove 'permanent."

NRS 284.376 Involuntary transfer; hearing; remedies

Proposed Amendments:

See amendments requested to NRS 284.390, and either duplicate or consolidate

NRS 284.385 Dismissals, demotions, and suspensions; regulations

Proposed Amendments:

Subsection 1: Remove "permanent."

Subsection 2: Remove "permanent."

Subsection 4: Add all remaining Federally protected status types (as the concept was previously defined within the NRS 284.290 amendment request) at the end.

NRS 284.390 Hearing to determine reasonableness of dismissal, demotion, or suspension; production of documents; representation; evidence; written decision; reinstatement; judicial review

Proposed Amendment:

Subsection 8: Add "except in cases related to Federally protected statuses" at the end.

Subsection 9: Remove "judicial." Replace "30" with "90." Add "or with the Equal Employment Opportunity Commission (EEOC) or Nevada Equal Rights Commission (NERC) in cases related to Federally protected status" and "For purposes of determining timeliness of an EEOC or NERC filing, the time spent resolving a hearing request shall toll the requirement until receipt of the hearing officer's decision" at the end.

What these changes will do:

This group of changes (those to subsections 290 through 390) will create identical sets of rules for both probationary and permanent employees, provide appropriate remedy carve-outs for cases involving Federally protected statuses, standardize the timing requirements to match Federal law, and suspend the timely filing requirements while other administrative remedies are pending. *See* the State Supreme Court's

fairly recent decision in *State v. Bronder* (link attached as a separate exhibit).

NRS 233B.039 Applicability

Add a new subsection at the end, "In no case shall any agency of the Executive Department of State Government outlined in this chapter be exempt when the issue in controversy is an individual's Federally protected status."

What this change will do:

This change will create a liability carve-out for review of cases which involve Federally protected statuses.

NRS 41.031 Waiver applies to State and its political subdivisions; naming State as defendant; service of process; State does not waive immunity conferred by Eleventh Amendment

Subsection 2: Clarify that an agency, for purposes of properly naming Defendants, shall be the entity who committed the actions which give rise to the suit. For example, if Medicaid does something wrong, Medicaid would be the proper Defendant, rather than the Department of Health and Human Services (DHHS)' Director's Office. Conforming change to subsection 2b. Further, clarify that the person serving in the office of administrative head shall mean the person who has final decision-making authority for that agency. For some agencies, this person may be a Director, whereas, for most others, it is an Administrator, in potential consultation with the relevant department's Director. *See* e.g., NRS 615.180, specifically subsections 1e, as in Edward, as well as 2, therein.

Temporarily add language which permits service of process either at the Attorney General's Carson City office, or the Carson City home of the Attorney General or their designee. In addition, add permanent language to subsection 2b which conforms to the Constitutional idea that the State Capitol is, at present, Carson City; therefore, any service of an entity, it

would logically follow, to be proper, should need to occur there, rather than a potential satellite office for the agency in Las Vegas, or any other jurisdiction within Nevada.

Subsection 3: Delete in its entirety. In the alternative, make conforming change as those previously outlined within the NRS 284.290 through 390 buckets.

What these changes will do:

These changes will provide clarity to persons who believe they have been treated unfairly by a State agency as to who they can properly sue to rectify how they were treated unfairly if mediative measures should fail.