

(Reprinted with amendments adopted on April 20, 2009)

FIRST REPRINT

A.B. 409

ASSEMBLY BILL NO. 409—ASSEMBLYMEN BOBZIEN, PIERCE,  
ANDERSON; CLABORN, KIRKPATRICK, KOIVISTO, LESLIE  
AND MCCLAIN

MARCH 16, 2009

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning the Local  
Government Employee-Management Relations  
Board. (BDR 23-1048)

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 public employees; requiring the Local  
Government Employee-Management Relations Board to  
conduct certain hearings using certain hearing officers;  
revising provisions governing the appointment of  
members to the Board; revising the periods within which  
the Board must hear and decide certain complaints; and  
providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, the Local Government Employee-Management Relations  
2 Board has exclusive jurisdiction to hear and determine complaints brought by local  
3 government employers, local government employees or employee organizations  
4 concerning various aspects of collective bargaining. (NRS 288.110) The Board also  
5 has jurisdiction to consider appeals filed by employee organizations that are  
6 aggrieved by the determinations of local government employers concerning which  
7 employee groups may constitute bargaining units for purposes of collective  
8 bargaining. (NRS 288.170) **Section 3** of this bill requires the Board to conduct the  
9 proceedings concerning such complaints or appeals using a hearing officer selected  
10 by the parties from a list of arbitrators obtained from the Federal Mediation and  
11 Conciliation Service or by appointing the Commissioner of the Board to serve as  
12 hearing officer. **Section 4** of this bill requires a hearing officer to prepare and  
13 submit to the Board a record of the proceedings concerning the complaint or appeal  
14 and to include in the record findings of fact, proposed conclusions of law and a  
15 proposed decision or order. **Section 5** of this bill requires the Board to issue its final  
16 decision or order upon the completion of its review of the record submitted by the  
17 hearing officer. **Section 11** of this bill requires the Board to issue its final decision  
18 not later than 1 year after the filing of a complaint if the matter is heard by a



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hearing officer and not later than 180 days after the filing of a complaint if the Board hears the complaint in the absence of an evidentiary hearing or decides a contested matter without a hearing. (NRS 288.110)

Under existing law, the Board may not consider any complaint or appeal that is filed more than 6 months after the occurrence which is the subject of the complaint or appeal. (NRS 288.110) **Section 11** of this bill reduces this period to 180 days.

**Section 7** of this bill requires that each decision or order of the Board in any complaint or appeal must be consistent with the decisions or orders previously issued by the Board in similar cases unless the Board includes in the decision or order an analysis of each previous case that has been cited to the Board which establishes that the decision or order issued in that case is erroneous or is inapposite to or distinguishable from the decision or order in the complaint or appeal at issue.

**Section 7.5** of this bill requires the Board to charge and collect a fee, not to exceed \$200, for the filing of a complaint or appeal with the Board or for the filing of any other pleading that constitutes the initial appearance of a party in such a proceeding.

Under existing law, the Local Government Employee-Management Relations Board consists of three members who are appointed by the Governor. (NRS 288.080) **Section 9** of this bill provides that the Governor, the Majority Leader of the Senate and the Speaker of the Assembly shall each appoint one member of the Board.

**Section 10.5** of this bill increases the salary that a member of the Board is entitled to receive from a maximum of \$80 to a maximum of \$150 for each day in which he is engaged in the business of the Board.

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

**Section 1.** Chapter 288 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7.5, inclusive, of this act.

**Sec. 2.** (Deleted by amendment.)

**Sec. 3. 1.** *If the Board decides to hear and determine any complaint or appeal filed with the Board pursuant to this chapter that requires the taking of testimony or other evidence, the Board shall appoint a hearing officer to conduct the proceedings concerning the complaint or appeal on behalf of the Board.*

*2. Except as otherwise provided in this section, the Board shall appoint as its hearing officer the person selected by the parties from a list of seven arbitrators obtained from the Federal Mediation and Conciliation Service. The parties shall alternately strike one name from the list until the name of only one person remains. The parties must determine by the toss of a coin which party will strike the first name. Each party shall pay one-half of the fee charged by the hearing officer appointed pursuant to this subsection.*

*3. The Board shall appoint the Commissioner to act as the hearing officer for a complaint or appeal if both parties request the appointment.*



1     4. The Board may appoint the Commissioner to act as the  
2     hearing officer for a complaint or appeal at the request of one  
3     party if the party demonstrates to the satisfaction of the Board that  
4     the payment of the party's share of a fee charged by a hearing  
5     officer appointed by the Board pursuant to subsection 2 is likely to  
6     impose an undue financial burden or hardship on the party. In  
7     determining whether to appoint the Commissioner to act as a  
8     hearing officer, the Board shall consider the complexity of the  
9     matters in dispute that are likely to affect the amount of the fee  
10    charged by a hearing officer appointed pursuant to subsection 2  
11    and any factor that is relevant to the party's ability to pay the fee,  
12    including, without limitation, the size or membership of the party,  
13    its financial resources, and any budgetary or other financial  
14    constraints.

15    **Sec. 4. 1.** A hearing officer appointed by the Board shall:

16    (a) Conduct the proceedings concerning the complaint or  
17    appeal on behalf of the Board in accordance with the procedures  
18    established by this chapter, chapter 233B of NRS and any other  
19    applicable statutes and regulations;

20    (b) Commence the hearing on the complaint or appeal within  
21    60 days after his appointment;

22    (c) Prepare findings of fact and proposed conclusions of law  
23    on every material issue, based on the evidence and arguments  
24    presented to him and shall prepare a proposed order or decision  
25    consistent with his findings and conclusions, the provisions of this  
26    chapter and the regulations of the Board and any relevant prior  
27    order or decision of the Board; and

28    (d) Prepare, provide to each party and submit to the Board for  
29    its review the record of the proceedings not later than 60 days after  
30    the conclusion of the hearing. The record must comply with NRS  
31    233B.121 and include, without limitation, findings of fact,  
32    proposed conclusions of law and a proposed decision or order that  
33    complies with NRS 233B.125. Each party shall pay one-half of the  
34    cost to prepare the record, including, without limitation, the cost to  
35    prepare a transcript of any oral proceedings.

36    2. A party to any complaint or appeal is entitled to be  
37    represented at any hearing conducted pursuant to this section by  
38    counsel, by an elected or appointed representative of the party, or  
39    both. A nonattorney representative of an employee organization  
40    must be a member of the organization.

41    **Sec. 5. 1.** The Board shall review the record of the  
42    proceedings in any complaint or appeal submitted to it by a  
43    hearing officer, including, without limitation, the proposed  
44    decision or order of the hearing officer. In conducting its review  
45    of the proposed decision or order, the Board:



1 (a) Shall confine its review to the record submitted by the  
2 hearing officer. If the Board determines, on its own motion or on  
3 the motion of any party, that additional evidence must be taken on  
4 any issue, the Board shall remand the matter to the hearing  
5 officer.

6 (b) May not substitute its judgment for that of the hearing  
7 officer as to any finding of fact that is supported by substantial  
8 evidence.

9 2. Upon completion of its review, the Board may:

10 (a) Approve the proposed decision or order of the hearing  
11 officer, with or without modification; or

12 (b) Reject the proposed decision or order and remand the  
13 complaint or appeal to the hearing officer for further proceedings.

14 3. If the Board modifies or rejects the proposed decision or  
15 order of the hearing officer, including, without limitation, any  
16 finding of fact or proposed conclusion of law separately stated  
17 therein, the Board must fully set forth in its final decision or order  
18 the factual and legal basis for its modification or rejection.

19 4. The Board shall issue its final decision or order in any  
20 complaint or appeal not later than 60 days after it receives the  
21 completed record from the hearing officer.

22 **Sec. 6.** Except as otherwise provided in subsection 4 of NRS  
23 288.110 or specifically ordered by the Board, the parties to any  
24 proceeding may by stipulation waive any limitation of time set  
25 forth in NRS 288.110 and sections 4 and 5 of this act.

26 **Sec. 7.** Each decision or order of the Board in any complaint  
27 or appeal must be consistent with the decisions or orders  
28 previously issued by the Board in similar cases unless the Board  
29 includes in the decision or order an analysis of each previous case  
30 that has been cited to the Board which establishes that the  
31 decision or order issued in that case is erroneous or is inapposite  
32 to or distinguishable from the decision or order in the case at  
33 issue.

34 **Sec. 7.5. 1.** Except as otherwise provided in this section, the  
35 Board shall charge and collect a fee, not to exceed \$200, for the  
36 filing of a complaint or appeal with the Board or for the filing of  
37 any other pleading that constitutes the initial appearance of a  
38 party in such a proceeding. The Board shall establish the amount  
39 of the fee by regulation.

40 2. The Board may, at the request of a party, waive the filing  
41 fee if payment of the fee would cause a financial hardship to a  
42 party or would be otherwise inconsistent with the purposes of this  
43 chapter.

44 3. All fees and other money received by the Board pursuant to  
45 the provisions of this chapter must be deposited in banks, credit



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*unions or savings and loan associations in the State of Nevada and expended solely for the purposes of this chapter. The money so deposited does not revert to the State General Fund.*

**Sec. 8.** (Deleted by amendment.)

**Sec. 9.** NRS 288.080 is hereby amended to read as follows:

288.080 1. The Local Government Employee-Management Relations Board is hereby created, consisting of three members, broadly representative of the public and not closely allied with any employee organization or local government employer, not more than two of whom may be members of the same political party. *Each member of the Board must, at the time of his appointment, have at least 5 years of experience in the field of labor-management relations.*

2. The term of office of each member is 4 years ~~[-2.], but a member shall continue to serve after the expiration of his term until his successor is appointed.~~

3. The Governor, *the Majority Leader of the Senate and the Speaker of the Assembly* shall *each* appoint ~~[the members]~~ *one member* of the Board.

**Sec. 10.** NRS 288.090 is hereby amended to read as follows:

288.090 1. The members of the Board shall annually elect one of their number as Chairman and one as Vice Chairman. Any two members of the Board constitute a quorum.

2. The Board may, within the limits of legislative appropriations:

(a) Appoint a Commissioner and a Secretary, who ~~[shall]~~ *must* be in the unclassified service of the State; and

(b) Employ such additional clerical personnel as may be necessary, who ~~[shall]~~ *must* be in the classified service of the State.

3. *The Commissioner must, at the time of his appointment, have at least 3 years of experience in the field of labor-management relations.*

**Sec. 10.5.** NRS 288.100 is hereby amended to read as follows:

288.100 1. Each member of the Board is entitled to receive a salary of not more than ~~[\$80,]~~ *\$150*, as fixed by the Board, for each day in which he is engaged in the business of the Board.

2. While engaged in the business of the Board, each member and employee of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

**Sec. 11.** NRS 288.110 is hereby amended to read as follows:

288.110 1. The Board may make rules governing:

(a) Proceedings before it;

(b) Procedures for fact-finding;

(c) The recognition of employee organizations; and



(d) The determination of bargaining units.

2. The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government employee or employee organization. ~~[The Board shall conduct a hearing within 90 days after it decides to hear a complaint.]~~ The Board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which he has been deprived by that action. The Board shall issue its decision within ~~[120 days]~~ *180 days after the filing of the complaint unless the Board appoints a hearing officer pursuant to section 3 of this act to conduct an evidentiary hearing, in which case the Board shall issue its decision within 1 year* after the ~~[hearing on]~~ *filing of* the complaint. ~~[is completed.]~~

3. Any party aggrieved by the failure of any person to obey an order of the Board issued pursuant to subsection 2, or the Board at the request of such a party, may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce the order.

4. The Board may not consider any complaint or appeal filed more than ~~[6 months]~~ *180 days* after the occurrence which is the subject of the complaint or appeal.

5. The Board may decide without a hearing a contested matter:

(a) In which all of the legal issues have been previously decided by the Board, if it adopts its previous decision or decisions as precedent; or

(b) Upon agreement of all the parties.

*➔ The Board shall issue its decision within 180 days after the filing of the complaint or appeal in the contested matter.*

6. The Board may award reasonable costs, which may include attorneys' fees, to the prevailing party.

**Sec. 12.** NRS 288.120 is hereby amended to read as follows:

288.120 1. For the purpose of hearing and deciding appeals or complaints, the Board *, and a hearing officer on behalf of the Board,* may issue subpoenas requiring the attendance of witnesses before ~~[it]~~ *the Board or hearing officer,* together with all books, memoranda, papers and other documents relative to the matters under investigation, administer oaths and take testimony thereunder.

2. The district court in and for the county in which any hearing is being conducted by the Board *or hearing officer* may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the Board ~~[.]~~ *or hearing officer.*



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3. In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the Board *or hearing officer* may report to the district court in and for the county in which the hearing is pending by petition, setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) That the witness has been subpoenaed in the manner prescribed in this chapter; and

(c) That the witness has failed and refused to attend or produce the papers required by subpoena before the Board *or hearing officer* in the hearing named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing,

↳ and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the Board *or hearing officer*.

4. The court, upon petition of the Board *or hearing officer*, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the Board *or hearing officer*. A certified copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued by the Board *or hearing officer*, the court shall thereupon enter an order that the witness appear before the Board *or hearing officer* at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.

**Sec. 13.** (Deleted by amendment.)

**Sec. 14.** (Deleted by amendment.)

**Sec. 15.** (Deleted by amendment.)

**Sec. 16.** (Deleted by amendment.)

**Sec. 17.** (Deleted by amendment.)

**Sec. 18.** (Deleted by amendment.)

**Sec. 19.** Notwithstanding the provisions of NRS 288.080, as amended by section 9 of this act:

1. The term of office of a member of the Local Government Employee-Management Relations Board who is serving in that capacity on June 30, 2009, ends on that date.

2. As soon as practicable after the effective date of this act:

(a) The Governor shall appoint, as successor to one member of the Board, a member whose term of office begins on July 1, 2009, and ends on June 30, 2011.



1 (b) The Majority Leader of the Senate shall appoint, as  
2 successor to one member of the Board, a member whose term of  
3 office begins on July 1, 2009, and ends on June 30, 2012.

4 (c) The Speaker of the Assembly shall appoint, as successor to  
5 one member of the Board, a member whose term of office begins on  
6 July 1, 2009, and ends on June 30, 2013.

7 **Sec. 20.** The provisions of sections 2 to 7.5, inclusive, of this  
8 act and the amendatory provisions of section 11 of this act do not  
9 apply to any complaint or appeal that was filed with the Board  
10 before the effective date of this act except to the extent that the  
11 parties, with the consent of the Board, may agree to their  
12 application.

13 **Sec. 21.** This act becomes effective upon passage and  
14 approval.

