ASSEMBLY BILL NO. 266–ASSEMBLYMEN SEGERBLOM, OHRENSCHALL; AND DALY

MARCH 11, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing disciplinary proceedings for certain employees of state and local government. (BDR 23-35)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; providing the circumstances under which certain public employers may compel certain public employees to answer questions during an internal administrative investigation; requiring local government employers to provide for post-disciplinary hearings and providing certain procedures for such hearings; revising certain other procedures concerning post-disciplinary hearings for certain state and local government employees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides certain rights and protections to employees in the classified service of the Executive Department of the State Government before such employees may be subject to disciplinary action or terminated. (Chapter 284 of NRS) Among those protections, such an employee must be given notice in writing of the allegations against him or her, be afforded the right to have an attorney or other representative present when the employee is questioned regarding those allegations and be allowed 2 business days to obtain such representation. (NRS 284.387) **Section 1** of this bill requires the written notice to contain specific allegations and requires the notice to be provided to the employee at least 48 hours before the employee is questioned regarding those allegations.

The United States Supreme Court has ruled that if a public employee is required to answer a question during an internal administrative investigation, the answer to the question cannot be used against the public employee in a criminal proceeding. However, a public employer may compel a public employee to answer such a question if the question is specifically, directly and narrowly related to the performance of his or her duties and the employer gives specific warnings to the

employee, including a warning that the answer to the question cannot be used against the employee in a criminal proceeding. (*Garrity v. New Jersey*, 385 U.S. 493 (1967); *Gardner v. Broderick*, 392 U.S. 273 (1968)) **Section 1** sets forth the requirements for such compelled answers during an internal administrative investigation with respect to employees in the classified service of the State.

Sections 3-5 of this bill provide local government employees with certain rights that are provided in existing law to employees in the classified service of the State with respect to disciplinary proceedings. **Section 3** provides a local government employee who is the subject of an internal administrative investigation the right to receive written notice of the specific allegations against him or her at least 48 hours before being questioned regarding the allegations and to have an attorney or other representative present at any time the employee is questioned regarding the allegations. **Section 3** also adds the same requirements concerning compelled answers to questions during an internal administrative investigation as were added to the provisions governing classified employees of the State in **section 1**.

Section 4 of this bill provides a local government employee the right to a post-disciplinary hearing conducted by an impartial hearing officer to determine the reasonableness of disciplinary action taken against the employee and sets out the manner in which the hearing is to be conducted. **Section 5** of this bill allows the parties to a post-disciplinary hearing to apply to the hearing officer for the issuance of subpoenas and allows the hearing officer to direct the parties to participate in a discovery conference. **Section 5** further allows the parties to examine witnesses and cross-examine opposing witnesses, impeach witnesses, introduce exhibits and rebut evidence offered against them.

Existing law mandates that certain subjects be included in the negotiations for a collective bargaining agreement, including discharge and disciplinary procedures. (NRS 288.150) **Section 6** of this bill requires that the discharge and disciplinary procedures agreed upon by a local government employer and a recognized employee organization in a collective bargaining agreement include the rights and protections provided to local government employees pursuant to **sections 3-5** of this bill.

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

Section 1. NRS 284.387 is hereby amended to read as follows:

284.387 ***1.*** An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee pursuant to NRS 284.385 must be:

~~[1.]~~ ***(a)*** Provided notice in writing of the ***specific*** allegations against the employee ***at least 48 hours*** before the employee is questioned regarding the allegations; and

~~[2.]~~ ***(b)*** Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. ~~[The employee must be given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.]~~

2. During an internal administrative investigation, the appointing authority may compel an employee to answer a

question, but only if the question is specifically, directly and narrowly related to the performance of his or her duties and the appointing authority informs the employee that:

(a) The investigation is administrative in nature;

(b) The employee is required to answer the question and failure to do so may subject the employee to disciplinary action; and

(c) The answer to the question cannot be used against the employee in a criminal proceeding.

Sec. 2. Chapter 288 of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. *1. A local government employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee must be:*

(a) Provided notice in writing of the specific allegations against the employee at least 48 hours before the employee is questioned regarding the allegations; and

(b) Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations.

2. During an internal administrative investigation, a supervisory employee may compel a local government employee to answer a question, but only if the question is specifically, directly and narrowly related to the performance of his or her duties and the supervisory employee informs the local government employee that:

(a) The investigation is administrative in nature;

(b) The employee is required to answer the question and that failure to do so may subject the employee to disciplinary action; and

(c) The answer to the question cannot be used against the employee in a criminal proceeding.

Sec. 4. *1. Within 10 working days after the effective date of the dismissal, demotion or suspension of a local government employee, the employee who has been dismissed, demoted or suspended may request in writing a hearing before an impartial hearing officer to determine the reasonableness of the action. The request may be made by mail and shall be deemed timely if it is postmarked within 10 working days after the effective date of the employee's dismissal, demotion or suspension.*

2. The hearing officer shall grant the local government employee a hearing within 20 working days after receipt of the employee's written request unless the time limitation is waived, in writing, by the local government employee or there is a conflict with the hearing calendar of the hearing officer, in which case the

hearing must be scheduled for the earliest possible date after the expiration of the 20 days.

3. The local government employee may represent himself or herself at the hearing or be represented by an attorney or other person of the employee's own choosing.

4. Technical rules of evidence do not apply at the hearing.

5. After the hearing and consideration of the evidence, the hearing officer shall render a decision in writing, setting forth the reasons therefor.

6. If the hearing officer determines that the dismissal, demotion or suspension was without just cause, the action must be set aside and the local government employee must be reinstated, with full pay for the period of dismissal, demotion or suspension.

7. The decision of the hearing officer is binding on the parties.

8. Any judicial review of the decision of the hearing officer pursuant to this section must be conducted in accordance with the procedure set forth in chapter 233B of NRS for reviewing a final decision of an agency.

Sec. 5. ***1. A hearing officer may, upon application of any party to a hearing held pursuant to section 4 of this act, issue subpoenas requiring the attendance and testimony of witnesses at the proceeding.***

2. The hearing officer may, upon motion of a party, direct that an opposing party participate in a discovery conference at which both parties and their counsel may put questions to the other party and receive answers, or request and receive copies of relevant documents or examine relevant documents and records and any other physical evidence which the opposing party intends to use at the hearing.

3. The hearing officer may administer oaths and affirmations and examine witnesses.

4. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination, impeach any witness, regardless of which party first called the witness to testify, and rebut the evidence against him or her.

Sec. 6. NRS 288.150 is hereby amended to read as follows:

288.150 1. Except as provided in subsection 4, every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for

each appropriate bargaining unit among its employees. If either party so requests, agreements reached must be reduced to writing.

2. The scope of mandatory bargaining is limited to:

(a) Salary or wage rates or other forms of direct monetary compensation.

(b) Sick leave.

(c) Vacation leave.

(d) Holidays.

(e) Other paid or nonpaid leaves of absence.

(f) Insurance benefits.

(g) Total hours of work required of an employee on each workday or workweek.

(h) Total number of days' work required of an employee in a work year.

(i) Discharge and disciplinary procedures ~~[.]~~ ***, which must be consistent with sections 3, 4 and 5 of this act.***

(j) Recognition clause.

(k) The method used to classify employees in the bargaining unit.

(l) Deduction of dues for the recognized employee organization.

(m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.

(n) No-strike provisions consistent with the provisions of this chapter.

(o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.

(p) General savings clauses.

(q) Duration of collective bargaining agreements.

(r) Safety of the employee.

(s) Teacher preparation time.

(t) Materials and supplies for classrooms.

(u) The policies for the transfer and reassignment of teachers.

(v) Procedures for reduction in workforce.

3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:

(a) Except as otherwise provided in paragraph (u) of subsection 2, the right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.

(b) The right to reduce in force or lay off any employee because of lack of work or lack of money, subject to paragraph (v) of subsection 2.

(c) The right to determine:

(1) Appropriate staffing levels and work performance standards, except for safety considerations;

(2) The content of the workday, including , without limitation , workload factors, except for safety considerations;

(3) The quality and quantity of services to be offered to the public; and

(4) The means and methods of offering those services.

(d) Safety of the public.

4. Notwithstanding the provisions of any collective bargaining agreement negotiated pursuant to this chapter, a local government employer is entitled to take whatever actions may be necessary to carry out its responsibilities in situations of emergency such as a riot, military action, natural disaster or civil disorder. Those actions may include the suspension of any collective bargaining agreement for the duration of the emergency. Any action taken under the provisions of this subsection must not be construed as a failure to negotiate in good faith.

5. The provisions of this chapter, including , without limitation , the provisions of this section, recognize and declare the ultimate right and responsibility of the local government employer to manage its operation in the most efficient manner consistent with the best interests of all its citizens, its taxpayers and its employees.

6. This section does not preclude, but this chapter does not require the local government employer to negotiate subject matters enumerated in subsection 3 which are outside the scope of mandatory bargaining. The local government employer shall discuss subject matters outside the scope of mandatory bargaining but it is not required to negotiate those matters.

7. Contract provisions presently existing in signed and ratified agreements as of May 15, 1975, at 12 p.m. remain negotiable.

Sec. 7. 1. To the extent that the provisions of sections 3 to 6, inclusive, of this act conflict with the provisions of a collective bargaining agreement in effect on July 1, 2011, the provisions of the collective bargaining agreement prevail.

2. A collective bargaining agreement which is entered into or renewed on or after July 1, 2011, must not conflict with the provisions of sections 3 to 6, inclusive, of this act, and any provision which conflicts with those sections is void.

Sec. 8. This act becomes effective on July 1, 2011.

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