

Amendment No. 257

Senate Amendment to Senate Bill No. 201

(BDR 23-559)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

DP/JWP



Date: 4/19/2013

S.B. No. 201—Revises provisions governing the employment of retired public employees. (BDR 23-559)



SENATE BILL NO. 201—SENATORS SEGERBLOM AND PARKS

FEBRUARY 28, 2013

JOINT SPONSORS: ASSEMBLYMEN ELLIOT ANDERSON,
BENITEZ-THOMPSON, HICKEY AND PIERCE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the employment of retired public employees. (BDR 23-559)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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' retirement; providing for the reemployment of retired public employees who are appointed to certain ~~positions~~ **boards and commissions** by the Governor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes certain restrictions on the reemployment of a retired public employee by a public employer that participates in the Public Employees' Retirement System. For example, the reemployment of such an employee is ordinarily limited to positions for which there is a critical labor shortage, as designated by the State Board of Examiners or other designating authority. (NRS 286.523) In most cases, the employee is also disqualified from receiving any retirement benefits from the System for the duration of the employment. (NRS 286.520)

This bill creates an exception to those provisions for a retired employee who is appointed by the Governor to a ~~position with a public employer~~ **board or commission whose members are entitled by law to an annual salary.** Section 1 of this bill provides for the reemployment of such an employee **, subject to certain limitations,** and provides that the employee: (1) may be appointed to such a position regardless of whether it is one for which there is a critical labor shortage; (2) shall, if the position is eligible to participate in the System, reenroll in the System for the duration of the appointment; (3) is not disqualified from receiving allowances under the System during the period of the appointment; and (4) does not accrue creditable service during that period or have any entitlement to additional allowances from the System. While the employee remains in the appointive position, if the position is eligible to participate in the System, **section 1** also requires the employee and employer to make the contributions to the System otherwise required by law ~~and~~ **, but** provides that the employee is **not** entitled to a refund of the employee's contributions made during that period. **Sections 2-6** of this bill make conforming changes to the relevant provisions of chapter 286 of NRS.

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

Section 1. Chapter 286 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of this chapter, a retired employee who is appointed by the Governor to a ~~position with a public employer under the System~~ salaried board or commission:

(a) May be appointed to such a position regardless of whether it is one for which there is a critical labor shortage ~~if~~ if:

(1) One year or more has elapsed since the effective date of the employee's retirement; and

(2) The employee was not a member of that board or commission before his or her retirement.

(b) If the appointive position is eligible to participate in the System, shall reenroll in the System for the duration of the appointment.

(c) Is not, because of the appointment, disqualified from receiving any allowances under the System.

(d) Does not accrue creditable service during the period of the appointment and is not entitled to any additional allowances from the System for service in the appointive position.

2. During the period of the appointment, if the appointive position is eligible to participate in the System, the employee and the employer shall make the contributions to the System otherwise required by this chapter. ~~After the end of that period and upon written request, the~~ The employee is not entitled to receive a refund of ~~full~~ contributions made by the employee during that period.

3. As used in this section, "salaried board or commission" means a board or commission of the State of Nevada or a political subdivision thereof whose members are entitled by law to an annual salary. The term:

(a) Includes, without limitation, the Nevada Gaming Commission and the State Gaming Control Board.

(b) Does not include a board or commission described in subsection 4 of NRS 286.297.

Sec. 2. NRS 286.297 is hereby amended to read as follows:

286.297 The following persons are not eligible to become members of the System:

1. Inmates of state institutions even though they may be receiving compensation for services performed for the institution.

2. Independent contractors or persons rendering professional services on a fee, retainer or contract basis.

3. Except as otherwise provided in NRS 286.525 and section 1 of this act, persons retired under the provisions of this chapter who are employed by a participating public employer.

4. Members of boards or commissions of the State of Nevada or of its political subdivisions when such boards or commissions are advisory or directive and when membership thereon is not compensated except for expenses incurred. Receipt of a fee for attendance at official sessions of a particular board or commission does not constitute compensation for the purpose of this subsection.

5. Substitute teachers and students who are employed by the institution which they attend.

6. District judges and justices of the Supreme Court first elected or appointed on or after July 1, 1977, who are not enrolled in the System at the time of election or appointment.

7. Members of the professional staff of the Nevada System of Higher Education who are employed on or after July 1, 1977.

8. Persons employed on or after July 1, 1979, under the Comprehensive Employment and Training Act.

9. Except as otherwise provided in NRS 286.293, persons assigned to intermittent or temporary positions unless the assignment exceeds 6 consecutive months.

10. Persons employed on or after July 1, 1981, as part-time guards at school crossings.

11. Nurses who:

(a) Are not full-time employees;

(b) Are paid an hourly wage on a daily basis;

(c) Do not receive the employee benefits received by other employees of the same employer; and

(d) Do not work a regular schedule or are requested to work for a shift at a time.

Sec. 3. NRS 286.401 is hereby amended to read as follows:

286.401 ~~Membership~~ *Except as otherwise provided in section 1 of this act, membership* of an employee in the System terminates upon:

1. The death of a member.

2. The withdrawal of contributions from a member's account.

3. Receipt of retirement allowances by a member.

4. Receipt of disability allowances by a member.

↪ A retired employee is not entitled to any right conferred by this chapter upon a member unless the provision conferring that right expressly states that it is conferred upon a retired employee.

Sec. 4. NRS 286.520 is hereby amended to read as follows:

286.520 1. Except as otherwise provided in this section and NRS 286.525, the consequences of the employment of a retired employee are:

(a) A retired employee who accepts employment or an independent contract with a public employer under this System is disqualified from receiving any allowances under this System for the duration of that employment or contract if:

(1) The retired employee accepted the employment or contract within 90 calendar days after the effective date of the employee's retirement; or

(2) The retired employee is employed in a position which is eligible to participate in this System.

(b) If a retired employee accepts employment or an independent contract with a public employer under this System more than 90 calendar days after the effective date of the employee's retirement in a position which is not eligible to participate in this System, the employee's allowance under this System terminates upon the employee's earning an amount equal to one-half of the average salary for participating public employees who are not police officers or firefighters in any fiscal year, for the duration of that employment or contract.

(c) If a retired employee accepts employment with an employer who is not a public employer under this System, the employee is entitled to the same allowances as a retired employee who has no employment.

2. The retired employee and the public employer shall notify the System:

(a) Within 10 days after the first day of an employment or contract governed by paragraph (a) of subsection 1.

(b) Within 30 days after the first day of an employment or contract governed by paragraph (b) of subsection 1.

(c) Within 10 days after a retired employee earns more than one-half of the average salary for participating public employees who are not police officers or firefighters in any fiscal year from an employment or contract governed by paragraph (b) of subsection 1.

3. For the purposes of this section, the average salary for participating public employees who are not police officers or firefighters must be computed on the basis of the most recent actuarial valuation of the System.

4. If a retired employee who accepts employment or an independent contract with a public employer under this System pursuant to this section elects not to reenroll in the System pursuant to subsection 1 of NRS 286.525, the public employer with which the retired employee accepted employment or an independent contract may pay contributions on behalf of the retired employee to a retirement fund which is not a part of the System in an amount not to exceed the amount of the contributions that the public employer would pay to the System on behalf of a participating public employee who is employed in a similar position.

5. If a retired employee is chosen by election or appointment to fill an elective public office, the retired employee is entitled to the same allowances as a retired employee who has no employment, unless the retired employee is serving in the same office in which the retired employee served and for which the retired employee received service credit as a member. A public employer may pay contributions on behalf of such a retired employee to a retirement fund which is not a part of the System in an amount not to exceed the amount of the contributions that the public employer would pay to the System on behalf of a participating public employee who serves in the same office.

6. The System may waive for one period of 30 days or less a retired employee's disqualification under this section if the public employer certifies in writing, in advance, that the retired employee is recalled to meet an emergency and that no other qualified person is immediately available.

7. A person who accepts employment or an independent contract with either house of the Legislature or by the Legislative Counsel Bureau is exempt from the provisions of subsections 1 and 2 for the duration of that employment or contract.

8. A person who accepts employment with a volunteer fire department of which all the volunteers have become members of the System pursuant to NRS 286.367 is exempt from the provisions of subsections 1 and 2 for the duration of that employment.

9. A retired employee described in section 1 of this act who is appointed by the Governor to a position described in that section is exempt from the provisions of subsections 1 and 2 for the duration of the appointment.

Sec. 5. NRS 286.523 is hereby amended to read as follows:

286.523 1. It is the policy of this State to ensure that the reemployment of a retired public employee pursuant to this section is limited to positions of extreme need. An employer who desires to employ such a retired public employee to fill a position for which there is a critical labor shortage must make the determination of reemployment based upon the appropriate and necessary delivery of services to the public.

2. The provisions of subsections 1 and 2 of NRS 286.520 do not apply to a retired employee who accepts employment or an independent contract with a public employer under the System if:

(a) The retired employee fills a position for which there is a critical labor shortage; and

(b) At the time of the retired employee's reemployment, the retired employee is receiving:

(1) A benefit that is not actuarially reduced pursuant to subsection 6 of NRS 286.510; or

(2) A benefit actuarially reduced pursuant to subsection 6 of NRS 286.510 and has reached the required age at which the retired employee could have retired with a benefit that was not actuarially reduced pursuant to subsection 6 of NRS 286.510.

3. A retired employee who is reemployed under the circumstances set forth in subsection 2 may reenroll in the System as provided in NRS 286.525.

4. Positions for which there are critical labor shortages must be determined in an open public meeting held by the designating authority as follows:

(a) Except as otherwise provided in this subsection, the State Board of Examiners shall designate positions in State Government for which there are critical labor shortages.

(b) The Supreme Court shall designate positions in the Judicial Branch of State Government for which there are critical labor shortages.

(c) The Board of Regents shall designate positions in the Nevada System of Higher Education for which there are critical labor shortages.

(d) The board of trustees of each school district shall designate positions within the school district for which there are critical labor shortages.

(e) The governing body of a charter school shall designate positions within the charter school for which there are critical labor shortages.

(f) The governing body of a local government shall designate positions with the local government for which there are critical labor shortages.

(g) The Board shall designate positions within the System for which there are critical labor shortages.

5. In determining whether a position is a position for which there is a critical labor shortage, the designating authority shall make findings based upon the criteria set forth in this subsection that support the designation. Before making a designation, the designating authority shall consider all efforts made by the applicable employer to fill the position through other means. The written findings made by the designating authority must include:

(a) The history of the rate of turnover for the position;

(b) The number of openings for the position and the number of qualified candidates for those openings after all other efforts of recruitment have been exhausted;

(c) The length of time the position has been vacant;

(d) The difficulty in filling the position due to special circumstances, including, without limitation, special educational or experience requirements for the position; and

(e) The history and success of the efforts to recruit for the position, including, without limitation, advertising, recruitment outside of this State and all other efforts made.

6. A designating authority that designates a position as a critical need position shall submit to the System its written findings which support that designation made pursuant to subsection 5 on a form prescribed by the System. The System shall compile the forms received from each designating authority and provide a biennial report on the compilation to the Interim Retirement and Benefits Committee of the Legislature.

7. A designating authority shall not designate a position pursuant to subsection 4 as a position for which there is a critical labor shortage for a period longer than 2 years. To be redesignated as such a position, the designating authority

1 must consider and make new findings in an open public meeting as to whether the
2 position continues to meet the criteria set forth in subsection 5.

3 ***8. The provisions of this section do not apply to a retired employee***
4 ***described in section 1 of this act who is appointed by the Governor to a position***
5 ***described in that section.***

6 **Sec. 6.** NRS 286.525 is hereby amended to read as follows:

7 286.525 ***Except as otherwise provided in section 1 of this act:***

8 1. A retired employee who accepts employment in a position eligible for
9 membership may enroll in the System as of the effective date of that employment.
10 As of the date of enrollment:

11 (a) The retired employee forfeits all retirement allowances for the duration of
12 that employment.

13 (b) The retired employee is entitled to receive, after the termination of the
14 employment and upon written request, a refund of all contributions made by the
15 retired employee during the employment. Except as otherwise required as a result
16 of NRS 286.535 or 286.537, if the retired employee does not request the refund and
17 the duration of the employment was at least 6 months, the retired employee gains
18 additional service credit for that employment and is entitled to have a separate
19 service retirement allowance calculated based on the retired employee's
20 compensation and service, effective upon the termination of that employment. If the
21 duration of the employment was:

22 (1) Less than 5 years, the additional allowance must be added to the retired
23 employee's original allowance and must be under the same option and designate the
24 same beneficiary as the original allowance.

25 (2) Five years or more, the additional allowance may be under any option
26 and designate any beneficiary in accordance with NRS 286.545.

27 2. The original service retirement allowance of such a retired employee must
28 not be recalculated based upon the additional service credit, nor is the retired
29 employee entitled to any of the rights of membership that were not in effect at the
30 time of the retired employee's original retirement. The accrual of service credit
31 pursuant to this section is subject to the limits imposed by:

32 (a) NRS 286.551; and

33 (b) Section 415 of the Internal Revenue Code, 26 U.S.C. § 415, if the
34 member's effective date of membership is on or after January 1, 1990.

35 3. Except as otherwise required as a result of NRS 286.470, 286.535 or
36 286.537, a retired employee who has been receiving a retirement allowance and
37 who is reemployed and is enrolled in the System for at least 5 years may have the
38 retired employee's additional credit for service added to the retired employee's
39 previous credit for service. This additional credit for service must not apply to more
40 than one period of employment after the original retirement.

41 4. The survivor of a deceased member who had previously retired and was
42 rehired and enrolled in the System, who qualifies for benefits pursuant to NRS
43 286.671 to 286.6793, inclusive, is eligible for the benefits based on the service
44 accrued through the second period of employment.

45 **Sec. 7.** This act becomes effective upon passage and approval.