

SENATE BILL NO. 124—SENATOR GOICOECHEA

FEBRUARY 18, 2013

JOINT SPONSOR: ASSEMBLYMAN ELLISON

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to local government employment. (BDR 23-544)

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 local government employment; providing that fact finders, hearing officers and arbitrators in certain employment-related matters must be attorneys in good standing admitted to practice law in the courts of this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides for the submission of certain employment-related matters
2 of local governments to fact finders, hearing officers and arbitrators. (NRS 288.200,
3 391.3161, 391.317, 391.3197) This bill provides that, unless mutually agreed
4 otherwise by the parties to such an employment-related matter, the fact finder,
5 hearing officer or arbitrator appointed in the matter must be an attorney in good
6 standing admitted to practice law in the courts of this State.

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

1 **Section 1.** NRS 288.200 is hereby amended to read as follows:
2 288.200 Except in cases to which NRS 288.205 and 288.215,
3 or NRS 288.217 apply:
4 1. If:
5 (a) The parties have failed to reach an agreement after at least
6 six meetings of negotiations; and



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(b) The parties have participated in mediation and by April 1, have not reached agreement,

➡ either party to the dispute, at any time after April 1, may submit the dispute to an impartial fact finder for the findings and recommendations of the fact finder. The findings and recommendations of the fact finder are not binding on the parties except as provided in subsections 5, 6 and 11. The mediator of a dispute may also be chosen by the parties to serve as the fact finder.

2. If the parties are unable to agree on an impartial fact finder or a panel of neutral arbitrators within 5 days, either party may request from the American Arbitration Association or the Federal Mediation and Conciliation Service a list of seven potential fact finders. *Unless mutually agreed otherwise by the parties, each potential fact finder on the list must be an attorney in good standing admitted to practice law in the courts of this State.* If the parties are unable to agree upon which arbitration service should be used, the Federal Mediation and Conciliation Service must be used. Within 5 days after receiving a list from the applicable arbitration service, the parties shall select their fact finder from this list by alternately striking one name until the name of only one fact finder remains, who will be the fact finder to hear the dispute in question. The employee organization shall strike the first name.

3. The local government employer and employee organization each shall pay one-half of the cost of fact-finding. Each party shall pay its own costs of preparation and presentation of its case in fact-finding.

4. A schedule of dates and times for the hearing must be established within 10 days after the selection of the fact finder pursuant to subsection 2, and the fact finder shall report the findings and recommendations of the fact finder to the parties to the dispute within 30 days after the conclusion of the fact-finding hearing.

5. The parties to the dispute may agree, before the submission of the dispute to fact-finding, to make the findings and recommendations on all or any specified issues final and binding on the parties.

6. If the parties do not agree on whether to make the findings and recommendations of the fact finder final and binding, either party may request the formation of a panel to determine whether the findings and recommendations of a fact finder on all or any specified issues in a particular dispute which are within the scope of subsection 11 are to be final and binding. The determination must be made upon the concurrence of at least two members of the panel and not later than the date which is 30 days after the date on which the matter is submitted to the panel, unless that date is extended by the Commissioner of the Board. Each panel shall, when making its



determination, consider whether the parties have bargained in good faith and whether it believes the parties can resolve any remaining issues. Any panel may also consider the actions taken by the parties in response to any previous fact-finding between these parties, the best interests of the State and all its citizens, the potential fiscal effect both within and outside the political subdivision, and any danger to the safety of the people of the State or a political subdivision.

7. Except as otherwise provided in subsection 10, any fact finder, whether the fact finder's recommendations are to be binding or not, shall base such recommendations or award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the fact finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

➔ The fact finder's report must contain the facts upon which the fact finder based the fact finder's determination of financial ability to grant monetary benefits and the fact finder's recommendations or award.

8. Within 45 days after the receipt of the report from the fact finder, the governing body of the local government employer shall hold a public meeting in accordance with the provisions of chapter 241 of NRS. The meeting must include a discussion of:

(a) The issues of the parties submitted pursuant to subsection 3;

(b) The report of findings and recommendations of the fact finder; and



(c) The overall fiscal impact of the findings and recommendations, which must not include a discussion of the details of the report.

➔ The fact finder must not be asked to discuss the decision during the meeting.

9. The chief executive officer of the local government shall report to the local government the fiscal impact of the findings and recommendations. The report must include, without limitation, an analysis of the impact of the findings and recommendations on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

10. Any sum of money which is maintained in a fund whose balance is required by law to be:

(a) Used only for a specific purpose other than the payment of compensation to the bargaining unit affected; or

(b) Carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount,

➔ must not be counted in determining the financial ability of a local government employer and must not be used to pay any monetary benefits recommended or awarded by the fact finder.

11. The issues which may be included in a panel's order pursuant to subsection 6 are:

(a) Those enumerated in subsection 2 of NRS 288.150 as the subjects of mandatory bargaining, unless precluded for that year by an existing collective bargaining agreement between the parties; and

(b) Those which an existing collective bargaining agreement between the parties makes subject to negotiation in that year.

➔ This subsection does not preclude the voluntary submission of other issues by the parties pursuant to subsection 5.

Sec. 2. NRS 391.3161 is hereby amended to read as follows:

391.3161 1. Each request for the appointment of a person to serve as a hearing officer must be submitted to the Superintendent of Public Instruction.

2. Within 10 days after receipt of such a request, the Superintendent of Public Instruction shall request that the Hearings Division of the Department of Administration appoint a hearing officer. *Unless mutually agreed otherwise by the parties, the hearing officer appointed must be an attorney in good standing admitted to practice law in the courts of this State.*

3. The State Board shall prescribe the procedures for exercising challenges to a hearing officer, including, without limitation, the number of challenges that may be exercised and the time limits in which the challenges must be exercised.



1 4. A hearing officer shall conduct hearings in cases of
2 demotion, dismissal or a refusal to reemploy based on the grounds
3 contained in subsection 1 of NRS 391.312.

4 5. This section does not preclude the employee and the
5 superintendent from mutually selecting an attorney who is a resident
6 of this State, an arbitrator provided by the American Arbitration
7 Association or a representative of an agency or organization that
8 provides alternative dispute resolution services to serve as a hearing
9 officer to conduct a particular hearing.

10 **Sec. 3.** NRS 391.317 is hereby amended to read as follows:

11 391.317 1. At least 15 days before recommending to a board
12 that it demote, dismiss or not reemploy a postprobationary
13 employee, the superintendent shall give written notice to the
14 employee, by registered or certified mail, of the superintendent's
15 intention to make the recommendation.

16 2. The notice must:

17 (a) Inform the licensed employee of the grounds for the
18 recommendation.

19 (b) Inform the employee that, if a written request therefor is
20 directed to the superintendent within 10 days after receipt of the
21 notice, the employee is entitled to a hearing before a hearing officer
22 pursuant to NRS 391.315 to 391.3194, inclusive, or if a dismissal of
23 the employee will occur before the completion of the current school
24 year or if the employee is deemed to be a probationary employee
25 pursuant to NRS 391.3129 and dismissal of the employee will occur
26 before the completion of the current school year, the employee may
27 request an expedited hearing pursuant to subsection 3.

28 (c) Refer to chapter 391 of NRS.

29 3. If a postprobationary employee or an employee who is
30 deemed to be a probationary employee pursuant to NRS 391.3129
31 receives notice that he or she will be dismissed before the
32 completion of the current school year, the employee may request an
33 expedited hearing pursuant to the Expedited Labor Arbitration
34 Procedures established by the American Arbitration Association or
35 its successor organization. *Unless mutually agreed otherwise by the*
36 *parties, the arbitrator appointed must be an attorney in good*
37 *standing admitted to practice law in the courts of this State.* If the
38 employee elects to proceed under the expedited procedures, the
39 provisions of NRS 391.3161, 391.3192 and 391.3193 do not apply.

40 **Sec. 4.** NRS 391.3197 is hereby amended to read as follows:

41 391.3197 1. A probationary employee is employed on a
42 contract basis for three 1-year periods and has no right to
43 employment after any of the three probationary contract years.

44 2. The board shall notify each probationary employee in
45 writing on or before May 1 of the first, second and third school



1 years of the employee's probationary period, as appropriate,
2 whether the employee is to be reemployed for the second or third
3 year of the probationary period or for the fourth school year as a
4 postprobationary employee. Failure of the board to notify the
5 probationary employee in writing on or before May 1 in the first or
6 second year of the probationary period does not entitle the employee
7 to postprobationary status. The employee must advise the board in
8 writing on or before May 10 of the first, second or third year of the
9 employee's probationary period, as appropriate, of the employee's
10 acceptance of reemployment. If a probationary employee is assigned
11 to a school that operates all year, the board shall notify the employee
12 in writing, in the first, second and third years of the employee's
13 probationary period, no later than 45 days before his or her last day
14 of work for the year under his or her contract whether the employee
15 is to be reemployed for the second or third year of the probationary
16 period or for the fourth school year as a postprobationary employee.
17 Failure of the board to notify a probationary employee in writing
18 within the prescribed period in the first or second year of the
19 probationary period does not entitle the employee to
20 postprobationary status. The employee must advise the board in
21 writing within 10 days after the date of notification of his or her
22 acceptance or rejection of reemployment for another year. Failure to
23 advise the board of the employee's acceptance of reemployment
24 pursuant to this subsection constitutes rejection of the contract.

25 3. A probationary employee who:

26 (a) Completes a 3-year probationary period;

27 (b) Receives a designation of "highly effective" or "effective"
28 on each of his or her performance evaluations for 2 consecutive
29 school years; and

30 (c) Receives a notice of reemployment from the school district
31 in the third year of the employee's probationary period,
32 ➔ is entitled to be a postprobationary employee in the ensuing year
33 of employment.

34 4. If a probationary employee is notified that the employee will
35 not be reemployed for the school year following the 3-year
36 probationary period, his or her employment ends on the last day of
37 the current school year. The notice that the employee will not be
38 reemployed must include a statement of the reasons for that
39 decision.

40 5. A new employee who is employed as an administrator or a
41 postprobationary teacher who is employed as an administrator shall
42 be deemed to be a probationary employee for the purposes of this
43 section and must serve a 3-year probationary period as an
44 administrator in accordance with the provisions of this section. If:



1 (a) A postprobationary teacher who is an administrator is not
2 reemployed as an administrator after any year of his or her
3 probationary period; and

4 (b) There is a position as a teacher available for the ensuing
5 school year in the school district in which the person is employed,
6 ➤ the board of trustees of the school district shall, on or before
7 May 1, offer the person a contract as a teacher for the ensuing
8 school year. The person may accept the contract in writing on or
9 before May 10. If the person fails to accept the contract as a teacher,
10 the person shall be deemed to have rejected the offer of a contract as
11 a teacher.

12 6. An administrator who has completed his or her probationary
13 period pursuant to subsection 5 and is thereafter promoted to the
14 position of principal must serve an additional probationary period of
15 1 year in the position of principal. If an administrator is promoted to
16 the position of principal before completion of his or her
17 probationary period pursuant to subsection 5, the administrator must
18 serve the remainder of his or her probationary period pursuant to
19 subsection 5 or an additional probationary period of 1 year in the
20 position of principal, whichever is longer. If the administrator
21 serving the additional probationary period is not reemployed as a
22 principal after the expiration of the probationary period or additional
23 probationary period, as applicable, the board of trustees of the
24 school district in which the person is employed shall, on or before
25 May 1, offer the person a contract for the ensuing school year for
26 the administrative position in which the person attained
27 postprobationary status. The person may accept the contract in
28 writing on or before May 10. If the person fails to accept such a
29 contract, the person shall be deemed to have rejected the offer of
30 employment.

31 7. If a probationary employee receives notice that he or she
32 will be dismissed before the completion of the current school year,
33 the probationary employee may request an expedited hearing
34 pursuant to the Expedited Labor Arbitration Procedures established
35 by the American Arbitration Association or its successor
36 organization. *Unless mutually agreed otherwise by the parties, the*
37 *arbitrator appointed must be an attorney in good standing*
38 *admitted to practice law in the courts of this State.*

