

## ASSEMBLY BILL NO. 271—ASSEMBLYMAN CARRILLO

MARCH 8, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing collective bargaining by local government employers. (BDR 23-290)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
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 governments; revising provisions relating to collective bargaining between local government employers and employee organizations; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law generally requires a local government employer to engage in collective bargaining with the recognized employee organization, if any, for each bargaining unit among its employees. In particular, existing law establishes certain mandatory subjects of bargaining in the negotiation of such collective bargaining agreements. Among those mandatory subjects are sick leave, vacation leave, holidays and other paid or unpaid leaves of absence. (NRS 288.150) **Section 2** of this bill clarifies that leave provided by a local government employer to an employee for time spent by the employee in performing duties or providing services for an employee organization is a mandatory subject of collective bargaining.

Under existing law, if a local government employer and an employee organization that represents local government employees, other than teachers and educational support personnel, fail to resolve a disputed issue in negotiating a collective bargaining agreement, either party may submit the dispute to an impartial fact finder. Before submitting the dispute to the fact finder, the parties may agree to make the findings and recommendation of the fact finder final and binding. If the parties cannot agree, either party may request the formation of a panel to determine whether the findings and recommendations of the fact finder on certain issues are to be final and binding. (NRS 288.200) **Sections 3 and 7** of this bill remove or repeal the provisions relating to such panels. **Section 3** also provides that the findings and award of the fact finder are final and binding on the parties. **Sections 1 and 6** of this bill make conforming changes.

Existing law establishes certain procedures and requirements applicable to the fact-finding process in negotiations between local government employers and recognized employee organizations representing firefighters and police officers.



\* A B 2 7 1 \*

(NRS 288.205, 288.215) Those procedures and requirements differ in certain respects from the procedures and requirements applicable to fact-finding in labor negotiations involving other local government employees. **Section 4** of this bill makes additional changes applicable only to labor disputes involving firefighters and police officers. Specifically, **section 4** provides that unless the parties to the dispute agree to make the findings of the fact finder final and binding: (1) the report of the fact finder must include recommendations for settlement of the dispute, in lieu of an award; and (2) the findings and recommendations of the fact finder are not binding on the parties.

Existing law authorizes a local government employer to provide leave to an employee for time spent by the employee in performing duties or providing services for an employee organization if the full cost of such leave is paid or reimbursed by the employee organization or is offset by the value of concessions made by the employee organization in the negotiation of an agreement with the local government employer. (NRS 288.225) **Section 5** of this bill provides that unless the terms of the agreement between a local government employer and an employee organization provide otherwise, if the local government employer agrees to provide such leave, there is a rebuttable presumption that the full cost of such leave has been offset by the value of concessions made by the employee organization.

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

**Section 1.** NRS 288.045 is hereby amended to read as follows:

288.045 "Fact-finding" means the formal procedure by which an investigation of a labor dispute is conducted by ~~one person, a panel or a board~~ **a fact finder** at which:

1. Evidence is presented; and

2. A written report is issued by the fact finder describing the issues involved, **making findings** and setting forth recommendations for settlement ~~which may or may not be binding as provided in NRS 288.200.~~ **or an award.**

**Sec. 2.** NRS 288.150 is hereby amended to read as follows:

288.150 1. Except as otherwise provided in subsection 4 and NRS 354.6241, 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 consistent with the provisions of this chapter ~~H~~, *including, without limitation, leave granted pursuant to NRS 288.225 for time spent by an employee in performing duties or providing services for an employee organization.*

(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) Except as otherwise provided in subsection 6, discharge and disciplinary procedures.

(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) Except as otherwise provided in subsections 7 and 9, the policies for the transfer and reassignment of teachers.

(v) Procedures for reduction in workforce consistent with the provisions of this chapter.

(w) Procedures consistent with the provisions of subsection 4 for the reopening of collective bargaining agreements for additional, further, new or supplementary negotiations during periods of fiscal emergency.

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:

(a) Reopen a collective bargaining agreement for additional, further, new or supplementary negotiations relating to compensation or monetary benefits during a period of fiscal emergency. Negotiations must begin not later than 21 days after the local government employer notifies the employee organization that a fiscal emergency exists. For the purposes of this section, a fiscal emergency shall be deemed to exist:

(1) If the amount of revenue received by the general fund of the local government employer during the last preceding fiscal year from all sources, except any nonrecurring source, declined by 5 percent or more from the amount of revenue received by the general fund from all sources, except any nonrecurring source, during the next preceding fiscal year, as reflected in the reports of the annual audits conducted for those fiscal years for the local government employer pursuant to NRS 354.624; or

(2) If the local government employer has budgeted an unreserved ending fund balance in its general fund for the current fiscal year in an amount equal to 4 percent or less of the actual expenditures from the general fund for the last preceding fiscal year, and the local government employer has provided a written explanation of the budgeted ending fund balance to the Department of Taxation that includes the reason for the ending fund balance and the manner in which the local government employer plans to increase the ending fund balance.

(b) 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.



1   ↪ Any action taken under the provisions of this subsection must not  
2 be construed as a failure to negotiate in good faith.

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

8     6. If the sponsor of a charter school reconstitutes the governing  
9 body of a charter school pursuant to NRS 388A.330, the new  
10 governing body may terminate the employment of any teachers or  
11 other employees of the charter school, and any provision of any  
12 agreement negotiated pursuant to this chapter that provides  
13 otherwise is unenforceable and void.

14     7. The board of trustees of a school district in which a school is  
15 designated as a turnaround school pursuant to NRS 388G.400 or the  
16 principal of such a school, as applicable, may take any action  
17 authorized pursuant to NRS 388G.400, including, without  
18 limitation:

19       (a) Reassigning any member of the staff of such a school; or

20       (b) If the staff member of another public school consents,  
21 reassigning that member of the staff of the other public school to  
22 such a school.

23     8. Any provision of an agreement negotiated pursuant to this  
24 chapter which differs from or conflicts in any way with the  
25 provisions of subsection 7 or imposes consequences on the board of  
26 trustees of a school district or the principal of a school for taking  
27 any action authorized pursuant to subsection 7 is unenforceable and  
28 void.

29     9. The board of trustees of a school district may reassign any  
30 member of the staff of a school that is converted to an achievement  
31 charter school pursuant to NRS 388B.200 to 388B.230, inclusive,  
32 and any provision of any agreement negotiated pursuant to this  
33 chapter which provides otherwise is unenforceable and void.

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

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

42     12. As used in this section, "achievement charter school" has  
43 the meaning ascribed to it in NRS 385.007.



1       **Sec. 3.** 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

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

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

15       2. If the parties are unable to agree on an impartial fact finder  
16 ~~{or a panel of neutral arbitrators}~~ within 5 days, either party may  
17 request from the American Arbitration Association or the Federal  
18 Mediation and Conciliation Service a list of seven potential fact  
19 finders. If the parties are unable to agree upon which arbitration  
20 service should be used, the Federal Mediation and Conciliation  
21 Service must be used. Within 5 days after receiving a list from the  
22 applicable arbitration service, the parties shall select their fact finder  
23 from this list by alternately striking one name until the name of only  
24 one fact finder remains, who will be the fact finder to hear the  
25 dispute in question. The employee organization shall strike the first  
26 name.

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

31       4. A schedule of dates and times for the hearing must be  
32 established within 10 days after the selection of the fact finder  
33 pursuant to subsection 2, and the fact finder shall report the findings  
34 and ~~{recommendations}~~ **award** of the fact finder to the parties to the  
35 dispute within 30 days after the conclusion of the fact-finding  
36 hearing.

37       5. ~~{The parties to the dispute may agree, before the submission~~  
38 ~~of the dispute to fact finding, to make the findings and~~  
39 ~~recommendations on all or any specified issues final and binding on~~  
40 ~~the parties.}~~

41       ~~6. If the parties do not agree on whether to make the findings~~  
42 ~~and recommendations of the fact finder final and binding, either~~  
43 ~~party may request the formation of a panel to determine whether the~~  
44 ~~findings and recommendations of a fact finder on all or any~~  
45 ~~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~~ **8, the** fact finder ~~1, whether the fact finder's recommendations are to be binding or not,~~ shall base ~~such recommendations or~~ **the** 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.~~ The award is final and binding on the parties.**

**6.** Within 45 days after the receipt of the report from the fact finder, the governing body of the local government employer shall



1 hold a public meeting in accordance with the provisions of chapter  
2 241 of NRS. The meeting must include a discussion of:

3 (a) The issues of the parties submitted pursuant to ~~subsection~~  
4 ~~3-] this section;~~

5 (b) The report ~~[of findings and recommendations]~~ of the fact  
6 finder; and

7 (c) The overall fiscal impact of the findings and  
8 ~~recommendations.] award~~, which must not include a discussion of  
9 the details of the report.

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

12 ~~[9-] 7.~~ The chief executive officer of the local government  
13 shall report to the local government the fiscal impact of the findings  
14 and ~~recommendations.] award~~. The report must include, without  
15 limitation, an analysis of the impact of the findings and  
16 ~~recommendations]~~ *award* on compensation and reimbursement,  
17 funding, benefits, hours, working conditions or other terms and  
18 conditions of employment.

19 ~~[10-] 8.~~ Any sum of money which is maintained in a fund  
20 whose balance is required by law to be:

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

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

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

28 ~~[11-] 9.~~ The issues which may be included in *an award by a*  
29 ~~[panel's order pursuant to subsection 6] fact finder~~ are:

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

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

35 ➔ This subsection does not preclude the voluntary submission of  
36 other issues by the parties. ~~[pursuant to subsection 5.]~~

37 *10. Except for the period prescribed by subsection 6, any time*  
38 *limit prescribed by this section may be extended by agreement of*  
39 *the parties.*

40 **Sec. 4.** NRS 288.205 is hereby amended to read as follows:

41 288.205 *1.* In the case of an employee organization and a  
42 local government employer to which NRS 288.215 applies, the  
43 following departures from the provisions of NRS 288.200 also  
44 apply:





~~11-1~~ (a) If the parties have not reached agreement by April 10, either party may submit the dispute to an impartial fact finder at any time for the findings of the fact finder.

~~12-1~~ (b) In a regular legislative year, the fact-finding hearing must be stayed up to 20 days after the adjournment of the Legislature sine die.

~~13-1~~ (c) *Unless the parties otherwise agree, before the submission of the dispute to fact-finding, to make the findings of the fact finder on all or any specified issues final and binding on the parties:*

*(1) The report of the fact finder must include recommendations for settlement on the issues submitted to the fact finder, in lieu of an award;*

*(2) The provisions of NRS 288.200 applicable to an award apply to the recommendations of the fact finder; and*

*(3) The findings and recommendations of the fact finder are not binding on the parties.*

2. Any time limit prescribed by this section ~~for NRS 288.200~~ may be extended by agreement of the parties.

**Sec. 5.** NRS 288.225 is hereby amended to read as follows:

288.225 1. A local government employer may agree to provide leave to any of its employees for time spent by the employee in performing duties or providing services for an employee organization if the full cost of such leave is paid or reimbursed by the employee organization or is offset by the value of concessions made by the employee organization in the negotiation of an agreement with the local government employer pursuant to this chapter.

2. *Unless the terms of the agreement between a local government employer and an employee organization provide otherwise, if the local government employer agrees to provide leave to any of its employees as described in subsection 1, there is a rebuttable presumption that the full cost of such leave has been offset by the value of concessions made by the employee organization. The presumption created by this subsection may only be rebutted by clear and convincing evidence.*

**Sec. 6.** NRS 353.264 is hereby amended to read as follows:

353.264 1. The Reserve for Statutory Contingency Account is hereby created in the State General Fund.

2. The State Board of Examiners shall administer the Reserve for Statutory Contingency Account. The money in the Account must be expended only for:

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310,



1 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, ~~288.203,~~  
2 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;

3 (b) The payment of claims which are obligations of the State  
4 pursuant to:

5 (1) Chapter 472 of NRS arising from operations of the  
6 Division of Forestry of the State Department of Conservation and  
7 Natural Resources directly involving the protection of life and  
8 property; and

9 (2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153,  
10 ➔ except that claims may be approved for the respective purposes  
11 listed in this paragraph only when the money otherwise appropriated  
12 for those purposes has been exhausted;

13 (c) The payment of claims which are obligations of the State  
14 pursuant to NRS 41.0349 and 41.037, but only to the extent that the  
15 money in the Fund for Insurance Premiums is insufficient to pay the  
16 claims; and

17 (d) The payment of claims which are obligations of the State  
18 pursuant to NRS 535.030 arising from remedial actions taken by the  
19 State Engineer when the condition of a dam becomes dangerous to  
20 the safety of life or property.

21 3. The State Board of Examiners may authorize its Clerk or a  
22 person designated by the Clerk, under such circumstances as it  
23 deems appropriate, to approve, on behalf of the Board, the payment  
24 of claims from the Reserve for Statutory Contingency Account. For  
25 the purpose of exercising any authority granted to the Clerk of the  
26 State Board of Examiners or to the person designated by the Clerk  
27 pursuant to this subsection, any statutory reference to the State  
28 Board of Examiners relating to such a claim shall be deemed to refer  
29 to the Clerk of the Board or the person designated by the Clerk.

30 **Sec. 7.** NRS 288.201, 288.202 and 288.203 are hereby  
31 repealed.

32 **Sec. 8.** This act becomes effective on July 1, 2017.

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## TEXT OF REPEALED SECTIONS

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**288.201 Request for formation of panel to determine whether findings and recommendations of fact finder are final and binding.** Any request for the formation of a panel to determine whether the findings and recommendations of a fact finder must be final and binding must be filed with the Commissioner. The request must include:



\* A B 2 7 1 \*

1. A list of the issues which remain unresolved and the position of each party regarding those issues;
  2. The requester's assessment of the fiscal effect on the local government of the requester's positions;
  3. An outline of any previous fact-finding between the parties, which includes any recommendations and awards of a fact finder and the actions of each party in response thereto;
  4. A statement of whether the parties engaged in mediation regarding the current dispute;
  5. A schedule of the dates and times set by the fact finder for the hearing; and
  6. Any other information deemed necessary by the Commissioner.
- ➔ Any person filing such a request shall give written notice of the request to the Nevada State Board of Accountancy and the State Bar of Nevada.

**288.202 Formation of panel to determine whether findings and recommendations of fact finder are final and binding.**

1. Within 5 days after receiving notice of such a request, the Nevada State Board of Accountancy and the State Bar of Nevada shall each submit to the Commissioner and each party to the dispute a list of names of five of their members who would serve on a panel and are not closely allied with any employee association or local government employer.
2. Within 8 days after receiving the lists, the parties shall choose one name from each list by alternately striking one name until the names of only one attorney and one accountant remain, who will each be a member of the panel. The parties shall choose the member from the list of accountants separately from their choice from the list of attorneys. The parties shall notify the Commissioner of their selections and the Commissioner shall notify the attorney and accountant selected.
3. Within 5 days after receiving notice of their selection, the attorney and accountant shall:
  - (a) Choose the third member of the panel, who must:
    - (1) Be willing to serve on the panel;
    - (2) Be a resident of this State; and
    - (3) Not be closely allied with any employee organization or local government employer.
  - (b) Notify the Commissioner of their choice, and the three members shall, within 5 days after selecting the third member of the panel, notify the Commissioner of the dates when they will all be available to attend hearings.
4. The Commissioner shall serve as a nonvoting member and also as the chair of the panel.



5. If the accountant or attorney selected to serve on the panel is unable to do so, the Nevada State Board of Accountancy or State Bar of Nevada shall designate a person to replace its nominee. If the person selected by the accountant and attorney is unable to serve, the accountant and attorney shall designate another person as a replacement. If the Commissioner is unable to serve, the Governor shall designate a person to serve in the Commissioner's capacity.

**288.203 Compensation of members of panel; claims.**

1. Each person, except the Commissioner, who serves on a panel formed pursuant to NRS 288.201 is entitled to receive as compensation:

(a) One hundred fifty dollars for each day the person is engaged in the business of the panel; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

2. All claims which arise pursuant to this section must be paid from the Reserve for Statutory Contingency Account upon approval by the Commissioner and the State Board of Examiners.

