

Amendment No. 836

Senate Amendment to Senate Bill No. 286 First Reprint (BDR 23-1012)

Proposed by: Senate Committee on Finance

Amendment Box: Replaces Amendment No. 822.

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.



SENATE BILL NO. 286—SENATOR D. HARRIS

MARCH 22, 2021

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public employees. (BDR 23-1012)

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; deeming a bailiff or deputy marshal to be a local government employee of the county in which he or she is appointed for the purposes of collective bargaining for local government employees; setting forth certain restrictions on collective bargaining between a county and an employee organization which represents bailiffs or deputy marshals; revising the definition of “supervisory employee” for purposes of collective bargaining for local government and state employees to include persons who provide civilian support services to a law enforcement agency; ~~revising the definition of “employee” for purposes of collective bargaining for state employees to include category II peace officers who are agents of the Nevada Gaming Control Board;~~ and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires collective bargaining between local government employers and local government employees and sets forth various requirements and procedures for such collective bargaining. (NRS 288.131-288.280) Existing law requires, in general, a local government employer to engage in good faith in collective bargaining with the recognized employee organization, if any, for each bargaining unit among its employees. Existing law also establishes the scope of bargaining in collective bargaining negotiations between a local government employer and a recognized employee organization. (NRS 288.150)

Existing law authorizes the judge of each district court to appoint a bailiff. In a county whose population is 700,000 or more (currently Clark County), such a judge is authorized to appoint a deputy marshal instead of a bailiff. Under existing law, a bailiff or deputy marshal serves at the pleasure of the judge, but his or her salary is fixed and paid by the county wherein he or she is appointed. (NRS 3.310) Existing law similarly authorizes a justice of the peace for a justice court in a county whose population is 700,000 or more to appoint a deputy marshal. Under existing law, the deputy marshal serves at the pleasure of the justice of the peace, but his or her salary is fixed and paid by the county wherein he or she is appointed. (NRS 4.353)

Section 1 of this bill deems a bailiff or deputy marshal to be a local government employee of the county in which he or she is appointed for the purposes of provisions governing collective bargaining negotiations between local government employers and

local government employees. Sections 1 and 1.7 of this bill limit the scope of mandatory bargaining for negotiations between a county and an employee organization which represents bailiffs or deputy marshals appointed in that county to certain subjects which are entirely within the control of the county. Section 1 prohibits negotiations between those parties concerning any subject matter within the control of the judiciary.

Existing law prohibits employees who exercise certain duties under a paramilitary command structure from being deemed supervisory employees solely due to the exercise of such duties. (NRS 288.138) ~~Section 1.5~~ of this bill also excludes from being deemed supervisory employees solely due to the exercise of certain duties under a paramilitary command structure certain Executive Department and local government employees who provide civilian support services to a law enforcement agency.

~~[Existing law defines "employee" for purposes of collective bargaining with the Executive Department to mean a person who is: (1) employed in the classified service of the State; or (2) employed by the Nevada System of Higher Education in the classified service of the State or required to be paid in accordance with the pay plan for the classified service of the State. (NRS 288.425) Section 2 of this bill includes in the definition of "employee" persons who are employed in the unclassified service of the State as agents of the Nevada Gaming Control Board with the powers of category II peace officers.]~~

Section 4 of this bill provides that the amendatory provisions of this bill do not apply during the current term of any collective bargaining agreement entered into before October 1, 2021.

Section 1.3 of this bill makes a conforming change to indicate the proper placement of section 1 in the Nevada Revised Statutes.

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 a new section to read as follows:

1. For the purposes of this chapter, a bailiff or deputy marshal shall be deemed to be a local government employee of the county in which the bailiff or deputy marshal is appointed.

2. The scope of mandatory bargaining for negotiations between a local government employer which is a county and an employee organization which represents bailiffs or deputy marshals appointed in that county is limited to the subjects set forth in subsection 2 of NRS 288.150 which are entirely within the control of the county.

3. A local government employer which is a county and an employee organization which represents bailiffs or deputy marshals appointed in that county shall not negotiate concerning any subject matter which is within the control of the judiciary.

4. As used in this section:

(a) "Bailiff" means a bailiff appointed pursuant to NRS 3.310.

(b) "Deputy marshal" means a deputy marshal appointed pursuant to NRS 3.310 or 4.353.

Sec. 1.3. NRS 288.131 is hereby amended to read as follows:

288.131 As used in NRS 288.131 to 288.280, inclusive, and section 1 of this act, unless the context otherwise requires, the words and terms defined in NRS 288.132 to 288.138, inclusive, have the meanings ascribed to them in those sections.

~~[Section 1.]~~ Sec. 1.5. NRS 288.138 is hereby amended to read as follows:

288.138 1. "Supervisory employee" includes:

(a) Any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline

other employees or responsibility to direct them, to adjust their grievances or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday. If any of the following persons perform some, but not all, of the foregoing duties under a paramilitary command structure, such a person shall not be deemed a supervisory employee solely because of such duties:

- (1) A police officer, as defined in NRS 288.215;
- (2) A firefighter, as defined in NRS 288.215; ~~for~~
- (3) A person who:
 - (I) Has the powers of a peace officer pursuant to NRS 289.150, 289.170, 289.180 or 289.190; and

(II) Is a local government employee who is authorized to be in a bargaining unit pursuant to the provisions of this chapter ~~for~~; or

(4) A person who:

(I) Provides civilian support services to a law enforcement agency; and

(II) Is ~~for~~ a local government employee who is authorized to be in a bargaining unit pursuant to the provisions of this chapter.

(b) Any individual or class of individuals appointed by the employer and having authority on behalf of the employer to:

(1) Hire, transfer, suspend, lay off, recall, terminate, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, to adjust their grievances or to effectively recommend such action;

(2) Make budgetary decisions; and

(3) Be consulted on decisions relating to collective bargaining,

↳ if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday.

2. Nothing in this section shall be construed to mean that an employee who has been given incidental administrative duties shall be classified as a supervisory employee.

Sec. 1.7. NRS 288.150 is hereby amended to read as follows:

288.150 1. Except as otherwise provided in subsection 5, ~~and~~ NRS 354.6241 ~~for~~ **and section 1 of this act,** 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.

- 1 (h) Total number of days' work required of an employee in a work year.
- 2 (i) Except as otherwise provided in subsections 7 and 10, discharge and
- 3 disciplinary procedures.
- 4 (j) Recognition clause.
- 5 (k) The method used to classify employees in the bargaining unit.
- 6 (l) Deduction of dues for the recognized employee organization.
- 7 (m) Protection of employees in the bargaining unit from discrimination
- 8 because of participation in recognized employee organizations consistent with the
- 9 provisions of this chapter.
- 10 (n) No-strike provisions consistent with the provisions of this chapter.
- 11 (o) Grievance and arbitration procedures for resolution of disputes relating to
- 12 interpretation or application of collective bargaining agreements.
- 13 (p) General savings clauses.
- 14 (q) Duration of collective bargaining agreements.
- 15 (r) Safety of the employee.
- 16 (s) Teacher preparation time.
- 17 (t) Materials and supplies for classrooms.
- 18 (u) Except as otherwise provided in subsections 8 and 10, the policies for the
- 19 transfer and reassignment of teachers.
- 20 (v) Procedures for reduction in workforce consistent with the provisions of this
- 21 chapter.
- 22 (w) Procedures consistent with the provisions of subsection 5 for the reopening
- 23 of collective bargaining agreements for additional, further, new or supplementary
- 24 negotiations during periods of fiscal emergency.
- 25 3. Those subject matters which are not within the scope of mandatory
- 26 bargaining and which are reserved to the local government employer without
- 27 negotiation include:
- 28 (a) Except as otherwise provided in paragraph (u) of subsection 2, the right to
- 29 hire, direct, assign or transfer an employee, but excluding the right to assign or
- 30 transfer an employee as a form of discipline.
- 31 (b) The right to reduce in force or lay off any employee because of lack of
- 32 work or lack of money, subject to paragraph (v) of subsection 2.
- 33 (c) The right to determine:
- 34 (1) Appropriate staffing levels and work performance standards, except for
- 35 safety considerations;
- 36 (2) The content of the workday, including without limitation workload
- 37 factors, except for safety considerations;
- 38 (3) The quality and quantity of services to be offered to the public; and
- 39 (4) The means and methods of offering those services.
- 40 (d) Safety of the public.
- 41 4. If the local government employer is a school district, any money
- 42 appropriated by the State to carry out increases in salaries or benefits for the
- 43 employees of the school district is subject to negotiations with an employee
- 44 organization.
- 45 5. Notwithstanding the provisions of any collective bargaining agreement
- 46 negotiated pursuant to this chapter, a local government employer is entitled to:
- 47 (a) Reopen a collective bargaining agreement for additional, further, new or
- 48 supplementary negotiations relating to compensation or monetary benefits during a
- 49 period of fiscal emergency. Negotiations must begin not later than 21 days after the
- 50 local government employer notifies the employee organization that a fiscal
- 51 emergency exists. For the purposes of this section, a fiscal emergency shall be
- 52 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.

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

6. 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.

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

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

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

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

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

10. The board of trustees of a school district or the governing body of a charter school or university school for profoundly gifted pupils may use a substantiated report of the abuse or neglect of a child or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 obtained from the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established by NRS 432.100 or an equivalent registry maintained by a governmental agency in another jurisdiction for the purposes authorized by NRS 388A.515, 388C.200, 391.033, 391.104 or 391.281, as applicable. Such purposes may include, without limitation, making a determination concerning the assignment, discipline or termination of an employee. Any provision of any agreement negotiated pursuant to this chapter which conflicts with the provisions of this subsection is unenforceable and void.

11. 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.

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

13. As used in this section, "abuse or neglect of a child" has the meaning ascribed to it in NRS 392.281.

Sec. 2. ~~NRS 288.425 is hereby amended to read as follows:~~

~~288.425 1. "Employee" means a person who:~~

~~(a) Is employed in the classified service of the State pursuant to chapter 284 of NRS; [or]~~

~~(b) Is employed as an agent of the Nevada Gaming Control Board with the powers of a category II peace officer, as described in subsection 9 of NRS 289.470, in the unclassified service of the State; or~~

~~(c) Is employed by the Nevada System of Higher Education in the classified service of the State or is required to be paid in accordance with the pay plan for the classified service of the State.~~

~~2. The term does not include:~~

~~(a) A managerial employee whose primary function, as determined by the Board, is to administer and control the business of any agency, board, bureau, commission, department, division, elected officer or any other unit of the Executive Department and who is vested with discretion and independent judgment with regard to the general conduct and control of that agency, board, bureau, commission, department, division, elected officer or unit;~~

~~(b) An elected official or any person appointed to fill a vacancy in an elected office;~~

~~(c) A confidential employee;~~

~~(d) A temporary employee who is employed for a fixed period of 4 months or less;~~

~~(e) A commissioned officer or an enlisted member of the Nevada National Guard;~~

~~(f) Any person employed by the Nevada System of Higher Education who is not in the classified service of the State or required to be paid in accordance with the pay plan of the classified service of the State; or~~

~~(g) Any person employed by the Public Employees' Retirement System who is required to be paid in accordance with the pay plan of the classified service of the State.] (Deleted by amendment.)~~

Sec. 3. (Deleted by amendment.)

Sec. 4. Insofar as they conflict with the provisions of such an agreement, the amendatory provisions of this act do not apply during the current term of any collective bargaining agreement entered into before October 1, 2021, but do apply to any extension or renewal of such an agreement and to any collective bargaining agreement entered into on or after October 1, 2021.