

SENATE BILL NO. 294—SENATOR CANNIZZARO

MARCH 22, 2021

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing collective bargaining by local government employers. (BDR 23-254)

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:

Under existing law, if a local government employer and an employee organization that represents local government employees, other than firefighters, police officers, 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 recommendations 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 1, 2 and 5** of this bill remove or repeal the provisions relating to such panels. **Section 4** of this bill makes a conforming change by eliminating the authorization of the expenditure of funds from the Reserve for Statutory Contingency Account in the State General Fund for expenses related to such panels. **Section 2** provides that the findings and award of the fact finder are final and binding on the parties.

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. (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 3** of this bill makes additional changes applicable only to labor disputes involving firefighters and police officers. Specifically, **section 3** 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



25 lieu of an award; and (2) the findings and recommendations of the fact finder are
26 not binding on the parties.

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

1 **Section 1.** NRS 288.044 is hereby amended to read as follows:

2 288.044 “Fact-finding” means the formal procedure by which
3 an investigation of a labor dispute is conducted by a ~~[person]~~ **fact**
4 **finder** at which:

5 1. Evidence is presented; and

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

10 **Sec. 2.** NRS 288.200 is hereby amended to read as follows:

11 288.200 Except in cases to which NRS 288.205 and 288.215,
12 or NRS 288.217 apply:

13 1. If:

14 (a) The parties have failed to reach an agreement after at least
15 six meetings of negotiations; and

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

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

24 2. If the parties are unable to agree on an impartial fact finder
25 ~~[or a panel of neutral arbitrators]~~ within 5 days, either party may
26 request from the American Arbitration Association or the Federal
27 Mediation and Conciliation Service a list of seven potential fact
28 finders. If the parties are unable to agree upon which arbitration
29 service should be used, the Federal Mediation and Conciliation
30 Service must be used. Within 5 days after receiving a list from the
31 applicable arbitration service, the parties shall select their fact finder
32 from this list by alternately striking one name until the name of only
33 one fact finder remains, who will be the fact finder to hear the
34 dispute in question. The employee organization shall strike the first
35 name.

36 3. The local government employer and employee organization
37 each shall pay one-half of the cost of fact-finding. Each party shall
38 pay its own costs of preparation and presentation of its case in fact-
39 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~~ *award* 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]~~ *8, the* fact finder ~~[, 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. If the local government employer is a school district, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district must be considered by a fact finder in making a preliminary determination.

(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. *The award is final and binding on the parties.*

~~[8.]~~ 6. 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 4.]~~ *this section*;

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

(c) The overall fiscal impact of the findings and ~~recommendations,~~ award, 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.]~~ 7. The chief executive officer of the local government shall report to the local government the fiscal impact of the findings and ~~recommendations,~~ award. The report must include, without limitation, an analysis of the impact of the findings and ~~recommendations~~ award on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

~~[10.]~~ 8. 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.



~~[1-1]~~ 9. The issues which may be included in *an award* by a ~~[panel's order pursuant to subsection 6]~~ *fact finder* 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.]~~

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

Sec. 3. NRS 288.205 is hereby amended to read as follows:

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

~~[1-1]~~ (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.

~~[2-1]~~ (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.

~~[3-1]~~ (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 ~~[or NRS 288.200]~~ may be extended by agreement of the parties.

Sec. 4. 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;

17 (d) The payment of claims which are obligations of the State
18 pursuant to NRS 41.950; and

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

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

32 **Sec. 5.** NRS 288.201, 288.202 and 288.203 are hereby
33 repealed.

34 **Sec. 6.** This act becomes effective on July 1, 2021.

TEXT OF REPEALED SECTIONS

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:

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.

