

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 1.5, 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.

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 and between school districts and employee organizations representing teachers and educational support personnel. (NRS 288.205, 288.215, 288.217) 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 2** of this bill makes changes applicable only to labor disputes other than those involving firefighters, police officers, teachers and educational support personnel. Specifically **section 2** provides that unless the parties to the dispute agree to make the findings and recommendations of a fact finder final and binding, either party may submit the findings and recommendations of the fact



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finder to a second fact finder to serve as an arbitrator and issue a decision which is final and binding on the parties.

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

Section 1. (Deleted by amendment.)

Sec. 1.5. NRS 288.044 is hereby amended to read as follows:

288.044 “Fact-finding” means the formal procedure by which an investigation of a labor dispute is conducted by a ~~person~~ **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.~~

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

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

1. If:

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

(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.~~ **subsection 5.** 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 ~~for 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. 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



1 pay its own costs of preparation and presentation of its case in
2 fact-finding.

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

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

12 6. If ~~[the]~~ parties *to whom the provisions of NRS 288.215 and*
13 *288.217 do not apply* do not agree on whether to make the findings
14 and recommendations of the fact finder final and binding, either
15 party may request the ~~[formation of a panel to determine whether]~~
16 *submission of* the findings and recommendations of a fact finder on
17 all or any specified issues in a particular dispute which are within
18 the scope of subsection 11 ~~[are to be]~~ *to a second fact finder to*
19 *serve as an arbitrator and issue a decision which is* final and
20 binding. ~~[The determination must be made upon the concurrence of~~
21 ~~at least two members of the panel and not later than the date which~~
22 ~~is 30 days after the date on which the matter is submitted to the~~
23 ~~panel, unless that date is extended by the Commissioner of the~~
24 ~~Board. Each panel shall, when making its determination, consider~~
25 ~~whether the parties have bargained in good faith and whether it~~
26 ~~believes the parties can resolve any remaining issues. Any panel~~
27 ~~may also consider the actions taken by the parties in response to any~~
28 ~~previous fact finding between these parties, the best interests of the~~
29 ~~State and all its citizens, the potential fiscal effect both within and~~
30 ~~outside the political subdivision, and any danger to the safety of the~~
31 ~~people of the State or a political subdivision.]~~ *The second fact*
32 *finder must be selected in the manner provided in subsection 2*
33 *and has the powers provided for fact finders in NRS 288.210. The*
34 *procedures for the arbitration of a dispute prescribed by*
35 *subsections 8 to 13, inclusive, of NRS 288.215 apply to the*
36 *submission of a dispute to a second fact finder to serve as an*
37 *arbitrator pursuant to this subsection.*

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

42 (a) A preliminary determination must be made as to the financial
43 ability of the local government employer based on all existing
44 available revenues as established by the local government employer
45 and within the limitations set forth in NRS 354.6241, with due



1 regard for the obligation of the local government employer to
2 provide facilities and services guaranteeing the health, welfare and
3 safety of the people residing within the political subdivision. If the
4 local government employer is a school district, any money
5 appropriated by the State to carry out increases in salaries or
6 benefits for the employees of the school district must be considered
7 by a fact finder in making a preliminary determination.

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

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

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

26 8. Within 45 days after the receipt of the report from the fact
27 finder, the governing body of the local government employer shall
28 hold a public meeting in accordance with the provisions of chapter
29 241 of NRS. The meeting must include a discussion of:

30 (a) The issues of the parties submitted pursuant to ~~subsection~~
31 ~~4-H~~ **this section;**

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

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

37 ➤ The fact finder must not be asked to discuss the decision during
38 the meeting.

39 9. The chief executive officer of the local government shall
40 report to the local government the fiscal impact of the findings and
41 recommendations. The report must include, without limitation, an
42 analysis of the impact of the findings and recommendations on
43 compensation and reimbursement, funding, benefits, hours, working
44 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 recommendation or 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.

12. Except for the period prescribed by subsection 8, any time limit prescribed by this section may be extended by agreement of the parties.

Sec. 3. (Deleted by amendment.)

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

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

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

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

(c) The payment of claims which are obligations of the State pursuant to NRS 41.0349 and 41.037, but only to the extent that the



1 money in the Fund for Insurance Premiums is insufficient to pay the
2 claims;

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

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

9 3. The State Board of Examiners may authorize its Clerk or a
10 person designated by the Clerk, under such circumstances as it
11 deems appropriate, to approve, on behalf of the Board, the payment
12 of claims from the Reserve for Statutory Contingency Account. For
13 the purpose of exercising any authority granted to the Clerk of the
14 State Board of Examiners or to the person designated by the Clerk
15 pursuant to this subsection, any statutory reference to the State
16 Board of Examiners relating to such a claim shall be deemed to refer
17 to the Clerk of the Board or the person designated by the Clerk.

18 **Sec. 5.** NRS 288.201, 288.202 and 288.203 are hereby
19 repealed.

20 **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.

