Senate Bill No. 161–Senator Nguyen

CHAPTER.....

AN ACT relating to local government employees; establishing additional procedures pursuant to which parties to a collective bargaining negotiation involving a school district and an employee organization representing teachers may submit issues to a binding arbitration process; prohibiting a school district or any agent thereof from requiring, requesting or urging a teacher to work more than a certain amount of time under certain circumstances; revising the penalties that may be imposed upon an employee organization representing teachers, the officers thereof and teachers for participation in a strike; revising the conduct that constitutes a strike; revising provisions relating to the recognition of employee organizations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth various requirements and procedures for collective bargaining between local government employers and local government employees. (NRS 288.131-288.280) Existing law sets forth procedures by which the parties to a negotiation involving a school district and an employee organization representing teachers or educational support personnel, after having failed to reach a collective bargaining agreement after at least four sessions of negotiations, may submit the issues remaining in dispute to a binding arbitration process. (NRS 288.217) **Section 3** of this bill sets forth additional procedures by which the parties to a negotiation involving a school district and an employee organization representing teachers may submit issues remaining in dispute to a binding arbitration process. Under **section 3**, the parties may, by mutual agreement, submit issues remaining in dispute to the binding arbitration process set forth in **section 3** if the collective bargaining agreement between the school district and the employee organization representing teachers: (1) is scheduled to expire within 75 days before the first day of instruction of a school year and the parties have not agreed to a successor agreement 75 days before the first day of instruction of the school year, in which case the parties may submit the issues in dispute to an arbitrator any time on or after the date that is 75 days before the first day of instruction of the school year and on or before the date that is 30 days before the first day of instruction of the school year; or (2) has expired, in which case the parties may submit the issues in dispute to an arbitrator any time after the expiration of the agreement. **Section 3** sets forth procedures for the selection of the arbitrator and procedures and requirements for the arbitration process. **Section 3** requires the arbitrator to render a final decision, which is binding on the parties: (1) if the issues in dispute are submitted to the binding arbitration process in accordance with the procedures for a collective bargaining agreement which has expired, not later than 60 days after the parties agreed to submit the issues in dispute to the binding arbitration process; or (2) if the issues in dispute are submitted to the binding arbitration process in accordance with the procedures for a collective bargaining agreement that is scheduled to expire within 75 days before the first day of instruction of a school year, not later than the first day of instruction of the school year. **Section 12** of this

bill makes a conforming change to indicate that parties to a negotiation between a school district and an employee organization representing teachers may utilize the procedures set forth in **section 3** under certain circumstances.

Section 4 of this bill provides that if a collective bargaining agreement between a school district and an employee organization representing teachers has expired and the terms of the agreement remain in effect under certain circumstances, the school district or any agent thereof is prohibited from requesting, requiring or urging a teacher to work more in any workday or workweek than the total amount of time required by the expired agreement for each workday or workweek.

Existing law declares it to be the public policy of this State that strikes against the State or a local government employer are illegal. (NRS 288.700) Existing law requires a court that finds that such an illegal strike has occurred, or unless enjoined will occur, to enjoin the commencement or continuance of the strike. (NRS 288.705) If a strike is commenced or continued in violation of an order enjoining the strike, existing law authorizes a court to impose certain penalties against an employee organization or labor organization guilty of such violation, any officer thereof who is wholly or partly responsible of such violation or any employee of the State or of a local government employer who participates in the strike. (NRS 288.710) Existing law also authorizes a State or local government employer to take certain actions against an employee who participates in a strike, including, dismissing, suspending or demoting the employee, canceling the contract of employment for such an employee or withholding all or any part of the salary or wages of the employee which would otherwise accrue. (NRS 288.715)

Sections 15 and 16 of this bill provide that the penalties that may be imposed by a court and the actions that may be taken by a local government employer with respect to a strike do not apply to a strike involving teachers or an employee organization representing teachers. Instead, **section 7** of this bill provides for the imposition of penalties only on the employee organization and the officers of the employee organization, and not an individual teacher, for an illegal strike.

Existing law defines "strike" to mean certain specified concerted conduct. (NRS 288.074) **Section 9** of this bill excludes from the definition of "strike" any of the specified concerted conduct that is engaged in by teachers at one or more schools in a school district unless the concerted conduct is engaged in on a district-wide basis.

Existing law: (1) requires an employee organization that applies to a local government employer for recognition to provide a pledge in writing not to strike against the local government employer; and (2) authorizes a local government employer to withdraw recognition from an employee organization that disavows that pledge. (NRS 288.160) **Section 11** of this bill excludes an employee organization representing teachers from those provisions.

Sections 2 and 8 of this bill establish a definition for the term "teacher" for the purposes of the provisions of existing law governing collective bargaining by public employees.

Section 10 of this bill makes a conforming change to indicate the proper placement of **sections 3 and 4** in the Nevada Revised Statutes.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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 the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. ***"Teacher" means an employee of a school district who is licensed to teach in this State and who is represented by an employee organization.***

Sec. 3. ***1. Except as otherwise provided in subsection 3, if a collective bargaining agreement between a school district and an employee organization representing teachers is scheduled to expire within 75 days before the first day of instruction of a school year and the parties have not agreed to a successor agreement 75 days before the first day of instruction of the school year, the parties may, at any time on or after the date that is 75 days before the first day of instruction of the school year and on or before the date that is 30 days before the first day of instruction of the school year, mutually agree to submit the issues remaining in dispute to an arbitrator to arbitrate the dispute in accordance with the provisions of this section.***

2. Except as otherwise provided in subsection 3, if a collective bargaining agreement between a school district and an employee organization representing teachers has expired and the parties have not agreed to a successor agreement, the parties may, at any time after the expiration of the agreement, mutually agree to submit the issues remaining in dispute to an arbitrator to arbitrate the dispute in accordance with the provisions of this section.

3. Not less than 180 days before the expiration of a collective bargaining agreement between a school district and an employee organization representing teachers or, for such a collective bargaining agreement that is of the type described in subsection 1, not less than 180 days before the first day of instruction of the school year, the parties shall assemble a list of not more than five potential arbitrators who agree to make themselves available to conduct arbitration proceedings in accordance with the provisions of this section. The number of potential arbitrators on the list and the selection of each potential arbitrator on the list must be mutually agreed to by the parties. If the parties fail to assemble a list of potential arbitrators pursuant to this subsection, the parties may not utilize the procedures set forth in this section.

4. During any period specified in subsection 1 or 2, either party to the collective bargaining agreement may submit to the other party a request to agree to submit the issues remaining in dispute to an arbitrator to arbitrate the dispute in accordance with the provisions of this section. The other party shall, within 3 business days after receipt of the request, respond to the party and either approve or deny the request.

5. If the request submitted pursuant to subsection 4 is approved, the parties shall, within 2 days after the approval is granted, select their arbitrator from the list assembled pursuant to subsection 3. If there is more than one potential arbitrator on the list, the parties shall alternately strike one name until the name of only one arbitrator remains, who will be the arbitrator to arbitrate the dispute. The employee organization shall strike the first name. The arbitrator has the powers provided for fact finders in NRS 288.210.

6. After the arbitrator is selected pursuant to subsection 5, the arbitrator shall hold a hearing to receive information regarding the dispute. The arbitrator shall, within 5 days after being selected, establish a date and time to hold the hearing and provide notice of the date and time to the parties. The date and time must be established with due regard to the expedited nature of the proceedings and the requirements for the issuance of a decision pursuant to subsection 12.

7. The parties to the dispute shall each pay one-half of the costs of the arbitration.

8. A determination of the financial ability of a school district must be based on:

(a) All existing available revenues as established by the school district, including, without limitation, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district, and with the limitations set forth in NRS 354.6241, with due regard for the obligation of the school district to provide an education to the children residing within the district.

(b) Consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multi-year contract, the arbitrator must consider the ability to pay over the life of the contract being negotiated or arbitrated.

➥ Once the arbitrator has determined in accordance with this subsection that there is a current financial ability to grant monetary benefits, the arbitrator shall consider, to the extent

appropriate, compensation of other governmental employees, both in and out of this State.

9. At the recommendation of the arbitrator, the parties may, before the submission of a final offer, enter into negotiations. If the negotiations are begun, the arbitrator may adjourn the hearing for a period of 7 days. If an agreement is reached, it must be submitted to the arbitrator, who shall certify it as final and binding.

10. If the parties do not enter negotiations or do not agree within 7 days after the hearing held pursuant to subsection 6, each of the parties shall submit a single written statement containing its final offer for each of the unresolved issues.

11. The arbitrator shall render a decision on the basis of the criteria set forth in NRS 288.200. The arbitrator shall accept one of the written statements and shall report the decision to the parties. The decision of the arbitrator is final and binding on the parties. Any award of the arbitrator is retroactive to the expiration date of the last contract between the parties.

12. The decision of the arbitrator must be rendered not later than the earlier of 7 days after the final offers are submitted pursuant to subsection 10 or:

(a) For a dispute submitted pursuant to subsection 1, the first day of instruction of the school year.

(b) For a dispute submitted pursuant to subsection 2, 60 days after approval of the request submitted pursuant to subsection 4 is granted.

13. The decision of the arbitrator must include a statement:

(a) Giving the arbitrator's reason for accepting the final offer that is the basis of the arbitrator's award; and

(b) Specifying the arbitrator's estimate of the total cost of the award.

14. Within 30 days after the receipt of the decision from the arbitrator, the board of trustees of the school district 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 submitted pursuant to subsection 1 or 2, as applicable;

(b) The statement of the arbitrator included in the decision of the arbitrator pursuant to subsection 13; and

(c) The overall fiscal impact of the decision, which must not include a discussion of the details of the decision.

➥ The arbitrator must not be asked to discuss the decision during the meeting.

15. The superintendent of the school district shall report to the board of trustees the fiscal impact of the decision. The report must include, without limitation, an analysis of the impact of the decision on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

16. As used in this section, "school year" has the meaning ascribed to it in NRS 388.080.

Sec. 4. ***1. If a collective bargaining agreement between a school district and an employee organization representing teachers has expired and, under the agreement, the terms of the agreement remain in effect during the period between the expiration of the agreement and the effective date of a successor agreement, the school district or any agent thereof shall not request, require or urge a teacher to work more in any workday or workweek than the total amount of time required by the expired agreement for each workday or workweek.***

2. A teacher who fails or refuses to comply with a request, requirement or urging that violates subsection 1 is not subject to any penalty for the failure or refusal.

3. The failure or refusal of a teacher or multiple teachers to comply with a request, requirement or urging that violates subsection 1 does not constitute a strike.

Secs. 5 and 6. (Deleted by amendment.)

Sec. 7. ***1. If a strike by teachers or an employee organization representing teachers is commenced or continued in violation of an order issued pursuant to NRS 288.705, the court may:***

(a) Punish the employee organization guilty of such violation by a fine of not more than $50,000 against each employee organization for each day of continued violation.

(b) Punish any officer of the employee organization who is wholly or partly responsible for such violation by a fine of not more than $1,000 for each day of continued violation.

2. Any of the penalties enumerated in subsection 1 may be applied alternatively or cumulatively, in the discretion of the court.

Sec. 8. NRS 288.015 is hereby amended to read as follows:

288.015 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 288.029 to 288.074, inclusive, ***and section 2 of this act*** have the meanings ascribed to them in those sections.

Sec. 9. NRS 288.074 is hereby amended to read as follows:

288.074 ***1.*** "Strike" means any concerted:

~~[1.]~~ ***(a)*** Stoppage of work, slowdown or interruption of operations by employees of the State of Nevada or local government employees;

~~[2.]~~ ***(b)*** Absence from work by employees of the State of Nevada or local government employees upon any pretext or excuse, such as illness, which is not founded in fact; or

~~[3.]~~ ***(c)*** Interruption of the operations of the State of Nevada or any local government employer by any employee organization or labor organization.

2. The term does not include any concerted conduct described in subsection 1 that is engaged in by teachers at one or more schools in a school district unless the concerted conduct is engaged in on a district-wide basis.

Sec. 10. NRS 288.131 is hereby amended to read as follows:

288.131 As used in NRS 288.131 to 288.280, inclusive, ***and sections 3 and 4 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.

Sec. 11. NRS 288.160 is hereby amended to read as follows:

288.160 1. An employee organization may apply to a local government employer for recognition by presenting:

(a) A copy of its constitution and bylaws, if any;

(b) A roster of its officers, if any, and representatives; and

(c) ~~[A]~~ ***Except for an employee organization representing teachers, a*** pledge in writing not to strike against the local government employer under any circumstances.

➥ A local government employer shall not recognize as representative of its employees any employee organization which has not adopted, in a manner valid under its own rules, the pledge required by paragraph (c).

2. If an employee organization, at or after the time of its application for recognition, presents a verified membership list showing that it represents a majority of the employees in a bargaining unit, and if the employee organization is recognized by the local government employer, it shall be the exclusive bargaining agent of the local government employees in that bargaining unit.

3. A local government employer may withdraw recognition from an employee organization which:

(a) Fails to present a copy of each change in its constitution or bylaws, if any, or to give notice of any change in the roster of its officers, if any, and representatives;

(b) ~~[Disavows]~~ ***Except for an employee organization representing teachers, disavows*** its pledge not to strike against the local government employer under any circumstances;

(c) Ceases to be supported by a majority of the local government employees in the bargaining unit for which it is recognized; or

(d) Fails to negotiate in good faith with the local government employer,

➥ if it first receives the written permission of the Board.

4. If the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it may conduct an election by secret ballot upon the question. Subject to judicial review, the decision of the Board is binding upon the local government employer and all employee organizations involved.

5. The parties may agree in writing, without appealing to the Board, to hold a representative election to determine whether an employee organization represents the majority of the local government employees in a bargaining unit. Participation by the Board and its staff in an agreed election is subject to the approval of the Board.

Sec. 12. NRS 288.217 is hereby amended to read as follows:

288.217 1. ~~[The]~~ ***Except as otherwise provided in section 3 of this act, the*** provisions of this section govern negotiations between school districts and employee organizations representing teachers and educational support personnel.

2. If the parties to a negotiation pursuant to this section have failed to reach an agreement after at least four sessions of negotiation, either party may declare the negotiations to be at an impasse and, after 5 days' written notice is given to the other party, submit the issues remaining in dispute to an arbitrator. The arbitrator must be selected in the manner provided in subsection 2 of NRS 288.200 and has the powers provided for fact finders in NRS 288.210.

3. The arbitrator shall, within 30 days after the arbitrator is selected, and after 7 days' written notice is given to the parties, hold a hearing to receive information concerning the dispute. The hearing must be held in the county in which the school district is located and the arbitrator shall arrange for a full and complete record of the hearing.

4. The parties to the dispute shall each pay one-half of the costs of the arbitration.

5. A determination of the financial ability of a school district must be based on:

(a) All existing available revenues as established by the school district, including, without limitation, any money appropriated by the State to carry out increases in salaries or benefits for the employees of the school district, and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the school district to provide an education to the children residing within the district.

(b) Consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multi-year contract the arbitrator must consider the ability to pay over the life of the contract being negotiated or arbitrated.

➥ Once the arbitrator has determined in accordance with this subsection that there is a current financial ability to grant monetary benefits, the arbitrator shall consider, to the extent appropriate, compensation of other governmental employees, both in and out of this State.

6. At the recommendation of the arbitrator, the parties may, before the submission of a final offer, enter into negotiations. If the negotiations are begun, the arbitrator may adjourn the hearing for a period of 3 weeks. If an agreement is reached, it must be submitted to the arbitrator, who shall certify it as final and binding.

7. If the parties do not enter into negotiations or do not agree within 30 days after the hearing held pursuant to subsection 3, each of the parties shall submit a single written statement containing its final offer for each of the unresolved issues.

8. The arbitrator shall, within 10 days after the final offers are submitted, render a decision on the basis of the criteria set forth in NRS 288.200. The arbitrator shall accept one of the written statements and shall report the decision to the parties. The decision of the arbitrator is final and binding on the parties. Any award of the arbitrator is retroactive to the expiration date of the last contract between the parties.

9. The decision of the arbitrator must include a statement:

(a) Giving the arbitrator's reason for accepting the final offer that is the basis of the arbitrator's award; and

(b) Specifying the arbitrator's estimate of the total cost of the award.

10. Within 45 days after the receipt of the decision from the arbitrator, the board of trustees of the school district 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 submitted pursuant to subsection 2;

(b) The statement of the arbitrator pursuant to subsection 9; and

(c) The overall fiscal impact of the decision which must not include a discussion of the details of the decision.

➥ The arbitrator must not be asked to discuss the decision during the meeting.

11. The superintendent of the school district shall report to the board of trustees the fiscal impact of the decision. The report must include, without limitation, an analysis of the impact of the decision on compensation and reimbursement, funding, benefits, hours, working conditions or other terms and conditions of employment.

12. As used in this section ~~[:~~

~~(a) "Educational"]~~ ***, "educational*** support personnel" means all classified employees of a school district, other than teachers, who are represented by an employee organization.

~~[(b) "Teacher" means an employee of a school district who is licensed to teach in this State and who is represented by an employee organization.]~~

Secs. 13 and 14. (Deleted by amendment.)

Sec. 15. NRS 288.710 is hereby amended to read as follows:

288.710 1. If a strike is commenced or continued in violation of an order issued pursuant to NRS 288.705, ***other than a strike involving teachers or an employee organization representing teachers,*** the court may:

(a) Punish each employee organization or labor organization guilty of such violation by a fine of not more than $50,000 against each employee organization or labor organization for each day of continued violation.

(b) Punish any officer of an employee organization or labor organization who is wholly or partly responsible for such violation by a fine of not more than $1,000 for each day of continued violation, or by imprisonment as provided in NRS 22.110.

(c) Punish any employee of the State or of a local government employer who participates in such strike by ordering the dismissal or suspension of such employee.

2. Any of the penalties enumerated in subsection 1 may be applied alternatively or cumulatively, in the discretion of the court.

Sec. 16. NRS 288.715 is hereby amended to read as follows:

288.715 1. If a strike or violation is commenced or continued in violation of an order issued pursuant to NRS 288.705, ***other than a strike involving teachers or an employee organization representing teachers,*** the State or the local government employer may:

(a) Dismiss, suspend or demote all or any of the employees who participate in such strike or violation.

(b) Cancel the contracts of employment of all or any of the employees who participate in such strike or violation.

(c) Withhold all or any part of the salaries or wages which would otherwise accrue to all or any of the employees who participate in such strike or violation.

2. Any of the powers conferred by subsection 1 may be exercised alternatively or cumulatively.

Sec. 17. This act becomes effective upon passage and approval.

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