

**ADOPTED REGULATION OF THE LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD**

LCB File No. R010-15

Effective October 27, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§1-13, NRS 288.110.

A REGULATION relating to local government employees; authorizing the electronic filing of certain documents; authorizing the Commissioner of the Local Government Employee-Management Relations Board to approve a request to extend time for filing certain documents; removing certain requirements related to the filing of documents with the Board; requiring certain information to be included in the annual reports submitted to the Board by a local government employer and an employee organization; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Local Government Employee-Management Relations Board to make rules governing proceedings before the Board. (NRS 288.110) **Section 2** of this regulation authorizes the parties in a proceeding before the Board to file certain documents with the Board electronically. **Section 3** of this regulation authorizes the Commissioner of the Board, upon written stipulation of the parties, to approve a request to extend the time for filing documents in a proceeding if the Commissioner finds that such an extension will not delay any hearing that may be authorized by the Board. **Sections 4 and 8-12** of this regulation amend existing regulations to remove the requirement for a party to a proceeding before the Board to file four copies of certain documents with the Board. **Sections 6 and 7** of this regulation revise the information that a local government employer and an employee organization are required to file annually with the Board. **Section 12** of this regulation provides that a response to a petition for a declaratory order filed with the Board is no longer required to be sworn.

Section 1. Chapter 288 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *Any written document required to be filed with the Board may be filed electronically in accordance with this section.*

2. If a filing party elects to file a document electronically, the filing party must first register with the Board all electronic mailing addresses authorized to send and receive electronic mail for the filing party on a form provided by the Board.

3. To be deemed filed, a document submitted electronically must be:

(a) Sent to the electronic mail address designated by the Board for receiving electronic documents;

(b) Sent from an electronic mail address registered with the Board pursuant to subsection 2; and

(c) Submitted as an attachment to the electronic mail address designated by the Board in portable document format.

4. When a document is filed electronically in accordance with this section, the document will be stamped as filed with the date the document is received at the electronic mail address of the Board. The Board will send to the filing party, by electronic mail, a confirmation receipt that contains the date-stamped copy of the document attached in portable document format.

5. The filing party must retain the original version of any document that was filed electronically until the filing party has exhausted all available appeals. The filing party may be required to produce the original of the document to the Commissioner upon request.

Sec. 3. 1. Upon written stipulation of the parties, the Commissioner may approve a request to extend the time to file any document described in NAC 288.220 to 288.250, inclusive, if the Commissioner determines that the proposed extension of time will not delay any hearing for the case that may be authorized by the Board. Any stipulated request for an extension that is not approved by the Commissioner must be approved by the Board.

2. This section does not prohibit a party from filing a motion to extend time for filing a document.

Sec. 4. NAC 288.070 is hereby amended to read as follows:

288.070 Except as otherwise provided in this chapter, if any written document or other written matter is filed with the Board:

1. The original ~~and four copies~~ must be signed and filed in the form of a pleading;
2. The written document or other written matter must satisfy the requirements set forth in NAC 288.231; ~~and~~
3. *The written document or other written matter must be filed in accordance with the requirements set forth in section 2 of this regulation if the written document or other written matter is filed electronically; and*
4. The filing party must serve a copy upon the opposing party, intervener and any party in interest.

Sec. 5. NAC 288.130 is hereby amended to read as follows:

288.130 If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the Board in accordance with the provisions of NAC 288.200 to 288.375, inclusive ~~1~~, *and sections 2 and 3 of this regulation.*

Sec. 6. NAC 288.140 is hereby amended to read as follows:

288.140 Before December 1 of each year, each local government employer shall file with the Board ~~1a~~:

1. *The name and contact information for the person designated by the local government employer to receive all official communications from the Board, except for those*

communications related to a case before the Board for which an attorney has filed an appearance; and

2. A list of all employee organizations that the employer is currently recognizing and a description of the bargaining unit for each employee organization.

Sec. 7. NAC 288.147 is hereby amended to read as follows:

288.147 ~~Between~~ *In addition to the requirements set forth in NRS 288.165, between* November 1 and December 1 of each year, each ~~local government~~ employee organization shall file with the Board ~~the~~ :

1. *The name and contact information of the person designated by the employee organization to receive all official communications from the Board, except for those communications related to a case before the Board for which an attorney has filed an appearance; and*

2. A list of its current officers and representatives , including, but not limited to, any and all elected officials and other professional representatives retained to administer the various activities of the employee organization. The employee organization may elect, appoint or retain additional or other officers and representatives subsequent thereto.

Sec. 8. NAC 288.200 is hereby amended to read as follows:

288.200 1. In addition to any other applicable requirements set forth in NAC 288.231, a complaint must include:

- (a) The full name and address of the complainant;
- (b) The full name and address of the respondent;

(c) A clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS, including the time and place of the occurrence of the particular acts and the names of persons involved; and

(d) The legal authority under which the complaint is made.

2. The complainant shall file ~~an original and four copies of the~~ a complaint with the Board in the form of a pleading and shall serve a copy by certified mail on all parties in interest at their last known addresses.

Sec. 9. NAC 288.220 is hereby amended to read as follows:

288.220 1. The respondent may file an answer in the form of a pleading and not later than 20 days after the receipt of a complaint.

2. The answer must contain a clear and concise statement of the facts which constitute a defense. The respondent must specifically admit, deny or explain each of the allegations in the complaint unless he or she is without knowledge, in which case the respondent shall so state and the statement shall be deemed a denial. Any allegation in the complaint not specifically denied in the answer, unless it is stated in the answer that the respondent is without knowledge, shall be deemed to be admitted to be true.

3. If an answer is not made within the prescribed time, the dilatory party is precluded, except with the consent of the opposing party or the Board, from asserting any affirmative defense in the proceeding.

4. An ~~original and four copies of the~~ answer must be signed and filed with the Board.

Sec. 10. NAC 288.250 is hereby amended to read as follows:

288.250 Not later than 20 days after the service of the answer, unless otherwise ordered by the Board, each party shall ~~submit to~~ *file with* the Board the ~~original and four copies of the~~ prehearing statement of the party which includes:

1. A plain and concise statement of the issues of fact and law to be determined by the Board which have not been resolved by negotiation or otherwise;
2. A memorandum of law or points and authorities in support of the party's position, including a list of significant differences or close similarities of the issue or issues to any prior determinations of the Board;
3. A list of witnesses and their qualifications, including a brief summary of their expected testimony; and
4. An estimate, to the nearest hour, of the time needed for the presentation of the party's position.

Sec. 11. NAC 288.345 is hereby amended to read as follows:

288.345 In any proceeding , the presiding officer may order briefs to be filed within a reasonable time. ~~An original and four copies of each~~ *Each* brief must be filed with the Board and must be accompanied by a certificate showing service on each party of record as provided in NAC 288.200.

Sec. 12. NAC 288.390 is hereby amended to read as follows:

288.390 1. Any party served with a petition for a declaratory order may respond to the petition within 20 days by filing ~~the original and four copies of~~ his or her ~~sworn~~ response with the Board. The responding party shall also serve a copy of the response upon the petitioner.

2. The response must include:

- (a) The full name and address of the petitioner;

- (b) The full name and address of the respondent;
- (c) A clear and concise statement of the facts, including the time and place of the occurrence of the particular acts described in the petition and the names of persons involved; and
- (d) A memorandum of authorities, including legal authorities in support of or in opposition to any position or contention raised by the petitioner.

3. A party requesting a petition for a declaratory order may file a reply to any response filed pursuant to this section within 10 days after the date on which the response is served.

Sec. 13. NAC 288.338 is hereby repealed.

TEXT OF REPEALED SECTION

288.338 Proposed findings of fact and conclusions of law. (NRS 288.110)

1. The Board may require any party of record to file proposed findings of fact and conclusions of law at the close of the proceedings. The Board will require the designated party to file these proposed findings and conclusions within 30 days after the hearing date. No decision, report or recommended order may be made until after the expiration of this fixed time.

2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered.

3. An original and four copies of findings of fact and conclusions of law, accompanied by a certificate of service, must be filed by each party with the Commissioner and one copy must be served upon each party of record.

4. Any party of record may petition the Board for an extension of time in which to file proposed findings of fact and conclusions of law, but in no case may the extension exceed 60 days before the date required by subsection 2 of NRS 288.110 for the issuance of a decision by the Board.

5. Any party upon whom a proposed finding of fact and conclusion of law has been served has 10 days from receipt of a copy of the proposed findings of fact and conclusions of law to submit to the Board objections and proposed modifications to those findings and conclusions.

NOTICE OF ADOPTION OF REGULATION

The Local Government Employee-Management Relations Board adopted regulations assigned LCB File No. R010-15 which pertain to chapter 288 of the Nevada Administrative Code on August 19, 2015. A copy of the regulations as adopted is attached hereto.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY NRS 233B.066 LCB FILE R010-15

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 288.

1. A clear and concise explanation of the need for the adopted regulation.

The temporary regulation does six things. First, it eliminates the requirement for a party to a case to file four copies in addition to the original. Only the original would be required. Secondly, it institutes a voluntary program whereby parties to a case can electronically file their documents in lieu of either mailing an original or filing the original in person. Thirdly, the regulation allows the Commissioner to approve stipulations to extend the time for filing certain documents in lieu of having the parties wait for approval at the next meeting of the Board, which only meets once per month. Fourthly, the regulation clarifies what is to be included in the annual reports submitted by local governments and employee organizations, and in particular, makes the regulation conform to state law. Fifthly, the regulation no longer requires that responses to a petition for declaratory order be sworn. Finally, the regulation repeals NAC 288.338 as the agency now prepares the findings of fact and conclusions of law.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of this summary.

Copies of the proposed regulation, notice of workshop and notices of intent to act upon the regulations were sent by U.S. mail and/or email to all local governments and employee organizations who filed an annual report with the agency, to persons who were known to have an interest in the subject of the Local Government Employee-Management Relations Board as well as to any persons who had specifically requested such notice. These documents were also made available at the website of the Employee-Management Relations Board (EMRB), www.emrb.nv.gov, mailed to all county libraries in Nevada and posted at the following locations:

State of Nevada Local Government	Attorney General's Office
Employee-Management Relations Board	Grant Sawyer Building
2501 E. Sahara Ave., Ste. 203	555 E. Washington Blvd.
Las Vegas, NV 89104	Las Vegas, NV 89101

Supreme Court Library
201 S. Carson Street #100
Carson City, NV 89701

Nevada State Library & Archives
100 N. Stewart Street
Carson City, NV 89701

State of Nevada Bradley Building
2501 E. Sahara Ave., Main Lobby
Las Vegas, NV 89104

Clark County Personnel
500 S. Grand Central Parkway
Las Vegas, NV 89101

State of Nevada
Department of Business & Industry
1830 College Parkway, Ste. 100
Carson City, NV 89706

State of Nevada
Department of Business & Industry
555 E. Washington Blvd.
Las Vegas, NV 89101

A workshop was held on August 10, 2015, and the minutes of that meeting, attached hereto as Exhibit A, contain a summary of the discussion held regarding the proposed regulation. No written responses were received. On July 17, 2015 the Commissioner issued a Notice of Intent to Act upon a Regulation.

A public hearing was then held on August 19, 2015, and the minutes of that public hearing, attached hereto as Exhibit B, contain a summary of the discussion held regarding the proposed regulations.

A copy of the summary of the public response to the proposed regulation may be obtained from the Local Government Employee-Management Relations Board, 2501 E. Sahara Avenue, Suite 203, Las Vegas, Nevada 89104 or via email to emrb@business.nv.gov.

3. The number of persons who:

(a) Attended each hearing:

August 10, 2015 Workshop in Las Vegas: 2 (not including EMRB Board members and staff)

August 19, 2015 Public Hearing: 0 in Las Vegas (not including EMRB Board members and staff)

(b) Testified at each hearing:

August 10, 2015 Workshop: 2

August 19, 2015 Public Hearing: 0

(c) Submitted to the agency written comments: 0

The agency believes that the low interest at the workshop and public hearing is due to this regulation being very similar to the temporary regulation that has been in effect since late February 2015 and which has been very well received.

4. **A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit C.**
5. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public, namely via mailings to all local governments and employee organizations who have filed an annual report with the agency plus to others who were known to have an interest in the subject of the Local Government Employee-Management Relations Board as well as to any persons who had specifically requested such notice. Comments were received at the workshop. The minutes of both the workshop and the public hearing, the small business impact statement and the summary may be obtained as instructed in the response to question #2.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The comments received at the workshop were all in favor of the proposed regulation and no one suggested any changes to the text.

7. **The established economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

(a) Both adverse and beneficial effects; and

The agency has concluded that the proposed regulations will neither impose a direct and significant economic burden upon small businesses nor directly restrict the formation, operation or expansion of small businesses. On the contrary, the proposed regulations have several features that may minimize the impact of the law firms that represent clients who appear before the agency and streamline interaction with the agency.

Sections 4, 8, 9, 10, 11, and 12 eliminate the need to file four copies in addition to the original when filing a document with the EMRB. This will eliminate paper and preparation costs for law firms that file documents with the agency.

Section 2 provides for optional electronic filing of documents with the EMRB in lieu of filing a manual original. This feature is not only at no cost to the law firms that file documents with the agency but it also has the distinct advantage of eliminating fees paid to “runners” that deliver documents to the agency. For those

law firms that use their own staff to file documents this feature will allow the firms to use their staff for other business.

Sections 6 and 7 change existing regulations to make them better conform with state law.

Section 3 expedites the handling of stipulations to extend the time to file certain documents. Currently all stipulations to extend time are approved by the Board, which only meets once per month. Thus there are many times when the Board is officially approving extensions after-the-fact. This causes uncertainty among the parties to a case and leads to extra telephone calls to the agency, especially among lawyers who do not frequently practice before the agency. The proposed amendment allows for the Commissioner to approve these stipulations right away, if warranted, thus helping to provide certainty to the parties.

Section 12 of the proposed regulation eliminates the need for a response to a petition for declaratory order to be sworn. In the most recent regulatory change approved by the Legislative Commission a similar requirement for answers was eliminated. This will eliminate the need for lawyers to find the correct person to sign the response, thus saving time and money.

Finally, Section 13 repeals NAC 288.338, which had parties prepare the findings of fact and conclusions of law. This has for some time been done by the agency itself through the Deputy Attorney General assigned to the agency.

Neither will there be any adverse effects on the public. This is for the same reasons as stated above.

(b) Both immediate and long-term effects.

There will be no immediate or long-term adverse effects on the businesses that the EMRB regulates. For the reasons stated in #7a above, the proposed regulations will have both immediate and long-term beneficial effects on those businesses.

There will be no immediate or long-term adverse effects on the public. For the reasons stated in #7a above, the proposed regulations will have both immediate and long-term beneficial effects on the public in that any cases filed have the potential of being handled more efficiently through such means as the e-filing of pleadings, reducing the number of copies required for manual filings and by expediting the approval process for stipulations.

8. The estimated cost to the agency for enforcement of the adopted regulations.

There is no additional cost to the agency for enforcement of this regulation.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulation duplicates.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no federal regulations that apply.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide a new fee or increase an existing fee.