

REVISED PROPOSED REGULATION OF THE GOVERNMENT

EMPLOYEE-MANAGEMENT RELATIONS BOARD

LCB File No. R056-19

November 8, 2019

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

AUTHORITY: §§1-6 and 8-37, NRS 233B.040, 288.110; §7, NRS 233B.040, 288.110 and section 53 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3744.

A REGULATION relating to state employees; expanding the applicability of certain provisions to collective bargaining for state employees; revising provisions relating to fees assessed for the support of the Government Employee-Management Relations Board; prescribing requirements governing the preliminary investigation of a complaint submitted to the Board for state collective bargaining; establishing bargaining units for employees of the Executive Department of State Government; revising requirements governing procedure in proceedings of the Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes collective bargaining between the Executive Department of the State Government and certain state employees. (Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3725) Existing law defines “employee” for these purposes to include a person who: (1) is employed in the classified service of the State; or (2) 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. Existing law further provides that the term “employee” does not include a “confidential employee.” (Section 19 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.425)) **Section 3** of this regulation interprets the term “confidential employee” to include clerical personnel employed by the Government Employee-Management Relations Board.

Existing law expands the powers and duties of the Local Government Employee-Management Relations Board to include hearing and deciding certain disputes between the State and certain state employees. (Sections 2, 7, 15-44 and 48 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at pages 3726, 3733, 3734 and 3741 (NRS 281.755, 288.029, 288.110, 288.405-288.590)) Existing law changes the name of the Local Government Employee-Management Relations Board to the Government Employee Management Relations Board to conform to this change in powers and duties. (NRS 288.110, as amended by section 46 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3741) **Section 9** of this regulation

makes a conforming change. **Section 2** of this regulation defines the term “government employer” to mean: (1) a local government employer; or (2) the Executive Department. **Sections 10, 11, 13-17, 20 and 35** of this regulation make certain provisions of existing regulations relating to the Board’s duty to hear and decide disputes applicable to all government employers, thereby expanding the applicability of these provisions to include disputes between the Executive Department and certain state employees.

Existing law: (1) requires the Board annually to assess a fee for its support based on number of employees of each local government employer and agency or other unit of the Executive Department of State Government; and (2) authorizes the Board to verify the identity and number of employees employed by these employers by any reasonable means. (NRS 288.139; section 23 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3730 (NRS 288.475)) **Section 4** of this regulation prescribes the information the Board will use to verify the identity and number of employees employed by a local government or the Executive Department of State Government for the purposes of assessing the fee for the support of the Board against a local government employer or an agency or other unit of the Executive Department of State Government. **Section 4** also requires the Board to adjust the fee imposed on a local government employer in certain circumstances.

Existing law requires a party aggrieved or its designated representative to file a complaint with the Board. Existing law also authorizes the Board to conduct a preliminary investigation of such a complaint. (Sections 27 and 28 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at pages 3733-34 (NRS 288.625, 288.630)) **Section 5** of this regulation prescribes certain requirements governing preliminary investigations. **Section 22** of this regulation prohibits the Board from ordering a settlement conference for any matter for which a preliminary investigation of a complaint is completed.

Existing law authorizes the Board to appoint a hearing officer to conduct certain hearings the Board is otherwise required by law to conduct. (Section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625)) **Section 6** of this regulation prescribes requirements for such a hearing officer, including proposing a recommended decision or order to the Board in writing. **Section 6** also: (1) authorizes either party to file a written objection to the recommended decision or order with the Board; and (2) provides that the Board will take certain action before rendering a final decision.

Existing law requires the Board to adopt regulations establishing bargaining units of employees of the Executive Department. (Section 53 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3744) **Section 7** of this regulation establishes these bargaining units.

Existing law requires the Board to order an election of exclusive representatives of a bargaining unit if: (1) no labor organization is designated as the exclusive representative of a bargaining unit; (2) a labor organization files with the Board a written request for an election which includes evidence showing that it has been authorized to serve as a representative by at least 30 percent but not more than 50 percent of the employees within the bargaining unit; and (3) no other election to choose, change or discontinue representation has been conducted within the bargaining unit during the immediately preceding 12 months. (Section 31 of Senate Bill No.

135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525)) **Section 8** of this regulation prescribes requirements if the Board orders an election. Existing law requires the Board to place certain labor organizations as a choice on the ballot if an election is ordered. (Section 32 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.530)) **Section 8** requires a labor organization that wishes to be placed on the ballot for an election to file a written request to be placed on the ballot for the election within 14 days after the date on which the Board orders an election.

Sections 11, 14, 19, 21, 23, 24, 29, 30, 33, 34, 36 and 37 of this regulation change certain procedural deadlines for matters considered by the Board. **Section 12** of this regulation updates existing regulations to conform with changes made to the Nevada Rules of Civil Procedure on March 1, 2019.

Section 18 of this regulation clarifies that pleadings and written motions that are filed electronically with the Board do not need to comply with certain requirements prescribed for written documents that are filed with the Board.

Existing regulations require each party to file a prehearing statement with the Board. (NAC 288.250) **Section 21** of this regulation requires such a statement to include certain information concerning any pending or anticipated administrative, judicial or other proceedings related to the subject of the hearing.

Existing regulations authorize the Commissioner of the Board to establish one or more panels consisting of members of the Board for the purpose of hearing and disposing of a matter. If two or more panels are established and the absence of one or more members of such a panel would otherwise require the postponement of a hearing, existing regulations authorize the Commissioner to randomly assign another member or members of the Board to the panel with the written consent of all the parties to the hearing. (NAC 288.271) **Section 25** of this regulation removes the requirement that the Commissioner obtain the parties' written consent and provides that if the Commissioner makes such a random assignment: (1) the agenda for the meeting of the panel must indicate that the Commissioner has taken such action; and (2) the member or members randomly assigned to the panel shall continue to participate in the panel for purposes of the hearing and disposition of the matter, including when the matter is deliberated or disposed of at a future meeting of the panel. Existing regulations require the Commissioner to assign a case to the next available panel for which a meeting agenda has not yet been posted whenever a case is commenced before the Board. (NAC 288.2715) **Section 26** of this regulation revises this requirement to authorize the Commissioner to assign a case to the full Board or an initial panel.

Section 27 of this regulation authorizes the Board to conduct a hearing by video conference and requires notice of a hearing to include certain information about the hearing.

Existing regulations: (1) limit representation before the Board in a contested case to representation in proper person or by an attorney who is licensed to practice law in the State of Nevada; and (2) prescribe criteria for representation to be deemed in proper person. Existing regulations also authorize the Board to waive the limitation on representation upon a motion. (NAC 288.278) **Section 28** of this regulation provides that representation shall be deemed to be in proper person if the representation is by a currently elected or appointed official of the labor

organization, an employee of the labor organization or an employee of the Executive Department. **Section 28** also authorizes the Board to waive the limitation on representation by stipulation of the parties.

Section 29 of this regulation: (1) extends the deadline for submitting a request for postponement of a scheduled hearing; and (2) authorizes the Commissioner to waive the period for hearing a complaint. **Section 31** of this regulation revises requirements concerning exhibits submitted to the Board.

Existing regulations require each brief filed with the Board to be accompanied by a certificate showing service on each party of record. (NAC 288.345) **Section 32** of this regulation provides that this requirement does not apply if the Board orders the submission of simultaneous briefs. **Section 32** additionally requires the Board to serve each party of record if the Board has required the submission of simultaneous briefs.

Section 1. Chapter 288 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *“Government employer” means:*

- 1. A local government employer, as defined in NRS 288.060; or*
- 2. The Executive Department, as defined in section 10 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.042).*

Sec. 3. *The Board interprets the term “confidential employee,” as used in section 18 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.420), to include, without limitation, any clerical personnel who are employed by the Board pursuant to NRS 288.090.*

Sec. 4. *1. To verify the number of local government employees employed by a local government employer for the purposes of NRS 288.105, the Board will:*

(a) If employees of a local government employer are members of the Public Employees’ Retirement System, use the most recent information available from the Public Employees’ Retirement System.

(b) If employees of a local government employer are not members of the Public Employees' Retirement System, use any other information submitted to the Board by the local government employer if the Board deems the information to be reliable and the local government employer certifies the accuracy of the information.

2. To verify the number of employees employed by the Executive Department for the purposes of section 23 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3730 (NRS 288.475), the Board will use any information submitted to the Board by the Division of Human Resource Management of the Department of Administration or the Nevada System of Higher Education, as applicable, if the Board deems the information to be reliable and the Division or the Nevada System of Higher Education, as applicable, certifies the accuracy of the information.

3. On or before May 31 of each year, each local government employer that does not employ persons who are members of the Public Employees' Retirement System, the Division of Human Resource Management of the Department of Administration and the Nevada System of Higher Education shall submit to the Board the information necessary to verify the number of employees employed by the local government employer or Executive Department, as applicable.

4. The Board will adjust the fee imposed on a local government employer whose employees are members of the Public Employees' Retirement System if:

(a) The local government employer submits to the Board proof that the local government employer employs 98 percent or less than the number of local government employees reflected in the information made available to the Board from the Public Employees' Retirement System;

(b) The Board deems the proof submitted pursuant to paragraph (a) to be reliable;

(c) The local government employer certifies the accuracy of the proof submitted pursuant to paragraph (a); and

(d) The local government employer pays any portion of the fee that is not in dispute.

Sec. 5. 1. In determining whether to conduct a preliminary investigation of a complaint pursuant to section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), the Board will consider:

(a) Whether the complainant or petitioner is represented by counsel;

(b) Whether the complainant or petitioner has conducted an investigation of the complaint or similar complaints;

(c) The number of persons affected by the alleged violation; and

(d) The amount of time and resources necessary to conduct the investigation.

2. In conducting a preliminary investigation pursuant to section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), the Board or Commissioner may:

(a) Interview the complainant or petitioner or any witnesses.

(b) Request the complainant or petitioner or any witness to provide records to the Board or Commissioner. A person shall provide any requested records to the Board or Commissioner, as applicable, not later than 30 days after the date on which the request was received by the person.

3. The Board or Commissioner will not conduct or continue a preliminary investigation if the complainant or petitioner has filed a motion to dismiss.

4. If the Commissioner conducts a preliminary investigation on behalf of the Board, upon completion of the investigation, the Commissioner shall prepare and submit to the Board, the complainant and the respondent a written report which must include a recommendation of whether the complaint has any basis in law or fact and the reason for that recommendation.

5. The Board will consider the prehearing statements filed pursuant to NAC 288.250 and the written report prepared pursuant to subsection 4, if any, and determine whether the complaint has any basis in law or fact. Upon making such a determination, the Board will take the action prescribed in paragraph (a) or (b) of subsection 2 of section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3734 (NRS 288.625).

Sec. 6. 1. *A hearing officer appointed by the Board pursuant to section 28 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3734 (NRS 288.630), to conduct a hearing that the Board is otherwise required to conduct pursuant to section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), shall:*

(a) Comply with any requirements for a hearing prescribed in NAC 288.273 to 288.350, inclusive;

(b) Ensure that the administrative record of the hearing is complete and forward the record to the Board as soon as practicable after the close of the hearing;

(c) As soon as practicable upon the close of the hearing, propose a recommended decision or order to the Board in writing, which must include, without limitation, any findings of fact or conclusions of law reached by the hearing officer; and

(d) Serve a copy of the recommended decision or order upon each party.

2. Either party may, within 14 days after service of the recommended decision or order pursuant to subsection 1, file a written objection to the recommendation with the Board.

3. Before deliberating, each member of the Board will state on the record that he or she has read:

(a) The administrative record of the hearing forwarded to the Board pursuant to paragraph (b) of subsection 1;

(b) The recommended decision of a hearing officer proposed pursuant to paragraph (c) of subsection 1; and

(c) Any objection filed pursuant to subsection 2.

4. The Board will consider the administrative record, the recommended decision of a hearing officer and any objection before rendering a final decision.

5. The Board will not substitute its judgment for that of the hearing officer as to the weight of evidence on a question of fact. The Board may substitute its judgment for that of the hearing officer as to any other matter.

Sec. 7. 1. For the purposes of paragraph (a) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the labor, maintenance, custodial and institutional employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves the performance of work that is physical and repetitive in nature, including, without limitation, employees who are custodial workers, laundry workers and highway maintenance workers. The unit excludes supervisory employees.

2. For the purposes of paragraph (b) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the administrative and clerical employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves the performance of work that is repetitive in nature but is

not primarily physical, including, without limitation, administrative assistants, accounting assistants and legal secretaries. The unit excludes supervisory employees.

3. For the purposes of paragraph (c) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the technical aides to professional employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves assisting employees who perform work that requires specialized skills or education. The unit includes, without limitation, accountant technicians, tax examiners and information technology technicians. The unit excludes supervisory employees.

4. For the purposes of paragraph (d) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the non-health care professional employees bargaining unit is hereby established. The unit includes professional employees whose primary job responsibility involves the performance of work that requires specialized skills or education but does not involve the performance of health care work, including, without limitation, environmental scientists, budget analysts and program officers. The unit excludes supervisory employees.

5. For the purposes of paragraph (e) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the health care professional employees bargaining unit is hereby established. The unit includes professional employees whose primary job responsibility involves the performance of health care work that requires specialized skills or education, including, without limitation, psychiatric nurses, mental health counselors and registered dietitians. The unit excludes supervisory employees.

6. *For the purposes of paragraph (f) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the nonprofessional health and personal care employees bargaining unit is hereby established. The unit includes employees whose primary job responsibility involves providing health care and personal care that does not require specialized skills or education, including, without limitation, child care workers, mental health technicians and dental assistants. The unit excludes supervisory employees.*

7. *For the purposes of paragraph (g) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the category I peace officers bargaining unit is hereby established. The unit includes employees whose primary job responsibility requires certification as a category I peace officer, including, without limitation, officers employed by the Department of Public Safety or the Nevada System of Higher Education, game wardens and park rangers. The unit excludes supervisory employees.*

8. *For the purposes of paragraph (h) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the category II peace officers bargaining unit is hereby established. The unit includes employees whose primary job responsibility requires certification as a category II peace officer, including, without limitation, criminal investigators, compliance investigators, enforcement investigators and youth parole counselors. The unit excludes supervisory employees.*

9. *For the purposes of paragraph (i) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the category III peace officers bargaining unit is hereby established. The unit includes employees whose primary job responsibility requires certification as a category III peace officer, including, without*

limitation, correctional officers and forensic specialists. The unit excludes supervisory employees.

10. For the purposes of paragraph (j) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the supervisory employees bargaining unit is hereby established. The unit includes employees from all occupational groups who are supervisory employees, including, without limitation, fish hatchery supervisors, park supervisors and tax program supervisors.

11. For the purposes of paragraph (k) of subsection 1 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515), the firefighters bargaining unit is hereby established. The unit includes employees whose primary job responsibility is firefighting, including, without limitation, firefighters, seasonal firefighters and crew chiefs. The unit excludes supervisory employees.

12. As used in this section:

(a) "Professional employee" has the meaning ascribed to it in paragraph (d) of subsection 3 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515).

(b) "Supervisory employee" has the meaning ascribed to it in paragraph (e) of subsection 3 of section 29 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3735 (NRS 288.515).

Sec. 8. 1. If a labor organization files with the Board a written request for an election pursuant to paragraph (a) of subsection 1 of section 31 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525), the Board will post a copy of the written

request and any information received by the Board relating to the written request on the Internet website maintained by the Board.

2. Any person may request that the Board notify the person if a labor organization files a written request for an election pursuant to paragraph (a) of subsection 1 of section 31 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525) or the Board receives any additional information related to such a request. The Board will provide such notice by electronic mail to any person who submits such a request.

3. If the Board orders an election within a bargaining unit pursuant to subsection 1 of section 31 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.525), the election must not occur sooner than 14 days after the date on which such an order is made.

4. Any labor organization that wishes to be placed on the ballot for an election pursuant to paragraph (c) of section 32 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.530) must file a written request to be placed on the ballot for the election within 14 days after the date on which the Board orders an election.

Sec. 9. NAC 288.020 is hereby amended to read as follows:

288.020 “Board” means:

1. The full ~~Local~~ Government Employee-Management Relations Board, consisting of all the members serving on the Board; or

2. A panel of the Board, if one or more panels are established pursuant to NAC 288.271.

Sec. 10. NAC 288.030 is hereby amended to read as follows:

288.030 “Complainant” or “petitioner” means:

1. A local government employer as defined in NRS 288.060;

2. An employee organization as defined in NRS 288.040; ~~for~~
3. A local government employee as defined in NRS 288.050 ~~for~~;
4. *The Executive Department, as defined in section 10 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.042);*
5. *A labor organization, as defined in section 12 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.048); or*
6. *An employee, as defined in section 19 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3729 (NRS 288.425).*

Sec. 11. NAC 288.080 is hereby amended to read as follows:

288.080 1. The issuance and service of process of papers required by this chapter must be in conformity with the Nevada Rules of Civil Procedure and the rules and regulations of the Board.

2. Any written document or other written matter required by this chapter to be filed with the Board or served upon another party shall be deemed to comply with any time deadline if it is mailed and postmarked upon the date specified or filed or transmitted electronically in accordance with subparagraph (3) of paragraph (d) of subsection 1 of NAC 288.070 or NAC 288.075, as applicable, upon the date specified.

3. If any paper is served by delivery of a copy, the delivery may be made by any person of suitable age and discretion, unless otherwise expressly provided by the Nevada Rules of Civil Procedure and the rules and regulations of the Board.

4. Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Nevada Rules of Civil Procedure and the rules and regulations of the Board, must be promptly filed in the Board's office before action is

to be taken thereon by the Board or the parties. The proof must show the day and manner of service and may be by written acknowledgment of service, by certificate of a member of the bar, by affidavit of the person who served the papers or by any other proof satisfactory to the Board. If an affidavit of mailing or of service is attached to the original pleading, it must be attached underneath the original pleading so that the character of the pleading is easily discernible. Failure to make the proof of service required by this subsection does not affect the validity of the service. The Board may at any time allow the proof of service to be amended or supplied, unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

5. A written complaint filed with the Board must be served upon the respondent, ~~Hoehl~~ government employer *or labor organization* or employee organization, *as applicable*, by the complaining party within ~~15~~ 7 days ~~to~~ *after* the filing.

Sec. 12. NAC 288.090 is hereby amended to read as follows:

288.090 The computation of any period prescribed by this chapter or by an order of the Board must be made in accordance with ~~Rules~~ *Rule* 6(a) ~~and 6(e)~~ of the Nevada Rules of Civil Procedure.

Sec. 13. NAC 288.100 is hereby amended to read as follows:

288.100 1. If a matter is significantly related to the subjects enumerated in subsection 2 of NRS 288.150, a local government employer, upon written request by an appropriate employee organization, shall negotiate the matter unless, in the determination of the employer, the proposed matter to be negotiated would be reserved to the local government employer pursuant to subsection 3 of NRS 288.150.

2. *If a matter is significantly related to the subjects enumerated in subsection 2 of section 24 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3731 (NRS 288.500), the Executive Department, upon written request by a labor organization, shall negotiate the matter unless, in the determination of the Executive Department, the proposed matter to be negotiated would be reserved to the Executive Department pursuant to subsection 3 of section 24 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3731 (NRS 288.500).*

3. If ~~the~~ *a government* employer determines that the proposed matter would be reserved to him or her pursuant to subsection 3 of NRS 288.150 ~~+~~ *or subsection 3 of section 24 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3731 (NRS 288.500), as applicable,* the employee organization *or labor organization, as applicable,* may request the Board to review that determination. If the Board, after reviewing the determination of the *government* employer, agrees that the controversy is a contested matter within the meaning of chapters 233B and 288 of NRS, it may conduct a hearing.

Sec. 14. NAC 288.110 is hereby amended to read as follows:

288.110 1. All elections conducted ~~in accordance with subsection 4~~ *pursuant to chapter 288* of NRS ~~288.160~~ will be conducted under the supervision of the Board or its agent.

2. Any party may be represented at the election by observers selected in accordance with such limitations as the Board may prescribe.

3. Any observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. The ballots of challenged persons will be impounded.

4. Upon the conclusion of the election, the ballots will be counted in the presence of the parties or their observers and the Board's agent conducting the election. The agent will furnish parties with a tally of the ballots.

5. Except as otherwise provided in this subsection, the ballots must be kept for at least 6 months after an election, after which period the ballots may be destroyed. If a timely objection to the election is filed with the Board or a petition for judicial review concerning the election is filed in district court, the ballots must be kept until after the conclusion of any Board or court proceeding concerning the election.

6. Provisions may be made for a nonunion vote and for linguistic assistance.

7. If the results are inconclusive, the Board will conduct a runoff election.

8. Within ~~5~~ 7 days after the election, any party may file with the Board objections to the conduct of the election or conduct affecting the results of the election. The objections must be in writing and contain a brief statement of facts upon which the objections are based. ~~A~~ *Except as otherwise provided in NAC 288.075, a* sworn original and ~~four~~ *six* copies of the objections must be signed and filed with the Board. The party filing the objections shall serve a copy upon each of the other parties.

9. If challenges which affect the results of the election or objections raise a substantial question which cannot be resolved without a hearing, the Board may issue and serve notice of a hearing on these issues.

10. An employee organization will be considered the exclusive bargaining agent for *local government* employees within a bargaining unit, pursuant to an election, if:

- (a) Challenged ballots are insufficient in number to affect the results;
- (b) No runoff election is to be held;

(c) No timely objections are filed; and

(d) The election demonstrates that the employee organization is supported by a majority of the *local government* employees within the particular bargaining unit.

11. A labor organization will be considered the exclusive representative of a bargaining unit for employees of the Executive Department within the bargaining unit, pursuant to an election, if the criteria prescribed in subsection 4 of section 32 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3736 (NRS 288.530), are met.

Sec. 15. NAC 288.130 is hereby amended to read as follows:

288.130 If any *labor organization or* employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the Board in accordance with the provisions of NAC 288.075 and 288.200 to 288.375, inclusive.

Sec. 16. NAC 288.140 is hereby amended to read as follows:

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

1. The name and contact information for the person designated by the ~~Health~~ 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 *labor organizations or* employee organizations, *as applicable*, that the *government* employer is currently recognizing and a description of the bargaining unit for each ~~employee~~ *such* organization.

Sec. 17. NAC 288.147 is hereby amended to read as follows:

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

1. The name and contact information of the person designated by the employee organization *or labor organization, as applicable*, 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 ~~[H]~~ *or labor organization, as applicable*. The employee organization *or labor organization* may elect, appoint or retain additional or other officers and representatives subsequent thereto.

Sec. 18. NAC 288.231 is hereby amended to read as follows:

288.231 1. Pleadings and written motions filed with the Board, including, without limitation, a complaint, petition, application or request, must:

- (a) Be properly titled;
- (b) Be signed by an authorized person;
- (c) State the name and, unless the pleading is a complaint, address of each party;
- (d) Clearly identify the proceeding by title;
- (e) Include the case number if a case number has been assigned;
- (f) Include an appropriate caption, if applicable;
- (g) Set forth a clear and concise statement of the matters relied upon as a basis for the action or relief requested and an appropriate prayer;

(h) ~~Be~~ *Except as otherwise provided in NAC 288.075, be* clear, legible and typewritten or printed by a computer on white, unglazed paper that is 8 1/2 by 11 inches in size and that is not lighter than 16 pounds;

(i) ~~Be~~ *Except as otherwise provided in NAC 288.075, be* firmly bound together at the upper left-hand corner of the document; and

(j) Not exceed 30 pages, except with the permission of the Board.

2. The type used in a pleading or written motion described in subsection 1 must be black in color and must not be smaller than 11 characters per inch. The lines on each page of the pleading or written motion must be numbered consecutively on the left margin. Each page of the pleading or written motion must:

(a) Have a top margin that is 1 inch from the top edge of the paper and a bottom margin that is 1 inch or more from the bottom edge of the paper; and

(b) Be numbered consecutively at the bottom of the page.

3. A pleading initiating a new proceeding must have space for the case number on the pleading.

Sec. 19. NAC 288.240 is hereby amended to read as follows:

288.240 1. Any request for an order by the Board, except for an order to permit intervention, concerning any matter that has been assigned a case number and that has not been finally decided by the Board must be styled a “motion.”

2. All motions made before or after a hearing must be filed in writing with the Board. Motions made at a hearing must be stated orally and must be included in the stenographic report of the hearing.

3. A motion directed at a complaint or petition must be written and filed before the answer or response is due.

4. Within ~~10~~ 14 days after service of any motion, all parties wishing to respond to the points raised in the motion shall file their opposition to the motion. That opposition must be in writing, unless made during the hearing. Within ~~10~~ 14 days after service of the opposition to the motion, the moving party may respond to the points raised in the opposition.

5. A certificate of service must be attached to the original opposition or response, indicating that the opposition or response has been served on the opposing party, unless the opposition or response is made during a hearing.

6. If a party fails to file and serve a written opposition to a motion, that failure to respond may be construed as an admission that the motion is meritorious and as consent to granting the motion.

Sec. 20. NAC 288.245 is hereby amended to read as follows:

288.245 1. Any person or governmental entity claiming an interest in a dispute or controversy that is the subject of a hearing before the Board may, by motion, request leave of the Board to file an amicus brief. If the Board grants the motion, it may impose terms and conditions related to the brief.

2. The Board may request in writing that one or more ~~health~~ government employers, *labor organizations* and employee organizations file amicus briefs in any contested case on such terms and conditions as are specified in the request.

Sec. 21. NAC 288.250 is hereby amended to read as follows:

288.250 1. Not later than ~~20~~ 21 days after the service of the answer, unless otherwise ordered by the Board or Commissioner, each party shall file with the Board the prehearing statement of the party which includes:

(a) 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;

(b) 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;

(c) *A statement of whether there are any pending or anticipated administrative, judicial or other proceedings related to the subject of the hearing and, if so, a description of the manner in which those proceedings may affect the hearing and an opinion concerning whether the hearing should be stayed pending the outcome of any such proceedings;*

(d) A list of witnesses and their qualifications, including a brief summary of their expected testimony; and

~~(d)~~ (e) An estimate, to the nearest hour, of the time needed for the presentation of the party's position.

2. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a party shall not attach any document, including, without limitation, an exhibit, to a prehearing statement.

Sec. 22. NAC 288.255 is hereby amended to read as follows:

288.255 1. Except as otherwise provided in subsection 3, the Board may order the parties to participate in a settlement conference upon the motion of any party or its own motion.

2. The Commissioner shall conduct any settlement conference ordered by the Board pursuant to subsection 1.

3. The Board will not order a settlement conference for any matter *for which a preliminary investigation of a complaint has been completed pursuant to subsection 2 of section 27 of Senate Bill No. 135, chapter 590, Statutes of Nevada 2019, at page 3733 (NRS 288.625), or any matter* that is:

(a) An appeal of the determination of a bargaining unit brought pursuant to subsection 5 of NRS 288.170;

(b) A proceeding relating to an application for the recognition of an employee organization filed pursuant to NRS 288.160; or

(c) A proceeding commenced upon a petition for a declaratory order filed pursuant to NAC 288.380.

4. A party or the Board may file a motion for a settlement conference at any time:

(a) After all parties have submitted prehearing statements pursuant to NAC 288.250; and

(b) Not later than 60 days before the date of a scheduled hearing.

5. The Commissioner may establish reasonable guidelines to conduct a particular settlement conference, except that the Commissioner may not:

(a) Require the parties to submit additional statements or briefs in advance of a settlement conference; or

(b) Establish guidelines that will impose any undue expense on a party.

6. The Commissioner may not be called as a witness in any proceeding in which a settlement conference has taken place.

Sec. 23. NAC 288.260 is hereby amended to read as follows:

288.260 1. Any person claiming an interest in a dispute or controversy which is the subject of a hearing may be made a party upon timely petition and a showing satisfactory to the Board of the person's interest in the controversy.

2. A petition to intervene must include the following information:

- (a) The nature of the petitioner's statutory or other right;
 - (b) The nature and extent of the petitioner's interest;
 - (c) The effect of any decision in the proceedings on the petitioner's interest;
 - (d) Other means available whereby the petitioner's interest may be protected;
 - (e) The extent to which the petitioner's interest may be represented by existing parties;
 - (f) The extent to which the petitioner's participation can assist in the development of a sound record;
 - (g) The extent to which the petitioner's participation will broaden the issues or delay the proceedings;
 - (h) The extent to which the petitioner's interest in the proceedings differs from that of the general public;
 - (i) How the petitioner's intervention would serve the public interest;
 - (j) If affirmative relief is sought, the type and basis of that relief;
 - (k) A statement as to whether the petitioner intends to present evidence in the proceeding;
- and
- (l) The name and address of the petitioner.

3. A petition is not timely filed unless it is filed with the Board and served upon all parties by certified mail at least 30 days before the time set for the hearing. A response to the application

or petition may be made by any party not later than ~~15~~ 7 days after receipt of the application or petition.

4. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a person filing a petition pursuant to this section shall not attach any document, including, without limitation, an exhibit, to the petition.

Sec. 24. NAC 288.262 is hereby amended to read as follows:

288.262 1. A petition for leave to intervene and proof of service of a copy of the petition on each party of record must be filed with the Board at least 30 days before the time set for the hearing. A response to the petition may be made by any party not later than ~~15~~ 7 days after receipt of the petition.

2. If a petition for leave to intervene is filed after the applicable period, the petition must state to the satisfaction of the Board a substantial reason for the delay. If a reason is not stated, the petition may be summarily denied by the Board.

Sec. 25. NAC 288.271 is hereby amended to read as follows:

288.271 1. The Commissioner may establish one or more panels as the Commissioner deems necessary. Each panel must be designated "Panel A," "Panel B" and so forth according to the number of panels established.

2. To the extent consistent with the provisions of subsection 3 of NRS 288.090, if two or more panels are established:

(a) The Commissioner shall assign each member of the Board to a panel or panels.

(b) Each member of the Board must be assigned to the same number of panels as every other member of the Board.

(c) If the absence of one or more members of a panel would otherwise require the postponement of a hearing, the Commissioner may ~~with the written consent of all the parties to the hearing,~~ randomly assign another member or members of the Board to the panel for the purposes of the hearing and disposition of the matter. *If the Commissioner randomly assigns another member or members of the Board to the panel pursuant to this paragraph:*

(1) The agenda for the meeting of the panel must indicate that the Commissioner has taken such action; and

(2) The member or members randomly assigned to the panel shall continue to participate in the panel for purposes of the hearing and disposition of the matter, including, without limitation, when the matter is deliberated or disposed of at a future meeting of the panel.

3. Except as otherwise provided in subsection 4:

(a) If the Chair of the Board is a member of a panel, he or she shall serve as the presiding officer of the panel.

(b) If the Chair of the Board is not a member of a panel, the Vice Chair of the Board shall serve as the presiding officer of the panel.

(c) If the Chair or the Vice Chair of the Board is not a member of a panel, the most senior member of the Board assigned to the panel shall serve as the presiding officer of the panel. For the purposes of this paragraph:

(1) The seniority of a member must be determined on the basis of the date of the appointment of the member to the Board.

(2) If two or more members were appointed on the same date, they shall draw lots to determine which of them will serve as the presiding officer of the panel.

4. Notwithstanding the provisions of subsection 3, with the consent of the presiding officer of the panel and the member so designated, the Commissioner may designate any member of a panel as the acting presiding officer for a meeting of the panel.

Sec. 26. NAC 288.2715 is hereby amended to read as follows:

288.2715 1. The Commissioner shall schedule the meetings of each panel in consultation with the members of the panel.

2. Except as otherwise provided in this section ~~§~~ *and section 5 of this regulation*, whenever a case is commenced before the Board by the filing of a complaint, petition or other pleading, the Commissioner shall ~~assign~~

(a) *Assign* the case to the ~~next available~~ *full Board; or*

(b) *Appoint an initial* panel ~~for which a meeting agenda has not yet been posted pursuant to NRS 241.020.~~,

to consider whether a hearing should be held in the case.

3. If ~~§~~ *the Board or* panel, *as applicable*, decides *pursuant to subsection 2* that a hearing should be held in a case, the *Board or initial* panel will, during the same meeting, randomly assign the case to itself or another panel for hearing.

4. Except as otherwise provided in this subsection, after a case has been assigned to a panel pursuant to subsection 2 or 3, as applicable, any motion or other matter relating to the case will be decided by that panel. If a stipulation to dismiss all or any part of a complaint or petition is filed, the Commissioner shall assign the stipulation to the next available panel ~~as provided in subsection 2~~ for consideration and disposition.

5. If the Commissioner determines that a case involves an issue of statewide significance, the Commissioner may so designate the case and assign it to the full Board instead of a panel for

all further proceedings. If such a designation is made, the Commissioner shall prepare and file written notice of the designation, stating the reasons for the designation, and serve a copy of the notice upon each party to the case.

Sec. 27. NAC 288.277 is hereby amended to read as follows:

288.277 **1.** Hearings may be held at any location in the State that the Board designates in the notice of the hearing. To the extent possible, hearings will be held in the geographical area which is affected by the proceeding.

2. *Hearings may be conducted by video conference.*

3. *Notice of a hearing must set forth:*

(a) *The date, time and place of the hearing; and*

(b) *Whether the hearing will be conducted in person or by video conference.*

Sec. 28. NAC 288.278 is hereby amended to read as follows:

288.278 **1.** Except as otherwise provided in this subsection, representation before the Board in a contested case is limited to representation in proper person or by an attorney who is licensed to practice law in the State of Nevada. The Board may:

(a) Upon a motion ~~or~~ ***or by stipulation of the parties,*** waive the limitation on representation; and

(b) Require an attorney who is not licensed to practice law in the State of Nevada and who is licensed to practice in any other jurisdiction of the United States to associate with an attorney who is licensed to practice law in the State of Nevada.

2. The representation shall be deemed to be in proper person if the representation is by ~~an~~ ***an***:

(a) *A* currently elected or appointed official of the employee organization or union or local government, a local government employee or an employee of the employee organization or

union. In the case of an employee organization or union, the official or employee must also be a member of the employee organization or union.

(b) A currently elected or appointed official of the labor organization, an employee of the labor organization or an employee of the Executive Department. In the case of a labor organization, the official or employee must also be a member of the labor organization.

Sec. 29. NAC 288.290 is hereby amended to read as follows:

288.290 *1.* Any request for the postponement of a scheduled hearing must be in writing and signed by the parties or their counsel. The request must include a statement of the reasons for the requested postponement and must be filed with the Board at least ~~10~~ *14* days before the time the hearing is scheduled unless good cause is shown to excuse the untimely filing of the request. ~~In no case will a~~ *Except as otherwise provided in subsection 2, the Board will not grant a* request for postponement ~~be granted~~ *submitted* within 30 days after the running of the ~~90-day~~ *180-day* period for hearing a complaint.

2. The parties may file with the Commissioner a request to waive the period for hearing a complaint. If the Commissioner grants such a request, the Commissioner may grant a request for postponement submitted after the running of the period for hearing a complaint.

Sec. 30. NAC 288.306 is hereby amended to read as follows:

288.306 *1.* The Board may, following the filing of briefs or upon contested motions:

(a) Set the matter for oral argument upon ~~10~~ *14* days written notice to each party of record, unless the Board considers a shorter time advisable; and

(b) Limit the amount of time available to each party for oral argument.

2. If the Board limits the amount of time available for oral argument pursuant to subsection 1, the Board will allow each party an equal amount of time for oral argument.

Sec. 31. NAC 288.324 is hereby amended to read as follows:

288.324 1. Unless otherwise permitted, exhibits submitted to the Board must be limited in size to 8 1/2 by 11 inches. ~~{A}~~ *Except as otherwise provided in subsection 2, a* copy of each documentary exhibit must be furnished to each party of record, and ~~{six}~~ *, if the case has been assigned to:*

(a) The full Board, eight copies must be furnished to the Board.

(b) A panel, six copies must be furnished to the panel.

2. The Board may waive the requirements of subsection 1 and require the parties to furnish documentary exhibits in an electronic format. If the Board does so, the Board will notify each party of this requirement when it notifies the party of the hearing.

3. If relevant evidence is included in a written or printed statement, book or document of any kind, containing other matters not relevant and not intended to be put into evidence, the statement, book or document containing that other matter may not be received or admitted in whole. Counsel or other parties offering evidence or exhibits shall present, in convenient and proper form for filing, a copy of the relevant portions or, at the discretion of the Board, read these portions into the record. Any documentary evidence offered, whether in the form of an exhibit or introduced by reference is subject to appropriate and timely objection.

~~{2}~~ 4. If documents are numerous or voluminous, and a party desires to offer into evidence more than a limited number of these documents as typical of the others, an orderly abstract of relevant data contained in these documents may be prepared and offered as an exhibit. Other parties of record will be given a reasonable opportunity to examine both the abstract and the documents.

~~13.1~~ 5. In any proceeding involving detailed accounting exhibits, the Board may require each party to file with the Board, and to serve on each party of record, a copy of these exhibits within a specified time before the hearing to enable the parties of record to study the exhibits and to prepare cross-examination with reference to them.

~~14.1~~ 6. Amendments to exhibits may be made after filing with the Board if the amendments do not prejudice the rights of any party or if the amendments contain a clerical or mathematical error.

Sec. 32. 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. Each brief must be filed with the Board and *, if the Board has not ordered the submission of simultaneous briefs,* must be accompanied by a certificate showing service on each party of record as provided in NAC 288.200. *If the Board has ordered the submission of simultaneous briefs, the Board shall serve each party after the Board receives each brief.*

Sec. 33. NAC 288.360 is hereby amended to read as follows:

288.360 1. Either party may, within ~~15~~ 14 days after service of a final decision of the Board, file a petition for a rehearing stating the reasons therefor.

2. The Board may order a rehearing by requiring the parties to submit any additional evidence or data in support of their respective positions. The Board will not require the repetition of evidence or data previously submitted. Further proceedings and deliberations will be conducted in accordance with the provisions of this chapter.

3. The failure of either party to submit a petition for rehearing within ~~15~~ 14 days constitutes an agreement that the Board's decision is a final decision for the purposes of NRS 233B.130.

Sec. 34. NAC 288.362 is hereby amended to read as follows:

288.362 Answers to a petition for rehearing will not be entertained by the Board. If a rehearing is granted by the Board, a response in the nature of an answer may be filed by any party of record within ~~15~~ **14** days after the issuance of the order granting a rehearing. The response must be confined to the issues upon which rehearing has been granted and the responding party must serve a copy of the response on each party of record.

Sec. 35. NAC 288.380 is hereby amended to read as follows:

288.380 1. Any recognized employee organization *or labor organization* or ~~Health~~ government employer may petition the Board for a declaratory order regarding the applicability or interpretation of any statutory provision or of any regulation or decision of the Board. A copy of the petition must be filed with the Board.

2. If the petitioner is a ~~Health~~ government employer, it shall file a copy of its petition with each of the employee organizations *or labor organizations, as applicable*, which it has recognized. If the petitioner is a recognized employee organization ~~H~~ *or labor organization*, it shall file a copy of its petition with the *government* employer which afforded it recognition.

3. The petition must contain:

- (a) The name, address, zip code and telephone number of the petitioner;
- (b) A statement of the nature of the petitioner's interest, including the reasons for the submission of the petition;
- (c) The designation of the specific provision, regulation or decision in question;
- (d) A clear and concise statement of the position of, or contention of, the petitioner;
- (e) A memorandum of authorities, containing a full discussion of their reasons, including legal authorities in support of such a position or contention; and

(f) The signature of each petitioner.

4. Any petition which does not conform to these requirements may be rejected.

Sec. 36. 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~~ 21 days by filing his or her 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~~ 14 days after the date on which the response is served.

Sec. 37. NAC 288.400 is hereby amended to read as follows:

288.400 1. Any petitioner who desires a hearing on a petition for a declaratory order shall set forth in detail in his or her request the reason why the matters alleged in the petition and the supporting affidavits or other written evidence in briefs or memorandum of legal authorities do not permit the fair and expeditious disposition of the petition.

2. A request for a hearing filed pursuant to this section must be filed within ~~20~~ 21 days after service of any response to the petition. Failure to file a request for a hearing may be construed as consent for the Board to issue a declaratory order without holding a hearing.

3. The parties shall not file the prehearing statements which are otherwise required by NAC 288.250 unless a request for a hearing filed pursuant to this section is granted by the Board.