

MOCK-UP

PROPOSED AMENDMENT 3195 TO SENATE BILL NO. 294

PREPARED FOR SENATOR CANNIZZARO
APRIL 2, 2021

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

Legislative Counsel's Digest:

Under existing law, if a local government employer and an employee organization that represents local government employees, other than firefighters, police officers, teachers and educational support personnel, fail to resolve a disputed issue in negotiating a collective bargaining agreement, either party may submit the dispute to an impartial fact finder. Before submitting the dispute to the fact finder, the parties may agree to make the findings and recommendations of the fact finder final and binding. If the parties cannot agree, either party may request the formation of a panel to determine whether the findings and recommendations of the fact finder on certain issues are to be final and binding. (NRS 288.200) **Sections ~~1.5, 2 and 5~~** of this bill remove or repeal the provisions relating to such panels. **Section 4** of this bill makes a conforming change by eliminating the authorization of the expenditure of funds from the Reserve for Statutory Contingency Account in the State General Fund for expenses related to such panels. ~~Section 2 provides that the findings and award of the fact finder are final and binding on the parties.~~

Existing law establishes certain procedures and requirements applicable to the fact-finding process in negotiations between local government employers and recognized employee organizations representing firefighters and police officers **and between school districts and employee organizations representing teachers and educational support personnel.** (NRS 288.205, 288.215 ~~1.5~~, **288.217**) Those procedures and requirements differ in certain respects from the procedures and requirements applicable to fact-finding in labor negotiations involving other local government employees. **Section ~~3~~ 1** of this bill makes ~~additional~~ changes applicable only to labor disputes ~~involving firefighters and police officers~~ **between local government employers which are cities and employee organizations.** Specifically, **if a city and an employee organization do not agree on whether to make the findings and recommendations of a fact finder final and binding,** ~~section 3 provides that unless the parties~~ **1 allows either party** to the dispute ~~agree~~ to

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~~make~~ submit the findings and recommendations of the fact finder to a second fact finder to serve as an arbitrator and issue a decision which is final and binding. ~~:(1) the report of the fact finder must include recommendations for settlement of the dispute, in lieu of an award; and (2) the findings and recommendations of the fact finder are not binding~~ on the parties.

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

1 Section 1. Chapter 288 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 In the case of an employee organization and a local government
4 employer which is a city, the following departures from the provisions of
5 NRS 288.200 also apply:

6 1. If the parties do not agree on whether to make the findings and
7 recommendations of the fact finder final and binding, either party may
8 request the submission of the findings and recommendations of the fact
9 finder on all or any specified issues in a particular dispute which are
10 within the scope of subsection 10 of NRS 288.200 to a second fact finder
11 to serve as an arbitrator and issue a decision which is final and binding.

12 2. The parties shall select a second fact finder to serve as an
13 arbitrator pursuant to subsection 1 using the process established in
14 subsection 2 of NRS 288.200.

15 ~~Section 1.~~ Sec. 1.5. NRS 288.044 is hereby amended to read as
16 follows:

17 288.044 "Fact-finding" means the formal procedure by which an
18 investigation of a labor dispute is conducted by a ~~person~~ fact finder
19 which:

20 1. Evidence is presented; and

21 2. A written report is issued by the fact finder describing the issues
22 involved, making findings and setting forth recommendations for
23 settlement which may or may not be binding. ~~as provided in NRS~~
24 ~~288.200 or an award.~~

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

26 288.200 Except in cases to which NRS 288.205 and 288.215, or NRS
27 288.217 or section 1 of this act apply:

28 1. If:

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

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

33 either party to the dispute, at any time after April 1, may submit the
34 dispute to an impartial fact finder ~~for~~ for the findings and recommendations
35 of the fact finder. The findings and recommendations of the fact finder are

1 not binding on the parties except as provided in subsections 5, 6 and 11.
2 subsection 5. The mediator of a dispute may also be chosen by the parties
3 to serve as the fact finder.

4 2. If the parties are unable to agree on an impartial fact finder ~~for a~~
5 ~~panel of neutral arbitrators~~ within 5 days, either party may request from
6 the American Arbitration Association or the Federal Mediation and
7 Conciliation Service a list of seven potential fact finders. If the parties are
8 unable to agree upon which arbitration service should be used, the Federal
9 Mediation and Conciliation Service must be used. Within 5 days after
10 receiving a list from the applicable arbitration service, the parties shall
11 select their fact finder from this list by alternately striking one name until
12 the name of only one fact finder remains, who will be the fact finder to
13 hear the dispute in question. The employee organization shall strike the
14 first name.

15 3. The local government employer and employee organization each
16 shall pay one-half of the cost of fact-finding. Each party shall pay its own
17 costs of preparation and presentation of its case in fact-finding.

18 4. A schedule of dates and times for the hearing must be established
19 within 10 days after the selection of the fact finder pursuant to subsection
20 2, and the fact finder shall report the findings and recommendations
21 ~~award~~ of the fact finder to the parties to the dispute within 30 days after
22 the conclusion of the fact-finding hearing.

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

26 ~~6. If the parties do not agree on whether to make the findings and~~
27 ~~recommendations of the fact finder final and binding, either party may~~
28 ~~request the formation of a panel to determine whether the findings and~~
29 ~~recommendations of a fact finder on all or any specified issues in a~~
30 ~~particular dispute which are within the scope of subsection 11 are to be~~
31 ~~final and binding. The determination must be made upon the concurrence~~
32 ~~of at least two members of the panel and not later than the date which is 30~~
33 ~~days after the date on which the matter is submitted to the panel, unless~~
34 ~~that date is extended by the Commissioner of the Board. Each panel shall,~~
35 ~~when making its determination, consider whether the parties have~~
36 ~~bargained in good faith and whether it believes the parties can resolve any~~
37 ~~remaining issues. Any panel may also consider the actions taken by the~~
38 ~~parties in response to any previous fact-finding between these parties, the~~
39 ~~best interests of the State and all its citizens, the potential fiscal effect both~~
40 ~~within and outside the political subdivision, and any danger to the safety of~~
41 ~~the people of the State or a political subdivision.~~

42 ~~7.~~ Except as otherwise provided in subsection ~~10, any 8, the~~ 9, any
43 fact finder, whether the fact finder's recommendations are to be binding or
44 not, shall base such recommendations or ~~the~~ award on the following
45 criteria:

1 (a) A preliminary determination must be made as to the financial
2 ability of the local government employer based on all existing available
3 revenues as established by the local government employer and within the
4 limitations set forth in NRS 354.6241, with due regard for the obligation of
5 the local government employer to provide facilities and services
6 guaranteeing the health, welfare and safety of the people residing within
7 the political subdivision. If the local government employer is a school
8 district, any money appropriated by the State to carry out increases in
9 salaries or benefits for the employees of the school district must be
10 considered by a fact finder in making a preliminary determination.

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

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

24 ➤ The fact finder's report must contain the facts upon which the fact
25 finder based the fact finder's determination of financial ability to grant
26 monetary benefits and the fact finder's recommendations or award. ~~The~~
27 ~~award is final and binding on the parties.~~

28 ~~8. 6.~~ 7. Within 45 days after the receipt of the report from the fact
29 finder, the governing body of the local government employer shall hold a
30 public meeting in accordance with the provisions of chapter 241 of NRS.
31 The meeting must include a discussion of:

32 (a) The issues of the parties submitted pursuant to ~~subsection 1;~~ this
33 section;

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

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

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

39 ~~9. 7.~~ 8. The chief executive officer of the local government shall
40 report to the local government the fiscal impact of the findings and
41 recommendations. ~~award.~~ The report must include, without limitation, an
42 analysis of the impact of the findings and recommendations ~~award~~ on
43 compensation and reimbursement, funding, benefits, hours, working
44 conditions or other terms and conditions of employment.

1 ~~10. 8.~~ 9. Any sum of money which is maintained in a fund whose
2 balance is required by law to be:

3 (a) Used only for a specific purpose other than the payment of
4 compensation to the bargaining unit affected; or

5 (b) Carried forward to the succeeding fiscal year in any designated
6 amount, to the extent of that amount,

7 ↪ must not be counted in determining the financial ability of a local
8 government employer and must not be used to pay any monetary benefits
9 recommended or awarded by the fact finder.

10 ~~11. 9.~~ 10. The issues which may be included in ~~fact~~ a
11 recommendation or award by a ~~panel's order pursuant to subsection 6~~
12 fact finder are:

13 (a) Those enumerated in subsection 2 of NRS 288.150 as the subjects
14 of mandatory bargaining, unless precluded for that year by an existing
15 collective bargaining agreement between the parties; and

16 (b) Those which an existing collective bargaining agreement between
17 the parties makes subject to negotiation in that year.

18 ↪ This subsection does not preclude the voluntary submission of other
19 issues by the parties. ~~pursuant to subsection 5.~~

20 ~~10.~~ 11. *Except for the period prescribed by subsection ~~6,~~ 7, any*
21 *time limit prescribed by this section may be extended by agreement of the*
22 *parties.*

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

24 ~~288.205 1. In the case of an employee organization and a local~~
25 ~~government employer to which NRS 288.215 applies, the following~~
26 ~~departures from the provisions of NRS 288.200 also apply:~~

27 ~~[1.] (a) If the parties have not reached agreement by April 10, either~~
28 ~~party may submit the dispute to an impartial fact finder at any time for the~~
29 ~~findings of the fact finder.~~

30 ~~[2.] (b) In a regular legislative year, the fact-finding hearing must be~~
31 ~~stayed up to 20 days after the adjournment of the Legislature sine die.~~

32 ~~[3.] (c) Unless the parties otherwise agree before the submission of~~
33 ~~the dispute to fact-finding to make the findings of the fact finder on all~~
34 ~~or any specified issues final and binding on the parties:~~

35 ~~(1) The report of the fact finder must include recommendations~~
36 ~~for settlement on the issues submitted to the fact finder, in lieu of an~~
37 ~~award;~~

38 ~~(2) The provisions of NRS 288.200 applicable to an award apply~~
39 ~~to the recommendations of the fact finder; and~~

40 ~~(3) The findings and recommendations of the fact finder are not~~
41 ~~binding on the parties.~~

42 ~~2. Any time limit prescribed by this section [or NRS 288.200] may be~~
43 ~~extended by agreement of the parties.] (Deleted by amendment.)~~

1 **Sec. 4.** NRS 353.264 is hereby amended to read as follows:

2 353.264 1. The Reserve for Statutory Contingency Account is
3 hereby created in the State General Fund.

4 2. The State Board of Examiners shall administer the Reserve for
5 Statutory Contingency Account. The money in the Account must be
6 expended only for:

7 (a) The payment of claims which are obligations of the State pursuant
8 to NRS 41.03435, 41.0347, 62I.025, 176.485, 179.310, 212.040, 212.050,
9 212.070, 281.174, 282.290, 282.315, ~~288.203,~~ 293.253, 293.405,
10 353.120, 353.262, 412.154 and 475.235;

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

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

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

20 (c) The payment of claims which are obligations of the State pursuant
21 to NRS 41.0349 and 41.037, but only to the extent that the money in the
22 Fund for Insurance Premiums is insufficient to pay the claims;

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

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

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

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

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

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TEXT OF REPEALED SECTIONS

288.201 Request for formation of panel to determine whether findings and recommendations of fact finder are final and binding.

Any request for the formation of a panel to determine whether the findings and recommendations of a fact finder must be final and binding must be filed with the Commissioner. The request must include:

1. A list of the issues which remain unresolved and the position of each party regarding those issues;
2. The requester's assessment of the fiscal effect on the local government of the requester's positions;
3. An outline of any previous fact-finding between the parties, which includes any recommendations and awards of a fact finder and the actions of each party in response thereto;
4. A statement of whether the parties engaged in mediation regarding the current dispute;
5. A schedule of the dates and times set by the fact finder for the hearing; and
6. Any other information deemed necessary by the Commissioner.

↪ Any person filing such a request shall give written notice of the request to the Nevada State Board of Accountancy and the State Bar of Nevada.

288.202 Formation of panel to determine whether findings and recommendations of fact finder are final and binding.

1. Within 5 days after receiving notice of such a request, the Nevada State Board of Accountancy and the State Bar of Nevada shall each submit to the Commissioner and each party to the dispute a list of names of five of their members who would serve on a panel and are not closely allied with any employee association or local government employer.

2. Within 8 days after receiving the lists, the parties shall choose one name from each list by alternately striking one name until the names of only one attorney and one accountant remain, who will each be a member of the panel. The parties shall choose the member from the list of accountants separately from their choice from the list of attorneys. The parties shall notify the Commissioner of their selections and the Commissioner shall notify the attorney and accountant selected.

3. Within 5 days after receiving notice of their selection, the attorney and accountant shall:

- (a) Choose the third member of the panel, who must:
 - (1) Be willing to serve on the panel;
 - (2) Be a resident of this State; and

(3) Not be closely allied with any employee organization or local government employer.

(b) Notify the Commissioner of their choice, and the three members shall, within 5 days after selecting the third member of the panel, notify the Commissioner of the dates when they will all be available to attend hearings.

4. The Commissioner shall serve as a nonvoting member and also as the chair of the panel.

5. If the accountant or attorney selected to serve on the panel is unable to do so, the Nevada State Board of Accountancy or State Bar of Nevada shall designate a person to replace its nominee. If the person selected by the accountant and attorney is unable to serve, the accountant and attorney shall designate another person as a replacement. If the Commissioner is unable to serve, the Governor shall designate a person to serve in the Commissioner's capacity.

288.203 Compensation of members of panel; claims.

1. Each person, except the Commissioner, who serves on a panel formed pursuant to NRS 288.201 is entitled to receive as compensation:

(a) One hundred fifty dollars for each day the person is engaged in the business of the panel; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

2. All claims which arise pursuant to this section must be paid from the Reserve for Statutory Contingency Account upon approval by the Commissioner and the State Board of Examiners.

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