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FIRST REPRINT

S.B. 201

SENATE BILL NO. 201—SENATORS SEGERBLOM AND PARKS

FEBRUARY 28, 2013

JOINT SPONSORS: ASSEMBLYMEN ELLIOT ANDERSON,
BENITEZ-THOMPSON, HICKEY AND PIERCE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the employment of
retired public employees. (BDR 23-559)FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to public employees' retirement; providing for the
reemployment of retired public employees who are
appointed to certain boards and commissions by the
Governor; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

1 Existing law imposes certain restrictions on the reemployment of a retired
2 public employee by a public employer that participates in the Public Employees'
3 Retirement System. For example, the reemployment of such an employee is
4 ordinarily limited to positions for which there is a critical labor shortage, as
5 designated by the State Board of Examiners or other designating authority. (NRS
6 286.523) In most cases, the employee is also disqualified from receiving any
7 retirement benefits from the System for the duration of the employment.
8 (NRS 286.520)

9 This bill creates an exception to those provisions for a retired employee who is
10 appointed by the Governor to a board or commission whose members are entitled
11 by law to an annual salary. **Section 1** of this bill provides for the reemployment of
12 such an employee, subject to certain limitations, and provides that the employee:
13 (1) may be appointed to such a position regardless of whether it is one for which
14 there is a critical labor shortage; (2) shall, if the position is eligible to participate in
15 the System, reenroll in the System for the duration of the appointment; (3) is not
16 disqualified from receiving allowances under the System during the period of the
17 appointment; and (4) does not accrue creditable service during that period or have
18 any entitlement to additional allowances from the System. While the employee
19 remains in the appointive position, if the position is eligible to participate in



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20 the System, **section 1** also requires the employee and employer to make the
21 contributions to the System otherwise required by law, but provides that the
22 employee is not entitled to a refund of the employee's contributions made during
23 that period. **Sections 2-6** of this bill make conforming changes to the relevant
24 provisions of chapter 286 of NRS.

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

1 **Section 1.** Chapter 286 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Notwithstanding any other provision of this chapter, a*
4 *retired employee who is appointed by the Governor to a salaried*
5 *board or commission:*

6 *(a) May be appointed to such a position regardless of whether*
7 *it is one for which there is a critical labor shortage, if:*

8 *(1) One year or more has elapsed since the effective date of*
9 *the employee's retirement; and*

10 *(2) The employee was not a member of that board or*
11 *commission before his or her retirement.*

12 *(b) If the appointive position is eligible to participate in the*
13 *System, shall reenroll in the System for the duration of the*
14 *appointment.*

15 *(c) Is not, because of the appointment, disqualified from*
16 *receiving any allowances under the System.*

17 *(d) Does not accrue creditable service during the period of the*
18 *appointment and is not entitled to any additional allowances from*
19 *the System for service in the appointive position.*

20 *2. During the period of the appointment, if the appointive*
21 *position is eligible to participate in the System, the employee and*
22 *the employer shall make the contributions to the System otherwise*
23 *required by this chapter. The employee is not entitled to receive a*
24 *refund of contributions made by the employee during that period.*

25 *3. As used in this section, "salaried board or commission"*
26 *means a board or commission of the State of Nevada or a political*
27 *subdivision thereof whose members are entitled by law to an*
28 *annual salary. The term:*

29 *(a) Includes, without limitation, the Nevada Gaming*
30 *Commission and the State Gaming Control Board.*

31 *(b) Does not include a board or commission described in*
32 *subsection 4 of NRS 286.297.*

33 **Sec. 2.** NRS 286.297 is hereby amended to read as follows:

34 286.297 The following persons are not eligible to become
35 members of the System:



1 1. Inmates of state institutions even though they may be
2 receiving compensation for services performed for the institution.

3 2. Independent contractors or persons rendering professional
4 services on a fee, retainer or contract basis.

5 3. Except as otherwise provided in NRS 286.525, *and section*
6 *1 of this act*, persons retired under the provisions of this chapter
7 who are employed by a participating public employer.

8 4. Members of boards or commissions of the State of Nevada
9 or of its political subdivisions when such boards or commissions are
10 advisory or directive and when membership thereon is not
11 compensated except for expenses incurred. Receipt of a fee for
12 attendance at official sessions of a particular board or commission
13 does not constitute compensation for the purpose of this subsection.

14 5. Substitute teachers and students who are employed by the
15 institution which they attend.

16 6. District judges and justices of the Supreme Court first
17 elected or appointed on or after July 1, 1977, who are not enrolled in
18 the System at the time of election or appointment.

19 7. Members of the professional staff of the Nevada System of
20 Higher Education who are employed on or after July 1, 1977.

21 8. Persons employed on or after July 1, 1979, under the
22 Comprehensive Employment and Training Act.

23 9. Except as otherwise provided in NRS 286.293, persons
24 assigned to intermittent or temporary positions unless the
25 assignment exceeds 6 consecutive months.

26 10. Persons employed on or after July 1, 1981, as part-time
27 guards at school crossings.

28 11. Nurses who:

29 (a) Are not full-time employees;

30 (b) Are paid an hourly wage on a daily basis;

31 (c) Do not receive the employee benefits received by other
32 employees of the same employer; and

33 (d) Do not work a regular schedule or are requested to work for
34 a shift at a time.

35 **Sec. 3.** NRS 286.401 is hereby amended to read as follows:

36 286.401 ~~Membership~~ *Except as otherwise provided in*
37 *section 1 of this act, membership* of an employee in the System
38 terminates upon:

39 1. The death of a member.

40 2. The withdrawal of contributions from a member's account.

41 3. Receipt of retirement allowances by a member.

42 4. Receipt of disability allowances by a member.

43 ➔ A retired employee is not entitled to any right conferred by this
44 chapter upon a member unless the provision conferring that right
45 expressly states that it is conferred upon a retired employee.



1 **Sec. 4.** NRS 286.520 is hereby amended to read as follows:

2 286.520 1. Except as otherwise provided in this section and
3 NRS 286.525, the consequences of the employment of a retired
4 employee are:

5 (a) A retired employee who accepts employment or an
6 independent contract with a public employer under this System is
7 disqualified from receiving any allowances under this System for
8 the duration of that employment or contract if:

9 (1) The retired employee accepted the employment or
10 contract within 90 calendar days after the effective date of the
11 employee's retirement; or

12 (2) The retired employee is employed in a position which is
13 eligible to participate in this System.

14 (b) If a retired employee accepts employment or an independent
15 contract with a public employer under this System more than 90
16 calendar days after the effective date of the employee's retirement in
17 a position which is not eligible to participate in this System, the
18 employee's allowance under this System terminates upon the
19 employee's earning an amount equal to one-half of the average
20 salary for participating public employees who are not police officers
21 or firefighters in any fiscal year, for the duration of that employment
22 or contract.

23 (c) If a retired employee accepts employment with an employer
24 who is not a public employer under this System, the employee is
25 entitled to the same allowances as a retired employee who has no
26 employment.

27 2. The retired employee and the public employer shall notify
28 the System:

29 (a) Within 10 days after the first day of an employment or
30 contract governed by paragraph (a) of subsection 1.

31 (b) Within 30 days after the first day of an employment or
32 contract governed by paragraph (b) of subsection 1.

33 (c) Within 10 days after a retired employee earns more than one-
34 half of the average salary for participating public employees who
35 are not police officers or firefighters in any fiscal year from an
36 employment or contract governed by paragraph (b) of subsection 1.

37 3. For the purposes of this section, the average salary for
38 participating public employees who are not police officers or
39 firefighters must be computed on the basis of the most recent
40 actuarial valuation of the System.

41 4. If a retired employee who accepts employment or an
42 independent contract with a public employer under this System
43 pursuant to this section elects not to reenroll in the System pursuant
44 to subsection 1 of NRS 286.525, the public employer with which the
45 retired employee accepted employment or an independent contract



1 may pay contributions on behalf of the retired employee to a
2 retirement fund which is not a part of the System in an amount not
3 to exceed the amount of the contributions that the public employer
4 would pay to the System on behalf of a participating public
5 employee who is employed in a similar position.

6 5. If a retired employee is chosen by election or appointment to
7 fill an elective public office, the retired employee is entitled to the
8 same allowances as a retired employee who has no employment,
9 unless the retired employee is serving in the same office in which
10 the retired employee served and for which the retired employee
11 received service credit as a member. A public employer may pay
12 contributions on behalf of such a retired employee to a retirement
13 fund which is not a part of the System in an amount not to exceed
14 the amount of the contributions that the public employer would pay
15 to the System on behalf of a participating public employee who
16 serves in the same office.

17 6. The System may waive for one period of 30 days or less a
18 retired employee's disqualification under this section if the public
19 employer certifies in writing, in advance, that the retired employee
20 is recalled to meet an emergency and that no other qualified person
21 is immediately available.

22 7. A person who accepts employment or an independent
23 contract with either house of the Legislature or by the Legislative
24 Counsel Bureau is exempt from the provisions of subsections 1 and
25 2 for the duration of that employment or contract.

26 8. A person who accepts employment with a volunteer fire
27 department of which all the volunteers have become members of the
28 System pursuant to NRS 286.367 is exempt from the provisions of
29 subsections 1 and 2 for the duration of that employment.

30 *9. A retired employee described in section 1 of this act who is*
31 *appointed by the Governor to a position described in that section is*
32 *exempt from the provisions of subsections 1 and 2 for the duration*
33 *of the appointment.*

34 **Sec. 5.** NRS 286.523 is hereby amended to read as follows:

35 286.523 1. It is the policy of this State to ensure that the
36 reemployment of a retired public employee pursuant to this section
37 is limited to positions of extreme need. An employer who desires to
38 employ such a retired public employee to fill a position for which
39 there is a critical labor shortage must make the determination of
40 reemployment based upon the appropriate and necessary delivery of
41 services to the public.

42 2. The provisions of subsections 1 and 2 of NRS 286.520 do
43 not apply to a retired employee who accepts employment or an
44 independent contract with a public employer under the System if:



- 1 (a) The retired employee fills a position for which there is a
2 critical labor shortage; and
- 3 (b) At the time of the retired employee's reemployment, the
4 retired employee is receiving:
- 5 (1) A benefit that is not actuarially reduced pursuant to
6 subsection 6 of NRS 286.510; or
- 7 (2) A benefit actuarially reduced pursuant to subsection 6 of
8 NRS 286.510 and has reached the required age at which the retired
9 employee could have retired with a benefit that was not actuarially
10 reduced pursuant to subsection 6 of NRS 286.510.
- 11 3. A retired employee who is reemployed under the
12 circumstances set forth in subsection 2 may reenroll in the System
13 as provided in NRS 286.525.
- 14 4. Positions for which there are critical labor shortages must be
15 determined in an open public meeting held by the designating
16 authority as follows:
- 17 (a) Except as otherwise provided in this subsection, the State
18 Board of Examiners shall designate positions in State Government
19 for which there are critical labor shortages.
- 20 (b) The Supreme Court shall designate positions in the Judicial
21 Branch of State Government for which there are critical labor
22 shortages.
- 23 (c) The Board of Regents shall designate positions in the
24 Nevada System of Higher Education for which there are critical
25 labor shortages.
- 26 (d) The board of trustees of each school district shall designate
27 positions within the school district for which there are critical labor
28 shortages.
- 29 (e) The governing body of a charter school shall designate
30 positions within the charter school for which there are critical labor
31 shortages.
- 32 (f) The governing body of a local government shall designate
33 positions with the local government for which there are critical labor
34 shortages.
- 35 (g) The Board shall designate positions within the System for
36 which there are critical labor shortages.
- 37 5. In determining whether a position is a position for which
38 there is a critical labor shortage, the designating authority shall
39 make findings based upon the criteria set forth in this subsection that
40 support the designation. Before making a designation, the
41 designating authority shall consider all efforts made by the
42 applicable employer to fill the position through other means. The
43 written findings made by the designating authority must include:
- 44 (a) The history of the rate of turnover for the position;



1 (b) The number of openings for the position and the number of
2 qualified candidates for those openings after all other efforts of
3 recruitment have been exhausted;

4 (c) The length of time the position has been vacant;

5 (d) The difficulty in filling the position due to special
6 circumstances, including, without limitation, special educational or
7 experience requirements for the position; and

8 (e) The history and success of the efforts to recruit for the
9 position, including, without limitation, advertising, recruitment
10 outside of this State and all other efforts made.

11 6. A designating authority that designates a position as a
12 critical need position shall submit to the System its written findings
13 which support that designation made pursuant to subsection 5 on a
14 form prescribed by the System. The System shall compile the forms
15 received from each designating authority and provide a biennial
16 report on the compilation to the Interim Retirement and Benefits
17 Committee of the Legislature.

18 7. A designating authority shall not designate a position
19 pursuant to subsection 4 as a position for which there is a critical
20 labor shortage for a period longer than 2 years. To be redesignated
21 as such a position, the designating authority must consider and make
22 new findings in an open public meeting as to whether the position
23 continues to meet the criteria set forth in subsection 5.

24 ***8. The provisions of this section do not apply to a retired***
25 ***employee described in section 1 of this act who is appointed by the***
26 ***Governor to a position described in that section.***

27 **Sec. 6.** NRS 286.525 is hereby amended to read as follows:

28 286.525 ***Except as otherwise provided in section 1 of this act:***

29 1. A retired employee who accepts employment in a position
30 eligible for membership may enroll in the System as of the effective
31 date of that employment. As of the date of enrollment:

32 (a) The retired employee forfeits all retirement allowances for
33 the duration of that employment.

34 (b) The retired employee is entitled to receive, after the
35 termination of the employment and upon written request, a refund of
36 all contributions made by the retired employee during the
37 employment. Except as otherwise required as a result of NRS
38 286.535 or 286.537, if the retired employee does not request the
39 refund and the duration of the employment was at least 6 months,
40 the retired employee gains additional service credit for that
41 employment and is entitled to have a separate service retirement
42 allowance calculated based on the retired employee's compensation
43 and service, effective upon the termination of that employment. If
44 the duration of the employment was:



1 (1) Less than 5 years, the additional allowance must be added
2 to the retired employee's original allowance and must be under the
3 same option and designate the same beneficiary as the original
4 allowance.

5 (2) Five years or more, the additional allowance may be
6 under any option and designate any beneficiary in accordance with
7 NRS 286.545.

8 2. The original service retirement allowance of such a retired
9 employee must not be recalculated based upon the additional service
10 credit, nor is the retired employee entitled to any of the rights of
11 membership that were not in effect at the time of the retired
12 employee's original retirement. The accrual of service credit
13 pursuant to this section is subject to the limits imposed by:

14 (a) NRS 286.551; and

15 (b) Section 415 of the Internal Revenue Code, 26 U.S.C. § 415,
16 if the member's effective date of membership is on or after
17 January 1, 1990.

18 3. Except as otherwise required as a result of NRS 286.470,
19 286.535 or 286.537, a retired employee who has been receiving a
20 retirement allowance and who is reemployed and is enrolled in the
21 System for at least 5 years may have the retired employee's
22 additional credit for service added to the retired employee's
23 previous credit for service. This additional credit for service must
24 not apply to more than one period of employment after the original
25 retirement.

26 4. The survivor of a deceased member who had previously
27 retired and was rehired and enrolled in the System, who qualifies for
28 benefits pursuant to NRS 286.671 to 286.6793, inclusive, is eligible
29 for the benefits based on the service accrued through the second
30 period of employment.

31 **Sec. 7.** This act becomes effective upon passage and approval.

