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EXPLANATION OF ASSEMBLY BILL NO. 65

(Prepared by the Legal Division)

A.B. 65 authorizes collective bargaining for certain state employees. In addition, it: (1) creates a Board for Labor Relations for State Employees; (2) provides for bargaining units and for their representatives; (3) establishes procedures for collective bargaining and for making, revising and amending collective bargaining agreements; and (4) authorizes the Superintendent of the State Printing Division to make certain labor agreements.

Section 1 amends NRS 281.129 which allows the withholding of money from the salaries of state officers and employees for certain purposes, including dues for employee and labor organizations. Section 1 makes an exception to NRS 281.129 for section 32 of the bill, which states that money may not be withheld from the salary of an employee within the bargaining unit to pay dues to an employee organization other than the employee organization that is the exclusive representative of the bargaining unit.

Section 2 amends NRS 284.013 which addresses the applicability of chapter 284 of NRS, the chapter which governs state officers and employees. Section 2 provides that, to the extent that they are inconsistent or otherwise in conflict, the provisions of chapter 284 do not apply to any terms or conditions of employment that are properly within the scope of and subject to the provisions of a collective or supplemental bargaining agreement or an agreement concerning the terms and conditions of employment for compositors, bindery operators, pressmen and assistants between the Superintendent of the State Printing Division and any group or organization that represents those employees.

Section 3 is directory language that adds new sections 4-50 to chapter 288.

Section 4 introduces the definitions included in sections 5-17.

Section 5 defines "bargaining unit" as a collection of employees that the Board of Labor Relations for State Employees has established pursuant to section 27.

Section 6 defines "Board" as the Board for Labor Relations for State Employees.

Section 7 defines "Chief of the Budget Division" as the Chief of the Budget Division of the Department of Administration.

Section 8 defines "collective bargaining" as a method to determine the terms and conditions of employment for all employees in a bargaining unit through negotiation, mediation or arbitration between the Executive Department and the exclusive representative of the bargaining unit.

Section 9 defines “confidential employee” to mean an employee who assists in personnel or managerial policymaking relating to collective and supplemental bargaining, provides administrative support to such an employee or is employed by the Board.

Section 10 defines “employee” as a person who is employed: (1) in the classified service of the State, including persons employed in the classified service by the University System; (2) by PERS; or (3) by any other employer that receives money from the State if the NLRB has refused to assert jurisdiction over the employer because the employer lacks the authority to determine the primary terms and conditions of employment and who is in a position similar to one in the classified service. The term does not include a state classified employee at grade 42 or higher, an employee who is not in the classified or unclassified service of the State, certain employees of the State Printing Division, a confidential employee, a part-time employee or certain temporary employees.

Section 11 defines “employee organization” as an organization that represents employees concerning the terms and conditions of their employment.

Section 12 defines “exclusive representative” as an employee organization that has the exclusive right to represent all employees within a bargaining unit and to negotiate with the Executive Department concerning the terms and conditions of employment of those employees.

Section 13 defines “Executive Department” as an agency, board, bureau, commission, department, division, elected officer or any other unit of the Executive Department of State Government.

Section 14 defines “mediation” as assistance by an impartial third party to reconcile differences between the Executive Department and an exclusive representative.

Section 15 defines “party” to include the Executive Department.

Section 16 defines “supplemental bargaining” as bargaining concerning the terms and conditions of employment that is conducted pursuant to section 45.

Section 17 defines “terms and conditions of employment” to include salaries and wages, hours, working conditions, benefits other than PERS benefits, grievances and labor disputes.

Section 18 states that the provisions of chapter 241 of NRS (Open Meeting Law) do not apply to negotiations or informal discussions between the Executive Department and employee organizations, meetings or investigations conducted by mediators or arbitrators and meetings between the Executive Department and its representatives concerning collective bargaining or supplemental bargaining.

Section 19 creates the Board for Labor Relations for State Employees consisting of 3 members appointed by the Governor, Majority Leader of the Senate and Speaker of the Assembly. The members must not be closely allied with any employee organization or the Executive Department. The term of office of a member of the Board is 4 years. Members of the Board serve at the pleasure of the appointing authority and vacancies are filled in the same manner as original appointments.

Section 20 provides for the Board to elect a Chairman and Vice Chairman from among its members and hire an Executive Secretary and clerical personnel as necessary. Two members of the Board constitute a quorum.

Section 21 provides for \$80 salary for each day in which a member of the Board is engaged in the business of the Board and per diem and travel expenses.

Section 22 authorizes the Board to adopt regulations regarding: (1) establishment of bargaining units and classifications of employees within each bargaining unit; (2) recognition of employee organizations and designation of exclusive representatives; (3) procedures for mediation and arbitration; and (4) hearings and proceedings before the Board. The Board may hear and determine complaints arising out of the interpretation or performance of a collective bargaining agreement, regarding the classification of an employee within a bargaining unit or concerning a prohibited practice.

Section 23 authorizes the Board to administer oaths, take testimony and issue subpoenas to compel attendance and testimony of a person and provides the procedures for the enforcement by a court of subpoenas issued by the Board.

Section 24 provides that subpoenas issued by the Board extend to all parts of the State. The Board may not require a person named in a subpoena to attend outside the county where he resides, unless the location of the place is less than 100 miles from the person's primary residence or a party, by affidavit, shows that the testimony of the person is material and necessary to the proceedings. If so, a person may be required to appear anywhere within the State. Subsections 2 states that a subpoenaed person is entitled to receive fees and mileage and, in some cases, per diem compensation for subsistence and transportation. The party requesting the subpoena shall pay the subsistence and transportation costs of the witness to the Board. However, the Board may require the party who did not prevail to pay the costs of the subpoenaed witness to the Board.

Section 25 states that for the purposes of collective and supplemental bargaining and other mutual aid or protection, employees have the right to organize, form, join and assist employee organizations, engage in collective and supplemental bargaining through exclusive representatives and engage in other concerted activity. They also have the right to refrain from engaging in any such activity. Collective and supplemental bargaining is a mutual obligation between the Executive Department and an exclusive representative to meet at reasonable times and to bargain in good faith with respect to the terms and conditions of employment, negotiation of an agreement, resolution of any question arising under an agreement and execution of a written contract incorporating the

provisions of an agreement. This section must not be construed to compel the Executive Department or an exclusive representative to agree to a proposal or to make a concession.

Section 26 lists those subjects that are not within the scope of collective or supplemental bargaining and are reserved to the Executive Department without negotiation. These subjects include the right to hire, direct or assign an employee (except the right to reassign as a form of discipline), the right to determine the minimum job qualifications and examinations offered for those positions, the right to determine the content of the workday and the right to take whatever action is necessary to carry out the responsibilities of the Executive Department in emergencies. The Executive Department and an exclusive representative may negotiate concerning the procedures that the Executive Department will observe in exercising the authority reserved to it and the effect of the exercise of such authority.

Section 27 authorizes the Board to establish by regulation bargaining units on a statewide basis. The Board shall establish one bargaining unit for each of the following occupational groups and such a unit must include all supervisory employees at the working level of the occupational group: (1) labor, maintenance, custodial and institutional employees; (2) administrative and clerical employees; (3) technical aides to professional employees; (4) professional employees; (5) health care and personal care employees; (6) officers of the Nevada Highway Patrol (sergeant or lower); (7) adult and youth correctional employees; (8) certain other peace officers, including such employees of the Public Utilities Commission of Nevada, Transportation Services Authority and Taxicab Authority; and (9) supervisory employees not otherwise included in other bargaining units. The Board is not prohibited from including within an occupational group employees other than those specified in this section for that group. The Board is required to establish the exact classifications of employees within each bargaining unit and the Board may not change an established bargaining unit arbitrarily. "Professional employee" and "supervisory employee" are defined for this section.

Section 28 sets forth the procedure when no employee organization is designated as the exclusive representative of a bargaining unit. If an employee organization files a list of its membership with the Board showing that the employee organization represents more than 50 percent of the employees in the unit, the Board is required to designate the employee organization as the exclusive representative of the bargaining unit without ordering an election. If the Board designates an exclusive representative in such a manner, the Board is required to:

1. Without ordering an election, remove the employee organization as the exclusive representative and designate another employee organization as the exclusive representative if, after June 30 and before December 31 of an odd-numbered year, another employee organization files with the Board a list of its membership that shows it represents more than 50 percent of the employees within the bargaining unit and the Board has not ordered an election during that period.

2. Order an election if: (a) after June 30 and before December 31 of an odd-numbered year, a group of employees within the bargaining unit files with the Board a written request for an election which includes a list showing that more than 50 percent of

the employees within the unit want an election to be conducted to change or discontinue representation; (b) the Board has not during that period designated another employee organization as the exclusive representative of the unit; and (3) no other election to choose, change or discontinue representation has been conducted within the unit during the preceding 12 months.

Section 29 sets forth the procedure when no employee organization is designated as the exclusive representative of a bargaining unit and no employee organization has filed a list of its membership with the Board showing that the employee organization represents more than 50 percent of the employees. In such a circumstance, the Board is required to order an election to be conducted within the bargaining unit if an employee organization has filed a written request for an election which includes a list of its membership showing that it represents at least 30 percent but not more than 50 percent of the employees in the unit and no other election to choose, change or discontinue representation has been conducted during the past 12 months. If the Board designates an employee organization as the exclusive representative of a bargaining unit based upon the results of such an election, the Board is required to:

1. Without ordering an election, remove the employee organization as the exclusive representative and designate another employee organization as the exclusive representative if, after June 30 and before December 31 of an odd-numbered year, another employee organization files with the Board a list of its membership that shows it represents more than 50 percent of the employees within the bargaining unit and the Board has not ordered an election during that period.

2. Order an election if: (a) after June 30 and before December 31 of an odd-numbered year, if (i) another employee organization files with the Board a written request for an election which includes a list of its membership showing that the organization represents at least 30 percent but not more than 50 percent of the employees within the unit; or (ii) a group of employees within the unit files with the Board a written request for an election which includes a list showing that more than 50 percent of the employees within the unit have requested that an election be conducted to change or discontinue representation; (b) the Board has not during that period designated another employee organization as the exclusive representative of the unit; and (3) no other election to choose, change or discontinue representation has been conducted within the unit during the preceding 12 months.

Section 30 provides that if the Board orders an election within a bargaining unit pursuant to section 28 or 29, the Board shall order that each of the following be placed as a choice on the ballot for the election: (a) If applicable, the employee organization that requested the election and the employee organization that is presently designated as the exclusive representative of the bargaining unit; (b) any other employee organization that files a request to be placed on the ballot and includes a list of its membership which represents at least 20 percent of the employees within the bargaining unit; and (c) a choice for "no representation." If the ballot has more than two choices and neither of the choices receives a majority of the votes, then a runoff election must be held between the 2 choices that received the highest number of votes at the initial election. If "no representation" receives a majority of the votes at any election, the Board is required to

designate the bargaining unit as being without representation. If an employee organization receives a majority, the Board must designate that organization as the exclusive representative of the bargaining unit.

Section 31 provides that the Board presides over all election and determines eligibility requirements for employees to vote in such elections. An employee organization that was a choice on an election ballot or an employee who was eligible to vote in an election may object to the results of the election within 10 days after notice of the results of the election is given by the Board. In response to such an objection, the Board may invalidate the results of an election and order a new election if it finds any conduct or circumstances that would raise substantial doubt that the results were reliable.

Section 32 allows the Board to designate an employee organization as the exclusive representative of more than one bargaining unit if the organization meets the requirements set forth in section 28 or 29 to be designated as the exclusive representative of each unit separately. If the Board designates an employee organization as the exclusive representative of a bargaining unit, the employee organization shall be deemed to be a party to any existing collective bargaining agreement or supplemental bargaining agreement then in effect and assumes all rights and privileges of the previous exclusive representative, but does not assume any costs or liabilities incurred by the previous exclusive representative. An officer of the Executive Department may not withhold money from the salary or wages of an employee within the bargaining unit to pay dues or similar fees to an employee organization other than the employee organization that is the exclusive representative of the bargaining unit.

Section 33 sets forth the duties of an exclusive representative. The exclusive representative is required to act as the agent of all employees within each bargaining unit that it represents, meet with the Executive Department at reasonable times, including in advance of its budget-making process and negotiate in good faith with the Executive Department concerning the terms and conditions of employment for the employees within each bargaining unit that it represents, including terms and conditions within the scope of supplemental bargaining pursuant to section 45. If an employee is within a bargaining unit that has an exclusive representative, he has the right to present grievances to the Executive Department at any time and to have those grievances adjusted without the intervention of the exclusive representative if the exclusive representative is given an opportunity to be present at meetings or hearings related to the adjustment of the grievance and the adjustment of the grievance is not inconsistent with the collective or supplemental bargaining agreement then in effect.

Section 34 requires the Governor, or a person designated by the Governor, to negotiate in good faith and on behalf of the Executive Department with the exclusive representative of each bargaining unit concerning the terms and conditions of employment for the employees within the bargaining unit.

Section 35 requires the Governor to sign and enforce any collective bargaining agreement reached by the Executive Department and an exclusive representative on

behalf of the employees within a bargaining unit that it represents. The collective bargaining agreement must be in writing and may not authorize any conduct that would violate the provision prohibiting strikes by state and local governmental employees. The agreement must include a procedure to resolve grievances which applies to all employees in the bargaining unit and which culminates in final and binding arbitration and a provision that allows the withholding of money from the salary or wages of an employee for dues or fees for the exclusive representative of the bargaining unit.

Section 36 sets forth the schedule for negotiations. In each even-numbered year, the Executive Department and an exclusive representative shall begin negotiations not sooner than January 1 of the even-numbered year and not later than March 15 of the even-numbered year, or later in that year upon agreement, if the exclusive representative was designated before March 1 of that year or not later than July 15, or later in that year upon agreement, if the exclusive representative was designated after March 1.

Section 37 provides the process when a collective bargaining agreement is not reached before July 31 of the even-numbered year, or such later date in that year as agreed upon by the parties. If this occurs, the Board shall appoint a mediator. The mediator shall attempt to settle each issue in dispute before August 15 of the even-numbered year, or such later date agreed to by the parties. Regulations adopted by the Board set forth the procedures for mediation. The parties retain their duties to negotiate in good faith in mediation. The cost of mediation is split equally between the Executive Department and the exclusive representative.

Section 38 sets forth the procedures when a mediator cannot reach an agreement before August 15 of the even-numbered year, or such later date agreed to by the parties. When this occurs, the parties have 5 days to select an impartial arbitrator. Once selected, the arbitrator shall begin arbitration before September 15 or a later agreed-upon date. Regulations adopted by the Board set forth the procedures for arbitration. All negotiation must be done in good faith. The arbitrator may administer oaths, take testimony and issue subpoenas. The costs of arbitration are split equally between the Executive Department and the exclusive representative.

Section 39 addresses the final decision of the arbitrator. The arbitrator is required to incorporate into his decision, with respect to each separate issue that is in dispute after arbitration, either the final offer of the Executive Department or the final offer of the exclusive representative. Criteria is provided that the arbitrator must use to determine which final offers to include in his decision. The arbitrator is required to render a written decision before October 15 or at a later agreed-upon date, but not later than December 31 of the even-numbered year. The decision of the arbitrator is final and binding except as otherwise provided in sections 40, 43, 44 and 50.

Section 40 allows the parties to agree to reopen negotiations and revise or amend the decision of the arbitrator. Any such agreement must be in writing. If the parties agree to a revision before the decision of the arbitrator has been submitted to the Governor and Chief of the Budget Division, the agreement is incorporated into the final

decision and has effect over any conflicting provision in the decision of the arbitrator. If the parties do not reach agreement before the date on which the decision of the arbitrator must be submitted to the Governor and Chief of the Budget Division, the parties must submit the arbitrator's decision without revision or amendment.

Section 41 stipulates that on or before December 31 of the even-numbered year in which negotiations began, the parties shall submit to the Governor and the Chief of the Budget Division, the final collective bargaining agreement. The Chief shall, when preparing the proposed executive budget, include enough money to give effect to the provisions of the collective bargaining agreement that require appropriations.

Section 42 provides for effectiveness of the provisions of the collective bargaining agreement that do not require appropriations. Such provisions become effective on July 1 of the odd-numbered year following the even-numbered year in which negotiations began and expires on June 30 of the next odd-numbered year. These provisions are effective whether or not the Legislature makes any appropriation to give effect to any other provision. Any provision of the agreement that requires legislative appropriation becomes effective on July 1 of a session year if the Legislature approves it and expires on June 30 of the next odd-numbered year.

Section 43 allows parties to revise provisions requiring appropriations during a legislative session. Any revisions must be submitted to the Legislative Counsel for preparation of the legislative measure. If the Legislature approves the revised appropriation, it has the same effective date as stated in section 42.

Section 44 provides that the Legislature may suspend in whole or part any provision in a collective bargaining agreement for which an appropriation has already been made, whether or not the provision has become effective. If a provision is suspended, the parties may revise the suspended provision (or any other provision in the agreement). If the parties agree to revise such a provision, they must submit their revision to the Legislative Counsel. If the Legislature approves the revised provision and makes an sufficient appropriation to carry it out, the provision becomes effective on the date set forth in the bill approving it and expires as stated in section 42.

Section 45 allows provisions other than those contained in the collective bargaining agreement to be discussed in supplemental bargaining even if the provisions uniquely affect fewer than all the employees if the provisions are not included in any provision of the collective bargaining agreement then in effect and they do not require an appropriation. If the parties reach a supplemental bargaining agreement, such provisions must be in writing and are deemed incorporated into the collective bargaining agreement as long as there is no conflict. If there is a conflict between a provision of a supplemental bargaining agreement and a collective bargaining agreement, the provision of the supplemental bargaining agreement is void and the provision of the collective bargaining agreement is effective. The Executive Department and an exclusive representative may not engage in supplemental bargaining on or after the date in an even-numbered year when negotiations began pursuant to section 36 concerning a collective bargaining

agreement and in the following odd-numbered year before July 1. The parties may include in a collective bargaining agreement any terms and conditions of employment that would otherwise be within the scope of a supplemental bargaining agreement.

Section 46 addresses the severability of a collective bargaining agreement and any conflicts between the agreement and NRS. Any conflict with NRS or a special act in a provision of a collective bargaining agreement makes the provision of the agreement void unless the Legislature expressly acknowledges and approves the conflict. Any conflicts between NRS or a special act and a provision of a supplemental bargaining agreement make the provision of the supplemental agreement void. However, if there are conflicts with any rules of an employer, the collective bargaining agreement or supplemental bargaining agreement prevails. The provisions of a collective or supplemental bargaining agreement are severable.

Section 47 sets forth prohibited practices for the Executive Department and an employee organization. The prohibited practices for the Executive Department include the refusal to engage in collective bargaining, interference with an employee exercising his rights, interference with the administration of an employee organization, discrimination in regard to hiring, tenure or terms or conditions of employment so as to encourage or discourage membership in an employee organization, discharging or discriminating against an employee because an employee files a complaint or joins an employee organization, discriminating on other bases or denying rights accompanying designation as an exclusive representative. The prohibited practices for an employee organization include the refusal to engage in collective bargaining or otherwise fail to bargain in good faith, interference with an employee exercising his rights or discrimination on various bases.

Section 48 sets forth procedures to follow when prohibited practices are committed. A party aggrieved by a prohibited practice must file a complaint with the Board and prove the allegations. If the Board finds that the party accused in the complaint has committed a prohibited practice, the Board shall order the party to cease and desist from engaging in the prohibited practice and may order any other relief necessary to remedy the prohibited practice. The Board may petition the district court for enforcement of its orders. All orders by the Board are final. Any such order may be appealed, but the appeal must be filed for judicial review not later than 10 days after the party was served with the order.

Section 49 provides that an employee organization and the Executive Department may sue or be sued. The district court for the county where the employee organization maintains its office or where the claim arose has jurisdiction. A person and his assets are not subject to liability for any judgment awarded against the Executive Department or an employee organization.

Section 50 provides that a party may seek judicial review in the district court of the decision of an arbitrator based on jurisdictional grounds or grounds that the decision was procured by fraud, collusion or other unlawful means or was not supported by

competent, material and substantial evidence. If judicial review is sought, the district court may stay the contested portion of the decision until the court rules on the matter. The district court may affirm or reverse the decision of the arbitrator, but the court may not remand the matter to the arbitrator or require any additional fact-finding or decision-making by the arbitrator. If the district court reverses any part of the decision of the arbitrator, the court shall enter an order invalidating that part of the decision of the arbitrator. A party may not seek judicial review of the decision of the arbitrator pursuant to this section in the same even-numbered year in which the decision of the arbitrator was made or in the following odd-numbered year before July 1.

Section 51 amends NRS 288.020 to make the current chapter-wide definitions not applicable to sections 4 to 50, inclusive.

Sections 52-67 amend sections in chapter 288 of NRS and other sections of NRS that originally referred to chapter 288 of NRS to change the reference from "chapter" to "NRS 288.020 to 288.280, inclusive," which are the sections addressing collective bargaining for local governmental employees. This change indicates that sections 4 to 50, inclusive, are in their own separate subhead in chapter 288.

Section 68 adds a new section to chapter 344 of NRS which provides that the Superintendent of the State Printing Division of the Department of Administration may negotiate with any group or organization that represents compositors, bindery operators, pressmen and assistants concerning the terms and conditions of their employment.

Section 69 amends NRS 344.080 to make an exception relating to the fact that the compensation of the employees of the State Printing Division may be set by collective bargaining.

Section 70 amends NRS 353.230 to include requests for appropriations to give effect to any collective bargaining agreements when the Chief of the Budget Division prepares the budget before a legislative session.

Sections 71-80 amend sections of NRS, city charters and special acts that referred to chapter 288 of NRS in the same manner as noted in the explanation for sections 52-67.

Section 81 repeals NRS 288.010, which states that the short title of chapter 288 is the Local Government Employee-Management Relations Act, because now the chapter includes provisions regarding collective bargaining for state employees too.

Section 82 provides for the appointment of the initial members of the Board for Labor Relations for State Employees.

Section 83 provides that an employee organization may not be designated as the exclusive representative of a bargaining unit under this act before October 1, 2003.

Section 84 makes the act effective on July 1, 2003.