

**MINUTES OF THE SUBCOMMITTEE ON SENATE BILL 544 OF THE
SENATE COMMITTEE ON FINANCE**

**Seventy-fourth Session
April 18, 2007**

The Subcommittee of the Senate Committee on Finance was called to order by Chair Bob Beers at 3:46 p.m. on Wednesday, April 18, 2007, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Bob Beers, Chair
Senator Bob Coffin, Vice Chair

STAFF MEMBERS PRESENT:

Bob Atkinson, Senior Program Analyst
Cynthia Clampitt, Committee Secretary

OTHERS PRESENT:

James T. Richardson, J.D., Ph.D., Nevada Faculty Alliance
Roger K. Maillard, American Federation of State, County, and Municipal
Employees Chapter, State of Nevada Employees Association
Martin Bibb, Retired Public Employees of Nevada
Victoria Robinson, City of Las Vegas
Al Bellister, Nevada State Education Association
Steve Miller, Benefits Administrator, City of Las Vegas
Raymond J. Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department
Leslie A. Johnstone, Executive Officer, Public Employees' Benefits Program
Rusty McAllister, Professional Firefighters of Nevada
Jesse Wadhams, Teachers' Health Trust
Diana Langs
Ronald P. Dreher, Peace Officers' Research Association of Nevada
Terry Johnson, Chair, Public Employees' Benefits Program Board
Michael R. Alastuey, Nevada Association of School Superintendents
Randy Robison, Nevada Association of School Superintendents
Rose E. McKinney-James, Clark County School District

CHAIR BEERS:

We will discuss a variety of potential amendments to Senate Bill (S.B.) 544 which makes various changes to the Public Employees' Benefits Program (PEBP). This bill was presented by members of the Public Employees' Benefits Program Interim Study Committee (A.C.R. 10) (commonly known as the A.C.R.10 Committee).

SENATE BILL 544: Makes various changes relating to the Public Employees' Benefits Program. (BDR 23-126)

It has been suggested by the Chair of the A.C.R. 10 Committee that sections of the bill be eliminated which make the Public Employees' Benefits Program subject to the oversight of the Commissioner of Insurance.

Section 4 of S.B. 544 changes the composition of the PEBP Board. As amended in section 4 of S.B. 544, pages 4 and 5, it states, "five members appointed by the Governor and four members appointed by the Legislature." At this time, two of the members must have experience in risk management, portfolio investment strategies or employee benefits programs.

Page 5, lines 33 and 34 state, "all members appointed by the Governor must have technical experience in the insurance or actuarial fields." Those restrictions are not placed on Legislative appointees. One member appointed by the Governor must be a representative of an organization that represents employees of local governments who participate in the Program.

SENATOR COFFIN:

I served on the A.C.R. 10 Committee and it appears we may have been too concerned about the specific requirements for appointment to the PEBP Board. It may have been a mistake in terms of attempting to satisfy all entities.

We approved an increase in the number of members on the Board who must have experience compared to the current two appointed members who have insurance or actuarial experience. I support the increased requirement. Individuals are needed who have group insurance or actuarial experience. They should be appointed by the Governor.

JAMES T. RICHARDSON, J.D., Ph.D. (Nevada Faculty Alliance):

It is our opinion the PEBP Board is currently functioning well. The A.C.R. 10 Committee was established several years ago at a time when there were serious communication problems with the PEBP Board and financial issues. I feel better about both of those issues at this time.

The current process is for groups to nominate lists of individuals to the Governor for service on the Board. It has resulted in considerable expertise on the current Board. As an example, the individual representing the Nevada System of Higher Education (NSHE) is someone with many years of experience in private industry working with benefit plans. Employee groups understand the need for expertise on the Board. We do not simply have members without experience. The NSHE representative is from the Office of the Chancellor and was supported by the Nevada Faculty Alliance. The Governor appointed that individual.

I would urge no change in the Board structure. The issue can be revisited in the next Legislative Session. The Board is functioning well and has expertise within its membership.

ROGER K. MAILLARD (American Federation of State, County, and Municipal Employees Chapter, State of Nevada Employees Association):

I support the PEBP Board and its staff. If the membership of the Board were to change, our recommendation is that, for the sake of continuity, some members of the Board should be carried over.

I have a number of issues with past actions and comments from the Board. I attend most PEBP Board meetings and will be the first to agree things have improved. I am not sure what provisions are in place to ensure past actions will not reoccur. We have progressed from the Committee on Benefits to the current Board with various executive directors and board members. Some of the problems are systemic in the PEBP system.

I will give this Subcommittee an example of occasional meetings of the Board I have attended. As a retiree, and representing retirees, I feel I am being treated as someone who does not understand what is going on.

CHAIR BEERS:

By whom were you treated in that manner?

MR. MAILLARD:

I was treated that way by the Board, in general, and by the previous executive director, not the current director. Let me give you an example of how we now communicate with the Board.

In May 2005, at a PEBP Board meeting, I asked a verbal question during open comments. I was told it could not be answered and that any and all questions had to be presented in writing and addressed to the Board Chair. Following the Chair's instructions I wrote a letter dated May 17, 2005, a second letter dated June 17, 2005, to the Board, and a third letter dated July 1, 2005, to former Governor Kenny Guinn, asking his Office to assist in obtaining a response. I received a response to some of my questions in a letter dated July 26, 2005. The question I asked in the May meetings was, why they were defying Assemblyman Morse Arberry's August 1, 2001, letter referencing the Medicare carve-out. I later got a response to that question. In September 2005, I met with the Chair of the PEBP Board. His response was that the PEBP Board did not answer to the Legislature, and was not required to submit to pressure from the Legislature. That is not an exact quote. Needless to say, I was shocked by the statement and let the matter drop. Senator Amodei had a similar experience when he tried to elicit response from the PEBP Board during the A.C.R. 10 Committee process.

I was informed by the PEBP Board a few days ago, when the subject of the Medicare carve-out was discussed, that the Board did not know what it was voting for. How can a group of adults, who have responsibility to the participants of the Program, vote for something as onerous as carve-out, without a clue as to what the term "maintenance of benefits" really means?

As long as I can remember, the subject of public employees' health care has been an albatross around the neck of the Legislature. During every Session in my recall, major problems are exposed. Statements and actions taken by the PEBP Board have demonstrated they answer only to the Governor. The Legislature has little to say in the operation of the Program. The A.C.R. 10 Committee recommendations regarding membership on the Board and who is responsible for appointments to the Board would go a long way in solving this issue. Failure to make the changes will only mean the Legislature will be revisiting the problems and hearing from unhappy participants in future Legislative Sessions. I will be instructing my constituents to e-mail or call their Legislators, not me.

I guarantee, during the 2009 Legislative Session, we will be discussing many of these same issues and their consequences. It all comes down to the need for a system of checks and balances.

MARTIN BIBB (Retired Public Employees of Nevada):

We do not disagree with Mr. Maillard's characterization of some of the contacts we have had in the past with certain Boards and with Dr. Richardson's comments. The retired member of the PEBP Board today is someone who has served as a Legislative Analyst in the Audit Division of the Legislative Counsel Bureau (LCB). We feel that experience has brought value to those in the Program because he is not afraid to ask questions of the members and why certain recommendations are made. We consider that an improvement.

As recently as one to two years ago, we were just beginning to see things turn around. The atmosphere was significantly different when the A.C.R. 10 Committee was first established in 2003. That progress needs to continue. The current executive officer of the PEBP has made a commitment to bridge the gap between the PEBP Board and local user groups.

CHAIR BEERS:

Are you in favor of changes, expressed in S.B. 544, relating to the composition of the Board, not of specific personalities?

MR. BIBB:

The structure presently in place for the composition of the Board through nominations by the user groups seems to be working.

CHAIR BEERS:

Are you referring to the individuals in the positions or to the structural composition of the Board?

MR. BIBB:

We support the structure of the Board through nomination from the various groups. We solicit retirees who, we believe, will have the ability to represent their constituents on this issue and suggest those names to the Governor. Perhaps the correct people are now in place to work into the future.

CHAIR BEERS:

Testimony seems to indicate the legal structure of the Board has not changed. Four years ago no one liked it, and now, everyone is happy with the current members of the Board. Structurally, we are considering a shift between participant representatives and nonparticipant representatives from an industry background of managing an insurance system.

One question is whether the current Board members could be appointed if the language were changed as recommended in section 4 of S.B. 544. I suspect the answer is yes.

SENATOR COFFIN:

Testimony seems to indicate support of the status quo; however, that is based on happiness with incumbent members. That is not long-term thinking. Qualification requirements are a better basis for long-term success. I have participated in the group insurance industry for more than 30 years. I have not

sold much insurance over the last 20 years, but I still know something about marketing.

My concerns are whether or not the Board is listening to its constituencies or is it listening to what employees of State government should have. Benefits are good. We want to attract young people into State service. The PEBP plan should be marketed to attract young people to the plan. One of the greatest expenses to younger employees is the cost of orthodontic care for their children. Most group insurance policies universally provide that coverage but not for Nevada State employees. That is only one example of noncovered health care needs. The Board appears to be missing participants in its marketing of group insurance.

Another troubling factor, in examples from the PEBP Board, is the question of durable medical equipment. That is a provision often needed by older employees or retirees. The PEBP Plan has a terrible contract with the suppliers of durable medical equipment. I cannot believe the Board membership has not recognized the employee costs for durable medical equipment compared to that of corporate employees.

In conclusion, there need to be more members with group health care experience on the PEBP Board. Are we providing the best deals possible?

VICTORIA ROBINSON (City of Las Vegas):

We have no concerns with the current structure of the PEBP Board. I have insurance experience. I do not have experience in city planning. It would not make sense for me to be a member of the City Planning Board. The section requiring technical experience or expertise in the insurance or actuarial fields is sensible. Marketing and knowledge in creation of a benefit plan attractive to the recipients is important.

CHAIR BEERS:

We will consider specific sections of S.B. 544. Section 2, of the bill, removes the option for retirees of local governments to join the Program upon retirement if the local government did not participate in the Program at that time. This is commonly referred to as, "if you are going to give us your retirees, you must give us your active employees as well."

AL BELLISTER (Nevada State Education Association):

We oppose section 2 of S.B. 544. The nature of our testimony at the first hearing on this bill was if this provision is enacted, the table is being turned back to where we were prior to 2003 and the enactment of Assembly Bill (A.B.) No. 286 of the 72nd Legislative Session. That measure gave public employees the opportunity to avail themselves of a stipend to offset the cost of their insurance in retirement. The measure contained a requirement for public employees to become members of the PEBP Plan to access the stipend.

There is a bill in this Legislative Session, A.B. 324, we would recommend as an amendment to this measure.

ASSEMBLY BILL 324: Expands eligibility for a subsidy for the costs of health insurance coverage to additional retirees of school districts.
(BDR 23-1152)

If the issue is the demographics of the PEBP and the Subcommittee is concerned about the 600 actives in the non-state Plan and the 4,000 retirees, we understand that concern. That concern is addressed in A.B. 324. If the stipend were paid to the local government health care plan, the participants could then stay within the local government health care plans.

The policy in 2003, based on compelling testimony, was that participants could not afford health care insurance upon their retirement. Their pensions were not keeping pace with the cost of insurance. The Legislature passed A.B. No. 286 of the 72nd Legislative Session to create the stipend for local government retirees. In our case, the local government health care plan is operated through the school districts.

We estimate there are over 2,000 school district employees who are not eligible for Medicare. They were hired prior to April 1986. There are a sizable number of current employees who will have no health care insurance when they retire. The districts are not paying Medicare premiums for over 2,000 employees.

DR. RICHARDSON:
I concur with Mr. Bellister's proposal.

CHAIR BEERS:
Would the suggestion be acceptable if the subsidy were a part of the DSA?

MR. BELLISTER:
The current subsidy is in the DSA. In the current procedure, the subsidy is provided to the school districts through the DSA and then disbursed to the PEBP. Under A.B. 324, it would continue the stipend into the DSA.

CHAIR BEERS:
Would the provisions only affect new retirees?

MR. BELLISTER:
That is correct. Those retirees currently insured through the PEBP are grandfathered into that Program under the provision of S.B. 544.

CHAIR BEERS:
Would you support S.B. 544 if the provisions of A.B. 324 were incorporated into the Senate bill and the subsidy provision were addressed?

MR. BELLISTER:
I would support S.B. 544 if those amendments were made.

MS. ROBINSON:
Could someone define the term participate? If it means all of our employees are mandated to be participants in the PEBP, that cannot happen because a number of employee groups have collectively-bargained agreements where health care insurance is purchased from companies other than the PEBP. Some of the collective-bargaining groups would not accept the mandate. Four years ago, the city of Las Vegas instituted a popular consumer-driven health care plan. Over 70 percent of our employees are happy members of that plan. The other 30 percent are in 2 other plans.

If participation means having the PEBP as an option for our employees, it is an entirely different matter.

CHAIR BEERS:

The definition, in this case, would be a mandate to become members of PEBP. If retirees are placed in the PEBP, the active employees must be a part of the Program as well.

Ms. ROBINSON:

I have concerns with that definition of participation. It erodes the options for our employees. I assume the previous testimony concerning the DSA means the subsidy would be applied, not only when an employee joins the PEBP, but if they stay with their employer's retirement plan.

CHAIR BEERS:

The DSA is the formula to fund the K-12 school districts statewide. The previous speaker represents the teachers' union. Their concern is because they are State funded; some accommodation would need to be made for the State to continue funding the premium subsidy for their retirees into the future.

Ms. ROBINSON:

Does that apply to school district employees, not municipal employees?

CHAIR BEERS:

That is correct.

Ms. ROBINSON:

If it were applied to municipalities, it would be an unfunded mandate.

Referring to the testimony concerning grandfathering those employees who are in the PEBP, Ms. Leslie Johnstone indicated at the last meeting that those employees would be grandfathered in. We have reviewed S.B. 544 and we did not find language indicating that provision.

CHAIR BEERS:

That provision is in section 15 on page 14 of the bill.

Ms. ROBINSON:

I would return to the issue barring our employees from joining the PEBP as an alternative to the municipal plans. It is a less-expensive alternative for some of our employees, even without the subsidy.

CHAIR BEERS:

Does the city of Las Vegas currently pay a subsidy for its employees who are members of the PEBP?

Ms. ROBINSON:

That is correct.

CHAIR BEERS:

How would the provisions of S.B. 544 be an unfunded mandate to the city?

Ms. ROBINSON:

The retirees who stay with our plan pay the full premium. They do not receive a subsidy. The only subsidy paid is for those retirees who opt to join the PEBP. There is not a statute requiring the city to pay a subsidy for those retirees retained in our health care plans.

CHAIR BEERS:

I will restate the section in S.B. 544, page 3, line 16, to make it specific. "The governing body or any municipal corporation or any other governmental organization of this State ... " followed by lines 32 of page 3 through line 2 of page 4. Is this what you are referring to as an unfunded mandate?

Ms. ROBINSON:

I was concerned about Mr. Bellister's proposal for the DSA that will allow him to support S.B. 544. We have no objection to continuation of the subsidy for those employees who are already in the PEBP. Our concern would be if someone wanted the local government to pay a subsidy for those employees who are not allowed to be in the PEBP and remained with their local government health care plans.

CHAIR BEERS:

That is my understanding of what is being considered for this measure.

Ms. ROBINSON:

We do not see that provision in S.B. 544. If another bill under consideration makes that provision, we would like to have that information. Our current monthly subsidy to PEBP is approximately \$90,000. A similar subsidy, to those employees who stay in local government health care plans, would have an enormous fiscal impact.

BOB ATKINSON (Senior Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

I believe you are referring to A.B. 324 that Mr. Bellister referred to and that it would apply to all local governments. That is not the case. Assembly Bill 324 only applies to school districts. There are no provisions in S.B. 544 or A.B. 324 that would make it mandatory for other local governments to subsidize retirees in any plan other than the PEBP.

Ms. ROBINSON:

Thank you, that was our only concern.

CHAIR BEERS:

How many retirees from the City of Las Vegas opt to stay in the local government health care plan?

STEVE MILLER (Benefits Administrator, City of Las Vegas):

There are 125 retirees who currently pay 100 percent of their premiums. Of those 125 retirees, 68 are eligible for Medicare which means they have a lower premium. That issue was addressed four years ago.

RAYMOND J. FLYNN (Assistant Sheriff, Las Vegas Metropolitan Police Department):

We are opposed to S.B. 544. We are the only entity that is currently in litigation with the PEBP. We have approximately 100 retirees that joined the PEBP. We

did not want those retirees to join. The Las Vegas Metropolitan Police Department (Metro) looks at the retirement health benefits as a collective-bargaining agreement. We have a self-insured trust that also offers retiree benefits. That is our preference for retiring employees. We pay a subsidy. We believe we are currently paying the subsidy twice.

SENATOR COFFIN:

Is the amount of dispute approximately \$700,000 at this point?

MR. FLYNN:

If we lose the litigation and are required to pay, that is correct.

CHAIR BEERS:

Is it the belief of the Metro that because you have already been paying the subsidy through your trust, you should not pay a subsidy for the retirees who are enrolled in the PEBP?

MR. FLYNN:

We have provided for our employees under either the Police Protective Association or the PERS plan until we went to a management/employee self-insured trust. We have provided retirement benefits for many years.

CHAIR BEERS:

Would you approve of the suggestion the actives as well as the retirees must be under the PEBP, unless the retirees were retained by the local government for those people currently in the PEBP plan?

MR. FLYNN:

That is correct.

CHAIR BEERS:

In other words, for your purposes, would you like to see the Metro removed from the grandfather clause in section 15 of S.B. 544?

MR. FLYNN:

That is true, but it still does not address the 100 retirees currently in the PEBP.

CHAIR BEERS:

If those 100 retirees were returned to the local government health care plans, would it make the provisions of S.B. 544 acceptable?

In the case of the Metro, section 2 of S.B. 544 would be amended that the Metro retirees could no longer opt into the PEBP Plan.

MR. FLYNN:

That is correct.

MR. BIBB:

We agree with the language in the bill as drafted; that if you have already come to the PEBP plan as a retiree, bring the active employees as well. In the past several years, the ratio of retirees to active employees, especially in the non-state pool, has become extreme. There are approximately 13:1 retirees/active employees in the non-state pool. A healthy ratio is

considered to be 1:3. That runs the risk of a volatile situation if catastrophic losses occur.

CHAIR BEERS:

Can the Metro provide language that would move their retirees back to the local government plans and assure the Legislature there would be no discontinuity in coverage for your employees?

MR. FLYNN:

I will contact our group and have them begin work on the language tonight.

CHAIR BEERS:

The Legislature does not want anyone injured by this bill.

MR. FLYNN:

I understand.

MS. ROBINSON:

Concerning the discussion on the Metro, the only other issue we have with S.B. 544 is the issue in terms of their cost. The city of Las Vegas and Clark County jointly share the budget for the Metro. We are aware of the outstanding litigation by the Metro. If that issue can be resolved, we would be happy. If it is not resolved, and section 11, subsection 2 provisions of the bill is that the funds could be taken from the local government tax distribution account, obviously, the shortfall for the Metro would have to be covered by Clark County and the city of Las Vegas.

CHAIR BEERS:

The Subcommittee is not considering a forgiveness of the debt into Legislation.

MS. ROBINSON:

I understand, but if it were resolved in some fashion, it would become a finite issue instead of an unlimited issue.

LESLIE A. JOHNSTONE (Executive Officer, Public Employees' Benefits Program):

I want to remind the members of the Subcommittee that on April 9, 2007, the PEBP provided specific amendment language ([Exhibit C](#)). The intent in this area was not to change the intent of the bill as drafted. There is follow-through in section 6 concerning the reinstatement of non-state retirees. The intent of the amendment is to clarify that the retiree would not have the ability to join the PEBP during the even-year, late-enrollment reinstatement period, unless they are an active participant in the Program.

In other words, it would apply to retirees as they enter retirement, and also to any reinstatement of retirees. The term "reinstatement" is somewhat of a misnomer, because the section is referring to individuals who retire from a non-state jurisdiction, joining that employer's plan as a retiree. In the even-numbered year, they are given the opportunity to join the PEBP. The intent of the amendment was to prohibit a retiree from joining in the even-numbered year unless their active employees are currently on the PEBP Plan.

CHAIR BEERS:

Are you suggesting the Subcommittee consider section 6 simultaneously with section 2 of S.B. 544?

Ms. JOHNSTONE:

It would fall into section 6, but I wanted to note it in the context of the non-state retirees' eligibility to join the PEBP.

CHAIR BEERS:

Section 3 of S.B. 544 incorporates definitions by reference; section 4 has been discussed; section 5 allows the PEBP Board to elect the chair from its membership, rather than by appointment, and authorizes the Board to appoint advisory committees at its discretion. Is there any discussion on section 5?

Seeing none, section 6 addresses reenrollment at the midpoint for retirees whose former employer does not maintain its active employees in the PEBP plan. The same arguments in support or opposition apply in section 6 as they do in section 2.

Ms. JOHNSTONE:

Section 6 addresses four different items. Subsection 1 would require provision of a flexible benefit package, such as a section 125, for Medicare retirees. The PEBP is requesting the Legislative intent, if not the amendment, be placed in the bill to clarify that the cost of the cafeteria plan should be rated together with other benefits offered to Medicare retirees or whether they should be rated separately. It would be our suggestion that, because it is such a different benefit from what is currently offered, it be rated separately.

CHAIR BEERS:

Is it separate for the Medicare participants and non-Medicare participants?

Ms. JOHNSTONE:

It is separate for the Medicare retiree flexible-benefit-package. The way I read the bill, it would only offer the flexible-benefit-package to the Medicare retirees.

MR. ATKINSON:

The Subcommittee's recommendation is that the stipulation relates to the Program and the PEBP would be required to offer a cafeteria plan to Medicare retirees and be allowed to offer it to others. That is what the term "may" in subsection 2 of section 1 provides. It would allow the Program to make a decision to offer the cafeteria plan to other participants in the Program.

Ms. JOHNSTONE:

The PEBP position is still that the flexible-benefit-package be rated separately.

CHAIR BEERS:

Does that conflict with what staff has stated?

MR. ATKINSON:

It does not.

Ms. JOHNSTONE:

Subsection 2 requires the 4-year minimum for non-state jurisdiction to participate in the PEBP. This subsection is where the language about reinstatement would fit.

Subsection 3 adds a Program reporting requirement to the Legislature. The PEBP has offered suggestions on how the language could be amended to provide

greater detail of the reporting requirement and be more specific as to the time frame and a due date if it was included. It stays within the same intent of S.B. 544.

CHAIR BEERS:

Are you referring to page 9, lines 6 through 9, or further down on that page? Do we have the amendment?

Ms. JOHNSTONE:

It was distributed at the hearing on April 9, 2007. I have provided a copy for the record today ([Exhibit C](#)).

Subsection 4 includes a provision that the Commissioner of Insurance will determine the Medicare retiree rates and the PEBP Board would be responsible for the determination of all other rates.

CHAIR BEERS:

The Subcommittee intends to recommend deletion of that provision.

Ms. JOHNSTONE:

At the heart of that issue is the commingling provision that has been raised over the last two years. The PEBP has offered a suggested definition we believe will satisfy other parties. It specifies how commingling would be applied.

CHAIR BEERS:

Do the other parties concur with the addition of the commingling definition?

MR. MAILLARD:

I have issues with the rate-setting and needing the involvement of the insurance commissioner, a second set of eyes.

CHAIR BEERS:

We do not intend to process that part of the bill.

MR. BELLISTER:

The way I read the proposed amendment for the definition of commingling, it applies to the PEBP. Is that correct?

Ms. JOHNSTONE:

The amendment would be a definition that would apply to all plans authorized through chapter 287 of the *Nevada Revised Statutes* (NRS). All self-funded plans would be treated in the same manner. It would not be limited to the PEBP. The immediate need is for the PEBP to have a definition of the term "commingling."

MR. BELLISTER:

I would have to present that proposal to the Clark County Health Trust prior to taking a position. I will provide their position to the Subcommittee.

MR. BIBB:

We concur with the proposed amendment.

DR. RICHARDSON:

We concur with the resolution on the commingling language.

MR. MAILLARD:
We concur as well.

MS. ROBINSON:
This is the definition we have been using for the past four years. We concur with the amendment.

CHAIR BEERS:
Are there any comments on section 7 of S.B. 544?

MS. ROBINSON:
Subsection 2, of section 7, imposes an annual assessment on participating public agencies in an amount sufficient to pay the Commissioner of Insurance relating to this section. What are those duties if there will no longer be oversight by the Commissioner of Insurance?

CHAIR BEERS:
The assessment in subsection 2, of section 7, was to pay for subsection 1, policy implementation. The Subcommittee recommendation will be to delete section 7 from the bill. It relates to the Commissioner of Insurance having oversight for the PEBP plan.

MS. ROBINSON:
That answers my question.

CHAIR BEERS:
Are there comments on section 8 of S.B. 544? This section would hold the Department of Taxation responsible for collection of overdue premium payments. Section 11 is referenced in subsection 6 of section 8. The reference is on page 11, at lines 20 through 25, which references section 11.

MR. FLYNN:
We have concerns with subsection 6, of section 8, of the bill. We oppose that section and section 11. If there is a dispute, it should be raised in the courts. To take away a revenue stream in a dispute between our organization and the PEBP is unfair.

CHAIR BEERS:
There can still be a dispute. What is at issue is who is going to hold the disputed revenue while the dispute is settled. I will note your objection.

DR. RICHARDSON:
Do you wish to have testimony of the reasons behind this section of the bill?

CHAIR BEERS:
Everyone on the panel appears to understand the section. Are there any comments on section 9 of S.B. 544?

DR. RICHARDSON:
During the A.C.R. 10 Committee hearings, considerable discussion was held regarding this issue. One proposal was to implement what the Public Employees' Retirement System (PERS) did several years ago in requesting a Constitutional Amendment to protect these funds, but finally, the A.C.R. 10 Committee decided to place a policy statement in the NRS stating these funds

should be limited in their use to keep other groups from raiding the fund. That is the intention of Section 9 of S.B. 544. I would hope the statement of policy could remain in the bill.

CHAIR BEERS:

Are there comments on section 10 of S.B. 544?

MS. ROBINSON:

Before you leave section 9, we support the policy statement that makes the fund inviolate so its funds can be used for the PEBP as opposed to the other worthy uses of funds for the State of Nevada. It would benefit our employees to do so.

CHAIR BEERS:

Hearing no comments on section 10, we will consider sections 11 and 12.

MR. FLYNN:

We oppose sections 11 and 12.

CHAIR BEERS:

Are there comments on section 13 of S.B. 544?

MR. MAILLARD:

The issue of rate setting gets down to the actuarial studies. My understanding is actuarial studies are completed based on certain assumptions. Some of those assumptions are provided by the PEBP to the actuary. In the Legislative Counsel Bureau (LCB) Audit LA06-21 dated September 6, 2006, it notes erroneous assumptions that were made in rate setting, commingling, which has been addressed, and the fact the PEBP could not provide documentation to support its representations concerning Medicare retirees' prescription drug use during the 2005 Legislative Session. Quoting from the LCB Audit, the PEBP stated:

Medicare retirees, on average used more prescription drugs than early retirees and employees combined. However, LCB's review of information from PEBP's pharmacy vendor indicates Medicare retirees' prescription drug usage was overstated, accounting for only about one-third of the prescription costs.

There are a number of other erroneous assumptions in the Legislative Audit. I support another set of eyes to review assumptions provided and to review the findings of the actuary. If the assumptions are wrong, the study will be wrong and the rates will be wrong. The Division of Insurance has its own actuarial staff. I am in favor of section 13.

CHAIR BEERS:

There would be additional review if the number of members of the Board were increased as well.

MR. MAILLARD:

I concur.

CHAIR BEERS:

We will now consider section 14. Hearing no comments, we will proceed. There has already been discussion on section 15 with a commitment from the Metro to provide further information.

Ms. JOHNSTONE:

I had suggested clarifying language in section 15 that rather than stating, "who joined the PEBP upon retirement before July 1st," it be changed to "who participated in the PEBP as of June 30, 2007." Individuals enter the Program through both retirement and reinstatement.

CHAIR BEERS:

Section 15 should either not reference retirement or should reference both retirement and reinstatement.

MR. BELLISTER:

If my powers of persuasion failed me on our suggestions for section 2, we would be opposed to Section 16 as currently specified. Retirement planning is a serious endeavor. It takes time for individuals to consider retirement and be financially prepared. Section 16 provides for an effective date of July 1, 2007. That means anyone who is contemplating retirement in 2007 would be precluded from enrollment in the PEBP and receipt of the stipend. Speaking on behalf of public school employees, it is my understanding the PERS considers the effective date of retirement for teachers to be September 1. We urge the effective date be moved to October 2009, allowing individuals two years to plan their retirement.

DR. RICHARDSON:

I sympathize with Mr. Bellister's position. He is correct regarding retirement planning. I urge section 2 be retained in S.B. 544. I am not sure the effective date needs to move to October 2009, but at least one additional year is necessary for retirement planning.

Ms. ROBINSON:

An effective date of July 1 would not allow any time to educate our employees contemplating retirement. We ask for at least a date of July 1, 2008.

We have no way of participating if the definition of "participate" is mandatory participation.

MR. BIBB:

We agree, an extension of the effective date is appropriate for section 2, because it poses difficulty for those trying to identify available plans and educate employees.

MR. MAILLARD:

We support the extension of the effective date under discussion.

Ms. JOHNSTONE:

Section 2 includes language to make a slight change on the calculations of subsidies for non-state employees. Instead of verifying a minimum of five years employment with any given employer before a subsidy is credited, it would verify their non-state service collectively across any number of employers. The suggested amendment from the PEBP is for State retirees to be treated in the

same manner when verifying all their years of public service in the subsidy calculations.

In that regard, system changes will be necessary and our amendment suggested an October 1, 2007, effective date for section 2.

In section 6, regarding the cafeteria plan, the PEBP already has the plan design and rates in place and are nearing an open enrollment period. We request the requirement be effective July 1, 2008, for the next cycle.

CHAIR BEERS:

Is it necessary for the Legislature to specify that requirement?

Ms. JOHNSTONE:

No, it is not.

CHAIR BEERS:

Could the PEBP make that change?

Ms. JOHNSTONE:

That is correct.

Section 13, concerning the Medicare rates, is impacted by the new definition of commingling. Since the rates are already established and the PEBP is ready to begin open enrollment, we request a July 1, 2008, effective date.

CHAIR BEERS:

We will now open the hearing to public testimony.

RUSTY MCALLISTER (Professional Firefighters of Nevada):

We have a concern regarding the provisions of the bill. We would like to offer an amendment to S.B. 544.

The city of Las Vegas firefighters and the Clark County firefighters have our own collectively-bargained, self-insured health insurance trust funds. We are also employees of the city of Las Vegas and Clark County. Should the city or the county choose to join the PEBP, we believe that would mandate the firefighters to become part of the Program. What would that do to our trust funds? The funds have been nurtured for more than 20 years and they are collectively bargained and well run. The Board of Trustees has both management and labor trustees. We set our own benefits. We have legal counsel. We have a professional actuarial consultant, third-party administration and professional investment of the assets. It is a well-run plan. If the bill would mandate our groups to join the PEBP, we would ask to be excluded. I have more retirees in the city of Las Vegas Firefighter plan than the city of Las Vegas has in theirs. I have 598 active participants, 151 retirees and 1,280 dependents in our plan. We would like to maintain our trust funds in their current form.

We have built reserves. If we were forced to join the PEBP plan, what happens to our significant reserves? I have talked to Senator Amodei about our concern and he has stated he would concur with the Professional Firefighters of Nevada being excluded from certain provisions of the bill. I am not sure whether the amendment should be placed within section 6 of S.B. 544.

CHAIR BEERS:

Please provide a written amendment proposal.

MR. MCALLISTER:

I have language drafted, but I am not sure where it should be placed in the bill or if it meets the needs of the Subcommittee.

CHAIR BEERS:

Please provide the language to me and I will discuss it with other members.

SENATOR COFFIN:

The consideration is whether to allow local government retirees into the PEBP or whether to insist they retain their local government insurance. If they were required to stay with their local government insurance, it would solve Mr. McAllister's concern.

CHAIR BEERS:

Have any of the Professional Firefighter retirees opted to insure under the PEBP?

MR. MCALLISTER:

I am unaware of any of our retirees who opted for the PEBP plan. If there were, it would have been prior to my tenure as Chair of our Board.

CHAIR BEERS:

There was no motive for them to do so prior to 2003.

MR. MCALLISTER:

There have been no retirees in our group who have opted for the PEBP plan since 2003.

There is a provision in the rules of our trust fund allowing an individual to be a member of the trust fund indefinitely; however, if they opt to leave, they cannot return. We did make an exception when A.B. No 286 of the 72nd Legislative Session passed, we had two retirees who tried to choose both plans. When we told them they must choose one plan, they returned to our trust fund. The only other retirees who may be members of the PEBP, who used to be firefighters, were those that left the trust fund to join a spouse's plan. I do not believe there are many.

JESSE WADHAMS (Teachers' Health Trust):

We concur with Mr. Bellister's comments that S.B. 544 represents a major policy shift and we would prefer an effective date in 2009.

DIANA LANGS:

I am here today with another staff member as an individual member who will be retiring this year. The other staff member is not eligible for Medicare because of her 30-year tenure. Her retirement date is May 28, 2007. My last day is the last-working day of October 2007.

CHAIR BEERS:

Are you employed with a local government?

MS. LANGS:

That is correct. We are a local government agency that was with the PEBP for more than 30 years and opted out approximately 6 years ago because of the costs. There are currently no retirees in our plan. We are only a 13-member staff. We receive no subsidies from our employer nor are we members of any type of trust fund. We carry insurance through the Nevada League of Cities. We have attended classes at the University of Nevada in preparation for retirement and met with retirement planners. We understand and appreciate the issues and have the task before the Legislature. We will support S.B. 544 if the effective date is changed.

Even if I were to retire today, I would not fall under the July 1 deadline. As a member of a non-state agency, I am required to be retired 60 days, plus the first day of the month, to join the PEBP. We could accept the measure if sections 15 and 16 were changed to an effective date of January 2008.

CHAIR BEERS:

Thank you for your testimony and humanizing the issue of the effective date.

RONALD P. DREHER (Peace Officers Research Association of Nevada):

There are approximately 35 professional peace officer associations in our group, some of which will be affected by this bill. As I testified at the April 9, 2007, hearing, the word "joined" should be removed from section 2 of S.B. 544. It is important that local government employees have the choice to join the PEBP if they so desire. A number of groups have collective-bargaining agreements on which the bill would have an effect. As an example, the Reno Police Protective Association has a post-retirement medical plan for life. Would the bill have an impact on them by excluding them from that plan? I am not sure if it would. The Reno Police Supervisor and Administrative Employee Group has a revocable trust that takes effect when the employee reaches 65 years of age. Under the provisions of A.B. No. 286 of the 72nd Legislative Session, local government employees have had a choice. If S.B. 544 were approved, the effective dates would need to be extended. Our primary concern is with section 2.

TERRY JOHNSON (Chair, Public Employees' Benefit Program Board):

I will make myself available for questions regarding the Board's position on these matters. We worked with Ms. Johnstone in crafting the information provided by her today and on April 9. The Board concurs with Ms. Johnstone's testimony.

A few moments ago, the Chair spoke to the human aspects of the considerations. I have no objections to changes to the bill. I would address the Board's composition issue in view of Senator Coffin's comments. As a State employee with 12 years of service, I became Chair of the PEBP Board a few years ago at the request of former Governor Guinn. At that time, there were several fiscal issues. Remarkable progress has been made by the Board. There are good men and women who serve on the Board and give perspective from their private and public sector input. They were instrumental in the rebuilding of the program.

Prior to my tenure with the Board, I had employees who came to me and stated they were contacted by collection agencies because of problems with the PEBP organization and payment processing. As a result of systemic reforms, we now

pay \$300 million annually in claims and 98 percent of the claims are paid accurately within 14 days. The PEBP has made significant progress. I will be happy to work with the Legislature on behalf of all State employees and the more than 800 employees I represent as a director of a State department.

CHAIR BEERS:

I will suggest an amendment for consideration. On page 5, lines 33 and 34, it states just prior, "In appointing members pursuant to paragraph (a) of subsection 1, the Governor shall insure that" Just after that language I would add "a. all the members have technical employment and experience in the insurance or actuarial field, including service on the PEBP Board." I believe that would resolve any question that current Board members can continue to serve under the new long-term structure being contemplated.

SENATOR COFFIN:

Please list the members of the Board who have the insurance experience specified in the statutes.

MR. JOHNSON:

There are two. One is from the MGM/Mirage Corporation Benefits, Mr. Christopher Campbell. Another business representative is from International Game Technology, Mr. Randall Kirner, Dr. Jacque Ewing-Taylor, is a representative for Higher Education.

SENATOR COFFIN:

I was only interested in those with insurance experience. There are nine members on the Board. How often do you meet?

MR. JOHNSON:

We meet monthly, except when the Legislature is in session when we meet weekly via telephone conference to review, discuss and provide staff with direction for matters coming before the Legislature that impacts the Board.

SENATOR COFFIN:

How often have you had one or more of the members with insurance experience miss a meeting?

MR. JOHNSON:

Meeting attendance is strong. I do not have exact percentages. These are individuals who leave their jobs to attend and spend eight or nine hours sorting through claims and rate issues.

SENATOR COFFIN:

There must be times when only one Board member with insurance experience can attend a meeting.

MR. JOHNSON:

That is probably true, occasionally.

SENATOR COFFIN:

That happenstance is why I support authorizing additional members with insurance or actuarial experience to the Board, as long as the size of the Board does not become unwieldy.

MR. JOHNSON:

That is the challenge. As Chair of the Board, trying to reach consensus on the issues and shepherd and guide the discussion, even with nine members it can be a challenge. I would be concerned by size increases. I suggest any changes that are made be made gradually. I would hate to see a situation where some of the institutional knowledge is lost.

Actuarial and insurance experience is helpful, but the Subcommittee should remember this is basically a State agency, and it is funded through State budgets. *Nevada Administrative Code* regulations must be adopted. It is a State agency with adjudicatory functions regarding claim appeals. It is not just a matter of insurance and actuarial knowledge.

SENATOR COFFIN:

Are you aware the PEBP plan pays among the highest costs for durable medical equipment of any contract in the country?

MR. JOHNSON:

I was not aware of that fact.

SENATOR COFFIN:

How would you make the Board aware of that fact in the course of business? Have you ever analyzed the costs of the PEBP plan?

MR. JOHNSON:

The Board reviews the costs of the PEBP plan in terms of input we receive as to PEBP plan structure and have a number of mechanisms to highlight such information. Diligence could be improved. The system allows for input between the monthly Board meetings, the town hall meetings, the focus group meetings and the customer satisfaction surveys. We rank in the 95-percentile range for customer satisfaction. We have a number of avenues from which to receive input. The bill provides discretionary authority for establishment of advisory committees. That could be an additional avenue to identify systemic and strategic areas.

SENATOR COFFIN:

Originally, the PEBP was established to write our own contracts. Currently, we use an entity such as Sierra Health Services to negotiate our contracts for us. Sometimes a third-party negotiation can cause problems. They may also be responsible for negotiating other contracts. I want to ensure the Board membership is sufficient to understand the process. My comments are not meant to denigrate the current Board members.

MICHAEL R. ALASTUEY (Nevada Association of School Superintendents):

My recollection on S.B. 544 is that after a certain date, it would cease the migration of local government employees into the PEBP plan; thereby, unilaterally, without a collective-bargaining agreement, or any prearrangement, creating an obligation on the local government from which the individual retired. That includes school districts.

School districts are unique among local governments, in that they have a special place in the *Constitution of the State of Nevada*. The Legislature is charged with the establishment and administration of a uniform system of common schools. The revenues for school districts, in operating terms, are established by the

Legislature. All the tax levies providing revenues for the schools are established by the Legislature

Likewise, on the expense side, the Legislature sets an amount-per-pupil rate annually. In financial terms, the school districts are a creature of the Legislature, operating almost entirely as a State agency.

In consideration of this, or any measure in the Legislature, if you create or allow the continuation of an unfunded current-year liability requiring cash payments for anything, including a subsidy for retiree health insurance, you are visiting upon the school district a circumstance that will then be visited upon the Legislature. There will be both instant and long-term liability.

Our primary concern, with respect for retirees, is the school operation and the current funding of schools for children enrolled in those institutions. The Legislature has already seen, since the passage of A.B. No. 286 of the 72nd Legislative Session, the rapid accumulation of an immediate obligation in the school budgets that needs to be paid. That is eating away at the Legislature's ability to appropriate funding for current school obligations.

CHAIR BEERS:

We share your concerns for school operations.

RANDY ROBISON (Nevada Association of School Superintendents):

We are concerned about what we see as fixed revenue for the DSA. If you continue to expand the liability and roll it into the DSA, at some point we hit a ceiling of funding availability. Obligations must be met and the revenue must be taken from another allocation. We believe it would come at the cost of construction programs for classrooms.

If S.B. 544 is eventually passed, it would place us in the position with fixed costs for budgetary planning.

ROSE E. MCKINNEY-JAMES (Clark County School District):

I have nothing to add to the testimony of Mr. Alastuey and Mr. Robison, but I have consistently appeared in opposition of this concept before the Senate Committee on Finance, beginning with the debate in 2003. It has nothing to do with our desire to be supportive of our retirees. It is a fiscal matter.

CHAIR BEERS:
Seeing no further testimony, this Subcommittee is adjourned at 5:29 p.m.

RESPECTFULLY SUBMITTED:

Cynthia Clampitt,
Committee Secretary

APPROVED BY:

Senator Bob Beers, Chair

DATE: _____