

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Fifth Session
March 4, 2009**

The Committee on Ways and Means was called to order by Chair Morse Arberry Jr. at 8:07 a.m. on Wednesday, March 4, 2009, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Morse Arberry Jr., Chair
Assemblywoman Sheila Leslie, Vice Chair
Assemblywoman Barbara E. Buckley
Assemblyman Marcus Conklin
Assemblyman Mo Denis
Assemblywoman Heidi S. Gansert
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Joseph (Joe) P. Hardy
Assemblyman Joseph M. Hogan
Assemblywoman Ellen Koivisto
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblywoman Debbie Smith

STAFF MEMBERS PRESENT:

Mark Stevens, Assembly Fiscal Analyst
Tracy Raxter, Principal Deputy Fiscal Analyst
Anne Bowen, Committee Secretary
Vickie Kieffer, Committee Assistant

Chair Arberry called the meeting to order.

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BUDGET ACCOUNT 101-4821
EXECUTIVE BUDGET PAGE PERS-1**

Dana Bilyeu, Executive Officer, Public Employees' Retirement System (PERS) presented Budget Account (BA) 4821. Ms. Bilyeu introduced Tina Leiss, Operations Officer. Ms. Bilyeu submitted [Exhibit C](#), PERS 2008 Actuarial Valuation Results, and read the following statement into the record:

The contribution rates are set to change beginning July 1, 2009. Actuarial valuations determine the liabilities of the system and contribution rates that are going to be needed to fund the system on what we call an actuarial reserve basis. Several areas are analyzed during the process of an actuarial evaluation, which include plan design, member demographics, and economic assumptions, such as salary growth and investment return.

Statute rates change every other July 1st on the odd-numbered years, based on the prior year's actuarial evaluation. So, the valuation from 2008 is what is used to set the 2009 contribution rates.

The first chart in your handout shows the results of the 2008 actuarial valuation and the impact on the employer pay contribution (EPC) plan. Approximately 94,000 of the 106,000 members of the Public Employees' Retirement System participate in the regular fund, and fully 82 percent of those participate under this contribution plan.

Approximately 12,300 members participate in the early retirement fund for public safety, and almost 85 percent of them participate under employer pay.

Employer pay, or what we call employer pay, is actually a shared contribution plan where employees pay half of the contributions either through salary reduction, as with the state, or through foregoing equivalent pay increases. There are two mechanisms in the statute that allow the cost-sharing back to the individual member.

The first line on the chart shows the existing rate that is currently being paid into the system for both funds, police/fire and the regular fund, based on the results of the 2006 valuation. The next line shows the results of the 2008 valuation. The third line of the chart shows the difference between those two rates. The bottom line applies the rounding mechanism that is contained within the statute to arrive at the new contribution rate for the coming biennium.

For regular members under EPC, the rate increase of 1 percent is split equally between the employer and the employee, meaning 0.5 percent of that goes back to the employee and 0.5 percent goes to the employer. For police/fire the rate is increasing by 1.75 percent to the employer and 1.75 percent to the employee. Rates in police/fire fund are more volatile due to the much smaller size of that fund and the relative funding status of that plan.

On the next page ([Exhibit C](#)), the chart shows the results of the valuation for members participating in the employee/employer after tax contribution plan. About 18 percent of the system participates under this particular plan. The chief differentiating fact between the two is that this plan has refundability of employee contributions.

Refundability actually causes the difference in the two rates. Employer pay is actually a less expensive way of financing retirement security because there is no refundability. The ability to take contributions back out of the system upon separating from public service actually causes the cost of that program to be about a percent higher.

The first line of the chart shows the existing statutory contribution rates for both funds again. The second line shows the results of the 2008 valuation. The difference between the two rates is shown again on line three, and the last line shows the statutory rates for 2010 and 2011.

For regular members the rate will increase by 0.75 percent, which will be matched by the employer. For police/fire the matching rate will increase by 1.75 percent. The same factors affecting police/fire in the EPC program are also affecting that program in this plan.

With that I am happy to answer any questions about the contribution rates, but otherwise I will turn it over to Tina.

Assemblyman Conklin requested an explanation of the audit process. Ms. Bilyeu said she would relate some of the history of the Employer Pay Plan as well, because it was misunderstood as a contribution plan. The Employer Pay Plan was put into place in the 1970s as a cost-savings mechanism. Because the Legislature had eliminated refundability for participants in the Employer Pay Plan, everyone saved money. Ms. Bilyeu said employees agreed to the Employer Pay Plan, because they had to pay a lesser rate, and everything was figured on a pre-tax basis. Cost sharing began in 1977 and almost all local governments were enrolled in the Employer Pay Plan by 1981, according to Ms. Bilyeu.

Ms. Bilyeu explained that when PERS set the rates, employers were all informed of what the rates would be almost a full year ahead of time. The employers were also given the actual formula to ensure the rate was split appropriately. Employers certified to PERS whether they were using the salary reduction method or had negotiated with employees to forego a pay raise that they would have received otherwise. When PERS saw the reports submitted by the employers and determined the formula had not been applied appropriately, PERS notified the employers of the error. The PERS had an audit staff of three, and the audit cycle of all public employers was on a three-year basis.

Ms. Bilyeu said PERS tested employers to ensure that not only had the certification been received, but it had been implemented appropriately.

Assemblyman Conklin asked how many certification audits had been performed since the inception of the program. Ms. Bilyeu replied there were over 1,900 certifications in the system. If rates decreased, PERS had to ensure that whichever of the two mechanisms had been used, the money was actually returned to the employee.

In answer to a question from Assemblyman Conklin regarding the Las Vegas Chamber of Commerce Report on the PERS, Ms. Bilyeu replied she had only one day to review the report prior to its publication. She said she had provided an extensive letter regarding the history of the Employer Pay Plan because she believed it had been misinterpreted and misapplied in the report. Assemblyman Conklin commented that it was curious that the Las Vegas

Chamber of Commerce had chosen to ignore the cost-savings measure that was audited to prove the policy was being followed.

Ms. Bilyeu said the PERS letter to Applied Analysis in response to the report had been posted on the PERS website.

Assemblyman Goicoechea asked why PERS was still offering the Employee/Employer Plan to new hires since the Employer Pay Plan saved money. Ms. Bilyeu explained there was a long history about why the Employee/Employer Plan still existed, and it involved litigation. In 1985 the PERS had been planning to implement a mandatory Employer Pay Plan. Participants that were in the plan in 1985 were to be mandatorily moved to the Employer Pay Plan as soon as they vested, and over time all new hires would be enrolled in the Employer Pay Plan. Ms. Bilyeu said a choice between the two plans would no longer have been offered.

The State of Nevada Employees Association had determined a contract right of choice between two programs was being removed, and it sued to stop the mandatory requirement of the Employer Pay Plan. The PERS had lost the case in the Ninth Circuit Court of Appeals. Ms. Bilyeu said there were a small percentage of participants, only 18 percent, enrolled in the Employee/Employer Plan. Because of the litigation, all state employees had a choice, as well as all newly created entities, such as charter schools.

Assemblyman Goicoechea commented that while the Employee/Employer Plan should not be taken away from anyone who was already enrolled in the plan, after a certain date, new hires should not have the choice. Ms. Bilyeu said she tended to agree, but there was language within the opinion of the Ninth Circuit Court of Appeals that precluded taking that action.

Assemblywoman Gansert remarked that she had heard about an "add-back" to what a retiree received from PERS and she asked for an explanation of that term. She also mentioned a contradictory *Nevada Revised Statutes* with transitory language.

Ms. Bilyeu said NRS 286.421, subsection 9, contained the difficult language. She noted this subsection also went back to the history of the Employer Pay Plan. The City of Reno went to the Employer Pay Plan by vote of its employees in 1977. Subsection 9 of NRS 286.421 was implemented in 1981 when the Legislature amended the statute to require all local governments to cover police and fire employees in Employer-Pay. The language in subsection 9 appeared to require a 100 percent payment of their salaries by local governments, according to Ms. Bilyeu. She said that meant they were using the mechanism in NRS 286.421, subsection 3, which was the cost-sharing mechanism between the two. The City of Reno had certified to PERS that it used the second of the two mechanisms to cost-share back to employees. The in lieu of commensurate salary increase mechanism was used. Ms. Bilyeu stated it had been established that the City of Reno had cost-shared back because in 2005, when the rate went down for regular members, part of the pay increase was given back to the employees at the City of Reno.

Ms. Bilyeu said there was difficulty with the nomenclature of the Employer Pay Plan because it was called "Employer-Pay," but it was a cost-sharing mechanism. The plan was not as well understood at the local government level, as it was at the state level. Because the state had no collective bargaining, there had been no use of the second mechanism in the statute. The state had always used salary reduction. Clark County School District, with the exception

of the most recent certification, had always certified salary reduction. Ms. Bilyeu said the state and the Clark County School District constituted over half of the fund, and both entities had always used salary reduction.

The other opportunity for cost-sharing had been put in place because that was how the employee groups were persuaded to participate and agree to the Employer Pay Plan and negotiate which of the two mechanisms was going to be used. Ms. Bilyeu stated that in the most recent period of time, virtually all large public employers had begun to use salary reduction in cost-sharing, instead of the in lieu of salary increase.

In answer to Assemblywoman Gansert's question, Ms. Bilyeu stated there was an add-back when City of Reno employees retired. Ms. Bilyeu referred to [Exhibit C](#) and said when benefits were calculated for participants under the Employer Pay Plan, those participants should not have a lower benefit than those participating in the after-tax program. Salary was factored up for participants of the Employer Pay Plan to match the salary under the Employee/Employer Plan. Ms. Bilyeu commented that it had to do with ensuring that employees were paid at the exact same rate regardless of which contribution plan they participated in.

Assemblywoman Gansert asked at what percentage PERS was presently funded. She added that funding had been between 75 percent and 82 percent. The fund was amortized over 30 years, and there was movement to amortize over 20 years.

Ms. Bilyeu acknowledged that was correct. The system had a 30-year layered amortization approach. A newly created unfunded liability in a year, as with a market decline, was given 30 years to be amortized so that everyone had an opportunity to pay for it. It did not matter when an employee was hired in the public sector; the employee and the employer had the same opportunities to pay it. As of the 2008 actuarial evaluation, the PERS was 77 percent funded, a composite of approximately a 78 percent funded ratio of the regular fund and a 71 percent funded ratio of the police and fire fund. It was a weighted ratio between the two funds. The peak of funding had been at approximately 85 percent in 2001, just before the market decline in 2001. Whenever there was a market decline, the funded ratio would also decline, because the biggest driver of the funded ratio was the market return. Ms. Bilyeu said that was the nature of layered amortization. The Retirement Board had been diligent in attempting to maintain the contribution rates on a stable basis, because of the cost-sharing back to the employees. Nevada did things differently from most states because it required equal cost-sharing between the employer and the employee, which included payment on the unfunded liability.

Ms. Bilyeu said PERS currently used a 30-year funded ratio, and as the blended amortization period got closer to 20 years, there had been discussion about moving the amortization period to 20 years. The average work period in the retirement fund was approximately 20 years. In police/fire the average work period was approximately 22 years and in the regular fund it was approximately 19 years. According to Ms. Bilyeu, that was why there was consideration for changing from a 30-year amortization period to a 20-year amortization period for any newly created unfunded liabilities. Ms. Bilyeu said as the original amortization period was completely retired, the entire amortization period would be shortened.

Assemblywoman Gansert asked whether new hires could be started on a 20-year amortization period, because it appeared that PERS was not fully

funded. The expectation was for 30 years when people were employed from 19 to 22 years on average. Ms. Bilyeu replied it would be almost impossible to sector out the two populations, those with a 30-year amortization and those with a 20-year amortization, because it was a pooled benefit. Presently the actual average amortization period was 26.5 years.

Assemblyman Hardy commented that what he was hearing from Ms. Bilyeu's testimony was that PERS was in good shape and funded adequately. Ms. Bilyeu stated that was correct and added that the chief misunderstanding about the unfunded liability of PERS was that it would somehow come due and the unfunded portion would have to be retired immediately. That was not the case, according to Ms. Bilyeu. The unfunded liabilities were long-term liabilities with long-term payment periods.

Assemblywoman Gansert said she had not realized it, but there was another voluntary retirement plan using pretax dollars that was not matched by the state. She wondered whether that was true and, if so, how many individuals participated in the plan.

Ms. Bilyeu said she believed Assemblywoman Gansert was referring to the 457 plan for state workers, which was a supplemental savings program. Ms. Bilyeu stated PERS did not administer that program, but it was her understanding that approximately 30 to 35 percent of state workers participated. She noted there was no match by the employer, and there were specific limitations on how much money could be contributed to an individual's account in any given year. The 457 plan was offered by each employer to employees, and there was no uniform system.

Assemblywoman Koivisto asked what would have happened if state employees had retired this year and had their retirement savings in a 401K, instead of a defined benefit plan such as PERS.

Ms. Bilyeu replied there were differences between the defined contribution and defined benefit programs that needed consideration. She said the defined contribution approach to retirement was being played out in the market cycle. Those people who retired at the top of the market would do very well, but those who were forced to retire at the bottom of the market might have to retire on 40 percent to 50 percent less than expected. Ms. Bilyeu said with defined contribution plans you were only as good as your account balance on the day you retired. From a retirement security perspective, a defined contribution plan was very volatile.

According to Ms. Bilyeu there had been discussion at the federal level to require private employers currently using the defined contribution approach to allow mandatory contributions to Individual Retirement Accounts (IRAs) through employee deductions. Ms. Bilyeu opined that Congress would initiate reform in 401K plans at some time. The fact that retirement security had been severely damaged during the market cycle was something Congress would be considering.

Ms. Bilyeu commented that it was not true that all defined benefit programs in the private sector were gone. She said there were significant dollars in Taft-Hartley Plans, which were union-based. Ms. Bilyeu reiterated that the benefits from PERS remained static because they were not based on market conditions, so the promised benefit was being paid on a predictable basis.

Tina Leiss, Operations Officer, Nevada Public Employees Retirement System (PERS), read the following statement into the record:

The system is a non-General Fund agency. Revenue for the system's administrative budget is from transfers from the Trust Fund on a per capita basis for each member and benefit recipient. These revenues are derived from employee and employer contributions, received from 173 public employers and about 106,000 active members who participate in the system.

The system's overall proposed budget for FY 2010 and FY 2011 is a decrease from the last biennium. The proposed FY 2010 budget is about a 9 percent reduction from the FY 2009 approved budget. For FY 2011 it is about an 8 percent reduction from the FY 2009 approved budget. The proposed budget contains no new positions, no new programs, or any large projects.

The per capita fee in FY 2009 is \$3.69 for the regular fund and \$3.90 for the police/fire fund. The system's budget as proposed would result in these going down to about \$3.16 in FY 2010 for the regular fund and to about \$3.40 for the police/fire fund depending on the final count of members and retirees as of June 30, 2009.

The retirement system participates in a national benchmarking service so that we can track our administrative costs against our public pension systems across the country and globally. The retirement system consistently ranks near the bottom in administrative costs when compared to our peers and about median for our service to members and retirees and near the top for workload per full-time employee. Our staff is responsible for 34 percent more work per full-time employee than the median U.S. public pension system. The system's total administration cost, as measured per active member and beneficiary, has decreased 6 percent per year over the last four years on average.

The budget includes two enhancement decision units proposed by the retirement system. Enhancement (E) 275, (which) maximized Internet and technology, provides for the replacement of work stations and servers that are at the end of their lifecycle. These replacements are in accordance with the guidelines provided by the Department of Information Technology. This decision unit also includes amounts for necessary software upgrades and maintenance to ensure the continued efficiency of the pension processing system.

Enhancement (E) 849, the non-classified salary adjustments, includes the Board approved salaries for each of the statutory positions in accordance with NRS 286.160. The proposed budget also includes one additional enhancement unit. Enhancement (E) 673 was a decision unit added by the Department of Administration to implement Nevada Spending and Government Efficiency (SAGE) Commission recommendations regarding health care subsidies for active and retired employees. This unit has resulted in a reduction in the proposed budget.

The system also administers two other minor budgets, the Legislator's Retirement System and the Judicial Retirement System.

Chair Arberry asked whether the 2008 actuarial valuation for the Judicial Retirement System had been completed. Ms. Bilyeu explained that the Judicial Retirement System (JRS) and the Legislative Retirement System (LRS) were on calendar year evaluations, and the Retirement Board would receive those evaluations from the actuary at the March Board meeting. The evaluations would be delivered immediately to the Legislature once they were received. The Retirement Board had acted at the last Board meeting to change the evaluation schedule for the JRS and the LRS because, in the past, the evaluations had been delivered to the Legislature so late in the session.

Chair Arberry asked whether there were any recommendations for changes in the contribution rates, and Ms. Bilyeu replied that PERS did not have the rates yet but hoped to have them by the Board meeting on March 17, 2009.

Chair Arberry requested information regarding the cost of continuing the critical labor shortage provisions. Ms. Bilyeu explained that the critical labor shortage issue was a temporary provision due to sunset on June 30, 2009. The provision was an exemption from the reemployment restrictions for PERS retirees to return to positions deemed to be critical labor shortage positions by employers. For the period of time the provision had been in place, the Legislature required an experience study be performed to evaluate the cost associated with the benefit. Should the benefit be extended past June 30, 2009, the cost associated with the benefit had to be recognized in the actuarial contribution rates. Ms. Bilyeu stated the experience period began July 2001 and went through October 2008. There were two components to the cost associated with critical labor shortage. The first was the "add to the unfunded liability." While the benefit had been temporarily in force, PERS had not been recognizing the cost associated with it. The cost, as the actuary derived it, was from taking the experience of those employees who retired and immediately returned to work. Ms. Bilyeu said those employees would not have returned to the workforce but for the benefit. The cost for the unfunded liability for those employees was for the benefits that had to be paid, which otherwise would not have been paid. The cost was approximately \$54 million during the experience period, according to Ms. Bilyeu.

The cost on a "going forward" basis to absorb those benefits that would not have been paid, but for the exemption to the reemployment restrictions, was calculated to be 33 basis points, or 0.33 percent. For that to be recognized in the contribution rates, 0.33 percent would be added to the actuarial valuation contribution rate, and rounded to the nearest 0.5 percent (per the NRS). That would drive the contribution rates in the regular fund to 22 percent for the Employer/Pay Plan based on the rounding. The contribution rate would go from the proposed amount of 21.50 percent to 22 percent. The Board had declined to bring a bill to extend critical labor shortage because it had a cost, according to Ms. Bilyeu.

Assemblyman Hardy said he knew of one bill draft where a person who had retired would be able to be hired back in the public sector at a lesser salary, perhaps 90 percent of the original salary, and still receive his retirement benefit. That plan would provide a 31 percent savings rate by reemploying an individual in a critical labor shortage area, according to Assemblyman Hardy.

Chair Arberry asked whether the upgrade in the conversion of the Computer Automated Retirement System of Nevada (CARSON) system had been successfully completed.

Ms. Leiss said the upgrade had been scheduled to take 18 to 24 months. The project had begun in December 2007, and the update was scheduled to go live this month. The project was a little ahead of schedule and had remained on budget.

Chair Arberry closed the hearing on Budget Account 4821 and opened the hearing on A.B. 203.

**Assembly Bill 203: Revises provisions relating to state financial administration.
(BDR 31-129)**

Assemblyman Joseph (Joe) P. Hardy, Assembly District No. 20, stated A.B. 203 was a concept shared by other members of the Committee. Assemblywoman Buckley and Assemblywoman Gansert had both submitted bill draft requests (BDRs) with the same concept.

Assemblyman Hardy referred to the biblical tale of Joseph's interpretation of Pharaoh's dream regarding the seven fat cows and the seven skinny cows (which was a parable about the need to prepare for bad years during good years). Assemblyman Hardy related that story to the state's "rainy day fund" (The Fund to Stabilize the Operation of the State Government) and the need, metaphorically, to build reservoirs to store the waters during rainy times so they can be used in times of drought. He said that A.B. 203 looks at that issue in regard to what the state can do in the way of a savings account. He noted that the stabilization fund was already in place and that in 2003 the Legislature provided a method to allocate the extra state money, including a portion to that fund, when tax revenues were higher than anticipated. This action recognized the ups and downs of the economy.

Assemblyman Hardy, after consultation with Carole Vilardo of the Nevada Taxpayers Association, proposed an amendment to delete subsection 2 of section 2 of the bill, a provision which was unnecessary. With that amendment, A.B. 203 would allow the balance in the stabilization fund to reach its statutory limit, and revenue in excess of the amount needed to reach that limit would be transferred to the fund for tax accountability. Money in the tax accountability fund could only be appropriated for the purpose of supplementing future revenue to reduce a tax or fee, and it could not be used to refund any tax for fee already paid to the state. Assemblyman Hardy said the purpose of the bill was to ensure the money was retained by the state to avoid a "bust" after a "boom."

Carole Vilardo, President, Nevada Taxpayers Association, testified in support of A.B. 203. Ms. Vilardo said the Nevada Taxpayers Association supported the concept of A.B. 203, and as she had read the bill it appeared to work with the bill Assemblywoman Buckley was sponsoring, and she hoped it would work with Assemblywoman Gansert's bill as well. Ms. Vilardo believed the "rainy day fund" was an important issue that had been proven by the current economic situation. Anything done in a bad economic climate that allowed the state to maintain base-level services without decimating agencies or services was important, according to Ms. Vilardo.

Ms. Vilardo agreed with the amendment proposed by Assemblyman Hardy. She pointed out that subsection 2 of section 2 of A.B. 203 was in conflict with a provision in NRS 353.235 that prohibited surplus funds from being used for ongoing, operational expenses. She cited an example of taxes collected on a major construction project after those taxes had been deferred for five years and noted that would provide one-time only revenue to the state. Ms. Vilardo said that projecting revenues during slow economic times was very difficult, and that the best use of surplus revenue was to put it into a "rainy day fund" or use it for training or capital expenditures that were not ongoing. She concluded by reiterating her support of A.B. 203 and other bills that would help the state through bad times.

Assemblyman Hogan said the bill with the proposed amendment appeared to provide just two paths for the excess revenues: either went directly to The Fund to Stabilize the Operation of the State Government or directly to the fund for tax accountability that was created in this bill. He wanted to be clear that there were only "two ways to go" and asked what the criteria were for the distribution.

Assemblyman Hardy stated the first priority was to fill the "rainy day fund." After that fund was filled to the statutory amount, surplus funds went to the fund for tax accountability.

Chair Arberry called for testimony in favor or in opposition to A.B. 203, and hearing none, declared the hearing closed.

Chair Arberry adjourned the meeting at 8:56 a.m.

RESPECTFULLY SUBMITTED:

Anne Bowen
Committee Secretary

APPROVED BY:

Assemblyman Morse Arberry Jr., Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: March 4, 2009

Time of Meeting: 8:07 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|-------------------------|--|
| | A | | Agenda |
| | B | | Guest sign-in sheets |
| | C | Dana Bilyeu | PERS' 2008 Actuarial Valuation Results |