

**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Seventy-fifth Session  
April 3, 2009**

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 8:13 a.m. on Friday, April 3, 2009, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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.

**COMMITTEE MEMBERS PRESENT:**

Senator Bernice Mathews, Cochair  
Senator Steven A. Horsford, Cochair  
Senator Bob Coffin  
Senator Joyce Woodhouse  
Senator William J. Raggio  
Senator Dean A. Rhoads  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Senator Mike McGinness, Central Nevada Senatorial District

**STAFF MEMBERS PRESENT:**

Gary L. Ghiggeri, Senate Fiscal Analyst  
Michael Bohling, Committee Secretary

**OTHERS PRESENT:**

Fred Rogne, Fire Chief, Fallon Volunteer Fire Department  
Pat Irwin, Lovelock Volunteer Fire Department  
Rusty McAllister, President, Professional Fire Fighters of Nevada  
Dana K. Bilyeu, Executive Officer, Public Employees' Retirement System  
Marily M. Mora, Deputy Executive Director, Reno Tahoe Airport Authority  
Cindy Chase, Director of Human Resources, Reno Tahoe Airport Authority  
Joshua J. Hicks, Chief of Staff, Office of the Governor  
Perry Comeaux, Deputy Director, SAGE Commission  
Frank A. Partlow, Jr., Executive Director, SAGE Commission  
Carole A. Vilardo, Nevada Taxpayers Association  
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada  
Samuel McMullen, Las Vegas Chamber of Commerce  
David F. Kallas, Director, Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.  
Roger K. Maillard, State of Nevada Employees Association; American Federation of State, County and Municipal Employees, Retiree Chapter 4041  
Tom Vanderpool, Service Employees International Union  
Ed Beaman, Clark County Fire Fighters Union Local 1908  
Craig M. Stevens, Director of Education Policy and Research, Nevada State Education Association

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Martin Bibb, Executive Director, Retired Public Employees of Nevada  
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada  
Danny Coyle, American Federation of State, County and Municipal Employees Local 4041  
Dennis Mallory, Chief of Staff, American Federation of State, County and Municipal Employees Local 4041  
Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education  
James R. Wells, Deputy Superintendent for Administrative and Fiscal Services, Department of Education  
Kathleen A. Conaboy, K-12 Inc.  
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence  
Paula Berkley, Nevada Network Against Domestic Violence

COCHAIR MATHEWS:

We will open the hearing with discussion on Senate Bill (S.B.) 174.

**SENATE BILL 174**: Exempts certain retired public employees who are serving as volunteer firefighters from certain consequences of reemployment with a public employer. (BDR 23-768)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):

I am here to support S.B. 174, the critical volunteer bill. We have designated employees in prior years as critical employees. These volunteer firemen are critical to their communities. A situation has arisen that when one of these employees, that is enrolled in the Public Employees' Retirement System (PERS) retires, they must also retire from their volunteer service.

For example, the Lovelock Volunteer Fire Department consists of 25 members. Fourteen are public employees: five Pershing School District, three Pershing County Road Department, three County Commissioners, two Lovelock Correctional Center, and one Pershing County Sheriff Deputy. Several members of volunteer organizations are here to answer questions.

I appreciate your support.

FRED ROGNE (Fire Chief, Fallon Volunteer Fire Department):

I am here to ask for your support of S.B. 174. The Fallon/Churchill Fire Department currently has 42 volunteer members and no paid firemen. We have an Insurance Services Office, Inc., Class 1 rating, which is the highest rating a fire department can receive.

Of our 42 members, 12 are currently public employees. Over the last six years, we have lost nine volunteers due to their retirement as public employees from the Public Employees' Retirement System (PERS). We lost six members in 2008 due to health coverage reductions, including the chief and two captains. These 6 members had a combined experience of 84 years. It would be a benefit to the Fallon Volunteer Fire Department (VFD) if members were able to stay after retirement.

PAT IRWIN (Lovelock Volunteer Fire Department):

I have been a member of the Lovelock Volunteer Fire Department (LVFD) for 20 years and was elected to the Pershing County Board of Commissioners in 2009. I have provided the Committee with a letter of support for S.B. 174 from the Pershing County Board of Commissioners ([Exhibit C](#)).

It is becoming more difficult to attract volunteers to the LVFD. Senate Bill (S.B.) 174 is a tool which will give these volunteers some sort of retirement for their efforts. We want to celebrate the commitment of these volunteers by giving them something for missing so much time from home and their families. When volunteers and professional firefighters leave these positions, their experience and level of training cannot be replaced. We are struggling to attract volunteers, and S.B. 174 is a tool to help us maintain a list of potential recruits.

RUSTY McALLISTER (President, Professional Fire Fighters of Nevada):

Although I do not represent volunteer firefighters, I am here to support S.B. 174. Many of these volunteers are former public employees. To remain in the service of their communities as volunteers, they had to return under the critical labor shortage provision within the PERS. The critical labor shortage provision is scheduled to sunset in June 2009. If this provision is not reinstated, it will hamper the ability of VFDs to maintain their current levels of manpower. If S.B. 174 is passed, it will offset the sunset of the critical labor shortage provision and allow the continued service of our volunteer firefighters.

DANA K. BILYEU (Executive Officer, Public Employees' Retirement System):

Senate Bill 174 is an act exempting certain retired public employees who are serving within volunteer fire departments that participate from PERS' reemployment restrictions. The Retirement Board has adopted a neutral position on this bill.

Senate Bill 174 addresses a situation that currently prevents volunteers from continuing their service to volunteer fire departments if they are retired public employees. If a public sector employee is also a volunteer firefighter for a district that has chosen to participate in the System, the Internal Revenue Code requires that the member separate from both the underlying paid public sector position and the volunteer fire position to prevent what is known as an "in-service distribution."

Many individuals who retire from their paid positions would like to remain as volunteers for these departments. Most departments have solved this issue by designating the volunteer positions as "critical labor shortage" to allow reemployment. As the critical labor shortage exemption from reemployment carries a significant cost, it is likely that this provision will sunset as of June 30, 2009.

The goal of the bill is to provide the opportunity for continued volunteerism of public employee retirees. Section 1 of the bill places the unpaid volunteers in the same category as retirees who return to work for the Legislature. This type of exemption will not affect plan qualification.

Volunteer fire fighter positions are unique in that they are unpaid but can participate in the System. They represent a limited exception to normal reemployment restrictions, in that the volunteers will have no right of

reenrollment or accrual of additional benefits. Due to these facts and because the bill addresses the retiree's ability to continue to volunteer their time, the Retirement Board has adopted a neutral position on S.B. 174. I would be happy to answer any questions. This concludes my prepared remarks.

SENATOR RAGGIO:  
Please clarify the Internal Revenue Code requirements.

Ms. BILYEU:  
For the system to be a qualified plan under the Internal Revenue Code, which carries significant tax consequences for the PERS, we must comply with certain provisions. We are not subject to the Employment Retirement Income Security Act, but we are subject to certain restrictions in the Internal Revenue Code. One provision requires the PERS to not pay in-service distributions, which prevents us from paying actively employed people after they have retired.

SENATOR RAGGIO:  
Is the critical labor shortage provision allowed as an exemption to paying in-service distributions?

Ms. BILYEU:  
Yes. The reemployment of a retiree is permitted as long as there is an actual event which shows a separation of service. In our current reemployment restrictions, the Legislature has set the separation event as a 90-day window. This requires retirees to wait 90 days before coming back for any type of work. There are some limited exceptions to reemployment restrictions, including the critical labor shortage provision.

SENATOR RAGGIO:  
If the sunset of the critical labor shortage provision occurs on June 30, will enacting S.B. 174 violate the Internal Revenue Code requirements?

Ms. BILYEU:  
No. Employees would be permitted to return as volunteers after retirement.

SENATOR RAGGIO:  
How is the rate applied and paid for volunteers?

Ms. BILYEU:  
The VFDs, which have chosen to participate in the PERS, set a deemed wage for their volunteers. This is a wage which would be paid to the person if they were employed by the VFD. No wage is actually paid to the volunteer, but the contributions are paid to the Regular Fund.

SENATOR RAGGIO:  
Who pays the contributions?

Ms. BILYEU:  
The VFD or the county pays the contributions.

SENATOR RAGGIO:  
Are all VFDs involved in this program?

MS. BILYEU:

No. This is a voluntary program.

COCHAIR MATHEWS:

If there are no further comments or questions, we will close the hearing on S.B. 174 and open the hearing on S.B. 284.

**SENATE BILL 284**: Exempts certain retired public officers and employees from disqualification for retirement allowances for reemployment with a public employer under the Public Employees' Retirement System. (BDR 23-687)

MARILY M. MORA (Deputy Executive Director, Reno Tahoe Airport Authority):  
The Reno Tahoe Airport Authority (RTAA) is a sponsor of S.B. 284.

CINDY CHASE (Director of Human Resources, Reno Tahoe Airport Authority):  
The RTAA proposed this bill after losing 24 positions and over 500 years of experience from its 250-employee workforce as a result of S.B. No. 544 of the 74th Session.

We are a unique industry. While many positions can be filled through the local labor market, it is not unusual for us to conduct nationwide searches to locate professionals in the aviation industry who have the specific knowledge we require. Financing functions at the airport are highly complex. We would not be able to hire a Chief Financial Officer who does not have specialized training. We are also a highly regulated industry because of safety and security mandates.

Due to the implementation of S.B. No. 544 of the 74th Session, we found ourselves in the position of losing long-term, experienced employees in a highly competitive hiring market. The relief we seek through S.B. 284 will allow us the opportunity to rehire employees who retired under the PERS for the purposes of continuity of business and training staff to take over their positions.

We met with the staff of the PERS and they graciously explained their opposition to our proposal. We now understand why S.B. 284 is in direct conflict with the philosophy of the PERS. As a result, we would like to offer an alternative for consideration.

Currently, chapter 286.523 of the *Nevada Revised Statutes* (NRS) provides a provision for hiring retirees to fill critical labor shortage positions. This provision provides the opportunity, on a limited basis, to achieve what the RTAA was hoping to achieve on a long-term basis through S.B. 284. This is currently the only mechanism which allows a retired employee to return to a PERS job while maintaining the PERS benefits. The provision includes health benefits under the Public Employees' Benefits Program (PEBP) as well as retiree benefits under the PERS. Unfortunately, the provision allowing us to fill critical labor shortage positions is due to sunset on June 30, 2009. Because we want to respect the philosophy of the PERS and maintain the stability of the system, we are asking the Legislature not to allow the critical labor shortage provision to sunset in June. If the Legislature takes this action, the benefits outweigh any negative impacts.

It is prudent to have the opportunity of rehiring employees who have retired under the PERS. Critical labor shortage positions cannot be created without the scrutiny of the governing body of each organization. Similarly, the statute offers

guidelines to governing bodies considering approval for critical labor shortage positions. This allows nonState agencies, such as the RTAA, to rehire retired employees for a limited period without jeopardizing the rehired employees' PERS or PEBP benefits.

Ms. MORA:

Though the RTAA does not receive taxpayer funds, we do participate in the PERS. We would like to see the critical labor shortage mechanism become a part of S.B. 284 or another PERS-related bill which comes before the Committee.

SENATOR RAGGIO:

I would like to disclose members of my law firm represent the RTAA.

COCHAIR MATHEWS:

I would like to disclose I do business with the RTAA.

Ms. BILYEU:

I would like to have my prepared testimony ([Exhibit D](#)) in opposition of S.B. 284 entered into the record and will address my comments to the proposed amendment rather than to the bill as it was drafted. The original provisions of S.B. 284 carried a fairly significant cost to the PERS and created approximately a 5,000-person exemption from our reemployment restrictions. When we based our estimated usage on less than one half of that figure, the cost came to approximately 2.4 percent of covered payroll in the Regular Fund and 0.36 percent of covered payroll in the Police/Fire Fund.

I have delivered the cost studies for the critical labor shortage provision to the Interim Retirement and Benefits Committee (IRBC) and discussed them in prior testimony. The critical labor shortage provision carries a cost valued at approximately 0.33 percent of payroll. The way the statute is currently written, if the provision is extended beyond the June 30 sunset date, the cost will be applied to the contribution rate. That rate is currently 21.54 percent for the Regular Fund. If we add 0.33 percent, it will make the contribution approximately 22 percent going forward and will cause a 50-basis point increase from where the rates are already going.

This is why the Public Employees' Retirement Board (PERB) has declined to offer legislation extending the critical labor shortage provision in its current version. The PERB is opposed to S.B. 284 as it is currently written and would be opposed to any benefit improvement which would cause the rate to increase at this time. I will provide the cost information directly to your staff this afternoon.

SENATOR RAGGIO:

How is the 0.33-percent cost calculated?

Ms. BILYEU:

The actuary took the experience periods we have had under the critical labor shortage provision from 2001 through June 2008 and calculated approximately 600 retirees returned under the provision. They counted only those people who had retired and immediately returned to work under the critical labor shortage provision. Normally, if those individuals immediately returned to work, we would stop their benefits; instead, we continued to pay their benefits. The continued benefit strain accounted for approximately \$34 million in benefits which would otherwise not have been paid.



This cost was valued and funded through the unfunded liability of the program and absorbed into the contribution rate as part of a payment on the unfunded liability. The actuary estimated the same type of behavior going forward and projected what the cost would be on a percent-of-payroll basis. They arrived at 0.33 percent based upon the actual experience of critical labor shortage provision usage during the experience period.

SENATOR RAGGIO:

Most of the critical labor shortage provisions were utilized in the field of education for teachers who retired. Could someone return under a contract in which they would not incur additional retirement benefits?

Ms. BILYEU:

That scenario does not really address the cost issue.

SENATOR RAGGIO:

If someone retires, there is an associated cost when they begin to collect their benefit. If they come back and do not collect a benefit, why does the cost change?

Ms. BILYEU:

The PERS is basically an insurance policy. We pay annuities, which are similar to life annuities you would receive from any insurance company. There are certain provisions which decrease costs and certain provisions which increase costs.

The restriction on reemployment is a benefit to all participants. If a person is reemployed after retirement and receiving benefits, we stop the benefit because that person is receiving an active salary. This is a benefit to everyone else in the program because we realize a cost savings. When you place a value on a pooled plan, cost containment measures of this type help reduce costs. When you remove a cost containment feature, it increases the cost of the program.

COCHAIR MATHEWS:

If there are no further questions or comments, we will close the hearing on S.B. 284 and open the hearing on S.B. 367.

**SENATE BILL 367**: Makes various changes to the provisions governing the Public Employees' Retirement System. (BDR 23-1168)

JOSHUA J. HICKS (Chief of Staff, Office of the Governor):

This bill has its genesis in the Spending and Government Efficiency (SAGE) Commission's recommendations. We have provided the Committee with a copy of the cover letter and Recommendation numbers 13 and 15, which are related to the PERS, from the "Second Report of the SAGE Commission" ([Exhibit E](#)). Recommendation numbers 13 and 15 were both passed unanimously by the SAGE Commission. The SAGE Commission was not assembled in response to the current budget crisis; it was formed and charged with the task of finding long-term savings for the State.

The anticipated savings from Recommendation 13 is approximately \$100 million over 5 years. Senate Bill 367 applies mostly to employees hired on or after January 1, 2010. Recommendation 13 suggests implementing these changes

for employees hired on or after July 1, 2009, but there were some administrative issues within the PERS with this implementation date.

One of the first concepts in this bill is the redefinition of "compensation" to base pay only for purposes of benefit calculation. There is a change in the "final salary" definition from the average of three consecutive highest years to the average of five consecutive highest years. This bill establishes a compensation cap for purposes of benefit calculation of 10 percent a year for the 5 consecutive highest years.

Recommendation 13 includes a requirement to review the cost of purchasing years of service every biennium and imposes a moratorium on benefit enhancements until the plan is actuarially fully funded for three consecutive years. Other concepts included in Recommendation 13 include establishing a minimum retirement age of 60, reducing benefits for retirements of less than 35 years and reducing the multiplier for retirement calculations from 2.67 percent to 2.15 percent. The changes in retirement age and the retirement multiplier would not be applicable to police and fire employees. This is an issue which should be studied separately.

We have a small amendment to the bill affecting section 7, subsection 2, changing the eligibility for service credit from 30 years to 35 years. We will provide the amendment to your staff after this hearing.

PERRY COMEAUX (Deputy Director, SAGE Commission):

With one exception, S.B. 367 exactly follows the SAGE Commission's intentions in its recommendations to the Governor concerning making changes to the PERS. The SAGE Commission knew this subject would be controversial to many people. Because the cost of the PERS is such a significant commitment, the Commission felt obligated to review and make recommendations for changing the PERS while understanding it would not be permissible to change the PERS for existing employees. The bill applies only to employees hired on or after January 1, 2010.

The Commission's recommendations take into account changes which have taken place in our society since the PERS was established in the 1940s. Those changes include longer life expectancy and employers' approaches to their retirement systems. The defined benefit of a generous retirement plan is rapidly becoming a thing of the past. Companies and governments are scrutinizing their plans and making changes to reduce costs while continuing to protect the retirement security of their employees. The SAGE Commission attempted to make changes which would benefit the State in the future while protecting the retirement security of State and local employees.

I am prepared to briefly review S.B. 367 section by section, but it is important to know where the SAGE Commission's recommendations appear in the bill. Section 2 of the bill implements the SAGE Commission's recommendation requiring the PERB to determine whether or not the cost to purchase credit for service is equal to or greater than the full actuarial cost of the benefit being purchased. This review would be performed every biennium and reported to the Legislature on or before December 31 of each odd-numbered year.

Section 3 of S.B. 367 would impose a moratorium on any enhancements to the PERS. The language of the bill would not permit the Legislature to enact any



enhancements to the PERS without first finding the PERS has been actuarially fully funded for at least three consecutive years and would continue to be actuarially fully funded after the enactment of any enhancement.

The SAGE Commission's intent with this recommendation was not to eliminate post-retirement increases. Post-retirement increases are already provided for in the statutes. The SAGE Commission's intention is to end new enactments which would enhance the benefits of the PERS.

Subsection 2 of section 3 indicates any enhancement to the PERS so enacted would expire in ten years. The intent is to give the Legislature the opportunity to review and change the enhancement if necessary.

Section 4 of S.B. 367 would require the PERS to make refunds to employees who were impacted by the 10-percent compensation cap outlined in section 7. If an individual received an actual increase in their compensation exceeding 10 percent during the average salary of their 5 highest years, section 4 allows the system to refund the employee's contribution in excess of the amount applied to the 10-percent compensation cap.

Section 5 of S.B. 367 redefines compensation for purposes of calculating the retirement benefit. Subsection 2 of section 5 indicates nothing would change for individuals hired before January 1, 2010. Subsection 3 indicates pay for purposes of benefit calculations include base pay, which is the monthly rate of pay excluding fringe benefits, and retains the language on the aggregate compensation from two part-time positions held by an employee hired on or after January 1, 2010. The effect is the elimination of pay calculations for longevity, shift differential, hazardous duty and other forms of compensation.

COCHAIR HORSFORD:

Please restate whether compensations other than base salary apply or do not apply to calculating the benefit.

MR. COMEAUX:

For existing employees and employees hired before December 31, 2009, paragraphs (b) and (c) under subsection 2, section 5, will apply. Their benefits will be calculated on base pay plus these other items. This bill indicates employees hired on or after January 1, 2010, will have their base pay plus the aggregate compensation paid by two separate public employers, if a PERS member is paid half-time or more by one employer and half-time or less by the other, included in the benefit calculation.

COCHAIR HORSFORD:

Payment for extra duty assignments, hazard pay and other compensations outlined in paragraphs (b) and (c) would not be included in the calculations.

MR. COMEAUX:

Correct.

COCHAIR HORSFORD:

I would like to understand the rationale for this provision.

MR. COMEAUX:

The SAGE Commission had indications other entities were restricting their benefit calculations to the base pay. It made sense to the Commission to base retirement benefit calculations on the base value of a position and not include calculations for intermittent compensations such as shift differentials or hazardous duty pay. For purposes of a more stable benefit cost, the Commission included only base pay for these calculations.

COCHAIR HORSFORD:

The cost is only incurred if and when an employee earns the other compensations noted in paragraphs (b) and (c). There was a rationale for including these compensations; beyond reducing costs, what is the rationale for excluding them now?

FRANK A. PARTLOW, JR. (Executive Director, SAGE Commission):

In listening to the discussions of the SAGE Commission on this matter, my impression was many Commission members felt these were areas in which we were not applying equal retirement benefits for every employee enrolled in the PERS. These are areas in which some people qualify, by the nature of their employment, and others do not. Members of the SAGE Commission felt these areas were not entirely controlled by management and were, in some cases, controlled by other factors. It was a way to level the playing field among all employees because not all employees have the ability or requirement to perform these services. This takes the issue of who requires these services to be performed out of the system.

MR. COMEAUX:

Section 6 of S.B. 367 would eliminate retirement at any age with 30 years of service and establishes a minimum retirement age of 60 for employees hired on or after January 1, 2010. Employees hired before January 1, 2010, would still be eligible for retirement at age 65 with 5 years of employment, at age 60 with 10 years of employment and at any age with 30 years of employment. Police and firefighters are not included in this section of the SAGE Commission's recommendations.

This recommendation was made because of the changes in life expectancies and career lengths we experience today. When this plan was enacted in the 1940s and 1950s, an employee would work for 30 years and retire, then collect retirement benefits for 10 or 15 years. Today, it is possible under the existing plan to retire after 30 years and collect retirement benefits for 30 years. The SAGE Commission is trying to encourage a longer career and believes 35 years is a good place to start.

The police and firefighters made compelling arguments to the SAGE Commission concerning why they should be excluded from these retirement eligibility requirements because of the safety concerns of having elderly firefighters and police officers on duty. The SAGE Commission believes this issue should be scrutinized separately.

Section 7 of S.B. 367 enacts changes the SAGE Commission recommended in items 2, 3 and 7 of recommendation number 13 ([Exhibit E](#)). This section changes the final average salary definition from the three consecutive highest years of employment to the five consecutive highest years. This recommendation was made because the SAGE Commission found a number of

other entities had done the same thing. This is a cost-containment recommendation as the average of five years will be less than the average of three.

COCHAIR MATHEWS:

Can you name some examples of other entities that do this?

MR. COMEAUX:

Offhand, the only one I can think of is the State of Kansas. I will provide additional information.

Section 7 contains the subsection to which we would recommend an amendment. The way the bill is written, it does not accomplish what the Commission had in mind. Subsection 2 indicates "for a member who is not a police officer or firefighter and has an effective date on or after January 1, 2010, a monthly service retirement allowance must be determined by multiplying a member's average compensation by 2.15 percent for each year of service earned with his eligibility for service credit ceasing at 30 years of service."

We will submit a written amendment to change this language to "ceasing at 35 years of service." The SAGE Commission was trying to encourage a longer career. Thirty-five years multiplied by 2.15 will produce the current maximum allowance of a 75-percent retirement benefit. Enacted as written, the maximum allowance after 30 years would be approximately 65 percent, which is not what the Commission intended.

Section 7, subsection 3, paragraph (b), makes the change in the average compensation from the 36 highest consecutive months to the 60 highest consecutive months. Subsection 4 contains the language which would enact a 10-percent cap for purposes of benefit calculation.

The idea behind this provision is many other entities are enacting caps for benefit calculations. Most of the caps I have seen are lower than 10 percent. This is to eliminate the possibility of any unusual or artificial jumps in salary during the five consecutive highest years which are used to calculate average compensation. Regardless of the increase an employee may receive in any year during the average compensation period, the increase would be capped at 10 percent for calculation purposes. The SAGE Commission selected this figure because, with a cost of living increase combined with a merit salary increase, it is entirely possible for an employee to receive a 10-percent increase in Nevada.

COCHAIR HORSFORD:

Was there any discussion of promotion or reclassification during those last five years when considering this provision?

MR. PARTLOW:

There were discussions related to situations I have witnessed in my 35-year service with the federal government. Promotions and job reclassifications are options available to people in the system. When we make promotions in the federal government, we say it is because of what a person can do in the future; not for what they have done in the past. If someone decides to initiate a promotion during the five-year period just to raise an employee's retirement benefit, it will cost the entity paying the benefit for many years thereafter. I did

not hear this specific discussion among SAGE Commissioners, but I heard viewpoints expressed which made me believe they had seen such promotions occur. This is one of the reasons why the Commission made this recommendation and why other states and the federal government are doing the same thing.

COCHAIR HORSFORD:

Is the SAGE Commission's recommendation, regardless of promotion or reclassification, to cap an individual's ability to earn retirement benefits beyond 10 percent of their salary adjustment?

MR. COMEAUX:

Yes. It would be 10 percent each year for those five highest consecutive years.

COCHAIR HORSFORD:

Does the Governor agree with this recommendation? There have been recent reports of positions granted and major promotions given in which individuals received much more than a 10-percent salary increase. They would not be eligible for the benefit under this bill as it is proposed.

MR. COMEAUX:

They would be ineligible for additional calculated benefits which exceed a 10-percent salary increase.

Section 8 of S.B. 367 would require the IRBC to conduct a study of the actuarial soundness of the PERS and make recommendations for appropriate changes to the system. This report would be submitted to the Director of the Legislative Counsel Bureau for submission to the 76th Session of the Nevada Legislature.

Section 9 of S.B. 367 would require an effective date of July 1, 2009.

COCHAIR HORSFORD:

Is funding for this study provided in the *Executive Budget*?

MR. HICKS:

No.

COCHAIR HORSFORD:

Since the Governor is proposing this study as a part of his bill, what is his plan for funding it?

MR. HICKS:

We will work with the PERS and the Budget Division to plan funding for the study.

COCHAIR MATHEWS:

Mr. Partlow, how late in a military career can someone receive a promotion?

MR. PARTLOW:

A person is eligible to receive a promotion until the end of their military career.

COCHAIR MATHEWS:

I ask because of your earlier statement regarding promoting based on what a person can do in the future.

MR. PARTLOW:

These types of provisions can be circumvented. A boss can tell employees he will take care of them by giving them a promotion, a pay raise or other things the employer has control over, regardless of what State or federal law might restrict. The SAGE Commission conducted a survey of State employees and received 2,500 open-ended responses. Some of these responses revealed situations this bill is intended to correct.

MR. COMEAUX:

The SAGE Commission realizes this is a complicated issue. The question is, "What does the State want to do with its retirement system?" This is why they recommended a study be performed by the IRBC. This study is to ensure the plan, as it exists and as the SAGE Commission is recommending it be changed, is providing the type of system the State wants which encourages the type of employee behavior the State wants to encourage.

The SAGE Commission wants to give the State the opportunity to reduce the cost of providing a reasonable retirement benefit. This will give the State's employees retirement security and provide stability to the cost of providing services. This can be achieved by adopting a 5-year average compensation model, adopting a 10-percent cap on compensation for purposes of calculating benefit and adopting base pay as the definition for compensation. All three of these recommendations will tend to reduce costs and stabilize the cost of the contributions to the system.

SENATOR RAGGIO:

We want to protect the integrity of the PERS. This is not the first change recommended to the PERS. When Governor Kenny Guinn recommended changes to the system, we refused to listen to a proposal which would have only impacted newly hired employees. Both the PERS and the PEBP are in need of reform. State and local governments cannot continue to pay the cost of retaining the system as it presently exists. I may not personally agree with all of these recommendations, but I welcome the efforts of the SAGE Commission and the opportunity to evaluate their recommendations.

SENATOR COFFIN:

The average pension in 1989 was approximately \$1,200 and it is not much more now. There probably has been some gaming of the system, but I would like to have solid evidence of how often it occurs. The last few years of an employee's career are often when they reach their peak in knowledge and productivity.

COCHAIR HORSFORD:

How was the projection of \$100 million in savings over the course of 5 years derived? Do you have any supporting documentation?

MR. COMEAUX:

At the time, the PERS actuaries had not completed their work to estimate the savings. I developed the \$100-million figure after a conversation with Ms. Dana Bilyeu, Executive Officer of the PERS. Yesterday, I was informed by

Ms. Bilyeu the PERS has actuarially calculated savings estimates related to S.B. 367.

COCHAIR HORSFORD:

This bill is critical because of the importance of the policy it sets for the future, and I want to be sure we are setting the right course. Were any members of the SAGE Commission connected to the PERS, or were any experts not connected to the PERS consulted to comment on the impacts of these recommendations?

MR. COMEAUX:

Based on their business experience, most of the SAGE Commission members had their own opinions of what a pension plan should do. The Commission relied heavily on Ms. Bilyeu for understanding of the existing PERS.

MR. PARTLOW:

The SAGE Commission operated all of our meetings under the Open Meeting Law and comments were invited. After hearing several representatives of our fire and police associations, we determined their issues were too complex to have dealt with in this bill.

COCHAIR HORSFORD:

Are there private-sector models which contributed to the decision to place a 10-percent cap on salary calculations for retirement benefits? It appears we are suggesting employees cannot advance in their careers. There are procedures which address abuse or gaming of the system, but what are the consequences of reducing a person's ability to increase benefits based on a promotion? If a person is offered a promotion which would better serve the State toward the end of their career, and must choose whether or not to increase their benefits or be subjected to a cap, they may choose to decline the promotion.

MR. COMEAUX:

The only places we have seen a cap on salary calculations for retirement benefits are in the public sector. Kansas enacted a 7.5-percent cap. I am personally familiar with instances in which employees have declined promotions because it was not worth the stress levels associated with the new job, but took promotions after entering the three-year window to increase benefits. A 10-percent cap on benefit calculation could have this effect, but only in instances in which a promotion produced a salary increase in excess of 10 percent.

CAROLE A. VILARDO (Nevada Taxpayers Association):

I am here to speak in support of S.B. 367. There is nothing easy about changing benefits. In attempting to make the PERS actuarially sound, increases in employee contributions have been necessary. The last actuarial report, performed before the stock market decline, includes an increase in employee contributions to maintain the fund and goes into effect this year. I anticipate we will experience more increases when the PERB studies the upcoming actuarial report to determine what is needed to maintain the amortization schedule we are on to obtain solvency.

Whether we process S.B. 367 as written or use another vehicle, I urge you to consider what escalating increases have meant relative to programs and services funded within the General Fund budget. We must gain control of this issue because we have another liability issue with the PEBP.

SENATOR COFFIN:

Why do defined contributions and defined benefits not appear in this bill?

MS. VILARDO:

When you consider changing from defined benefit to defined contribution, you have an accelerated pace at which you must pay off your liability. We would then have much higher rates and a larger hole in the budget.

TRAY ABNEY (Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada):

The Reno-Sparks Chamber of Commerce has stated we will not support any tax increases until long-term spending reforms are implemented. The SAGE Commission's recommendations and reform of the PERS are good steps in that direction. We support the concepts of S.B. 367 and urge its passage.

COCHAIR HORSFORD:

If there are reforms, will the Reno-Sparks Chamber of Commerce support new revenue if it is necessary?

MR. ABNEY:

If it is necessary, we are willing to consider new revenue. We have a list of reforms we would like to see implemented which include reforms to the PERS and PEBP, prevailing wage, local government collective bargaining and reserve accounts. Our position is the Legislature has a responsibility to squeeze every possible efficiency from every dollar it receives before asking for the private sector to pay more.

SAMUEL McMULLEN (Las Vegas Chamber of Commerce):

The Las Vegas Chamber of Commerce understands the difficult task the Legislature is faced with and supports S.B. 367. We appreciate this issue is under discussion and we have tried to focus on long-term reforms. Our concerns are driven by findings in reports we sponsored regarding the amount of funding going into the PERS as an actuarial subsidy. Funding from local governments and the State's budget has been used to ensure the actuarial soundness of the PERS. This issue has caused us concern because we must ensure the promises we make to the PERS members can be kept.

MS. BILYEU:

The Retirement Board has not had an opportunity to take a position on S.B. 367; however, staff will recommend that the Board adopt a neutral position on Sections 1 through 6. Certain provisions in section 7 of the bill leave the service time multiplier at 2.67 percent for members of the Police/Fire Fund but reduce it for regular members. This disparity raises significant policy issues. The Retirement Board, in 2001 was on record in an open meeting of the Board opposing the concept of different multipliers for the two funds. Based upon the same policy reasons that existed in 2001, it is likely that the Retirement Board will oppose the concept of disparate multipliers for the funds.

With the Chair's permission, I would walk through some general comments about pension reform and then address the specific sections of the bill including the policy issues related to having two distinct service time multipliers.



First, pension reform proposals generally should be analyzed in light of the mission of the System and in terms of the broad financial and retirement security issues affecting members, employers and taxpayers. The System is currently financed in accordance with all Governmental Accounting Standards Board (GASB) requirements and in accordance with applicable Actuarial Standards of Practice and is on target to pay off the current unfunded accrued liability over 26.5 years from July 1, 2008 in accordance with the System's funding policy. Contribution costs, set every two years, reflect the predicted cost to finance the program and provide a mechanism for financing newly created unfunded liabilities over time. Contribution costs are managed for predictability, but not all volatility can be removed. Given the current market conditions, it is likely that contribution rates will trend upward in 2011 and even into 2013.

So while the System is well financed with proper controls and with a good benefit design that meets the mission of the System, the desire by policy makers, given the State's fiscal crisis, to seek overall cost reductions extends to decreasing the cost of public employee benefits. The System is a resource to provide retirement policy information and to insure that, regardless the proposed benefit reductions, the overall plan design continues to meet the mission of the System, complies with the requirements for plan qualification under the Internal Revenue Code and can continue to be pooled from an actuarial valuation perspective.

The public purpose of the System is threefold: First, to provide a reasonable base income to qualified employees whose earning capacity has been removed or has been substantially reduced by age or disability; second, to provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure; and third, to provide a system that will make government employment attractive to qualified employees and will encourage these employees to remain in government to give the employer (and the public) the full benefit of their training and experience gained during their public service.

Nevada does not participate in Social Security so the benefit must provide adequate income to insure against poverty (like the role of Social Security), and at the same time act in the pension role (the second leg of the three legged stool for retirement security - the third leg of which is personal savings). Most economists will agree that to maintain the same standard of living a person needs about 75 percent of pre-retirement income in retirement. The benefit must adequately contribute to this total percentage keeping in mind both roles the benefit plays.

Moving to the sections of the bill:

Section 2 requires the System to review the cost to purchase service credit at least biennially to determine whether such costs are equal or greater than the full actuarial cost of the service. Current practice is to perform such reviews at the completion of an experience review which occur every three to five years to capture trends in demographic which are then used to update assumptions for the System. Implementation of the section would require a look back to a lengthy enough period to allow assessment of the demographic changes that might influence costs.

Section 3 binds the Legislature from enacting benefit improvements until the System is fully financed for three years and requires sunsets on any benefit improvement.

Section 4 provides refunds of contributions paid by a member if the contributions are linked to pay that cannot be used to calculate the average compensation of the member for the retirement benefit. This section only applies to after tax contributions paid by a member participating in the after tax contribution plan. Even if it is intended to also extend to members who pay their contribution with pretax salary reduction, the Internal Revenue Code prevents such a distribution from the System, under the "in service distribution" prohibition, despite the fact that the provision requires payment with the first retirement check.

Section 5 limits the types of wages to be reported to the System to base wage only, excluding longevity, shift differential, hazardous duty pay, holiday pay, call back pay, and extra duty assignment pay.

Section 6 requires new hires in the Regular Fund to be age 65 to retire with up to 9.9 years of service and provides that anyone with 10 years of service or more can retire at age 60. Early retirement provisions are maintained for our public safety members.

Section 7 reduces the service time multiplier for members of the Regular Fund to 2.15 percent and caps the accumulated benefit at 30 years of service (35 years of service with the proposed amendment) with 64.5 percent of pay. The section maintains the 75 percent cap on benefit for members of the Police/Fire Fund and maintains the 2.67 percent service time multiplier for this fund.

The Retirement Board has raised the following issues regarding the establishing disparate multipliers for the two funds in the past:

- Although earlier retirement is provided for members of the Police/Fire Fund, police and fire careers tend to be the same length (or longer) than members of the Regular Fund (22 years for p/f vs. 19 years for regular members). The income replacement ratio generated by the service time multiplier should be the same because the assertion that members of the Police/Fire Fund cannot accumulate an adequate replacement ratio due to early retirement is not supported by the statistics from the valuations of the System. Members enter that program at much younger ages and as I said, have longer careers typically. In our most recent valuation the average entry age for members of the Police/Fire Fund was 29.5 compared to age 36.7 for regular members.
- Members of the public safety sector are paid higher wages during their careers (average reportable wage was \$70,000 versus \$46,000 for members of the Regular Fund), in part as a reward for holding themselves in harm's way. The retirement benefit calculation recognizes this pay differential and provides higher retirement benefit to them based upon it (\$3,700 per month versus \$2,300 for regular members).

- Since the concept of the System is to adequately replace income in retirement, the ratio replaced should not be different simply based upon which sector of employment the member is employed in.
- Members move regularly from fund to fund which can create difficulties and confusion for the member as to what benefit they are accruing and what the cap is for their benefit.

Also contained in Section 7, beginning on page 6 at line 19, is a provision that extends the average compensation period upon which a benefit is to be based to 60 months. Further it is designed to limit the average compensation calculation to no more than 10-percent increases from year to year. This is to insure that the benefit is based upon a predictably increasing wage. It does exclude the opportunity for an employee to receive an increased benefit amount due to a promotion, which may frustrate the desire to seek promotion or for an employer to recruit from other public employers the more seasoned employees, which we know occurs currently.

Section 8 requires IRBC to conduct a study of the actuarial soundness of the System for delivery to the 76th Session. Currently the System reports regularly to IRBC, conducts yearly actuarial valuations of the System and performs second opinions of those valuations on a schedule adopted by the Retirement Board. The valuations are delivered to the members of the IRBC and the Consolidated Annual Financial Report of the System is delivered to every member of the Legislature yearly. These reports include actuarial valuation information as well as significant summaries of the activities and financial status of the System.

Turning now to the costs and savings of the bill, the System's actuary calculated the normal cost savings attributable to the benefit reductions for new hires to be 3.79 percent of payroll for regular members and 1.71 percent for the Police/Fire Fund. These normal cost reductions would roll in over the period of time it takes to replace current workers with those that are subject to the reduced benefit structure, typically between 20 and 30 years.

Hard costs to the System for programming changes based upon estimates is approximately \$1.5 million which would be supplemental to the System's proposed budget assessed against the trust fund. This concludes my prepared remarks. I would be happy to answer any questions.

COCHAIR HORSFORD:

Will you explain the \$1.5 million supplemental amount for programming changes?

MS. BILYEU:

The current budget proposed by the PERS does not contain programming costs to change the program and establish the second set of benefits. We received estimates of \$1.5 million to make those changes within the computer system.

COCHAIR HORSFORD:

Mr. Hicks, please review these costs with the Budget Division to resolve how we will fund this supplemental amount if we determine to proceed with this bill.

SENATOR COFFIN:

We heard a strong statement concerning anecdotal information received by the SAGE Commission. What tools do you have at your disposal to help us analyze changes in employees' pay and contribution levels toward the end of their careers? I would like to have Ms. Bilyeu's answers to my questions entered into the record verbatim because we are forming a permanent record.

MS. BILYEU:

Currently, the definition of average compensation contains a variety of components associated with it. I want to break them into two different pieces:

There are what we would call premium pay types of pay that are subject to contribution to the system; those currently include holiday pay, call-back pay and longevity pay which are, sort of, in excess of your current wage.

The other half, or the other parts of the definition of compensation for PERS purposes, are really incremental types of changes to base pay. Shift differential, hazardous pay ... . Extra duty assignment, I guess, I would put into a completely separate category ... . Mostly, primarily, it is used in the education sector. For instance, a teacher who takes on a secondary or supplemental duty to be the coach ... . If that is combined in their contracts, it is PERS reportable to us. It is an incentive for those individuals to take on those extra-duty assignments.

With respect to premium pay, we have a number of tools already in place that make sure that premium pay is reported when it is supposed to be reported to us and is not reported to us when it shouldn't be. The most significant area of premium pay that is reported is in the public safety sectors and that is the call-back type of premium pay. Call back has very specific rules associated with it in the ... . Not only the Retirement Act, but also within the official policy of the Retirement Board. It's difficult for me to say that there is abuse of those provisions as much as there is a use of them.

Call back is used fairly significantly by our local government employers. Overtime and call back are both used to staff, particularly in police and fire, because of the ... I think you will probably hear more testimony from the public safety sector folks on this ... but, because there is the opportunity to ... even though you are paying a premium type of pay to these individuals, you're not paying the ... you're actually saving money at the employer level because you are not having to pay the benefit costs associated with it other than the contributions to the system. So, it is used significantly.

That is not the case for the State. The State does not use call back as much. There is a little difference in how our various employers use these premium pays. From that perspective, it would be hard for me to say, across the board, that there is abuse, but there is definitely use of them ... . I mean, that's the nature of the ... sort

of management scheme that is in place at the local government level.

SENATOR COFFIN:

Regarding management structure changes or other types of activity which are sometimes associated with circumventing the system to increase final average salary definition, would you say this is more likely to occur at State or local government management levels?

MS. BILYEU:

The State has adopted a very restricted view of call back. In fact, when call back is used at that level, only the first two hours of whenever the call back shift is, is actually reportable to the System pursuant to their own regulation. They have defined it even more ... and our policy makes the exception for the State ... given the fact that their policy was in place prior to the adoption of our call-back rule, which is the 12-hour rule. It is simply not used in the same fashion at the State level.

SENATOR COFFIN:

I am more interested in management-level employees being promoted and adjusting their final average salary definition. I have seen this occur in local governments more often than at the State level.

MS. BILYEU:

With respect to simply promotions, we don't see a tremendous number of folks getting the promotions in the last three years of their service. It's more likely that when people promote into management, they become ineligible for many of these ... for the other types of pay that are going to be reported to us, such as call back, overtime, the shift differential ... all those types of pays, because they have moved into a level of employment that does not allow for that.

I would not say that there is a tremendous or significant cost associated with promotion. Again, going back to the mission of the System, we're here to really foster the opportunity to be able to move amongst employers and to attract and retain people and provide that ability to make those moves from place to place. There has not been raised with ... certainly not with the staff of the System ... an issue related to promotion as an abuse itself.

SENATOR COFFIN:

What is the taxability of retirement benefits received by our employees?

MS. BILYEU:

First of all, if you are contributing under the after-tax employer contribution plan, which about 18 percent of our program participates on, you have already paid taxes on your contributions into the System, so your taxable benefit is reduced by a little piece at the top ... it used to be that we were able to allow those individuals to recapture their first three years of benefits basically on a tax-free basis in the Internal Revenue Code ... was modified ... the regulations were modified that require us now to take those

contributions ... the after-tax contributions that we are going to be paying back out to the members as part of their benefit ... and we have to spread that over their lives ... . So, it's about a 3-percent reduction, approximately, in the taxable amount of their wage.

Everyone who has participated under the employer-paid plan, which is the pre-tax contribution program, their pension benefit is 100-percent taxable as income to them.

SENATOR COFFIN:

My Social Security benefit is 85-percent taxable and PERS member benefits are 97- to 100-percent taxable. No one is getting a free ride in that respect. With the decline in stock market values, have you seen a rapid change in our unfunded liability?

MS. BILYEU:

The unfunded liability is measured as a snapshot on June 30 ... 2008 is our most recent one. Obviously, we have had a significant market downturn since then. What we'll do is we take a snapshot again at June 30, 2009 and ... the financing tool that's currently in place, depending on what happens with the market at that point, provides an opportunity to finance ... if there is a newly created unfunded liability based upon what has occurred in this current market condition ... it will be given a 30-year amortization period.

I can't tell you that, "Yes, we have a new one," although I would predict that there will be a new unfunded liability that has occurred, quite frankly, based simply on the market conditions, and that's part of the process that we go through.

Two parts of that: From a contribution cost, you've heard me in my testimony indicate that there is likely to be a contribution rate increase in 2011 and 2013. That is based, in part, on ... as you sort of do stress tests on the contributions to match it based on what our projection of the unfunded would be, given any date within the annual fiscal year instead of at the end of the year, that it's a significant number.

We want to make sure to keep everybody's expectations reasonable with respect to that. We finance in accordance with Governmental Accounting Standards Board. The longest period of time under those standards right now that you can use is 30 years to maintain the requirements that you are satisfying ... the GASB requirements going forward. There are ramifications if you finance outside of that ... and it has to do more with sort of how the State is viewed from a bonding perspective and those sorts of things. Given that we have that bookend of 30 years, we are likely to see a contribution rate increase to help finance that. That is paid by not just the employers; it is paid by the employees when we pay the unfunded. The reason we use the 30-year period is to try to manage those volatilities as best we can. We cannot remove them all, but we do make all attempts to make that as predictable as possible for you as you go through the budgeting cycles.

SENATOR RAGGIO:

Do I perceive you deem addressing the unfunded liability as unimportant? I have been chairing the IRBC, off and on, for the last 20 years and it has always been imperative that we address this unfunded liability. We have made strides over a number of years and have been requested to contribute large amounts toward a fund to address this issue. If you deem it unimportant we make changes to address the magnitude of this unfunded liability, whether it has changed because of the GASB or not, I would like to know.

MS. BILYEU:

The unfunded liability is not unimportant. The PERB takes the payment of the unfunded liability of the program seriously. The comments to Senator Coffin are designed to explain how the financing of the unfunded liability has been adopted by the PERB. The PERB is charged with trying to ensure payment of the unfunded liability over the appropriate accounting periods permitted and, at the same time, try to balance the short-term volatility payments on those unfunded liabilities introduced into the budgeting cycles.

Nevada is fairly unique in how we finance this program, as we require absolute dollar cost sharing back to the employee on a half and half basis. When rates change, we know we are not only affecting the underlying budgets of the entities participating in the program, but we are also affecting the actual take-home pay of the individual members.

When we made our change to the funding policy, it was designed to allow newly hired employees the same opportunities to pay those unfunded liabilities over time as those who were in the program earlier. The idea is to ensure the unfunded liability is paid in a manner which provides intergenerational equity and retires the liabilities. The most significant piece of our unfunded liability is in its 25th year of being paid and will be retired in 25 years.

Because of short-term volatilities in the market cycle, if there is a newly created unfunded liability, we want to ensure we are dedicated to paying it off in a similar fashion. We want to do this in a way which addresses the underlying budgeting cycles and in how much contribution individual members must make.

SENATOR RAGGIO:

Do diverse multipliers, such as one for public safety members versus one for other members, or one for new hirees versus existing employees, exist in other pension plans?

MS. BILYEU:

In large, consolidated plans like Nevada PERS, which is a multiple-employer cost-sharing plan, one multiplier is typical. In many other states and jurisdictions, you have separate plans instituted by municipalities and counties. You also have separate plans for municipal workers, public safety workers and teachers. If you have a plan designed only for police and/or fire employees, you will see a different multiplier than for municipal employees. In large statewide plans, in which everyone is consolidated, there is typically one formula.

SENATOR RAGGIO:

I would like to disclose I am a recipient under the PERS.



COCHAIR MATHEWS:

How much is the average monthly check for a PERS recipient?

Ms. BILYEU:

The average monthly check in the Regular Fund is approximately \$2,306. It is approximately \$3,700 in the Police/Fire Fund.

DAVID F. KALLAS (Director, Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.):

As of August of this year, I will have completed 30 years of service. Most of this bill does not affect the Police/Fire Fund, but it is important to the PERS we consider this bill reasonably. I am concerned, with the current economic downturn, there are groups of individuals who are using this as an opportunistic time to promote their own beliefs on what is and is not reasonable to those of us in public employment.

This is about the future. We must be fair to everybody who is involved in the PERS. In 2001, the fund was 85-percent funded and this legislative body made some benefit enhancements to the fund. There were different entities considering separate multipliers for the Police/Fire Fund and the Regular Fund. In 2001, this body made the decision to treat everyone in public employment equally and I implore you to do the same thing now. From that perspective, I take issue with the SAGE Commission's recommendation and S.B. 367 to change the multiplier for those in the Regular Fund to 2.15 percent and leave the multiplier in the Police/Fire Fund as it is.

I am not recommending a change from the 2.67 multiplier in the Police/Fire Fund. In dealing with such a large economic crisis, people are considering this issue unreasonably. They want to make such significant changes to the PERS it will impact the long-term viability of the program and the ability of entities to hire qualified employees to do the jobs we expect of them. I do not believe we can do this by making changes to this plan. The most important element of the plan is its long-term viability.

Several weeks ago, I asked the chief investment officer of the PERS how bad the stock market would have to get for the PERS to go below the 8-percent actuarial assumption we have had since the inception of the PERS. Last year, we were at 9.1 percent. The chief investment officer said the Dow Jones Industrial Average would have to drop to below 4,000 or 5,000 points.

Even with the economic difficulties we have suffered since 2001, our fund has still met its actuarial assumption for all of those years. As we consider the provisions of S.B. 367, I ask the Committee to keep this in mind and understand the PERB take their fiduciary responsibility seriously.

I have heard we do not like to bind future legislators to legislation imposed by prior committees or the Legislature itself. Section 3 of S.B. 367 tells the legislative body not to enact any enhancements to the System until the System is fully funded. We are concerned about projections as we move forward, but this provision ties the hands of this body and the PERB. I do not think this provision is good public policy.

Section 5, subsection 3 of S.B. 367 contains language limiting base pay. From the employees' perspective, call back pay, shift differential and hazardous duty

pay are forms of all earned compensation. When retiring, the least an employee should be entitled to is receiving compensation for what they earned, regardless if it is from receiving a promotion, shift differential or running into a burning building. If it is earned, it should be a part of the compensation package when an employee retires. It is disingenuous to ask a person to do a job, compensate them while they are working, then tell them that compensation is not worth the same amount when they retire.

I do not think it is reasonable to have separate multipliers as outlined in section 7 of S.B. 367. This creates administrative and fairness issues. We do not work in the private sector. I do not have the opportunity to earn additional income based upon profit margins or to decide how much to charge customers. I entered into a contract when I took my job and was told what my duties and responsibilities would be and what compensation I could expect in exchange for performing them.

Unlike at least one of the supporters of S.B. 367, who said "Until some significant reforms are made, we would not step up to the table," I am at the table telling this body we are unconditionally willing to do whatever is needed to ensure the long-term viability of the PERS. Employee groups in southern Nevada and Reno who have been subject to reductions over the last two years have all made modifications to their current collective bargaining agreements in recognition of the difficulties we are having in these economic times. Our organization settled a contract in record time because we understood the magnitude of the issues this Legislature has to deal with.

The Service Employees International Union (SEIU) is voting today on a modification to their contract which will affect 10,000 workers employed by Clark County. They are willing to reduce their salaries by 2 percent and will also lose 0.5 percent in their contribution to the PERS. The newspapers are not congratulating them for stepping up to the table; the newspapers said it was only going to be a savings of \$10 million.

On behalf of our organization, 4,000 police and corrections officers, we will do what needs to be done, within reason, to ensure we do our part to help in this economic downturn. We are concerned with the opportunists who make knee-jerk proposals to what is happening. Public employees and the PERS did not create the economic issues we are dealing with, but we are willing to help resolve them.

COCHAIR HORSFORD:

I appreciate the comments about shared sacrifice because it will take all of us, working together, to find the solutions to these problems.

MR. McALLISTER:

I represent members of the Police/Fire Fund and the Regular Fund. Other than Mr. Comeaux, nobody on the SAGE Commission is currently enrolled with the PERS. It was mentioned that public comment was taken during the SAGE Commission hearings, but no public employees were asked if they had alternatives to what is being suggested in S.B. 367. In my ten years of being involved with the Legislature, some of the best legislation I have witnessed takes place when both parties are asking what they can do to make a proposal work. That has not taken place up to this point.

The language in section 4 of S.B. 367 refers to a refund to employees if their contributions are linked to pay which cannot be used to calculate their average compensation. If the Legislature chooses to adopt this section of the bill, will the interest earned over an extended period of time on the member's overpayments to the fund be included in the refund? Will the public employer who paid 50 percent of these overpayments get a refund as well?

I am offended by the use of the term "fringe benefits" when describing section 5 of S.B. 367. One of the "fringe benefits" brought forth by the SAGE Commission is pay for hazardous materials technicians. For years, we have based our contract negotiations on provisions in the PERS which indicate additional compensation tied to a percentage base pay for the position is compensable by the PERS. Hazardous materials pay is a percentage of base pay an employee receives for performing a specific job. There are extra training and risks involved in performing this job. Technicians must put on an encapsulated suit, in 110-degree temperatures, and deal with hazardous materials incidents. To say this is now a "fringe benefit" which should not be compensated is offensive to me.

Passage of this provision raises the possibility of a large number of groups coming before the PERS requesting position reclassifications. If employees are earning an additional 5 percent of their base pay to be hazardous materials technicians, by having additional qualifications and taking additional risks, why would they not come before the PERS board and request new job reclassifications if their compensation is eliminated? Calling these types of additional compensation "fringe benefits" will not solve the problems the SAGE Commission was put in place to solve.

With regard to this topic, some proponents of S.B. 367 suggested management was forced into these types of agreements. These are contracts which are agreed upon and negotiated in good faith by employee groups and employers.

We are also opposed to the disparate multipliers contained in the language in section 7 of S.B. 367. I have employees contributing to the Regular Fund whose jobs are no less important than firefighters and they should not be compensated differently. Changing these multipliers creates a two-tiered system. Two people working in the same building doing the same exact job will be compensated differently. If layoffs occur for economic reasons, senior employees with higher compensation will be let go in favor of the people doing the same job but compensated at a lower rate. This creates animosity and morale issues.

Changing the average compensation period from three to five years is nothing short of a means to weaken the benefits and spending ability of employees. The average monthly benefit of contributors to the Regular Fund is \$2,306. The SAGE Commission seems to be suggesting this is a lot of money. If we change the average compensation period to five years, it will reduce the average monthly benefit even more. This makes no sense when considering health insurance could cost over \$1,000 each month. People cannot live on \$1,300 a month without a significant amount to supplement their income.

Section 7, subsection 4 of S.B. 367 provides a provision for a compensation cap of 10 percent a year for purposes of benefit calculation. If this provision is in place to address overtime compensation, the PERS has already changed the definition of call-back overtime for future hires. Call-back overtime, which is

compensable for PERS, can only be used in a declared emergency by an employer for compensation calculations.

This provision will also have an affect on people who choose to accept promotions. If someone is promoted from a battalion chief to a chief level position, why would we want to hamper them? They do not give chief positions away.

We are willing to have conversations in a respectful and professional manner regarding the viability of the PERS. Unlike certain members of the SAGE Commission, I am not independently wealthy. I am depending on the long-term viability of the PERS for my retirement, as are many of our members. We come here with no quid pro quo or demands which place the Legislature in a difficult position.

The Chamber of Commerce mentioned the studies, which they paid a large amount of money to have completed, regarding the PERS, the PEBP and compensation of public employees. Those studies only mention in their fine print the State of Nevada is 51st in the Nation, behind Puerto Rico, in the number of public employees per 1,000 residents. This does not include the over 40 million annual visitors to our State.

We are doing more with less and have been doing it for a long time. Compensating our employees appropriately is the right thing to do. The proponents of this bill are asking us to do more and compensate us at a lower level.

SENATOR RAGGIO:

Senate Bill 367 does not affect any current employees in any manner. For the long term, since newly hired employees would have a full understanding of their compensation and benefits, are there any aspects of this bill you would support?

MR. McALLISTER:

I would not support anything in this bill without first having meaningful discussions or a negotiation concerning what is appropriate. The provisions within this bill go too far to one side of the issue. There is middle ground which can be discussed for the future viability of the PERS.

MR. KALLAS:

I could not support S.B. 367 as it is currently written. I understand the concern and the concept of the bill, but it needs modifications. This bill is a knee-jerk reaction and goes too far to one side.

SENATOR RAGGIO:

There are a number of provisions in this bill, such as changing to a 5-year average period and reduced benefits for retirements of less than 35 years. Do you support any provisions within this bill? We need to maintain the future viability of the PERS while still addressing the issue of the unfunded liability. The goal is to stop addressing this unfunded liability by constantly increasing the contribution rate. Is there anything you can suggest to help solve this issue for those coming into the system after 2009?

MR. KALLAS:

I can only speak on behalf of myself. My organization did not brief me regarding suggested changes to the bill as it is written. I believe there is room for modification to the PERS as it exists. In 2001, the system was 85-percent funded and the compensation multiplier was 2.5 percent. The PERS is now 77-percent funded. Reasonable people would consider this and understand we increased benefits in 2001 and the system is now funded to a lesser extent. Obviously, we need to evaluate our position, but we do not need to go to a 2.15-percent multiplier or a 5-year average for calculating compensation.

There are concepts in S.B. 367 we could work with if we get the opportunity to discuss them. As the language stands today, I cannot support this bill.

ROGER K. MAILLARD (State of Nevada Employees Association; American Federation of State, County and Municipal Employees, Retiree Chapter 4041):

As a representative of a retirees' association, this bill does not affect us; but it will affect our grandchildren. I am here to speak for my three grandchildren, one of whom plans to enter State service when she completes her college education. When I heard some of the inaccurate findings of the SAGE Commission concerning promoting people for the sake of increasing their pensions, I had to speak up. I can say in my 30 years of State service, I never saw this occur; but I have seen the opposite. I have gone to my boss to suggest a deserved promotion for an employee and was told not to promote that person because she only had three years before retirement. I have had to defend my decision to promote based on merit.

TOM VANDERPOOL (Service Employees International Union):

I have been a public employee at McCarran International Airport for 13 years. The SEIU Nevada represents over 17,500 employees statewide in the healthcare and public sector. I am here in opposition to S.B. 367. We are all aware of the economic crisis our State is facing, but passing this legislation will contribute to the crisis in addition to negatively impacting public employees across Nevada.

State and local government pension plans have a total economic impact of over \$358 billion which is supported by more than 2.5 million American jobs, as reported by the National Institute of Retirement Security. Locally, the PERS paid over \$981 million in pension benefits last year. Expenditures resulting from the PERS pension payments supported more than \$390 million in income for State residents other than the PERS retirees. The PERS pension payments supported more than \$1 billion in total economic output in the State and more than \$433 million in value added.

Payments made to the PERS retirees supported more than \$196 million in federal, State and local tax revenue. Each \$1 paid in pension benefits to PERS retirees residing in the State supports \$1.28 in total economic output in Nevada. Each \$1 in taxpayer contributions to the PERS supported \$6.21 in total economic output for Nevada.

At a time when our State is facing an economic crisis, the likes of which has never been seen, we should not be talking about removing money from our local economy and contributing to the crisis.

The PERS, or our pension retirement, is not only a recognition of the dedication of the delivery of quality services of public employees, it is a driving force to the contribution of the economy of the State of Nevada.

ED BEAMAN (Clark County Fire Fighters Union, Local 1908 and Executive Board Member, AFL-CIO):

I am here to voice our organizations' opposition to S.B. 367. Because of the size of the room made available in Las Vegas, more than 200 people who came to witness this hearing, and perhaps give testimony in opposition to this bill, cannot be seen on your video monitors.

CRAIG M. STEVENS (Director of Education Policy and Research, Nevada State Education Association):

I am speaking today in opposition to S.B. 367. This bill will do great harm to the state of education in Nevada. In crucial times such as these, any impediment to hiring qualified teachers would be a major blow to the quality of education provided in our State.

Attracting educators to work in Nevada can be quite challenging. Clark County alone has over 300 vacancies. To fill these positions, it will take a competitive salary and good benefits. The implementation of the SAGE Commission's recommended changes to the PERS or S.B. 367 will remove one of the major recruiting tools to fill our classrooms with qualified teachers.

Changing the PERS multiplier to a paltry 2.15 percent is a significant decrease from the current rate. We already know Nevada educators earn 93 percent of the average salary of teachers across this country. The Governor's proposed budget will make this even less, yet Nevada school districts are still expected to place a highly qualified teacher in every classroom.

Classrooms in Nevada are already overcrowded and the SAGE Commission's recommendations may drive future educators to competing states. Expecting teachers to remain in the classroom for nearly 40 years before they can collect their hard-earned retirement is unconscionable. This Committee should not be attempting to slash educator benefits. Many times, the Nevada State Education Association testified before the SAGE Commission on this issue, however, each time we were ignored.

The economic crisis is not the fault of educators, yet time and time again, we hear it is the educators who are going to take the brunt of this crisis. While this will hurt all Nevada State workers, it will also hurt Nevada's future generations for decades to come. Please reject S.B. 367. We hope to work together to find a solution which does not harm Nevada's schools. Thousands and thousands of school children are depending on your wisdom to enhance their futures and the futures of all Nevadans.

SENATOR COFFIN:

Mr. Stevens, can you clarify your statement about appearing in front of the SAGE Commission and not being given an opportunity to speak?

MR. STEVENS:

We were not given the opportunity to speak until they allowed public comment at the end of the hearing. After the decisions were made, we were asked if we

would like to comment on them. The comments we made at the SAGE Commission hearings were similar to the comments we are making today.

MARTIN BIBB (Executive Director, Retired Public Employees of Nevada):  
We are opposed to S.B. 367 and would like to address some concerns I heard from the Committee. People are living longer and this places pressure on the PERS.

It was many years before we changed the multiplier for compensation from 2.50 percent to 2.67 percent. The problem in this bill is the bifurcated approach taken by proponents who would have the multiplier go to one level for the Police/Fire Fund and another level for the Regular Fund. We agree with Ms. Bilyeu. This may pose some precedential challenges and become a real problem. This is something which should be considered if they wish to make a change to the bill. Even today, this is an \$18-billion shift. Major changes in a system which has worked successfully for many years must be made cautiously, but there are some areas for discussion.

It was said earlier the PERS is a generous benefit. I would not take exception to \$2,300 a month being generous, but Nevada is one of a handful of states in which virtually none of the members of its PERS are eligible for Social Security benefits. If they are eligible, the benefits are greatly reduced. References to an overly generous benefit in the Las Vegas Chamber of Commerce study, which was the source for many of the SAGE Commission's recommendations, need to be scrutinized.

The SAGE Commission's recommendations point to the PERS, but when you consider the PERS benefit and the Social Security benefit, this State ranks in the bottom 14 percent for total contribution. This is a statistic which needs to be considered as this Committee and the Legislature work in the future.

One of the reasons the PERS was formed in 1947 was because of a phenomenon known as hidden pensioners. This was a situation in which people were staying on the jobs well after their most productive years, and in some cases, dying on the job. Those times are changing. People are living longer and medicine is better. Extending the number of years of service should be considered.

The PERS contributes more than \$1 billion into the economy annually. Because there is no Social Security contribution made by the PERS members, it alleviates a tax burden on the private sector through the cost of operating government.

We have attended SAGE Commission meetings since last year, and in attending those meetings, we would like to have seen workshop efforts in the early stages to deal with the PERS and the PEBP. We are pleased the SAGE Commission elected to begin conducting workshops in other areas in which they are making recommendations to the Legislature including salaries, overtime and merit pay. We had a productive three-hour session, with many of the groups here today represented, to have our contributions made to the Commission.

One positive aspect of S.B. 367, though we have serious problems with it, is provisions of the bill do not take effect until January 2010. By contrast, the recommendations affecting the group health insurance program take effect in July 2009. This places everyone under additional stress.



RONALD P. DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):

Members of this benefit coalition have attempted to have our voices heard in the SAGE Commission's meetings so we could make valuable comments and provide data which probably would have resulted in something other than what is seen in S.B. 367.

Last year, I went to a SAGE Commission meeting in Las Vegas after learning they would be discussing issues which impact current and retired PERS members. I did not have the opportunity to speak before the SAGE Commission until after six or seven hours. I took my three allotted minutes to begin speaking on a positive note because SAGE Commission members are valuable corporate leaders in this State. They understand the private sector, but I told them they have no knowledge of what we do in the public sector. If you want to fix a problem, you must have people impacted by the decisions you make sitting on the Commission.

During my three minutes of speaking time, I learned the Commission planned to take a recommendation, and adjust it for everyone, to increase the minimum retirement age to 60. Fortunately, Mr. McAllister and I were there to tell the Commission to take the Police/Fire Fund contributors into consideration. I cannot support some of the recommendations I have heard today and seen in this bill. We expended a lot of time and effort before 2001 to implement the 25-year retirement plan for police and fire employees because many of these members were dying earlier than regular members of the PERS. Now, police and fire members are living longer and we have accomplished our mission. Our regular members are living longer as well. This bill would force people to work longer to receive their full benefit under the PERS.

The PERS was started because people were dying on the job. Some of my friends have died on the job. This is the reason we spent 20 years fighting for a 25-year retirement plan for police and fire members of the PERS. Now that retirement plan is being considered for sacrifice and may not be available for future employees because of our current economic downturn.

In 2001, the economy was doing great and everyone supported the 2.67-percent multiplier for calculating retirement benefits. Everyone supported the 25-year retirement plan for police and fire members. This bill and the SAGE Commission's recommendations would take us backwards, and I disagree with that plan. I agree with the previous testifiers who said there are concepts which can be agreed to and worked out when we are invited to provide the crucial information.

We have discussed promotions, but we have not discussed demotions. Most police departments have done away with detective classifications. Now, police officers work as detectives for a couple of years and rotate back to patrol duty. An officer receives a 5- to 10-percent salary increase for performing detective duties during those years, which is PERS-compensable income, and loses the salary increase when rotating back to patrol duty. My highest three-year average income came approximately three years before retirement. I was assigned as a homicide detective for ten years, and middle-of-the-night call outs were PERS compensable. This rule changed for newly hired employees on July 1, 2008. I rotated back to patrol duty the year before I retired and lost my

10-percent salary adjustment and other benefits which would have decreased my average salary.

Our role in appearing before this Committee is to reach a compromise. We have the best PERS in the U.S., but when you factor in the loss of Social Security benefits, Nevada is ranked at the bottom. There are currently approximately 15,000 openings in law enforcement and only 1 in 20 applicants are hired. The benefits from the PERS attract the best candidates to come into our system and stay here. We are willing to sacrifice during bad economic times, but if we have to sacrifice the 25-year retirement plan for police and firefighters, I will be back fighting to reinstate that provision when the economy improves. I do not want to come back to this Committee and tell you we are losing qualified police officers and firefighters to other states or these employees are dying on the job and unable to enjoy their retirements because we reduced their benefits.

DANNY COYLE (American Federation of State, County and Municipal Employee, Local 4041):

I agree some changes need to be made to the PERS, but any legislative changes to be made should come from the recommendations of the PERB; not from an outside commission or the Las Vegas Chamber of Commerce. The PERB has more expertise in matters regarding changes made to the PERS and meets on a regular basis to review those changes.

Budget changes may be needed. We are working with the leadership of the Senate and the Assembly to work out any concessions which may affect the budget but would not affect current benefits.

DENNIS MALLORY (Chief of Staff, American Federation of State, County and Municipal Employees, Local 4041):

There must be a sense of sacrifice, but there also must be willingness to compromise. During the SAGE Commission hearings, no compromise was made. We had three minutes to voice our views at the end of the meetings and none of our suggestions were incorporated into the recommendations of the SAGE Commission. They did not listen to us.

We acknowledge our serious economic difficulties and understand we need to collectively find compromise. There is no compromise in S.B. 367. Changing the multiplier for retirement calculations to 2.15 percent would deteriorate the fund. Our objective is to maintain the long-term stability of the plan without these draconian reductions of PERS benefits. We can accomplish this by sacrificing and compromising, but not to the extent incorporated in S.B. 367. I look forward to those discussions because we will have a platform from which our suggestions will be heard; a platform we did not have when testifying before the SAGE Commission.

SENATOR WOODHOUSE:

I would like to disclose, as a teacher and administrator with the Clark County School District for 40 years and as a retired public employee, I receive a retirement allowance under the Nevada PERS. In addition, I served as a member of the PERS Board of Directors for 16 years and as Chair for 13 years. Senate Bill 174, S.B. 284 and S.B. 367 will not have any direct impact on me. Therefore, the independence of judgment of a reasonable person in my position would not be materially affected by my interest. Thus, under Senate Rule 23,

I am not required to make this disclosure, but do so under an abundance of caution.

COCHAIR MATHEWS:

If there is no further testimony, we will close the hearing on S.B. 367 and open the hearing on S.B. 384.

**SENATE BILL 384**: Revises provisions governing apportionments from the State Distributive School Account to certain charter schools. (BDR 34-805)

KEITH W. RHEULT PH.D. (Superintendent of Public Instruction, Department of Education):

I am here to support S.B. 384. The issue this bill addresses was brought up by the Department of Education during a meeting of the Legislative Committee on Education in the summer of 2008. The bill addresses the equitable distribution of Distributive School Account (DSA) funding. The Nevada DSA plan is one of the most equitable in the country. When the Nevada Plan for School Finance was designed, it did not envision individual schools being funded through the plan or distance education and charter schools in which students from 16 different school districts are funded under one school's apportionment.

This bill would provide a uniform apportionment to distance-education charter schools regardless of where the students live and where they are participating. This bill attempts to equalize the 16 different amounts being apportioned for the same service across the State.

JAMES R. WELLS (Deputy Superintendent for Administrative and Fiscal Services, Department of Education):

I have provided the Committee a handout with a chart on the front page as a graphical representation of the purpose of the Nevada Plan for School Finance ([Exhibit F](#)). The graph shows what is done to apportion funding generated for education. We apportion funding differently for all of the 17 school districts based on three primary factors: the relative costs to those districts; the local wealth of those districts; and the transportation costs incurred by those districts.

When we talk about costs, we try to promote the purchasing power parity from the school district in Clark County to the school district in Esmeralda County. In this example, you have two school superintendents, each earning \$100,000. Because there are 300,000 students in Clark County, it costs 33 cents per student for their superintendent. In Esmeralda County, where there are 67 students, it costs \$1,420 per student to cover that same \$100,000 salary.

There are purchasing power differences based on the size of the school district, costs of property, utilities and maintenance. The local wealth factors consist of a two-thirds portion of the property tax, government services taxes consisting of motor vehicle registration, and franchise fees on utilities. Based on the assessed valuations of properties and the net proceeds from government services taxes, some districts have significantly higher local wealth than others. The relative costs of transporting rural-county students to schools and athletic events are higher than in urban school districts.

All of these factors are considered in how we apportion money to the 17 school districts. The first column on the second page of our handout ([Exhibit F](#)) shows every school district begins with \$4,969 in proposed average basic support per student in fiscal year (FY) 2010-2011. The second column shows additions and subtractions for relative costs. Due to the size of the districts, Clark County has a relative costs savings and Esmeralda County has cost increases. The third column shows the local relative wealth of each district. Eureka County's negative amount of \$6,153 in this column represents the large amount of proceeds from taxes on mines on a per-pupil basis. The fifth column shows how much funding is apportioned per student in each of the 17 school districts with an average of \$4,969 per student. There is a low of \$4,769 per student in Clark County and a high of \$21,259 in Esmeralda County.

We built this allocation plan knowing the cost structures of a school district. These allocation plans include teacher allocation models and attendance areas in which places like Elko and Nye Counties have disparate regions within their jurisdictions. Allocation models, such as the ones I described, do not necessarily apply to charter schools which teach students from multiple counties.

The last page of your handout ([Exhibit F](#)) shows the three largest virtual schools in Nevada: the Nevada Connections Academy; the Nevada Virtual Academy; and the Insight Charter School. In FY 2008-2009, the total basic support per pupil was an average of \$5,213, a low of \$4,958 in Clark County and a high of \$15,332 in Esmeralda County. The next column shows the outside revenues per pupil consisting of a two-thirds portion of the property taxes, government services taxes and franchise fees. In FY 2008-2009, the outside revenue per pupil was an average of \$1,533, a low of \$921 in Elko County and a high of \$24,141 in Eureka County.

The Nevada Connections Academy has students in 16 of Nevada's 17 counties. To determine their allocation funding, we take the basic support level per pupil and outside revenue per pupil for each county and multiply it by the number of students from each county attending the Nevada Connections Academy. Shown below the two enrollment columns on the bottom half of the page are the current payments to the Nevada Connections Academy. For example, the 24.6 students from Carson City generate \$153,012 in basic support and \$27,970 in outside revenue for the Nevada Connections Academy.

Under S.B. 384, we would use the lowest figure for any district for basic support, which in this case is Clark County at \$4,958 per pupil. We would use either the district's figure for outside revenue or the statewide average for outside revenue, whichever is lowest. The statewide average for outside revenue is \$1,533. This is a weighted average based on the number of students in the State. In Carson City, the figure of \$1,137 of outside revenue per pupil is less than the statewide average of \$1,533. For those same 24.6 students, the State would pay \$121,967 in basic support and the Nevada Connections Academy would also receive the \$27,970 in outside revenue.

Part of the reason this proposal came about is because the Eureka County School District does not receive apportionment from the State. That county's outside revenue generates more than their basic support guarantee. Each student from Eureka County enrolled at the Nevada Connections Academy cost the State approximately \$30,000 while students from Clark County cost the

State approximately \$6,400. We see a disproportionate value being placed upon students receiving the same education from the same charter school.

We will probably conduct a study on the cost of distance education within the next year. These are relatively new schools and we need to have a better grasp on the costs associated with distance-education learning.

DR. RHEAULT:

We appreciate distance-education charter schools provide students in Nevada a choice, particularly in the rural areas. We are attempting to provide fair and reasonable cost calculations for students across the State instead of charging \$30,000 for one student in Eureka County and \$6,400 in Clark County. This will be a benefit for new schools coming into the system as they will have a set fee they can rely on when building their budgets rather than trying to project how many students they will enroll from a different county with different costs.

KATHLEEN A. CONABOY (K12, Inc.):

K12, Inc. (K12) is a developer of a world-class, distance-education curriculum currently being used by charter schools and public school districts in 21 states and the District of Columbia. In Nevada, the K12 curriculum is used by Nevada Virtual Academy, a statewide distance-education charter school authorized by the State Board of Education. In just two years of operation, Nevada Virtual Academy has enrolled nearly 1,000 students in grades kindergarten through grade 8 and was recently authorized to offer a high school program next year.

In yesterday's meeting of the Senate Committee on Legislative Operations and Elections, Senator Mathews made a comment concerning the unknown identity of the originator of a bill. In researching the genesis of S.B. 384, I encountered the same problem. I have spoken to Dr. Rheault and Mr. Wells, but they did not know the genesis of the bill. The Chairman of the Senate Committee on Health and Education, from which this bill was referred, was also unsure of the genesis of this bill. In spite of several conversations with the Department of Education, we still have several strong objections to S.B. 384.

Mr. Wells indicated the Department of Education fully understands the cost structure of standard education. Unfortunately, there is no advance study which has come before this Committee regarding the costs of distance education.

This bill drastically changes the existing and long-standing approach to the per-pupil funding allocation, specifically, funding for each child within a district is uniform with the allotted funding following the public school pupil. This bill proposes to cut the DSA for a small subset of charter school students, discriminating against those students who attend a distance-education charter school program fulltime. If a program does not require a weekly face-to-face meeting between a student and their teacher, they fall into a category of reduced DSA funding.

Let me remind you of the definition of distance education, which is found in NRS 388.826:

In summary, "distance education" means instruction which is delivered by means of video, computer, television, the Internet or other electronic means of communication in such a manner that the person supervising or providing the instruction and the pupil receiving the instruction are separated geographically.

In the same chapter, NRS 388.866 requires distance-education programs to ensure that teachers meet or otherwise communicate with the pupil at least once each week during the course.

In the K12 model used by Nevada Virtual Academy, teachers and students are in frequent communication. They have interactive lessons via the K12 Elluminate system. Students have virtual study halls, in person field trips, club activities, e-mails and phone interaction. Teachers have full oversight of a student's academic activity on a daily basis via a daily reporting system in which teachers check students' log-ins to verify attendance. Further, each unit in the K12 curriculum has a formative assessment, allowing teachers to track student progress in real time and determine if students are lagging in their comprehension. Phone calls with students and/or with parents occur as often as necessary.

As our world changes technologically, the definitions of "communication" and "meet" are evolving as well. Look at how we regularly conduct legislative business, with people attending hearings via electronic means from remote locations. There is a cost factor associated with the ability to do this.

Our second objection to S.B. 384 is the proposal to change the DSA distribution based on presumptions about cost, and not supported by any analysis of data or policy discussion at any level. In fact, the 2007 interim Legislative Commission on Education specifically chose not to bring forward legislation addressing changes in the funding model.

In spite of frequent meetings and much dialogue on a number of issues, the Department of Education has not requested a meeting to discuss our overall cost structure, nor has the Department requested any data from us to help inform the new proposed model. The presumption about virtual schools could be we automatically have lower costs because we do not have brick-and-mortar structures. As you might conclude from learning about the technology infrastructure I described earlier, we have real and significant infrastructure costs related to our technology architecture. Over the past five years, K12 has invested more than \$100 million in the development of its excellent curriculum. Along with the word "communication," the definition of "infrastructure" is also evolving.

We are uncertain whether the real issue which inspired the bill is the problem of actual costs balanced against revenue allocation or whether the bill is targeting teacher/student face-to-face interaction. I checked with representatives of the Washoe County and Clark County school districts, both of which have full-time distance-education models at the high school level. Neither district requires students to come to a physical location on a weekly basis for teacher conferences. As K12 requires, students must log in and teachers track their progress, but this takes place in the virtual environment. Because we are 100-percent distance education and our students and teachers do not meet face-to-face on a weekly basis, we feel this bill does not address school district programs and, therefore, unfairly discriminates against the distance-education model used by three charter schools in this state.

This bill strikes at the heart and purpose of charter schools, which is to create options for families to address the individualized learning styles and learning

needs of their children. Senate Bill 384 creates a disincentive for the design and implementation of innovative educational programs and delivery models and, by doing so, shortchanges Nevada's students.

Rather than rewarding and encouraging innovative education models, this bill, which is based on no objective criteria, no data and no discussion with distance-education charter schools or analysis of our cost constructs, seems to be based solely on belief and bias.

On behalf of K12, Inc. and the students it serves at the Nevada Virtual Academy, I respectfully request that you reject S.B. 384.

COCHAIR HORSFORD:

I am not clear on how this bill came to exist. This is a policy matter and the bill contains no fiscal note.

SENATOR HORSFORD MOVED TO REREFER S.B. 384 TO THE SENATE COMMITTEE ON HEALTH AND EDUCATION WITH NO RECOMMENDATION.

SENATOR COFFIN SECONDED THE MOTION.

SENATOR RAGGIO:

This bill is not exempt and there is little time for another committee to hear S.B. 384. The bill may require a waiver to give the Senate Committee on Health and Education the time and opportunity for consideration.

COCHAIR HORSFORD:

I will confer with the chair of the Senate Committee on Health and Education to determine whether or not this bill can be added to one of their agendas. If there is insufficient time for the bill to be heard, I will consider giving it a waiver.

THE MOTION CARRIED UNANIMOUSLY

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COCHAIR MATHEWS:

We will now begin the hearing on S.B. 14. We held a hearing on this bill on March 9, 2009, and our testifiers would like to propose an amendment to the bill.

**SENATE BILL 14**: Increases the portion of the fee for a marriage license that funds the Account for Aid for Victims of Domestic Violence.  
(BDR 11-117)

SUSAN MEUSCHKE (Executive Director, Nevada Network Against Domestic Violence):

On March 9, 2009, the Committee held a hearing on S.B. 14 which requested a \$5 increase to the marriage license fee to fund domestic violence services. We have experienced double-digit decreases in revenues to the marriage license fund over the last biennium. This bill is an attempt to address those decreases.

Over the last year, the revenue decrease has been more significant and we requested a \$10 increase to the marriage license fee at the March 9 hearing.



The chapel industry testified a \$10 increase to the marriage license fee would not be acceptable and instead suggested a \$5 increase to the certified copy fee.

Our proposed amendment retains the \$5 increase to marriage license fees and adds a \$5 fee for a certified copy of a certificate of marriage or for a certified abstract of a certificate of marriage. There are two sections of NRS 246.180 dealing with the copy fee and the amendment tracks both sections. The \$5 fee will be credited to the account for Aid for Victims of Domestic Violence in the State General fund. I have provided the Committee with a copy of the proposed amendment ([Exhibit G](#)).

SENATOR HARDY:

It was my understanding the proposal for the \$5 copy fee was in lieu of the \$5 increase to marriage license fees, not in addition to the original increase.

MS. MEUSCHKE:

The chapel industry was opposed to the \$5 increase in marriage license fees. During testimony, Ms. Margaret Flint, the representative for the chapel industry, said they could live with a \$5 increase but were opposed to a \$10 increase. The decreases in revenue we are experiencing require us to request a \$10 addition and this is the compromise.

SENATOR HARDY:

I know this is a subject Senator Washington feels strongly about and I would not be comfortable proceeding until I have a chance to confer with him.

PAULA BERKLEY (Nevada Network Against Domestic Violence):

On the last page of the proposed amendment ([Exhibit G](#)) there is a chart indicating the projected revenues from certified copy fees and marriage license fee increases. We project fees from certified copies would generate \$986,555 and we need to generate \$1,224,000. This is why we kept the \$5 marriage license fee increase. Either the service or the number of programs would be decreased if we cannot meet our goals.

SENATOR HARDY:

We are making drastic budget reductions in many areas. I would like the opportunity to confer with my colleagues before proceeding with this bill.

COCHAIR MATHEWS:

The chapel industry would have preferred to have no increase in fees. When someone applies for a marriage license, an additional \$5 is unlikely to dissuade them. The chapel industry asked, through Senator Washington, to generate additional revenues by adding a \$5 fee to certified copies of certificates of marriage.

SENATOR HORSFORD MOVED TO AMEND AND DO PASS S.B.14.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE VOTE).

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COCHAIR MATHEWS:

There being no further business before the Committee, the meeting is adjourned at 11:04 a.m.

RESPECTFULLY SUBMITTED:

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Michael Bohling,  
Committee Secretary

APPROVED BY:

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Senator Bernice Mathews, Cochair