

**MINUTES OF THE  
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-fifth Session  
February 17, 2009**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Joyce Woodhouse at 1:37 p.m. on Tuesday, February 17, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Joyce Woodhouse, Chair  
Senator Bernice Mathews, Vice Chair  
Senator Valerie Wiener  
Senator John J. Lee  
Senator William J. Raggio  
Senator Barbara K. Cegavske  
Senator Warren B. Hardy II

**GUEST LEGISLATORS PRESENT:**

Senator Mike McGinness, Central Nevada Senatorial District

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legislative Counsel  
Pepper Sturm, Committee Policy Analyst  
Makita Schichtel, Committee Secretary

**OTHERS PRESENT:**

Vicki Robinson, Manager, Insurance Services, City of Las Vegas  
J. David Fraser, Executive Director, Nevada League of Cities and Municipalities  
Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada  
Martin Bibb, Executive Director, Retired Public Employees of Nevada  
Rusty McAllister, President, Professional Fire Fighters of Nevada  
James T. Richardson, Nevada Faculty Alliance

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Leslie A. Johnstone, Executive Officer, Public Employees' Benefits Program  
Leonard Schlener

Danny Coyle, Vice President, American Federation of State, County and  
Municipal Employees, Local 4041

Harold Shrader

Les Lee Shell, Administrator, Department of Finance, Clark County

Adam Segal, Legal Counsel, Metropolitan Police Department; City of Caliente

CHAIR WOODHOUSE:

I will open the meeting on Senate Bill (S.B.) 87.

**SENATE BILL 87**: Revises provisions relating to health benefits provided by a  
local government. (BDR 23-484)

VICKI ROBINSON (Manager, Insurance Services, City of Las Vegas):

We support S.B. 87. The intent is to return the method of setting rates for  
employee benefits to the system used before the passage of A.B. No. 286 of  
the 72nd Session, by eliminating the requirement for public entities to  
commingle the loss experience of active employees and retirees. I have provided  
background information and benefits of the bill ([Exhibit C](#)).

J. DAVID FRASER (Executive Director, Nevada League of Cities and  
Municipalities):

Changing the wording in the bill from "shall" to "may" in reference to  
commingling the claims experience of active employees and retirees allows local  
governmental entities the option to continue their current method or to change  
the rates according to the new method.

SENATOR HARDY:

What impact would this bill have on insurance premiums?

MS. ROBINSON:

Before A.B. No. 286 of the 72nd Session was passed, our retirees paid a higher  
premium than our active employees until they became Medicare eligible at age  
65. At that point, our insurance became supplemental and their rates dropped.  
We cannot say what our current rates would be because we only have  
18 retirees in the City's plan. The result of A.B. No. 286 of the 72nd Session  
was a mass exodus to the Public Employees' Benefits Program (PEBP); only a  
handful of employees stayed with us. That will change now that S.B. No. 544

of the 74th Session has been enacted. The difference is more choices for retirees. The AARP has many programs provided for the pre-65-year-old retirees. United HealthCare is working with AARP to create new programs. United has offered to allow our retirees to join one of their programs, which costs much less. The CIGNA is actively working on providing an alternative.

SENATOR HARDY:

We need figures to see what type of impact this bill might have.

RON DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):

I am in opposition to the bill because it may undo progress previously made. When I was President of the Reno Police Protective Association, we negotiated lifetime medical insurance for our retirees at the expense of cost-of-living raises. This bill would conflict with that program. We prefer keeping the word "shall" in the bill for protection against potential outrageous costs to retirees. This bill is a wash.

SENATOR HARDY:

My first reaction is also that the bill is a wash. Do you have any data to support your stance?

MR. DREHER:

We could ask the City of Reno for those records. I believe they take actuarial figures into account. Some local governments bid for insurance, but we do not.

SENATOR HARDY:

This would be simpler if we were discussing two separate groups as opposed to the same group of people at different stages of their lives. It is not the same as considering one group of employees over another. We do not want to make the burden lighter on the active employees and then increase the burden on those same people in their retirement years. If anything, we should go the other way when they are more able to pay higher premiums.

MARTIN BIBB (Executive Director, Retired Public Employees of Nevada):

A four-year interim study of group insurance recommended commingling. The idea of overpaying when you are active and then underpaying when you are retired is standard in group insurance plans. It makes sense to continue to do so. This issue was explored in both A.B. No. 286 of the 72nd Session and in

S.B. No. 544 of the 74th Session. These bills fine-tuned the concept of commingling. There was a period of time when many local government retirees who entered the State's group health insurance plan did so partly because of the protections that actives and retirees shared as far as rate-setting. A current change dictates that local government retirees who wish to join the State health insurance plan must join as a group as opposed to individuals. With the individual no longer able to join, the option is to stay with their own plan or potentially end up without insurance. Today, our local government has concerns about indigent care costs, which could increase with additional retirees without insurance. This is a complex situation, and we encourage the Committee to consider leaving it as is. After many difficult years, PEBP has worked hard and gotten it right.

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

This bill would negatively affect fire fighters. The City of Las Vegas has only 18 retirees, but once they acquire more, they will have a different claims experience. If you set rates for just those 18 people and do not commingle the rates, then one claim would drive their insurance through the roof. We have about 2,000 covered individuals which includes retirees. Our retirees pay, based on the commingled claims experience, about \$650 a month. If we did not commingle, their rate would increase dramatically. Commingling brings up the cost to the actives somewhat, but we are willing to do this in order to benefit them later.

JAMES T. RICHARDSON (Nevada Faculty Alliance):

We were involved in the development of A.B. No. 286 of the 72nd Session, and in the four-year study which Mr. Bibb referenced that resulted in revamping the state health plan by recommending commingle. I thought this issue was finalized and that the State had established a policy to commingle. If you substitute the word "may" for "shall," some local governments will exercise discretion and rate their retirees separately in small groups, making rates impossible for them to afford insurance. There will be ramifications of this bill; I urge you to consider it carefully.

CHAIR WOODHOUSE:

We will close the hearing on S.B. 87 and move to S.B. 103.

**SENATE BILL 103**: Revises provisions relating to the Public Employees' Benefits Program. (BDR 23-422)

LESLIE A. JOHNSTONE (Executive Officer, Public Employees' Benefits Program):  
We asked for S.B. 103. The bill contains clarifications identified when implementing legislation from the 2007 Session. This bill also reinforces some aspects of administering the non-state retiree subsidy provisions of A.B. No. 286 of the 72nd Session. The PEBP requests a few minor amendments to the language that were originally submitted ([Exhibit D](#)).

My first topic deals with implementing S.B. No. 544 of the 74th Session. Section 2 separates the local government requirements from the PEBP requirements for the biennial enrollment.

Section 5 says to be considered a participating agency in the PEBP program, only the PEBP offering is allowed. In a meeting discussing S.B. No. 544 of the 74th Session, several local jurisdictions asked if PEBP could be offered as an option. The intent is that PEBP be the sole option with the exclusion of a collective-bargaining trust. Section 9 also indicates PEBP be the sole benefits option.

Section 10 requires PEBP to provide a flexible benefit offering to Medicare retirees for services they could not access through Medicare such as dental, vision and prescriptions. We offered that beginning in July 2008, and would like the language converted to "may" rather than "shall" as we only have 23 people enrolled in this option. This is an administrative issue.

Section 16 separates local plans from the PEBP plan.

We have changes from the implementation of S.B. No. 547 of the 74th Session. This bill establishes a separate trust fund.

Section 13 clarifies State subsidy for active employees be assessed to their budget and then redistributed through the rate structure by the PEBP board, which goes into a clearing fund and is then reallocated through the rate structure based on the actual cost. We would like to include that mechanism in this statute.

My final topic is our collection effort to receive retiree subsidy payments from local jurisdictions. We have over 300 local jurisdictions which we assess for retirees on the plan. We are still working with the Las Vegas Metropolitan Police Department. They have paid most of their bill, but there are some outstanding

bills they dispute. We think we are on strong legal ground; we would like reinforcement with legislative intent to collect those monies. This subject is found in sections 3, 4 and 16. Las Vegas Metro is not paying subsidies assessed before July 2005 under the legal argument of statute of limitation. The language we provide in this bill will expand that time period. They are also fighting our authority to assess late fees, which is found in the Administrative Code. The language in S.B. 103 indicates we have authority to charge late fees for implementation of A.B. No. 286 of the 72nd Session. The most controversial section is in section 4, which references the program's remedy if a bill continues to remain unpaid. We have been advised by the Attorney General's Office that we could not charge the retiree for any portion their employer did not pay because according to statute, it is the employer's obligation to make that payment. Even if we could, this would set precedence for other jurisdictions to stop paying and put the burden of payment on the retiree, which was not the intent of A.B. No. 286 of the 72nd Session.

We have been advised we cannot establish the authority to terminate a retiree if their employer continues to not pay the bill. This would again hold the retiree accountable. From an administrative standpoint, we are stuck in the middle. Since October 2003, we have been back and forth in one legal fashion or another and still are unsuccessful in collecting monies owed. This is our proposal as a way to collect the money.

SENATOR RAGGIO:

What was the court decision on the Las Vegas Metropolitan lawsuit?

Ms. JOHNSTONE:

In March of last year, the Nevada Supreme Court ruled they were required to pay the subsidy. Unfortunately, it was not ordered that they pay their entire debt, so we are still disputing it on different legal grounds. Their outstanding debt is the amount owed on subsidies before July 2005 and interest. Those items were not part of the argument before the Supreme Court but came up afterwards.

SENATOR RAGGIO:

Is there another governmental entity in debt?

MS. JOHNSTONE:

The City of Caliente is in debt. Beginning in December, they are paying us monthly under protest.

SENATOR LEE:

Where did you get the idea of waiting six years after the date of payment to bring legal action?

MS. JOHNSTONE:

This is our approach to compensate for the argument the police department makes. The statute of limitations should not have been an issue. We billed every month starting in October 2003 and had regulations in place in 2004 for administrative billing and disputes. No billing was disputed. The alternative of legal action was pursued. It may appear that we have done nothing for six years, but we have been actively pursuing collection of this money before any legal action was taken.

SENATOR LEE:

We are crafting this bill for one case?

MS. JOHNSTONE:

For one very large case, yes.

SENATOR LEE:

Is this the time frame you want codified for the future?

MS. JOHNSTONE:

This should be statute because we have a bad track record with the police department billing. We do not want to be locked into a shorter time frame.

SENATOR LEE:

Does this mean we should give our residents the choice to not pay their traffic tickets for six years?

MS. JOHNSTONE:

This should be limited to nonstate employers paying their subsidy for their retirees on the PEBP plan only.

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):

I bring an amendment ([Exhibit E](#)). It allows retired workers from nonparticipating local governments who chose not to carry their health benefits into retirement and who were not notified by their former employer of the opportunity to opt in the PEBP system, the chance to do so. One of my constituents, a retired City of Las Vegas employee, told me he was never notified of his window of opportunity to opt in ([Exhibit F](#)).

LEONARD SCHLENER:

I represent myself in favor of this bill. As Senator McGinness said, I retired from the City of Las Vegas at which time I joined my wife's health insurance plan. When she was forced to take a disability retirement, I was left with no health care. While thumbing through her PEBP booklet, I saw a paragraph saying I was eligible for health care through PEBP. When I called to inquire, I was told I had to sign up between January and March of that year, which had already passed. I was told the City of Las Vegas should have notified me in the even years that I could sign up. I was never notified. Senator McGinness wrote them a letter. Their response was that "all City of Las Vegas retirees who had retained any insurance coverage with the city" were notified. I was not a retiree as I did not carry health insurance into retirement. This leaves me at the mercy of the PEBP Board to get health insurance.

MR. RICHARDSON:

We support this bill. It clarifies how PEBP operates and helps with their collections. However, I am concerned about the provision in section 4 which could cause some people to be discontinued from their insurance without any alternatives. Could a person pay if they wanted to? It would probably cost a lot, but it would give them an option. It seems people can be a pawn in a game between PEBP and the local government. I would hope this could be resolved. If there are no alternatives possible for an individual to pay, the PEBP Board needs the authority to do these things, and I support the bill.

SENATOR WIENER:

Section 4 bothers me as well. Ms. Johnstone testified that PEBP does not have the authority to charge a retiree because it may set a precedent, and those former employers might refuse to pay and place the burden onto the employee. Have you had a conversation about possible alternatives?



BRENDA ERDOES:

We will look into it.

MR. BIBB:

Section 3 effectively addresses the issue of collecting outstanding debts. Regarding alternatives, there may be a legal precedent that prohibits terminating a person's insurance. With that caveat, we support the bill.

SENATOR RAGGIO:

Who would pay the premium in the case of the employer not paying the debt?

MR. BIBB:

Ideally, the enforcement provisions would require the employer to pay premiums in a timely manner.

DANNY COYLE (Vice President, American Federation of State, County and Municipal Employees, Local 4041):

We support the bill and the amendment offered by Ms. Johnstone, particularly section 4.

HAROLD SHRADER:

I am a retired local government employee and a member of PEBP. I share some of the same concerns of section 4. Since termination is final, if this section holds and cannot be appealed or reviewed, the bill would be subject to potential arbitrary abuse. There are no explicit or implicit protections for the retiree. It is contradictory that a member of PEBP has three levels of appeal if the claim is denied but none if his or her coverage is terminated. This language actually provides an incentive for a former employer to not pay the required retiree subsidies once the retiree's coverage is terminated. That employer would never have to pay that subsidy again. The retiree should at least be afforded the opportunity to pay the whole subsidy while pursuing legal action against his former employer. A retiree and his dependents should not be at risk of losing coverage without the right of appeal due to a violation of the *Nevada Revised Statutes* (NRS) by his former employer.

I heard Ms. Johnstone report that only 23 people are enrolled in the flexible benefit plan for vision, dental and prescription benefits for Medicare retirees. Section 10 would make flexible benefits an option. The Governor's budget proposal would eliminate subsidies for Medicare-eligible retirees. If it is

approved, then Medicare retirees would desperately need a flexible health benefit plan. The PEBP would see an influx of Medicare-eligible retirees because they could not afford the premiums of a standard health maintenance organization or a preferred provider organization. The small group of 23 members could grow exponentially. This is not the time to make such a plan optional. It should remain mandatory until the budget proposal is clarified.

LES LEE SHELL (Administrator, Department of Finance, Clark County):

We have a couple of concerns. Section 2 has language which seems to change the standard of having insurance at the time of retirement. Section 3 allows PEBP to bring a court action against a local government agency, and allows the action to be retroactive for a period of six years. We have experienced billing problems with PEBP over subsidy issues. They acknowledge the problems exist. Sometimes, it takes us longer than the 90-day period to rectify those billing problems, and we would not want to see those participants terminated from coverage during the interim. This needs some review. The six-year time period is a concern. It seems too long. This might cause administrative issues for us if cases can go back that many years, as people come on and off retiree rolls.

Section 4 implies PEBP can terminate coverage without an appeal. We would like to see the terminated party have some right of appeal. Sections 9 and 19 broaden the authority of PEBP and allow them more power over how we make our payments, and make that provision retroactive to October 2002. Clark County feels we have been responsive in paying our subsidies and that no additional regulations are required in those interactions with PEBP. This bill places unnecessary administrative burdens on local governments. Giving authority to PEBP to make decisions about coverage of our participants without review seems an unfair burden for the participants to carry. This could cause thousands of employees to return to our plan, which would incur big costs for us.

SENATOR LEE:

I do not want to see people left out in the cold. Is PEBP not required to provide a minimum payment schedule? It seems ludicrous that if someone does not pay their entire bill in one or two months, then PEBP is going to kick them out of the system. Is there an option where they can continue coverage with some payment until the amount is rectified?

MS. JOHNSTONE:

We are seeking help on protracted unpaid bills. We are not talking about bills 90- or 180-days old. This addresses a problem that is over 5 years old. We would be establishing procedures by regulation. If a jurisdiction is worried about an ulterior motive of PEBP, I can allay those fears. This stems from an unusual situation. Clark County has been delinquent in working with us on billing issues, but they are not who we are addressing in this bill.

SENATOR RAGGIO:

The money committees have been concerned about the Las Vegas Metropolitan Police issue for two sessions. I assure you all that we have been discussing this. Why has this financial obligation not been satisfied?

ADAM SEGAL (Legal Counsel, Metropolitan Police Department and the City of Caliente):

We are against S.B. 103. Let me first clarify previous testimony about the Nevada Supreme Court ruling with Metro. It was implied that the Court ruled Metro owed the subsidies. The ruling was strictly confined to two declaratory judgment issues raised by Metro seeking clarification. Those issues are not at dispute now. The reason the Court did not rule that Metro was required to pay the amount demanded by PEBP is because PEBP failed to file a compulsory counterclaim seeking those subsidies. This is the heart of the ongoing dispute. Although PEBP continues their stance, they have not filed the lawsuit to collect, even though it was a compulsory suit after they were sued by Metro. They will not sue Metro or the City of Caliente for subsidies because they know what will be revealed.

The A.B. No. 286 of the 72nd Session states the public employee's last employer, upon retirement, would have to pay a subsidy equal to what the State pays. It was originally billed that way by PEBP, but they later decided to prorate the subsidy obligation among all former public employees over time. Instead of going back to the Legislature to draft a law to prorate, they adopted regulations which changed the subsidy statute from one creating an obligation on the last employer prior to the retirement to one prorating among various former employers. This is a problem. Nevada Legislature had not given PEBP regulatory authority regarding subsidy statute. They had no authority to adopt that regulation and no authority to change the law. Metro and the City of Caliente have attempted to follow the law as written short of adhering to this regulation adopted without authority. They have paid a big price over the years

and have been beaten up in hearings such as this. The truth is those two employers are following the letter of the NRS.

My clients have identified eight sections of S.B. 103 with problems. They oppose section 2 as it forces employers like them to take back retirees into any employer plan they have without regard to whether the retiree in question was ever in that plan, whether the plan existed when the individual retired or whether the employer has any authority of enrollment into that plan.

My clients oppose section 3 as it attempts to fix PEBP's failure to sue them within the existing three-year statute of limitations. They are attempting to cover up their own failure to sue on time. They had three years and failed to do so even after the judgment was a compulsory judgment to file in the case I spoke of earlier. They want to change the law to accommodate their mistake. Six years is an astoundingly long statute of limitation for a problem they would be aware of ten days after it is due. If you adopt this change in timing, it should not have a retroactive clause. My clients are citizens who have the right to rely on the law as written, which provides a three-year statute of limitations. Section 3 also creates a presumption that in any dispute, PEBP's bills are presumed correct. This reverses traditional common law, which holds that anyone with a claim has to prove their claim. This flips that assumption, where the party challenging PEBP would have to prove that claim wrong. Metro is being billed for several individuals who never worked for them. PEBP has agreed these people never worked for Metro but say the Public Employees' Retirement System has assigned their names on an internal audit to Metro and, therefore, can bill Metro for them. However, PEBP will not show us this audit. This switches the burden of proof to a party that will not even access their records or show an audit.

Section 4 expands the subsidy obligation to anyone ever covered in the past by any employer plan at any time with no regard to when the individual left that plan to join PEBP upon retirement. If a person worked for you a few years 30 years ago, you will be billed for part of their subsidy. The A.B. No. 286 of the 72nd Session intended to have the last employer pay its fair share of subsidy if the worker rejected that employer's plan upon retirement to enroll in PEBP. Section 4 also attacks due process where PEBP can terminate coverage of retirees if any portion of the amount due—whether their portion or a subsidy—is late. As the bill is written, payment could be one day late or one dollar short for the coverage to be terminated without appeal or review. This is

an astounding provision. This would afford PEBP more power than any State entity including trial judges. They are all subject to review.

Section 9 adopts retroactive authority for PEBP to adopt regulations prorating the subsidy. You as Legislators are being asked to endorse an improper and illegal action taken by PEBP. Although they do not want to admit that Metro and the City of Caliente were right in saying PEBP did not have the authority, they want to gain retroactive authority. Metro and Caliente have been right in reading the statutes. The PEBP did not have the authority in their case since they are asking for that authority now. Section 9 also asks for PEBP to charge interest penalties. As adopted, the subsidy statute did not give PEBP authority to adopt regulations. Now they want retroactive endorsement for exceeding their authority in the past. It would be unfair to adopt this retroactively and penalize two employers who are following the letter of the law.

Please read section 19 thoroughly. It says the Legislature gives blanket approval for everything PEBP has done since 2003, whether legal or not, whether disclosed or not. They want legislative approval to rule on appeal against Metro and the City of Caliente when they have yet to file a lawsuit.

SENATOR RAGGIO:

What is the amount in dispute with Metro and City of Caliente?

MS. JOHNSTONE:

The amounts for Metro penalties are \$433,141.39 and subsidies, \$124,926.54. The bill was originally \$1.6 million; most has been paid.

SENATOR RAGGIO:

This is important to note. As an attorney myself, Mr. Segal has some interesting points. However, every public employer could have taken the same position and has not. There is clear legislative intent in A.B. No. 286 of the 72nd Session. Metro and the City of Caliente have enjoyed the benefits of this coverage all of this time, so is there not some moral obligation to comply with the law and perhaps bring a declaratory judgment to see if further action is necessary?

MR. SEGAL:

Both entities also have a moral obligation to pay money only on what is legally prescribed. Please show us in the law where we are obligated to make this large expenditure. We cannot find proof. The goal for both clients is to follow the law

as written. Their moral obligation lies there. Senate Bill 103 confirms that PEBP cannot point to law to say its bills are correct. Neither client wants to hurt their retirees; both have plans in place to cover them. They do not want to spend funds that are not authorized or required by law. Prorating is not in the law.

CHAIR WOODHOUSE:

We will close the hearing on S.B. 103. This hearing is adjourned at 3:04 p.m.

RESPECTFULLY SUBMITTED:

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Makita Schichtel,  
Committee Secretary

APPROVED BY:

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Senator Joyce Woodhouse, Chair

DATE: \_\_\_\_\_