

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Sixth Session  
March 21, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:01 a.m. on Monday, March 21, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Cyndie Carter, Committee Manager  
Cheryl Williams, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Dana K. Bilyeu, Executive Officer, Nevada Public Employees' Retirement System  
Cadence Matijevich, representing the City of Reno  
Renee Rungis, Director of Human Services, City of Reno  
Mike Cathcart, representing the City of Henderson  
Ted Olivas, representing the City of Las Vegas  
Lisa A. Gianoli, representing Washoe County  
Kathy Clewett, representing the City of Sparks  
Carole Vilardo, President, Nevada Taxpayers Association  
Tray Abney, representing, Reno/Sparks Chamber of Commerce  
Rusty McAllister, President, Professional Fire Fighters of Nevada  
Ronald P. Dreher, representing Peace Officers Research Association of Nevada  
Craig M. Stevens, representing Nevada State Education Association  
P. Michael Murphy, representing Clark County  
Carla Fells, Executive Director, Washoe County Employees Association  
Danny L. Thompson, representing Nevada State American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)  
Kevin R. Ranft, representing AFSCME, Local 4041  
Leonard Nevin, representing Nevada State Law Enforcement Officers' Association

**Chair Kirkpatrick:**

[Roll was taken.] I do not use the gavel, so I try to talk firmly and loud because I have seen some Chairmen break the gavel if it does not get quiet enough. So I try not to.

This morning we are going to start with a presentation by the Public Employees' Retirement System (PERS). On Friday, we did the Public Employees' Benefits Program (PEBP) and heard their bills. I do not know if it was helpful for the Committee to have it fresh in your minds so you could ask questions. This morning we are going to do the same thing. I would like to invite Dana Bilyeu up.

**Dana K. Bilyeu, Executive Officer, Public Employees' Retirement System:**

Before I go through the prepared presentation ([Exhibit C](#)) which we did provide to the members of the Committee on Friday, I did want to take a moment to introduce my fellow officers for the system. Directly behind me in the first row is Ken Lambert, our Investment Officer. He has been with the system 15 years. Tina List is directly to his right, and she is our Operations Officer. She has been with the system for 10 years in various capacities, and then Karen Kimball, our Administration Services Coordinator, is the secretary of the board and basically runs the shop. With that, I will continue with my presentation.

The first page is the Mission of the Retirement System. The Public Employees' Retirement System (PERS) was created in 1947, and we did not pay benefits until 1949. The creation of the system was for two purposes. Number 1, there was no ability to attract and retain workers in public service because there was no retirement benefit. All of the states surrounding Nevada had already created defined benefit pension plans for their workers. As well, there was no ability for public workers in the state at the time to participate in Social Security.

When Social Security was created in 1935, the federal government was under the impression that they could not tax state and local government treasuries. Public workers were left outside of that system, and it was up to the states and the local governments themselves to create retirement security packages for their individual members.

The Mission was created in 1947, and it remains the same today. There are three fundamental tenets contained in the Mission Statement. Number 1 is to furnish public workers and their dependents with a retirement program that provides a reasonable base income for retirement or for periods where a disability has removed a worker's earning capacity. Number 2 is to encourage those public workers to enter the public workforce, and number 3 is to encourage them to remain in the public workforce for such periods of time that the people of the State of Nevada can gain the full benefit of their training and experience.

What is Nevada PERS? We are a constitutionally-created trust fund. It is contained in Article 9, Section 2 of the *Nevada Constitution*. We are a multiple-employer, cost-sharing defined benefit pension plan. There are 183 participating public employers, and that is virtually every public employer in the state, with a few exceptions. The state is only one of those 183 employers and is about 16 percent of the fund itself.

We are a human resource tool designed to achieve goals for the employer, meaning workforce management types of goals: attraction, retention, keeping

the cost of retraining down. We are also a benefits package for all public employees within the state.

There is full portability amongst all employers so that if an employee moves from the state to a school district, from a school district to a county, that same benefit is maintained regardless of what public employer he participated under.

Page 4 of [\(Exhibit C\)](#) is a very brief snapshot of the benefits themselves. When we say we are a cost-sharing defined benefit system, the defined benefit is based upon a statutory formula: your years of service, your average compensation, and then a multiplier is applied to that.

In 2009, the Legislature added a second tier of benefits to PERS with a lower multiplier, a higher retirement age, and a couple of other differences in the benefit structure. That has been in place for approximately one year.

It is a lifetime benefit and that means that as a public employee, when you retire you cannot outlive your benefit itself. It is guaranteed by the trust. The trust currently has assets of about \$24.5 billion. I will talk a little bit about the investment program in a few minutes.

Members qualify by vesting and attaining the required levels of age and service. Again, it does function in place of both Social Security and the public employers' or the employers' sponsored retirement system.

When people talk about retirement security in our county, we normally talk about it in the form of three legs of a stool. There are personal savings, employer-sponsored retirement systems, and Social Security. The components of those three add up to the required income security such that you can retire in your golden years and live at the same level as you lived while actively employed.

For public employees in the state of Nevada, we function as two of those three legs. We function not only as the employer-sponsored portion of the benefit, but we also function in exchange for Social Security.

Page 5 shows you the cost-sharing nature. Remember I said we were a cost-sharing multiple-employer plan? In Nevada, we require our employees to participate equally in the financing of their pension benefit. They pay one-half of the contributions costs as they come in. So when our rates go up, employees either take a salary reduction to match that increase in the rate, or there may be a negotiation where they give up cost-of-living adjustments with their public employer.

There are 103,000 active members, so we share one-half the cost. You can see visually the breakdown of our public employers participating in the system. You have the top five as far as body count goes broken out separately, and then the remaining 168 employers.

Notice that the Clark County School District is our largest employer. They actually dwarf the state by about 12,000 employees.

On page 6 ([Exhibit C](#)) is a snapshot of the average active members of the system as of June 30, 2010, which is our most recent actuarial evaluation for the system. The regular fund has over 90,000 members. The majority of our liabilities are contained within the regular fund of the system. At least when you read the press, you get the impression that people come to the public sector at very young ages: 21, 22, and 23. This is actually not the case. The average entry age into the regular fund is age 35. So the average age of our plan members with about 10 years of service is slightly under 45. That is the average age of the participating public employee in the regular fund at this point.

Almost 55 percent of the active workforce in the regular fund make less than \$50,000 a year. In keeping with what you expect from either a corporation or any business, your top less than 3 percent make over \$100,000 a year. We have doctors in this plan; we have administrators in this plan, county managers, city managers, and professors. The contingent that you see above \$100,000 are those that are in the highest management and professional capacities at all of the government levels that are participating.

The police/fire fund has an additional public policy purpose for its existence. We require our public safety members to retire early. That serves the public purpose for our taxpayers, which is to provide a youthful and vigorous front line public safety for us that is capable of protecting the public from physical harm. So the 55-year-old firefighter can still carry the 80 pounds up the 22 flights of stairs to the top floor of a hotel fire.

Your police force is still actively engaged in protecting the public from physical harm. So you have a slightly younger entry age into that program. It is 28.5 years old. Again, still a little bit older than most people would expect, but nevertheless a little bit younger than in the regular fund. Of course, you have higher salaries in the police and fire fund. That is directly related to their taking on that additional personal risk, so you are rewarding the people that are running toward the danger instead of running away from it during their active working period with a higher salary.

Fewer than 13 percent of those in the police/fire fund have reported incomes of over \$100,000. Again, that is a higher percentage, but you notice there are only about 12,000 participating members in that program. It is a much smaller program.

**Chair Kirkpatrick:**

Does anyone have any questions?

**Assemblywoman Pierce:**

I thought I was told the other day that in 1986 the public employees started to participate in Social Security.

**Dana Bilyeu:**

Actually, in the 1970s they opened up Social Security on a voluntary basis. In 1983, the United States Congress passed a very comprehensive reform package to Social Security. At that point, they put into provision that if you were in Social Security you could not opt back out again. That was one of the things that happened. There was a deadline in 1983 and in 1986 for those people who are public employees who also had some piece of Social Security, and they instituted offsets against our benefits. Social Security offsets their benefits against our benefits. We can petition to get into Social Security, but we have to do it on a going-forward basis and only for new hires. Those that were in could no longer opt out. They basically closed the window on Social Security.

**Assemblywoman Pierce:**

So people on PERS do not get any Social Security.

**Dana Bilyeu:**

The other thing that may have happened and what you might be thinking of is Medicare coverage. In 1986, all public employees were required to participate in Medicare, and I believe that is the date that that occurred.

**Assemblywoman Pierce:**

Okay, thank you so much.

**Assemblyman Goedhart:**

How about where someone started working at the age of 25 and retired as a firefighter at the age of 50. Is it possible for them to work in the private sector for 15 years and still accrue Social Security benefits going forward?

**Dana Bilyeu:**

It is possible for them to do so, but what Social Security will do; they will look at your total career numbers. So there is an offset, and it is called the Windfall Elimination Provision (WEP). They will take the years of service that you had outside of Social Security and your benefit based on that, and they will do a sliding scale offset for your Social Security benefits. You will get a Social Security benefit, but it will be reduced by that time you spent outside of Social Security. You will have a 15-year benefit that then is calculated down, and I do not know the formula. It is a sliding scale depending on how many years you have in both, but you will be offset to some portion in the Social Security benefit.

**Assemblyman Livermore:**

I am looking at the benefit recipients, and I did not see anything on what the life expectations are. How does that affect the need for a pool of people that pay into the program and the substantial amount of revenue you need to have in order to make those payments?

**Dana Bilyeu:**

The way we finance the program is that we require all public employees as they are contributing and their employers to pay the normal cost of their benefit on an accrual basis. We are prefunding those benefits going forward, which is very different than Social Security which is basically an intergenerational transfer tax, where today's taxpayers are paying for today's benefit recipients. You are passing the cash back and forth.

For PERS, we do not do it that way. We require the accrual of the benefit and payment of the benefit on a yearly basis, so we value what we call normal costs of the benefit. That is the yearly accrual of our benefit and, of course, there is the payment that we have in our contribution rate also for the unfunded accrued liability, which is kind of a layered mortgage payment that we are making.

Mortality is very important as part of the calculation process, and we actually continue to look at mortality tables going forward. Mortality tables are adopted by the Public Employees' Retirement Board on the basis of recommendations from the actuary. Frankly, they depend on which part of the population you are in and what we expect your life expectancy to be, on average.

In the most recent experience study, men are actually making greater leaps in longevity than the women in our population. Women's longevity increases are slowing down and men's are growing, so the increase in the women's mortality

tables was identical to the men in the police/fire fund. Women are slowing down while men are making the leaps.

On average, age 82 is about what we are looking at, but it is very different depending on which area of the population you are.

**Assemblyman Livermore:**

My reason for that question is to make sure that, as the retirees enter that phase of retirement, there are sufficient funds there to make those payments without coming to the Legislature and saying, we need an infusion of money.

**Dana Bilyeu:**

The purpose and the way we finance the program, the obligations of the employers and the employees are solely to make those contribution payments on a yearly basis. We currently have a trust fund of about \$25 billion, and we are actually a cash-flow-positive program at this point. So the contributions coming in on a yearly basis from our public employers and public employees are actually more than the benefit payments that are going out. We are still continuing to accrue additional contributions in excess of those that are also in the markets for us. I do not anticipate at any time in the foreseeable future any requirement that we would come to the Legislature and ask for any type of infusion of monies, given the size of the asset pool that we already have on hand.

**Chair Kirkpatrick:**

I think you are going to discuss that a little bit more as we get to unfunded liability, but one of the things I like to make sure that people realize is that we are one of the better states out there. People actually look to us on our PEBP. I have a couple more questions, but I want to make sure that you go into how the PERS board is made up, and I do not see that within your presentation. That is what I get the most phone calls on in my district.

**Assemblyman Stewart:**

I want to make sure that I understand this. Say you are in PERS and you retire at age 40 after 20 years of service, and then you work an additional 20 years in the private sector. Someone else who was not in PERS works 20 years. The person who is on PERS and gets Social Security after the 20 years gets less money than the person in the private sector. So the person on PERS is penalized, although he works the same amount of time in the private sector. Do I understand that correctly?



**Dana Bilyeu:**

This is correct. The rationale for Social Security's offsets, the Windfall Elimination Provision is for those of us that work outside of the Social Security system for a fairly significant period of time and yet still qualify for quarters. We have the 40 quarters, so we are eligible. When Social Security looks at us, we tend to look like we are low-wage earners in the Social Security formula. Social Security is actually weighted so that you are paid a higher percentage at the low end of the wage scale. So it is a weighted poverty prevention program.

What the United States Congress basically did in 1983 was say if you are outside of Social Security for any given period of time, we have an obligation to the Social Security trust to make you look as though you are not a low-wage earner simply because you have fewer quarters and much of your time was outside of the workforce.

It is sort of the same idea for people who stay out of the workforce for long periods of time raising families. Social Security will look at them and see if they have wages outside of Social Security. Otherwise they will be entitled to the higher benefit as their quarters qualify them for the supported end of the benefit scale. For those of us that have the additional benefit, U.S. Congress said you are not low-wage earners, you have a qualified benefit somewhere else.

You are right. If you have a 40-year career, 20 years in the public sector that does not participate in Social Security and 20 years in the private sector, your Social Security benefit is going to be reduced on a sliding scale, depending on how much your wages were that were reported under Social Security.

**Assemblyman Stewart:**

So, in summary, then they get screwed.

**Assemblyman Ellison:**

The formula that you use now for new hires versus somebody that has been in the system 15 to 18 years, is that formula going to change and make it a higher rate for new people coming in?

**Dana Bilyeu:**

A contribution cost?

**Assemblyman Ellison:**

Right.

**Dana Bilyeu:**

The contribution is pooled, so regardless of which tier you are on, if you are on the old tier with a higher multiplier or the new tier with the lower multiplier, the difference between those two multipliers is 17 basis points. They are pooled together, and everyone is going to pay the exact same contribution costs going forward.

Over time, as you drop off of the higher tier, those of us that are working towards retirement and you are replacing us with people who are on the lower tier of benefits, the normal cost of the benefit will come down over time. It will actually be a cost savings to the participating employers and employees.

**Chair Kirkpatrick:**

Are there any other questions?

**Dana Bilyeu:**

On page 8 we used the same visual for the payment on the end fund of the accrued liability as we did for the participating under the shared contribution costs because, in Nevada, we are unique in the country in that we require our employees to actually pay on the end fund of the accrued liabilities. Most states bear that cost only on the employer side of the equation. They will set a statutory rate for the employees, and then the employer's rate will float up and down.

In Nevada, our rates float on both sides of the equation. When we take a loss in the market that causes us to need higher contributions to make up that funding deficient over the amortization period, our employees are also going to share in that cost. The clearest example of that is with state employees because our rate is going up in July of this year to match the funding period that we have for financing the program. It has been proposed by the Governor as a pay decrease: a 1.125 percent pay decrease for state workers directly related to the payment of their half of the contribution change.

We do that differently here. It has been that way since the 1970s. We have required our employees to participate equally. That was a decision that the Legislature made and it was one that was made very early in the financing process for PERS. Again, that shared responsibility is something that is really a hallmark of our program in Nevada.

As you can see from the visual, we have 103,000 active members who are sharing the investment risks through the payment on the end fund of the accrued liability. Two are employers, so when you look at our rates, our rate on a total basis is going to be 23.75 percent. One-half of that cost is directly

taken out of the public employees' pay. The other one-half is being paid by the employers themselves.

Look on page 9 ([Exhibit C](#)). Because we have always required our employees to participate in the contribution costs of the system, we do everything we can to moderate changes in our contribution rates. We cannot take out all volatility since we are in the markets and there is tremendous volatility there, as I am sure that you are all familiar with over the last decade with the recessions that we have been through. We cannot remove all the volatility from the contribution rate, but the retirement board uses all sorts of tools to try and meter that contribution rate volatility. Because we do that, we are also a very long-term financier of our unfunded accrued liability.

We do things over a 30-year period because we know that slow and steady wins the race when it comes to financing. I will talk a little about that when I get to the investment program. We believe in trying to meter as much risk as we go forward. You cannot get all the risk out of it when you are out in the investment markets. We try to do it in a way that makes it very, very slow and very, very steady over time.

This is a 20-year history of the funded ratio, and you can see the slow climb from 1984 up to the height of our funding, which was almost 86 percent financed at that time. Of course, you can see the recession of our funded ratio over the last decade, and that is virtually 100 percent or at least 95 percent tied to the investment markets themselves.

In fact, you sort of see the bump-up in the funded ratio and that is because we had that period of time between the recession at the beginning of the decade and then the very, very, deep recession that we had. We were actually in recovery at that point until 2009 when we took that significant loss in the investment markets.

**Assemblywoman Neal:**

On this chart for the PERS funded ratio, what did you do when it was at its peak at the 86 percent? Did you have some kind of savings plan where you did something more with money? What happened there, because you went down, can you explain that?

**Dana Bilyeu:**

Certainly. In 1984, which is the first date on this chart, we put into place an amortization period, sort of like a mortgage. There is a component of our contribution rate that goes to retire the unfunded liability over time. The first 16 percent of our rate is just paying our benefits as we are accruing them.

The remaining piece of it is literally a mortgage payment. You are paying down that debt over time.

The mechanisms have remained the same over the long term, so we were making those payments over time, every year. Everyone was doing it up to 1999-2000. The same mechanisms are still in place; what happened was we had a recession.

So we invest the monies out into the various markets: private equity, equities, bonds, international bonds, international stocks; and when the markets go down, that is what causes us to lose our funded ratio. It is not anything that we have done differently. It is when the markets move away from you, you have to recapture those monies over time.

So, slowly we have lost funded ratio because we use various methods to bring in those losses over time so we do not take a huge hit in a single year, which would cause a huge change in our contribution rate. So we employ various tools to smooth that downward trend as well.

All the mechanisms have been identical. What has happened to us is, because we are in the stock market and the stock market loses money, we lose money as well. That directly affects our funded ratio.

**Assemblywoman Neal:**

What are the tools that you are using?

**Dana Bilyeu:**

The first tool we use is the type of valuation approach, which is entry age normal. Entry age normal is a very conservative valuation tool that requires us to currently finance our benefits. That is the first thing that we do. It is also the most predictable of all of the approaches to financing a defined benefit pension plan. Most public pension plans use it, and I think it will end up being the required approach under the Governmental Accounting Standards Board (GASB).

Secondly, we use a more conservative approach from an investment perspective than many of our sister pension funds across the country. We tend to worry about risk in such a way that we attempt to hedge against the types of risks that many others do and we do not use hedge itself. But that is kind of what we are doing.

We have a smoothing period for purposes of taking in our losses, so if we have a loss in a single given year, we are going to take 20 percent of that loss in for

the next five years. It is a layered approach, so if we have a gain in one year, we take that in over five years. If we have a loss in one year, we take that in over five years. That has the effect of metering volatility in those contribution rates going forward.

The thing that the Legislature has put into place for us is an actual rounding mechanism in our statute. When our rate goes up or down by a valuation perspective, there is an actual rounding mechanism that we do not go all the way to either the highest point or the lowest point. Those all tend to help us meter the contribution rate volatility going forward.

**Assemblyman Goedhart:**

On the PERS Funded Ratio Sheet of my presentation, at 2008 it shows a gradual decline towards 2010 because I think you have based it on an every other year reference on this spreadsheet. I think it was 2009 that would show a steeper drop and 2010 would have shown a jump up again, because if you look at the last page in 2010, I believe you had a pretty good rate of return of 10.8 percent. Is that correct?

**Dana Bilyeu:**

That is correct. The way we build this chart is we do valuations every single year, but we only value for purposes of contribution rate changes every other year.

**Assemblyman Goedhart:**

That gets back to smoothing out the peaks and valleys, rather than having a big swing one way or the other. You are basically doing a law of averages. The other quick question is at 70.5 percent, and I have seen different reports from different groups like the Pew Research Center and whatnot. It is always better to ask the person that is in charge of the fund. How are we doing on a national basis, and what exactly is the unfunded liability in PERS, to the best that you can determine it?

**Dana Bilyeu:**

When you look at the national studies across the country, there are about five things that the Pew Research Center would look at. Moody's is another one of the rating agencies that just did a review of public pension debt as well.

The number 1 thing to do is always look at whether or not your plan sponsor, the Legislature, your employers, and employees, are making the actuarially required contributions to the program so when the bill comes due you are making those payments every single year.

The second measure of health is your funded ratio and the Pew Center uses 80 percent as their sort of bogey, Moody's uses a 70 percent bogey. Either of the two indicate health as long as you are making those required contributions.

I always want to make sure that I contrast Nevada to states where plan sponsors have not been making their contributions. They are the ones who are making your headlines most of the time: the State of Illinois and the State of New Jersey. The fund will come to them and say this is what is required in order to maintain your funding and your funding progress going forward. They simply say, no, we are not going to make the payments. So you see that funded ratio go down.

Our funded ratio went down in a direct relation to the investment return, the markets themselves. I did not answer the last portion of your question, which is what is the amount of the unfunded liability? Assets on hand are about \$25 billion, and the unfunded portion of it is about \$10 billion.

**Chair Kirkpatrick:**

There are not too many states that could have proud numbers like that, right? I would like to recognize Mr. Bernie Anderson; he is former Chairman of Judiciary and an Assemblyman who was one of the people that got me on the right track my very first year. Welcome to Government Affairs.

**Dana Bilyeu:**

Page 10 of my presentation is an important graph to look at for purposes of who is paying for and how many people we have in the system. As you can tell, as the population of Nevada has decreased, so has the population of public employees, and even at our high point in 2008 there were 106,000 public employees. I know many of you probably heard the statistics about us being dead last in the country for the ratio of public employees to citizenry and it is obvious that is the case. It continued in 2010, when we had a reduction from our high point of 3,000 on a total basis, total public employees in the state.

Page 11 is a snapshot of what the actual pension cost is. So many of your press reports talk about how public pension costs are going to take away from other essential services. We internally went through a process of gathering all the public budgets in Nevada so that we could take a look at what is the ratio of our yearly cost to the yearly budgets that are reported. We tried to use a very conservative number of approximately \$27 billion, which is the total public expenditures sans highway funds and those sorts of things which are not payroll costs and essential government service costs.

We looked at what our pension costs were as a percentage of that, and that is what you see here. I was concerned for a while because the results seemed to always indicate that we are a very big driver of costs in the public sector. I was uncomfortable using this statistic until there were two different national studies that were done that showed that this is virtually the same in every other state, even in those states that are the worst actors, New Jersey and Illinois.

The Center for Retirement Research at Boston College pegs their allocation of public budgets to retire or to bring whole their pension funds into a level of good financing at about 6 percent of pay. When you look at our costs, it is very clear that we are close to the national average on what our allocated cost is as a percentage of the total public budgets.

Because we make our employees pay one-half of the cost, we wanted to show what their portion of that was as well.

Page 12 is our cost efficiency chart. We took our contribution rate and we plotted it against states that participate in Social Security, states that do not participate in Social Security, and then the private sector with Social Security as well.

The top bar you see is a private employer with a defined contribution match. We took an average match; it is very difficult in the private sector to get to an average match because it tends to be a sliding scale. The first 2 percent is matched 100 percent. The next 2 percent is matched at 50 percent. However they are doing it, it can be a sliding scale. We took a basic flat 4 percent match and plotted first the 12.4 percent that is the Social Security required payment, which is the money that would just go off to the federal government. Then we have the two pieces of the contributions for a defined contribution plan in the private sector.

The second bar down is the Nevada PERS contribution rate, and you see that exact dollar matching cost to the employer and the employee. Those sister states that do not participate in Social Security, there are ten of us out there that do not participate. You can see the employer's portion of that cost is more than one-half, and that is because most of those states do not require their employees to pay on the unfunded accrued liability of the program. So the employer bears more of the weight than the employees do.

What is most telling is the bottom line of the chart, which shows the Social Security eligible states. For the 40 states that do participate in Social Security, the first 12.4 percent goes off to the federal government, then you have the employers' portion in the dark blue bar, and the

employees' portion, for a total cost of retirement income security in those states of over 27 percent.

So from a competitiveness base, it is not measured only against the other public sector plans in other states, but also against the private sector. The cost to finance the Public Employees Benefit through the Public Employees Retirement System is quite competitive.

Before I go into the investment strategies on page 13, I will address the Chair's question regarding the Retirement Board, because the Retirement Board is a board of trustees. They are fiduciaries to the system; they are the ones who set all policy decisions for the retirement system.

When I think about PERS, I always try to figure out how to think about us conceptually, and that is that we are really our own unit of local government. We are sort of like a general improvement district (GID) that sits out to the side of all of the other component units of government because we owe the same duties. The Retirement Board owes the same duties to an employee at a mosquito district as they do to a Clark County School District employee because we have all different types of employees in the system.

So we sit out on the side and we owe duties to our employers and employees at all levels of government. The board is an appointed board. It is a board that is created in the *Nevada Constitution*; you are required to have a public employees' retirement board. The Governor makes all seven of the appointments. It is essentially a representative board. The Board has three management positions, three employee positions, and a single retiree position. That is where they come from; these are groups in our statute that they are nominated from, and then the Governor makes those appointments.

Once they set foot into the retirement boardroom, those hats all have to come off. Whether you have been appointed from nominations of public employee groups or from boards of county commissions or city councils, that does not matter any more. You come in as a fiduciary, and you owe the same duties of loyalty to everyone regardless of where you come from in that boardroom. The board makes all the decisions with respect to asset allocation, how we invest the money based on the recommendations of staff and our investment consultants. They make all of our policy decisions with respect to interpreting the statute on what is reportable compensation to us, whether or not people are eligible to be enrolled in the system, because we do not allow the employers to control that. That is solely controlled by the trustees of the system.



**Assemblyman Livermore:**

My question is regarding your investment strategies and your payments received. In the current law . . .

**Chair Kirkpatrick:**

She has not gotten to that information yet. I made her stop and tell me about the board.

**Assemblyman Livermore:**

I will reserve my question for later.

**Chair Kirkpatrick:**

Let me ask you this. The biggest question I get is, how do they know who is nominated? Because they never feel they are in on that process on who is nominated. Sometimes a person may be within the group and really is a manager and now he is wearing two hats, and then the representation feels slighted. Last session I reached out to Governor Gibbons at least five times to understand how that works. I did not receive a response. I am wondering how are the regular members that receive PERS supposed to know what these people are doing. Are there minutes out there?

**Dana Bilyeu:**

The Retirement Board actually meets monthly. It is an open public meeting. The agendas are posted subject to the open meeting law. We have an education session at the beginning of every meeting that talks about both an operational topic and an investment topic, and then they go into their regularly scheduled board meeting. Everyone is invited to attend; those minutes are out on the web as well. The minutes are posted once they have been approved by the Retirement Board. They are about a month behind, but they are posted. It is absolutely a public process.

The statute for the nomination process to the retirement board was drafted in 1989. Prior to that, there were other participants on that board who were not part of the representative groups so those board members were not fiduciaries or did not have vested interests in the program itself.

The Legislature made the decision to make a change to a fully representative board, and at that point they put into place categories that basically allow for state workers, teachers, police and firefighters. All of the various groups do not have to be part of an association, but you need to at least have been nominated by various groups.

The Governor is the one that takes the nominations and then makes the decisions to make his appointments to the retirement board based on what he has received. That is also true on the management side. County commissions and city councils have an opportunity to make nominations to the retirement board. There is one dedicated position that is required to be a director of a department or a manager at a certain level. There has always been a requirement that there be one retiree representative on the board. There are seven of them, and that is about the normal size of a board. They go anywhere from 3 up to 15 members. It is a very good, workable group, and they do very much act solely in the best interests of the members and the beneficiaries of the program.

**Assemblyman Livermore**

This is related to the board of director's fiduciary responsibility. I am referring to the responsibility to pay your contributions within so many days. Does the board of directors get regular reports on whether or not contributions and payments are made in a timely fashion? Do they review audits to make sure that the payment that was paid is applicable to the amount you received?

**Dana Bilyeu:**

There is a statutory deadline; reports and monies are due on the 15th of the month. If we have employers who are late in either filing a report or providing the monies to us appropriately, penalties are assessed against the employer. That is the first process if we have employers who have been failing to make their payments for whatever reason. There are times where a public employer can get into fiscal difficulty. The most recent have been our rural hospitals, because of the recession. We go through a process where we bring them to the retirement board and we talk to them, not only about the penalties themselves. They sometimes ask for waivers of those penalties because they are already having a difficult time making their payroll obligations.

The retirement board is actually obligated under *Nevada Revised Statutes* (NRS) 286.462 to report them to the Department of Taxation if a public employer fails to make payroll for us. We have actually used that in the past. About a decade ago, we reported an employer to the Department of Taxation. The employer then went in through the committee on local government finance and did a workout program for the employer.

In addition to that, we have three auditors who are in the field. We rotate through. We have 183 public employers, and we try to get through all 183 on a rotating three-year basis. In addition, our top five or six employers get special compensation audits that we do on a yearly basis to ensure that they are enforcing the rules on what is reportable compensation to us and what is not.

We also balance those reports. When they report, they are actually required to report the hours the individual worked, because service credit in Nevada PERS is day-for-day accumulation. So we expect if a person is going to be reported to us on a full-time basis as a 40-hour-a-week employee, that by the end of the year there are going to be 2,080 hours reported to us.

They also report wages to us, and we balance those today so we will see exactly what people are being reported at and whether or not those balance on an individual basis. We post that service credit to the individual's account on a monthly basis as well.

**Chair Kirkpatrick:**

Are there any other questions?

**Assemblyman Goedhart:**

Referring back to page 11 with the pension costs as a percentage of total Nevada public budgets, you said it equated to something like \$27 billion when you factor in all costs. When you relate the PERS contribution as a percentage of total payroll, you go back to page 12 where it is about 11 percent, is that correct?

**Dana Bilyeu:**

That is correct, and that is the cost of efficiency.

**Assembly Goedhart:**

So when you add it as a percentage of total payrolls, the PERS contribution is actually about 11 percent.

**Dana Bilyeu:**

From a total payroll perspective, the employer's portion of the cost is about 11 percent. The employees also match that. We have a reported payroll of \$5.4 billion reported to us annually.

On the investment pool, we have approximately 20 external investment managers who manage the asset allocation that you see before you on page 13 of my presentation: U.S. stock, international stock, U.S. bonds, international bonds, and private markets. You will see that there is an asterisk that indicates private markets equal 6.5 percent in private real estate. We buy real estate on an individual or single account basis, so we own outright the assets in the real estate portfolio. Then 3.5 percent is private equity, all the way from venture capital up through distressed debt and those sorts of things as well.

The asset allocation is a decision that the Retirement Board makes. We review it on an annual basis, and we make changes to it. We assume that we are going to make an 8 percent return number based on the various components of that asset allocation. When you combine those all together with the expected return for each of the asset classes, we arrive at the expected return of 8 percent over the very long term.

On page 14 you will see that there are three other pools of assets that we manage for the Legislature. The first one is the Legislators' Retirement Fund. It is our smallest fund. It has \$4.5 million in it, and that is to fund the retirement benefits for our Legislators.

The Judicial Fund has \$52.3 million in it. This fund was created in 2001. Prior to creation of this fund, it was an unfunded program that was pay-as-you-go. So the Administrative Office of the Courts would come to the Legislature every legislative session and give you a bill for how much benefits would be paid to retired judges. The Legislature did a study, and between 1999 and 2001 we went to a contribution funded system. We got about \$5 million as seed money to start that fund up, and we have been managing that since 2001 on your behalf.

The third fund, which is now approximately \$100 million, is the Retirement Benefits Investment Fund. That is a voluntary fund which our employers can opt to participate in. They initially adopt trust provisions at the local government level for their health care, their other post-employment benefits unfunded liabilities, and they have an opportunity to come into this fund and we will manage the assets for them on their behalf. We have about five employers participating in that program at this point, for a total of about \$100 million.

**Chair Kirkpatrick:**

Ms. Neal has one question.

**Assemblywoman Neal:**

Going back to your PERS investment strategy, for the private real estate, can you break that out? Are they buildings, what state are they in, are they in Nevada, and how is current depreciation affecting that asset?

**Dana Bilyeu:**

On the private real estate investments, we own properties all over the country. We have what is called a core real estate program where we purchase assets of properties anywhere between \$40 million and \$100 million. We own warehouses, retail malls, apartment complexes, and those sorts of things.

It is well diversified both geographically as well as in property types. We were quite aggressive with our real estate managers when the recession happened and we saw the downturns in the markets. We actually required write-downs in those portfolios. We have those valued on a yearly basis, and we require the actual value, and that is how we carry them. We are very aggressive, and at the same time have a core approach. Two-thirds of our return is from income in the properties, so we want to buy things that are fully leased because we require so much of the return to be from income itself.

**Chair Kirkpatrick:**

Are there any other questions?

**Dana Bilyeu:**

The last slide of my presentation is the growth of the assets themselves. As you can tell when you look back over this last decade, and we have included this year because they had very strong returns in this last year, you see the growth of the portfolio and then the reduction in size, primarily due to the recession.

At bottom of the markets you can see fiscal year 2009 was a -15.8 percent return. That is what we are financing our way back out of. I do want to point out to the Committee that in the year that we made the -15.8 percent, the average was approximately -27 percent to -28 percent for other pension funds across the country. Again, we tend to be more conservatively invested and so we try to maintain our capital over time. You can see the tremendous growth, and the actual return numbers for the portfolio as of today are 17.5 percent, a return of \$24.5 billion.

**Assemblyman Stewart:**

So, you have made a dramatic recovery from the recession to \$24 billion. We are getting more money coming in than going out. Can I say that the fears of the media are perhaps exaggerated a little? Also, I have been here for three sessions, and I have been very impressed by your presentations and your management.

**Dana Bilyeu:**

I would argue that the press reports are overstated. That seems to be the case on a national basis. I have to tell you that I think our press corps here in Nevada tries to do a very balanced job and in many ways has done so. It tends to move away from the balance, once you move toward the editorial pages from the actual underlying reporting itself.

**Assemblyman Goedhart:**

There is no doubt that we are very blessed to have some very capable management here in Nevada with the PERS. You have been doing a wonderful job, and looking at the last 12 years that are on the chart, if we added the pluses and minuses what would that give us on an annual rate of return? Is that between 5 and 6 percent?

**Dana Bilyeu:**

That would be 5 percent.

**Assemblyman Goedhart:**

Nationally and the same thing you have done is that we have put into our projection an average long-term rate of return of about 8 percent. I am just saying, is that still a reasonable figure given the uncertainty of the world in which we live in today? With the experience of the last 12 years, is that an actual rate of return we still think we can look at achieving over a long term horizon?

**Dana Bilyeu:**

That is exactly what we do every single year. We go out and we look at each of the individual asset classes that we finance in, and we look at what the expected rates of return are. We tend to do it differently here than what you see, for instance, when you are talking to economists that are making projections. They tend to do them over 5-year and 10-year periods of time, really no longer than that. We try to make our projections for the very, very long term because we are financing over a 30-year to 60-year time horizon.

When you look back at the total portfolio approach since the inception date of 1984, our annualized rate of return is 9.5 percent. So the history of the program clearly matches and exceeds the 8 percent return number because we use such a very long-term time horizon. If you look at any of the longer-term time horizons for the international stock market and the domestic stock markets, your annual rate of return for those is over 8 percent. So we do believe we are very comfortable with the return assumption. It is not something that we take for granted. We look at it every single year and we make all of our professionals give us their best estimates as well, and we take all of those into consideration when we make our recommendations to the Retirement Board.

**Assemblywoman Pierce:**

What were the changes made in 2009?

**Dana Bilyeu:**

Senate Bill No. 427 of the 75th Session, which was the comprehensive public employee bill, had three components in it. It had PERS, PEBP, and it had some collective bargaining in it as well. For PERS, you raised the retirement age to 62 in the regular fund. You got rid of 25-and-out for police and fire, you lowered the multiplier to 2.5 percent from 2.67 percent, you lowered the cost of living allowance (COLA) formula, you increased the early retirement penalty to full actuarial cost, and you created a couple of different financing pieces in the bill. I know no one believes that the markets will come back and rates will go down, but there is experience for that and, believe me, there have been times when our rates have actually have gone in the other direction. When the rates go down, the Legislature puts a very conservative financing mechanism in place, and the rates have to go down by over 2 percent before we will drop our rates. Because of that if our rates are scheduled, on an actuarial basis, to go down by 2 percent and we do not do that, that additional contribution is going to go into accelerating payment on the end fund of the accrued liability.

Your final piece today is Assembly Bill 67, and that is the heightened employer responsibility for appropriate reporting to us and making sure that there is a remedy for the individual members should employers not report correctly to us.

**Assemblywoman Pierce:**

How long will it take to actually see the full effect of that?

**Dana Bilyeu:**

We already have 5,000 members on the new tier. If there are 100,000 public employees and our replacement rate is about 5 percent, it will take about 20 years for all public employees to be on the new tier.

**Assemblyman Stewart:**

What affect has that had on the system financially? How much money have we saved, and how much will we save?

**Dana Bilyeu:**

Because it is only 5,000 members with only one year of service credit, at this point and from an actuarial perspective, we have not seen a change in our rates due to it. Over time, we projected the cost savings to be about \$120 million, but again, that is a projected and we are not exactly sure. It will definitely be a lower normal cost going forward.

**Chair Kirkpatrick:**

Lastly, the unfunded liability is only if everyone retired today?

**Dana Bilyeu:**

That is correct, and I should point that out. The unfunded accrued liability is also a projection. It is the present value of future accruals, so it is a projection as well and was designed to finance over that 30-year time horizon.

I should say that amortization period is actually, on average, about 25 years at this point.

**Chair Kirkpatrick:**

Thank you very much. I know that your office has always had an open door policy, and they are always willing to help. I have asked you to create "PERS for Dummies," because people like me need that simpler form.

Before we open the hearing on A.B. 67, if anyone has any bills, please take them to the floor now. There is about a 45-minute process. They have to be read, they have to be sent to their regular committee, all of this has to be determined. I know there are a couple of floor sessions later today, but if you have bills in your possession, please take them now to the floor because it helps the process later.

With that, I am opening the hearing on A.B. 67.

**Assembly Bill 67:** Revises provisions governing the Public Employees' Retirement System. (BDR 23-317)

**Cadence Matijevich, representing the City of Reno:**

Good morning, Madam Chair and members of the Committee. For the record, I am Cadence Matijevich. [Continued to read from prepared text ([Exhibit D](#)).]

**Chair Kirkpatrick:**

Does anyone have any questions?

**Assemblyman Goedhart:**

Have we ever had a situation where PERS did an audit and found out a retired employee was not getting paid enough, was paid too little?

**Renee Rungis, Director of Human Services, City of Reno:**

Not to my knowledge.

**Assemblyman Goedhart:**

I was just wondering if there had ever been a precedent where the county or whatnot had not adequately paid that person, and then had to pay a retroactive liability, but that has not happened. For people currently working, have people



filed complaints now based upon the outcome of some PERS audits? They are now filing a complaint against future retirement benefits, even though they are currently a full-time employee? Is that what I am hearing?

**Renee Rungis:**

Yes.

**Chair Kirkpatrick:**

Let me clarify this. In the City of Reno you probably have not seen that, but I know from the testimony last session when we had this discussion, it was a problem amongst local governments in general. Is that correct?

**Renee Rungis:**

I believe that is true. I was not present at the Committee hearing the last time.

**Chair Kirkpatrick:**

It may have not happened in Reno, and I want to clarify that. But I can tell you there are a couple of different bills that dealt with this, and we tried to make it so that local government was not all this way, sideways, and the employee was not all that way.

Because honestly, I have been through it myself. When you are planning for retirement you do not ever think of having all those paycheck stubs and having all that stuff until you realize that the numbers are way off from what you were told. It was a problem that did exist last session, but it probably was not in Reno.

**Assemblywoman Benitez-Thompson:**

For the three grievances that were found during your audit, could you tell me a little bit about what those grievances looked like? It does not sound like they were underpayments, but rather overpayments. What did those overpayments look like?

**Renee Rungis:**

One of the grievances was filed by one of the labor unions that represent a group of Reno employees. At the time the grievance was filed, the audits had been completed on many employees and the credits that PERS had issued at that time were in the range of \$740,000. The employee organization felt that those credits should be given to the employees that they represent, and those employees were still active. That grievance went to arbitration, and the arbitrator did state that this city, the employer, did not violate the labor contract and that he did not have the authority to modify or circumvent the state or

PERS law. In that case, the outcome was something that the city was pleased to hear.

One other grievance that we have is for one individual, and it is for one call-back shift. The PERS staff did do a calculation on behalf of that person, and when the person discovered the error he filed a grievance and then retired a few months later. The calculation that PERS came up with felt that it would be equivalent to approximately \$19.01 per month for the rest of the individual's life. That grievance is scheduled to go to arbitration next month.

**Assemblywoman Benitez-Thompson:**

With the three grievances, one was with the labor groups; one was with an individual; what was the third one? Does there seem to be a process right now, or are all of these going to arbitration and you are finding answers there?

**Renee Rungis:**

Yes, they have been scheduled for arbitration, the one I mentioned and the upcoming one. I think the point being is that it is very costly to go to arbitration in terms of dollars spent as well as resources and staff time on behalf of both organizations.

**Assemblywoman Pierce:**

The part in your amendment ([Exhibit E](#)), "The public employer is not responsible to an active employee for impact to the employee's member benefits, if any, that results from the erroneously reported wages." How does an employee discover that his wages are being reported erroneously?

**Renee Rungis:**

As a result of an audit that PERS did with the City of Reno, they found that the city was making contributions in certain categories where it was not appropriate and not according to PERS law.

**Assemblywoman Pierce:**

How often are these audits done? I mean can someone be told suddenly that for five years they have been reported erroneously?

**Renee Rungis:**

The audits are done, as Ms. Bilyeu stated earlier, about once every three years, and for the last audit, the one that was completed in 2007, the corrections needed to go back three years retroactively.

**Assemblyman Goedhart:**

I am assuming that, like most audits, they will just take a percentage; they do not go through and evaluate each and every employee. They will take a representative sample and, based upon the outcome of that audit, they may wish to expand the scope of the audit in certain areas where they might deem to have been a misapplication of the PERS statutes. Is that correct?

**Renee Rungis:**

Yes, they do take a sampling.

**Assemblyman Goedhart:**

Based upon the outcome of that audit, they may or may not decide to expand the scope within the area in which they found some deviations from PERS statutes.

**Renee Rungis:**

With the sampling and the items they discovered, the city was required to go back and to treat all employees in a similarly situated circumstance the same. So corrections needed to be made for all of those employees.

**Chair Kirkpatrick:**

Are there any other questions? What is the penalty for the local governments and for the person who is reporting all this information and reporting it wrong?

**Renee Rungis:**

I do not know if there is a penalty, but corrections do need to be made and contributions need to be adjusted.

**Chair Kirkpatrick:**

Where does the accountability come from in the local governments? That was the big focus of this last session, and I think we are forgetting to talk about that, because it was both. In some parts of the state, the employee was getting way more than he had coming, but in other parts of the state the local government was just reporting whatever and people start counting on that. There was no balance, and I thought this bill was the balance and here we are back.

**Cadence Matijevich:**

It has been our experience that these findings, as was our case in the 2007 audit, were the result of the clarification on the part of PERS of wages that we had been reporting for years and years. This was the first time that they had been identified as erroneous, and, in that case, we said certainly,

we understand that anyone that has been paid those benefits erroneously and is being asked to repay them, we would hold them harmless.

From that point going forward, the taxpayer would not be required to do that. As I said, we are humans and we are going to make mistakes, but I do not believe that these are the results of carelessness. We take our responsibility to report very seriously, and in our cases, the errors were a result of a clarification not because of carelessness on our part.

**Chair Kirkpatrick:**

I am trying to find the balance for the last time while we are trying to balance the problem. The problem seems to exist every time, and we keep trying to balance it. If there are no other questions, I am going to go ahead, and I am assuming that the people who have signed in are in support with the amendment ([Exhibit E](#)), correct?

**Cadence Matijevich:**

I believe that is the case as well. I did have an opportunity to send the amendment out to representatives of the local governments before the weekend to give them the opportunity to look at it. I do not want to speak for all of them, but I do support the bill with the amendment.

**Chair Kirkpatrick:**

So, those that are in favor of A.B. 67 with the amendment only, please come up now.

**Mike Cathcart, representing the City of Henderson:**

We are in support of the bill as amended. We have had a conversation with the Reno people and we are requesting one word change in the amendment and that is on page 2, in the wording in green on the second line, we would like to strike the word "deliberate" and put "fraudulent" in its place. We believe deliberate you could do in good faith. We really want to look for fraud in this case here, and deliberate is a little gray for the amendment.

**Chair Kirkpatrick:**

Okay, does anyone have any questions? [There were none.]

**Ted Olivas, representing the City of Las Vegas:**

We too are in support of the amendment. We believe it strikes a balance. Let me say that our people report that the relationship with PERS is very good. We were looking at the wages in detail, and there is a better understanding than ever as to what wages are PERS wages and what are not. The system is working well.

**Assemblyman Stewart:**

Mr. Olivas, you want fraudulent put in there as well, is that correct?

**Ted Olivas:**

I have not talked to the City of Reno about that; I believe that it works.

**Chair Kirkpatrick:**

I believe that Reno is in support of that one word change.

**Lisa A. Gianoli, representing Washoe County:**

We just want to go on record as being in support of the bill as amended. We have had similar situations in Washoe County as well and have been working through them with PERS.

**Kathy Clewett, representing the City of Sparks:**

We are also in support of the amendment and the one word change.

**Chair Kirkpatrick:**

Does anyone have any questions? [There were none.] Those that are in favor of A.B. 67 with the amendment, please come forward.

**Carole Vilardo, President, Nevada Taxpayers Association:**

Yes, we are in support of the bill with the amendment and do not have a problem with the word change to fraudulent.

**Tray Abney, representing, Reno/Sparks Chamber of Commerce:**

I will give a "me too" with Ms. Vilardo.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support of A.B. 67? Anybody who is in opposition of A.B. 67, please come forward.

**Dana Bilyeu, Executive Officer, Nevada Public Employees' Retirement System:**

The Retirement Board is opposed to the bill as originally drafted. We have not had the opportunity to take the amendment to our Retirement Board, so I am going to first testify with a little bit of background with respect to Senate Bill No. 427 of the 75th Session and talk about why this provision was in there and give you framework for how it fits into the reporting requirements for our employers.

The Public Employees' Retirement Act has a provision within it, *Nevada Revised Statutes* (NRS) 286.288, which is the obligation section for the employers. The employers are obligated to report to us appropriately, and the retirement system

is responsible for errors that we make and employers are responsible for errors that they make.

When we have adjusted benefits downward, there is a history of that stemming all the way back into the 1970s, and there was a case called the *Nevada Public Employees Retirement Board v. Byrne* 96 Nev. 276, 607 P. 2nd 1351 (1980). When the system makes a mistake on a benefit calculation and we make an adjustment to the correct amount, and if the member has reasonably and detrimentally relied and has changed their position on the basis of that advice from us, then we are obligated to pay the benefit at the higher rate pursuant to *Nevada Public Employees Retirement Board v. Byrne*. We should not be, and our current law, even absent the changes in S.B. No. 427 of the 75th Session does not obligate the system to pay a benefit when the mistake that was made was not one that was the system's mistake. In essence it was an employer's mistake. The change that was put into place in S.B. No. 427 of the 75th Session basically recognizes that the employer is obligated for their own mistakes but also does a couple of other things as well.

Number 1, it raises the level of scrutiny. I think that it is very clear that this has occurred because now there is an actual liability that can inure to the employer on the basis of the erroneous reporting. There are a couple of things that change in S.B. No. 427 of the 75th Session did for employees. Number 1, it makes the employer more aware of their obligations as employers to report to us appropriately.

Number 2, it makes it very clear that the retirement system is not obligated to pay a benefit that is erroneous based on an erroneous reporting.

Number 3, it does provide a remedy to the individual member to seek redress with their employers for their own mistakes.

Addressing a couple of things that were said in the previous testimony from the City of Reno—the clarification that the City of Reno is referring to in the one audit that they are talking about in their grievance had to do with the definition of call-back. Call-back is a particular type of premium pay. There is a rule in place and has been in place since the 1980s, and it is called the 12-hour rule. The 12-hour rule says that if a person has less than 12 hours notice and returns to work the employer calls them with less than 12 hours notice, that shift is going to be reportable to us or the hours that they are back at work are going to be reportable to us. It is different than planned overtime because scheduled overtime is at the discretion of the employer: they can or cannot do it. When you go through the legislative history for the definition of call-back, it was actually taken out of the act in the 1970s and then put back

into the act in 1981. The testimony at the time was that it better be only for emergencies and it cannot be used as a management tool. It cannot be that there are a lot of call-back shifts that are reported to us because it should only be done at the extreme need of the employer.

What we discovered with some of our employers was that call-back had become a management tool. In some agreements they had actually agreed never to call for an overtime shift with more than 12 hours notice. The system did not change the call-back rule, it simply said employers cannot deliberately change an overtime shift to a call-back shift simply by waiting until the 12-hour rule is triggered.

That was the clarification that we put into place. The rule is the same, but we were trying to make sure that the legislative intent was being fulfilled by our employers when they were reporting their shifts to us. Since that time you have actually made a change in the definition of call-back in the act in S.B. No. 427 of the 75th Session, and I apologize that was one of the other things that were in S.B. No. 427 of the 75th Session.

Now, call-back for our new tier of benefits will not be allowed unless it is a declared emergency by the elected body, the city council, the county commission, or the highest management person for the employer.

We have been trying to make sure that not only is the call-back rule in place for those of us that are on the current or old tier but, that we are fulfilling the legislative intent for call-back shifts to be reported to us.

With those two clarifications, I will still have to take back the amendment to the Retirement Board, and I do not know where they will be with respect to that language.

**Chair Kirkpatrick:**

You will let us know at your next meeting.

**Dana Bilyeu:**

Certainly.

**Assemblywoman Benitez-Thompson:**

I am wondering within the system and when audits are done, is there a standard by which there is a margin of error when accountings are done to know that a city or a local government . . . . Even doing their best we know that no one is going to be 100 percent error-proof. But what is an acceptable error rate, or does that even exist?

**Dana Bilyeu:**

There is not an acceptable error rate because every individual member's personal accounts are being affected by the transactions themselves. There is another Supreme Court case that basically says that the retirement system is the insurer of benefit structure as we are implementing it, and when we go out to do our field audits we will test against the definition of contribution; we will test against the wages reports, and the hours reported to us.

We try to take a very broad view. We will select individuals that may have the highest risks of certain kinds of errors where we know that errors are prone to be made. When we discover that an employer is making an error, we do require them to go back for at least three years because it will affect the average compensation for the individual members. They will have to do it for everyone that is similarly situated, so that all employees get the benefit of the appropriate reporting to us.

**Assemblywoman Flores:**

I understand that you are trying to strike a balance between the previous language and what you are proposing now, but the way that I read it and the more testimony that I hear, I would like you to clarify it a bit for me because it reads if the employer reports wages that are ineligible pursuant to the definition. The public employers are responsible to the retiree, and we are adding in that either deliberate or fraudulent action on behalf of the retiree that causes the wages to be reported erroneously. What I am confused about is then there is another statement made that says the public employer is not responsible to an active employee for the impact of the employee's member benefits, if any.

To me, I read that last statement as essentially negating the first statement, because you are saying that the employer is liable, and they are required to repay to the retiree whatever was erroneously reported unless there some intent or willful behavior on behalf of the retiree. But then it ends with the sentence that says the employer is not responsible to the employee. I am confused as to why that last statement is even in there if we are already saying that the employer is responsible for erroneous reporting of wages.

**Dana Bilyeu:**

From the retirement system's perspective, and again this is the City of Reno's amendment so I am . . .

**Chair Kirkpatrick:**

I was just going to say we will wait for Cadence Matijevich to bring that up. From your perspective, I would bet you would say that the system is not broke; we fixed it last time.



**Dana Bilyeu:**

Right. Well, from the perspective of the system, what I think we are trying to do and what I think the city is trying to do is prior to someone actually retiring, the employer should have a opportunity to make those corrections because there has been no change in position, no reasonable and detrimental reliance on the benefit calculation because they have not actually retired at that point. Currently that is the Supreme Court test for whether or not you can make a change or whether or not we are going to be held to pay a benefit that was erroneously calculated for whatever reason. It is a very strong test in favor of the employee, and I think the city is simply trying to say that at some point there has not been a change in position. No reasonable and detrimental reliance at that point. Now having said that, from the perspective of the system, we want to make sure that our employers are always reporting appropriately to us. I do want to point out to the Committee that we engage in tremendous amounts of education with our employers, and we are out at the payroll sites. We have a liaison officer conference where we do payroll education. Payroll clerks do turn over, and that tends to be an area where people are moving up because it is an entry-level position. We try and make ourselves available for training for employers all over the state.

**Chair Kirkpatrick:**

Are there any last questions? Is there a process in place where the employer should be auditing their own books for this retirement? Or is that just something we think should be out there?

**Dana Bilyeu:**

I personally think everyone should always be vigilant with respect to their reporting. I think our employers really do try to do a good job in doing it. Quite frankly, there are some challenges with respect to the definition of compensation. They are challenging for our employers as we move through the audit cycle, which is what I believe I indicated in my prior presentation. For our largest employers we actually sample, on a yearly basis, reportable compensation because we do not want to get too far outside of one year's time to make sure that they maintain their education levels with respect to what is reportable to us, because we know it is a challenging definition for them.

**Rusty McAllister, President, Professional Fire Fighters of Nevada:**

Speaking initially to the language as proposed in the bill, we would be opposed to this language for several different reasons. First of all, our interpretation and based on what Ms. Bilyeu has indicated under NRS 286.421, subsection 3, paragraph (a), subparagraphs (1) and (2), basically says that if there is an increase to the contribution rate and because we consider this a 50/50 state, employer/employee, and it says if there is an increase to the contribution rate

that will be accomplished either through . . . . If the employer is the one paying 100 percent of benefits, it will be accomplished either through a reduction in pay which I can speak personally of—I had my pay reduced for a contribution increase—or in lieu of a salary increase, a cost of living adjustment (COLA) or both.

What was taking place was PERS started auditing local governments and they started finding that they had reported inappropriately some contributions on behalf of a lot of our members. What they did was report a lot of call-back overtime that was not necessarily call-back. The remedy for that is that PERS will make the corrections. They will not refund money, but they will refund credit that they applied for their next month's contributions.

Our contention is if this is a 50/50 state and half of it is employer and the other one-half employee and that the money that comes back to the local governments, 50 percent of that belongs to the employers and the other 50 percent belongs to the employees. If you are getting money back that was one-half mine in lieu of a salary increase and one-half mine through a payroll reduction, then our contention is that you should have to give that back to us because it is okay if you make a mistake with your money, but if you make a mistake with my money and 50 percent of that money was mine based on what the PERS statute says, you should not be able to keep the refund.

If you look at the amounts, I know that the City of Reno reported they returned a credit of \$739,901; the City of Henderson was refunded \$380,000 in credit; the City of North Las Vegas was refunded \$116,000; the City of Las Vegas, through just a partial audit, was refunded \$314,000; Clark County was refunded, based on testimony by Edward Finger, Assistant County Manager, at the most recent County Commission meeting, \$800,000. It is also my understanding that the Metropolitan Police Department was refunded a credit of \$1.2 million.

That money stayed with the employers. None of the money went back to the employees. The reason we brought this forward during the last legislative session, and this plays into Reno's amendment, what we really found was if you are still employed, yes, that should be your 50 percent, but you are still working, so you still have an effort to recover the money you have lost. The local government is just going to get richer.

A person that is a retiree has made a conscious decision. They have looked at the proposed benefit from PERS and said, I am in a financial position right now where I have met the requirements of PERS and I am financially capable of retiring and I am going to choose to do so. They retire, and under PERS policies

they have 12 months in which to audit the employee after they retire. They can adjust the benefit one way or another if they audit that employee, and that employee can have their benefit reduced or added to depending on how it plays out.

What we found was that for a lot of employees who had just recently retired, during their audit they were having their benefit reduced through no fault of their own. They had a detrimental reliance upon the local governments to make contribution rates that were appropriate. So, that is why this provision was stuck in this bill last session. It was to help those people who had a detrimental reliance upon contribution reporting by the local governments. They made a life decision to leave employment, and they cannot come back and fix it after they have retired.

The bill was passed and there was a provision in S.B. No. 427 of the 75th Session, section 7 that basically says that if an employer has erroneously reported PERS contributions and the employee's benefit is reduced, then they need to be made whole. Many of our members are currently in court trying to get the local governments to step up to the plate and do what the law that was passed said.

A lot of these people are retired, spending money in court to battle to get their money refunded or to be made whole. This happened to Carson City in 2008, and they stepped up to the plate when they realized that an employee that had retired had been impacted and had his benefit reduced. They stepped up to the plate, did what they needed to do, and they went out and made that employee whole.

Prior to us passing this bill in 2009, they did the right thing. Other local governments in the state have thus far not done that, and again, many of our retirees are in court now trying to get the law to be followed. So, it is a policy decision to allow Reno's change with their amendment to make it for retirees, because when I testified on this bill back in 2009 I did say that my major concern was for the retirees because they do not have the ability to go back and get this back.

If, in fact, you decide to make a policy decision to do this, I would hope there would be some type of provision in there to make this happen as soon as possible and make it happen without these employees having to go to court to get their local governments to comply with the law that this Legislature passed.

**Assemblyman Goedhart:**

I am not a public employee so I am trying to get my hands around all the information. Earlier in your testimony, it sounded as if someone was under a call-back which was not typically the definition of call-back. The employee might have been making one-half of the contribution as well as the local government, and at some point in time in the future when that was deemed not to be part of a PERS reimbursable or calculating deal, all that money they had returned was funded all back to the employer. None of the extra pay was returned to the employee. Is that what has been happening?

**Rusty McAllister:**

That is my understanding. Currently for the increased contribution for a call-back that is PERS-compensable, one-half is paid for by the employer and one-half is paid for by the employee. When the contributions came back to the local governments for those call-backs, the local governments kept it all. The local employee did not get anything.

**Assemblyman Goedhart:**

The local governments did not reimburse the overpayment by the employee against his future PERS contributions?

**Rusty McAllister:**

That is my understanding. If I might, there is one exception. I have been in contact with City of Henderson firefighters, and they have told me that they have worked out an arrangement with their local government in their contract to correct that \$380,000 refund. They have made arrangements in their contract to fix that problem for them. So they have stepped up and solved the problem with their local employees. I am not sure if any other local employers have.

**Assemblywoman Benitez-Thompson:**

Which cities and local governments pay for their employees' contributions and which ones do not? I think it makes a difference when we are talking about this. We know not every local government pays in uniformly in terms of employee contributions.

**Rusty McAllister:**

That would be very difficult for me to answer. Ms. Bilyeu would be better to answer that for you. There are 160-plus employers in the PERS system that are making contributions. Some of them pay 100 percent. Some of them have varying degrees, and they pay a certain amount but for any future contribution increases, one-half of that is going to be from the employee and the one-half from the employer. Some, like the state, have a straight 50/50 split. If there is a contribution increase to the employee, the state takes it out of their pay.

**Assemblyman Livermore:**

I just want to clarify what Mr. McAllister said happened in 2008. He was correct. There had been an audit that dealt with overtime and call-back pay. There was a determination by PERS that the records submitted put them in the position of an unfunded liability, and so the governing body was presented with the findings of that, not at the time it should have been. It took about three months for the governing body to receive the audit, and in the meantime our firefighter retired.

At that point in time his retirement benefits were based on "ifs." After the audit was adjusted, his retirement benefit dropped. In order to keep that employee whole, the governing body stepped forward and paid the remaining contribution.

**Rusty McAllister:**

That is correct.

**Ronald P. Dreher, representing Peace Officers Research Association of Nevada:**

I have also been authorized to speak on behalf of the Southern Nevada Conference of Police and Sheriffs as well. We are in total opposition to A.B. 67 including the amendment, and for the reasons that Mr. McAllister put on the record, and in the essence of time I will just be brief.

The amendment itself would cover retirees; however, there are a number of police officers in this day and age that are retiring because of the economic crisis right now. The Public Employees' Retirement System has done audits all over the state, as Ms. Bilyeu stated. Specifically in the City of Reno, Washoe County, and the like where a number of the active employees found out recently that their holiday pay was not PERS-compensable the way the law is written. But for the past 20-plus years it has always been done by collective bargaining agreement, which they thought was in compliance with PERS.

These types of issues have resulted in all kinds of litigation going on, as Mr. McAllister stated. The way this bill is written, there is no way that it goes back to the active employee. The active employee who thus retires next week gets hit with some kind of a penalty. The other part of this dealt with the fraudulent part. A retiree does not know until he goes to retire what his retirement benefits will be, and I am not sure how you would ever prove fraud. Deliberation on both sides and penalties on both sides should be quid pro quo. That would be our concern with this bill in its entirety. What Mr. McAllister and S.B. No. 427 of 75th Session accomplished in 2009 should be the same; it should say status quo current language, and that would be our position.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.]

**Craig M. Stevens, representing Nevada State Education Association:**

For all the reasons that Mr. McAllister and Ms. Bilyeu stated, the Nevada State Education Association (NSEA) is in opposition of A.B. 67.

**P. Michael Murphy, representing Clark County:**

Very simply, we are in opposition and we believe that this makes PERS responsible for the mistakes of local governments, and the reality of it is it adds an additional burden to those systems. It is the responsibility of local governments to do their accounting appropriately and be held accountable appropriately.

**Carla Fells, Executive Director, Washoe County Employees Association:**

I have actually been living this nightmare since December with one of my employees, and we have gone through the grievance process. We have not gone to arbitration as of yet. The concern that we have is there is no way to make the employee who is an active employee whole. As you know, all the local governments are going through a downturn of employees, and with the recession they have frozen positions. In our case what has happened is we have had an employee take a higher level position, and be compensated as out of class for over three years, which is the highest three years of her pay. In February, she contacted PERS because she intended to retire because she needed to assist in the care of an elderly parent. She was given the higher rate of pay for her retirement pay. Actually she contacted PERS three different times, once for the buyout two years ago at her old salary that Washoe County had paid her, and she has been contacting PERS off and on.

In February she was given the higher salary. When she went to retire in December, she was given the lower salary saying that the whole time she has been working in the higher-level position that salary was not PERS-compensable. We have been trying to rectify it, and as a matter of fact, we went to the hearing last week with PERS. We are on the agenda next month after we go through several things. Our concern is that the employees are in the middle of the finger pointing. The local government will say it is PERS' fault and how they have interpreted it, and PERS will say it is the local government's fault. In the middle is the employee, who is not being compensated and who cannot make decisions about what to do. Whether to retire, whether to stay, or what is compensable because there is nothing that you can read, as Mr. Dreher said, in the collective bargaining agreement. There is nothing for the employee themselves to say: is my remote area pay compensable, is my out of class pay compensable? That is all determined

between PERS and the employer. When the employee goes to retire, they get a surprise and find out that is not PERS compensable. So either leave something in this bill that allows the employee some sort of being made whole, or eliminate the finger pointing between the local government and PERS so that the employees can be made whole and they do not have to wait until the day before they retire to find out they have been disallowed anything.

**Danny L. Thompson, representing Nevada State American Federation of Labor-Congress of Industrial Organizations (AFL-CIO):**

We are opposed to this bill for all the reasons that you have heard today. I would dare say that the average employee does not understand all the complexities of this law, but it is local government's and the employer's responsibility to understand that and to report things correctly. It is not fair for someone to work all their life and then get to the point where they are going to make this decision to retire, only to find out that someone has not complied with a law made by the Legislature.

**Kevin R. Ranft, representing AFSCME, Local 4041:**

We are opposed to the bill as written and as amended for all the reasons you have heard today.

**Leonard Nevin, representing Nevada State Law Enforcement Officers' Association:**

I concur with every statement made.

**Chair Kirkpatrick:**

Is there anyone else that would like to testify in opposition of A.B. 67?

**Cadence Matijevich:**

I will indicate that we are in support of the one word change that the City of Henderson brought forth, and that is to change "deliberate" to "fraudulent." We are in support, and I do want to get on the record that we do audit. We do conduct our own audits. As Ms. Bilyeu stated herself, these categories are complicated, the definitions are challenging, and I hope that I did not mischaracterize our relationship with PERS as not being a good one. It is a good one, and we are very appreciative of the support that they give us and the training that they give to our employees. Ms. Rungis met with Ms. Bilyeu as recently as last week to talk about how we work with them to make sure that what we are reporting to them is, in fact, in keeping with the requirements.

To Ms. Flores's question from earlier, I do not know if perhaps some of the other testimony clarified it. The first sentence is intended to address retirees, and the second would be active employees. I just want to say that we

understand that this is a challenge. We are not trying to put the employee in the middle, but we are trying to strike a balance at being responsible with the taxpayers' money.

The eligibility for this compensation is not determined between PERS and the employer. It is determined by PERS.

**Renee Rungis:**

I would just like to thank the Committee on behalf of the City of Reno for hearing this, and also to thank PERS for working with the City of Reno.

**Chair Kirkpatrick:**

Does anyone have any questions? [There were none.] At this time we are closing the hearing on A.B. 67. Is there any public comment? [There was none.] Meeting adjourned [at 10:54 a.m.].

RESPECTFULLY SUBMITTED:

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Cheryl Williams  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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



**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 21, 2011

**Time of Meeting:** 9:01 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Dana Bilyeu	PowerPoint Presentation
A.B. 67	D	Cadence Matijevich	Prepared Text
A.B. 67	E	Cadence Matijevich	Amendment