

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

**Seventy-Eighth Session
March 26, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8 a.m. on Thursday, March 26, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Glenn E. Trowbridge
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Lynn D. Stewart (excused)



GUEST LEGISLATORS PRESENT:

Assemblyman Randy Kirner, Assembly District No. 26
Assemblyman David M. Gardner, Assembly District No. 9

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Erin Barlow, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Marsha Berkgigler, Chair, Board of Fire Commissioners, Truckee Meadows
Fire Protection District
Charles Moore, Fire Chief, Truckee Meadows Fire Protection District
John Slaughter, County Manager, Washoe County
Thomas G. Daly, Private Citizen, Reno, Nevada
Cliff Low, Private Citizen, Washoe Valley, Nevada
Terry Kennedy, President & Chief Executive Officer, Appreciation
Insurance Financial Services, LLC
Constance Brooks, Vice Chancellor, Government Affairs, Nevada System
of Higher Education
Kent Ervin, Private Citizen, Reno, Nevada
Brian Davie, Private Citizen, Las Vegas, Nevada
Rob Boehmer, Program Coordinator, Nevada Public Employees' Deferred
Compensation Program
Michael Hillerby, representing Voya Financial

Chairman Ellison:

Assemblyman Kirner, you are here to present Assembly Bill 333?

Assembly Bill 333: Provides for the consolidation of certain fire protection districts in certain counties. (BDR 42-650)

Assemblyman Randy Kirner, Assembly District No. 26:

I am. I hate to say this, but Assembly Bill 333 is the biggest no-brainer bill you are going to see this session. This is a straightforward bill. Let me give you a brief overview of what this bill is about. About three years ago, the Sierra Fire Protection District and the Truckee Meadows Fire Protection District merged into one fire district for Washoe County. Today, they both have one fire chief, one fire board, one union contract, but two sets of books. One set

includes the engines and equipment for Sierra, and the other includes the engines and equipment for Truckee Meadows. What we are trying to do in this bill is to put them together financially. On one day, the fire board will have a meeting to talk about the Truckee Meadows Fire Protection District. Then they will adjourn and open another meeting right away to talk about the Sierra Fire Protection District. It is crazy. This is one fire department, and we need to put them together into one body, not two arms for two fire departments. All this bill does is allow the completion of that merger. Like I said, it is a simple bill.

Chairman Ellison:

Is this something that could have been done administratively versus legislatively?

Assemblyman Kirner:

No, it has to be done legislatively, which is why we are here.

Chairman Ellison:

I figured that was the case, but can you explain why? Is it because of the different districts?

Marsha Berkgigler, Chair, Board of Fire Commissioners, Truckee Meadows Fire Protection District:

It is because in the Washoe County statutes, the fire departments are different. Sierra was a Forest Service Fire Department that was acquired by the county when the Forest Service did not want to run it anymore. I am not sure of the reasons behind that, and the Chief may have a more technical explanation for that. In those days, we had a county fire department called Truckee Meadows Fire Protection District, and then we acquired Sierra Fire Protection District, which was a separate fire department. Since it is in the statutes, we have to come to the Legislature to merge them.

Currently, both are funded by a tax on the non-incorporated residents of Washoe County. No resident in the cities of Reno or Sparks pays for this, only the residents who live in the non-incorporated areas of the county. The numbers vary, but I believe I heard at the last meeting that this change could save us between \$80,000 and \$100,000 a year. We have to do separate audits for the two entities, but they operate as one now. We are looking to get it in statute that they are one Truckee Meadows Fire Department.

Chairman Ellison:

Are there questions from the Committee?

Assemblywoman Neal:

I know you said this is a simple bill, but we had another bill in this Committee, A.B. 34, which dealt with fire protection districts (FPD) and repealing certain provisions. What is the relationship with this bill?

In section 2 of this bill, you included dedicated ad valorem funding of these services. What is the effect of you dedicating ad valorem if other monies may be dedicated in a different way? That is property tax. Is there a shift?

Marsha Berkgigler:

There is not a shift. The only way the unincorporated fire district is funded in the county is through this ad valorem tax. There is no other funding. Both of our fire districts are funded by the residents who live in that unincorporated portion of the county. There is no other funding that could be dedicated to it. We do not use funding from the county's general fund. It is simply the ad valorem tax in our fire system. The tax that is collected from the residents who live in the Sierra area is the same as the one collected from the residents who live in the Truckee Meadows area. This will not result in any tax increases or any changes. We are just fixing this statutory problem so that they are truly one fire department. They currently operate as one, but we have to spend extra money to do audits and other things. We are spending taxpayer dollars that we could more appropriately use to add another firefighter or equipment. That is all we are looking to do here.

Assemblyman Trowbridge:

Looking at the map ([Exhibit C](#)), I see several islands within Reno and Sparks that are currently protected by the Truckee Meadows Fire Protection District. Are those unincorporated areas?

Charles Moore, Fire Chief, Truckee Meadows Fire Protection District:

They are unincorporated areas. There are some islands within the Cities of Reno and Sparks, but they respond to the City of Sparks through an automatic aid agreement.

Assemblyman Trowbridge:

So the areas are included in the mutual aid agreement?

Charles Moore:

Yes.

Assemblywoman Neal:

I wanted to clarify about the bill I referenced, Assembly Bill 34. Although it relates, there is another bill I want to share.

Assemblyman Kirner:

As far as we know in doing our research, there are no other bills that affect this bill. This is a stand-alone bill, the kind you could easily pass today and send it on its way.

Assemblywoman Joiner:

I remember there being some discussion of this in the news over the summer. I think you clarified the biggest concern that I have heard, that folks who live in the City of Reno would somehow be paying taxes toward this. But you just explained that it is only in the unincorporated area, so that answered one of my questions.

Chairman Ellison:

Is there anybody else in favor of the bill?

John Slaughter, County Manager, Washoe County:

I wanted to relay that the Washoe County Board of County Commissioners (BOCC), which also sits as the fire board of both the Sierra FPD and the Truckee Meadows FPD, by separate action of the BOCC, took action to support the bill. It is something the fire districts have been working on for quite a while, and this bill just finalizes their consolidation. I urge your support.

Thomas G. Daly, Private Citizen, Reno, Nevada:

I am speaking today for myself and dozens of other residents and taxpayers in the Truckee Meadows and Sierra FPDs who have worked for the past seven years to establish a unified and affordable fire department to serve our communities. We have been successful in that regard. Under the able leadership of Fire Chief Charles Moore, who leads the fire departments that are operationally combined pursuant to an interlocal agreement, we have seen improved services, new and refurbished fire stations, faster response times, a new fleet of fire vehicles, fuel reduction projects, and paramedic services throughout all areas of both districts. While already combined operationally, the two fire districts remain separate taxing districts and separate legal entities. We are in support of A.B. 333, which will allow the BOCC to merge these two districts after July 1, assuming approval. [Continued to read from ([Exhibit D](#)).]

Chairman Ellison:

Are there any questions from the Committee? [There were none.]

Cliff Low, Private Citizen, Washoe Valley, Nevada:

I am a resident of the Truckee Meadows FPD. This bill is not deceptively simple, it is just simple. Right now is March Madness, and in the vernacular of March Madness, this bill should simply be a slam dunk, and I believe should

receive bipartisan support. The *Nevada Revised Statutes* (NRS) already allow for county commissions to organize FPDs for unincorporated areas. The intent of A.B. 333 is simply to allow county commissions to combine such FPDs when certain criteria are met, including that the BOCC determines that such a combination is in the best interest of the county and the FPDs. Please support A.B. 333.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Is anyone else in favor of the bill? [There was no one.] Is there anybody in opposition? [There was no one.] Is there anybody who is neutral? [There was no one.] Assemblyman Kirner, I think you are right. Can we get a vote to move this along?

Jered McDonald, Committee Policy Analyst:

If we want to pass the bill right now, we need to make a motion and have everybody approve to waive Assembly Standing Rule 57, and then we can move on the bill.

ASSEMBLYMAN SILBERKRAUS MOVED TO WAIVE ASSEMBLY
STANDING RULE 57.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN CARRILLO AND NEAL
VOTED NO. ASSEMBLYMAN STEWART WAS ABSENT FOR THE
VOTE.)

Chairman Ellison:

The motion did not pass, so we will consider it in a work session. I will close the hearing on A.B. 333, and we will take a five minute recess.

[The meeting recessed at 8:17 a.m. and reconvened at 8:21 a.m.]

Chairman Ellison:

Next on the agenda is Assembly Bill 360.

**Assembly Bill 360: Revises provisions relating to deferred compensation plans.
(BDR 23-906)**

Assemblyman David M. Gardner, Assembly District No. 9:

I am bringing Assembly Bill 360 before you today, and I am going to go through it very quickly. This bill seeks to provide employees of the state of

Nevada and the Nevada Systems of Higher Education (NSHE) with expanded options for investing through deferred compensation programs. Currently, *Nevada Revised Statute* 287.320 enables the State and NSHE to divert funds into a number of plans authorized pursuant to federal law. These plans include 401(a), 401(k), 403(b), and similar investment programs. This bill sets a minimum number of investment choices for employees of the State and NSHE.

Under section 1, subsection 2, new language requires that the State and NSHE offer an employee a minimum of five investment options. The plan must offer at least two investment options consisting of fixed or fixed index annuities, and at least two security investment options offered by different investment management companies. Further, under subsection 3, when selecting the investment options for the program, a third-party administrator of a program for deferred compensation must use a process to request proposals and choose among the proposals made available under an open and competitive process. The reason we are doing this is that we are trying to give transparency and options to the people currently employed in higher education. I am going to use the "S" word. This is a simple amendment, only a few lines.

Assemblyman Trowbridge:

Is this a completely voluntary program on behalf of the participants?

Assemblyman Gardner:

Yes. Right now, NSHE provides these plans through only one company, but they provide investment options. This would require them to provide more companies.

Assemblywoman Joiner:

What is the need for this? Have people expressed that there are problems? Has the deferred compensation program at the university level lost money? I am wondering what the genesis of this bill was. I know there are different investment options for people. Could you please clarify if the deferred compensation plan is pre-tax money? Is it employer-contributed, or just employee contributions? Can you explain which type of retirement we are talking about?

Assemblyman Gardner:

I have not received any complaints on this topic. This bill was just from a desire to make the process more open and transparent, and also to get more options. That was the impetus. As far as the various types of investments, I would like to defer that to Terry Kennedy.

Terry Kennedy, President & Chief Financial Officer, Appreciation Insurance Financial Services, LLC:

I am from Las Vegas and have been in the financial services business for more than 16 years. I have worked with a lot of public employees, mostly teachers in K-12. Many of our clients, about 3,000, have spouses and other relatives that work for NSHE. We meet with them and talk about their retirement also. Prior to January 2014, NSHE allowed for five vendors, so an employee could sign up with one of five different companies to defer their 403(b) contributions to. There were five different companies, and all of the options inside those companies. On January 1, 2014, they decided to do a request for proposal (RFP) and go down to one vendor—Teachers Insurance and Annuity Association of America-College Retirement Equities Fund (TIAA-CREF). When that happens, if the employees do not like TIAA-CREF, they are out of luck. They had five options before, and now there is one because the RFP said it would save money. A K-12 teacher has 20 different 403(b) companies they could choose from and 18 different 457 companies, while NSHE employees do not.

Assemblywoman Neal:

When NSHE decided to go with only one provider, what was stated as the public policy purpose for why they did that?

Terry Kennedy:

According to somebody in Human Resources, NSHE was trying to save money.

Assemblywoman Neal:

So you got the information from a Human Resources employee, and the reasoning was not broadly known in the minutes of a meeting or from a meeting?

Terry Kennedy:

I could read you the email. That is where I got the information from. I do not have any other resource.

Assemblywoman Neal:

So then you decided, "This is wrong. Must bring legislation"?

[Assemblyman Moore assumed the Chair.]

Terry Kennedy:

Yes. Anytime that I see an organization has gone down to one vendor, it is typically not the best decision. Across the country, with all the 403(b) accounts that my company deals with, we see that this is not a good thing that happens. More options are better for the employees. These people have

financial advisors outside that can choose which 403(b). If you work for the University of Nevada, Las Vegas as a professor, you might have an advisor with Wells Fargo or someone else. They can actually sign you up for that 403(b). If I go to my advisor at Wells Fargo and they say the only thing I now have as an option is TIAA-CREF, I cannot do anything else. It is not like we are trying to get in to advise. Their own advisors cannot give them any other options.

Assemblywoman Neal:

Can you explain the TIAA-CREF program that they selected? Do you have information about its strengths and weaknesses? That would be helpful to understand. I understand what you are saying, that limiting options is bad, but talk about the program that was chosen.

Terry Kennedy:

With 403(b)s, they have to have a third-party administrator that keeps records for the Internal Revenue Service's purposes. That third-party administrator will choose from the vendors that are out there. Before this RFP came up, TIAA-CREF was the third-party administrator already but there were five vendors that they chose. The argument from NSHE was that it was costing too much. A third-party administrator can choose vendors who will pick up the fees of the participants. For instance, in Clark County, if TSA Consulting Group brings on one vendor, that vendor will pay the \$3 a month for each participant that signs up with them. The cost is not to the school district or other people. Whether or not that vendor is willing to pick up the cost or not depends on whom the third-party administrator picks. They could go out and find vendors who are willing to pay the fee for each participant that is brought to them.

The case with the TIAA-CREF change is that if they get to be both the third-party administrator and the only investment option, it is cheaper. In that way, TIAA-CREF is picking up their own fee. They are not the best investment option. There are lots of investment options. If we were to go to Morningstar or anything like that, they would tell us that those are not the best across the board in every category. Some people do not want to be in securities. Most of their investment options with TIAA-CREF are securities. They do have some insurance products, but what if someone does not want that? What if they like a company they already use? Why can other companies not be involved? If a company is willing to pick up the fee and it is not going to cost any more, why not allow another company to be added to the list?

[Assemblyman Ellison reassumed the Chair.]

Assemblywoman Neal:

I am going to go out on a limb with a rumor. I heard that NSHE got an award for having a really good pension plan. Is that true?

Terry Kennedy:

There is an award out there, yes.

Assemblywoman Neal:

So NSHE was congratulated on having a good program and supporting their people with good plans.

Terry Kennedy:

They got an award, but I did not look up who the award is from. However, there are a lot of awards all over the place that can be given in financial services. If they are the only one providing this, who are they playing against?

Assemblywoman Joiner:

The University of Nevada, Reno (UNR) currently has the ability to have a multitude of options if they choose to go back to that model, right? If this bill does not pass, it does not mean they just have to stick with one provider. They have the ability to choose multiple providers if they think it is in the interest of their employees. Is that correct?

Terry Kennedy:

It is true, but the plan document says that they cannot add other vendors. They chose to sign a five-year contract with TIAA-CREF. That is a conflict.

Assemblywoman Joiner:

But at the end of that contract, they could change it.

Terry Kennedy:

Right.

Assemblyman Gardner:

We have been talking to NSHE about this, and they will be coming up in opposition. We would be willing to talk to them and see if we could come up with an agreement.

Assemblywoman Joiner:

I do not see anything in this bill that says that a current contract would somehow become null and void upon passage of this bill. Maybe I am missing it. This would all be after that five-year contract is expired anyway.

From a legal perspective, would the language in this bill override that contract as of July 1? I do not think that is how it usually works.

Eileen O'Grady, Committee Counsel:

This bill could not affect a current contract, just future ones.

Chairman Ellison:

The way I read this bill, it looks like it is an option and not mandatory that they give an alternate option.

Eileen O'Grady:

The statute currently allows the State or Board of Regents to have plans that consist of one or more plans. This bill says that if they do have one of those plans, those plans must fulfill these requirements.

Chairman Ellison:

Is anybody else in favor of the bill? [There was no one.] Anyone opposed?

Constance Brooks, Vice Chancellor, Government Affairs, Nevada System of Higher Education:

It is true that we spoke with Assemblyman Gardner on several occasions. I am trying to understand the origins of this bill and what is actually trying to be accomplished. It is unfortunate that I have only learned of the real details and why the proponents feel it is necessary this morning. The Board of Regents is a public body, elected by the citizens of the state of Nevada. We welcome anyone to come forward with issues, complaints, or to discuss various options—especially with relation to how we serve our employees throughout the state. To our knowledge, the Board of Regents has not been approached by anyone with complaints regarding our deferred compensation plan to date. We still welcome that conversation, and hope that outside of this building and the Legislature, individuals will feel welcome to discuss their issues with our elected Board of Regents, who are available.

As a result of an open and transparent competitive RFP process, TIAA-CREF was selected as the sole administrator for the NSHE retirement program. The RFP was released to the public in May 2013, and requested service and pricing information from respondents on multiple retirement plan administration scenarios, including single vendor, multiple vendors with a mastered record keeper, and other multiple vendor options. After a comprehensive review of the RFP submissions, it was determined that there was no added benefit in a multiple vendor arrangement compared to a single vendor arrangement. In addition, vendors were charging less for single vendor arrangements as opposed to multiple vendor or mastered record keeper arrangements. Finally,

it was determined that TIAA-CREF offered the best overall service and fee structure for NSHE retirement plan participants, and so they were awarded a five-year contract as the single record keeper.

I would also like to add that it is true that we won an award in November 2014. It is the Eddy Award from *Pensions and Investments*, which is a national publication. We placed second for our open, transparent, and inclusive process, and our communication plan to our overall employees.

I would also like to add that we ran some numbers. If there were any changes to our plan for an option to add a second fixed annuity product, we would incur a cost of over \$21,000. The cost of an open and competitive process to select another option vehicle would be about \$185,000. Yes, we were trying to find the best option for our system. We have endured over \$200 million in budget cuts over the last three biennia. We are interested in any way that we can better serve our students and staff and look at cost savings. We are very grateful that we have been nationally recognized for that effort.

Assemblywoman Spiegel:

I understand you when you say that adding the section option would cost \$21,000, and reopening the bidding process would cost \$185,000. At the time the contract with TIAA-CREF expired, would there be any detriment to employees or NSHE by allowing employees to have multiple choices of providers or products?

Constance Brooks:

Are you asking what the cost would be for us to reopen the open and competitive bidding process at the end of the contract's expiration date?

Assemblywoman Spiegel:

I guess my real question is if there is a downside to giving choice to the employees, once you are out of the exclusive contract that you have right now.

Constance Brooks:

Through our open and competitive bid process, other companies are welcome to provide their array of options to both our retirement plan advisory committee as well as to the Board of Regents, as they did in 2013. That is something we are planning for at the current contract's expiration date. There is already planning in our budget for the next five years.

Assemblywoman Spiegel:

At that time, if you were to decide to offer a multitude of products and not enter into an exclusive contract, would there be a downside to that choice for either the university system or their employees?

Constance Brooks:

We have already identified that the process and this selection of the current contract provides us with an enormous cost savings. I would presume that at the expiration date of this contract, we would keep that in mind and look at the fiscal savings that we have incurred so far. We would use that as a determining factor going forward. I would presume that by 2018, we would still realize the savings and would likely continue with this single contractor.

Assemblywoman Shelton:

In 2013, when NSHE decided to go with only one provider, were there other bids put in at the time you chose this one? Was this the only company that you took a bid from?

Constance Brooks:

We had the open RFP process that all state agencies adhere to. To my knowledge, there were indeed other companies. Dr. Kent Ervin, who was heavily involved with that process, can probably provide you with much more detail than I can. As I understand it, there were other companies that were welcome to participate in the process and did so.

Assemblywoman Neal:

After this five-year contract with TIAA-CREF ends, do you have the ability to open it back up to multiple vendors in your RFP process?

Constance Brooks:

Yes, we do.

Assemblywoman Neal:

If we pass this bill, it would mandate that you do that, but you already have the ability to review multiple vendors and make a decision.

Constance Brooks:

That is correct.

Assemblyman Moore:

What was the cost savings from using a single vendor and not multiple vendors?

Constance Brooks:

I do not have the exact numbers, and we are trying to run those. We have been trying to work with Assemblyman Gardner. I do not have that exact number at this point, but I will be happy to get that for you. We are working on it currently.

Assemblyman Moore:

Was it a lot, or a little?

Constance Brooks:

It was a lot. It was enough to allow us to focus on a single contractor versus having multiple vendors. The cost realization and savings was something we believed was important to our overall system.

Assemblyman Moore:

Is anybody connected with NSHE connected with your current investment provider?

Constance Brooks:

If I understand your question, are you asking if any of our 15,000 employees have any relationship outside the deferred compensation program between our employees and TIAA-CREF?

Assemblyman Moore:

Is there anybody in the decision-making process affiliated with the current provider?

Constance Brooks:

I do not have an exact answer. We are a state agency, so we do have to adhere to all of the policies and procedures pertaining to conflict of interest. If that were a problem, I am sure that it would be taken into consideration and those specific employees would have to disclose that relationship, as any other state employee would have to.

Kent Ervin, Private Citizen, Reno, Nevada:

I am an active participant in both the voluntary deferred compensation plans for the State and for NSHE. A substantial portion of my savings for retirement is invested in these tax-deferred plans. As a UNR faculty member, I do not have any Public Employee Retirement System benefits or social security benefits. I will be totally dependent on income from my deferred compensation, tax deferred plans in my retirement. The efficient operations of the plans are important to me and why I have been active on our Retirement Plan Advisory Committee since 2006. Since that committee has not had any time to meet

since we learned about this bill, I am testifying only for myself, as a participant in the program.

Our committee advises Chancellor Klaich in his fiduciary duties as the designated administrator of NSHE's defined contribution plans. In this role as advisory committee member, I have learned a lot about defined contribution plans, and I have been a constant advocate for reducing the fees paid by participants to investment managers and for administration. My understanding of A.B. 360 is that it would force both the state and NSHE's deferred compensation plans to add certain annuity insurance products to the investment choices already provided to participants and change the way they review and select investment managers. This bill is both unnecessary and counterproductive. I have submitted detailed written comments ([Exhibit E](#)), but I will only hit the main points.

The plans already have a diversified set of investment choices following the best practice. The TIAA-CREF plan was selected through this open process as the sole record keeper, but most of the industry, especially higher education, had gone to an open architecture where the record keeper is the account keeper but a variety of investments are operated. So we do not just have one investment, we have 32. There is one annuity product, which is provided by TIAA-CREF under the current plan, which is one of the best in class. There are mutual funds from Vanguard, the low cost leader in index funds, Dodge & Cox, and T. Rowe Price. These are all selected through a rigorous, duly diligent, fiduciary process which is standard industry best practice.

Adding a second annuity product would have marginal benefit in terms of providing investment diversity but would cost more. The plans already have the authority to consider investment products. In fact, our committee has talked about and researched the idea of a second annuity, and so far, it has not penciled out as being in the best interest of participants. The plans already have a rigorous fiduciary review process to select investments; however, using a full RFP process, which follows purchasing regulations for every mutual fund or investment that we select, would be more expensive and prevent the system from responding as quickly to changing market conditions as fiduciaries. For example, there can be a detrimental change of investment manager or in the financial strength of the company. The fiduciary needs to be able to respond to those issues.

Using a third-party administrator to choose investments is something I have not seen anywhere else. It conflicts with having the state as the employer serving as fiduciary. Third-party administrators are typically not fiduciaries. You have to go through a contracting process to find one that could do that.

Having a third party handle selection of investment would be intrinsically less open and transparent. The winners from this legislation would be the insurance companies competing for part of the profits from their annuity products. The losers would be the participants who would bear hiring fees for investment management and administration. Please choose the side of participants and reject A.B. 360.

Assemblyman Carrillo:

Whom are you representing today?

Kent Ervin:

I am representing myself. I am a participant in both the State and NSHE plans.

Assemblyman Carrillo:

If this system is not broken, why are we trying to fix it? That was a statement. As you are representing yourself, is this something you feel is a much-needed change? I know you came up in opposition.

Kent Ervin:

I am in opposition. I am representing myself. The committee has not had a chance to meet and advise the chancellor on this. I represent my constituents as a faculty representative on the committee, and I have heard no complaints. On the contrary, I have heard lots of compliments about how we went through this process and got to a cheaper, more flexible plan. Before this, we had three active record keepers. Fidelity only had Fidelity funds, TIAA-CREF only had TIAA-CREF funds, and VALIC had a variety of both their own annuity funds and other mutual funds. By going to a single record keeper but having open architecture and selecting TIAA-CREF, we went to the one major annuity fund that participants already were choosing, but also had this variety of mutual funds from lots of different best-in-class managers. We have a process for monitoring those and reviewing those.

My recollection is that before the transition, our average fees—total expense ratios including administration and investment manager—for the various companies ranged from 0.7 percent to 1.3 percent. With our new plan, we are at 0.26 percent. The details of that depend on how you calculate and look at all those averages over the whole plan because participants choose their own investments. That is the order of magnitude of the savings we have achieved.

Assemblyman Carrillo:

All of us here represent our constituents in our various districts. We try to make sure that we have good legislation to ensure we represent them well in their best interest, and that is what I think you are here for today as well.

Kent Ervin:

Yes.

Assemblyman Flores:

How many people compose the committee that you are part of?

Kent Ervin:

We have one representative from each of the NSHE institutions, plus benefits managers from northern and southern Nevada, a retiree member, and the system manager. I think it totals 12 or 13.

Assemblyman Flores:

If the participants started to complain about the options, what would be your response to that?

Kent Ervin:

If it is mutual funds, they are really easy. They are publicly disclosed securities, along with all the prices and terms. If we had people saying they wanted a high tech fund immediately, we would come back to the committee and discuss that. We have an independent investment consultant that we have retained to help us with our fiduciary duties because we individuals are not experts. We would look at that and choose to go out on a fund search and select one of those if we thought it was in the best interest of our participants. However, on the topic of choice, in addition to the investments within the plan, there is a new mutual fund brokerage window since 2014. Those few participants who are sophisticated and want to go out on the open market for mutual funds can go do that, put the contributions there, and select from thousands of mutual funds. Any individuals that want that kind of choice can do that.

I think we are talking about insured annuity products, which typically are not offered that way. They have lots of details in their terms and such. If we went out for an annuity product, we would find out if TIAA-CREF, as our record keeper, could support that. They have told us they can support third-party annuities of various kinds. They have to have an agreement with that other company to be able to handle the accounting, but there are various ways to do that. We could go ahead and change that. For an annuity, we probably would not go out with RFPs because they are so complicated.

Assemblyman Flores:

I will summarize to make sure we are on the same page, and then maybe the proponents can correct me if I am wrong. It sounds like you are saying there is a rigorous process to how we got to where we are right now, and due diligence was done. You have a committee of 12 members that adequately represents

the demographics from every institution. If there is a complaint now, you have a mechanism in place to have recourse to address that issue. The participants have an array of options right now, and should they want to change them, the participants would go through the committee, and the committee ultimately could do that if they wanted to. Am I correct?

Kent Ervin:

That is correct, with the sole provision that we are just an advisory committee and we advise the chancellor who is the designator, administrator, and fiduciary.

Chairman Ellison:

From what you have explained, this plan gives an alternate package. It does not say that you have to take the plan. Is that correct?

Kent Ervin:

My understanding of the bill is that it would require NSHE to offer an extra annuity product. So you gain pricing leverage if you can go into the market for one annuity product and request the best deal for access to all of our participants. That must be weighed against choice and whether the annuity products are different enough.

Chairman Ellison:

But they still have a choice, correct?

Kent Ervin:

It would be an additional choice for participants. One thing I would note is that over and over in the past six years, we have seen behavioral finance studies saying that more choice in these kinds of plans tends to paralyze participants from taking action. We had 300 choices in our plan before, and now we have 30. Ten of those are Vanguard target date funds, which are very simple. There are other index funds, more specialized plans, and then for the people who really want those choices, they can go to the brokerage window. We have lots of choices now, including what we found to be fixed annuity with guaranteed interest product that has very favorable terms through our open process. Just adding another annuity would not necessarily be in the best interest of the whole plan. We can consider the needs of the participants at any time.

Chairman Ellison:

We will move down to Las Vegas.

Brian Davie, Private Citizen, Las Vegas, Nevada:

I am speaking on my own behalf and as one member of the state's Deferred Compensation Committee. Like NSHE's advisory committee, this bill just came up last week and we have not had a chance to meet as a committee, so I will not speak as a member of the committee.

I am speaking in opposition, which is weird for me, given my background. I want to say that I am currently the Vice Chair of the Nevada Deferred Compensation Committee. I have served on this committee for the past 12 years, and I am the longest-serving member. I also served four consecutive years as chairman of that committee. I was honored to have been appointed by three consecutive governors, starting with Kenny Guinn, to this position on the state's committee. Since last July, I am also a retiree from the Legislative Counsel Bureau. I spent nine years with the Research Division in Carson City, and 19 years as a Legislative Services Officer heading the Las Vegas office down here. I bring that up just to show you my perspective in my testimony. I want to emphasize that I am speaking on my own behalf as one member of the committee. I know and have worked with about half of your committee members, and I feel like I have been getting to know some of the new members by watching from afar, due to my current work as a senior fellow at the Kenny C. Guinn Center for Policy Priorities.

I have a couple of quick points to make, and I am glad that I followed Dr. Ervin because I just want to say "Me, too" to everything he has said. I know that much of the testimony this morning has been about the NSHE program, but the proposed change in the law clearly affects Nevada's Public Employees' Deferred Compensation Program. One of my big concerns, on the topic of transparency and consultation, is that this bill draft resolution was submitted on December 10 and just said that it makes various changes to businesses. That did not alert us that this proposal had anything to do with deferred compensation. Since then, the state's Deferred Compensation Committee had a planning meeting on January 21, and our regular quarterly meeting on February 18, to which anyone can come and testify. We have public testimony at the beginning and end of every meeting. Dr. Ervin is a frequent visitor to our committee, given his interest and participation in our program, and it has contributed a lot to our understanding of the things we have done.

We also went through an RFP process and completed a transition. We also changed from two record keepers to one. That was finalized last year and the transition was completed last February. For the same reasons that Dr. Ervin cited, we decided to go with one provider because it offers lower rates for the participants, especially given the size of our plan. We have roughly 12,000 employees and are approaching \$700 million in assets from state and

public employees that are part of this system. It was in their best interest for us to go to a single record keeper because it does give participants better rates and deeper administration. We also have an investment consultant, and by going to one record keeper, we are saving \$20,000 every year because that investments consultant does not have to look at two record keepers' records and report to us every quarter.

I want to make one other point. I do not want to be cynical or disrespectful to Assemblyman Gardner or the legislative process. I was disturbed that this measure came up and there was no consultation with the state's Deferred Compensation Committee or with NSHE. Our state committee consists of five members appointed by the governor. There has been no consultation or collaboration with us on this measure. I have been around for a while and know how the legislative process works, and I know there are people and interests that try to get around agency processes through legislation in the hope of getting something through that they might not be able to get through with the agency. I know that works sometimes because agencies are seen as protecting their turf and being resistant to change. I want to just point out that the state's Deferred Compensation Committee does not really have any turf to protect because our statutory charge from the Legislature is to work solely in the best interests of the participants. That is our fiduciary responsibility. We do take it seriously. We try to find best-in-class options. We went to one record keeper because the deferred compensation field has changed in the last few years, and there is open competition and choice in making our investment choices. Like Dr. Ervin said, the more choices the participants have, the more paralyzed they are. We have pared ours down, and I think we have a much more viable program that will really benefit the participants in the coming five years that we signed into contract.

Chairman Ellison:

If you have a written statement, can you give that to the committee secretary?

Brian Davie:

I have some notes, which I will give to the committee staff ([Exhibit F](#)). I want to say that I am opposed to the bill, on my own behalf and as one member of the deferred compensation committee. I urge you to reject this proposal.

Assemblyman Moore:

Would you agree that choice is a good thing in life? We all have choices in what we wear and where we shop, buy gasoline, and eat. Is that a good thing?

Brian Davie:

Yes, absolutely. We do have choice in our program. We have one record keeper, and because of the open architecture that exists within the deferred compensation field right now, we can pick and choose any mutual fund that is out there. We have index funds, target date funds, and a wide range of funds that our participants can choose from. They do have choice.

We did have two record keepers in the past. The minor record keeper never would advance their part of the program very much because they had to charge higher fees since they had a lower part of the program. All they do is keep the records. Everybody still has choice because of the open architecture. They still have choice in making their investment options. The choice is there.

Assemblyman Moore:

You stated earlier that if this bill were to pass through that your members potentially could be paralyzed with all the choices before them, and now you say that choice is good. I am trying to figure where we are on this.

Brian Davie:

What we have seen, and what Dr. Ervin referred to, is that when you have too many choices, that is what paralyzes the participants. In my mind, one of the reasons we went to one record keeper was because before, our participants had two record keepers to choose from. So they had to make several choices: which record keeper to go to and which investment choice or choices to make. So we tried to simplify the process, but they still have choice in investments. The record keeper is just a record keeper. They do not influence the choice of investment options.

Assemblyman Moore:

So maybe in this instance, you are of the belief that choice is not so good as are other choices in life.

Brian Davie:

No, Assemblyman Moore. We have choice. This proposed bill does not offer any more choices, it just brings more companies into the process and will affect participants by increasing the fees that they will be charged.

Chairman Ellison:

Is there any other discussion? [There was none.] Is there anybody else in opposition to testify? [There was no one.] Those who will testify as neutral, please come up.

Rob Boehmer, Program Coordinator, Nevada Public Employees' Deferred Compensation Program:

On behalf of the Nevada Public Employees' Deferred Compensation Program (NDC), we have to take a neutral position on this legislation on behalf of the NDC committee. You have heard from Brian Davie, who is one of the representatives on our committee. There was not enough time for us to hold a special committee meeting, as Mr. Davie stated, and no one reached out to us regarding this proposed legislation as well. We were not able to hold a special committee meeting to conduct and evaluate the needed research and analysis in order for the committee to establish a position on this legislation. [Continued reading from ([Exhibit G](#)).]

Our investment lineup is an industry standard and is used by the majority of defined contribution, participant-directed programs across all industries. I think it is important for the Committee to understand that there are two different types of plans you can have in the 403(b) and 457(b) market. There are larger plans that are multimillion dollar plans, like the NDC plan, which is pushing almost \$742 million last time I checked. We operate under what is called an unbundled plan versus, for example, some school districts that are smaller that might have less asset size, where an insurance company will go and give them all the products that they will use. That is where you see, in school districts especially, multiple companies that are available to participants.

I want to point out for the Committee that amendment number two [referred to ([Exhibit G](#))], it would require that the NDC program's current stable value investment option, the Voya fixed account, be placed alongside another insurance product which may introduce a competing fund and require a complex minimum 90-day equity wash provision for the transfer of assets between the two options. Furthermore, that could prevent the transfer of assets out of the fixed or equity-indexed annuity if we were to offer that, and the participant would be assessed a deferral sales charge, withdrawal charge, or surrender charge. This poses a challenge to the established suitability standards that the federal government has established for companies, especially insurance companies, to abide by.

In our case, the NDC committee has retained the services of Segal Rogerscasey, a global independent investment advisory firm, to coordinate all fund searches, research, and to find replacements. As an independent investment advisory firm, they have no vested interest in the proposed options we offer under an open architecture investment platform to our participants. In other words, we can increase or decrease the investment options in our program anytime we want. We can offer insurance products like fixed annuities and index annuities, if the committee felt that it were in their best interest to do so. They would, of

course, want to make sure the fee structure was not going to be competing with our current contract with our current record keeper.

As an independent investment advisory firm, and because they have no vested interest in the proposed investment options we have in our lineup, their analysis and procedures are all supported by a solid research team of highly skilled and regarded professionals in the industry. [Continued reading from [Exhibit G](#).]

Chairman Ellison:

It sounds like you should have signed in under opposition instead of neutral.

Rob Boehmer:

Since the NDC committee was unable to convene and take a position on this, I unfortunately have no choice but to give a neutral position on this. I just wanted to point those things out to the committee so that you have that information available before you make this decision.

Michael Hillerby, representing Voya Financial:

Voya Financial is the current record keeper for Nevada's deferred compensation plan. We have been involved with the plan for a number of years. Recently, as you have heard in previous testimony, the plan made a decision to go with one record keeper. They previously had two. State law requires that there are five state employees that are appointed to manage the deferred compensation plan. That is the committee. State law requires that they offer at least one separate record keeper. They have had one in the past and then went to two, and in this case they have gone back to one record keeper.

I have heard a number of other testifiers talk about the approximately 26 different funds that the committee decides on. The committee decides the different options that their record keeper will then offer, and then we implement. They do that with the help of Segal Rogerscasey, their outside investment consultant. On the idea of an open process, the Committee should know that over the course of more than two years, the Deferred Compensation Committee ran two different RFPs to determine pricing to help them make a decision about whether to go with one or more record keepers. Based on that, in the second and most recent process run by state purchasing, there was a variety of open, public meetings. The RFPs were presented and a number of vendors competed. The committee ultimately made the decision, because of pricing, to go with one vendor. Voya was the successful one. That contract was approved some months ago by the State Board of Examiners after the award process through the Deferred Compensation Committee and purchasing.

We are neutral, and we will implement the policy the state chooses. It would necessitate a change in the contract, in our minds, particularly the fixed annuity part based on the way the bill is written. In subsection 2, if the idea of a minimum of five investment options means five different firms, that would obviously necessitate a change in the contract. If that means at least five different funds in the plan, we have that now with approximately two dozen different investment options. If any of the Committee members would like to see the list of funds available to state employees, we will provide that as well. For full disclosure, I have money in the state's deferred compensation plan from the time I was a state employee some years ago. The plan is entirely voluntary. The state provides no General Fund match for any of the state employees. It is the state employees' money that comes out pre-tax and goes into that plan. It is managed by the state employees through the Deferred Compensation Committee.

Chairman Ellison:

Is there a match by the state?

Michael Hillerby:

This is separate and distinct from the Public Employees Retirement System, which is the defined benefit system. This deferred compensation program is a voluntary program, and for state employees, there has historically been no match. It comes out of their paychecks. You can elect the pre-tax option, and it comes out of their paycheck over and above the Public Employees Retirement System. Dr. Ervin talked about that. I cannot speak to what NSHE or other local governments may or may not do. I know some local governments do match, but for state employees in the deferred compensation program, it is entirely their money.

Chairman Ellison:

Any questions from the Committee? [There were none.] Is there anybody else to testify as neutral? [There was no one.] Will the sponsor of the bill please come forward?

Assemblywoman Joiner:

I really appreciate the testimony. The more people that talk, the more questions I have. My real question now is about the intent behind the five different choices. The way it is worded in the bill, it says different investment management companies and "two securities investment options." It is not clear, as the last testifier said, whether you intended it to be five investment options. But either way, having been in a bid process myself and chosen vendors, I am trying to picture what this results in. The only way I can see it is that if they go up to bid and get offers, they basically have to rank the top five

and take the top five, or if it were two different companies, they have to take those two. I have a concern with that. I think they choose a product that they think would be beneficial to their employees and have confidence in and feel would be a safe investment. I have a concern with forcing them to take the top three, two, or five options. I am wondering if I am misunderstanding your intent on that.

Assemblyman Gardner:

The intent was just to provide more choice, whether it be two or five companies. My intent was to require five companies. This is voluntary. It would not force any person into a program. It would just offer options, and the individual would be able to choose which one they want.

Assemblywoman Joiner:

I understand that it is optional for people to invest. But from a system perspective, they only want to choose products that they have confidence in as quality products. I think employees, in general, are trusting. Having worked at the university, I have a small amount invested in these. I think there is a general trust that your employer has done some vetting, or that they would not be offering these products if they were not high-quality or the best in the bid process. When you keep going down a list of offers and force them to take entities that are lower on the list, I am concerned that the perceptions of quality that the employees have would not necessarily be real, because their employer was forced to choose entities that were lower on the list.

Assemblyman Gardner:

I would argue that there are well more than five good companies that do this. I would say there are at least tens or hundreds that do this, that are all highly graded by Morningstar and other services that grade these funds and companies. I would be very surprised if they did not find five good companies to do this. This is not something that is requiring them to do an inordinate amount of grouping. It will be voluntary for these people to decide which entities they want to go with. If I like Vanguard to do my accounting, for example, I could choose them, or I could use TIAA-CREF. That could very well happen. I have nothing against TIAA-CREF, it is a great company. We had a meeting with them on something else and they have been doing some of these things for our state for about 40 years, I believe they said. The vast majority of people could choose them. I have no problem with that. The idea is just to give them the options and not have someone taking away their options, which I believe is happening right now. If this is not the best way to do that, I will be talking with NSHE, and if we can come up with better ways to provide these options, I am happy to do that.

Assemblywoman Shelton:

I am on the same line as Assemblywoman Joiner. I was looking into this company, and it looks like they did have some problems back in 2009. That got me thinking. You are right, this company is doing well at the present time, but it has had problems in the past. This bill would allow other companies to come in and be in the mix, allowing employees more options. Was that your thought behind this bill?

Assemblyman Gardner:

It was along those lines. I do not want to say anything bad about TIAA-CREF; they are a good company. A lot of companies had issues in 2008 and 2009. But some of these things, especially annuities, are based on the financial stability of those companies. So we are just trying to provide more choices. That is all this bill is intending to do. Once again, if this is not the best way to do that, I am happy to amend it. But the idea is to get more options to these employees and let them choose.

Assemblyman Moore:

Giving choice is always a good thing. In your opinion, who has the ultimate responsibility to do their due diligence when they invest their money? Is it the employer or the employee whose money is actually being invested?

Assemblyman Gardner:

I would say obviously the employee, but I agree with Assemblywoman Joiner. I like the idea that there can be some vetting. We do not want any of these people to be scammed or some kind of bad company to provide an annuity and not have the financial security to back it up. I agree that we should be looking at these companies, which is already done with these advisory committees. I am just saying I think there should be more choice.

Assemblyman Moore:

I agree that choice is good, and it is ultimately the employees' responsibility to do their due diligence when they are investing their own retirement money.

Assemblyman Gardner:

I agree that with all of us, when we do the investing, the responsibility is ours.

Assemblyman Carrillo:

Where is this coming from? Was there a constituent who talked to you about it? No one seems to be complaining about not having choices.

Assemblyman Gardner:

I did have a constituent contact me about this. I would also say that perhaps they do not know that they do not have choices. This is just a general policy argument on my part. More choice is better. It was suggested it can be paralyzing if we have too much choice, but that also gets to the point where a board can eliminate 90 percent of your choice, as NSHE said that they did. That concerns me. Maybe the bill passes and nothing changes. That is fine with me. The idea is to not force people to different companies but just to give more options and let them decide what to go with.

Chairman Ellison:

Do you have any closing arguments?

Assemblyman Gardner:

Not really, but I just want to point out that we are not trying to say that there is crony capitalism or there is any problem with companies going in and corrupting the board to choose them; we are not trying to argue that at all. I am saying that as a policy argument, we like more choice, and that is really what this comes down to.

Assemblyman Flores:

Thank you for indulging me. When you came up with the idea of pushing this bill forward, what was the initial response when you approached NSHE that made you decide you needed to keep going forward?

Assemblyman Gardner:

We were able to talk very initially with NSHE, but we were unable to get everyone in the same room. That is why as late as last night when the Assembly Committee on Education was finishing up at about 6 p.m., I talked with Ms. Brooks of the NSHE. I mentioned that we still had not been able to get everyone in the same room, so we decided to just go forward with it today, and then get everyone in the same room and figure out a way to work out these differences. As of last night, we were not able to get everybody in the same room to have that discussion.

Chairman Ellison:

Thank you for your comments. I will close the hearing on A.B. 360. Is there anyone here for public comment? [There was no one.] Meeting adjourned [at 9:34 a.m.].

RESPECTFULLY SUBMITTED:

Erin Barlow
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 26, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 333	C	Marsha Berkgigler / Washoe County Board of Fire Comissioners	Map
A.B. 333	D	Thomas G. Daly / Private Citizen	Testimony
A.B. 360	E	Kent Ervin / Private Citizen	Testimony
A.B. 360	F	Brian Davie / Private Citizen	Testimony
A.B. 360	G	Rob Boehmer / Nevada Deferred Compensation Program	Testimony