

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

**Seventy-Eighth Session
April 3, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:10 a.m. on Friday, April 3, 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: 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 Lynn D. Stewart
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblywoman Robin L. Titus, Assembly District No. 38

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Jordan Neubauer, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Rusty D. Jardine, Esq., District Manager and General Counsel,
Truckee-Carson Irrigation District
Ernest C. Schank, President, Board of Directors, Truckee-Carson Irrigation
District
Nathan Wadsworth, Private Citizen, Fallon, Nevada
Edwin James, General Manager, Carson Water Subconservancy District
Mike Draper, representing Frey Ranch Distillery
Colby Frey, Private Citizen, Fallon, Nevada
Pete Olsen, Chairman, Board of Commissioners, Churchill County
Kelvin Hickenbottom, P.E., Deputy State Engineer, Office of the State
Engineer, Division of Water Resources, State Department of
Conservation and Natural Resources
Robert L. Holley, District Manager, Dayton Valley Conservation District
Steve K. Walker, representing Lyon County
Ron Penrose, Superintendent, Carson-Truckee Water Conservancy District
Jeff Fontaine, Executive Director, Nevada Association of Counties
Ronald P. Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada; and representing Washoe County Public
Attorneys' Association; and Washoe School Principals' Association
Martin Bibb, Executive Director, Retired Public Employees of Nevada
Janice Florey, Private Citizen, Gardnerville, Nevada
Vicki Cameron, Private Citizen, Henderson, Nevada

Chairman Ellison:

[Roll was called. Committee rules and protocol were explained.] We are hearing three bills today and have a work session. We will do the work session first.

Jered McDonald, Committee Policy Analyst:

The first bill is Assembly Bill 162.

Assembly Bill 162: Revises provisions governing the use of portable event recording devices by law enforcement. (BDR 23-443)

This bill was sponsored by Assemblyman Munford and Assemblyman Wheeler. It was heard in this Committee on March 9. Assembly Bill 162 requires certain peace officers to wear a portable event recording device while on duty. [Continued to read from the work session document ([Exhibit C](#)).]

Chairman Ellison:

This bill is enabling and we encourage the departments to do what they can to implement the policy. I will take a motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 162.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Ellison:

Assemblyman Munford, will you please do the floor statement?

Assemblyman Munford:

Yes, I will. I just want to extend my appreciation to the Committee for having this legislation go forward. It is a big step in the relationships with the community and law enforcement.

Jered McDonald:

The next bill is Assembly Bill 170.

Assembly Bill 170: Revises provisions governing general obligations. (BDR 30-917)

This bill was sponsored by Assemblywoman Dickman, Assemblyman Wheeler, Assemblywoman Fiore, and others. It was heard in this Committee on March 27. Assembly Bill 170 clarifies that a general obligation issued or incurred by a municipality or school district must be used only for the stated purpose for which the general obligation was originally issued or incurred and not for any other purpose. [Continued to read from the work session document ([Exhibit D](#)).]

Chairman Ellison:

Is there any discussion?

Assemblywoman Neal:

I just have a question on the change of the effective date. What do you mean to allow current proposals to proceed? What is it referring to?

Assemblyman Wheeler:

There are some current proposals for bonding that would be affected if we did not change the effective date. It is a friendly amendment.

Assemblywoman Spiegel:

I had a number of concerns with the bill, and I am not entirely certain that the amendment alleviates them, so I am going to vote yes to move forward, but I want to reserve my right to change my vote on the floor.

Assemblywoman Joiner:

This amendment was not out for the public very long, and I have not heard back from all of those who had expressed opposition to hear whether the amendment alleviates their concerns or not. I do not know if you know who all have agreed to the amendment besides the ones listed here. There are some people missing from the list. I am going to vote for it, but I will reserve my right to change my vote on the floor unless that is clarified.

Chairman Ellison:

Assemblywoman Neal, Assemblyman Carrillo, and Assemblyman Flores, would you all like to reserve your right to change your vote on the floor as well?

Assemblywoman Neal:

Yes.

Assemblyman Carrillo:

Yes.

Assemblyman Flores:

Yes.

Chairman Ellison:

Not a problem. I will take a motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 170.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Ellison:

Assemblyman Wheeler, will you please make sure Assemblywoman Dickman will do the floor statement?

Assemblyman Wheeler:

Yes.

Jered McDonald:

The next bill is Assembly Bill 236.

Assembly Bill 236: Enacts provisions related to the promotion of public engagement by state agencies. (BDR 18-697)

This bill was sponsored by Assemblywoman Neal and others. It was heard in this Committee on March 17. Assembly Bill 236 encourages each state agency, to the extent practicable and within the limits of available funding, to develop a policy to promote public engagement that includes the use of the Internet and Internet tools, including electronic mail, electronic mailing lists, online forums, and social media. [Continued to read from the work session document ([Exhibit E](#)).]

Chairman Ellison:

Is there any discussion? [There was none.] I will take a motion.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 236.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Assemblyman Wheeler:

I was not on this Committee at the time this bill was heard, so I would like to look at it a little more closely. I will vote it out of the Committee, but I would like to reserve my right to change my vote on the floor.

Assemblywoman Dooling:

I would like to reserve my right to change my vote on the floor, but I will vote for it now.

THE MOTION PASSED. (ASSEMBLYMAN SILBERKRAUS
VOTED NO.)

Chairman Ellison:

Assemblywoman Neal, will you do the floor statement?

Assemblywoman Neal:

Yes.

Chairman Ellison:

I will now open the hearing on Assembly Bill 415.

Assembly Bill 415: Revises provisions relating to the use of water in a federal reclamation project. (BDR 48-928)

Assemblywoman Robin L. Titus, Assembly District No. 38:

As all of us are aware, not only Nevada but California and many surrounding areas are suffering from a drought. If you have not noticed, you have not read any newspapers lately. Assembly Bill 415 was submitted specifically for the people in Churchill County who use water from the Truckee River and the Carson River. There have been concerns that they are not able to use the limited amount of water to the best of their abilities. This bill is a one-line amendment to existing *Nevada Revised Statutes* (NRS). Page 2, lines 33 and 34, identify what a farm is. In many areas of farming, you may have a farm unit in one location and another farm further down the road. You may have bought multiple farms, inherited them, or bought them yourselves, but the fence posts do not always touch. A couple of lines in this bill define a farm as a tract of land but the tracts of land do not have to be contiguous. They do not have to be touching. That is the sole purpose of this bill so we can make maximum use of the water.

Rusty D. Jardine, Esq., District Manager and General Counsel, Truckee-Carson Irrigation District:

We are centered in Fallon. As many of you may know, we are the contractor with the United States Department of the Interior Bureau of Reclamation for the administration, operation, and maintenance of the Newlands Project. We have many duties, including the administration of water rights associated with the water users in the project. There are 2,500 of them and they include private persons, government entities, the United States Fish and Wildlife Service, the United States Navy, and many others. In connection with all of that, we keep track of all of those rights under direction given to us by the Office of the State Engineer and the federal watermaster. We administer two federal decrees, the Alpine Decree and the Orr Ditch Decree, and we are subject to a body of federal regulations known as the Operating Criteria and Procedures for the Newlands Project in Nevada.

We are in favor of this measure. It will allow our water users within the project to find clarification associated with the purposes regarding the creation of what may be called a "farm unit." Farms are not what they used to be. We used to

consider them a large parcel. They have grown to include ownership of a tract in one location and ownership of other tracts elsewhere. They are not tidy in regard to the fact that they are contiguous. They are not touching at a point or they are not side by side. Typically, the family farm has grown to include a number of parcels.

Presently, Nevada law provides that a surface water right acquired by a water user in a federal reclamation project may be considered appurtenant to an entire farm, instead of specifically identifiable land within that farm, upon the granting of a permit for the change of place of use by the State Engineer, which designates the place of use as the entire farm. [Continued to read from prepared text ([Exhibit F](#)).]

Chairman Ellison:

I understand what you are doing and I agree with you. Say I have two parcels of land and enough water rights for only one, yet I go ahead and put water on one field and then put it on another field too. What would be the violation or fine for watering both parcels?

Rusty Jardine:

The creation of a "farm unit," which is an ordained process through the Office of the State Engineer, would allow you, having the separate tracts, to identify them and make them part of a farm unit wherein you ascribe a water budget to both of those tracts. It would allow you to flexibly use whatever quantity of water you ascribe to that farm on either one parcel or the other. You could move the water between the two of them in that fashion as long as you did not exceed the amount that was identified for the entire farm.

Chairman Ellison:

You cannot exceed what you are allocated. Is that correct?

Rusty Jardine:

That is correct.

Ernest C. Schank, President, Board of Directors, Truckee-Carson Irrigation District:

Honorable Chairman Ellison and honorable members of the Committee, I am Ernest C. Schank, President of the Truckee-Carson Irrigation District, Board of Directors. I reside in Fallon, Nevada, and operate a farm in the Newlands Project. My grandfather purchased the family farm in 1939. [Continued to read from prepared text ([Exhibit G](#)).]

It was one of the first five authorized, the first to have construction begin, and the first to have a part of the project dedicated, so we claim that we are the first federal reclamation project in the United States. [Continued to read from prepared text ([Exhibit G](#)) and referred to ([Exhibit H](#)).]

Assemblywoman Neal:

In existing law, NRS 533.040, subsection 4, says, "For the purposes of this section, a surface water right acquired by a water user in a federal reclamation project may be considered appurtenant to an entire farm, instead of specifically identifiable land within that farm...." The existing statute was extended to say that it does not have to be specifically identifiable land within that farm, and you are able to use the quantity of water available for the use on the farm as long as it does not exceed the amount determined by the State Engineer. Then NRS 533.075, which is the rotation in use of water says, "To bring about a more economical use of the available water supply, it shall be lawful for water users owning lands to which water is appurtenant to rotate in the use of the supply to which they may be collectively entitled; or a single water user, having lands to which water rights of a different priority attach, may in like manner rotate in use, when such rotation can be made without injury to lands enjoying an earlier priority...." How do those two provisions not allow movement from one parcel to another parcel if it is in the entire farm?

Assemblywoman Titus:

That is what these people have been asking for, for years. That is why we are here today. It seemed like it was clear that the parcels do not need to be touching if it is within your farming area, but it has been interpreted by the Office of the State Engineer that the land has to be touching. We wanted to make it clear that they do not have to be touching. The fence posts have to be touching before they let the water be moved around. Your reading of the statute, for us at the table, seems clear enough.

Assemblywoman Neal:

Is the State Engineer going to be here today?

Assemblywoman Titus:

I do not know. They are well aware of that with which we are going forward.

Chairman Ellison:

Several senators at the rural caucus were educated on this bill this morning.

Assemblywoman Spiegel:

The land would be farmed as though it were one piece of land, so I just wanted to get a sense of how far apart that might be. If you had one of the parcels in Fallon, could the other parcel be in Tonopah, or are there parameters?

Ernest Schank:

For this particular bill, they would be confined to the Newlands Project.

Assemblywoman Joiner:

Assemblywoman Spiegel asked the same question I was going to. I understood the answer, thank you.

Assemblyman Flores:

Section 1, subsection 2, states, "If at any time it is impracticable to use water beneficially or economically at the place to which it is appurtenant...." If there is no use for the water where the water is attached to the parceled land, then at that point you are allowed to transfer the water to a different parcel, is that correct?

Assemblywoman Titus:

Yes, that is exactly correct.

Assemblyman Flores:

The reason you are bringing this issue forth is because sometimes the water is beneficial to a parcel, but you also want it to be beneficial to another parcel and that scenario is where you are colliding with the State Engineer, correct?

Assemblywoman Titus:

No, they are colliding with the State Engineer's interpretation. It is already in statute that they can move water around to the best use scenario. This does not give more water rights. There is only a finite amount of water. They can move the water from one field to another for best use, but they interpret it that those fields have to be touching somewhere. I interpret it differently than the State Engineer has been interpreting it, and not necessarily the State Engineer himself, but perhaps some of his employees. That is why we brought this forward. It sounds like many of you are already interpreting it as you can move the water, but they are holding the statute strictly that the parcels have to be touching.

Assemblyman Flores:

In section 1, subsection 2, it says, "the right may be severed from the place of use and be simultaneously transferred and become appurtenant to another place of use, in the manner provided in this chapter, without losing priority of right."

They are reading that to mean if the parcels are not touching, they cannot use it. Is that correct?

Assemblywoman Titus:

Yes.

Assemblyman Flores:

I am done with my questions. The new language makes sense to me.

Nathan Wadsworth, Private Citizen, Fallon, Nevada:

Honorable Chairman and Committee, I am grateful to have this opportunity to speak to you in favor of A.B. 415. I am a third-generation farmer on the Newlands Project. I am representing my father, 6 brothers, our 38 children, and our partners in our farming operation. I support this bill in every way and concur with everything that has been said. I would like to give you an analogy. I would like to compare the ability of using water where it is needed to the usage of my tractors. When I need to use my tractor on a different field or different property, I have the freedom to do so. [Continued to read from prepared text ([Exhibit I](#)).]

Assemblyman Wheeler:

In fact, I see this as a conservation measure. Like your tractor, you do not have to go buy another one and let it sit on the field. Where the water may not be used on one parcel of land because of growing conditions—you may be reducing for a year to get soil compact back, et cetera—but you cannot use the same water during the drought period a quarter mile down the street or literally across the street because there is no fence post touching because the land is divided by a street. Is this correct?

Ernest Schank:

That is correct.

Chairman Ellison:

Will those in favor of the bill please come forward?

Edwin James, General Manager, Carson Water Subconservancy District:

We just wanted to let you know we are in support of this bill.

Mike Draper, representing Frey Ranch Distillery:

We are very much in support of this bill. We would also like to make the point that Assemblyman Wheeler touched on; we are in the middle of a historic drought. In many ways we see the timing of this as almost an emergency measure that will help our farmers get the very most out of their tracts of land.

We would also like to say that not only do we support this bill, but also after talking to Assemblywoman Titus last night, we would like to suggest that this bill be expanded to include properties that are not just owned, but leased. Many of our farmers not only own tracts of land, but they also lease tracts of land, and we would like to be able to allocate the water to the best possible tracts of land regardless of whether it is leased or owned, as long as we have the water rights.

Colby Frey, Private Citizen, Fallon, Nevada:

I am a fifth-generation Nevada farmer and the owner of Churchill Vineyards, Frey Ranch Estate Distillery, and Frey Farm. We own about 1,200 acres of farm ground in Fallon. We also farm an additional 1,300 acres of farm ground that we lease around the valley. Actually, all of our owned ground is contiguous, but our leased farm grounds are around the valley. This year I am not going to be able to irrigate different farms because it is not worth it. With the amount of water we have, there are no crops that are valuable enough on the leased ground to even use the water rights.

My family has been farming in Nevada since the 1850s, and this is the worst drought we have ever had. It is really important to be able to use the water rights in the most efficient and best way possible. I know you have already heard this, so I am going to keep it short and simple, but this is very important to us.

Pete Olsen, Chairman, Board of Commissioners, Churchill County:

I am a local dairy farmer in Fallon. My family has been in Nevada since 1861, and we have produced milk for northern Nevadans continuously for 100 years using water from the Sierra Nevada mountain range to create feed for our cows. [Continued to read from prepared text ([Exhibit J](#)).]

This year it looks like we are only going to be allocated 20 percent. The problem with guessing at the beginning of the year is invariably we will be wrong. We will transfer more than we can get applied to one property in the shortened water season and maybe shorten another piece of property. Right now, we are estimating that it might take seven-tenths of a foot of water to irrigate on the first irrigation because the ground is so dry. Some will take five-tenths, and some will take six-tenths. It is very hard to get it exactly right. This bill would give us the flexibility to be able to put the water to the best use. [Continued to read from prepared text ([Exhibit J](#)).]

Chairman Ellison:

People may not understand that you might want fields to rest for a year and by doing that the climate might allow you to get one extra cutting of alfalfa on

another field. It is good to be able to transfer the water back and forth. You can use the extra water on another crop. There is good in this any way you slice it. It is all in the management.

Jered McDonald, Committee Policy Analyst:

We received a letter ([Exhibit K](#)) from Norm Frey on March 31 and it was addressed to the Chairman regarding this bill. It is available on Nevada Electronic Legislative Information System (NELIS).

Chairman Ellison:

Are there any questions from the Committee?

Assemblyman Silberkraus:

What you would like to see added into this bill is the ability to transfer water from land you own to land you are leasing so you can produce crops, correct?

Colby Frey:

Yes, essentially that is what we are asking. We have leases for the particular water. Under current law, just like different parcels that are owned, we can do temporary transfers. We would have to go through the paperwork to move it around, which is sometimes not worthwhile. Like Mr. Olsen said, you have to guess at the beginning. Last year our water budget was 45 percent and it was cut down to 40 percent, which made our water budgeting extremely hard. At the last minute, we could have made adjustments and moved water with the proposed legislation.

Also, up until about four years ago, we were able to move the water with the farm units as we are suggesting until the interpretation. When I began farming, I could actually take leased groundwater rights and owned water rights and create a farm unit and use the water rights to my best advantage. Now, and within the last four years, I cannot do that, and it is ironic because in the last four years, we have had a drought, and now we cannot use the water most efficiently.

Assemblyman Silberkraus:

As Assemblyman Wheeler said, this is actually a conservation measure. You are going to be able to use your water more efficiently. You will not have to make rough estimates, either transfer too much or not enough, and be able to get more efficient cost savings as far as producing your crops.

Colby Frey:

Exactly, we want to be able to conserve water. We are not asking for more water or anything other than to be able to use our water to our best advantage

possible, especially in drought years when we are already down. We rely solely on water to grow our crops, so we really need to use the water to our best advantage; it is very important for us.

Chairman Ellison:

Is there any other discussion? [There was none.] Just remember Mark Twain's famous statement, Whiskey is for drinking and water is for fighting over. This is one of those issues. Is there anyone else who wants to testify in favor of A.B. 415? [There was no one.] Is anyone in opposition to this bill? [There was no one.] I am sure we have a neutral individual from the Office of the State Engineer. Please come forward.

Kelvin Hickenbottom, P.E., Deputy State Engineer, Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources:

I did not come here to comment on A.B. 415, but I can answer questions.

Chairman Ellison:

I think we all agree that this is in the statute already. Sometimes, two people can read the same law and come up with different interpretations. This bill is just clarification to the current statute, is that correct?

Kelvin Hickenbottom:

Yes, within the federal reclamation project.

Assemblywoman Neal:

The Office of the State Engineer has read the statute not to include lands that do not touch?

Kelvin Hickenbottom:

Yes, we interpret the law as though they need to be contiguous.

Assemblywoman Neal:

Why? What is your reasoning?

Kelvin Hickenbottom:

When I started working here that is what I was told. I read the statute that way. The water is affixed. We look at it as a piece of property that water is appurtenant to. They need to have a map that shows a place of use, from the water to its appurtenance. When that happens, parcels are not necessarily contiguous, but at least they are affixed to the place of use that is granted underneath the permit.

Assemblywoman Neal:

Fixed to the place of use meaning the entire farm even though the entire farm may not have contiguous land?

Kelvin Hickenbottom:

A lot of the time when an application is filed, they will actually delineate a larger place of use than they actually have water for. Through the permitting process, the permittee is required to put their water to beneficial use and at that point, they submit another map affixing the water to a specific place of use that is smaller than the original place of use that they have applied for under their permit. Some ground is better than others and that is where we affix it. Essentially, when it is under a certificate, it becomes fixed to a particular place of use. It cannot be moved unless there is a change application on file approved by the State Engineer to move it to another parcel of ground. Our terminology is strict as to the place where it is affixed and then moved to a new place of use. If they had two places of use that were not necessarily contiguous in the original permit, we would allow that. There is still a duty per acre for the grounds and that is what we try to do. It is tough to just allow people to spread their water and increase the consumptive use, which is why we affix it to a place.

Assemblywoman Neal:

How long does the change process take?

Kelvin Hickenbottom:

Presently, temporary permits take 30 to 60 days. Knowing that this is a drought year and last year was a drought year, we have made a concerted effort to get them processed as fast as we can. We have cut down the time period. It is our priority to get those applications processed, and we do. We still have to ask questions and make sure we are adhering to Nevada's water laws. There are multiple people filing change applications. Yesterday, I reviewed some temporary change applications for an applicant within the Truckee-Carson Irrigation District, and they were only in our office for a couple of weeks. We try to expedite the applications knowing that there is a drought.

Chairman Ellison:

Under Nevada law interbasin transfer is legal, correct?

Kelvin Hickenbottom:

Interbasin transfers are not illegal; they just have additional scrutiny they have to undergo.

Chairman Ellison:

They are legal?

Kelvin Hickenbottom:

Yes.

Chairman Ellison:

Interbasin transfers are legal, but the biggest problem we have is the time period it takes when you have such short growing seasons.

Assemblyman Wheeler:

This is the first time I have heard about 30 days being expedited. I am just wondering if you know that 30 days is about half of an alfalfa growing cycle. If it takes that long to get the permit, you are going to lose half an alfalfa cycle. Why does it take so long? Obviously, this bill is badly needed if it is taking you that long to process these permits.

Kelvin Hickenbottom:

One reason it takes that long is staffing levels. We have 256 basins within the state that we administer. It is not only in the Fallon area that we get temporary applications; we get them statewide. As I said, we are trying to cut down the time frame the best we can. If someone files an application in April, they are probably already behind the curve anyway. It is a process we are working on. We have made a concerted effort to move through these as fast as we can. Sometimes, we cannot move fast, there may be title issues that we have to address, and we would have to get the information if they did not bring a title, or if there is a lease, which they do quite often in the Truckee-Carson Irrigation District, we have to make sure we have the lease agreement papers before we can approve the change applications, et cetera. There are questions quite frequently that we have to get answers to before we can actually sign a permit.

Assemblywoman Joiner:

It sounds like in order for them to be able to use noncontiguous land this way, they would need this bill to pass. Anytime we do away with an oversight process, as this bill proposes to do in that they would not need the temporary permits, I always wonder what it is that may not be caught. How many temporary permits do you deny? Is there any concern that if we do away with the temporary permit process and they can automatically move the water around that the permits you are currently denying will go astray or there will be abuse of the system? Or is it just that you are checking a bunch of paperwork and you approve them all anyway?

Kelvin Hickenbottom:

I do not think we will ever get away from the temporary permits. Maybe in the Truckee-Carson Irrigation District we will, but not statewide. There are other areas that this bill does not affect. This is only for a federal reclamation project and there is only one in Nevada. This bill would help them. It would expedite the process. They could just take their decreed waters and move them from one farm unit to another farm unit.

I am speaking for myself now: My only concern would be if they spread their water within a greater area other than what they are water-righted for, then the consumptive use of that water goes up unless return flows get back to the system for other water right holders. We are educated in affixing the water right to a place of use, and it has a specific duty.

Assemblywoman Joiner:

What percentage of permits do you think you currently deny, specifically in this basin since it is the one the bill affects?

Kelvin Hickenbottom:

To be honest, I could not tell you how many temporary permits we have denied in the Truckee-Carson Irrigation District. I would say very few because we have a good working relationship with them. We have one specific engineer who generally works on these applications, and he is in contact with their offices all of the time to make sure the paperwork is there in order to expedite the applications. Most of the time, it is a denial because we do not have ownership information, a lease agreement, et cetera. I would say very few.

Assemblyman Flores:

I imagine that this bill also benefits the farming community in that there is an expense associated with the permits, correct?

Kelvin Hickenbottom:

Yes, there is an application fee. It is about \$180 for a temporary application because they do not have to pay the publication fee. There is also a permit fee, which is up to \$750 for irrigation-to-irrigation changes.

Assemblyman Flores:

So almost \$1,000. I know when we use the term appurtenance, it is typically treated like a term of art and it has a very specific definition. I am trying to get to that definition with my questions so you understand where I am going. Say there is a stream of surface water and right next to it is a parcel and right next to the parcel is another parcel that is not attached to the stream of water.

Is there a scenario now where the second parcel has a water right to the stream of water?

Kelvin Hickenbottom:

The state of Nevada is under the prior appropriation doctrine, so the place of use does not have to be affixed to the stream, which is a riparian doctrine. The answer is yes, but they would have to have a permit that allowed them to take the water from that source and be able to apply it to the noncontiguous parcel. It is allowed all over. It is best to use the water where it is best to use it, not just right along a stream course, which may not be the best place.

Assemblyman Flores:

If I purchased the second parcel, I would have a lot of scenarios, but I do have a water right to something that is not directly attached to the parcel, correct?

Kelvin Hickenbottom:

As long as you are on a permit to irrigate the other parcel. If a road divides two parcels, we still consider that contiguous. If they were separated by a distance, then we would say they are not contiguous, but a road is not a barrier.

Assemblyman Flores:

Is there a scenario where there is a single individual parcel which is detached from water that has water rights? If that is true, then with my interpretation of the statute, I still do not understand why we are not allowing them through the way the law is written currently. I just do not get it, but I think we are agreeing.

Chairman Ellison:

Are there any other questions? [There were none.] Does the bill sponsor want to make any closing remarks?

Assemblywoman Titus:

Thank you for all your excellent questions. Water law is a fascinating issue and it seems so clear but so confusing. It would appear that there would be no need for this bill because it only makes sense to use water to its best use; however, there are different ways to interpret this. The people behind me, and the farmers and ranchers in Fallon have had many issues. Ultimately, the permits are denied not because they are using the water to the best use and the State Engineer agrees, but the problem is they have to go through a process to ask to move the water. The process can cost up to \$1,000 and take 30 to 60 days. The Office of the State Engineer does not have enough personnel to process the paperwork timely, so why are we making the farmers

jump through hoops? This does not affect other water areas; there is only one federal reclamation area in Nevada, which is Fallon, so we are not impacting areas down the road or other counties. It is specific to one area of use. I ask that you help the farmers and ranchers in Churchill County.

Chairman Ellison:

There was an amendment mentioned about leased land. To me it is the same as adverse possession. What do you want to do with that?

Assemblywoman Titus:

I would accept the amendment providing that it is allowed within the current statute and the Legislative Counsel Bureau Legal Division is not concerned. It makes good sense, but sometimes what I think is good sense other people do not. This is almost an emergency measure and if the amendment were going to stop the bill or in any way obstruct progression, then we would take it out. It is ultimately the Committee's choice. This is an important bill to pass for all ranchers and farmers.

Chairman Ellison:

I agree. We have only four days to get every one of these bills out of this house before the deadline, and if I cannot get the rules suspended to get some bills out, then we are going to prioritize the most important bills. I am hoping we can work something out to get these moved forward. No matter what bills they are or whose bills they are, we are going to focus on them. I think this is important. It is crunch time.

Assemblyman Wheeler:

Why are we just doing this on the reclamation district? This seems to be so important. Why are we not doing this statewide?

Assemblywoman Titus:

As everyone has expressed today and with your very good questions on water laws, you can see water can be very detailed and sometimes a contentious decision. The Truckee-Carson Irrigation District came to me asking if I would sponsor this bill for them last summer, and I agreed to do so because it is limited to one law, one reclamation project. It is very clear and distinct and we can all wrap our heads around this one statute because that is all that it affects. If we open this up to all of the water users in the state of Nevada, it then becomes another issue. These people came to me with a very distinct request that affects them and that I think we can get passed though this year. Is it needed in other jurisdictions? I would say absolutely. Can we get that forward? I am not convinced. As you are probably aware, there are several bills in the Senate that have had hundreds of hours of testimony about water.

This is a huge arid state and water laws are critical to our survival. I would fight that battle, but for right now, this is what my farmers need. That is why we are going forward with this.

Chairman Ellison:

Are there any more questions? [There were none.] I will close the hearing on A.B. 415. I will open the hearing on Assembly Bill 430.

**Assembly Bill 430: Revises provisions governing channel clearing.
(BDR 48-1130)**

Assemblywoman Robin L. Titus, Assembly District No. 38:

I have submitted some talking points ([Exhibit L](#)) on Assembly Bill 430. The statute is already in existence and has been for many years in *Nevada Revised Statutes* (NRS) 532.220. It is a program that is administered by the State Engineer and was established to maintain and be good stewards of the Carson River. These funds were frequently matched by local funds and in years when the state did not have funds for it, the local conservation districts did fund it as best as they could. Unfortunately, with the economic downturn in 2009, there has not been any money to fund this account. It seems like every day we read more and more about water issues. Many people and I think that it is important that we reestablish the funding for A.B. 430, so they can do some of the really important conservation work in channel clearing.

Please look at the fiscal note on the bill; it says there is not an effect on the local government, but on the state government there is an effect that contains appropriations not included in the Executive Budget, and this is the reason I brought this bill forward. The people from the Truckee-Carson Irrigation District were dumbfounded when they looked at the Executive Budget and did not see anything that was asked for by our Governor to help maintain this waterway.

We did not just pull a figure out of the sky. These people are very attuned to what keeps the water flowing; the best way to make sure it does not flood, and how to make sure the snags are cleared out that would maybe ruin riverbanks. We have included the list of potential clearing and snagging projects ([Exhibit M](#)), what they cost, and where they are. I think they are very good stewards of this waterway and want to see that it is not destructed in any manner.

Chairman Ellison:

Assembly Bill 430 is not a two-thirds bill, but it says, "Appropriation not included in Executive Budget." Based on the amount you are talking about, do

you want this bill to go to the Committee on Ways and Means and then have them refer this to a study? What is it you are trying to do?

Assemblywoman Titus:

We would like this bill, by nature of the beast, to be funded and passed from your Committee if you see the value of it, and then it will need to be forwarded to the Committee on Ways and Means, so that it can be funded this year. This is a critical bill.

Edwin James, General Manager, Carson Water Subconservancy District:

We appreciate Assemblywoman Titus bringing this bill forward. It is very important. I will point out that these funds can be used throughout the state of Nevada. We are focusing on the Carson River, but any navigable river can utilize these funds, and they have been used by other watersheds in the past.

I have a brief statement I would like to read. The Carson Water Subconservancy District (CWSD) is in support of A.B. 430. It is a multicounty bistate organization created by the Nevada Legislature to deal with water issues throughout the entire Carson River Watershed.

As part of our function, we work closely with various water conservation districts located in the Watershed. It should be noted that most of the physical work done to ensure the health of limited water along the Carson River is performed by the conservation districts. For years, CWSD has provided funding to the conservation districts to help them to do this work. In the past, the funds from CWSD were used to match the funds from the state.

In 2009, due to the downturn of the economy, the state cut these funds. Since that time, CWSD has held several meetings with the State Engineer to discuss the importance of state funds for the clearing and snagging projects. Although the Office of the State Engineer's staff understands the importance of the work for the conservation districts to perform, we were told over the years that there were no funds available in the budget, but maybe next session.

This year, I was told that the State Engineer had requested funds in the budgeting cycle, but they were not included in the Governor's Budget. Although CWSD continues to provide funds to the conservation district, our funding is limited.

Over the years, we have seen an increase in fallen trees and sandbars that form in the river channel. These fallen trees can be a hazard to people floating down the river, but these years they are probably more of a tripping hazard than

a floating hazard, and the increase in vegetation in the river channel can reduce the flow capacity, which can increase flood hazards.

During the 1997 flood, some of the damage was enhanced due to the amount of debris that was in the channels. In fact, after the 1997 flood, the Nevada Legislature increased the amount of money in this account from \$25,000 to \$250,000 because they realized the importance of keeping the river channels clear.

I would like to point out that the state of Nevada claims ownership of the Carson River to the high water mark. With ownership comes the responsibility of ensuring water deliveries, habitat protections, and reduced flood hazards. The conservation districts perform these tasks for the state. It is the fund provided by the state that enables this work to be done.

Carson Valley Conservation District has submitted a document ([Exhibit N](#)) that is on NELIS. It contains pictures, so you can see what we are talking about. The director who was going to be here had a medical emergency and could not make it.

Chairman Ellison:

You are not talking about the navigable waters of the United States, correct?

Edwin James:

It is a definition that is already in the NRS.

Assemblywoman Spiegel:

Do you get salt cedar in northern Nevada, and would that be covered by this also?

Edwin James:

We do get salt cedar. We work with the conservation districts on treatment. There are funding sources we provide. We also provide funding for noxious weeds and other habitat enhancements on the rivers. That was not included, but it is an issue we are dealing with.

Robert L. Holley, District Manager, Dayton Valley Conservation District:

I submitted a packet ([Exhibit O](#)) for your review that contains pictures of some of the snags that we removed from the river over the last few years. This last winter is a good example where the state provided only \$3,800 toward that project—simply because of a lack of funding, not because of a lack of willingness—the Carson Water Subconservancy District provided \$75,000, and Lyon County provided \$75,000. We are taking those funds and going onto

property that the state claims and removing the hazards. What ends up happening when we have a high water event is the trees—and you can see how big they are by the pictures—stack up on irrigation dams, plug diversions, reduce the size of the channel, cause a lot of bank erosion, and they really end up precipitating events that wreak havoc on adjacent public and private lands.

In short, we are asking for an appropriation to allow the state funds to maintain their property and be a good responsible neighbor in these valleys. It is not just this river. It would be the Carson River, Truckee River, Colorado River, and I believe there is another river in southern Nevada. These funds also can address noxious weeds; salt cedars are part of the problem in these rivers.

Chairman Ellison:

Does the Committee have any questions? [There were none.]

Assemblywoman Titus:

I realize that you are a policy committee and not a money committee, but we are bringing this forward to you to support our policy and to encourage the flow of the finances.

Chairman Ellison:

I will take testimony in favor of the bill.

Steve K. Walker, representing Lyon County:

Lyon County is in favor of the bill. I would like to note that there are navigable streams and navigable bodies. There are two navigable streams in Nevada, the Carson River and the Truckee River, but navigable bodies apply to the other river systems. I just wanted to make that clarification.

Chairman Ellison:

I sat on a group in Washington, D.C., for about three or four years about the navigable waters of the United States. I got an education I did not want to have.

Ron Penrose, Superintendent, Carson-Truckee Water Conservancy District:

I deal with matters dealing with river encroachments and Corps of Engineers issues. We support this bill. We think it is very important to be able to deal with debris and snags in the river. What this will do is prevent exacerbation of potential floods and it protects the public from the standpoint of kids and rafters being caught in a snag. We support it from an overall flood perspective and also public safety.

Ernest C. Schank, President, Board of Directors, Truckee-Carson Irrigation District:

I just want to voice our support for the monies that have been asked for in this bill. The Truckee-Carson Irrigation District participates with the Lahontan Conservation District in helping make money go further. We have assisted in kind with our equipment and labor to help clear the Carson River channel. The Carson River channel through the Newlands Project becomes very important in flood years because it is the flood channel that protects the community. The Lahontan Conservation District submitted some photos ([Exhibit P](#)) that will show the kind of work we accomplish with these funds.

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 anyone in opposition? [There was no one.] Is anyone neutral?

Kelvin Hickenbottom, P.E., Deputy State Engineer, Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources:

Thank you for the opportunity to provide testimony for Assembly Bill 430 on behalf of State Engineer Jason King. Nevada law currently provides for the establishment of a channel clearance, maintenance, restoration, surveying, and monumenting program on Nevada's navigable rivers that is to be administered by the State Engineer. [Continued to read from prepared text ([Exhibit Q](#)).]

Chairman Ellison:

You said that the state could apply for a grant for the clearance, correct? Are there monies available and if so, how much are available for the cleaning of the channels?

Kelvin Hickenbottom:

The state does not apply for the grant. The Office of the State Engineer approves the grants applied for by local entities such as conservation districts, counties, or cities. Prior to the budget shortfalls, the funds were up to \$250,000. They would be replenished by going to the Interim Finance Committee. Presently there is nothing in the account for grant money.

Chairman Ellison:

I think that is what Assemblywoman Titus is concerned about. It was only appropriated up to \$250,000, and it is actually unfunded for this biennium. I think they want to send this bill to the Committee on Ways and Means to see if there is any funding available. Do you support that recommendation to try to get money to clear the channels?

Kelvin Hickenbottom:

As my testimony stated, we are in support of this program; it has done a lot of great work. It is a 50 percent to 50 percent match, and it was not all the time that they came to our office when we did have funding. Sometimes, they would have grants from other governmental entities like the Carson Water Subconservancy District. It is very beneficial to the community. For every dollar spent, someone had once told me, it creates another \$8. It is viable and a good program.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Does anyone else want to testify as neutral? [There was no one.] Does the presenter of the bill have any comments?

Assemblywoman Titus:

Thank you for hearing this bill. We think it is an important bill and as testimony had already brought forward, these dollars bring in maybe one to eight more, so I think it is important to be funded. No one can tell us why it was not funded. We are asking that it be looked at again. They are matching dollars as already stated in testimony. Communities are putting up the dollars to make this program work. Not only are they putting up dollars, they are putting up their sweat equity. They get in there and they do the channel clearing. We encourage the state, which is responsible for this body of water, to help us parlay our dollars further by having some of the funds available so we can apply for further grants. We would encourage support of this issue.

Chairman Ellison:

I will close the hearing on A.B. 430 and open the hearing on Assembly Bill 426.

Assembly Bill 426: Revises provisions relating to the Public Employees' Benefits Program. (BDR 23-1103)

Jeff Fontaine, Executive Director, Nevada Association of Counties:

First of all, thank you Chairman, for bringing forward Assembly Bill 426 on behalf of the Nevada Association of Counties (NACO). Assembly Bill 426 is enabling legislation that is intended to address a structural problem with the Public Employees' Benefits Program (PEBP). Specifically, the problem is the non-state retirees in the system whose health insurance premiums are increasing faster than insurance premium costs for the state retirees in the program. The reason they are increasing at a faster rate is because they are a much smaller, shrinking pool. It is my understanding that there are approximately 2,400 non-state retirees in the system compared to the much

larger pool of active and state retired employees. More importantly, there are only 12 active non-state employees in PEBP to support the non-state retirees.

Yesterday, the PEBP Board voted to adopt temporary regulations to require local governments to pay for the increased premium costs for their retirees in PEBP. I understand that they had considered three options, which included blending the non-state retirees with the state pool, passing the costs on to the non-state retirees, and lastly, passing the cost onto the local governments. The Board chose the last option and by regulation, essentially has passed on those costs to local governments.

We originally requested that this bill apply to counties only; however, we would be fine if as written now it applies to other local entities as well, if they wish. We also noted that in the bill there might be a problem in that we specifically are addressing current retirees, not state retirees in the system. We will need to amend section 2 to clarify that.

This bill would give local governments, or in our case counties, the option to continue to contribute the same amount to their retirees in the system as they are today, but would make that contribution portable for the retiree to use to purchase insurance on their own, including the Silver State Health Insurance Exchange where they may also qualify for a subsidy under the Affordable Care Act (ACA).

We understand that there are concerns that the non-state retirees are essentially being kicked out of PEBP. That is not our intention and we certainly do not want to hurt the retirees. We understand and are willing to work with the individuals to put in protections so that this legislation will not result in higher costs or less coverage for the retiree. In fact, our intent is the opposite; we are looking for the opportunity to provide a better or equivalent insurance at a lower cost. We can consider a few options: One would be to require certain findings before a decision is made to have the individuals purchase their own insurance, and the findings can require that there are equivalent or superior plans in terms of cost and coverage in that county. We could also make this optional for the individual retiree to take advantage of.

If you look at the Division of Insurance website, you can compare insurance plans for all age groups including the different benefits. You can look by county too. You can compare the premiums and coverage you can purchase on and off the Silver State Health Insurance Exchange with those offered by PEBP. We did a comparison for several counties including Clark County. You can buy any of the 37 gold-tier plans, which is one step below the platinum-tier plan, but certainly a very good level of coverage for less than you pay for your coverage

under PEBP today as a non-state retiree. This is for an individual age 64. That is the highest premium that you would pay on the Silver State Health Insurance Exchange. In every county, a silver-tier plan is offered at the same or lower cost than what is offered by PEBP.

We are trying to address a problem with non-state retirees who are a pool that virtually has no possibility of rate stabilization. We do not want to harm the retirees, both current and future retirees in the non-state pool. Like it or not, the ACA is in place, and one of the results of the ACA is that there are options for purchasing insurance. In many cases, we believe that those options are to the benefit of the retirees and certainly, compared to what is available on PEBP, it could be a benefit to both the employee and a cost savings to the local government.

Chairman Ellison:

The City of Elko submitted a letter ([Exhibit R](#)). Can you address their concerns?

Jeff Fontaine:

I have not seen their letter.

Chairman Ellison:

I will give you a copy. I want to address some of the concerns they have. Does the Committee have any questions?

Assemblywoman Neal:

You are saying that it is better for them to go out on their own and look for other insurance policies and to potentially take the option to get out of PEBP because their current policies are not stable?

Jeff Fontaine:

Yes. We think there are opportunities outside of PEBP that are equivalent or have better coverage at a lower cost. As far as the stability is concerned, basically you have a shrinking pool. It is my understanding that there are currently 2,400 individuals, and I know that there are representatives from PEBP here who can probably answer this better than I can, but the pool will shrink to a lower level, and within a couple of years it will be down to 1,000. You have 12 active non-state employees supporting those retirees. With an aging and shrinking pool, the rates are going to go up for those individuals.

Assemblywoman Neal:

I went to the Silver State Health Insurance Exchange website. Tell me how much they are paying right now in PEBP. What are their out-of-pocket expenses? If you have retired, your income is different. It means that you are no longer making what you were making. It is capped and at a set rate.

Jeff Fontaine:

My understanding is there are two or three different plan options under PEBP. I believe the Health Maintenance Organization (HMO) plan is \$773.00. There is a subsidy, and I understand that the subsidy is based in part on when you retire and also based on your years of service, and there is a high-rate Preferred Provider Organization (PPO) plan as well. We are not talking about the subsidies here because this bill would allow those subsidies to continue. Regarding your comment about the lower income, that is why we think that there may be an option for some, not everybody, to get the subsidy on the Silver State Health Insurance Exchange under the ACA.

Assemblywoman Neal:

There are varying plans, bronze, gold, silver, and for one of the plans for the calendar year the deductible for an individual would be \$3,700 and the maximum out-of-pocket limit for an individual could be \$6,600. I get that there is an issue and a need, but ACA is under discrepancy, and there is a bill to repeal it. So we are going to put these individuals into what, an abyss? I do not even know what the federal landscape is, but there is an action. I thought we even had a bill in our own house that is trying to put ACA to the side. Do you understand what I am saying? Are we sending them to a place that is also unstable in policy? It is potentially unstable for everyone who signed up under the deal. They might end up with no insurance come August 30. That is why my alarm went off. I do not see the stability on the other side in terms of policy, not at the federal level and potentially not at the state level either.

Jeff Fontaine:

As far as the ACA is concerned, you are right. It affects a much larger population than just the state or non-state retirees. Today, it is in place and you can sign up for insurance and get a subsidy. As far as what happens in future years, that is anybody's guess. It is a policy issue. If the ACA goes away and there needs to be some protection to bring these people back into the system, that is fine too. All we are looking for is an opportunity for there to be choices under the current system that is in place today under the ACA, because under PEBP there are limited choices and growing costs.

Assemblywoman Spiegel:

If this pool is so small and shrinking and the other pool that we have of active employees is larger, diverse, et cetera, is there a reason why we cannot move the people from this pool into the larger pool legislatively? That way it would just broaden the base of the other and bring down costs for these people. Since it is so small relative to the number of employees that we have in the larger pool, it would probably not affect costs very much.

Jeff Fontaine:

That was one of the options that was considered by the PEBP Board, but they chose not to implement that option. I believe there are representatives from PEBP here, but apparently, there was concern with pooling the non-state retirees with the state pool because it might increase premiums for the entire pool, and there was opposition to that as well.

Assemblywoman Spiegel:

Do you know how much it would have increased costs for everyone else?

Jeff Fontaine:

I do not have that information; perhaps someone from PEBP can answer your question.

Assemblywoman Spiegel:

If this bill does not pass you are looking at paying a subsidy anyway. If non-state employees were to be moved over into the larger pool, then the subsidy from the non-state employees could be moved over into the larger pool. Could that make up the difference, or is that something that is just not practical?

Jeff Fontaine:

I suppose anything is possible, but we have not done that calculation.

Assemblywoman Joiner:

In section 2, who is making the choice of whether to continue with PEBP or have a subsidy? Is it the employee or the public employer?

Jeff Fontaine:

The bill is written so that it is the public employer who makes the choice

Assemblywoman Joiner:

The retiring employee does not have a choice? If the public employer has chosen to go the subsidy route, the retiring employee would not have the option of remaining in PEBP, correct?

Jeff Fontaine:

As the bill is written. As I indicated, we would be more than willing to work with those who are concerned about that issue to see if we can work through the issue.

Assemblywoman Neal:

I assume there is a calculated rate in here, but if the employer chooses the subsidy, how much is it? What does this retiree do when the subsidy runs out? Let us say that you give them \$7,000 and they pay their premium at \$487 per month for however many months \$7,000 will get them. What then do they do when the \$7,000 is no longer there? What is the catchall? For me, I imagine the 67-year-old or the 85-year-old who is retired and relying on their dental insurance or whatever PEBP is currently providing them that they have decided works for them. They get the subsidy and are told to go out on their own and find the plan that works for their life, and the plan and dollar amount that works for their life does not have dental insurance, does not allow them to go to the doctor consistently the way they did before. They are limited to two visits a year because they cannot go over the \$487 per month; what does this individual do? Who answers that question? They answer the question for themselves? Are they going to go back and work at Walmart for 15 hours a week to make the money? I always try to put it into the concept of the real individual who I will meet when I walk out onto the street and say that they are one of the people, it may not be a large number of people, but they are one of the people who have to figure out their lives. Talk to me about that. What would the subsidy be? How long will it carry them over if that were an option? Ultimately a subsidy would probably be the best option.

Jeff Fontaine:

Our intent is to continue the annual subsidy. It is not a lump sum. The same subsidy that they are providing today would be provided on an annual basis.

Assemblywoman Spiegel:

Someone sent me an email saying they are also getting life insurance through PEBP, and I guess that would be gone if this were to go through. Would the subsidy count as income for tax purposes?

Jeff Fontaine:

We do not know if the subsidy would count as income, but I have heard that concern. It is very possible that it would, but I do not have a definitive answer. As far as life insurance, we would have to look at the very specific cost of that component within PEBP. I do not think that cost is increasing as much as the health insurance piece. Maybe there is a mechanism where they could still be

held harmless on any life insurance coverage but with a different way to treat the health insurance piece.

Assemblywoman Spiegel:

There was the concern that they would just be losing benefits, period.

Chairman Ellison:

Those in favor of the bill please come forward.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; and representing Washoe County Public Attorney's Association; and Washoe School Principals' Association:

We are speaking in favor of A.B. 426 because of the intent to be able to have, what we considered over the past few years, orphan retirees having some say so if they leave the system a subsidy amount would follow them. For the Committee members who do not know, this goes back several years. In 2007, a lot of public employees were told if they wanted to have postretirement medical insurance, they had until November 2007 to get into PEBP. At that point in time, we all believed that individuals had gone into this system and that they would be taken care of. The promise was that they were going to go into PEBP and be comingled with the other employees and their rates would stay what they were and that they would get a subsidy. A couple years later, in 2013, there was a lot of discussion over this issue, and all of a sudden we found out that the non-state retirees, orphan retirees as they were referred to at that time, were shrinking. The pools were shrinking, and they were not being comingled with the other employees. The reason for that was because there was a fear that costs would go up for the other employees in the state. There was legislation and a lot of discussion over the issue as to what the amount was. We certainly did not want to affect the other employees in the state that had already taken furloughs, et cetera, because they would have an increased insurance rate. What we did know was there were about 4,400 orphan retirees in 2013, and in talking to Mr. Bibb we believe that number is down to 1,900.

Recently there was another hearing in the Senate that brought up the issue of PEBP. The discussion was if they were going to comingle the orphan retirees or what was going to happen with them. They all believed that they were going to have insurance for the rest of their lives. Now we come to this bill, which provides at least some amount of money if they choose to go, but the questions came up about how much money and how it is determined. Assemblywoman Neal hit it on the head; as that pool shrinks, why can they not be comingled because the costs are going to go down, obviously. If this bill were to go forward, what would that amount be? How would they get raises and would it correspond with inflation? If they left the system, would the

amount be given to them? Would the amount become taxable income? We think it would. Or would the money go to the new insurance? What is it based on? Is it going to be based on the group of current employees in the state? Will it be grouped on the state retirees? These are some of the concerns. The concept behind it is favorable. If somebody wants to have an appropriate subsidy and leave the system, that is fine because currently they can leave the system—they get one shot. They can go back to their previous employer if that employer had post-retirement medical insurance.

The concept of the bill to provide a subsidy amount and allow them to go out and have another choice is a good one. Assemblywoman Spiegel asked an important question; Would it carry the benefits we currently have, such as life insurance? When you look at taking care of these people, their concern is what is going to happen to them. In 2007, they were promised if they went to this system, they would be taken care of. Unfortunately, what is happening now is they are not being taken care of and the comingling process is not going to happen because it could have an impact on the rates of the regular retirees who are in the state. I am supporting the bill because the concept is sound. It allows someone a subsidy, but it has some hiccups that need to be fixed.

Assemblywoman Neal:

I understand the concept and I feel the fear. I go back to my first statement about the ACA and the open market. It is going to potentially go back to being an unregulated market where there is not affordable care. The reason why I bring this up is because I was able to get dental insurance for my children through ACA. I do not know if that is going to continue. I am trying to get them a dental appointment by July 1, 2015 just in case something becomes effective July 1, 2015. I am trying to make sure they can go to the dentist because I do not know if that particular provision will still be in place. It will no longer be something I can access. I am unsure because I do not know what the policy will be. We do not run Congress. If it came out of our body, there is nothing we can do to stop it. We can unravel the whole system like that. That is a huge concern for me.

Ronald Dreher:

It is a big concern for us too. It is important that we have the ability to tweak the bill and include comments and concerns like you have and we have from the orphan retirees who are concerned about what is going to happen: the ability to come back into the system, the ability to provide benefits, and everything else that they should have if they decide to leave the system. What is the quid pro quo? What got me into this business more than 31 years ago was insurance with the City of Reno. I have a good background with insurance and how it works. What concerns me are the same concerns you have. What also

concerns me is what happens if the orphan retirees go away. Where do they go? If they are allowed to go to an exchange, where does the subsidy go? I think the concept is good. If you allow people to leave the system and they have the ability to come back or, like you said, if you tweak the language to say they can only go to insurers or exchanges that have similar benefits that are sound and have ratings that are appropriate and similar to PEBP and give them the choices as this pool shrinks, that would be beneficial.

We predicted, as did Mr. Jim Richardson in 2013, that it would not be long before there is no more subsidy for non-state retirees. That really bothers me because it goes back to what they were promised in 2007: If you come to this system, we are going to save you; there is a system that is going to provide you with post-retirement medical coverage. Now, that is going away. That is what we are trying to fix. Maybe that is what Mr. Fontaine and PEBP are trying to fix with this, but what do we do when they are gone? We cannot put them in the regular system because it would inflate the rates of the state employees and we do not want that to happen either. We are trying to come up with a fix, and that is why we are supporting the concept and the bill.

Martin Bibb, Executive Director, Retired Public Employees of Nevada:

I was hoping I could provide some relatively brief historic background as to how we got here with the program. This is very complex, as it appears the Committee understands. In 2003 a bill was passed, Assembly Bill No. 286 of the 72nd Session, which allowed local government retirees to come into PEBP if the employer, active or retired, paid a portion of the same contribution, the employer contribution—some people call it a subsidy—the same amount for the people coming into PEBP that PEBP paid for state employees. It was at a time when the PEBP was seeking local governments to join in this health plan. There was a four-year legislative study to see about the best way to get this done, which is atypical, because usually they are two-year interim studies. The law has changed a bit over the years and in 2007, there were efforts to get people into PEBP.

I believe it was in 2009 when the law was changed. It was changed to say when you bring retirees into PEBP from a local government employer, city, county, school district, et cetera, you must bring with them the active employees too. That was because the number of active to retiree was declining, making it a higher-risk pool. What has been termed the orphan group is a group of pre-Medicare age local government retirees in PEBP. There are no new orphans coming into PEBP individually because the plan has been changed so that you may only enter PEBP if you bring both the active employees and retirees.

In 2013, on the last day of the session in the Senate Committee on Finance, there was discussion about how much money it would take to assist the declining number of local government retirees in the system. My recollection is that it was about \$800,000 on a continuing basis. However, as mentioned, that number is declining. Looking at PEBP numbers from the last presentation they made at the opening of this session, the current number for fiscal year 2016, which basically we are going to enter into in July, is 1,951, the estimated number in 2017 is 1,400, and a brief takeoff says that number will be as small as 500 in two or three years from now.

At yesterday's PEBP Board meeting there was discussion of a temporary regulation, which Mr. Fontaine mentioned, which deals with a different way to handle local government subsidies to make it fair for the local government retirees in this plan. The Board approved it. During the course of their meeting yesterday, one of the statements was made that it was unclear whether the money that might be provided by a local government to a retiree would be from the Silver State Health Insurance Exchange, which is the public exchange, not the PEBP Individual Medicare Market Exchange—they are two different animals. The money that could be provided from a local government employer going into the Silver State Health Insurance Exchange, which Mr. Fontaine suggested would be an option, would be taxable to that individual. By contract, the amount of contribution or subsidy which is provided by a local government employer to an orphan group, pre-Medicare retiree or to a Medicare retiree, is processed through a health reimbursement account or a health savings account that goes through PEBP. It means the money is not taxable for the individual.

One of the concerns that a PEBP Board member expressed yesterday was that in addition to the question that was brought up about life insurance maybe not being offered, if the money is taxable to the individual, then obviously the person can buy less product, less insurance coverage with the money than if the money were paid by a local government employer into PEBP and then put into a health reimbursement account or a health savings account. I am hoping that this provides some information. At the PEBP Board meeting yesterday, it was a split vote, and there is concern about this taxability issue that I mentioned. This is a very complex subject, and I was here when the bill was initially passed in 2003 and through all of the changes over the years. The enrollment criteria has changed: You now have to come in with your active employees if you are going to bring a retiree in; hence, the declining orphan group. In addition to the enrollment changing, mentioned by Mr. Dreher, the comingling has changed too.

How do you fund these people? I know it is on the PEBP Board members' minds, and there are all sorts of options. One of the suggestions, which we

have made organizationally, is using some excess reserves over and above the reserves to pay claims and to provide for contingencies. Perhaps in that area there could be some funding found to ameliorate this problem once and for all. Again, the problem is going to go away. It is stemmed by the fact that it is a declining number that will eventually become zero. People will either age out and be in the PEBP Individual Medicare Market Exchange, they will drop the program, or they will be deceased. The number is going to be zero, and we are all struggling with trying to find ways of addressing the cost for this group of people. We think the temporary regulation that was passed by the Board is a way to somewhat even it out so some pre-Medicare age retirees do not pay significantly greater rates than others. It is a very complex issue.

Chairman Ellison:

I think the information, knowledge, and history helped a lot.

Martin Bibb:

If we can be of value in some fashion with the sponsor of the bill or others in trying to see if there is some center point of some sort, we would appreciate it. It is very complex. Obviously health care benefits are a major issue, not only on a statewide basis, but clearly on a national basis as well.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Is there anyone else in favor of the bill? [There was no one.] Is there anyone opposed to the bill?

Janice Florey, Private Citizen, Gardnerville, Nevada:

I am a non-state retiree. I was a teacher in the Douglas County School District. Every other year we have the chance to decide whether we want to stay with PEBP or go out and look for our own insurance. The main issue I have with this bill is that I think we, as retirees, need to be making the decision for ourselves and not leaving it up to the local government or the county, et cetera. My experience with PEBP overall has been a good experience. I sent an email ([Exhibit S](#)) showing the comparison of a bronze-tier plan, gold-tier plan, and silver-tier plan compared to the PEBP benefits for northern Nevada. It would make more sense for us to stay with PEBP than to go out into the open market. Yes, I am concerned about my life insurance. I am concerned that if we leave at age 65, we would not receive the \$220 subsidy to help with Medicare Part B as well.

We know that these rates are going to continue to increase, but as long as we are willing to pay the rates, I do not believe that the local government should be

making the decision for us. We know what we are up against. We are looking at the big picture versus the small picture.

Another thing that was mentioned was comingling. It has been talked about time and time again. There is a belief it would raise the rates for the state active employees and state retirees, but right before Mr. James Wells left PEBP he talked to the Board about something that was going to come up through the ACA, and it was called an excise tax. If that law stays in place in 2018, if our insurance costs per person go above a certain limit, then the insurer, PEBP, or someone will need to be paying an excise tax. He put a visual on the screen and showed that non-state retirees would become a problem and active retirees as well. So we said maybe we should just comingle all of the groups. That is what we have been asking for the last five years. Please let us make our own decisions about where we want to be.

Vicki Cameron, Private Citizen, Henderson, Nevada:

I am an orphan retiree. Not only am I an orphan retiree, I do not and will not qualify for Medicare. When I turn age 65 this summer, I will not move to Medicare; I will still be in PEBP. I am very concerned about what is going to happen to me. We have been fighting this battle for several years now. I attend every PEBP meeting. I have been to the Interim Finance Committee meetings in the past when they have advised PEBP to do something to assist the orphans. Yesterday, when Mr. Fontaine showed up at the PEBP Board meeting and came up with this bill, everybody was shell-shocked. They were not aware of it, and they had very little information regarding it. I had been aware of it for several weeks and had tried to bring it to someone's attention.

Some of the concerns yesterday voiced by the Board and the public were the legality of the changes: Would a subsidy paid to a retiree be taxable for the retiree, would retirees have the option to remain with PEBP, would insurance coverage be comparable, would subsidies be adjusted each year, would retirees retain a subsidy and transition at age 65 to the PEBP Individual Medicare Market Exchange, would life and dental insurance continue, to whom does section 12 of this bill apply? It says that it does not apply to anyone who retired prior to July 1, 2015, but that is exactly who it applies to. That was the contingent included with the bill, and nobody knew what it meant or understood the way it was written.

The temporary regulation that was approved by PEBP yesterday was to make clear what it says in NRS Chapter 287: Public employers would pay the same amount in subsidy for their retirees that the state pays for theirs. It has not been interpreted like that over the past years and that is where everything started happening. Mr. James Wells, when he was the director, was concerned

that the state was paying more money than the other public agencies, so his answer to help the orphans, such as myself, is that we need to have an equal amount. I certainly agreed with that. I think it is only fair that all employers pay the same amount of subsidy and not make one higher than the other. Ultimately, if the temporary regulation does not become permanent, then we will be right back in the same boat and it would take legislative action, which is too late for this Legislature, and we will be here again in 2017.

Chairman Ellison:

If you have written testimony, please send it to the Committee Secretary.

Vicki Cameron:

I sent a letter ([Exhibit T](#)).

Chairman Ellison:

We have it. Thank you. Are there any questions from the Committee?

Assemblywoman Spiegel:

You said that you are not Medicare eligible, can you explain to those of us who are not public employees why? Are there many orphans who are also not Medicare eligible?

Vicki Cameron:

There are. Most people who started in the system in the early '70s, unless they worked part-time jobs, probably are not Medicare eligible. I started working in the system when I was 23 years old and in 1973 the state did not pay social security Federal Insurance Contributions Act (FICA) taxes. In 1986, when the federal government mandated that everyone pay FICA taxes, the city that I worked for said they would not pay them for people who were hired prior to 1986; therefore, my FICA taxes were not paid. I asked them to pay the taxes, but they said no. Their auditor told them they could not. Therefore, I put in 31 years in public service, and I do not have credits towards Medicare.

Chairman Ellison:

Is anyone else in opposition? [There was no one.] Is anyone neutral? [There was no one.] Will the sponsor of the bill please come back up?

Jeff Fontaine:

I just want to clarify one point that was just made about the local government's contributions. My understanding of what the temporary regulation that was adopted by the PEBP Board yesterday does is before the adoption of the regulation, the local governments were paying the same dollar amount for contributions to the retirees in the system as did the state. What the regulation

does is require local governments to make a contribution that is on a percentage basis equivalent to what the state is. In other words, the state's contribution as a percentage of the overall premium is different from what the local governments were paying. That regulation basically makes the percentage of contribution by the local governments for the retirees equivalent to what the state's is. It increases the actual dollar amount for local governments. I hope I did not confuse everybody with that explanation, but that is what it does. It is my understanding that there was never a situation where the local governments were paying less than the state.

We appreciate all of the concerns that have been raised. We simply are trying to provide some relief and take advantage of what is out there for other options in terms of coverage, benefits, and costs. We think it could ultimately be a benefit. We understand that there is concern about who makes the decision. We very much appreciate the dialogue about the bigger issue. This may not be the solution, and it is not going to solve the entire problem, but what the PEBP Board did yesterday was administrative action to address this problem by requiring additional costs for local governments, which is still not going to satisfy the overall issue of the increase in premiums and the additional costs. Some people believe comingling is the solution, but that is not what this bill seeks to do. We are happy to work with all of the people who have testified and the groups that have expressed interest in this concept to see if we can make this work.

Chairman Ellison:

It looks like this group we are talking about is dwindling down. It is dissolving as we speak. We heard from the numbers that it was 1,951, then 1,400, and maybe by the end of the fiscal year it might be 500. It is shrinking, correct?

Jeff Fontaine:

Under the current system, yes, the pool is shrinking, but short of the next three or four years I believe, PEBP has done some projections on how many participants they expect in the pool. I do not know what the long-term projections are, but at least for the short term, the costs are increasing, but the pool is actually decreasing.

Chairman Ellison:

Does the Committee have any questions? [There were none.] I will close the hearing on A.B. 426. Is there anybody here for public comment? [There was no one.] We are adjourned [at 10:36 a.m.].

[([Exhibit U](#)) and ([Exhibit V](#)) were presented but not discussed and are included as exhibits for the meeting.]

RESPECTFULLY SUBMITTED:

Jordan Neubauer
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 3, 2015

Time of Meeting: 8:10 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|----------|---------|---|--|
| | A | | Agenda |
| | B | | Attendance Roster |
| A.B. 162 | C | Jered McDonald / Committee Policy Analyst | Work Session Document |
| A.B. 170 | D | Jered McDonald / Committee Policy Analyst | Work Session Document |
| A.B. 236 | E | Jered McDonald / Committee Policy Analyst | Work Session Document |
| A.B. 415 | F | Rusty D. Jardine / Truckee-Carson Irrigation District | Prepared Text |
| A.B. 415 | G | Ernest C. Schank / Board of Directors, Truckee-Carson Irrigation District | Prepared Text |
| A.B. 415 | H | Ernest C. Schank / Board of Directors, Truckee-Carson Irrigation District | Joint Testimony |
| A.B. 415 | I | Nathan Wadsworth / Private Citizen, Fallon, Nevada | Prepared Text |
| A.B. 415 | J | Pete Olsen / Board of Commissioners, Churchill County | Prepared Text |
| A.B. 415 | K | Norm Frey / Private Citizen, Fallon, Nevada | Letter |
| A.B. 430 | L | Assemblywoman Robin L. Titus | Talking Points |
| A.B. 430 | M | Assemblywoman Robin L. Titus | List of Potential Clearing and Snagging Projects |
| A.B. 430 | N | Carson Valley Conservation District | Snagging and Clearing Projects, Douglas County, Carson River |
| A.B. 430 | O | Rob Holley / Dayton Valley Conservation District | Packet |

Assembly Committee on Government Affairs

April 3, 2015

Page 40

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|----------|---|--|-----------------------------|
| A.B. 430 | P | Jackie Bogdanowicz / Lahontan Conservation District | Photos |
| A.B. 430 | Q | Kelvin Hickenbottom / Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources | Prepared Text |
| A.B. 426 | R | Dawn Stout / City of Elko | Letter |
| A.B. 426 | S | Janice Florey / Private Citizen, Gardnerville, Nevada | Email and Bronze Plan Table |
| A.B. 426 | T | Vicki Cameron / Private Citizen, Henderson, Nevada | Letter |
| A.B. 415 | U | Rusty D. Jardine / Truckee- Carson Irrigation District | News Release |
| A.B. 426 | V | Sandra M. Mix / Private Citizen, Las Vegas, Nevada | Email |