

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Seventy-Eighth Session
March 31, 2015**

The Senate Committee on Finance was called to order by Chair Ben Kieckhefer at 8:07 a.m. on Tuesday, March 31, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Ben Kieckhefer, Chair
Senator Michael Roberson, Vice Chair
Senator Pete Goicoechea
Senator Mark A. Lipparelli
Senator David R. Parks
Senator Joyce Woodhouse
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Mark Krmpotic, Senate Fiscal Analyst
Alex Haartz, Principal Deputy Fiscal Analyst
Lona Domenici, Committee Manager
Emily Cervi, Committee Assistant
Trish O'Flinn, Committee Secretary

OTHERS PRESENT:

The Honorable James Hardesty, Chief Justice, Supreme Court
Tina Leiss, Executive Officer, Public Employees' Retirement Board
Priscilla Maloney, American Federation of State, County and Municipal Employees
Patrick T. Sanderson, Nevada Alliance for Retired Americans
Colleen Cripps, Ph.D., Administrator, Division of Environmental Protection,
Department of Conservation and Natural Resources
Greg Lovato, Deputy Administrator, Division of Environmental Protection,
Department of Conservation and Natural Resources
Sean Sever, Communications Director, Department of Transportation

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Felicia Denney, Administrative Services Officer, Department of Transportation
Ben Griffith, Western Petroleum Marketers Association

Chair Kieckhefer:

We will start today with Senate Bill (S.B.) 69 regarding the Judicial Retirement System.

SENATE BILL 69: Revises provisions governing judicial retirement. (BDR 1-496)

The Honorable James Hardesty (Chief Justice, Supreme Court):

The first item I will address is S.B. 69. The amendments to *Nevada Revised Statute* (NRS) 1A.350 will neither enhance nor modify the retirement benefits of judges in Nevada. Section 1 of S.B. 69 states, "A member of the Judicial Retirement Plan is eligible to retire ... at the age of 55 years if the member has at least 22 years of service." An amendment has been submitted ([Exhibit C](#)) to strike that language from the bill. No effort is being made to provide for retirement earlier than age 60 or at less than 30 years of service. The other amendments to the bill focus on the necessary qualifications for participation in the Senior Judge Program.

When a judge retires, they are either in the Public Employees' Retirement System (PERS) or they are members of the Judicial Retirement System. The Judicial Retirement System has been funded through a combination of appropriations by the Legislature as well as premium contributions made by the State. Judges reach the maximum amount they can be paid at 22 years of service. They may retire at age 65 with a minimum of 5 years of service, at age 60 with 10 years of service or, as in PERS, at any age with 30 years of service. However, judges who have been in service for 30 years, but are less than 60 years old may not participate in the Senior Judge Program until they reach age 60.

Retired judges in either the PERS or the Judicial Retirement System may be recalled to service by the Chief Justice of the Supreme Court. They do not acquire additional retirement credits for this service. These recalled judges are paid an hourly rate for their service. We want to make entrance into the Senior Judge Program conform with the retirement provisions. A retiring judge over age 60 can enter the Senior Judge Program, but judges with 30 years of service who are less than age 60 cannot enter the Program until they attain 60 years of

age. There are several judges in this category when their PERS service and their judicial service are added together.

Chair Kieckhefer:

It is not necessary for all 30 years of service to be judicial service. How many years of judicial service must a judge have to qualify for the Senior Judge Program?

Chief Justice Hardesty:

Vesting in the Judicial Retirement System requires 10 years of judicial service. One of the new Court of Appeals judges, Judge Abbi Silver, has served at every level of the judicial system. Some of her service was in PERS as a Municipal Court judge and a Justice of the Peace. Once she was elected to the District Court, her PERS service was converted to the Judicial Retirement System. But, she will have reached 30 years of service before she turns 60. She is not the only judge in the system in this situation.

The second amendment proposed is to reduce the post retirement waiting period for the Senior Judge Program to conform with PERS. Originally, S.B. 69 proposed a 6-month waiting period; PERS has a 90-day waiting period. The amendment changes the waiting period from the date of retirement to entrance in the Senior Judge Program to 90 days. I have worked with PERS to ensure there is no fiscal impact associated with either of these changes, nor is there any additional cost to the Senior Judge Program associated with S.B. 69.

Section 3, Subsection 7 of the amendment to S.B. 69, page 2 of [Exhibit C](#), provides that a person who "accepts employment or an independent contract, as a senior justice, senior court of appeals judge, senior district judge, senior justice of the peace or senior municipal court judge of the Nevada court system" is exempt from the provisions of subsections 1 and 2 for the duration of that employment or contract. This provision is an exemption from what is referred to as the critical labor shortage statute. Through this point of the current Legislative Session, no one has requested the Legislature to extend the critical labor shortage statute. If it is not extended, and this exemption is not approved, at least half of the judges who retire as PERS employees would not be able to participate in the Senior Judge Program. PERS employees may only return to service if there is a critical labor shortage declaration. There are exemptions to the critical labor shortage statute, including those who return to service at the

Legislature or the Legislative Counsel Bureau (LCB). Granting judges the same exemption extended to Legislative and LCB staff seems fair.

Senator Goicoechea:

There are district attorneys in rural counties who are presently employed under the critical labor shortage statute. I have been looking for a bill to include an exemption for this category. Would S.B. 69 be germane enough to add them to this exemption?

Chief Justice Hardesty:

In a similar situation, the marshals who provide all the security for the Regional Justice Center in Las Vegas are employed by the 8th Judicial District Court. They depend upon POST-certified retired law enforcement to serve as marshals. They have been hiring them under the critical labor shortage statute. There are currently 21 open positions that cannot be filled, and will not be able to be filled, unless the critical labor shortage statute is extended. It is a serious problem for the court system. The salaries for the retirees filling these positions are lower than currently active law enforcement.

Chair Kieckhefer:

We can have counsel look at the bill and determine if it is appropriate to add these categories to it.

In section 4 of the amendment, are you eliminating the sunset provision?

Chief Justice Hardesty:

The provisions enacted in 2009 had a 6-year limitation placed on them so we could determine how the Judicial Retirement System performed. The results of the last 6 years indicate the contribution rate of the Judicial Retirement System is lower than the rest of the State employees. Because the performance has been so good, we saw no need to sunset the provision, and neither did the actuary.

Chair Kieckhefer:

Is anyone here from PERS to address the fiscal note attached to the original bill?

Tina Leiss (Executive Office, Public Employees' Retirement Board):

The PERS Board voted to oppose the bill as it was written. They have not seen the amendments. However, we have worked through the amendments with

Chief Justice Hardesty, and they have allowed PERS to determine there would be no fiscal impact. If the amendments are adopted as proposed, the elimination of retirement at age 55 removes a portion of the cost. The fiscal note is eliminated entirely with the dynamics of the retirement guidelines for Senior Judge Program as opposed to the dynamics of the retirement guidelines for the general population of State employment. The addition of the 90-day setback is important because it ensures there is a bona fide retirement. It does not change retirement behavior. The bill affects a limited population and is an exemption which would be within the control of the employer, the Supreme Court; therefore, no fiscal impact would be attached to the 90-day setback.

Chair Kieckhefer:

Is the 90-day setback consistent with PERS' current regulations?

Ms. Leiss:

Reemployment restrictions in NRS 286.520 provide a 90-day setback and earnings limitations. This not only ensures a true retirement, it conforms to federal requirements.

Chair Kieckhefer:

Is anyone here to testify in favor of S.B. 69? Is there anyone in opposition?

Priscilla Maloney (American Federation of State, County and Municipal Employees):

We are officially in opposition to S.B. 69. However, now that I have seen the amendments, that is likely to change. The American Federation of State, County and Municipal Employees (AFSCME) Board voted to oppose this bill at its last meeting on March 20. At that time, the primary concern was the public perception of a bill that appears to protect retirees, but could possibly hurt new hires, or diminish benefits for new hires. The retiree board of AFSCME is concerned with the health of the overall system. Given the language of the amendment, and Chief Justice Hardesty's testimony, I will recommend my Board change its position to approve or neutral. I cannot make a unilateral change. I will submit a written statement after the next AFSCME Board meeting on April 10.

Chair Kieckhefer:

Is there anyone neutral on S.B. 69?

Patrick T. Sanderson (Nevada Alliance for Retired Americans):

All judges started in PERS. I am asking Chief Justice Hardesty to look at the bills before the Legislature this year. The employees of the State of Nevada need a retirement system that supports them.

Senator Roberson:

Contrary to what you may hear or see in this building, this Legislature is not going to harm public employees' retirements. I have a bill that will be heard tomorrow that will make the System more solvent, but it is reasonable and it does not affect current employees.

Mr. Sanderson:

I can only take a person at his word. It is not only the current employees we are concerned about, it is also the employees who will work for the State of Nevada for the next 100 years.

Chief Justice Hardesty:

The removal of the proposed language in Section 1 removes this bill from any retirement plan considerations. We are simply trying to provide parity between the two retirement systems and the ability to recall judges to service. The Senior Judge Program has been a success. Without Judges Archie Blake and Peter Breen, there would be no mental health or drug court services in northern Nevada. Without Judge Charles Thompson and some of the other Senior Judges in Las Vegas, we would not be able to settle as many family court cases as we are currently able to do.

Chair Kieckhefer:

We will close the hearing on S.B. 69.

We will open the hearing on S.B. 431.

SENATE BILL 431: Authorizes the Supreme Court of Nevada to enter into a long-term lease for office space in Clark County which extends beyond the 2016-2017 biennium. (BDR S-1133)

Chief Justice Hardesty:

Construction of the Regional Justice Center in Las Vegas began in 1999 and was completed in 2005. The Legislature authorized the State Supreme Court to enter into a 20-year lease to occupy the 17th floor of that building for its

Las Vegas operations. The space is 15,272 square feet. The lease extends through November 2025. I have been concerned with the escalating operating costs in connection with the lease. There is a base price to which is added a percentage of the operating costs of the building, which has caused an escalation in the price per square foot of the lease. I have also been concerned about the costs the Court and the State will face when it is time to renegotiate the lease.

Last December, I was approached by a developer in Las Vegas regarding construction of a new building on a lot in downtown Las Vegas near the Lloyd D. George Federal District Courthouse. Although I expressed interest, I enumerated the obstacles to a move which include: Clark County's willingness to terminate the lease early, Legislative and Gubernatorial approval, and the approval of the Buildings and Grounds (B&G) Section of the Department of Administration. A plan was presented to the Supreme Court which I have forwarded to Legislative staff, the Governor's Office and B&G. The plan provides a new, two-story building with approximately 24,000 square feet. The lease would extend for a period of 25 years; the rate for the first 10 years would be the same as the base lease the Supreme Court is paying in its current location. The operational, maintenance and percentage rate increases we are currently assessed would be eliminated. For the remaining 15 years of the lease, a normal cost of living increase would apply. The building has been designed with our input and would house the Supreme Court, the Court of Appeals and the administrative offices of the courts. It would also give the Court the ability to plan for its needs in Clark County for the next 25 years. There is no fiscal impact: the lease amounts between now and November 2025 would be less than if the Court stayed in the Regional Justice Center.

I met with some of the Clark County Commissioners and staff. The Clark County Commission unanimously voted to allow for the early termination of the Supreme Court's lease effective December 31, 2016. That is the date the developer has projected the new building would be ready for occupation. Clark County is waiting for my signature on the lease termination. Senate Bill 431 authorizes the Supreme Court to sign that agreement. I was advised recently that language in S.B. 431 regarding the length of the term may need to be corrected. We will bring an amendment if that is the case. Throughout the campaign for the Court of Appeals, I represented to the people of Nevada that we would locate the Court of Appeals in the Regional Justice

Center. We have done that. However, this is a unique opportunity for the Court and the State.

Chair Kieckhefer:

How would security work at the new location? Is the security at the Regional Justice Center cost allocated?

Chief Justice Hardesty:

Our security at the Regional Justice Center is not cost allocated; nor is it included in the operating and maintenance costs we pay. We have a separate security contract for the marshals on the 17th floor totaling approximately \$133,000 a year. I have approached the Chief Judge of the 8th Judicial District to propose the same contract at the new location. That is under discussion. Alternatively, we would hire the marshals as part of the Supreme Court marshal program.

Chair Kieckhefer:

What about security at the ingress and egress?

Chief Justice Hardesty:

The security would be arranged the same way it is at the 17th floor of the Regional Justice Center.

Chair Kieckhefer:

Is this two stories in a larger structure, or is it a two-story building?

Chief Justice Hardesty:

It is a stand-alone two-story building with underground parking and a surface parking lot.

Chair Kieckhefer:

Are furniture, fixtures and equipment (FFE) contemplated in the lease as well?

Chief Justice Hardesty:

As part of the consideration to terminate the lease with Clark County, they requested the furniture currently on the 17th floor. Clark County has a serious need for District Court space and their complex litigation center. They propose using the courtroom on the 17th floor of the Regional Justice Center for those purposes. However, all the computers, videoconferencing equipment and other

technology would be moved with us. The Supreme Court had set aside \$450,000 in its preemptory challenge fund to remodel the 17th floor of the Regional Justice Center to accommodate the Court of Appeals. When these negotiations developed, we halted that project. Those monies will fund the FFE in the new building.

Chair Kieckhefer:

Would you include moving expenses in that category?

Chief Justice Hardesty:

Yes.

Chair Kieckhefer:

If you sign the termination agreement with Clark County, is there a provision for accommodations if the new building is not ready to be occupied?

Chief Justice Hardesty:

The lease would carry over on a month-to-month basis.

Chair Kieckhefer:

Is anyone present to testify in favor of S.B. 431? Is anyone opposed? Is anyone neutral?

Continue to work with legal staff to amend the bill. I will close the hearing on S.B. 431.

The final item on the agenda is S.B. 89.

SENATE BILL 89: Revises provisions regarding expenditures from the Fund for Cleaning Up Discharges of Petroleum. (BDR 51-370)

Colleen Cripps, Ph.D. (Administrator, Division of Environmental Protection, Department of Conservation and Natural Resources):

Senate Bill 89 amends NRS 590 provisions related to the Fund for Cleaning Up Discharges of Petroleum, or the Petroleum Fund. The Petroleum Fund was established in 1989 and has operated successfully for 25 years, providing the owners of underground fuel storage tanks with an insurance fund that can be accessed in the event leaks occur requiring cleanup. The Fund provides reimbursement to qualified owner/operators for cleanup costs associated with

releases of petroleum products into the environment. Currently, the Fund will pay up to \$1 million less a 10 percent co-pay for each eligible leaking tank system. To be eligible, the tanks must be registered with the program and the owner/operators must pay an annual registration fee of \$100. The Fund is supported by a 0.075 cent fee for each gallon of motor vehicle fuel, diesel fuel and heating oil imported into, or refined in, Nevada. The Fund maintains a balance of \$7.5 million to support underground tank cleanups in the State. At the end of each year, funds in excess of \$7.5 million are transferred to the Highway Fund. Since the program began in 1989, over 1,000 cases have been closed and the Fund has reimbursed nearly \$200 million.

The Program has two basic responsibilities: the claims reimbursement program and a provision that allows the Division to directly clean up sites where the responsible party is unable or unwilling to respond, and then to seek cost recovery. Senate Bill 89 does not affect the claims reimbursement program; it only addresses the second provision. The statute currently caps this authority at \$250,000 per discharge. The Division has rarely used this provision. Recently, the Division sought IFC approval of budget authority of \$2 million to clean up eight separate tank system leaks at the Eagle Gas site in Carson City. This generated questions regarding how the cap is applied and a request to clarify the statute.

Senate Bill 89 clarifies the cap on the amount the Division can spend directly cleaning up sites. It sets a limit of \$2 million per year statewide unless IFC authorizes a higher amount. Based on the Division's experience overseeing cleanups and reviewing Petroleum Fund claims for cleanups since 1989, costs for mitigation and source control of sites with significant off-site groundwater contamination generally range from \$1 million to \$2 million, including capital, operation and maintenance costs.

Senate Bill 89 also expands the contaminants that can be cleaned up directly by the Division to include petrochemicals, which is defined to include dry cleaning solvent. Our intent is to provide a source of funding for cleaning up high priority dry cleaner sites where there is no viable responsible party. The Division has identified and prioritized 15 of these sites across the State. One of the highest priority sites is the former Mercury Cleaners location right across the street from the Legislative Building in Carson City. If left unattended, these sites constitute a significant public health risk.

In most cases, we are successful working with operators, property owners and insurance companies to have the sites cleaned up by responsible parties. However, in these 15 cases, the sites are former dry cleaners that have long been closed and there is no responsible party with funds available to clean up the sites. The funding mechanism in S.B. 89 would allow us to clean up these sites over time. The Division does not have the resources to manage more than one or two site cleanups per year. The initial focus will be on those sites where the groundwater is known to have been contaminated and is migrating off-site. Some of these sites, like the Mercury Cleaners site, have the potential to impact commercial areas, residential neighborhoods and municipal drinking water wells.

The Division has considered other funding mechanisms for addressing cleanup of dry cleaner sites, including the creation of a specific dry cleaner assurance fund similar to the petroleum fund. However, in Nevada the number of dry cleaning businesses and dry cleaner sales volume in the State is not sufficient to support such a fund. Additionally, the majority of high priority sites we plan to address are the result of legacy contamination from closed businesses that would not be able to pay into or be covered by such a fund. Other options that have been considered include creating a State Superfund program, or utilizing the federal Superfund program. We do not think the scope of the problem warrants a new program. We have also tried to find a solution that does not involve the creation of a new tax or fee. Listing sites on the federal Superfund National Priorities List (NPL) is an option of last resort since the federal program tends to be slow, expensive and bureaucratic. Additionally, NPL sites require a 10 percent State match and State funding of operation and maintenance costs if the site is cleaned up using federal funds. Therefore, the Division is proposing limited use of the Petroleum Fund to address high-priority dry cleaner sites.

Since 2011, between \$3.4 million and \$4.4 million has been transferred annually to the Highway Fund. Because the expanded use of these funds has the potential to reduce the amount of money available to transfer to the Highway Fund by up to \$2 million a year, the Division consulted the Department of Transportation (NDOT) during the development of S.B. 89. They have no objection to expanding the scope or the \$2 million limit as proposed. We have also received a letter of support from Chris Benedict, the Manager of the Washoe County Remediation District, which we have presented to the Committee ([Exhibit D](#)).

Chair Kieckhefer:

Is this a statewide program?

Ms. Cripps:

Yes.

Chair Kieckhefer:

Do you have an estimate of how many total sites would qualify?

Ms. Cripps:

We have identified 15 sites.

Chair Kieckhefer:

What would be the average cost for remediation?

Ms. Cripps:

The costs vary, but if there is groundwater contamination it would be \$1 million to \$1.2 million.

Chair Kieckhefer:

Is the plan to remediate these 15 sites over a period of 7 or 8 years?

Ms. Cripps:

Yes.

Senator Parks:

The money in the Petroleum Fund was not generated from dry cleaning establishments. If a dry cleaning fund was created, what kind of fees would be necessary? Would a charge of 10 cents per item dry cleaned be sufficient?

Ms. Cripps:

There are a number of states that have developed these types of programs. Most of these programs do not generate enough revenue to support the cleanup of contaminated sites.

Greg Lovato (Deputy Administrator, Division of Environmental Protection, Department of Conservation and Natural Resources):

It would be difficult to assess fees on existing dry cleaners for cleanup of the legacy contamination sites. We have not calculated what amount would have to

be levied on existing dry cleaning businesses to generate the \$1 million to \$2 million required for each of the 15 sites identified.

Senator Parks:

My concern is we are using funds generated from another source to supplement the cleanup of a separate issue. If we are charging future purchasers of gasoline for past contamination, it would be consistent to charge future dry cleaning customers for the past dry cleaning contamination.

Senator Goicoechea:

While I agree with Senator Parks, we are typically dealing with groundwater contamination which is everyone's problem.

Chair Kieckhefer:

Is someone here from NDOT to address the impact on the Highway Fund?

Sean Sever (Communications Director, Department of Transportation):

The NDOT supports S.B. 89. Although this bill proposes to decrease the amount of funding that would revert to the Highway Fund and eventually to NDOT, we support Division of Environmental Protection (NDEP) and the intended purpose of the bill. It is in the best interests of the State. The total amount of money that reverts from the Petroleum Fund is a small percentage of NDOT's total capital project expenditures. This bill will not jeopardize our ability to deliver future projects.

Chair Kieckhefer:

Do you have an estimate of the reduction in the reversion to the Highway Fund?

Mr. Sever:

It is \$2 million annually.

Senator Goicoechea:

I know that NDOT is in the process of an extensive change of tanks at fueling sites. How much does that project cost?

Felicia Denney (Administrative Services Officer, Department of Transportation):

This biennium, the cost is approximately \$6.5 million. Next biennium, the cost is about \$10 million for the fueling systems. The tanks are a subset of that cost.

Senator Goicoechea:

The purpose is to prevent contamination. This shift in funds would not impact that project. The costs and actions necessary to avoid contamination are also costly. Your support of NDEP and S.B. 89 is another aspect of addressing groundwater contamination.

Chair Kieckhefer:

Is anyone here to testify in support of S.B. 89?

Ben Griffith (Western Petroleum Marketers Association):

We support S.B. 89. It is good for the environment, good for Nevada and good for America.

Chair Kieckhefer:

Is anyone here to testify in opposition to S.B. 89? Is anyone neutral? As there are no further testifiers, I will close the hearing on S.B. 89.

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Chair Kieckhefer:

I will open the hearing to public comment. Seeing none, this meeting is adjourned at 9:06 a.m.

RESPECTFULLY SUBMITTED:

Trish O'Flinn,
Committee Secretary

APPROVED BY:

Senator Ben Kieckhefer, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 69	C	3	Chief Justice Hardesty	Judicial Branch Amendment to <u>S.B. 69</u>
S.B. 89	D	1	NDEP	Letter in Support of <u>S.B. 89</u>