

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

**Eightieth Session  
May 6, 2019**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 9:28 a.m. on Monday, May 6, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Edgar Flores, Chair  
Assemblyman William McCurdy II, Vice Chair  
Assemblyman Alex Assefa  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblyman Richard Carrillo  
Assemblywoman Bea Duran  
Assemblyman John Ellison  
Assemblywoman Michelle Gorelow  
Assemblyman Gregory T. Hafen II  
Assemblyman Glen Leavitt  
Assemblywoman Susie Martinez  
Assemblywoman Connie Munk  
Assemblyman Greg Smith

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Melissa Hardy (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Dallas Harris, Senate District No. 11  
Senator Julia Ratti, Senate District No. 13

**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Asher Killian, Committee Counsel  
Kirsten Oleson, Committee Secretary  
Trinity Thom, Committee Assistant

**OTHERS PRESENT:**

Richard McCann, Executive Director, Nevada Association of Public Safety Officers;  
and representing the Nevada Law Enforcement Coalition  
Michael Ramirez, Director of Government Affairs, Las Vegas Police Protective  
Association; and representing the Nevada Law Enforcement Coalition  
Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada  
Marlene Lockard, representing the Retired Public Employees of Nevada  
Tina M. Leiss, Executive Officer, Public Employees' Retirement System  
Christopher G. Nielsen, General Counsel, Public Employees' Retirement System  
Priscilla Maloney, representing American Federation of State, County and Municipal  
Employees, Retiree Chapter, Local 4041  
Drake Ridge, representing Las Vegas City Employees Association  
Alex Marks, Political Coordinator, Nevada State Education Association  
Terri Laird, Executive Director, Retired Public Employees of Nevada  
Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance  
Tom Wellman, President, Nevada State Education Association-Retired  
Steve Horner, Private Citizen, Las Vegas, Nevada  
Harry Beall, Private Citizen, Las Vegas, Nevada  
Daniel Honchariw, Senior Policy Analyst, Government Affairs, Nevada Policy  
Research Institute  
Robert Fellner, Policy Director, Nevada Policy Research Institute  
Paul J. Moradkhan, representing the Las Vegas Metro Chamber of Commerce

**Chair Flores:**

[Committee rules and procedures were explained.] We will begin today with Senate Bill 158 (1st Reprint).

**Senate Bill 158 (1st Reprint): Revises the definition of the term "supervisory employee" for purposes of provisions relating to collective bargaining. (BDR 23-789)**

**Senator Dallas Harris, Senate District No. 11:**

Senate Bill 158 (1st Reprint) is relatively simple and straightforward, but still very important. In short, the bill revises the definition of the term "supervisory employee" as used in Chapter 288 in *Nevada Revised Statutes* (NRS) for the purpose of collective bargaining. It may seem that such a simple definition is innocuous, but when it comes to collective bargaining, the term supervisory employee is very instrumental to who can and who cannot

be part of a collective bargaining unit. As you know, local governments may engage in collective bargaining with the recognized employee organization for each bargaining unit of employees. Moreover, a supervisory employee is prohibited from being a member of the same bargaining unit as the employees under his or her supervision. The bill addresses the concern that, due to the broadness of "supervisory employee," some employees who should be involved in the bargaining unit cannot be a part of it or, in some cases, might find themselves unfairly removed. This is particularly problematic for those employees involved in public safety—specifically firefighters, certain peace officers, and police officers.

The current definition of supervisory employee includes any person who, on behalf of his or her employer, engages in various employment actions when such actions are not just routine and require the use of independent judgment. Those involved in public safety positions will tell you that they sometimes perform supervisory functions, but they might also not perform those functions. It all depends on the specific situation faced by those in law enforcement and public safety. A supervisory decision or act might be needed temporarily, but such employees are not, in fact, supervisors as most would think of them. This has led to some in the public safety field being excluded or even kicked out of the very bargaining unit in which they should be included.

Senate Bill 158 (1st Reprint) proposes to amend the definition of supervisory employee to address this unintended consequence by clarifying that police officers and firefighters who perform some but not all the supervisory duties set forth in NRS 288.075 under a paramilitary command structure must not be deemed a supervisor solely because of such duties. I would note that the original draft of this bill did not include peace officers. You are looking at the first reprint which will have that definition in addition to police officers and firefighters. I would also note that it does not include all peace officers, just ones we felt this problem arises with under that paramilitary command structure. That would obviously not apply to, let us say, investigators in the Attorney General's Office.

Thank you for your consideration and support of this bill. With your permission, I would like to turn the presentation over to Mr. McCann, representing the Nevada Association of Public Safety Officers and the Nevada Law Enforcement Coalition. Mr. McCann will further explain the rationale for this bill and highlight the critical importance of this bill.

**Richard McCann, Executive Director, Nevada Association of Public Safety Officers;  
and representing the Nevada Law Enforcement Coalition:**

We represent approximately 10,000 law enforcement professionals throughout the state of Nevada. This is a simple bill, but an important bill. Senate Bill 158 (1st Reprint) seeks to amend the definition of supervisory employee under NRS 288.075. It will exclude peace officers and firefighters who perform some but not all of the enumerated duties under a paramilitary command structure.

Why exclude these folks? Why is this bill here? Imagine you have a bargaining unit comprising exclusively law enforcement officers. Imagine that these officers have not been promoted to supervisory positions. They do not have property rights. In that sense, there is

no formal promotion. At any given point in time depending on injuries to their fellow officers, vacations, other manning issues, or the needs of the department, they may be asked to assume some supervisory tasks as officers in charge (OIC) or field training officers (FTO). They are asked to assume those tasks full-time for what could be days, weeks, or months at a time depending on the department's needs. Technically, they may be considered supervisory employees under the current definition of NRS 288.075 because they may assign work to others, direct them in their tasks, or recommend discipline for someone under their guidance. Those tasks may occupy a significant part of their workday for those days, weeks, or months that they are occupying those temporary duties. Under the current NRS 288.075, they would be supervisory employees, and under NRS 288.170, a supervisory employee must not be a member of the same bargaining unit as the employees under their direction. The result is that an employer could decide that the temporary OICs or FTOs, since they are fulfilling some tasks but not all of the tasks that are enumerated in current NRS, count as supervisory employees. Therefore, they cannot be a member of the same bargaining unit as the officers whom they are supervising. We cannot have peace officers changing their duty status from time to time due to the needs of the department and, as a result, be subject to removal from their bargaining unit. That is kind of crazy. Of course, if they are fully promoted to supervisory positions and they have property rights to those positions, that may be a different situation. Senate Bill 158 (1st Reprint) makes this adjustment to NRS 288.075 to exclude peace officers and firefighters from this situation that is, quite frankly, common to their professions. For those reasons, we fully support S.B. 158 (R1) as did the Senate floor unanimously. We urge this Committee's support as well.

**Assemblyman Leavitt:**

I want to understand the logistics a little bit. The supervisors or quasi-supervisors are under a separate and different negotiating contract. Is that correct?

**Richard McCann:**

That is what we are trying to avoid. If everyone in this room is part of the same collective bargaining agreement and a couple of you happen to become FTOs or any other position that I have outlined, there is a real chance, based upon the way the statute is currently written and has been interpreted recently, that if you do one or two of these things for a period of time during that temporary status that you are in, you may be subject to being pulled out of the collective bargaining group. Yet you are not really a supervisory employee in a full-time sense; you are just occupying that position for a period of time. We are worried that people might say that you can be in the bargaining unit today but not tomorrow and so on and so forth. We are trying to avoid that. It may sound like an absurd result, but we believe that it is a result that could be interpreted based upon a Local Government Employee-Management Relations Board (EMRB) decision that came out last year. That is what motivated this bill.

**Assemblyman Leavitt:**

I am in a governmental position when I am not here. I am in an exempt position, so I am not part of the collective bargaining unit. Whatever the determination of the collective bargaining unit, it will affect me. I am under the unit with my salary, benefits, and everything that goes along with it that is collectively bargained for, even though I am not

a member. Do they still receive the benefit of the collective bargaining even if they are not able to get in there—in the trenches—and collectively bargain? Say they are fully promoted to a supervisory position—not flipping back and forth—do those supervisory positions now have their own set of collective bargaining that they are bargaining for? Are they represented in some shape or form at all times?

**Senator Harris:**

Let me go with your first question. Yes, supervisors have their own bargaining unit. One of the issues that you might see is a weakening of the nonsupervisor bargaining unit by picking people out. You lose the strength and any benefit because there are not enough people participating anymore because you are deeming everyone a supervisor even when they should not be. I believe that at some point they will all be represented. There is a worry that there is a concerted effort to weaken the bargaining unit by chipping away at their numbers.

**Richard McCann:**

There are many organizations that include supervisory employees—sergeants and lieutenants—within the base bargaining structure; however, not all of them are that way. Some of them do have a rank-and-file structure—organized collective bargaining and supervisory collective bargaining units. So, yes, if they were to move they might move into a supervisory collective bargaining unit if one exists. We are talking about the situation where they may only be doing the supervisory job temporarily. Why are we moving them in and out of collective bargaining groups?

**Assemblyman Ellison:**

Usually when they do the bargaining units between the sergeants and lieutenants—maybe even further up—do they not use the same bargaining units? Are there two different units for supervisors versus employees?

**Richard McCann:**

As I have indicated, there may be groups. In Elko there is the Elko Police Department. They have all their sergeants as part of the collective bargaining group with the rank-and-file officers. This EMRB case that came out last year put that in jeopardy. Now they feel that they have to separate and move into their own group. There are other groups throughout the state—not in Elko—where they have them all in one collective bargaining group. That is their choice. We are worried that down the road, employers could decide that they have the statute that has 12 enumerated things that you have to be able to do. If you are only doing 1 or 2 of all the 12 things, suddenly you are not allowed to be in the collective bargaining unit that you have been in. We are just worried about the movement back and forth. If someone is promoted into a supervisory position and there is a supervisory collective bargaining group, then they would move into that. Not all of them have a separate supervisory group, but those who do would move into that group. We are talking about the ones who are occupying the positions on a temporary basis.

**Assemblyman Ellison:**

I was surprised when I read that none of the cities or counties came in for opposition on the Senate side.

**Richard McCann:**

Was your comment that nobody came in for opposition? That is a good thing. They obviously agree with us. We have a powerful Senator sitting here.

**Assemblyman Ellison:**

Usually if there is a problem, you would see the cities or counties lined up.

**Richard McCann:**

I would say that there is no problem.

**Assemblyman Assefa:**

For clarification purposes, is it your observation that if someone were to assume a temporary supervisory role to assist his or her department, it would automatically disqualify them from remaining in their collective bargaining unit without formally being extended the benefits of being promoted to a supervisory role?

**Senator Harris:**

That is the worry. There is a process that you can go through. I will turn it over to Mr. McCann to give a little bit of the background on the EMRB case which was the way you might flesh this out and decide who should be where.

**Richard McCann:**

The EMRB case came out on August 29, 2018. It was the *City of Elko v. The Elko Police Officers Protective Association, et alia*. The EMRB case is Case No. 2017-026, Item No. 831. There was a general decision from the EMRB that if you perform 1 or 2 of the enumerated 12 tasks in the current statute, then you are a supervisory employee. Therefore, you cannot be in the rank-and-file group because the whole theory behind this is a supervisor should not be in the same collective bargaining group as the people whom they supervise. Again, in our profession we are worried about people coming and going within the supervisory ranks so they could very well qualify under the EMRB standard. Why should they be moved out of their collective bargaining group when, in fact, very shortly they will not be doing those things and they would return to their previous group? Moving them between bargaining units is the problem that we are having. It is not a problem that is happening right now; it is more preventative.

**Assemblywoman Duran:**

If it is happening enough, are they not promoting into the supervisory position? They are utilizing the bargaining unit employees, which can cause a conflict as far as moving in and out of that position among the other fellow employees—police officers or firefighters.

**Richard McCann:**

I do not want to represent this as a situation that is ongoing. It is not a major problem for us right now. We do not have people running around with their hair on fire, not knowing what collective bargaining group they are in. We are just concerned that this case could be identified and interpreted as such down the road.

**Assemblywoman Duran:**

I understand what you are saying because I work with a bargaining unit myself. They utilize people who promote up and demote. It becomes a problem because they are not fully staffing the supervisory positions when they should be doing it on a permanent basis.

**Chair Flores:**

Seeing no additional questions, we will move on to those wishing to speak in support of S.B. 158 (R1).

**Michael Ramirez, Director of Government Affairs, Las Vegas Police Protective Association; and representing the Nevada Law Enforcement Coalition:**

Just to give you some insight, this is not currently a problem that we see for our agency—the Las Vegas Metropolitan Police Department. I know the positions that Mr. McCann is alluding to—the FTOs. Our positions are six-month cycles. When there is an academy or people being trained, you have FTOs who train those officers. Essentially they are the first-line supervisor even though they still have a sergeant and lieutenant supervising them. I can see where this could possibly be interpreted—like they did in Elko—to try to say you are doing a role of supervisor. It could muddy the waters. We appreciate Senator Harris's bringing this forward. We are in support of this bill.

**Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada:**

We want to thank the sponsor and Richard McCann for bringing this bill forward. We have 18-month special assignments where people go down and run multiple academies and supervise all the incoming rookies. This bill will help clarify that and make sure there is no confusion as we move forward. We fully support this bill.

**Chair Flores:**

Seeing no one else in support, is there anyone wishing to speak in opposition to this bill? Seeing no one, is there anyone wishing to speak in the neutral position? Seeing no one, Senator, please proceed with closing remarks.

**Senator Harris:**

I would like to thank you for your time and consideration. My door remains open if there are any additional questions. I look forward to seeing you all at work session.

**Chair Flores:**

With that, we are going to close out the hearing on Senate Bill 158 (1st Reprint). Next, I would like to open up the hearing on Senate Bill 224 (1st Reprint).

**Senate Bill 224 (1st Reprint): Revises provisions relating to public retirement systems.  
(BDR 23-598)**

**Senator Julia Ratti, Senate District No. 13:**

I am here to talk to you about an issue that has quite a bit of history. It is not new to this body. It is the issue of whether the files of our Public Employees' Retirement System (PERS) members should be confidential. I am not a lawyer, so I will make no effort to take you through the long and trying legal path that this issue has been through. We have uploaded testimony and recent court cases regarding this issue. If you want to dig deep into the court cases, there will be other people here today to help you do that.

Generally, the law says that PERS files are confidential. That is what the law says, that the individual file of a PERS member is confidential. The current state of the law is that PERS individual files are confidential, but through a series of court cases there have been different decisions on whether, once aggregate information is pulled out of that file and into a report, it remains confidential. I am not trying to take you through those decisions; other people can do that.

I am here because I believe there should be concern when the private information of our PERS retirees is made available to the public. It raises a number of concerns. The first is privacy. At what point is a public servant no longer a public person? These former administrative assistants, maintenance workers, law enforcement officers, social workers, and their colleagues dedicated their careers to public service. In exchange, they earned a salary and benefits. That moment when they are earning the salary and benefits, that information is still public. They earned a PERS benefit that was set aside for their future use and retirement. They earned that benefit, and it was set aside. They paid part of it and, in some instances, their employer paid part of it. It was set aside and invested for their use in retirement. So when we now are going back to those retirees and asking to look at their individual accounts, we are looking at, not taxpayer money, but their earned benefits and the investment gains or losses that have resulted in a fixed benefit for that retiree. I do not see that is different than saying that your 401(k) should be public to everyone and, particularly, your social security check should be public.

An argument that the opposition will make is that because it is a fixed benefit, it is backed by taxpayer dollars. It may be taxpayer dollars that need to rescue it should PERS (the System) ever fail. If that is the argument, we could make that argument for every social security check in the country because it is also a fixed benefit and backed by taxpayer dollars. That argument does not make any sense to me. On that point, I have had people say to me that when you work for the government, you know that you will become a public figure.

I will talk about my mom. When I was five years old, my mom, who had been a stay-at-home mom, decided that she wanted to go to work and earn some money for the household. She became a school cook. She worked in the lunchroom kitchen. When I was six—that was 44 years ago—she did not go to work with any thought in her mind that she was a public figure. She also did not think that 44 years later her retirement benefits



would be public to anybody who wanted to look at them. I find it to be a faulty argument that if you take a job within the public sector, you already know that you are going to be a public person for the remainder of your life.

Then let us talk about the world that we live in today. What about their public safety? What about the security of their identity and information? In a world where terrible people continue to prey upon vulnerable senior citizens, we are serving our retired public employee information up on a platter. The state should not be facilitating putting these seniors who worked not just for us, but every local government and every public job in the state that participates in the PERS program. We should not be serving that information up on a platter to very sophisticated individuals who connect the dots with that information and other information that they can find available. It is not the right thing to do.

Finally, there is a high cost to litigation. I think that you will have some folks testify who will make it clear that the court has made its decision and that we just do not want to accept that decision. The minority opinion of the Supreme Court said it is not clear. We have left the hardworking employees on PERS in the position of having to do a balancing test between transparency and the privacy rights of the PERS members. The team at PERS does not have an opinion about whether it should or should not be confidential. They are charged with what our law and now our courts have directed them to do. What I seek to do with this legislation is hopefully put an end to that high-cost litigation that is eating into the PERS funding stream. We are back in court over and over again.

I acknowledge that the privacy and security concerns that I have for our public retirees are in conflict with the real need for transparency. I acknowledge that. Because of that, I did not just bring you a bill that says it is all confidential all the time no matter what. Instead, I tried to balance the needs of the state—which has a real job to be a watchdog and make sure that we are taking care of our systems, including PERS—with the needs of privacy of the public employees in our systems.

There is an exception which releases a limited list of information with an identification number that would allow any public request to pull all of the records for that information. That way they could look for trends and data that would show discrepancies. That way they can fulfill their role. Is it perfect? No. I would suggest that most of the laws that we pass are not. I think it is an appropriate balance that protects the privacy and security of the individual with the needs for transparency on this issue.

How does this bill solve the problem? This bill would clarify *Nevada Revised Statutes* (NRS) Chapter 286—which is specific to PERS—to ensure that identifying personal information or intensely personal collateral information will remain confidential. I should note that, as originally presented in the Senate, these changes to NRS lived in the public records chapter [Chapter 239]. I was contacted by the Nevada Press Association, who let me know their concerns that if we left it in the public records chapter, it might have wider-spread consequences to other public records law. Since that was not our intent, I worked with our legal team to move it out of the public records chapter and into the PERS Chapter 286.

It should not have any wide-reaching effects on public records. Keeping this information confidential will lessen the risk of bad people preying on our elderly public employees through identity theft. The clarifying language will also reduce litigation.

Section 1, subsection 1, clarifies that all information contained in an individual PERS file is confidential and that it remains confidential regardless of form. This part is important because this has been the basis of a bulk of the cases. The law says that the individual file is confidential. That is the law today. The fight has been over once it has been taken out of that file and put into a different form and whether, at that point, it does remain confidential. This bill says that it does. The bill goes on to say that it remains confidential regardless of form, location, manner of creation, or the storage of a record or file. It should not matter if it has been pulled into a database or lives in a computer file. It should not matter where it is. If the law says that it is confidential, then it is confidential.

Section 1, subsection 2, exempts the certain information that would require PERS to release an identification number, the last public employer, the years of service credit, the retirement date, annual pension amount, and whether the benefit is a disability or a service requirement. I am going to turn it over to Marlene Lockard, who has been my partner on this project.

**Marlene Lockard, representing the Retired Public Employees of Nevada:**

In the interest of full disclosure, I feel I must inform you that after I gave my testimony on the Senate side, the Nevada Policy Research Institute (NPRI) filed a complaint with the Legislative Counsel Bureau claiming that I had willfully given false testimony in my comments in support of S.B. 224 (R1). I would like to invite you to look at NELIS [Nevada Electronic Legislative Information System] and see the response Robert Fellner of NPRI received from Director Richard Combs of the Legislative Counsel Bureau (LCB), clearing me of that allegation ([Exhibit C](#)). In addition, I have also uploaded a letter from my personal attorney, Kent Robison ([Exhibit D](#)). His letter speaks for itself. I am sorry this type of tactic was employed in their efforts to kill S.B. 224 (R1).

Now, on to the important purpose of S.B. 224 (R1). Senator Ratti has eloquently outlined the need for clarification in our statutes. We are concerned about our seniors. For more than 35 years, PERS personal information was considered confidential. As a result of the court cases that have been mentioned—and are now on NELIS for your review [([Exhibit E](#)), ([Exhibit F](#)), and ([Exhibit G](#))]—we are now at a point where one standing order continues to make public, if requested, date of birth, beneficiary information, gender, passports, addresses of ex-spouses, birth certificates, and marital status. What is the purpose of releasing this personal information to the public?

The Retired Public Employees of Nevada asserts that releasing this information is unnecessarily invasive and places our members as targets for fraud, scam artists, and identity theft. Most important, it places them at risk for their own personal safety. Identity theft experts in the past have stated that even though de-identified datasets appear to decouple information from a person's identity, they still contain enough content to form a unique "data fingerprint."

Earlier this session in another hearing on identity theft, law enforcement officers testified that identity theft is on the rise in Nevada. Nevada ranked first for identity theft and fraud and second for the average loss amount due to fraud, according to WalletHub. The study showed that last year, Nevada had about 128 identity theft complaints per capita. The average amount of money lost due to online identity theft was about \$13,500 per person in Nevada, again according to WalletHub. I urge your favorable consideration of this measure.

**Assemblyman Hafen:**

I have been very concerned about PERS. We had a presentation on PERS and the number that was presented to us is that there is a \$13 billion unfunded liability that we were told would be made whole. I requested that information so that I could see and provide my friends who work in the public sector that information. They are very concerned. To this day, I still have not been provided that information. I am very concerned with the PERS system itself.

In regard to some other things that I have supported that go along with this, we have currently been passing out of this Committee adding additional protection to public employees—such as code enforcement and protective services. I think there are different agencies that should be protected and should have the ability to have their records protected just like our law enforcement. I wanted to touch on what you said about seniors being scammed. I do not think it is just our public retirees who are being scammed. For example, my grandma was scammed last week. It was an online scam that she got sucked into. She spent a week trying to get her bank accounts closed so that she could cut off the scam. You provided data that said our seniors are being scammed. Do we have definitive data that our public retirees are being scammed more than other seniors? Specifically, are they using the data that is being presented through public records requests to establish these scams?

**Marlene Lockard:**

We do not have specific data of where bad actors get their information or how they target specific seniors. I noted that Governor Sandoval's veto message for Senate Bill 384 of the 79th Session was posted to NELIS ([Exhibit H](#)). His veto message from last session essentially stated that there was not enough evidence to show the amount of identity theft. That puts our seniors in the posture that they have to be harmed first before we can protect them. That does not make any sense to us.

**Senator Ratti:**

I think it is a bar that is too high to meet because the Dark Web is dark. I do not know that we would ever be able to point specifically to a bad actor and know exactly where he got his information. I do not know that we could ever connect those dots. I know that our law enforcement community is putting in significant resources and doing the very best that they can to track down these cases as they present. I suspect that when your grandmother called law enforcement, law enforcement said make sure to protect yourself, but they do not have the individual resources to go after each individual case to be able to track down what is happening with your grandma. If they do not have the resources to do that, then we never have the data that says in this specific scenario they connected these dots with these dots.

I think it is common sense that as we are in a world where folks like myself are locking down credit reports and doing everything we can in terms of online software virus protection, we know that we are constantly under attack. Why we would put public employees' records in a more transparent place when it really does not serve any significant purpose is beyond me.

To the point about the PERS system, we have good, meaningful, independent data that looks at it in the aggregate. That is third party—not our own folks. Year after year, assessment after assessment, even though the alarm bells have been rung over and over again, our retirement system in the state of Nevada ranks as one of the best-funded in the nation. Every report comes back as you would expect with a little adjustment. We get high ratings continually. I know that the unfunded liability number sounds scary to people, but that is a liability that results from a change in accounting principles. That said, you have to show what the entire liability would be if we shut our doors today and had to pay out everybody. There is no scenario where, as a retirement plan, you have to shut your doors today and pay out everybody. It does not work that way. It would be fiscally irresponsible to have enough money sitting aside to fully pay every retiree's benefit all the way into eternity as he is earning it. What we are looking for is a healthy percentage. Year after year we hit that healthy percentage. Could we do better and make more progress? Absolutely. Could we get to a more fiscally secure spot? Possibly. That unfunded liability number is a full funding of every retiree. If we were doing that, we would not be investing money in the services and the work of government. It does not resound with me when people make the argument that the PERS system somehow needs greater oversight. It is a respectful difference of opinion. I do not see that there is a compelling set of evidence that says that we need to have more transparency either.

**Assemblyman Hafen:**

I am confused. Bear with me because I live in the private sector and I have an individual retirement account (IRA). With an IRA, I put the money aside. That money is there. If I am understanding correctly, the employees are making the contributions today into PERS, but you are telling me that the money from the people who contributed is not there and is not backed with actual dollars like my IRA or somebody's 401(k) is.

**Senator Ratti:**

We have the team from PERS here. I will say that they are far more qualified to answer that question. I would suggest that we defer that to them. A defined benefit plan works very differently than a defined contribution plan. Your IRA that you are discussing is a defined contribution plan. In a defined benefit plan, we are much more reliant on good data and good science to do actuarial projections about how long people are going to live. There is an oversight committee that is constantly making adjustments based on that assumption. We do not have all the dollars for every benefit and every employee and retiree who is on the books. That would be fiscally unsustainable for any entity. I would leave it to the professionals to explain.

**Assemblyman Leavitt:**

I am a PERS employee in the other months outside of this. You have to balance transparency because public employees are public and they are paid with public money. If I were a private employee, the person who is writing my paycheck should know everything that they are spending their money on. For public employees, that level of transparency is increased. There is a balance. We do not want to take transparency to a dangerous level. How do you get to the threshold? I get that this cannot be perfect because where you seek to protect one person, you possibly harm another. How did you get to the thresholds that you have created here? We want to have a little bit of understanding because taxpayer money pays my contributions and fills in that gap because I am a public employee. That level of transparency, by nature, has increased because of who is footing the bill.

**Senator Ratti:**

All of the different ways that we are transparent about how public employees are compensated are not in this bill. When factoring that balance, I think that we need to look at all the other things that are transparent first. All of the salary schedules are transparent. In public forums and government settings, we set salaries, whether that is folks who are here for the state and our processes or whether it was in my time as a city councilmember where we were approving the salaries for those who were living in the PERS system but are city employees. All of those are public meetings. All of that is transparent and anybody can go and figure out what a fireman is making or what a secretary is making because the salary schedules are public. That is the first thing. This does not make the actual paying of employees and their benefits at that time private. Right now, that public records request could go and if you want to know what is being paid to employees, you could go to Transparent Nevada. You can see how much was paid in their salary and how much was paid out in their benefits. That is all public.

To answer one piece of your question, both the taxpayer dollar and the employee dollar fund PERS. Just like in social security where your employer is putting in money, but some money is taken out of your paycheck to fund your portion, the same thing happens in PERS. There are different levels based on different entities within the PERS system. Some of it is negotiated through collective bargaining. The employer puts in their share and the employee puts in their share. It is very much like your paycheck: once that money has been paid to you and you take your paycheck, how the money is being spent or managed is your personal issue.

I see that as the same with your retirement money. This is your retirement money that you have earned. It is now in your account that you have earned. It is past the point when you were paid that salary and you were paid that benefit. Now it is yours. Why we would be digging into that account that is now yours and that you have earned is the question that does not make any sense to me. The law is clear that those files are confidential; it is only the exercise that we have gone through in the last decade with the media and think tanks coming

in and requesting that information. It is a very esoteric argument to ask whether it is still confidential when it is in a report or when it is in a different file. Do they have to actually create a separate piece of software to pull that information if the public requests it? That is the conversation that we have been having.

I think there is a very logical argument as to why this information is private. These are dollars that have been earned by the employees and set aside for them. They contributed to it and their employer contributed to it. It was transparent and there is all kinds of transparency on the front end of how much that is going to be. All those were in public meetings. It is still even transparent on the employee information as they were receiving both their salary and benefit as an employee. Now it is just their money in their personal file for their PERS account, just like your social security account if you are a private employee. Why that would be public to everybody, I am still at a loss. I think that is the balancing test. We have all this transparency on the front end. We have then picked a handful of things for people who want to run their own reports and do not trust the third party. This information is to be used by highly qualified personnel for actuarial analysis and the audits of our PERS system. If they see any discrepancies, we would like to know so we can look into it ourselves. I think that is the appropriate balance.

**Assemblyman Carrillo:**

I think any effort to protect our retirees is a good thing. Why would we want to add to that pool of people who are at risk for identity theft? I am not sure what the unfunded liability has to do with this bill. If the Assemblyman from District No. 23 [Assemblyman Leavitt] decides to retire from his position with his public job, I am sure that he is not going to call and get his full retirement at once. In fact, I see some retirees in here who are probably PERS recipients. How many of you got your full retirement at once? I am seeing heads shaking no. They get it in the monthly or biweekly payments. You are doing a great thing with this bill. Keep it moving.

**Assemblyman Assefa:**

Besides the gains and losses associated with the particular PERS account, what other information is available for disclosure at this point?

**Senator Ratti:**

Everything that is de-identified from the individual. All this bill says is that you cannot pull the individual information. Anything in aggregate that is de-identified, that is on this list, and they can still pull it. All of that actuarial data that is presented is public. The unfunded liability is public. It is the individual information in the file and anything associated with that file that is confidential with the exception of the list that is presented in the bill.

**Assemblyman Assefa:**

I do not think that you are trying to conceal any information in a subversive way. I think that those who are serving and protecting us in our communities should not have to worry about their safety and information.

**Chair Flores:**

We will proceed with those wishing to speak in support of S.B. 224 (R1).

**Tina M. Leiss, Executive Officer, Public Employees' Retirement System:**

The retirement board has taken a position of support on S.B. 224 (R1). This position is primarily based on the need for clarity and certainty regarding which records and information about members, retirees, and beneficiaries of the System are confidential and which are not. The bill only concerns member and retiree information. The large volume of records reflecting financial, investment, governance, policies, procedures, and employer information will remain public under this bill.

Before I get into the history of legal issues that have arisen from this bill, I would like to address a couple of questions that came up during the presentation. First, any information on the unfunded liability will be best found in financial statements, our actuarial evaluation, second opinion reviews, our experience studies, and looking at our assumptions. All of that information has been and will remain public. That is the best information about unfunded liability. There was also a comment regarding a prior presentation and questions about further information. I recall that we gave a presentation to this Committee early on in the session and there were questions. We provided follow-up information to the Committee. I apologize if that information did not fully answer the questions about unfunded liability. We would be happy to provide any further information on the unfunded liability. The information that we are talking about today is just member, retiree, and beneficiary information, which is not really going to inform any questions about the unfunded liability. That would be for the financial, actuarial information that is and will remain public under this bill.

I will provide the Committee with a brief history of the relevant statutes and the interpretations of those statutes to provide context as to why the PERS system believes that clarification and certainty are necessary. *Nevada Revised Statutes* (NRS) 286.110, subsection 3, provides, in part: "The official correspondence and records, other than the files of individual members, or retired employees . . . of the System are public records . . ." This statute now says that the individual files of members and retirees are not public. I would also like you to understand some of the information that we have in the file. It is not only about our members and retirees. It is about any beneficiary they have ever named and their minor children they told us that they have. We have their children's birth dates, social security numbers, addresses, and information about spouses and ex-spouses. It is not just public employee information that is contained in these individual files. It is all the information we will need to someday pay out whatever benefits—whether they are retiree benefits, survivor benefits, or disability benefits.

We are really talking about more information than just the member retiree benefits. *Nevada Revised Statutes* 286.117 provides: "All records maintained for a member, retired employee or beneficiary may be reviewed and copied only by the System, the member, the member's public employer or spouse, or the retired employee or the retired employee's spouse . . ." These two statutes were enacted in 1977 to resolve a question about whether member and

retiree records were confidential or subject to the public records law. In 1974 the Office of the Attorney General advised the System that the individual retirement file of a particular member of a system—which often contains information that is extremely confidential and sensitive—is not a public record within the meaning of Nevada public records law. In 1976 the Office of the Attorney General said that these systems should make certain portions available for public inspection upon request, but information of a personal nature should first be removed from the file. We have those two different opinions, one which says that the entire file is confidential and one which says that the file except for personal information is public.

In part because of these conflicting opinions, the 1977 Legislature answered the question for us and enacted the provision providing that the individual files of members and retirees are not public records. It is my understanding that since these statutes were enacted in 1977, the consistent legal advice from the Office of the Attorney General was that the individual's file is confidential until a 2013 Nevada Supreme Court decision revised the opinion. The System was legally prohibited from releasing any information from those files except to those persons listed in NRS 286.117. Based on that advice, our consistent interpretation for 35 years is that all the information in the files is confidential.

In 2011 the *Reno Gazette Journal* requested that the System provide the names of all individuals who are collecting pensions, the names of their employers, their salaries, their hire and retirement dates, and the amount of the pension payment. The deputy attorney general responded that these were not public records. This response kept with our consistent and long-term interpretation of the retirement act. Aside from the confidentiality issues, there are also administrative issues with some of the requests because a lot of the hire dates for retirees are not in a searchable database, so going through and finding all the hire dates of 65,000 retirees was an administrative issue—those files go back into the 1940s. It was a problem for us with the public records request.

The district court ordered the System to produce a report for the *Reno Gazette Journal* concerning each retired employee who was receiving a benefit. This included their name, retired employee's employer, salary, hire and retire dates, and the amount of the benefit payment. There was also an issue there as to whether beneficiaries should be included. We pay a large dollar amount to beneficiaries who may or may not have ever been public employees.

The Nevada Supreme Court issued its opinion on November 14, 2013 ([Exhibit E](#)) [*Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, 129 Nev. Adv. Op. 88.]. They affirmed in part and vacated in part the district court order. The Nevada Supreme Court ruled that the individual files are confidential. The court also ruled that where the information is contained in a media separate from the individual file—including administrative reports generated from data contained in individual files—such reports or



other media are not confidential because the same information is also included in the individual files. The Nevada Supreme Court vacated the district court order to the extent that it required us to create new documents or customized reports by searching for information from those files.

The board is a governing body of a trust fund which holds fiduciary duties to its members and retirees. The law enacted by the Legislature provides that those files are confidential. However, the first Nevada Supreme Court decision placed the System in a situation where it made it difficult to fulfill fiduciary duties while still performing required functions of the System. Essentially, this made the information confidential so long as it is in the file, but if we have to pull that information out to create a report, then, under the Nevada Supreme Court order, we were taking confidential information and making it public. We have numerous reports that we have to run, including how to value the System, audit certain functions, create a file for the bank so that they know where the payments are supposed to be going. By running those reports, we are risking converting information that the Legislature deemed confidential into public information. That put the System in a difficult situation when the Legislature deemed it confidential, but the Supreme Court says that if we use the information outside of the file, it is no longer confidential.

The status of the member beneficiary information became less clear after another Supreme Court decision was entered on October 18, 2018 ([Exhibit G](#)). The second Supreme Court decision was 4 votes to 3 with the author of the first decision in the dissent. The majority opinion affirmed in part, reversed in part, and remanded the district court order. This opinion seems to require PERS to create a customized report to respond to public records requests by searching data contained in the member and beneficiary files. It appears to be in conflict with the first Supreme Court decision. This opinion also appears to hold that some information in a member's file or beneficiary's file is public, but more sensitive personal information such as hire date, sex, marital status, beneficiary information, and beneficiary birth dates may not be subject to disclosure if a balancing test weighs in favor of nondisclosure. Therefore, based on this opinion, it is not at all clear what information is confidential.

Based on the first opinion, any member retiree information may be transformed into public information if it exists in a report outside of the file. The dissent of three out of seven justices of the Supreme Court in the second opinion clearly illustrates the need for this bill. The dissenting opinion concludes with the following statement ([Exhibit G](#)):

In sum, the majority's opinion today contravenes the plain language of the Public Records Act, directly violates NRS 286.110(3), it exposes official state records otherwise declared confidential to agency search simply because they are stored on a computer, it inexplicably departs from *stare decisis* by overruling *Reno Newspapers*, and it sets Nevada apart from other jurisdictions that have considered this issue.

Based on these decisions, the sharply divided court, and the second opinion, we believe that legislative action to clarify law is not only warranted, it is necessary. The System believes that it should not be determining which member and retiree and beneficiary information—sometimes very personal information—is confidential or public either as a byproduct of performing its administrative functions or by applying a balancing test, the results of which may subject the System to litigation from either the person whose information we release or the person who requested the information, no matter which way we determine the balancing test to go. The System also believes that it is in no one's best interest that these issues be decided on a case-by-case basis by the courts.

We are not necessarily recommending which information should be public; we believe that is for the Legislature to decide which information should be public. I would caution that the more personal information that is released to the public, the greater the risk of harm to the System and to the member. In the last three years at least two public retirement systems have been the victims of criminals using personal identifying information of retirees to access or create online accounts. The criminals can redirect the direct deposits of the retirees. The direct deposit will then go into other accounts and will be immediately taken out of the accounts and then the money is gone. In that case, if the money is gone, the System still owes the money to the retiree it should have paid, and so the loss is to the System. In particular, this recently happened to a state system where 103 benefit payments were redirected. By the time that they found out where the money was, the money was gone. They were out for the benefit payments for 103 people. There is a risk if too much personal information is out there. There can be harm not only to the retirees but also to the System as well.

**Christopher G. Nielsen, General Counsel, Public Employees' Retirement System:**

As previously discussed, we are here today in part due to a recent Nevada Supreme Court decision ([Exhibit G](#)) that appears to have fundamentally changed public records laws in Nevada in two ways. First, the decision gutted the plain meaning of NRS 286.110 and 286.117. The confidentiality of a PERS member's personal information is now determined on a case-by-case basis using a balancing or searchability test instead of using a longstanding policy and statute of the Legislature, which says that everything in a member's individual file is confidential. Second, as Justice Stiglich pointed out in her dissent of that decision, the majority opinion departed from *stare decisis* by turning public records into an affirmative duty to create new customer reports. We support [S.B. 224 \(R1\)](#) from the standpoint that it provides clarity.

In short, I believe that it attempts to balance the interest of transparency with the interest of privacy. More important, it proposes black-and-white rules to determine what is public and what is not. As stated earlier, PERS receives numerous public records requests each year, many of which relate to the System itself which include financial information, investment information, or vendor information. These types of public requests are routinely complied with and are not an issue here today. What is an issue are the requests that seek the personal information of our members and our retirees. Because PERS stores a wealth of sensitive

information of our members and retirees, it is challenging, from an administrative standpoint, to determine what information is public and what is not—especially in light of the most recent Supreme Court decision.

This decision, unfortunately, does not provide clear guidance nor has it provided a workable new role. For example, the majority opinion opined that where the requested information merely requires searching a database for existing information, it is readily available and nonconfidential, and the alleged risks do not outweigh the benefits of the public's interest and access to the records. The act mandates that PERS discloses information. This new, so-called rule does not provide clarity. For instance, what does "readily accessible" mean? Does confidentiality or disclosure hinge on what type of technology PERS or any other type of governmental entity is using? What are the alleged risks? What are the public interests? From an administrative standpoint, how does one weigh these two?

The Supreme Court then goes on to say if disclosure of government retirees' information includes more sensitive information such as birth dates, sex, marital status, beneficiary information, and beneficiary birth dates, the balancing test may weigh in favor of disclosure. After one searches the database—and determines what is readily accessible, what is not confidential, and then does the balancing test—one then must determine if the information contains any "sensitive" information which may or may not be dispositive as to whether the requested information is public or not. I hope that it is now apparent why S.B. 224 (R1) is needed. This bill amends the retirement act and NRS Chapter 286 by making certain individual pieces of information confidential and certain pieces of information public.

Personally, I support this legislation because it will provide some black-and-white rules. I believe the clarity provided by S.B. 224 (R1) will benefit PERS and the requestors alike. It will take much of the guessing game out of public records administration. Some of the written materials submitted in opposition suggest that legislation is not needed because existing law is clear and that nothing else is needed other than using names instead of identification numbers. Whether their names are included is a policy decision for you to make. However, I can assure you that clarity is needed. I urge everyone to read the decision and tell me that it is not. That decision is up on NELIS ([Exhibit G](#)).

Some of the written materials that were previously submitted in opposition to this bill also suggest that the language of the bill should substitute the word "information" for the word "record" in section 1. From an administrative standpoint, I believe using "information" is good for clarity. In my view, if sensitive personal information is deemed confidential by the policymakers, it should remain confidential regardless of how it is categorized or stored.

In summary, I support Senate Bill 224 (1st Reprint) as it makes the necessary changes to take PERS out of the business of determining what is confidential and what is not on a case-by-case basis. This is a policy decision made by the Legislature. We support this bill not so much for its substance, but for the fact that it provides clarity to an area of law that

sometimes, unfortunately, leads to litigation. We are in the business of providing retirement benefits to tens of thousands of retirees each month. We do not want to be in the business of public record litigation.

**Assemblyman Hafen:**

The current contributions are made by employees and then the tax dollars are being used to match these contributions. Are the funds that are currently being paid to retirees not set aside? Is that why we have that unfunded liability? Is that correct?

**Tina Leiss:**

We get contributions as a percentage of payroll from both the member and the public employer. Those contributions go to the trust fund. The trust fund is then invested. The money from contributions and the investment returns is what funds the benefit. The benefit is earned based on years of service, salary, and age at time of retirement. It is a defined benefit plan, which means that the benefit is earned and is not necessarily dependent on the contributions that were put in. Instead, it is determined by the benefit that comes out based on the factors of service credit, age, salary, plus however long the person lives. If the person lives two years after retirement or for another 50 years, that is what the benefit is. We value that benefit so that we know what we will owe each and every person for the rest of their life. The actuary takes all the information on individuals, the assumptions of how long people will work, what their salary increases will be, how long they will live, and whether they have beneficiaries. They take all of that information and then project what we will owe every active member and retiree. The total liability number that you are talking about includes not only what we owe right now to the existing retirees, but what we project that we will owe to every active employee and retiree whom we are paying. That number encompasses all those benefits that we will owe out into the future for decades to come. To say that it is owed right now is not the case.

**Assemblyman Hafen:**

My question is not in regard to the unfunded liability. It is about the current employee contributions and the agency's contribution match—which is taxpayer dollars. Those are the funds that are being invested and then paid out to the current retirees. That is where my questioning is, not the unfunded liability. I understand that portion. The question that we have in front of us today is that we are using taxpayer dollars to pay for the retirees—should this information be transparent or not? I think that your answer was yes, but could you, for the record, clarify that.

**Tina Leiss:**

The benefit payments come from the money collected in the trust fund. That money comes from member and employer contributions which are then invested. The investment earnings on those contributions pay for the benefits. It depends on the investment earnings over the years, but generally, more than half of the benefits are paid off of the investment earnings. It all starts with the contributions from the members and employers. The source of the funds that come to us from the employer and member would be whatever source of the funds, such as the local agency, the school district, the mosquito district, the irrigation

district. The source of the contribution depends on whatever source of funding those agencies have. We get employer and member contributions. With the source of the funding you would need to look at each individual agency.

**Priscilla Maloney, representing American Federation of State, County and Municipal Employees, Retiree Chapter, Local 4041:**

For the record, AFSCME International, AFSCME 4041, and AFSCME-Retirees incorporate by reference and adopt everything that has been said in support today.

We have covered a lot of different public policy issues surrounding this challenge, but I would like to circle back to the issue, as Ms. Lockard pointed out, of Governor Sandoval's comments and his veto message in 2017 ([Exhibit H](#)). To go back to the issue of the so-called lack of evidence, as Senator Ratti pointed out, that is going to be extremely difficult to quantify. As Ms. Leiss pointed out, there are two other states that had a concern or challenge when their security system was somehow accessed and then a malfeasance occurred. In the March 1, 2019, hearing before the Senate Committee on Government Affairs, we submitted a statement by one of our retirees, Ms. Laura Leavitt. I would like to read that into the record.

My name is Laura Leavitt. I've lived in Las Vegas for over 50 years. As a recent widow, I feel anxious, concerned and afraid as I now suddenly receive text messages, phone calls, email and letters in the mail, targeting my husband and I by name to request I get back to them right away about selling my house. I feel preyed upon by these scammers due to my husband's recent death.

I strongly support the passing of SB224 to help prevent this type of solicitation when someone is most vulnerable and don't know when something is an actual phone call you're waiting for or a scam.

The larger issue, when we discussed with Ms. Leavitt about preparing this testimony, was that she had to opine that the only way she was getting this sudden flood of calls is because all citizens—for the record, state employees are taxpayers too—file documentation, as happens when someone passes, with the county or city authorities. Somehow, somebody was out there in the Dark Web accessing that information and turning it into a situation of malfeasance and bad-faith intent. We are very much in support of this legislation. We appreciate all the hard work and effort that has been put into this legislation—including its sponsor Retired Public Employees of Nevada (RPEN). We are trying to protect our seniors from what is a very real problem in our society.

[Assemblyman McCurdy assumed the Chair.]

**Drake Ridge, representing Las Vegas City Employees Association:**

We urge you to support this bill.

**Todd Ingalsbee, Legislative Representative, Professional Fire Fighters of Nevada:**

We support this bill. Ditto to what everybody else said. This is one bill that I think both sides are lucky to have Senator Ratti working on. She has put thoughtfulness into this bill to make it mutually beneficial to both sides, but also to protect our retirees from being preyed upon. Also, we should be thankful for Tina Leiss and her team who have made the Nevada PERS system one of the top in the country. We should be proud of that.

**Michael Ramirez, Director of Governmental Affairs, Las Vegas Police Protective Association; and representing the Nevada Law Enforcement Coalition:**

We support this bill and ditto everything everybody has said.

**Richard McCann, Executive Director, Nevada Association of Public Safety Officers; and representing the Nevada Law Enforcement Coalition:**

We fully support S.B. 224 (R1). I echo the comments made by my colleagues who have testified here before me in support of this bill—especially those of Marlene Lockard. I accept her testimony, and I want the record to reflect this, word for word. There are several in this room who know exactly why I say that. You want to bring a complaint, then next time add me to it. We fully support S.B. 224 (R1), and we urge your consideration and support.

**Alex Marks, Political Coordinator, Nevada State Education Association:**

We are in full support of this bill. I echo Rick McCann's comments that we would like Marlene Lockard's comments to be attributed to us, Nevada State Education Association, word for word.

**Terri Laird, Executive Director, Retired Public Employees of Nevada:**

First and foremost, I want to say ditto to testimony given March 1, 2019, by our lead lobbyist and legislative advocate, Marlene Lockard. I also say ditto to her testimony as given today. Marlene has been a lobbyist for RPEN since 2010 and has served as our lead lobbyist since 2016. It goes without question that we fully support the fine work she does for us in representing our 8,000-plus dues-paying members statewide in 18 chapters. I support the other testimony given this morning. We thank Senator Ratti for her support. We ask that you support S.B. 224 (R1) to limit the confidential information put out there on the World Wide Web as one effort to try to curb this highly personal attack.

**Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance:**

We are representing all eight Nevada System of Higher Education (NSHE) institutions. About 18 percent of NSHE faculty and all of our classified staff colleagues are members of PERS. We support S.B. 224 (R1). I also wish to include Marlene Lockard's testimony and her words for the record.

To address the issue of whether these are taxpayers' funds or members' funds, I would like to cite the *Nevada Constitution*, Article 9, Section 2.2 which says:

Any money paid . . . for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.

The fiduciary of a trust fund has a duty to serve in the best interests of the beneficiaries. The PERS system should stand by its beneficiaries by protecting them from sharing information about their own property assets and income. The social security system is taxpayer-funded, but also has contributions from employees and their employers; however, it is largely funded by taxpayers into the future. Social security retirement earnings are not considered to be public information. I would like you to think about retirement contributions put into a 401(k) defined contribution plan. Once the contribution is made and vested, that is the property of the individual and not subject to public disclosure—even if the contribution is made by a public employer. The funds are typically held by a brokerage or mutual fund as a custodial trustee. If the person chooses to convert that into assured annuity for fixed payments, such as a pension, it is held by the insurance company for the benefit of the annuitant.

In the case of PERS funds, the PERS Board and the state are the trustees. That requires a high level of transparency as to the operation of PERS and its investments, but it does not mean individuals' private data should become public any more than it would for social security, a 401(k), or annuity. The requests for names of retirees receiving their property as pension payments over time is simply voyeurism. The real goal is not transparency; rather, the goal is to use private individual information to attack the pension system itself.

[Assemblyman Flores reassumed the Chair.]

**Tom Wellman, President, Nevada State Education Association-Retired:**

I am a resident of Senate District No. 1. I am president of the NSEA retired program. I am a retired teacher from the Clark County School District—where I worked for 32 years. I am also a recipient of PERS. I am here to express my support and the support of our members for S.B. 224 (R1). In this time of data breaches, data leaks, and websites being hacked by outside groups, any step that can be taken to secure members' personal information is appreciated and important to protect PERS members. Nevada State Education Association retirees are in support.

**Steve Horner, Private Citizen, Las Vegas, Nevada:**

I am a resident of Senate District No. 9 and Assembly District No. 35. I am an Army veteran, a retired vice president of the Nevada State Education Association-Retired, and the Clark County Education Association. This is an extremely important issue. Retirees are already targeted for scams and stolen identity schemes. By placing all personal information available for public scrutiny, it is doubling the odds of a future and continual targeting by

those who wish to exploit individuals who have faithfully served our state. This is an earned pension, like any other. Just because we have decided that we wanted to be civil servants does not mean that our personal information should be laid out for anyone to see. I want to thank Senators Ratti, Parks, and Woodhouse for addressing this important issue. I urge you to please support S.B. 224 (R1), which would limit the information used by those wishing to do harm to retirees.

**Harry Beall, Private Citizen, Las Vegas, Nevada:**

I live in Senate District No. 3. As someone who has paid into my PERS benefits for 20 years and is now a PERS recipient, I am speaking in support of S.B. 224 (R1). The Nevada Policy Research Institute (NPRI) has been publishing the entire list of retirees and their benefits since the Supreme Court ruled them public several years ago. That has left them exposed to possible identity theft and other money-grabbing schemes. This bill goes a long way towards keeping the identity of those who receive PERS benefits from the prying eyes of the public and from the release of how much each person receives. I know that this bill is a compromise to satisfy those who have received PERS benefits by keeping their identities hidden behind an identification number. It also satisfies NPRI's need to show the general public NPRI's belief that PERS recipients' checks are too large. Including the names of the last public employer, the years of service, the retirement date, and whether they will be receiving a disability or service retirement allowance may be enough—especially in rural communities—to figure out the names behind the identification numbers. Personally, I would like to have only the identification numbers and the annual pension benefits released. I believe that is all the public needs to know. However, as I mentioned earlier, this bill is a compromise and does end up giving most PERS recipients the protection that they need from people who would do them financial harm.

[([Exhibit I](#)) was submitted in support but not discussed.]

**Chair Flores:**

Seeing no one else wishing to speak in support, is there anyone wishing to speak in opposition?

**Daniel Honchariw, Senior Policy Analyst, Government Affairs, Nevada Policy Research Institute:**

I want to register NPRI's opposition to this bill in person; however, my colleague in Las Vegas, Robert Fellner, will testify further.

**Robert Fellner, Policy Director, Nevada Policy Research Institute:**

[Robert Fellner spoke from prepared testimony ([Exhibit J](#)).] We oppose S.B. 224 (R1) because it would make government less transparent and less accountable by making secret the names of those receiving tax-funded public pensions. Because the public is responsible for paying down the entirety of the PERS \$13 billion deficit—which explains why contribution rates have gone up 50 percent in the last decade while benefits have been cut for



new hires—there is tremendous public interest in disclosing the limited, nonsensitive information of name and payout data, which is why so many other states already do so ([Exhibit K](#)). This also explains why there is broad, bipartisan opposition to the government secrecy proposed by S.B. 224 (R1).

Last month, for example, Democratic Senator Marilyn Dondero Loop, who is a PERS retiree herself and thus directly affected by this bill, joined Majority Leader Nicole Cannizzaro and every Senate Republican in voting against this bill on the floor of the Senate. When asked about her opposition to S.B. 224 (R1), Majority Leader Cannizzaro cited the need to keep this data public, telling the *Las Vegas Review-Journal*, "Obviously I think that information is important."

Former Governor Brian Sandoval expressed a similar sentiment when he vetoed a near-identical version of this bill last session ([Exhibit H](#)), cautioning that "the public's right to know cannot be compromised absent a compelling case that such limits are justified and in the public interest."

This commitment to defending the public's right to know and promoting increased government transparency has long been championed by Nevada elected officials from both parties at all levels of government. Earlier this year, Congresswoman Dina Titus wrote about the importance of working to "bring about the level of transparency, accountability, and stewardship that the American people expect" from their government.

Few have fought more heroically for transparency than Governor Steve Sisolak—particularly during his time as a Clark County Commissioner. In 2010, then-Commissioner Sisolak braved death threats while pushing for an investigation into possible firefighter sick leave abuse, which ultimately led to changes that saved taxpayers millions of dollars.

While S.B. 224 (R1) is limited to PERS, by making secret nonsensitive pension information, it would nonetheless undermine this longstanding, bipartisan commitment to protecting the public's right to know. In fact, this is one of the main reasons the *Reno Gazette Journal* has formally opposed this effort because of the dangerous precedent this bill will set which will almost certainly be used to justify further government secrecy.

Proponents claim secrecy is needed because disclosing names would lead to harm, but four separate Nevada courts, including two state Supreme Court decisions, found no evidence to support this claim. In 2018, the Nevada Supreme Court explained that name and pension data was "limited in scope and helps promote government transparency and accountability." The Court once again found no evidence to suggest the disclosure of such limited information would lead to harm.

This should not be surprising that this information is readily available for well over 10 million retirees in at least 20 states nationwide; again, with no evidence of harm. Even the Identity Theft Resource Center, a national nonprofit organization dedicated to preventing

identify theft, does not believe that disclosure would lead to harm. The PERS Board itself agrees with this consensus as evidenced by their unanimous vote last year that would have kept names public, with then-Board Chairman Mark Vincent saying at the time that he sees "value" in disclosing names.

In light of the above and given the significant expense PERS imposes on the taxpaying public, we think the argument for transparency is clear.

Others are free to disagree with this policy view, of course. We should all agree that it is fundamentally wrong to argue for any law, let alone one that makes government less transparent, based on misinformation and deception. Unfortunately, this is precisely what proponents of S.B. 224 (R1) have done to gain support for the bill. Instead of talking about the need to make names secret, proponents have instead focused almost exclusively on sensitive information like home addresses, which we all agree should be confidential, while barely mentioning the bill's real purpose, which is to make names secret.

Testimony by Retired Public Employees of Nevada previously, and again today, is a great example of this bait-and-switch tactic. Retired Public Employees of Nevada never once mentioned that S.B. 224 (R1) would make names secret. Instead, RPEN chose to mislead the Legislature and the public by falsely claiming that S.B. 224 (R1) is needed to counteract a recent court ruling that supposedly made information such as home addresses, passports, and birth certificates public. In reality, no court has ever issued such an order, something Legislative Counsel Bureau Director Rick Combs recently confirmed when we asked him to investigate this false claim. Yet the damage from this deception has already been done. Several of those who testified or made a public comment in support of the bill did so under the false impression that S.B. 224 (R1) was needed to make their home address or other sensitive information confidential.

To be clear, we would gladly support a bill that reaffirms the confidentiality of every piece of personal information cited by RPEN and the bill sponsor, Senator Ratti. In fact, the Nevada Press Association proposed an amendment that would have done just that, making sure every single data point mentioned by Ms. Lockard remained confidential, while simply keeping the limited information of name and pension payout data available to the public. That amendment, however, was never adopted—indicating that the true intent of S.B. 224 (R1) is to make names secret.

This effort to make limited, nonsensitive information confidential is a direct assault on the public's right to know, according to one of Nevada's most respected and experienced reporters, KLAS-TV Channel 8's Steve Sebelius, who wrote ([Exhibit L](#)): "If [Senator] Ratti's bill can't be amended to ensure the public has oversight over supposedly public servants, and has access to names and basic information about public retirees, then it must be killed in the Legislature or vetoed by the governor. The Public Records Law contains too much secrecy as it is."

Public Employees' Retirement System staff, as well as PERS Board member Yolanda King and [former member] Kathy Sisolak, have also stated their main concern is to clarify existing law. Again, the Nevada Press Association's amendment would have done exactly that, while also protecting the public's right to the limited, nonsensitive information of name and payout data.

This legislative session began with a promise from Governor Sisolak to "work with legislative leadership . . . to ensure our state government operates with the high standards of transparency and integrity that Nevadans deserve."

Senate Bill 224 (1st Reprint), both in process and substance, is a direct affront to both of those mandates. This Committee should follow the lead set forth by Governor Sisolak, Senate Majority Leader Cannizzaro, and the entire Senate Republican Caucus and vote no on Senate Bill 224 (1st Reprint). Thank you for your time, and I am happy to answer any questions that you may have.

Before I conclude, I would like to respond to some of the comments that were made. The complaint that I filed I also filed with the Attorney General's Office under the penalty of perjury—because the complaint is true. I would welcome a hearing by this Committee. I think that it would take less than an hour. If you review the court case, it is abundantly clear that the testimony made in support of this bill was false testimony. I think that it is important to clear the legislative record on that matter. I welcome a hearing into the matter.

**Chair Flores:**

Is there anyone wishing to speak in opposition to S.B. 224 (R1)? Seeing no one in Las Vegas, we will come back to Carson City.

**Paul J. Moradkhan, representing the Las Vegas Metro Chamber of Commerce:**

First, the Chamber would like to thank Senator Ratti for meeting with the Chamber early on. We appreciate the points that were made by the proponents of the bill. The Chamber has been in longstanding engagement on PERS issues—from our membership perspective, from the taxpayer side of it. We believe that certain components should remain public. For that reason, the chamber is in opposition to this bill.

[([Exhibit M](#)) and ([Exhibit N](#)), letters in opposition to S.B. 224 (R1), were submitted but not discussed.]

**Chair Flores:**

Is there anyone wishing to speak in the neutral position? Seeing no one, Senator Ratti, please make your closing statements.

**Senator Ratti:**

I appreciate the significant amount of time that you have put into this hearing today. Hopefully having heard the backstory and history, you will understand why it has generated a lot of conversation. There are a couple of points that I would like to make sure are clear

for the record. I do not think that we have satisfied the question of whether this is a taxpayer-funded system. I think that it is a direct question and you are looking for a direct answer. I wanted to see if we could get a little bit of clarity as to why the answer might not be direct. I think that it came up in some of the support testimony. You hear the PERS administrators saying that it is based on contributions. The reason why it is not a firm yes that these are taxpayer dollars is because all of the entities that contribute to the PERS system are funded differently. Many of them are funded with taxpayer dollars, but many of them are not.

If you want to take the NSHE example where the gentleman came up and said that 18 percent of employees within NSHE faculty are part of PERS. Some of that is going to be tuition dollars; it is not a taxpayer dollar. Some of that will be grants; that is not a taxpayer dollar. If you want to go to the other extreme example of the mosquito district, that is going to be a fee structure. If you want to talk about a Regional Transportation Commission (RTC) employee who works for RTC, most of that revenue will be a regional road impact fee. It is not a simple answer that these are taxpayer-funded dollars. Many of them are public dollars. I just want to make sure that we have clarity on that.

There is already transparency when those salaries and benefits are being paid to those employees through the public meetings around salary structures and the individual contracts for the highest-level employees that we hire at public agencies. For the records request, they can currently be done on the salary and benefits for those individual employees. There is a lot of transparency on the front end. Hopefully that provides greater clarity. We are not saying that it is 100 percent taxpayer-funded because not all of it is. It is contribution-funded by the agencies and the individuals.

If the question is, are those taxpayer dollars funding the actual fixed benefit, then the answer is, sort of. The broad base of funding that came from those individuals and entities that came from taxpayer dollar fees, tuition, or other sources pays for some of the benefit. The investment returns off of those dollars pay for the remaining. I am not sure that it is a black-and-white answer that we receive taxpayer dollars and we pay benefits. We receive all kinds of dollars that fund these agencies. We pay benefits with those contributions plus the earnings and investments. I do not want anyone to leave with the impression that we are trying to be vague. It is just a more complicated answer. That is the first thing I wanted to address.

The second thing that I would like to note is that the opposition will say that this is a solution that is looking for a problem. They will say that we cannot definitively prove that this transparency is directly leading to retirees who are vulnerable and who are experiencing identity theft. We have the example of the two public retirement systems that have been breached. I do not know if we can specifically say that breach is because of this, but you start to make these logical, rational connections that this is what is happening. I would say that the opposition is also a solution looking for a problem because there has been very limited evidence of fraud in the PERS system. It has been out there, but we have not seen any instances of fraud being reported. I think that you can make that argument on both sides.

I also wanted to point out for clarity that the bill that the Governor vetoed last session released the name and the benefit amount. That was the bill that was vetoed last session. It narrowed the information. There are several folks in opposition who said that we want, similar to 20 other states, the name and the benefit information. That was the bill. I think that the bill that we are bringing forward to you today is a balanced approach to protecting the privacy and the security interests of the individuals and the transparency needs for the state—not necessarily for the folks who are trying to make the case that public employee pensions are bad.

I cannot walk away from this table without addressing the misinformation and deception accusations. As a legislative official, we are talking about a direct attack on my integrity and a formal complaint that could have an incredibly chilling effect on this process. They tried to make the case that it was somehow inappropriate that there was a lobbyist sitting at the table to present with me. If every single one of you across the partisan spectrum is going to be slimed every time you have a lobbyist who is bringing forward a bill, then we have a real problem in this building. They have doubled down even though there is an opinion from the LCB [Legislative Counsel Bureau] saying that there was no dishonesty or deception. We are not trying to mislead you or somehow use lies and fabrications to stand by the merits of this bill. I am offended by that, and you all should be offended by that too. We do not need to put ourselves into a position where everybody needs to be so careful with every precise word because they are afraid of some kind of complaint.

We believe that because the Nevada Supreme Court has ended this with a balancing test, there is no clarity in the law about how that balancing test would be perceived on any request for information. For the opponents to come up here and say that, I could say that it is misleading and deceptive. I am not going to file a complaint because I do not think that is an appropriate use of our legislative process. We should be hard on ideas, but soft on people. It is ridiculous to be attacking people and saying that they are being dishonest when there has been no such activity. If somebody came forward today and asked for any of the information that Ms. Lockard requested, there would have to be a balancing test applied. We cannot predict what the outcome of that balancing test would be. Those are the facts. I apologize. I think that you have seen me in committees before. You know that I tend to focus on issues and bring good policy. I am very well informed on my bills. I am angry because sliming a bill as a tactic to kill it is inappropriate and, in the long term, it is going to have a chilling effect on every single one of you in this body.

This is a good bill. It is a compromised position that balances the interests of the individuals whom we should be protecting—people who have dedicated their lives to public service and have chosen to make less money so that they can serve. They should not be at risk just because people can play political games with our pension systems. We have put in a compromise so that there is transparency and there can be oversight by our responsible members of the press. I ask you to support this bill.

**Chair Flores:**

We are going to close out the hearing on S.B. 224 (R1). Assemblyman Hafen has a comment.

**Assemblyman Hafen:**

I just wanted to clarify the record because I was personally called out—not by the Senator. I fully support the employee retirements. These are contracts that are implemented by two parties. We have transparency when these are being implemented. The discussion today is about transparency and not about their retirement. I apologize that I did not know there was a complaint filed. I, too, have been dragged through the mud through the appointment process of me getting here. I was named in a lawsuit to prevent me from coming up here. I fully understand your concerns. I had to go a step further with having to go through a court hearing.

I want to touch on the *Nevada Constitution* that was discussed today. We were quoted Article 9, Section 2, subsection 2; however, subsection 1 specifically states:

The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

I wanted to bring the context of that. Again, this is not an attack on the retirements in any way, shape, or form. This is also not an attack on an individual. I simply am a big proponent of transparency, and I wanted to clarify that on the record.

**Chair Flores:**

Is there anyone wishing to speak in public comment? Seeing no one, this meeting is adjourned [at 11:21 a.m.].

RESPECTFULLY SUBMITTED:

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Kirsten Oleson  
Committee Secretary

APPROVED BY:

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Assemblyman Edgar Flores, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated May 1, 2019, from Richard S. Combs, Director, Legislative Counsel Bureau, to Robert Fellner, Policy Director, Nevada Policy Research Institute, submitted by Marlene Lockard, representing the Retired Public Employees of Nevada.

[Exhibit D](#) is a letter from Kent R. Robison, Esq., to Chair Flores and the Assembly Committee on Government Affairs, dated May 2, 2019, submitted by Marlene Lockard, representing the Retired Public Employees of Nevada.

[Exhibit E](#) is a Supreme Court of Nevada opinion dated November 14, 2013, in the case of *Public Employees' Retirement System of Nevada v. Reno Newspapers, Inc.*, No. 60129, dated November 14, 2013, submitted by Christopher G. Nielsen, General Counsel, Nevada Public Employees' Retirement System.

[Exhibit F](#) is a copy of an order from the First Judicial District Court of the State of Nevada in and for Carson City, in the case of *Reno Newspapers, Inc. v. Public Employees Retirement System*, Case No: 11 EW 00009 1B, dated May 1, 2014, submitted by Christopher G. Nielsen, General Counsel, Nevada Public Employees' Retirement System.

[Exhibit G](#) is a Supreme Court of Nevada opinion in the case of *Public Employees' Retirement System of Nevada v. Nevada Policy Research Institute, Inc.*, No. 72274, dated October 18, 2018, submitted by Christopher G. Nielsen, General Counsel, Nevada Public Employees' Retirement System.

[Exhibit H](#) is a letter dated June 3, 2017, from Governor Brian Sandoval to the Honorable Aaron Ford, regarding Senate Bill 384 of the 79th Session, submitted by Robert Fellner, Policy Director, Nevada Policy Research Institute.

[Exhibit I](#) is a letter from Len George, Tribal Chairman, Fallon Paiute-Shoshone Tribe, to Chair Flores and the Assembly Committee on Government Affairs, dated April 24, 2019, in support of Senate Bill 224 (1st Reprint).

[Exhibit J](#) is written testimony in opposition to Senate Bill 224 (1st Reprint), submitted by Robert Fellner, Policy Director, Nevada Policy Research Institute.

[Exhibit K](#) is a graph of pension name and payout data, submitted by Robert Fellner, Policy Director, Nevada Policy Research Institute, in regard to Senate Bill 224 (1st Reprint).

[Exhibit L](#) is a copy of an article titled "Steve Sebelius: PERS secrecy bill loaded with issues," published by the *Las Vegas Review-Journal*, dated April 3, 2019, submitted by Robert Fellner, Policy Director, Nevada Policy Research Institute, in regard to Senate Bill 224 (1st Reprint).

[Exhibit M](#) is written testimony in opposition to Senate Bill 224 (1st Reprint), submitted by Mac Potter, Private Citizen, Sparks, Nevada.

[Exhibit N](#) is written testimony in opposition to Senate Bill 224 (1st Reprint), submitted by Richard Karpel, Executive Director, Nevada Press Association.