

THE SIXTY-FOURTH DAY

CARSON CITY (Monday), April 10, 2023

Senate called to order at 12:38 p.m.

President pro Tempore Spearman presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Brian Lucas.

Gracious God in heaven, we honor You today in all we do. May Your face shine upon this nation and Your blessing be upon our State of Nevada. In this Senate, grant wisdom to those leading us. May the men and women gathered here be filled with grace, love, compassion and patience for one another. Bring prosperity to our State and dignity to the people. We ask Your spirit, power, insight and mercy to fill this place and make these meetings fruitful.

In Your glorious Name, we pray today.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEE

Madam President pro Tempore:

Your Committee on Commerce and Labor, to which was referred Senate Bill No. 330, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

PAT SPEARMAN, *Chair*

Madam President pro Tempore:

Your Committee on Education, to which was referred Senate Bill No. 71, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

ROBERTA LANGE, *Chair*

Madam President pro Tempore:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 165, 210, 319, 331, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

EDGAR FLORES, *Chair*

Madam President pro Tempore:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 260, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Human Services, to which was referred Senate Bill No. 44, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

FABIAN DOÑATE, *Chair*

Madam President pro Tempore:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 103, 129, 153, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Judiciary, to which was referred Senate Bill No. 34, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MELANIE SCHEIBLE, *Chair*

Madam President pro Tempore:

Your Committee on Natural Resources, to which were referred Senate Bills Nos. 76, 77, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JULIE PAZINA, *Chair*

Madam President pro Tempore:

Your Committee on Revenue and Economic Development, to which was referred Senate Bill No. 95, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DINA NEAL, *Chair*

WAIVERS AND EXEMPTIONS
NOTICE OF EXEMPTION

April 10, 2023

The Fiscal Analysis Division, pursuant to Joint Standing Rule No. 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 65, 221, 233, 423.

WAYNE THORLEY
Fiscal Analysis Division

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that Senate Standing Rule No. 50 be suspended, and that Senate Bill No. 448 be withdrawn from the Committee on Judiciary and re-referred to the Committee on Finance.

Remarks by Senator Cannizzaro.

Senate Bill No. 448 reallocates administrative assessment revenues and should be properly heard in Finance as it impacts our budget decisions.

Motion carried.

Senator Cannizzaro moved that Senate Bill No. 223 be taken from the General File and placed on the Secretary's Desk.

Remarks by Senator Cannizzaro.

This motion is for the purpose of an amendment.

Motion carried.

Senator Cannizzaro moved that Senate Bill No. 39 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Cannizzaro.

This is for the purpose of answering some outstanding questions.

Motion carried.

Senator Cannizzaro moved that the following persons be accepted as accredited press representatives, and that they be allowed the use of appropriate media facilities: KOLO 8: John Macaluso, Dan Pyke; KTVN: Jaden Urban.

Motion carried.

By Senators Lange, Cannizzaro, Spearman, Dondero Loop, Daly, Doñate, Flores, Harris, Neal, Nguyen, Ohrenschall, Pazina and Scheible and Assemblyman Nguyen:

Senate Concurrent Resolution No. 2—Declaring April 2023 as Financial Literacy Month.

Resolution read.

Senator Lange moved that the resolution be adopted.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 2.

Resolution read.

Remarks by Senator Hansen.

Senate Joint Resolution No. 2 urges the United States Congress to require the United States Board on Geographic Names to consider renaming the Sheldon National Wildlife Refuge as the E.R. Sans National Wildlife Refuge. The resolution recognizes the significant contribution of Edward R. Sans, who was an employee of the Bureau of Biological Survey of the United States Department of Agriculture in Reno, Nevada, to the establishment of the refuge.

The reason this came up was while I was studying sage grouse, I discovered that in about 1915, when Mr. Sans came to the State of Nevada, the antelope populations here were about 1500 and declining. Mr. Sans made an aggressive effort to get different people together to create what we know today as an antelope refuge to protect the remnant populations that existed in Nevada. He was successful after almost 20 years of effort. He got the Audubon Society involved, Boone and Crockett involved, and when the antelope refuge finally came to fruition, it was named after a man who had never been in Nevada, a man named Mr. Charles Sheldon. Nothing against Mr. Sheldon, he was an exceptionally important person in that whole process. Mr. Sans is one of those unspoken people who helped the original Nevada conservation movement. Because of his efforts, today we have over 25,000 antelope, and growing, in the State to a point where we have a substantial huntable population. There is now over a million of them in the West because of the efforts of people like Mr. Edward R. Sans. This is one of those people who, after 30 years of hard work, nobody knows about. But, because of his effort, we now have the antelope populations we have today as well as the antelope refuge. That is why I brought this forward.

Roll call on Senate Joint Resolution No. 2:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 2 having received a constitutional majority, Madam President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 3.

Resolution read.

Remarks by Senator Scheible.

Senate Joint Resolution No. 3 urges the United States Bureau of Reclamation to consider certain actions, alternatives and measures for the protection and management of the Colorado River, including the pursuit of a collaboration-based framework to address the structural deficit in the Colorado River; the inclusion of mechanisms to account for evaporation and system losses; the amendment of existing federal regulations to prohibit the inefficient delivery, application or use of water to limit unnecessary losses on the Colorado River; and consideration of the Consensus-Based Modeling Alternative submitted by Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming in the supplemental environmental impact statement process.

Roll call on Senate Joint Resolution No. 3:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 3 having received a constitutional majority, Madam President pro Tempore declared it passed.
Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 5.

Resolution read.

Remarks by Senator Scheible.

Senate Joint Resolution No. 5 urges the United States Congress to expand the Supplemental Nutrition Assistance Program and the Special Supplemental Nutrition Program for Women, Infants and Children to cover the purchase of menstrual products.

Roll call on Senate Joint Resolution No. 5:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 5 having received a constitutional majority, Madam President pro Tempore declared it passed.
Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 7 of the 81st Session.

Resolution read.

Remarks by Senator Dondero Loop.

Senate Joint Resolution No. 7 of the 81st Session proposes to amend the Nevada Constitution to remove the constitutional provisions governing the Board of Regents of the University of Nevada. The Legislature shall provide, by law, for the governance of the University and the establishment of its various departments. In addition, the resolution stipulates that proceeds of public lands donated for the support of the institution shall be invested by the State of Nevada as required by law.

This resolution was approved by the 81st Session of the Legislature in 2021. If approved in identical form during the 2023 Legislative Session, the proposal will be submitted to the voters for final approval or disapproval.

Roll call on Senate Joint Resolution No. 7 of the 81st Session:

YEAS—20.

NAYS—Titus—1.

Senate Joint Resolution No. 7 of the 81st Session having received a constitutional majority, Madam President pro Tempore declared it passed.
Resolution ordered transmitted to the Assembly.

Senator Nguyen approved the addition of Senators Hansen, Harris and Ohrenschall as cosponsors of Senate Bill No. 242.

Senator Scheible approved the addition of Senator Buck as a sponsor of Senate Bill No. 352.

Senator Scheible approved the addition of Senator Seevers Gansert as a cosponsor of Senate Bill No. 352.

Senator Scheible approved the addition of Senator Seevers Gansert as a cosponsor of Senate Bill No. 389.

Senator Seevers Gansert approved the addition of Senator Buck as a cosponsor of Senate Bill No. 97.

SECOND READING AND AMENDMENT

Senate Bill No. 8.

Bill read second time and ordered to third reading.

Senate Bill No. 16.

Bill read second time and ordered to third reading.

Senate Bill No. 18.

Bill read second time and ordered to third reading.

Senate Bill No. 19.

Bill read second time and ordered to third reading.

Senate Bill No. 25.

Bill read second time and ordered to third reading.

Senate Bill No. 26.

Bill read second time and ordered to third reading.

Senate Bill No. 29.

Bill read second time and ordered to third reading.

Senate Bill No. 67.

Bill read second time and ordered to third reading.

Senate Bill No. 80.

Bill read second time and ordered to third reading.

Senate Bill No. 110.

Bill read second time and ordered to third reading.

Senate Bill No. 131.

Bill read second time and ordered to third reading.

Senate Bill No. 177.

Bill read second time and ordered to third reading.

Senate Bill No. 181.

Bill read second time and ordered to third reading.

Senate Bill No. 182.

Bill read second time and ordered to third reading.

Senate Bill No. 221.

Bill read second time and ordered to third reading.

Senator Dondero Loop moved that the bill be taken from the General File and re-referred to the Committee on Finance.

Motion carried.

Senate Bill No. 250.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 214.

Bill read third time.

Remarks by Senator Titus.

Senate Bill No. 214 relates to the elimination of certain commissions, committees and councils. The bill eliminates the Advisory Committee to the Juvenile Justice Oversight Commission and the Advisory Council on Science, Technology, Engineering and Mathematics. The bill also eliminates the Commission on Educational Technology and, instead, requires Nevada's Department of Education to establish a plan for the use of education technology in public schools. The bill eliminates both the requirement for the Department of Education to establish the Competency Based Education Network and the authority for the Nevada System of Higher Education to establish the Committee on Anatomical Dissection. Finally, the bill removes the authority of the Advisory Council on the State Program for Wellness and the Prevention of Chronic Disease to appoint an advisory group to study the delivery of health care through patient-centered medical homes.

Many folks have heard me vehemently protest the invention of new commissions and committees. I was excited to see this bill eliminates some of the commissions that are out there. Please support this bill.

Roll call on Senate Bill No. 214:

YEAS—21.

NAYS—None.

Senate Bill No. 214 having received a constitutional majority, Madam President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 440.

Bill read third time.

Remarks by Senators Cannizzaro and SeEVERS Gansert.

SENATOR CANNIZZARO:

Senate Bill No. 440, as amended, makes General Fund appropriations totaling \$26.2 million and Highway Fund appropriations totaling \$1.5 million in Fiscal Year 2023—that is this fiscal year—to fund salary increases for state officers and employees of 2 percent commencing on April 1, 2023, and ending on June 30, 2023, and retroactive one-time payments and salary increases to certain personnel represented by bargaining units established in NRS 288.515, as provided. Of the amounts appropriated from the State General Fund, not more than \$3.6 million may be allocated and disbursed to the Nevada System of Higher Education.

I believe this bill is important, because—as many of us who sit on the Finance Committee have heard and if you talk to anybody from any state agency, you have heard in Nevada, we have a significant vacancy rate among state agencies. We also have a history of underpaying our state employees. According to a salary survey conducted by the Division of Human Resource Management in Fiscal Year 2022, the State of Nevada, on average, pays its employees 30 percent less—30 percent—than local governments and the private sector. This has resulted in a vacancy rate that, on average, is about 23 percent. When we look at other departments, especially in public safety, it can be even higher than 23 percent. This is something that has reached an unacceptable

level and that we have to address. Senate Bill No. 440—like other bills we have voted on in this chamber and are being considered by many of our committees—is an attempt to invest in our state workforce.

Cost of living adjustments (COLAs) have lagged behind inflation for state employees by approximately 31 percent since 1979. I ask everyone in this body to think about that, and let it sit in your brain. This is a persistent problem. We have an ability to correct that. This is one step in that direction. There are several agreements in this bill. I will talk first about the agreements and then the 2 percent cost of living adjustments.

The agreements represent a collective bargaining agreement, which is the law in the State of Nevada. State workers have the right to collectively bargain, to organize, to form a unit and then bargain with the State for conditions of employment and for pay. Those are rights that they have. And if they follow the law, we have an obligation as a body and this State has an obligation under the law to ensure that we are living up to those agreements. Otherwise, we are saying that that portion of the Nevada Revised Statutes, whether we agree with it or not, is something that we are not willing to enforce, that it is void. If that is the case for that portion in NRS 288, then it could be true of any portion of the Nevada Revised Statutes. Frankly, what this body does is enact laws, knowing that they are going to be enacted and fulfilled.

We have a unit like the Nevada Police Union—which represents category I peace officers—who negotiated with the State for a 1 percent COLA, for longevity bonuses and for educational attainment purposes to get that additional incentive. We are talking about category I officers who help keep our roads safe. These are people who work in public safety. They have immense vacancy rates. They negotiated for this. That contract ultimately went to arbitration. And we hear time and time again that we should not have recourse to civil litigation for agreements that are entered into by the State, that we should believe in things like the arbitration process or a mediation, and that those are reasonable ways for us to resolve disputes that exist, and that is a reasonable way for us to enforce provisions of the Nevada Revised Statutes.

What happened at arbitration was this contract was approved in favor of the Nevada Police Union for the category I officers. That contract was then approved through another governmental process through the Board of Examiners back in March of 2022. What cannot happen in 2022 is for us to fund it because we are not in session. The Legislature cannot appropriate funds for that purpose when we are not in session. But those officers deserve that increase, not only because they are entitled to it under the law but because they went through the process, a process we have designed to ensure the State is bargaining in good faith. We also owe it to them, not only for that reason but because of the job they do.

There is another agreement for several American Federation of State, County & Municipal Employee units. These units are labor, maintenance, custodial and institutional employees, including for our penal and corrections institutions, that are not responsible for the security of those buildings. These are folks who are working in our corrections departments. These are professional employees who provide health care, including physical therapists and other employees in the health and medical field, employees who are not professionals, who also provide health care and personal care, including those who provide care for children. When the State says we care about families, we care about children, we care about health care and we are going to provide that, these are the employees who help do that. Also, a unit of category III police officers that work here in this State have the same situation. They had a contract; they organized under the law; they are entitled to that. They went to arbitration—they wanted arbitration—and the board of examiners then approved that contract for these employees.

To me, to say that we do not have to fund it if we do not feel like it is not making good on our promises. It is not investing in our state law enforcement. It is not standing up for those folks who are coming in here every day and making the State run. I would urge my colleagues' support.

Additionally, this bill provides a 2 percent COLA increase for our state employees, including our judicial and our legislative employees, the folks who we rely on every day to ensure we can do the job that we do in this building and so this State functions. If you are asking yourself why we should care so much about state employees, think about your constituents and when they may call on you: "I can't get through to the DMV," "I am having some trouble getting some verification for Medicaid," "I need someone to help me because of" fill in the blank. These are the people that are providing those services. These are your touch point with your constituents. This is how we

are interacting with the people who have sent us here and who have placed their faith in us. If we do not believe in the people who are providing those services, then it is hard for us to say that we can provide much for our constituents.

For me, it is not okay for us to continue to hear about these vacancy rates—about the underpayment of state employees and continue to ask them to do the job of two, three, four, sometimes six or seven people, to have understaffing in our state law enforcement that provides a security risk and a safety risk for our citizens—and not make decisions that, even if you disagree with the law as it currently exists, are consistent with making good on that promise and investing in those employees. I urge my colleagues' support for this bill.

The only other thing I will mention, because I anticipate there may be some discussion about how much this is all going to cost, is there has been a lot of work done looking at many proposals coming before this body that we have already approved in the form of retention bonuses and that we are looking at in this bill and that we will look at in other pieces of legislation and throughout the budgeting process. This is something we owe to these employees, at the very least the collective bargaining pieces. That is money they should already have in their pockets, but it is not because of a technicality of us not being in session. We should make good on that promise first and foremost before we consider anything else.

A 2 percent COLA in this fiscal year with money that is left is something that we can afford and is appropriate. We should continue to have those discussions, but this is not the bill we should say we are not going to support because we do not believe in a particular law, and so somehow we cannot afford it. That is not true. There have been many discussions in the Finance Committee to support this as a fiscal decision, from a fiscal responsibility standpoint and from a responsibility to those officers and employees. I strongly urge my colleagues' support of Senate Bill No. 440.

SENATOR SEEVERS GANSERT:

I oppose Senate Bill No. 440. The purpose of the State Government is to serve the citizens of the State. We need to fund K-12 and higher education. We need to make policy decisions to sustain and support the business sector that employs hundreds of thousands of Nevadans through businesses, small and large. We need to make sure our communities are safe. We need to support our most vulnerable through health and human services and through safety-net programs. We count on our state employees for all of these purposes and more.

We, too, care about our employees. We are grateful to them and look for opportunities to support them. We recognize that COVID, with the closure of businesses and the State's pivot to remote work, impacted all our employees. We recognize that state pay has fallen behind, and we face record vacancy rates across positions, with public safety being one of the hardest hit.

This governor and legislative body are responsible for making policy and budget decisions to support the many purposes the State Government has and are responsible to treat all our employees fairly and equally. The State's budget must balance what we may want to do with what we need to do today with an eye toward the future. The comprehensive budget we must approve must serve the citizens of the State, support our hardworking public employees, be sustainable today and into the future and include savings to ensure we can continue to serve Nevadans when we face our next economic downturn.

The proposal we have before us includes retroactive raises of 1 and 3 percent for certain groups of employees that are not enforceable without legislative appropriation and additional 2 percent raises across all employee groups beyond the Governor's recommendations. The Governor's budget, or the Executive Budget, includes 8 and 10 percent raises in Fiscal Year 2024—which may be historic highs—and an additional 4 percent in Fiscal Year 2025. This provides substantial raises while also providing parity—parity—among state workers. Again, the Executive Budget provides substantial pay increases and restores parity to all employees. The Governor's budget also adds one-shot retention incentives, with a portion of those already enacted as of January 1 of this year.

When you add the proposed raises in Senate Bill No. 440 to the Governor's proposed raises, some employees will see 14 percent raises starting April 1st of this year and others will have 18 percent retroactive raises. The result is we will have unsustainable pay increases and a doubling—a doubling—of the pay differences between certain types of employees. In the money committees now, we are also contemplating more additions beyond what is on the table today.

Again, we need to balance the budget, and we are looking at executive branch proposed raises, these raises and also additional things we have been talking about in the money committees.

I have talked about making sure the raises are sustainable, and here is why. In 2008, 2009, 2010 and 2011, we faced budget cuts. For those of us who were here, several of us were here, it was painful. Most of those cuts were to health and human services, particularly mental health services. Higher education had a one-third cut to their budget, and we had ongoing furloughs for public employees. In 2007, just before that, we increased pay. So, we increased pay and then we had to roll everything back. While that may seem like ancient history to many of you, remember we just had to implement cuts and furloughs in 2020 due to the closure of our State's businesses due to COVID. So we just did this again.

Nevada is not immune to economic downturns. Rather, historically, it has been hit harder than any other state. With a less-diversified economy in December of 2010, we led the United States with the highest rates of unemployment, foreclosures and bankruptcies. The past needs to inform us today and in the future.

Before closing, I want to make another point about the collective bargaining agreements. NRS 288.560(2)(b) states, "If a provision of the collective bargaining agreement ...[r]equires an act of the Legislature to be given effect ... [t]he provision becomes effective, if at all"—again, if at all—"on the date on which the act of the Legislature becomes effective."

When we were having the hearing the other day, I emailed our chief legal counsel, Bryan Fernley, to follow-up on that. What does that mean? I have a memo that I would like inserted into the record from our chief legal counsel:

You have asked whether the Legislature and the Governor have a legal obligation to enact a bill to appropriate money to implement provisions of a collective bargaining agreement between the State and employees of the Executive Department of State Government that provide for pay increases and other increased compensation. Because such provisions do not become effective unless and until an appropriation is made by law to fund them, there is no legal obligation to enact an appropriation to fund the provisions.

As an initial matter, collective bargaining agreements between public employees and public employers are not subject to federal law. Private collective bargaining agreements are subject to the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151 et seq., and, thus, federal law may preempt state laws in areas relating to private collective bargaining agreements. However, employees of a state or a political subdivision of a state are not governed by the NLRA because the NLRA specifically excludes "any State or political subdivision thereof" from the scope of the Act. 29 U.S.C. § 152(2); *Truckee Meadows Fire Prot. Dist. v. International Ass'n of Firefighters*, 109 Nev. 367,374 (1993) (citing *N.A.A.C.P., Detroit Branch v. Detroit Police Officers Ass'n*, 821 F.2d 328, 331-32 (6th Cir. 1987)). In addition, public employers are not required to bargain with their employees unless the Legislature of the state provides otherwise. *Id.* Thus, collective bargaining between public employees and public employers is exclusively governed by state law and there is no legal obligation under federal law for the Legislature to enact, or for the Governor to sign, appropriations to carry out collective bargaining agreements between public employees and public employers.

Turning to state law, under section 19 of Article 4 of the Nevada Constitution, money is prohibited from being paid out of the state treasury "but in consequence of appropriations made by law." This provision requires that the expenditure of money from the state treasury "shall first be authorized by the legislature, which stands as the representative of the people." *State v. Eggers*, 29 Nev. 469, 475 (1909). Because appropriations are required to be "made by law," an appropriation cannot become effective unless and until the bill making the appropriation is signed by the Governor pursuant to section 35 of Article 4 of the Nevada

Constitution. See also, *Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Administration*, 413 Mass. 377 (1992) ("The Governor, however, has the power to disapprove an appropriation" of money necessary to carry out a collective bargaining agreement with state employees.) Thus, under the Nevada Constitution, if money has not been appropriated by law to implement a provision of a collective bargaining agreement between the State and employees and the Executive Department of State Government, an appropriation enacted by the Legislature and signed by the Governor is necessary to make money available to fund the implementation of the provision.

The statutes governing collective bargaining between the State and employees of the Executive Department of State Government recognize the necessity of enacting a law making an appropriation to fund the provisions of such collective bargaining agreements. NRS 288.505(1)(c) requires a collective bargaining agreement to include "a nonappropriation clause that provides that any provision of the collective bargaining agreement which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation." Because a legislative appropriation must be made by law, any provision of a collective bargaining agreement requiring an appropriation of money, by the terms of the agreement, becomes effective only if the Legislature has enacted a law providing the appropriation and the Governor has signed that law. In addition to the requirement for the agreements to include nonappropriation clauses, NRS 288.560 similarly provides that "if a provision of a collective bargaining agreement ... requires an act of the Legislature to be given effect, ... [t]he provision becomes effective, if at all, on the date on which the act of the Legislature becomes effective." Thus, the agreements, as required by NRS 288.505, and NRS 288.560 both provide that a provision for which an appropriation has not been made do not become effective unless and until the Legislature has enacted and the Governor has signed a law making an appropriation to fund the provision.

For a person to claim a legal entitlement to a salary increase or additional compensation in a collective bargaining agreement between the State and employees of the Executive Department of State Government, such provisions of the collective bargaining must have become effective. However, under the collective bargaining agreements themselves and the statutes governing those agreements, such a provision is not effective, and cannot become effective, unless and until the Legislature enacts a law making an appropriation to fund the provision and the Governor signs such a law. *Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Administration*, 413 Mass. 377, 386 (1992) (claims deprivation of constitutional rights for failure to fund a collective bargaining agreement "are premised on a deprivation of contractual and statutory rights and presume the effectiveness of the costs items [but] the cost items remain unfunded and have never been given legally binding effect")

In conclusion, if a provision of a collective bargaining agreement between state employees and the Executive Department of State Government requires an appropriation to fund the provision, the provision of the agreement does not become effective unless and until the Legislature enacts a bill making an appropriation and the Governor signs that bill into law. Thus, in the absence of the enactment of such an appropriation, no action could be brought to enforce those provisions of the agreement.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Part of what it says is, "The statutes governing collective bargaining [agreements] between the State and employees of the Executive Department of State Government recognize the necessity of enacting a law making an appropriation to fund the provisions of such collective bargaining agreements. NRS 288.505(1)(c) requires a collective bargaining agreement to include 'a nonappropriation clause that provides that any provision of the collective bargaining agreement which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation.'"

Further, "in the absence of the enactment of such an appropriation, no action could be brought to enforce those provisions of the agreement." The proposed retroactive raises based on collective bargaining agreements dating back to 2021 cannot be enforced without appropriations of the Legislature. Each of those agreements include nonappropriation clauses as required by statute.

We believe that while those retroactive raises and new 2 percent raises sound appealing—they do sound appealing, and we want to support our employees—they are not sustainable, especially with the other pay raises and different changes that we may make to state compensation. They are not sustainable, and they increase the inequity—the inequity—of pay for public employees and will lead to a fiscal cliff during the next economic downturn.

We appreciate our public employees and support substantial and sustainable raises, as proposed in the Executive Budget and the one-shot retention bonuses that have already been partially enacted. These reflect our appreciation for the past and ongoing work for public employees. But today we must be fiscally responsible. We must balance our budget, and therefore we must oppose Senate Bill No. 440.

Roll call on Senate Bill No. 440:

YEAS—13.

NAYS—Buck, Goicoechea, Hammond, Hansen, Krasner, Seevers Gansert, Stone, Titus—8.

Senate Bill No. 440 having received a constitutional majority, Madam President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

REMARKS FROM THE FLOOR

Senators Harris and Hansen requested that their remarks be entered in the Journal.

SENATOR HARRIS:

On a more serious and less jovial note, this morning we lost four more Americans to gun violence in Louisville, Kentucky—nine people injured. I will note that two of the people who were injured are police officers, one of whom had just finished the police academy ten days ago. And there is just no level of training that's going to put you up against an AK-15 [*sic*], which was the weapon of choice in this particular shooting, as it is for so many of them.

I hope I don't have to get up and mention this again in front of this body, but at the same time, I can guarantee you that I will. This will happen again before this legislative session is over, and while we take the time to kind of talk about these ones that are making national news, this is happening every day. I believe our latest count is 145 this year—145 this year—and it's just going to keep going until we all decide that we've had enough.

SENATOR HANSEN:

We had a joint hearing on Thursday on the very issues that my colleague just mentioned, with Assembly Judiciary and Senate Judiciary. I want to start my remarks off, first, by praising the Senate Chair of Judiciary, our colleague from District 9, who did an exceptionally good job and received well-deserved accolades for her work there.

However, I am here to, frankly, complain about the process. We had a hearing on three bills and, as Legislators, one of our jobs is to hear both sides of an issue. While we all have strong personal opinions on many of these things, our job, in what we call a hearing, is to allow both sides an opportunity to present their views. This so-called hearing that occurred on Thursday was an advocacy demonstration masquerading as a hearing.

Why do I say that? It is simple. I went back and did the math, and we discovered the proponents of the bill had an hour and forty-five minutes to present their side of the issue. Those of us who were in opposition had no opportunity. There was no opposition presentation allowed in the hearing. Not only that, for those of us who wanted to ask questions, we were limited to a single question, and we were not allowed to have a follow-up. What we called a hearing was, in fact, a one-sided demonstration against a position that I hold as a Second Amendment right.

If we, as Legislators, are going to do our job, it is important we make sure—I was chair of that exact committee and I always made sure, even if I did not agree with the opposition—that in our committees, both sides have an opportunity to present, fairly, their views. We, for whatever reason, are drifting away from that. This hearing is about as good an example as—or a bad example if you will—I can think of. Hearings should be just that: a hearing. It is not advocacy, not a demonstration, but an opportunity for us, as Legislators, to make up our mind after hearing both sides of the question.

This is my seventh legislative session. I have, over the years—although I have strong opinions on lots of issues—been privileged to hear opposition testimony and learn from people who disagree with me in many cases. I think as a legislative body, one of our responsibilities going forward, from this minute, is to make sure in every hearing we have, whether we like it or not, and whether or not it is going to be controversial, we make sure that everybody in the State of Nevada knows we gave a fair and impartial opportunity for both sides to be heard in our legislative chambers.

This hearing was a sham; it did not do that. It gave an hour and forty-five minutes to those in support, and then for those of us who testified in opposition, they were granted one minute. We, as Legislators, were not allowed to even ask them a question, with one exception, in the hearing.

These are, obviously, as my colleague just pointed out, exceptionally sensitive issues. They are not cut and dried, simple things. There are a lot of complicated portions to this, beyond the emotional appeal of it. There are all sorts of reasons for the laws we have, for the Second Amendment to our Constitution, and firearms often are used in a positive way to prevent violence.

Because we spent an hour and 45 minutes discussing all the terrible things about firearms, we had a very one-sided hearing. That is not the way it is supposed to be. We should make our opinions and votes based on being educated and as well-rounded as possible in those hearings.

I am in the minority, and when I was in the majority, I made sure that your side got every opportunity to have a fair and impartial hearing before our committees. What I saw on Thursday was a disgrace. It was not a hearing; it was advocacy. It belonged out front where they wanted to do a demonstration and get the press. That is fine and dandy. It was called a hearing when it absolutely was not a hearing but a one-sided presentation. I had Dr. John Lott, who had agreed to come here if we wanted, who is a nationally known expert on these issues as well as the lobbyist for the National Rifle Association. I tried to get at least five minutes. No. They were granted, like everybody else, one minute with no questions from the panels whatsoever.

By the way, we do not get a second bite at the apple like we normally do. That hearing was a joint hearing, and the Senate will never hear it again. The people like myself who want to have an opportunity to question some of these folks have been denied that opportunity. Therefore, thank goodness, we still have the floor. We have not figured out a way to shut everybody down on the floor. At least I can advocate for my side, somewhat, here.

All I am asking for is not advocacy for my views; it is simply a fairness in the process. Everybody in the State of Nevada should know that at the Nevada Legislature both sides will be granted an equal opportunity to present their views before those of us who are going to pass laws affecting over three million human beings. That is not at all unreasonable, and it is certainly not something that we, as Legislators, should turn away from. We should embrace that. We should gladly listen to both sides and, after weighing all the evidence that is presented, then make rational judgments based on a full and impartial hearing as much as humanly possible.

I want to encourage my colleagues as we go forward, especially those of you in the majority, to make sure we do this process as fairly, equally and impartially as we reasonably can.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Buck, the privilege of the floor of the Senate Chamber for this day was extended to Susan Beckett, Timothy Smalley, Eric Wilcox and Lucie Wilcox.

On request of Senator Daly, the privilege of the floor of the Senate Chamber for this day was extended to Deaf Day attendees.

On request of Senator Lange, the privilege of the floor of the Senate Chamber for this day was extended to John Ahdunko, Jaynie Malorni and Ray Specht.

On request of Senator Nguyen, the privilege of the floor of the Senate Chamber for this day was extended to the Chamber of Cannabis.

On request of Senator Ohrenschall, the privilege of the floor of the Senate Chamber for this day was extended to Alexander James Harvey.

Senator Cannizzaro moved that the Senate adjourn until Tuesday, April 11, 2023, at 4:30 p.m.

Motion carried.

Senate adjourned at 1:40 p.m.

Approved:

PAT SPEARMAN

President pro Tempore of the Senate

Attest: BRENDAN BUCY

Secretary of the Senate