

MEMBERS PRESENT: Chairman Dini
Vice Chairman Schofield
Mr. Craddock
Mr. DuBois
Mr. Jeffrey
Mr. May
Mr. Mello
Mr. Nicholas
Mr. Polish
Mr. Prengaman
Mr. Redelsperger

MEMBERS ABSENT: None

GUESTS: Mr. Patrick Pine, Clark County
Mr. Heber P. Hardy, Public Service Commission
Mr. Bob Gagnier, SNEA Executive Director
Mr. Jim Lorigan, Nevada Industrial Commission
Mr. John Crossley, Legislative Counsel
Bureau Auditor
Mr. Will Keating, Public Employees Retirement
Service
Mrs. Joyce Woodhouse, Nev. St. Educ. Assoc.

Chairman Dini called the meeting to order at 8:05 A.M. The first bill to be heard is AB-251.

Assemblyman Robert Rusk, District 28: Under Chapter 463, as you know in NRS, licensing and control of gaming, there is an area here that I feel strongly about and have for a number of years. The issue is the potential conflict of interest. I suppose the discussion has to be in the area of defining a conflict of interest. The potential for a conflict of interest would be the regulatory agencies of particularly a privileged industry like gaming where we have the Gaming Control Board and the Commission. We have key executive people, knowledgeable people, who gain their experience, admittedly, by and through those jobs, who find themselves under the existing law of the state of Nevada able to move directly into the industry as a key executive of the very industry they are controlling. If that is not an example of a potential conflict of interest, I don't know what is. I suspect that this bill is not the answer to that problem, but it maybe gets at a beginning, and that is, by waiting a year, any individual who goes to work for that industry in the control end of it for the state, has to recognize that if they are going to take that job to get the experience necessary to move into a high paying job that is not available in the state but is available in the industry itself, they are going to have to think twice about any potential conflict, and that area of conflict

is that in the control of that industry, they find themselves in a position where one day they are able to favor that industry and the next day be able to have a job with the industry. There is a recent example of one of the controlling people who has left that industry and took it upon himself to wait a year before he would consider any clients. I think that's a nice idea on the part of that individual. I think it's an idea that all people who work in the controlling boards should consider or should be required to live with. Under NRS-703, we get into the other regulatory agency in the state of Nevada, the Public Service Commission. Line 12 should be changed to exclude "or other employee of the Commission" for the reason that it is not intended for the person with typing or clerical skills, but we are thinking in terms of the deputy commissioner or the commissioner. I would suggest that as a proper amendment.

We also have the question that should be asked is if for these three regulatory agencies, why not all regulatory agencies in the state. Why not legislators. I think the answer to that is that where you have such a highly controlled situation that the potential of conflict is so obvious, we need to start some place and I think these are the glaring examples that are included in my bill that need to be addressed.

Mr. Nicholas: First of all, have you researched the laws that are in force dealing with this in other states in the preparation of this bill.

Mr. Rusk: No, I have not.

Mr. Nicholas: Are you aware that a number of other states in the union do have such laws and that those laws are very strict involving all regulatory agencies in certain cases. One of the chief directions taken by these laws in other states deals with, interestingly enough, departments such as our Department of Human Resources, that the regulatory agencies in reference to welfare, certificate of need, etc., are specifically named. Under those circumstances, would you consider the expansion of this bill to go into that sector?

Mr. Rusk: I would be open-minded to that. I think it is in the hands of the committee to consider that. You bring up a good point.

Mr. Dini: Don't you think that when you put these kinds of restrictions on a job, you actually tie the Governor's hands on the people he appoints because some people will not take the appointment and we need good people in state government?

Mr. Rusk: I think there is an element of truth to that in that we have gotten good people to serve that have gone on into the industry and there is no question that at the time they took the job they felt that would be one of the benefits in the future. I think that speaks, too, to the very element of my concern and that is the potential conflict. That individual who takes the job, knowing that he someday will be working in the industry, has got to put himself in a position of potential conflict. There are people, I think, quality people - for example, Carl Dodge, is one who has arrived at a station in life now, with his background and experience, that there is no way he is going to work for the industry. He is an outstanding example of where we can get good people that wouldn't need to go to work for the industry. This bill does not provide that they can't ever go to work. It is just that they can't go one day, the next day is a year's wait.

Mr. Dini: We have some glaring conflicts of interest in the Legislative process. We have people in the Legislature representing large gaming clients, unions, different organizations that are more glaring than a man going to the gaming industry he is regulating.

Mr. Rusk: Your point is a good one because on the one hand, you are talking about an existing conflict of interest and on the other hand, I'm really talking about a potential conflict of interest.

Mr. Craddock: What about some individual benefiting in an inproportionate amount. When I don't have a direct and personal interest in what's going on, I'll so notify this body. So, I live in conflict of interest, or potential conflict of interest. I don't have any problem with the Public Service Commission or the gaming commission, or anybody else. I think we are going to do more harm than good. What would you think of this as a definition of potential conflict of interest? That is, when you benefit in an inproportionate amount.

Mr. Rusk: Definite an inproportionate amount. Is it a nickel or a dollar?

Mr. Craddock: For example, if a contract is given where the state is obligated to pay Robert G. Craddock \$782.40, then I think I would abstain because I would be getting an inproportionate amount.

Mr. Rusk: My only comment would be...I don't clearly understand what your definition is...that I would personally declare a conflict of interest, if I had an item that I am voting on that

that would benefit me individually, or someone that I am very close to, either through financial partnership or something along that line, and probably not take part in the vote, let alone the discussion. On the other hand, the law provides that once you declare that conflict of interest, you can go ahead and vote on it.

Mr. Nicholas: We are very concerned here about the conflict of interest direction, but interestingly enough, this particular type of bill or law has been used as a tool in other states not to deal so much with the subject we're talking about - conflict of interest - as to retain good employees in state regulatory positions, the problem being that so often, regulators learn on the job, basically. There isn't a lot of training you can receive before you go into a regulatory position. They learn on the job and then take their expertise out into the market place. This is again a tool to keep them in government a little bit longer. And it has worked in other states. I did want to stress that this is a very important point here, even more important, in some ways, perhaps, than our particular concerns that we have individually about possible conflicts.

Mr. DuBois: Are you aware of any abuses over the last fifty years of gaming control and public utility regulations that have taken place?

Mr. Rusk: I can't tell you specifically of cases other than possibly doing some researching in the newspapers. There were certainly accusations of that kind of thing. The problem that I am trying to address here is, for example, anybody can be a regulator one day and gone to work for the industry in key positions the next day. These people, as far as I am personally satisfied, had no conflict because they did not take advantage of a situation to get the job. I can't guarantee that in any way, shape or form. If they are regulating the industry one day and work for it the next day and they are paid doubles the day they go into the industry, you can't tell me that there isn't that potential of conflict. Anybody that goes to work for an agency that thinks in their mind in terms that the way they are going to finally achieve their status in life that they would like to achieve is through that public agency into the private sector, that individual is sitting with a potential conflict of interest, a gross conflict of interest, in my mind, particularly when you are regulating a privileged industry; an industry that can be closed down by one of those regulators at any given day for a number of reasons that most industries are not regulated under those, almost in some cases, unconstitutional directions. It is just a very unique case of potential conflict. So, I can't look and tell you whether there was ever any consideration on behalf of the employer that that individual, at the point of

of leaving the state and going to work for that employer, was helpful and, therefore, in conflict.

Mr. Heber Hardy, Commissioner of Public Service Commission: I disclose at once a conflict of interest. I talked to Mr. Rusk just before we came into the hearing and suggested some personal problems I had with the bill as written and some suggestions, and although he did not mention up front, he suggested he wouldn't necessarily oppose a suggestion I have. Our present policy, both written and unwritten, regarding employees going to work for a public utility from the Public Service Commission, is General Order No. 3, Rule .5.060 - appearance of former employees - says that no person who has served as a member, expert, attorney, accountant, engineer or other employee of the Commission may practice or act as attorney, expert witness or representative in connection with a particular docket before the Commission if that person has handled, investigated, advised, or otherwise participated in the consideration of the same docket while in the service of the Commission. That is very strictly adhered to and that is understandable because you have an actual conflict of interest involved in this type of situation.

The unofficial part of our policy is that, sometime ago, a particular employee had been negotiating with a particular public utility for future employment. I found out about it and called him in to talk to him about it and strictly advised him that if he was going to negotiate with a public utility, in my opinion, he would have to resign first before even beginning to talk to them. He agreed that it was a bad decision and immediately backed off and there was no further negotiations. It was a bad case of judgment in my point of view. As a result of that, I personally called each of the major public utilities and told them that it was highly improper for any public utility to even discuss employment with any employee of the Public Service Commission unless they had first announced their resignation before there was any discussion. The reasons are very obvious for that. I would recommend and wholeheartedly concur with a bill which related to the Public Service Commission. Section 4 should then be amended on Line 13 to show the words "for a period of one year" be stricken and on Line 14, the period stricken and the words "unless he had submitted his resignation prior to any discussion or negotiation related to future employment". The obvious problem with that approach is how you are going to find out if there has been any discussion. There is always that potential. If the law says that you have no discussion or negotiation, it would be a very unwise and foolish person who would do that, running the risk that he probably would have to be terminated or fired and the public utility could possibly have disciplinary action or legal action for having done it. There is always that potential. So, I think it is a tremendous weapon

against going ahead and negotiating or discussing prior to any resignation. First of all, I don't think a public utility would touch it if it was in the law. I just don't think it would be smart or wise or prudent in any way for them to even consider talking to anybody if that is in the law that way. And, frankly, I think that ought to be in the law for every public official.

Mr. Schofield: Are you aware of any infractions in your particular area?

Mr. Hardy: Not to my knowledge. There is some advantage to the Commission and the public of having knowledgeable people appear before the Commission who are familiar with us. I have sat and conducted hearings where every attorney, in one case, were former commissioners and staff counsel and a deputy attorney general who had served with the Commission. I think they perform a tremendously good function because they have knowledge of our procedures, they have knowledge of the issues and a better record is made of some of the problems. To my knowledge I don't think it has had any undue influence upon the commissioners to have former people appearing before them. I think you will find that a former commissioner or former employee appearing before us have records where they have not prevailed in every case by any means. The same applies to legislator attorneys who appear before us. From my experience, I don't think they have been given special consideration. There is a positive benefit as opposed to a negative benefit.

Mr. DuBois: How far down in categories of positions would you go in prohibiting negotiations or discussions prior to resignation?

Mr. Hardy: If my language is adopted, I think it ought to go to every employee. I don't think that even a secretary ought to negotiate for employment for a public utility unless they first announce their resignation from the Commission. Secretaries do type what I would consider in a sense confidential information. There could be a pending rate matter which they have typed preliminary drafts on and they could be negotiating with a public utility. There is that possibility at any time.

Mr. Craddock: How would you define or deal with a potential conflict?

Mr. Hardy: I tried to analyze this a little bit. I used to be a school teacher. I would think that there is a potential conflict if I recognized that one of my students has a father, for instance, that had a business that would seem to be a considerable improvement in my employment if were someday go to work for him. It seems to me that I would have a potential conflict in giving his

son a better grade that somebody else. That is far-reaching, I realize. The media has made a lot of this type of thing. It seems to me that there is a potential conflict that any news reporter going from a newspaper to a public utility as a public relations person. There is a possible conflict if they go to any public office or agency, maybe the Governor's office, even, directly from a newspaper. It may be that they don't report impartially, so that they might some day get a job with someone they want. This is rather remote. We should be looking to actual conflict. Potential conflicts, I think, exist for everybody and to single out these two agencies and say, because there is a potential conflict, we ought to prohibit them from even having a (cur path) which would include going to work for an agency that regulates. Mr. Nicholas's comment about having a tool to keep in government, I thought was good.

If there is a problem with profiteering, that is, getting exorbitant salaries, limit the salary for any reasonable period of time to not more than 10% of the salary when they left office.

Mr. Nicholas: I would like to give some reasoning behind the one year. With specialist and executive personnel who have been decision making for a period of time, who have been involved on the fire line in litigation, regulations, it is generally felt that their current knowledge on jumping the fence can be utilized to the detriment of the regulatory agency with whom they have been affiliated prior to that time. This current knowledge is dangerous to the governmental attitudes. That is one of the main reasons for that one year period, to make sure that the information that the person takes with him is basically no longer current.

Mr. Bob Gagnier: We would not be concerned with this bill if our salaries were competitive enough that our people didn't have to leave to go elsewhere. The state turnover currently, as you may know, is about 20% or in excess of that figure. We have many highly specialized fields in the state and there is no place for those people to go to work except in the industry they regulate. Now, gaming is one of them and we have a large number of people that work at the Gaming Control Board. Where are they going to work if they leave, other than the gaming industry? What if an employee is fired? If you are going to cover the employees and then you fire one, you are preventing him from going to work for a year in the only industry he is trained in. Mr. Rusk's amendment is very important to this bill and if it is passed, then you are restricting the intent of the measure to the top officials of these regulatory bodies. I thought that was the intent of the bill originally.

Mr. Nicholas: The norm is that if a person is fired, the year does not count. Now, again, this may not apply to our state, as it does in some other states that use this rule.

Mr. Hardy: I certainly would not disagree with what Mr. Gagnier said about other employees. My comments related directly to the potential conflict area that we are talking about. If the committee desires to process the bill, I certainly have no objection to deleting 'other employees', and relating only to top officials, so long as my other language is approved.

This concluded the testimony on AB-251.

The next bill to be heard is AB-480.

Mr. Bob Gagnier: The substance is contained in Section 1, the first seven lines of the bill. It limits the investment policy of the Public Employees Retirement Board. At the present time, the policy on investments for that board is that they may invest all of their funds under what is commonly referred to as the prudent man rule. The State of Nevada Employees Association is here today because we think that they have not been prudent in those investments and we have suggested an amendment that will limit the investments that they may make of 12½% in any one type of industry and 25% of its funds in any one type of investment. That is an awful lot of money. You have to remember that the Public Employees Retirement Fund is rapidly approaching \$1 billion. So, when we talk about any one kind of investment being limited to 25%, that is \$250 million. Or, in any one industry, we are talking about \$125 million. We think this would be a good control factor for PERS and urge your support of the measure.

Mr. Mello: In what area do you think there is abuse?

Mr. Gagnier: We believe that the Public Employees Retirement Board is getting too much money invested into the gaming industry.

Mr. Mello: You don't think we should invest in the Number 1 industry in the state?

Mr. Gagnier: We have nothing against investing in it. We say that there should be a lid on it, and that lid should be 12½%. Most of the investments made by PERB are done by a firm they have hired, an investment firm, which, by the way, I would like to give our heartiest support to. We think that Funds Advisory has done an outstanding job since they started managing the portfolio. There is one part of the portfolio that they do not manage and that is the real estate investment. That is handled directly by the Retirement Board and we might feel a little more comfortable without this limitation if the total portfolio was invested by

professional outside people, whose sole job is investment of funds. This is why we feel this is the one area where we have a problem.

Mr. May: What percent of the monies in the funds do you estimate is now invested in the gaming industry?

Mr. Gagnier: I think the last figures we had, if all of the money committed was invested, was around 15%.

Mr. May: But as this is written, they would have to liquidate some of their present investments to get back down to 12½%.

Mr. Gagnier: That is not our understanding from the bill drafter. They could maintain a status quo and as the fund grows, and it is growing at a very geometric rate, they would reach the 12½% in a very time.

Mr. Mello: One reason it's growing at this fast rate is the interest they are getting from those loans.

Mr. Gagnier: Well, they are getting a good return on their real estate investments. The last time we checked, they were getting on a combination of their real estate investments, I believe, around 11%. They were securing higher return on other portions of their portfolio.

Mr. Prengaman: Don't you think that such a limitation as this would have the effect of forcing the money to go outside of the state?

Mr. Gagnier: We do not have a great deal of industry within the state of Nevada. You could be right. The whole concept, I believe, though, of a retirement fund is diversification. You don't want to put too many eggs in one basket. You want to diversify it as much as you can to assure that the money is there when the people retire. We are unfortunate in that we are a relatively small state, industrially speaking. We don't have a great deal. We are not like Washington, where you could invest a certain amount in Boeing. But, I would say the same thing, to get back to Mr. Mello's question. If we were in the state of Washington, I would not want to see more than 12½% of our funds invested in Boeing, because a few years back, eleven years ago, Boeing laid off 80,000 people. Their stock plummeted because they lost the SST contract. That is the problem when you have a one key industry. It can be hurt and it can hurt bad. If you have too much money in that one industry, then it can hurt the overall fund.

Mr. Mello: Are you saying that you feel that the gaming industry, though, is not a safe industry to have money invested in it?

Mr. Gagnier: It is a safe industry to have 12½% of our money invested in it.

Mr. Dini: I don't understand where this is coming from because 50% of the state employees's salaries is paid by the gaming industry. They provide jobs by loaning money to that industry. They participate in at least 50% of the money coming into the State Treasury. They also provide state employee jobs. Isn't it better to keep the money in the state, invested in the state, rather than invest it outside the state?

Mr. Gagnier: Normally, I would say 'yes'. If you want to amend the bill to remove the limitation and provide by law that all investments made by the Public Employees Retirement Board be done by outside professional investment counsellors, we would concur with that amendment.

Mr. Redelsperger: Are you objecting to the way the investments are being handled now by the Board.

Mr. Gagnier: In this one area, yes, we are.

Mr. Redelsperger: In this one area. Now you are saying you would like to go outside of the state and bring in experts in just this one area?

Mr. Gagnier: Not necessarily outside of the state. It happens that right now the investment firm that handles the majority of the portfolio, Funds Advisory, is in Texas. That is just accidental. The one before them was out of San Francisco. There might be mortgage and real estate firms within the state of Nevada, but I doubt it. We are just not big enough to have that kind of expertise.

Mr. Redelsperger: Are they doing such a bad job that we should look for others? I'm talking about these people from Texas that are now involved in helping us invest this money. Do you feel that they are doing a poor job?

Mr. Gagnier: No, they are doing an excellent job. However, they do not advise the Retirement Board in the field of real estate. They have nothing to do with real estate.

Mr. Redelsperger: Do you think they are doing a poor job in real estate?

Mr. Gagnier: The Retirement Board? We feel that they have put too much of their funds in this one area. Now, here again, I think we are leading to the point to where I am going to have to say something I had hoped to avoid, but I guess I can't. Obviously, we feel that there are pressures being brought to bear on the lay members of the Retirement Board to make casino investments. If we had a professional firm doing that investing, we would not have that pressure.

Mr. Dini: Almost anything, anymore, has got pressure at the state level.

Mr. Polish: Would you have any feeling if the experts turn around and say they want to put 50% into the gaming industry?

Mr. Gagnier: I'll have to back up. Before we determined that we would ask that this legislation be introduced, we attempted to get the Retirement Board to voluntarily limit the amount of their investments. They declined to do that. At one time, I believe they did have a limit, a voluntary, internal policy limit, and they removed that limit for this one area. In addition, we have proposed a code of ethics that has not been adopted for members of the Retirement Board that before they would vote on any loan application, they would state in open meetings, for the public record, whether they had been contacted by any individual outside of that meeting for the purpose of influencing their vote.

Mr. Mello: You mention 'we'.

Mr. Gagnier: Our organization.

Mr. Polish: Do you feel that you have the expertise to make the recommendations in this particular area?

Mr. Gagnier: No, we do not have the expertise to make the loans. I do not think that most of the Retirement Board have any more expertise than we do. Their staff does, certainly. Mr. Bennett and his staff. But the members of the Retirement Board are all lay people. One or more of them might have some expertise in this field, but the majority do not. The retirement staff has the expertise to investigate the loan applications and they have consultants they retain to look into these investments and they discuss them with the members of the Retirement Board. The person making the loan application and his representatives have the opportunity to come to the Retirement Board and give their pitch. So, you have the input from the staff and the loan applicant, It's all there.

Mr. Vernon Bennett, Executive Officer of the Public Employees Retirement System: The system is opposed to AB-480. This bill would place restrictions on the type of investments that the Retirement System would have to make. The 1975 Legislature removed all percentage limitations and restrictions regarding our investment program and authorized us to make investments in accordance with the prudent man rule. The prudent man rule basically provides that we will make investments in accordance with the standards that a prudent man would use in making investments for his personal account. Mr. Bennett's written testimony

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is attached hereto as EXHIBIT A, and made a part of these minutes. Mr. Bennett continued: First of all, the issue of professional counsel. When the Retirement System first went into mortgage and real estate investments, we did employ professional counsel. We went nationwide; we interviewed and selected one of the finest mortgage and real estate companies in the nation - Lomas & Nettleton. They had fourteen offices throughout the western United States. Unfortunately, they did not know Nevada and very few out of state real estate firms do. One of the first things they recommended was that the System make no investment whatsoever in warehouses. Yet, that is the third or fourth industry in Nevada and Nevada enjoys an excellent warehousing situation because of the special tax situation. For example, such things as the J. C. Penney warehouse in Sparks and the new one they are building in Las Vegas, and now in the Las Vegas/Henderson area, there is developing a pretty good industry in warehousing. We consider those very secure investments. Our Lomas & Nettleton group said 'no, we don't think you should'. The second thing I would like to point out, is that the Retirement System does use expertise in our mortgage and real estate. Bob did allude to that, but I would like, for the record, for you to realize that. We just have not employed one specific firm who will always be the firm that does our mortgage and real estate. On many major mortgage and real estate loans that are complex, we have hired such firms as First National Bank, Nevada National Bank, Warehouse Mortgage and different savings and loan representatives, to do a professional evaluation. In addition, we have a professional legal evaluation by an independent attorney who, we were advised, and we surely believe, is one of the best mortgage and real estate attorneys in the state. We have a separate M.A.I. appraisal. We have two appraisal reviews made of the appraisals from the borrower and an additional appraisal we provide.

We employ on larger loans a professional auditing firm to do a professional evaluation of the fiscal information. Staff does its own evaluation and on-site inspection, as well. So, there is expertise provided on the loans.

The other point I would like to make is that even though we agree that Funds Advisory is an excellent firm for stock and bonds and that they do a good job, they have never made one investment decision for the Retirement System. They submit proposals to the Board in closed meetings at every monthly meeting. The Retirement staff also submits proposals and the Retirement Board makes the investment decisions. The law clearly provides that the Retirement Board, and only the Retirement Board, can make investment decisions. They are making them on stock and bonds, as well as making them on real estate. If you determine that we employ a professional real estate manager, which is fine, if this is the

wishes of the Legislature, we will sure employ them. The Retirement Board would still be making the decisions. If there is a concern, maybe the concern should be as to whether or not the Retirement Board should make decisions. We have a 12-page Attorney General's opinion in 1975 which says that the law gave the Board that authority, gave them the responsibility and the liability. And the only way a Board member can duck that liability is to resign from the Board.

I have touched on the return; I would like to tell you the sort of things we are doing, very briefly. We had a return on mortgage and real estate that averaged approximately 11% until about two years ago. That was because, when stocks and bonds were around 7½% to 8½%, we were buying at 10 and 10½%. We at one time bought packages of single family dwellings when the return was higher than bonds. When the 12% usury was lifted by the 1979 Legislature, our returns on mortgage and real estate since that time, have been at least 15% per annum. We are currently looking at over \$50 million in mortgage and real estate investments where they are paying us 1½%, 17% per annum guaranteed, plus 5% of the gross income. Then, after the tenth year, they have the right to resell at fair market value and we get 50% of the profit of the resale, offset by the amount of the 5% gross income. I don't know of one insurance company in the nation that is realizing those returns. One of the reasons we are able to realize them is that we will invest in Nevada. The reasons that such firms as Prudential and Aetna do not realize it is that they will not invest in casinos.

We are dealing with an industry who can normally, within 18 months to two years, from their gross income pay off a loan where you could put the same kind of investment in a shopping center at 5% per annum less and their income would take ten years to pay off the loan. We feel that these are very secure investments. We not only get a first deed of trust on the security, but we get personal guarantees by the parent company and personal guarantees by the major partners in the entity and we feel that the mortgage and real estate program has done very well, not only for the Retirement System, but for the taxpayers of Nevada. We did change from our percentage limitation because we had to make a straight investment decision, which is: do you make 17% plus 5% of the gross income, or do you buy a bond at 13%? Or do you buy stock? We have done very well with our stock. We averaged about 14½% to 15% last year on stock. But that is not a guaranteed return for the next fifteen years. The stock market goes up and down and within the last year or two, many public retirement systems lost so much money on common stock, they determined that they would never buy stock again. I think that's a mistake on their part. But the mistake they made was that they were buying stock all the time, when the market was at 700 and they bought it when it was at a 1,000. The Dow now is at a very high position and is not the time to buy stock. Yet, they are limited in their

investments in that they have to buy stock and they have to buy bonds, so regardless of whether it is a good time to buy stock or not, they have to buy it. We hope that you won't put that kind of restriction on our investment program.

Mr. May: I don't really share Mr. Gagnier's concerns on this. 286.113 provides for an interim retirement committee to review the operations of the Board and to report back to the Board itself and to the Legislature. 286.120 says that the governor himself shall review the broad administrative policies of the Board and may remove any board member for cause shown. I don't see any problems at all in the way it is being done now and I think the Board certainly deserves a vote of confidence of this committee for the manner in which they are proceeding.

Mr. Mello: I think there is a way we can express that, Mr. Chairman. I move to INDEFINITELY POSTPONE AB-480. Seconded by Mr. May. There being no further discussion a vote was asked for by the Chairman. Motion carried.

The next bill to be heard is AB-539.

Mr. John Crossley, Legislative Counsel Bureau Auditor: The amendment to Section 281.155, involves the payment of final compensation of an employee. The statute did not provide for the deceased employee of the state, it only applied to local governments. Final compensation did not include accumulated annual leave or the sick leave benefits an employee could be eligible for.

Mr. Mitch Brust, Personnel Division: If the committee would like to amend this bill to include the payment of unused annual leave, sick leave and, possibly, longevity, which is included in AB-416, we would have no objection to that. It would all be in one statute that way. We would have to include either a general covering language which would include the payment of all unused benefits, or specifically spell out those benefits which are the annual, the sick and, possibly, longevity.

Mr. Dini: Do you have the proposed amendment?

Mr. Brust: No, but I can get one to you.

This concluded the testimony on AB-539.

The next bill to be heard is AB-527.

Joyce Woodhouse, President, Nevada State Education Association: AB-527 is before you at our request. The issue arose in the

Clark County School District based upon some problems the teachers association is having regarding NIC and sick leave problems. The item that came from the Clark County teachers did go to our Delegate Assembly last May and was adopted into the legislative program. The item that was passed by the teacher representatives was this. To make NIC benefits independent of an employee's sick leave. Job-incurred injuries should not require an employee to use his sick leave days. One of the problems that we are having in the Clark County School District is one we are trying to deal with. We are having problems in dealing with it in the negotiations area and in dealing with the school district itself. The president of the Clark County Teachers apprised me of an incident just yesterday and that is why we have decided to pursue these issues. A teacher, at Christmastime, was supervising a group of students who were practicing Christmas programs. That teacher saw a handicapped student trying to negotiate the stairs of the stage. The child was having difficulty. The teacher moved forward to help the student down the stairs. The student fell just as the teacher got to the student, fell on the teacher and the teacher went backwards down the stairs. That teacher has been denied the job-incurred NIC benefits by the school district because the student that she helped was not on her class list. This brings to mind the kinds of things we are dealing with in this area. This bill does not address all of the problems but we are trying to make some progress in helping those people that do end up in these kinds of circumstances.

Mr. Jim Banner, Assemblyman, District #11: In Clark County, in the event an employee is absent due to a service-connected disability which has been verified by the NIC for a period not to exceed sixty calendar days from the date of injury, he may receive compensation as determined by the Nevada Industrial Commission, plus an amount from the county which would cause the total amount received by the employee to equal his salary at the time of disability. During this period, the employee shall not forfeit any accrued sick leave. Six months continuous service is required in order to qualify for any service-connected disability. We, in the county, for the first 60 days, do not lose any sick leave and by taking the compensation check and turning it back to your employer, you receive full benefits. Upon the expiration of sixty calendar days, subsequent to the on the job injury, if the employee is still unable to work, he or she may elect to utilize accrued sick leave, during which period the employee shall receive full compensation from the county. Following that, the check still goes back into the county and the employee still receives his NIC leave. The advantage here is that the employee is not on a leave without pay status. When the accrued sick leave has expired, the employee is still

unable to work, then except for total accumulated vacation pay, the employee shall receive no additional compensation from the county; however, the exception to this rule may be applied with the Board of County Commissioners. It is the intent of the county to pay the on the job injured employee as outlined in this section. The difference between the full daily salary and that provided by the Nevada Industrial Commission is salary continuance. Therefore, the employee shall return to the county treasurer all salary continuance payments made by the NIC covering the periods enumerated. Now, that's the way I wrote it. What I thought that the school teachers wanted was some procedure written. The state does it and it isn't written any better than the way I wrote it. The bill needs to be clearer. It says that the amount of those benefits shall be paid to the employer. That sounds like the benefits went to the employer instead of the employee being required to turn that check in. We have an arrangement with the NIC that allows them to send the check directly to the employer. What the school teachers were looking for was a move from a statutory standpoint, something we did by rule.

Mr. DuBois: How does this relate to what Joyce was talking about?

Mr. Banner: It doesn't really relate to that circumstance but what it relates to is they then have told these people that they have to take their sick leave. There are some public employers that don't understand that you can work with coordinated benefit types of things or some employers who would say that you would have to go on leave without pay. Where you have an accumulated sick leave benefit, this is a way to coordinate those benefits without losing time or other benefits. The disadvantage is that the money you receive from NIC would not be taxable. By it going to the employer and then your sick leave would be taxable. That would be an advantage to me as a public employee to have continued employment for retirement and sick leave accumulation and continue with your group insurance.

Mr. Dini: Do you think we should delete Lines 9 and 10?

Mr. Banner: It should be written in a different way. It should be made clear that the amount of benefits paid by the Commission shall be paid to the employer. It should be that the amount of benefits received by the employee to the employer.

Mr. Hal Curtis, Commissioner, representing labor on the Nevada Industrial Commission and Jim Lorigan, representing the employers testified next.

Mr. Lorigan: The only objection that the Nevada Industrial Commission has to this bill is involved in Lines 9 and 10. There is a statute that makes the benefits of the NIC non-assignable to anyone. We feel that if you are of a mind to pursue it without

altering that sentence, you will be opening the door to an assignment to other interests. That is our only objection. We would suggest that if you want to leave that sentence in perhaps you could add, 'c/o of the employer', which is exactly what we do now. All the agency has to do is write us and tell us to please send the check payable to the employee c/o our agency and then we'll make the arrangements.

Mr. Hal Curtis: I will go along with Jim on Lines 9 and 10. Either take it out or put in the extra wording.

Mr. Dini: What happens if we leave it out?

Mr. Curtis: We do the same thing we are doing now, making the check to the employee.

Mr. Bill Bunker, representing the Federated Firefighters of Nevada: I speak in favor of AB-527. The firefighters have enjoyed this benefit for a number of years and for a number of reasons. If you are receiving an NIC check and your benefits are cut off and you are not receiving your full paycheck, you tend to put pressure on your doctor to return to work before you are able because you are out there starving to death. The fire department has found that it has been very detrimental and hazardous to put a man back to work before he is ready, and so they require us to come back to work with our doctor's signature stating that we are physically able to return. After the sixty or ninety days, then we do draw our sick leave or reduce our vacation time. But the first sixty days, we do receive our full pay.

This concluded the testimony on AB-527.

The next bill to be heard is AB-523.

Julius Conigliaro, City of Las Vegas: The City of Las Vegas has experienced numerous cases where owners have abandoned property for not paying the taxes and at a later date, we will determine that a public purpose can be served by acquisition of such property. That public service is normally for street, sewer or drainage use. The current law allows local government to acquire such properties after petitioning the Board of County Commissioners and giving the owner a ninety day redemption period. But the law only allows this acquisition for purposes of dedication as a street. Of course, we would like to amend that bill to include: for streets, sewer or drainage uses. This would be mainly to put underground sewer pipes or water culverts to divert water, perhaps, in a certain tract area. It may be that the property's use is more advantageous for that use, than to dedicate a street. We are merely asking to expand the existing law to include those other public services. The

delinquent taxes, then, would not need to be paid in any circumstance by the city or whomever is making application.

Mr. Nicholas: Would you be dealing only with those portions of lands that would be utilized directly through three things that you mentioned; if there were balances to the lands, for example. What would happen to them?

Mr. Conigliaro: Yes. We couldn't use them for any other purpose at that point. The land would have to remain vacant, and the city would have to maintain that piece of land that was unusable, other than for these three purposes, and they would be charged to maintain that property.

This concluded the testimony on AB-523.

Mr. Dini stated he had a BDR* for introduction by the committee. It came out of the audit on the Washoe Airport. Currently there are no restriction on local governments on change orders on construction jobs. Mr. Schofield moved for introduction of this BDR, seconded by Mr. Mello. Motion carried.

On AB-283: No action.

On AB-251: No action.

On AB-539: Mr. Schofield moved a DO PASS, seconded by Mr. Mello. Motion carried.

On AB-527: Mr. Nicholas moved an AMEND AND DO PASS. Motion was seconded. Motion carried.

On AB-523: Mr. Jeffrey moved a DO PASS, seconded by Mr. Polish. Motion carried.

Mr. Dini stated that Irene Porter was here to testify. AB-283 had been amended yesterday and is before the committee again today to hear an additional amendment.

Irene Porter, Southern Nevada Home Builders Association: It seems that there has been a problem as a result of the differences in our counties and the way we administer things in the state of Nevada. It deals with land, an acre in size, that has a gradient slope on it and whether you can or cannot build on that parcel of ground. Washoe County allows the use of the acre for residential construction with more than 20% grade. 20% is really not very much, if, in fact, there is not more than 20% figured on the basis of one-third of the lot averaged overall. My understanding is that Storey County is the adjacent county and there, they

* AB 584 (BDR 28-2019)

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don't have the local ordinance on it so they are using a state health administrative reg, which prohibits the use of that acre lot with more than 20% grade anywhere on the lot. You end up with a situation where you can build in one area and in another you cannot. The State Health goes around changing the regulations so one year you can and one year you can't. The idea of the amendment that Mr. Dini has for this would be use the Washoe County language and put it into the subdivision law, Chapter 278, and it would fit in with this bill AB-283, to have that slope or gradient apply to acre lots in all counties uniformly, as it does not in Washoe County. I have talked to a couple of engineers who have no problem with it. I certainly don't see any problem with it and I think as we change in Nevada, we have got to be able to look at the different levels of land and how to use them. That has worked and is working in Washoe and would permit the use of the land exactly the same in other areas of the state. We certainly would support Mr. Dini's amendment.

Mr. Craddock: I'm not quite clear. You said 20% and one-third average overall.

Ms. Porter: The way I understand they are doing it in Storey County is that a lot could be table topped and then have a slope on the edge. If there is more than 20% slope anywhere on that acre, you can't build at all. What Washoe has done is that as long as there is not more than 20% on more than one-third of the lot, you can use the lot.

Mr. Dini: The realtors want a correction on Page 2, Line 16 to change the description of lot to say: "lot means a part or parcel of land". There is also a typographical error on Line 8, Page 3, the word "may" should be "map".

Mr. Craddock moved an AMEND AND DO PASS, seconded by Mr. May. Motion carried. This ended testimony on AB-283.

Mr. Dini adjourned the meeting at 10:00 A.M.

Respectfully submitted,

Lucille Hill
Lucille Hill

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VERNON BENNETT
EXECUTIVE OFFICER

WILL KEATING
ASSISTANT EXECUTIVE OFFICER

STATE OF NEVADA



PUBLIC EMPLOYEES RETIREMENT SYSTEM

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TESTIMONY PROVIDED TO ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE
REGARDING AB 480, APRIL 23, 1981

I am Vernon Bennett, Executive Officer of the Public Employees Retirement System. The Retirement System is opposed to AB 480. This bill would place restrictions on the type of investments that the Retirement System would be able to make. The 1975 Legislature removed all percentage limitations and restrictions regarding our investment program and authorized us to make investments in accordance with the Prudent Man Rule. The Prudent Man Rule basically provides that we will make investments in accordance with the standards that a prudent man would use in making investments for his personal account. The Prudent Man Rule has been further interpreted to establish that you obtain expertise regarding a prospective investment, compare that investment, both as to return and security, with other available investments, that you make the very best investment available in accordance with your objectives, and that you document the reason for your decision. The Retirement System has complied with this as fully as possible. We thoroughly document all investment decisions. We have tried diligently to always make the investment which is most beneficial to the Retirement System.

I have knowledge of investment laws regarding many public retirement systems. I have held discussions with retirement administrators and board members throughout the United States who have indicated their frustration because they had to turn down a very attractive investment which provides a higher return than other investments merely because of legal restrictions. This would be very expensive to both the members of the Retirement System and the taxpayers of Nevada. Our System has increased its return over the last seven years from 4.00% to 10.08%. We estimate that our return, as of June 30, 1981, will be 10.25% to 10.50%. During the same period, we have increased our annual income from \$9 million to \$67 million. We anticipate that our income, as of June 30, 1981, will be approximately \$85 million.

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Exhibit A

Page 2
April 23, 1981

The System invested over \$100 million in mortgage and real estate loans in Nevada last year at returns of 15% or above. Many of these investments provide equity kickers where we receive a percentage of the gross income, which will be increased every three years as rentals are adjusted per cost of living. Our mortgage and real estate program has been able to consistently earn more than 3% per annum than would be available in bonds. Our income increased last year from \$50 million to \$67 million in one year, which was due mainly to our mortgage and real estate program and high interest rates on short-term investments. Therefore, we feel that the System's investment program is doing exceptionally well. We would hope that the Legislature will not approve restrictions on our program.

Regardless of the fact that we object to the principle of AB 480, the new language creates several problems regarding interpretation. I am enclosing a letter dated April 20, 1981, from our investment counsel, Funds Advisory Company. Paragraph 3 speaks specifically to the concern regarding the current wording in the bill. We feel that their point is well taken. If you interpret Section 1 liberally, there is no reason for the legislation. If you interpret Section 1 literally, the Retirement System is probably in violation of these provisions and may be required to sell some of our current securities at reduced prices to bring our portfolio within these limitations. For example, we already own 40.3% of the portfolio in U. S. corporate bonds. There is nothing in this bill that would indicate that current excesses in the restricted percentages could be retained. There are no definitions for such terms as "type of industry" or "kind of investment." Yet, these are very key words in the legislation. Therefore, we would respectfully request that, if the Committee does approve AB 480, we be given the opportunity to work with the Attorney General, Legislative Counsel, and our investment counsel to strictly spell out the intent of this legislation as provided by its authors.

We would be pleased to answer any questions which members of the Committee may have.

FUNDS ADVISORY COMPANY

April 20, 1981

Mr. Vernon Bennett
Executive Officer
Public Employees Retirement System of Nevada
693 West Nye Lane
Carson City, NV 89701



Dear Vernon:

The following is Funds Advisory Company's response to your request that we provide comments regarding proposed changes to Chapter 286 of the State of Nevada Public Employees Retirement Act:

The new section (Section 1.) proposed as an amendment to Chapter 286 of the NRS, has the potential with present wording to create problems for the investment of PERS assets. Wording of the proposals in Section 1. is general, vague, and has little meaning if interpreted broadly. If interpreted literally, it could result in specific restrictions that could be detrimental to the investment of PERS assets and to the beneficiaries of the NRS.

Phrasing such as "one type of industry or business" or "one kind of investment" does not specify bonds, stocks, convertible issues, mortgages, or other classes of assets. Placing percentage limitations on undefined investment groups could be confusing, especially since the diversified nature of numerous corporations is not conducive to convenient industry or business categorization.

The "25 percent rule", for example, could be interpreted literally to mean that the 21.1 percent of the total portfolio that is invested in U. S. government fixed income issues could quickly reach the limit, and the 40.3 percent in U. S. corporate bonds could now violate the proposed amendment.

The changes that are proposed in the paragraphs in Section 2 appear to be wording changes that do not change materially the content or intent of these paragraphs.

If parties within the legislature want to define "more clearly" an area for investment, they need to specify exactly the proposed percentages in the context of terminology that is defined by accepted economic and investment usage. The "Prudent Man Rule" that serves as the investment guideline for most large pools of tax-free money such as the Nevada PERS assets is effective and continues to be applicable in this instance.

Sincerely,

Richard L. Brooks
RICHARD L. BROOKS
Managing Director

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