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**Committee on Government Affairs
Assembly Bill 450 Testimony
George Pyne - Executive Officer**

Mr. Chairman, members of the Committee, George Pyne, Executive Officer of PERS. Staff will recommend to the PERS' Board that it take a position in opposition to AB 450.

Before I testify on the specifics of the bill, I'd like to provide the Committee with some background on PERS' reemployment law and to the origins of AB 555 of the 2001 legislature that resulted in the "critical labor shortage" legislation.

As a general rule, retirees of PERS who return to work with a public employer are subject to one of 2 restrictions. If they return to work in a less than half time position, they may earn up to \$19,053 in a fiscal year and continue to receive their benefit. Retirees who return to work in full-time positions, have their PERS' benefits suspended for the duration of their employment with an option to again enroll in PERS, subject to certain restrictions.

I also wanted to briefly review other exemptions from the PERS' reemployment restrictions currently existing and that have been in existence since 1981 in one form or another. NRS 286.520 provides exemption from PERS' reemployment restrictions for persons who are chosen by election or appointment to fill an elective public office, unless that person is serving in the same office in which he served and for which he received service credit as a

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SUBMITTED BY: GEORGE PYNE

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member. This exemption was placed into the statute so as to remove a barrier to elective public service. It serves to foster the public policy of promoting participation in the democratic process.

The second exemption is also found in NRS 286.520 and is for individuals who work for the legislature or the legislative counsel bureau. We believe this exemption was placed in the statute primarily to allow for recruitment from the retiree population for session workers to work during legislative sessions.

Moving to AB 555--it was the Retirement System's technical legislation, containing various modifications to Chapter 286, which is the Retirement Act. Technical legislation is the term used by the Retirement Board for changes to the Act that are not "advanced funded" for actuarial contribution rate calculation purposes. What this means is the benefit is not costed as part of the actuarial contribution rate, as is performed for any fiscal legislation.

The provisions within AB 555 concerning retiree reemployment were the result of an 18-month long study conducted in accordance with AB 74 of the 1999 legislative session. That bill required PERS to conduct a study of the effect on PERS of the employment of retired public employees by public employers that participate in PERS and report findings and recommendations to the 2001 session. At the same time, AB 74 provided the University System with a 2-year exemption from our reemployment restrictions for positions within the Colleges of Education at UNR and UNLV only. Testimony in support of AB 74 focused on the tight

labor market in the educational professions and the need to bring retired public employees back to fill certain positions. Only after the exemption from PERS' reemployment law was made temporary and the study added to the bill did the Retirement Board support the bill.

The Retirement System conducted our study by first creating a list of interested parties including taxpayer, employee and employer groups who would be invited to participate during the course of the study. The parties were asked to attend three meetings for input to the process. PERS then conducted a nationwide survey of public pension plans on the issue of retiree reemployment. The survey and input received from the employee and employer groups that participated in the meetings were used to develop a variety of retiree reemployment scenarios that might accomplish the objectives of helping our employers as well as protecting the fiscal integrity of the system. These scenarios were provided to the system's actuary. Once the actuary provided feedback, the scenarios were presented to the study group for discussion and review.

Out of this process came the draft language presented to the Retirement Board and ultimately the Legislature. Several findings of the study were key to the creation of the draft language of AB 555:

- ◆ Across the country public employers were beginning to feel labor shortages in several areas. Education, Information Technology, Nursing, Public

Safety as well as other fields are experiencing labor shortages.

- ◆ PERS is a multiple employer plan with basic uniform benefits for all employers and employees. Any exemption from reemployment restrictions should be uniformly applied in keeping with the uniform nature of the plan. The potential exists for any one of the over 150 employers participating in PERS to experience a critical labor shortage. Exemptions to meet this need should be crafted so that every employer has the opportunity to take advantage of the retiree population to fill positions in times of critical need.
- ◆ The survey results indicated a recent movement by several states to liberalize their reemployment laws to address tight labor markets. We also noted the lifting of earnings limitations by the Social Security Administration.

Rather than advance funding, given the dearth (or lack) of experience with this type of exemption, cost containment features were added to the bill. These measures include a requirement to be full age and service eligible (no early retirement unless the retiree has attained the age at which they could have retired without reduction) and a sunset provision. If the exemption is to be continued past the sunset date of July 1, 2005 any cost associated with the exemption would have to be recognized in the contribution rate (based upon an experience study of the benefit).

Currently, the "critical labor shortage" exemption is found at NRS 286.523. Among other things, it states at paragraph 4 (page 2 of your bill

beginning at line 27) *...that public employers, when determining whether a position qualifies for a "critical labor shortage", it shall consider (1) the history of the rate of turnover, (2) the number of openings and qualified candidates, (3) the length of time the position has been vacant, and (4) the success of recruiting persons from other states to fill these positions..*These considerations are the result of significant deliberation by the AB 74 study committee and the Retirement Board. I should also point out at this time that our technical bill (SB 439) does contain one modification to this law to require the duration for "critical labor shortage" positions to be 2 years unless a subsequent certification is received from the designating authority. This is consistent with the rationale for providing an exemption from PERS' reemployment restrictions for certain retirees. They are filling positions in urgent need of occupancy due to a critical labor shortage but the duration of the shortage may be for a limited time. Two years is a reasonable time frame for the employer to re-examine the position and re-designate the position as meeting the "critical labor shortage" criteria if necessary. This change is not anticipated to have any cost impact to the plan and would be incorporated into the actuary's experience study scheduled for 2004.

Overall, the intent of AB 555 has been accomplished. Approximately 65 retirees have returned to work in the public sector and continue to receive their PERS' benefit. The great majority are in the education profession. Interestingly, and I'll come back to this in a moment, approximately 40 of these persons make over \$50,000 annually.

Moving to the specific language changes beginning at line 28 on page 2 of the bill, the first change to the wording of the statute is when it is designating critical labor positions the appointing authority "shall consider whether" various conditions exist versus "shall give consideration to". I'm not sure if there is really any operative change here given the key word remains "consideration".

The second change under 4(b) at line 33 again changes the wording but doesn't, in my estimation, have any significant operative impact.

Beginning at line 36, the change to sub-paragraph (c) states that *...there shall be consideration as to whether the position has been vacant longer than 3 months...* While this may be convenient language for school districts, given the 3 month summer break, I don't believe it is an appropriate consideration for other public employers since the very nature of this designation is a critical one and sometimes critical needs must be filled immediately.

Finally, at line 41, there is a mandate that *..the designating authority may not determine a critical shortage exists if the annual salary is greater than \$50,000...* This would significantly reduce the number of positions eligible for the reemployment exemption. As I mentioned earlier, the majority of approved positions exceed this limit. Also, nowhere in our study did annual income come up as a relevant factor in designating a "critical labor shortage" position. This limitation unfairly discriminates against an employer's ability to designate a

position as meeting a critical need simply because the annual earnings exceed \$50,000.

Mr. Chairman, in summary I would like to say that NRS 286.523 was not created in a void, but rather the result of an exhaustive and deliberative process that is reflected in the AB 74 study report. We urge your opposition to AB 450. That concludes my prepared remarks.