

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eighty-second Session
April 10, 2023**

The Senate Committee on Government Affairs was called to order by Chair Edgar Flores at 3:37 p.m. on Monday, April 10, 2023, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Edgar Flores, Chair
Senator James Ohrenschall, Vice Chair
Senator Skip Daly
Senator Pete Goicoechea
Senator Lisa Krasner

GUEST LEGISLATORS PRESENT:

Senator Dina Neal, Senatorial District No. 4
Senator Melanie Scheible, Senatorial District No. 9
Senator Heidi Seevers Gansert, Senatorial District No. 15

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst
Heidi Chlarson, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

James Dzurenda, Director, Nevada Department of Corrections
Benu Clark, Employee Development Division, Nevada Department of Corrections
Adrian Hunt, Las Vegas Metropolitan Police Department
John Abel, Las Vegas Police Protective Association
Paul Lunkwitz, President, Fraternal Order of Police, Nevada Correctional Officer
Lodge 21

Senate Committee on Government Affairs
April 10, 2023
Page 2

Pamela DelPorto, Executive Director, Nevada Sheriffs' and Chiefs' Association
Gregory Carter, Southern Academy Commander, Nevada Department of Corrections
Paul Klein, Nevada Police Union
Rick McCann, Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition
Will Adler, Storey County
Troyce Krumme, Vice Chair, Las Vegas Metro Police Managers and Supervisors Association
Todd Ingalsbee, Professional Firefighters of Nevada
Marlene Lockard, Service Employees International Union 1107
Andrew Regenbaum, Executive Director, Nevada Association of Public Safety Officers
Ian Carr, General Counsel, Public Employees' Retirement System
Christopher Daly, Nevada State Education Association
Cynthia Reveles
Kristen Gonzalez
Jasmine Gomez
Ryan Whitlock, Vice President, Northern District, Professional Firefighters of Nevada, Truckee Meadows Local 2487
Morgan, Unidentified Testifier
Shelly Booth Cooley, Nevada Justice Association
Kimberly M. Surratt, Nevada Justice Association
Melissa Exline, Nevada Justice Association
Marshal S. Willick
Tina Leiss, Executive Officer, Public Employees' Retirement System
Kent Ervin, Nevada Faculty Alliance

CHAIR FLORES:

We will open the hearing on Senate Bill (S.B.) 323.

SENATE BILL 323: Revises provisions relating to peace officers. (BDR 23-925)

SENATOR HEIDI SEEVERS GANSERT (Senatorial District No. 15):

We have a critical staffing shortage in our prison system. James Dzurenda, Director, Nevada Department of Corrections, testified in the Assembly Committee on Judiciary that critically low prison staffing is the No. 1 issue facing the system. At a time when the prison population is growing, staffing is

declining. Ely State Prison has a 48 percent shortage of correctional officers, and Lovelock Correctional Center has a 46 percent shortage.

One strategy the Department of Corrections is considering is to seek workers from other states, such as California, who may be retired or have been laid off. Senate Bill 323 provides a mechanism to reduce barriers to recruit and attract qualified prison staff from other states. Senate Bill 323 requires the Peace Officers' Standards and Training Commission (POST) to adopt regulations to establish standards for the reciprocity of a person from another state or the federal government with a certification or law enforcement training equivalent to a Nevada category III peace officer.

We do not have reciprocity for category III peace officers, and we are pointing specifically to POST so it can create what those standards should be because they vary state to state.

Under *Nevada Revised Statutes* (NRS) 289.480, category III peace officers are those whose authority is limited to correctional services, including superintendents and correctional officers of the Department of Corrections.

JAMES DZURENDA (Director, Nevada Department of Corrections):

It is not a secret how the Nevada Department of Corrections (NDOC) is desperate and hurting for staff. It does not have enough staff to cover services. Not having regular services covered at a correctional institution for a long time attracts a lot of attention and a lot of tension. Cancelling visits and programs that help individuals or keep them from being locked in their cells could cause many problems. That happens because there is not enough staff at the facilities. Almost every day, the facilities at Ely and Lovelock are below minimum staffing levels. That is dangerous and a horrible situation to be in.

In order to get staff, the NDOC encourages staff to come from other states. However, when staff retire from other states or have been laid off, they send out "shotgun resumes." They send applications to multiple agencies such as highway patrol, county police departments and correction agencies in the counties. When they start getting offers or acceptances, they usually go to the area they want or to whoever is hiring first. The NDOC process is too slow. Its timelines for hiring go way beyond everybody else because applicants have to wait to get into a POST academy. The NDOC waits to get any certification issues resolved before hiring someone. By the time NDOC tells individuals they

will be hired, they are on to something else because other agencies have already hired them.

One obstacle, not the only one, is not being able to quickly process individuals from other states who are either retiring or being laid off from agencies. A simple language change regarding reciprocity for category III correction officers will allow faster processing. It does not mean everybody who is a category III officer will be accepted. It will allow NDOC to conduct background, employment history and reference checks on its own, do them faster and get people hired faster. When good candidates are hired faster, they tend to stay because they are already becoming invested in creating relationships with staff and with the agency.

I hope S.B. 323 goes through because it will take care of the obstacle of getting competent staff—especially if the NDOC starts looking at recruiting options and budgets that will allow it to do advertising and marketing. This is going to be a big year if this bill is passed. The NDOC will start seeing relief which will better protect residents in the community, staff and offenders because staffing levels will be above minimum.

BENU CLARK (Employee Development Division, Nevada Department of Corrections):

The NDOC will be able to recruit people from other locales, get them on board and utilize their experience to help train staff as well as shore up the ranks. It is a great bill that will assist the NDOC in the future.

SENATOR GOICOECHEA:

I was not aware that category III is limited to corrections officers. Who will be vetting people coming from another state? Will it be NDOC, POST or a combination of the two? Clearly, NDOC wants to hire the best candidates it can.

MR. DZURENDA:

The NDOC will do the vetting, not POST. It will meet with the Fraternal Order of Police, the union for corrections officers, to develop standards.

The NDOC will review the National Crime Information Center database to check the backgrounds of individuals either through its human resources department or a recruitment division it will set up.

Senate Committee on Government Affairs
April 10, 2023
Page 5

ADRIAN HUNT (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department supports S.B. 323. This bill would assist with recruiting corrections officers to the State.

JOHN ABEL (Las Vegas Police Protective Association):

The Las Vegas Police Protective Association supports this bill. Any bill that helps get law enforcement professionals from other states to come and work here is a positive.

PAUL LUNKWITZ (President, Fraternal Order of Police, Nevada Correctional Officer Lodge 21):

The Fraternal Order of Police, Nevada Correctional Officer Lodge 21 supports this bill. Vacancy rates translate into mandatory overtime and officer exhaustion. This would be a good thing to attempt to curb the staffing problem.

PAMELA DELPORTO (Executive Director, Nevada Sheriffs' and Chiefs' Association):

The Nevada Sheriffs' and Chiefs' Association supports S.B. 323 and encourages its passage.

GREGORY CARTER (Southern Academy Commander, Nevada Department of Corrections):

I support S.B. 323 because it will help with recruitment and bring quality people to curb mandatory overtime. These people will also have good corrections backgrounds.

SENATOR SEEVERS GANSERT:

This bill will help expedite the process by which new correctional officers will be brought to the State, which is at a critically low level.

CHAIR FLORES:

We will close the hearing on S.B. 323 and open the hearing on S.B. 388.

SENATE BILL 388: Revises provisions relating to certain public employees.
(BDR 23-131)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

This bill revises the Public Employees' Retirement System of Nevada (PERS) regarding collective bargaining. The Legislature approved S.B. No. 135 of the 80th Session which authorized collective bargaining between the State and

certain employees, generally those in State classified service. It provides for collective and supplemental bargaining between the Executive Branch of the State government and an exclusive representative for each labor group on a wide range of subjects including, but not limited to, salary or wages, leave and employee safety.

Senate Bill 388 makes the portion of the employee contribution rate paid by the employer to PERS a mandatory subject of collective bargaining for certain groups of classified employees of the Executive Branch. When employees get to the bargaining table, the purpose of the bill is to ensure that the employee contribution the employer is going to pay, which in this case would be a State agency, would be one of the mandatory provisions on the bargaining table.

Section 1 allows for a provision of a collective bargaining agreement entered into between certain State employees of the Executive Branch to establish a negotiated rate for employee contributions rather than a matching rate, and requires the employer to pay the remainder of contributions required on behalf of the employee.

Section 1 also provides that contributions paid by an employer on behalf of an employee as required by a collective bargaining agreement are not required to be returned to the employee.

Section 2 prohibits the salary of an employee from being reduced to counterbalance the increased contribution made by the employer on behalf of the employee.

Section 3 makes a portion of the employee contribution rate paid by the employer to the System a mandatory subject of collective bargaining for certain groups of employees in the classified service of State government.

Section 4 prohibits a provision of a collective bargaining agreement relating to payment to PERS from becoming effective unless the provision also requires the salary of each employee who has elected to have his or her employer pay all contributions to PERS to be increased by a rate which results in an equivalent increase in compensation to that which results from such a payment to PERS.

The intent of the bill is neither to require that the State pay the employee portion of the contribution nor to require that when there are rate changes, the

State agency automatically assumes the cost of that increase. The purpose is to ensure they return to the bargaining table every year or every time there is an increase. That empowers the employees through their collective bargaining unit to choose whether they want to start taking on that portion of their employee contribution or bargaining in exchange for something else, such as holidays, overtime pay or other benefits they receive as part of their collective bargaining package.

I recently learned the bill language may not perfectly reflect my intent. I am happy to work with PERS, other stakeholders and members to address those concerns. However, today I want to make sure I clarify the intent of the bill.

MR. LUNKWITZ:

This bill is the second most common thing that members of the Fraternal Order of Police (FOP) contact me about. It is the ability to have our retirement parallel to or at least in the ballpark with other agencies. Local government agencies pay the entire contribution rate. If we choose to have the employer pay our contribution rate, we take a reduced salary. When you compare our pay scales to other local government agencies, they are nowhere near the same. That scale has to be on the reduced amount to see what we actually receive compared to other agencies.

This bill would provide the opportunity for collective bargaining units, such as the FOP which bargains on behalf of correctional officers in NDOC, to level that out and retain employees, which is NDOC's biggest staffing problem.

This bill would make it easier for NDOC to compete with other agencies for employees who are interested in a law enforcement job. The FOP supports this bill.

PAUL KLEIN (Nevada Police Union):

On behalf of the Nevada Police Union, your State Police officers, I echo what the gentleman just said. The PERS is the primary issue while we are suffering a high rate of turnover and high vacancy rates. The Union supports this bill.

RICK MCCANN (Nevada Association of Public Safety Officers; Nevada Law Enforcement Coalition):

State employees have the right to collectively bargain. They bargain their wages, benefits and working conditions. They have learned from employees in

the private sector who have been collectively bargaining for decades that when they engage in discussions about PERS contribution rates, they may be paid as a result of bargaining their respective contributions between the parties.

Senate Bill 388 provides that right to State employees as a mandatory subject of bargaining which the parties may use during their contract negotiations. We suggest that you support S.B. 388.

MR. ABEL:

The Las Vegas Police Protective Association (LVPPA) is the collective bargaining unit that bargains with the Las Vegas Metropolitan Police Department on behalf of all rank-and-file police officers. This works. We do it. We are doing it now. That is why the LVPPA is able to maintain the level of pay it does. We ask that you pass this bill.

WILL ADLER (Storey County):

Storey County supports S.B. 388. Storey County is on the verge of collapse because U.S. Highway 80 is constantly overrun with traffic and has nothing but trouble when it comes to traffic safety. The main reason is the lack of law enforcement presence. The Nevada State Police Highway Patrol has to cover this entire stretch of road and cannot do so after dark because it does not have the staff.

Because of that, Storey County supports any bill that could increase its ability to collectively bargain or assist it in providing PERS support for its employees. A statutory limit on State law enforcement levels should not put it at a disadvantage in the competitive ability with local law enforcement.

TROYCE KRUMME (Vice Chair, Las Vegas Metro Police Managers and Supervisors Association):

In 2019, State workers got the right to collectively bargain. The inclusion of contribution rates was probably a bit of an oversight since wages are subject to mandatory bargaining. There is no reason contribution rates should not be rolled into that same subject for mandatory bargaining. For that reason, the Las Vegas Metro Police Managers and Supervisors support S.B. 388.

TODD INGALSBEE (Professional Firefighters of Nevada):

Professional Fire Fighters of Nevada support our brothers' and sisters' ability to collectively bargain and have the same collective bargaining rate rights we do.

Senate Committee on Government Affairs
April 10, 2023
Page 9

MARLENE LOCKARD (Service Employees International Union 1107):
I say ditto.

ANDREW REGENBAUM (Executive Director, Nevada Association of Public Safety Officers):

The Nevada Association of Public Safety Officers (NAPSO) supports S.B. 388. I say ditto to all of the speakers before me. The NAPSO agrees that PERS contributions should be a mandatory subject of bargaining for State workers as they are for private sector employees.

IAN CARR (General Counsel, Public Employees' Retirement System of Nevada):
On behalf of PERS, I advise the Committee that the Public Employees' Retirement Board has yet to opine on S.B. 388. However, PERS recommends that the Retirement Board express opposition to S.B. 388 as drafted because legal analysis of the bill's language has revealed Internal Revenue Code issues.

Its outside tax counsel, the Groom Law Group of Washington, D.C., has opined two tax issues with this proposed legislation. However, PERS will be happy to work with Senator Scheible to develop language to address these issues and remedy these potential Internal Revenue Code issues.

SENATOR SCHEIBLE:

It is not a good thing when you bring a bill on a particular subject that comes up in opposition because they do not want to violate the Internal Revenue Code; you might be forcing them to do that, which is not my intent. Mr. Carr advised me of this in advance, and I am confident we will resolve the issues with the mismatch between my intent and the language as drafted.

CHAIR FLORES:

We will close the hearing on S.B. 388.

SENATOR DALY:

We will open the hearing on S.B. 434.

SENATE BILL 434: Revises provisions related to public retirement systems.
(BDR 23-16)

SENATOR DINA NEAL (Senatorial District No. 4):

Senate Bill 434 does a few things. I am going to deal with section 1 first. This section of the bill would create a social safety net for substitute teachers. The conversation about how substitute teachers are treated in PERS has been going on for many years. This bill would allow short-term substitute teachers to get 700 service credit hours the same way a cafeteria worker does. Substitute teachers could work a nine-month assignment or a six-week assignment and not accrue any PERS benefit. The idea is to take care of them now, so we do not take care of them later because of the high poverty rate across the State. This would allow them to have something saved in retirement other than social security.

Section 2, subsection 7 would allow someone who is going to retire to designate an alternate beneficiary and choose to set aside six months of one's retirement to help pay expenses after one's death. This came up because during the COVID-19 pandemic, many people did not understand how retirement works. Some people lost family members and, therefore, the retirement or income that would come into the household.

Section 3 of the bill deals with the base determination of benefits when a person retires. During the Interim, I found out about an inherently unfair rule called the "time rule." When someone gets divorced, one does not just get the accrued community interest. For example, someone retiring after working 23 years was married for only 5 years during that time and is now getting divorced. The court is going to do a calculation to determine the spouse's share of the pension, using the entire time the person was employed and doing a fractional relationship from the five years that person was married which will be paid until the spouse's death, not the retiree's death.

This bill institutes the "frozen time rule." If someone gets divorced after ten years of marriage and the divorce decree is signed in Year ten, that determines the community interest.

I have received calls from people who got divorced many years ago and are now at the point of retirement. They have found out they signed a qualified domestic relations order (QDRO) and did not know at the time what it was. It ties their hands for life, and there is regret over that. This bill provides that if an attorney is doing the divorce process, he or she must inform the client what a QDRO is and its effect because it will take from one's retirement past the years of one's

marriage. I want to institute what the military does and freeze the benefit at the time of divorce. Nevada Supreme Court case *Gemma v. Gemma*, 105 Nev. 458, 778 P2.d 429 (1989) is an example of what is happening.

I tried to do many things with the bill which the Legal Division staff said could not be done because it was affecting a final divorce order. The conceptual amendment ([Exhibit C](#)) states that upon a motion to the court, one can review a final decree and determine its accuracy.

The amendment also defines homemaker. The *Gemma* case was based on the fact of traditional families in which the wife stayed home and took care of the kids. It was established on a fundamental belief that someone was always going to be the primary wage earner. After speaking with several attorneys in the Interim, I decided to keep that in because we still have those persons. What is the value of that relationship and what is it worth versus the relationship where both were making money, getting divorced and ending the relationship?

SENATOR GOICOECHEA:

Your amendment, [Exhibit C](#), says "authorize parties, upon mutual agreement." What happens if one of them does not agree to go to court and have the finding?

SENATOR NEAL:

That is the case. Even under the *Gemma* case, the Nevada Supreme Court ruled that one needs the consent of the other party to reopen the divorce decree. I was told that separation of powers prevented me from allowing a single party, upon a single motion, to reopen the case. Both parties must agree to reopen the case which may never happen.

It is unfair because the QDRO decree ties one's hands, and nothing can be done about it. The only thing I could do to help someone in the future with the "frozen time rule" is to say when people divorce, the spouse's pension is frozen as of the date of divorce. If someone is married for 25 years, one will get the community property interest developed from the pension. But if someone is only married for five years, the spouse should only get the five years of what was earned in the pension. Giving more than that is unfair.

SENATOR GOICOECHEA:

You are right. But I do not know how you resolve that if you cannot go back to court.

SENATOR KRASNER:

I do not understand this that well, but I am wondering if the reason that provision is in the law is because of the scenario you mentioned where previously there was one breadwinner in the family. Typically, the husband worked, and the wife stayed at home and raised the children. She had accrued no money, she had no pension, she had no individual savings. If they get a divorce, she gets nothing. Is this why these laws were put on the books?

SENATOR NEAL:

That was part of it, but I do not like the *Gemma* case. The Nevada Supreme Court looked at that to determine what was fair because there is a community interest in someone's pension.

I do not know how this time rule came about, in which the ex-spouse's final year of retirement is looked at, the pension is divided, and a fraction of it is paid. When I read the *Gemma* case, I wondered what happened in 1989 that ruined people's lives. The rule was wrong. That is why I have the exemption for a homemaker.

In the scenario you describe, that person will fall under the time rule. Everyone else will fall under the frozen time rule. If a couple has only been married for ten years, the spouse is only entitled to ten years of the retirement pension. Two spouses are working. Someone could remarry another person making \$1 million and still be entitled to the other spouse's retirement benefit at Year 23 even though they divorced 15 years ago. That is what the rule says now. That is incorrect because the only way it can be changed is for both spouses to consent to go back to court, and they are never going to do that.

SENATOR KRASNER:

I am trying to understand this, too. Going back to the scenario where only one spouse is working and the other spouse is the homemaker: If one spouse stayed home and the working spouse wants a divorce, the homemaker has nothing to fall back on. Is that why this rule was put into law?

SENATOR NEAL:

It could be. When I researched this, the fundamental homemaker standard was in play during that period. However, I do not remove that with this bill. The conceptual amendment keeps the homemaker. It keeps the exception for the person who falls into that situation. This bill and the amendment would not change that scenario for homemakers if they can establish they were dependent on the primary breadwinner.

SENATOR KRASNER:

Is there a bottom line? If the parties are married for 18 years, then they each get to take from the entire pension.

SENATOR NEAL:

Under the frozen time rule, if spouses are married for 18 years and there is 18 years of pension, they each will get 18 years and their community interest will be divided from the 18 years of marriage and not be reduced. The longer the couple is married, they each will get the benefit of the marriage and the pension earned during the marriage. The issue pops up in short-term marriages of five or six years.

SENATOR DALY:

Section 1 of the bill mentions the short-term substitute teacher. Is there a definition of short-term?

SENATOR NEAL:

The reason short-term substitute is in the bill versus long-term substitute is because someone could work 700 hours within a school year even with daily assignments. The idea is that one is still working for the school district. It would allow someone to accrue retirement on those 700 hours worked in the school year. It will be equivalent to what cafeteria workers accrue and create a social safety net for the substitutes. Just because they are filling in for the day does not mean they should not be allowed to acquire benefits after working a school year. The substitutes should accrue some kind of retirement, so we take care of them now instead of some other way later on.

SENATOR DALY:

I agree they should be covered, but section 1 says "the following persons are not eligible." You are saying substitutes are eligible unless they are short-term substitutes. Are you saying that threshold changes, or are you trying to capture

700 hours? Without direction, will PERS be able to determine when someone is short-term versus just a substitute because all substitutes were exempt and not covered before? Now it is just short-term substitutes. Where is the threshold?

SENATOR NEAL:

If we could delete short-term and just use substitutes, they would be covered because, technically, they were not considered to be in PERS. Whether short-term or long-term or whether one took a nine-month vacancy, one would be excluded. That might need to be cleaned up by putting in short-term versus just having the word substitute and removing the exemption.

SENATOR DALY:

Yes, because right now they are in the exemption section where it says the following persons are not eligible to become members of the system.

Section 1, subsection 5 used to read "substitutes." With the change, it says "short-term substitute." There should be a threshold for when they are no longer substitutes and become short-term. If your goal is to cover everybody, then it has to be worded differently.

My understanding of QDROs is that once installed by the court, one is required to follow the QDRO regardless. That becomes the rule.

I want to learn how PERS calculates that and if it does it differently.

CHRISTOPHER DALY (Nevada State Education Association):

The Nevada State Education Association supports section 1 of S.B. 434 and the issue of short-term versus long-term substitutes. A bill in the Assembly requires contemplation of health insurance or health coverage for long-term substitutes.

There is a massive education shortage in Nevada—probably close to 2,000 teacher vacancies in districts across the State. There are many long-term substitutes. While this has been an issue for a long time, it has ballooned into a major issue. Many districts are relying on long-term substitutes. Long-term substitutes are now teaching year after year. At a certain point, these people should be PERS-eligible.

SENATOR DALY:

Is there a definition of short-term and long-term substitutes?

MR. DALY:

There is a definition contemplated in the Assembly Bill. However, there is no working definition.

MR. ABEL:

The LVPPA supports S.B. 434 regarding the QDRO issue. It is a convoluted system. A member of LVPPA retired at 15 years with a disability. Because of the QDRO, he lost 95 percent of his retirement to his ex-wife who he was married to for ten years. It was a reduced benefit because he did not work the full 25 years, but it was a disability retirement. Now he is struggling to figure out how to go about his life with the disability, working and paying his ex-wife through this QDRO issue.

MR. INGALSBEE:

The Professional Fire Fighters of Nevada (PFFN) supports section 3 of this bill. This is a long-awaited, necessary portion and correction. No one really knows the calculation.

Senator Krasner, one gets year for year that one was married; it just time-stamps. It does not matter if one was only married for ten years, one gets ten years of that benefit at 50 percent of the calculation at that time. If one was married for 23 years and then gets divorced, one still gets the 23 years. A homemaker would still continue to get the remaining difference as well as the 50-50 split.

For example, I was hired ten years ago as a firefighter and was only married for five years. I worked the next 20 years, moved up the ranks and got a higher pension. My ex-wife would get a benefit based on my ending salary after I could have already paid alimony for that time as well. I hope that clarifies some of your questions.

Only two attorneys in Las Vegas can do QDROs. One attorney will do the decree, and another attorney will do the QDRO in the proper form that goes to PERS, so someone would be paying two attorneys. The calculation is not in the decree or in the QDRO until one retires because of how it is calculated. The PFFN asks the Committee to support this bill. I would love to work on it.

Senate Committee on Government Affairs
April 10, 2023
Page 16

MR. MCCANN:

The way we look at it, what is fair is fair, particularly with the dissolution of marriage. The rule regarding the calculation of PERS benefits is what we are focused on. The rest of the bill is good, too. We support S.B. 434.

MR. KRUMME:

The Las Vegas Metro Police Managers and Supervisors Association supports this bill.

The unfortunate part is sometimes marriages have to end. We support anything that would make the dissolution and those separations fair and equitable for all parties involved.

CYNTHIA REVELES:

I work for Las Vegas Fire and Rescue, and I support this bill.

KRISTEN GONZALEZ:

I am a State employee, and I support this bill.

JASMINE GOMEZ:

I work for Las Vegas Fire and Rescue. I support S.B. 434 because it is beneficial and critical for our members.

RYAN WHITLOCK (Vice President, Northern District, Professional Firefighters of Nevada, Truckee Meadows Local 2487):

The PFFN supports this bill and echoes the support brought forward today.

MORGAN (Unidentified Testifier):

I work for Las Vegas Fire and Rescue, and I support this bill.

SHELLY BOOTH COOLEY (Nevada Justice Association):

I have been a family law attorney in Clark County for 19 years. I am a Nevada-certified Family Law Specialist; a Fellow of the American Academy of Matrimonial Lawyers; a dual Adoption and Assisted Reproduction Fellow of the Academy of Adoption and Assisted Reproduction Attorneys; and a Fellow of the International Academy of Family Lawyers. I was chair of the State Bar of Nevada, Family Law Section, Executive Council from 2017 to 2019, and I was elected and served on the Council for four terms or nine years.

Senate Committee on Government Affairs
April 10, 2023
Page 17

An inquiry was posted on the Nevada Bar Family Law Section ListServ, and nothing but negative comments and feedback were received by my family law colleagues. While there is not an official State Bar Section position on this bill, because it was not sent for review, the people I spoke to about this do not support this bill. I request that S.B. 434, section 3 be opposed.

There are equal protection violations in this bill. Section 3 creates two different tiers of pension property division—homemaker spouse versus a nonhomemaker spouse. Fortunately, the conceptual amendment has a definition of homemaker, but it still does not address the equal protection issue. With the nonhomemaker spouse, the frozen benefit rule is applied, but the time rule is applied if the individual is a homemaker. These are equal protection issues.

There is no rational basis for section 3. It would be rendered unconstitutional when challenged. *Nevada Revised Statutes* 125.155 already addresses this issue and has decided how to divide PERS and the Judicial Retirement Plan with the time rule.

Senate Bill 434 creates a fictional scenario in which the public or judicial employee retires on the day the pension division order is filed. The bill will divide the hypothetical retired pay attributed to the rank and years of service of the public employee at the time of the order dividing the retired pay. No exceptions allow for the parties' agreement to vary from S.B. 434. Everyone must do it one way regardless of what the spouses decide they want the settlement to say.

I have submitted a letter ([Exhibit D](#)) of opposition to S.B. 434. Please oppose this bill.

KIMBERLY M. SURRATT (Nevada Justice Association):

Some extreme, fundamentally wrong statements have been made about how community property works. It would take an entire law lesson to explain it to you, but there were misstatements.

A qualified domestic relations order is not entered into by the parties. It is not an agreement they put in front of the court per se. Section 3 of this bill should not be passed.

A divorce is either a court order, or the parties have reached an agreement. In either circumstance, retirement may be divided, or it may not be divided. There

may be an imbalance in assets where one party took more of a different form of retirement, a different piece of real property or something else to offset that retirement. It is not always done 50-50, but the court would enter an order if the parties stipulated and agreed to what they wanted in their divorce which is the decree of divorce.

The decree of divorce cannot divide your retirement, whether you agreed to it mutually as the parties or the court ordered it upon you to divide the retirement. Certain retirement accounts require an additional court order. That is a QDRO as mandated and dictated at the federal level by the Employee Retirement Income Security Act of 1974 (ERISA), other rules and requirements. The PERS will not divide the retirement without a QDRO. The court order now orders the retirement entity to divide it, either per the stipulated divorce order the parties entered or per the court order done through an entire trial and the court entered a decree of divorce deciding what was right for the parties.

Another court order is required to order the entity that holds the retirement to divide it. Certain types of retirement accounts do not need that order, but anything with a pension plan does require that. That order is given to the pension entity that will divide it according to the court's order. The parties are stuck with what was either mutually agreed to between the parties for the division or what the court told them they had to do based on the facts and circumstances in the case.

There was a statement about a friend on disability. Disability is dealt with separately. That person did not tell us what was in the rest of the marital settlement agreement and did not tell us what the rest of the court decree was—whether there was alimony, what offset it, why the decision was made for a certain balance of that retirement.

SENATOR KRASNER:

The scenario I brought up with Senator Neal, which she was not sure of, was a traditional family with one person the breadwinner, the other person the homemaker. After 18 years, because Nevada is a no-fault State, the breadwinner says I want a divorce. The other party is left with nothing. Was this put into law to protect that person after 18 years of marriage?

Ms. SURRETT:

There is a misconception about what is in the law. The law treats everybody the same on how retirement is valued. It is divided on an individual basis, divorce by divorce. A party may get more of one retirement, less of another, such as an asset in exchange for the retirement or alimony for being the homemaker. There are ways to take care of homemakers within the decree of divorce. The issue is what value do you get from the pension.

If it is a 30-year pension and one was married for 10 of that 30 years, the issue is if the parties were married for the first 10 years of the marriage and one party continues to work for 20 more years for the same PERS system and gained value in PERS. The parties still only get the ten years they were married. In PERS, the last years of one's work time frame dictate the dollar value, how much one will receive and what the payments will be. It waits to determine the actual end amount. It will still only be ten years' worth. One does not get more than the percentage of time one was married and maybe only 50 percent, depending on the divorce decree. Homemakers and any other spouses are treated the same. There is no equal protection problem in the statutes. Pensions are not treated differently. They are all calculated the same way.

This bill makes two exceptions to equal protection problems—pension assets being treated differently from all other assets in a divorce and a category of persons being treated differently. The calculation part of this is too complicated to do in the time we have, but it is incredibly difficult.

The only people telling you this is unfair are the people receiving PERS; their spouses are not testifying. They did not come here and tell you it is fair. The employees always think they should get more of their retirement.

MELISSA EXLINE (Nevada Justice Association):

Retirement is often the largest asset in a divorce. What I like to point out when people are talking about this asset is it does not belong to one party. While the work that goes into earning the retirement may be done by one party, Nevada is a community property state that treats that retirement asset—often one of the most significant assets in a divorce case—as the community's asset. It does not belong to the participant in the plan per se, it belongs to both of them. While one person might be working at home or in a different job, the reality is that asset, that time into PERS, its credits and the years, is both of theirs.

One of the things that I want to straighten out with the Committee is that each year builds upon the prior years. The issue creating confusion is ten years should be ten years, and it should stop or be frozen at the time the participant in the plan is divorcing. This is creating a weird scenario because the later years build on the earlier years.

There is a building block to the PERS structure. To make it fair, the time rule and the wait and see approach was put in place to treat all pensions the same way for everybody. It is treating both spouses the same way as well. Important to know is that when you are creating these two tiers and freezing it in time, you are pretending like the retirement is happening at the date of the divorce when we know it is not.

It is important for the Committee to understand that if the participant in the plan works after the divorce, the courts can go back and take that into consideration. The courts use their discretion to apply the frozen benefit rule when it makes sense.

I have submitted a letter ([Exhibit E](#)) opposing S.B. 434.

SENATOR GOICOECHEA:

I have never had a divorce, so I do not really know I am talking about, but if someone has been married for ten years and then gets divorced, that is when the assets will be divided. Are they going to wait 20 years to find out what the PERS participant has at retirement? That does not work.

Ms. EXLINE:

One cannot collect that retirement. Let us say one has ten years of marriage and is in one's forties; one has to wait until eligible to retire. Both spouses have to wait until they know when the retirement is going to happen. At that point, they can then value the asset and decide. If the marriage was 10 years, it could be split 50-50, and then there is the remaining portion. The numerator of the formula only reflects an equal portion of the period of time they were married. It does not give them more time than they are entitled to or even reach back and get a period of time from when they were not even married. They fairly determine only the portion of time they were married. The calculation cannot be done and the QDRO put in place until the retirement takes place.

SENATOR DALY:

This is like a plan design issue. What is the plan design? I understand it is complicated. I do not know how PERS is done or why PERS could not make a plan design change to allow for this to happen. If the State is saying this is part of the deal and telling PERS to add this to its plan design, there is nothing stopping the State from doing that.

MS. EXLINE:

Precisely, the issue would be a PERS plan change within its statutes. This is a change under NRS 125.155. This is a specific, fundamental change under the divorce structure, and it is taking what the State has as a community property, an equal division State, and is treating PERS—not other pensions, not other ERISA plans—differently than all other community property assets in the State. It is a strange, fundamental shift in the State's community property law.

SENATOR DALY:

Okay, I understand that better, which is why I wanted to talk to PERS. It is a plan design, and PERS could absolutely do this as a plan design but not in this section because it is only picking out one potential asset in putting the restriction on the community property or whatever you were talking about.

MS. EXLINE:

It is actually more complicated. It might be in both areas because change made in PERS would have to line up and match up properly with community property laws in this area. There could be a finger in both pies if you will. Without knowing the specifics of where a change could be made within the PERS statutes, I cannot comment on that with specificity, but there are many restrictions within every plan. The Judicial Retirement Plan and PERS are statute-based retirement plans.

SENATOR DALY:

I am not a lawyer, but I understand how this works. The court would not be able to order more compensation under PERS than the plan design allows because it would not be eligible for it. The court cannot reach into PERS and say it has to give more of that because it thinks so. The plan design would dictate.

MS. EXLINE:

If PERS gave more of a community property asset by plan design, then the community property would have to be unequally divided in another place to

make up for that because you are looking at the entire community property as a pie among multiple assets: house, retirement, money. Hopefully, there are things to divide, but all cases would not be that fortunate. If PERS made a change and family law did not change as well, then you would have to address it.

MARSHAL S. WILLICK:

I have been a family law attorney in Nevada for over 40 years. I am past chair of the Family Law Section and past president of the Nevada Chapter of the American Academy of Matrimonial Lawyers. I am a certified Family Law Specialist and a Fellow of both the American and International Academies of Matrimonial Lawyers. I am appearing on my own behalf.

I have written many books and articles on pension divisions and divorce. I teach the subject regularly, as recently as a few weeks ago. I am a national expert on pension and retirement law, and I own a firm that drafts pension division orders called "QDRO Masters."

The experience under the military frozen benefit rules should be a caution to this Body and the reason section 3 is a terrible idea. The federal payment limitation was based on the lie that spouses married for just a year were getting 50 percent of the pensions, which is not how the time rule works. It created a federal payment limitation for that one asset. The proponents of the bill before this Committee are making the same false assertion.

The time rule is self-adjusting; the shorter the marriage, the smaller the benefit because the numerator is locked at the amount of the marriage. The denominator continues to grow. It is called a smaller slice of a larger pie situation.

But no matter what is done to the division of a singular asset, the military plan or PERS, it does not and cannot alter the court's duty to divide property equally under NRS 125.150. It just made doing so a whole lot harder because it required making additional compensatory awards to the spouse to make up for the federal payment limitation. It greatly increased lawyer fees. It led to a large variation between outcomes, depending on how educated the lawyers were which led to a large increase in postdivorce litigation. That is because if left uncorrected, it violates equal protection by giving one spouse a larger interest in

the pension of the other than the other has, which is prohibited in this equal division State.

It was also hardest on poor people who are least likely to be able to hire lawyers who know how to create the compensatory orders. As a 20-year member of the Board of Directors for the Legal Aid Center of Southern Nevada, I see that as both an equal protection and an access to justice problem. In short, a frozen benefit rule does no actual good for anyone. It simply increases cost to everyone, creates injustice and unequal justice, and it creates equal protection and access to justice issues. It is important to realize that pensions are property. They are not alimony. In Nevada, the law requires the equal division.

I have submitted my letter ([Exhibit F](#)) of opposition to S.B. 434.

TINA LEISS (Executive Officer, Public Employees' Retirement System):

The Retirement Board has not had a chance to take a position on this bill, but staff will be recommending neutral.

I have a few comments on section 1 of the bill dealing with substitute teachers. I want to clarify that the Public Employees' Retirement System, has a threshold for membership of half time or more. No one who is less than half time is enrolled in the plan. Half time for school districts is defined as 720 hours. Anyone who works 720 hours or more for a school district is enrolled except for substitute teachers because substitute teachers are a specific exclusion from membership in statute. To include substitutes in the plan, they would have to work at least 720 hours to meet that half time or more threshold.

Sometimes, there is confusion about long-term substitutes, short-term substitutes or just substitute teachers because the statute only says substitute teachers. It does not distinguish between the two, and PERS was never able to find a definition of long-term substitute that it could look at. It would welcome any clarification in this area.

Regarding the alternate beneficiary in section 2, PERS might have issues with implementing that upon passage and approval as stated in the conceptual amendment, [Exhibit C](#). As stated in the bill, an effective date of July 1, 2023, with the programming needed might be difficult as well.

Regarding section 3, I can answer any questions you might have, but it does not modify PERS statutes, it modifies NRS 125. The PERS statute provides that if the agency receives a QDRO, it is reviewed, and if it complies with the statute, then the benefit owed to the retiree will be divided.

SENATOR GOICOECHEA:

Does someone have the entire year to accumulate 720 hours?

MS. LEISS:

That is correct.

CHAIR FLORES:

Before we move on, just for the point of clarification because we keep talking about whether it is in the right chapter of statute, do you have any perspective regarding that?

MS. LEISS:

What section 3 attempts to do is properly in NRS 125 because it directs how a court may divide assets in a divorce. That is not a PERS issue. The PERS issue is whether it gets an order that clearly provides how it is to divide the benefit it owes. Any change to the PERS statute would create cost because it is dividing a benefit it owes.

If the structure of how PERS divides a benefit is changed, then the change is probably dividing a benefit it does not owe. If it does not owe the benefit, then any change obviously creates costs because PERS is funded based on its benefit structure.

The benefit structure in place is the payment of a monthly benefit for the lifetime of the retiree which begins on the retirement date. The PERS does not pay a benefit prior to member retirement. It only pays a benefit to the retiree, as long as he or she is alive. If a member dies prior to retirement, it is likely there is no benefit to divide because the survivor beneficiary kicks in which is the surviving spouse or minor children.

That is why it is difficult to talk about changing PERS structure to deal with this issue because it has a specific type of benefit for its purposes.

SENATOR DALY:

If a couple gets divorced and the participant retires, PERS has to do a calculation. What is the plan design? How does PERS calculate that?

MS. LEISS:

The System will divide the benefits in any manner in which the court has ordered as long as it does not violate the law. There are a number of ways it can be divided. The court may not have done, for whatever reason, either of two things, the frozen rule or the time benefit rule. How the court divides it is how it is paid. There is a requirement in statute that the order has to be clear, and PERS must be able to determine how to divide it. If it is not able to determine how to divide it, the order will be returned to the parties. They will be advised why it cannot be divided based on the court order, and they will need a new order if they expect PERS to divide the benefit.

It could be divided in different ways. I have seen them going both ways that we are discussing today. For instance, a standard way would be if the participant spouse has a career of 20 years, and the parties were married for 10 of that; a standard division might be 50 percent of the time during marriage because the marriage was 50 percent of the career. Fifty percent of 50 percent would be 25 percent of the benefit. From there, that could be done one of two ways. The System pays 25 percent of the benefit to the ex-spouse and 75 percent to the retiree. That would be based on the salary at the time of retirement because that is the benefit the System calculates.

The other way might be that the 25 percent the ex-spouse is getting is not based on the salary time of retirement, the way the retiree's benefit is based, but will be based on the salary at the time of divorce, which could be a different salary. That would make the benefit 25 percent of a lower number. Those are the two typical calculations.

However, a QDRO could order a flat rate or a percentage. The PERS does not police that as long as it can calculate the benefit, the order is clear and does not violate statute, meaning it does not require it to pay a benefit it does not owe. The benefit will then be divided as the court has ordered.

SENATOR DALY:

The System follows whatever the QDRO says, as long as it complies with statute.

This bill amends the correct statute for what the Senator is trying to accomplish. Lawyers testified that we cannot do this. For 120 days, we can. This can be accomplished. I just wanted to make sure we are in the right statutes.

SENATOR KRASNER:

What chapters of NRS are being affected by this bill?

MS. LEISS:

Sections 1 and 2 are in the PERS chapter which is NRS 286. Section 3 is amending NRS 125 which is family law.

SENATOR KRASNER:

Because it is separate, it causes concern. If this were to happen, section 3 would change the way a family law judge directs a divorce when a pension is involved. Is that correct?

HEIDI CHLARSON (Counsel):

Sections 1 and 2 of S.B. 434 amend NRS 286 which relates specifically to PERS. Section 3 of the bill amends NRS 125.155 which is in the community property, domestic relations, provisions of law. However, in NRS 125.155, the language being amended talks about

In determining the value of an interest in or an entitlement to a pension or retirement benefit provided by the Public Employees' Retirement System pursuant to chapter 286 of NRS or the Judicial Retirement Plan established pursuant to NRS 1A.300.

Even though this section of law is not in the PERS chapter of NRS 286, it does impact PERS and specifically is only meant to apply to PERS. However, the law is structured that way as far as the division of the community property asset that relates to PERS or the Judicial Retirement Plan.

SENATOR KRASNER:

It is a different NRS chapter. Would it affect how a family law judge interprets family law upon divorce?

Ms. LEISS:

Family law is not my area of expertise. The intent, though, is to perhaps change how the benefit division is being made.

Ms. CHLARSON:

As has been explained by the family law attorneys who testified, the courts are going to be dividing all the community property of which PERS is a part. Could this impact the division of the PERS community property portion of the asset? Yes, but it still keeps community property intact in the State. As it is currently done, the court has to divide all the community property. There are times when, in divorces, public employees actually keep their pensions and then the parties negotiate, or the court orders the division of a different community property asset in a way to make up for that. A specific circumstance will dictate how the court divvies this up based on all the community property assets, not just the PERS asset.

Ms. LEISS:

As far as PERS is concerned, it will follow whatever the court orders the persons to divide or not divide the pension assets. It needs to make sure the division is clear, it follows the law and does not require PERS to pay something it does not owe. From that standpoint, PERS is neutral.

SENATOR KRASNER:

Is it possible for someone to fully vest in 20 years and then retire?

Ms. LEISS:

Someone in the Police and Firefighters' Retirement Fund, police officers or firefighters would be fully vested for an unreduced benefit if they have all their service credit in that Fund. Their retirement eligibility is 20 years of service at the age of 50. Regular members may retire with 20 years of service, but they would take a reduction. It may not be in their best interest to retire, but they certainly can draw, assuming they are not reduced so far that there is no benefit left.

SENATOR KRASNER:

Back to my scenario where the spouses are married for 18 years, she is the homemaker who does not work outside the home. Eighteen years comes, the husband says he wants a divorce. It is a no-fault divorce. He works two more years and gets the full retirement. What does she get now with this bill?

Ms. LEISS:

The PERS would only know if the court divided it in a way where it had to divide the benefit itself. I honestly do not know. Every case may be different. In that case, the ex-spouse might get half of the benefit or any portion of the benefit from zero to 100 percent, depending on how the court divided the benefit.

SENATOR KRASNER:

I am concerned we will bring a law that hurts women.

KENT ERVIN (Nevada Faculty Alliance):

I have comments on sections 1 and 2 of S.B. 434. For full disclosure, I am on the Nevada Public Employees' Deferred Compensation Committee, but I am not speaking for it.

It seems clear that if the idea is to provide PERS to people who are long-term, the State and the Nevada System of Higher Education (NSHE) have retirement programs for people who are part time. A social security alternative program is offered by the Deferred Compensation Program for part-time State employees and local government employees.

In NSHE for people, particularly postdoctoral and medical residents, who cannot be employed in that status long enough to vest in PERS, there is an alternative retirement plan for them. So there are ways to handle that.

In section 2, the idea of either disability or death benefits, I point out that the State has reduced those benefits from the Public Employees' Benefits Program that might help out in those situations for State employees.

SENATOR NEAL:

On the equal protection comments, I understand what is being said about the homemaker piece, but I want to know from the Legal Division if treating one type of asset under the rule is an equal protection issue.

Ms. CHLARSON:

The equal protection claim is not necessarily about the division of the asset. It is treating different divorced people in one circumstance different than the other. Whether it would pass equal protection scrutiny if the law were challenged is dependent on what level of scrutiny the court applies if the court applies a

rational basis analysis. If this meeting of the Legislature had a rational basis for passing the law, then that law is generally upheld. If the court finds discrimination based on gender, race or some sort of protected class, that would trigger a higher level of scrutiny and would be harder to predict.

The bill as written does not necessarily discriminate based on gender. It does use the term homemaker, but the definition being proposed by Senator Neal does not limit it to one gender over the other. So arguably it would seem it would be consistent with equal protection.

SENATOR NEAL:

I understand the homemaker objections and treating one group differently. I do not have a problem removing that. I do not think the bill hurts women because one could be a woman with a divorced male ex-spouse, who could still be able to take from the highest level of benefit from one's years of working. It is equal play for both parties.

I looked at the frozen benefit rule because the military had adopted this policy, and I wanted to freeze the benefit at the year of divorce. Consequently, whatever one's accrued community interest, one still gets that. It does not take that away.

I am grateful that the Committee was able to ask questions regarding the correct NRS in the bill. That would have created all kinds of havoc if it had been in the wrong chapter.

I appreciate the Committee and its wisdom regarding the frozen benefit rule or going back to the time rule. However, applying the frozen benefit rule does not hurt families. It creates fairness for those who are divorced and have a community interest. They will still get that community interest, just the calculation will change. I am willing to take the homemaker piece out if people feel I am treating one type of spouse differently than the other.

Senate Committee on Government Affairs
April 10, 2023
Page 30

CHAIR FLORES:

The Committee has received four letters in opposition ([Exhibit G](#)) to S.B. 434.

We will close the hearing on S.B. 434. This meeting of the Senate Committee on Government Affairs is adjourned at 5:47 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Edgar Flores, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 434	C	11	Senator Dina Neal	Conceptual Amendment
S.B. 434	D	17	Shelly Booth Cooley	Letter of Opposition
S.B. 434	E	20	Melissa Exline	Letter of Opposition
S.B. 434	F	23	Marshal S. Willick	Letter of Opposition
S.B. 434	G	30	Senator Edgar Flores	Four Letters of Opposition