

SB494: conceptual amendments relating to the Public Employees' Benefits Program (PEBP)

Recommended by the Nevada Faculty Alliance

The amendments to SB494 contained in proposed Amendment 3105 go a long way toward preserving the PEBP Board's authority and fiduciary oversight on behalf of participants. These amendments in addition to those in Amendment 3105 are intended to buttress the ability of the Board to function as a fiduciary within the Nevada Health Authority.

Conceptual language provided to show the intent of amendments.

Sections 68 and 68.5: SB494 moves PEBP and the PEBP Board to within the new Nevada Health Authority (NHA), rather than being an independent agency, and the PEPB Executive Officer will report to the Director of the NHA. These amendments are intended to ensure that the PEBP Board independently represents the best interests of participants of the program and retains its role as fiduciary for the Program. Because the NHA will be providing managerial, actuarial, and other health insurance expertise to PEBP, the Board membership no longer needs outside experts with those specific qualifications.

Sec. 68. [Additional amendments highlighted]. Subsection 4 from Amendment 3105 restores the original statutory language.]

NRS 287.041 is hereby amended to read as follows: 287.041 1. There is hereby created *within the Authority* the Board of the Public Employees' Benefits Program. The Board consists of ~~[[1]]~~ *seven voting members and three nonvoting members* appointed as follows:

(a) Two *voting* members who are professional employees of the Nevada System of Higher Education, appointed by the Governor upon consideration of any recommendations of organizations that represent employees of the Nevada System of Higher Education. One such member must reside in northern Nevada and the other member must reside in southern Nevada.

(b) Two *voting* members who are retired from public employment, appointed by the Governor upon consideration of any recommendations of organizations that represent retired public employees.

~~(c) One member who is an employee in the classified service of the State, appointed by the Governor.~~
One voting member who is an employee in the classified or unclassified service of the State, appointed by the Senate Majority Leader.

~~(d) One member who is an employee in the classified service of the State, appointed by the Governor.~~
One voting member who is an employee in the classified or unclassified service of the State, appointed by Speaker of the Assembly.

~~(e) Two members who are employees in the classified service of the State, appointed by the Governor upon consideration of any recommendations of organizations that represent state employees.~~

~~(d) One member who is employed by this State in a managerial capacity and has substantial and demonstrated experience in risk management, group insurance programs, health care administration or employee benefits programs appointed by the Governor.~~

~~(e) Two members who have substantial and demonstrated experience in risk management, group insurance programs, health care administration or employee benefits programs appointed by the Governor.~~

~~(f)(e)~~ *(e)* One *voting* member who is an employee in the classified service of the State, appointed by the Governor from a list of nominations of ~~[[10]]~~ *three or more* classified state employees submitted by the labor organization representing the largest number of classified state employees participating in the Program.

~~(f) Two nonvoting members with expertise in medical, dental, or pharmaceutical health care delivery or insurance, or actuarial expertise, appointed by the Director of the Nevada Health Authority.~~

(g) One nonvoting member with expertise in employee benefits, appointed by the ~~[The]~~ Director of the Department of Administration ~~[or a designee of the Director approved by the Governor].~~

~~2. [Of the nine persons appointed to the Board pursuant to paragraphs (a) to (e), inclusive, of subsection 1, at least four members must have a bachelor's degree or a more advanced degree, or equivalent professional experience, in business administration, economics, medicine, accounting, actuarial science, insurance, risk management or health care administration, and at least two members must have education or proven experience in the management of employees' benefits, insurance, risk management, health care administration or business administration.]~~

~~3.2.~~ Each person appointed as a voting member of the Board must:

(a) ~~[Except for a member appointed pursuant to paragraph (e) of subsection 1, have]~~ Have been a participant in the Program for at least 1 year before the person's appointment;

(b) ~~[Except for a member appointed pursuant to paragraph (e) of subsection 1, be]~~ Be a current employee of the State of Nevada or another public employer that participates in the Program or a retired public employee who is a participant in the Program;

(c) Not be an elected officer of the State of Nevada or any of its political subdivisions;

~~(e)(d)~~ Not be an employee within the Nevada Health Authority; and

~~(d)(e)~~ Not participate in any business enterprise or investment:

(1) With any vendor or provider to the Program; or

(2) In real or personal property if the Program owns or has a direct financial interest in that enterprise or property.

4. Except as otherwise provided in this subsection, after the initial terms, the term of an appointed member of the Board is ~~[serves one term of not more than]~~ 4 years and until the member's successor is appointed and takes office unless ~~[, as fixed by the Governor. Except as otherwise provided in this subsection, the term of a member automatically ends if]~~ the member no longer possesses the qualifications for appointment set forth in this section or is removed by the Governor. If a member loses the requisite qualifications within the last 12 months of the member's term, the member may serve the remainder of the member's term. If the labor organization that submitted the name of the member appointed pursuant to paragraph (f) of subsection 1 ceases to represent the largest number of classified state employees participating in the Program during the member's term, the member continues to serve for the remainder of his or her unexpired term. Members are ~~[not]~~ eligible for reappointment ~~[, except that the Governor may reappoint a member to an additional nonconsecutive term if the seat to which the member is reappointed has been vacant for longer than 6 consecutive months.]~~ A vacancy occurring in the membership of the Board must be filled in the same manner as the original appointment.

5. The appointed members of the Board serve at the pleasure of the Governor.

Sec. 68.5. [Addition to Amendment 3105 is highlighted.] NRS 287.0415 is hereby amended to read as follows: 287.0415 1. A majority of the voting members of the Board constitutes a quorum for the transaction of business.

2. At the beginning of each calendar year, the Board shall elect one of its members to serve as the Chair. The Governor shall designate one of the members of the Board to serve as the Vice Chair.

3. The Board shall meet at least once every calendar quarter and at other times upon the call of the Chair.

4. The Board may meet in closed session:

(a) To discuss matters relating to personnel;

(b) With investment counsel to plan future investments or establish investment objectives and policies;

(c) With legal counsel to receive advice upon claims or suits by or against the Program;

(d) To prepare a request for a proposal or other solicitation for bids to be released by the Board for competitive bidding; or (e) As otherwise provided pursuant to chapter 241 of NRS.

5. Except as otherwise provided in this subsection, if the Board causes a meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS, the Board shall post a transcript of the meeting on its Internet website not later than 30 days after the meeting. The Board shall post a transcript of a closed session of the Board on its Internet website when the Board determines that the matters discussed no longer require confidentiality and, if applicable, the person whose character, conduct, competence or health was discussed in the closed session has consented to the posting.

6. The Board may appoint such advisory committees as it deems necessary to assist the Board in carrying out its duties pursuant to NRS 287.0402 to 287.049, inclusive.

7. As used in this section, "request for a proposal" has the meaning ascribed to it in subsection 8 of NRS 333.020.

Section 74 as modified in Amendment 3105 appears to allow the responsibility of the PEBP Board to approve all requests for proposals and contracts to be circumvented if the new procurement provisions of the Nevada Health Authority are used instead of the State Purchasing Division. These changes are intended to confirm the Board's the fiduciary responsibility and authority over contracting, whether the State Purchasing Division is used or the new procurement regulations in NHA are used, while still making the process more flexible by allowing delegation of purchasing duties to the Executive Officer and making optional the closed meeting to review the results from an evaluation committee.

Sec. 74. [Additions to Amendment 3105 are highlighted.] NRS 287.04345 is hereby amended to read as follows: 287.04345 1. ~~[The]~~ *Except as otherwise provided in this section, when using the procurement services of the State Purchasing Division or the procurement services of the Authority pursuant to subsection 3 of NRS 287.043, ~~it~~ or conducting procurement under the provisions of section 24 of this act, the* Program is subject to the provisions of chapter 333 of NRS *or the provisions of section 24 of this act and the regulations adopted thereto, as applicable.*

2. The Board shall act as the chief of the using agency for the purposes of NRS 333.335 ~~it~~ *and may conduct procurement under the provisions of section 24 of this act. Except as otherwise provided in this subsection, the Board may delegate to the Executive Officer any or all of the duties of a purchasing officer, as defined in NRS 333.020, or any similar duties under section 24 of this act and the regulations adopted thereto. Such delegable duties may include, without limitation, assisting a committee for the evaluation of proposals established pursuant to NRS 333.335 or section 24 of this act in evaluating proposals. The scope of work for any request for proposals is subject to the approval of the Board.*

3. If a committee to evaluate proposals for a contract for the Program is established pursuant to NRS 333.335, ~~any number of members~~ *or section 24 of this act, at least one member* of the Board may be appointed to the evaluation committee. If one or more members of the Board are appointed to an evaluation committee:

(a) No action or deliberation regarding any business of the Board other than the confidential review of the proposals pursuant to NRS 333.335 *or section 24 of this act, as applicable,* may be taken or conducted by the evaluation committee.

(b) Except as otherwise provided in paragraph (a), a meeting of the evaluation committee is not subject to chapter 241 of NRS.

4. The Board ~~shall~~ *may* review the results of any evaluation of proposals for a contract for the Program pursuant to NRS 333.335 *or section 24 of this act, as applicable,* in a closed meeting *prior to taking action pursuant to subsection 5 of this section.*

5. The Board shall take the following actions only in an open meeting:

- (a) Award the contract pursuant to NRS 333.335 ~~it~~ *or section 24 of this act, as applicable;*
- (b) Cancel the request for proposals; or
- (c) Modify and reissue the request for proposals.