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Eugene Paslov, which recommended increasing mining taxes in order to better fund Nevada's education system.

We do not anticipate that the two policy articles included in this issue will decrease the level of criticism that we receive in any way, as they are on two very controversial topics, albeit for very different reasons. The first piece we offer in this journal is called "Public Pensions and Retiree Healthcare in Nevada: An Analysis," by former Clark County Manager, Dr. Thom Reilly. This essay is an important and non-partisan piece of an enormous national discussion, localized for Nevada. Further, we have included a history of Yucca Mountain policy provided by Andrew Newman, a topic that has been controversial in our state for as long as many of us can remember. Although the opinions expressed in each article are those of their authors, we stand by our mission of providing a space for a broader policy debate in Nevada, a function that we believe has not largely been served in the state's history.

We cannot fulfill any aspect of our mission without the support of many. From the authors of the original works produced here, those who have allowed us to reproduce previously published work in our pages, as well as the interviewee and those who submitted book reviews for publication, *The Nevada Review* remains a team effort. We would also like to thank Tee Iseminger and Alisha Anne McCoy who have contributed greatly to our ongoing efforts to serve this small space. And thanks to you as well for continuing to read our journal. ■

PUBLIC PENSIONS AND RETIREE HEALTH CARE IN NEVADA: AN ANALYSIS

THOM REILLY

Abstract

Many state and local governments are still struggling to recover and balance their budgets after more than five years of economic hardship. Their ability to perform core functions and deliver essential services has been seriously comprised. Large, unfunded liability costs for public workers' pension and retire health care have exacerbated the problem. By most accounts, Nevada's retirement system (PERS), a defined benefit plan, is one of the most generous in the nation. At the same time, Nevada ranks in the bottom fifth of states with regards to the percent of the pension liability funded. The purpose of this paper was to review and analyze Nevada's public retirement systems (pension and retiree health care), and compare them to similar plans in other states. Recommendation for policy choices include: restructuring PERS into a hybrid design, increasing employee retirement contribution levels, reducing the formula multiplier used to calculate benefits, making changes to the governance structure of the PERS board, and increased transparency, among others.

Introduction

States and local governments are still struggling to recover and balance their budgets more than five years after the great recession began and significantly reduced their tax collections. As a result, officials were forced to lay off workers and cut spending when deficits emerged in their budgets. The housing collapse eroded property tax revenues, the main source of funding for many local governments. Since there is a lag of several years in changes in property tax assessments, the post 2006 plunge in house prices will continue to impact local governments for at least the next several years.

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State and local government budget cuts are getting harder to manage after several years of dwindling payrolls, service reductions, and deferred maintenance and investment in new infrastructure. One solution to the budget squeeze has been the contraction in state and local government payrolls. Some 656,000 public workers have been laid off since their employment peak in mid-2008 as governments try to cope with plummeting tax revenues (Luhby, 2012). Nationwide, local governments payrolls have shrunk nearly 4%, or more than 4 million workers since peaking in 2008 (Hoene and Pagano, 2011). The budget cutting at both the state and local levels has exerted a drag on the nation's economic recovery.

At the same time, state and local governments are facing huge pension and retiree health care obligations that have significantly contributed to their financial woes. Pension and health care costs for retirees have risen faster than inflation for several reasons. Retirees are living longer, and low interest rates have sharply cut the returns on pension funds used to pay benefits. Further, many of the promises made to public employees are not sustainable and many jurisdictions are struggling to make payments into these systems, leaving less each year to spend on education, public safety, safety-net programs, park maintenance, road repairs, and other governmental services. The recession was not the chief cause of the pension and retiree health care problem although it contributed to it or exacerbated it by chipping away at the value of investments. In some cases, states and local governments have diverted scarce money away from paying their full share of pension costs and instead shifted funds to pay for immediate concerns. When they fall behind in their retirement contributions, they have to come up with even more money later to make up the difference (Reilly, 2012).

Although far from common, an alarming number of municipalities are filing for Chapter 9 bankruptcies. In the month of July 2012, the city of Stockton and the county of San Bernardino in California, both with populations over 200,000, filed for bankruptcy citing dwindling tax revenues and unsustainable pension and other post retirement obligations to public employees as chief reasons for their insolvency. This follows recent pension related bankruptcies in Vallejo, California in 2008; Prichard, Alabama in 2009; and Central Falls, Rhode Island in 2011. More Chapter 9 pension related filings could be on the way, with other California municipalities such Compton, Fresno, Hercules, San Jose, and Victorville reportedly on the brink of insolvency.

The Pew Center on the States (2012) recently released their updated nationwide study highlighting retirement systems shortfalls in funding, noting that liabilities continue to outpace contributions in many places across the country. Their findings indicate conservatively, a $1.3 trillion shortage (54.7% in pensions and 45.3% in retiree health care) between states' assets and their obligations as a public employer. This funding gap has risen nearly 9% since 2009. The report found that thirty-four states (including Nevada, which is 70% funded) now fall below the "red flag" funding threshold of 80%. The authors suggest that while states have the cash in the short term to cover these benefits, they will not be able to keep up in the long term without higher contributions from taxpayers, major benefit reductions and/or changes to how retirement plans are structured and benefits awarded.

Some analysts have suggested that states and local governments have significantly underestimated their pension costs and their unfunded liability is much higher than being reported. They view these public pension plans' assumptions as too optimistic and have suggested that some retirement funds are so poorly funded, that they may run out of assets within a decade. Biggs (2011) suggest states and localities have over $3 trillion in unfunded pension liabilities and obligations. Novy-Marx and Rauh (2011) calculate that public pensions may be underfunded by $4.4 trillion, up from $3.1 trillion in 2009. Skeptics suggest that government accounting rules currently used by states and local governments obscure the real magnitude of public pension liabilities and contend they do not use their investment assumptions to project future growth and measure what they will owe retirees in the future in today's dollars. This practice has been prohibited in the private sector since 1993 (Walsh and Hakim, 2012). In addition, the typical public pension plan assumes its investments will earn average annual returns of 8% over the long term (Munnel, Hurwitz and Quinby, 2012). However actual experience since 2000 has been much less, 5.7% over the last ten years (Brainard, 2011). However, Lav and McNichol (2011) contend that these claims overstate the fiscal problem, fail to acknowledge that severe problems are concentrated in a small number of states, and promote extreme actions rather than more appropriate solutions.

The purpose of this paper is to review and analyze Nevada's public retirement systems (pension and retiree health care), compare them to similar plans in other states and offer recommendation for policy choices going forward.

Public Sector Retirement Systems

The vast majority of public sector employees at the federal, state, and local levels have access to some type of employer-sponsored pension plan. In contrast, only half of the U.S. private sector workforce participates in an employer-sponsored retirement plan (Brainard, 201). Retirement benefits can generally be divided into two types of plans: defined benefit and defined contribution. Most public workers (84%) have defined benefits plans, while only 21% of private sector works have access to this type of plan (BLS, 2008). In a defined benefit plan, the employer guarantees a certain level of retirement benefit to the employee based on several factors, such as the employee's age, years of employment (or a combination of years and age), and final salary. There are usually a vesting period required and the value of the benefit includes a formula multiplier, which determines the amount of the employee's retirement annuity. Typically, employees are required to contribute to the plan; however this does not occur uniformly across state and local government plans. Finally, cost-of-living adjustments are built into many plans (Peng, 2009). Pension plans in the public sector generally include the following key components:

- Mandatory Participation
- Participants must take their benefit as a lifetime annuity
- Pooled investments that are professionally invested
- Adequate benefits than include death and disability
- Cost sharing of contributions by employees and employers (Brainard, 2010).

In a defined contribution plan, the employee sets aside a certain percentage of his/her salary in a tax-deferred individual account that allows investments. Typically, the employer will match a part of or the full amount of the employee contribution. Defined contribution plans are typically found more frequently in the private sector. 401(k) plans in the private sector and 403(b) plans in the private sector are the most common types of defined contribution plans available (Peng, 2009). A defined benefit plan differs from a defined contribution plan in that it provides employees, upon retirement, with annual pension payments equal to a previously agreed upon percentage of their wage, as opposed to a defined contribution plan in which employees received the sum of the contributions, with interest, that they have paid into their pension funds throughout their career.

Hybrid plans, plans that mix components of defined benefits and defined contribution, are increasingly being adopted in both private and public organizations. These plans are designed to limit risk by guaranteeing certain level of investment along with the upside of a 4019k)-style plan such as portability and the ability to roil over retirement savings when the worker changes jobs. Most frequently in the public sector, employer contributions in a hybrid plan go toward financing a defined benefit annuity and employee contributions accumulate in an individual retirement account. There are, however, variations (Snell, 2012).

A unique pension plan has been adopted by Nebraska. Their cash-balance plan for state and county workers includes individual retirement accounts, which are invested in a common fund. The state guarantees an annual return of 5%, and credits the accounts with more if circumstances permit. The cash-balance plan has some of the features of both defined benefit and defined contribution plans. No other statewide plan in the United States is exactly like the Nebraska plan (Snell, 2012).

Table 1, below, summarizes information on the kinds of statewide retirement plans.

Table 1: Defined Benefit, Defined Contribution and Other Retirement Plans by State (1)

Plan Characteristics	State Employees' Plan
DB plan only	36 [2]
DC plan only	4 [3]
Hybrid plan only	4
DB plan plus optional DC plan	6
DB plan plus optional hybrid	1
DC plan plus optional hybrid	1
DB plan plus optional DC and hybrid	1

(1) Includes the District of Columbia and Puerto Rico
(2) Includes New Jersey, where, depending on amount of compensation, some employees are eligible for both defined benefit and defined contribution plans.
(3) Includes the Nebraska cash-balance plan, (Snell, 2012)

The largest of the other post-retirement employment benefits (OPEB) is by far subsidized retiree health care. Retiree health care has been offered to public employees for decades and largely been handled on a pay-as-you-go basis, meaning the state and municipalities pay whatever bills become due each year. These benefits are offered to public employees as a result of the fact that many public sector employees can retire before they qualify for Medicare. On average, public sector employees can retire on full pension five years earlier than their private sector counterpart (Clowes, 2004; Edwards, 2010). States and local governments have done a much better job putting away money for their pension system than they have for retiree health care. Overall states should have set aside over $51 billion to pay for their commitment in fiscal year 2010, but they contributed just over $17 billion that is approximately 34% of what was annually required (The PEW Center For The States, 2012).

Benefits make up a larger portion of overall compensation in the public sector than in the private sector. Public employers contribute on average 34.1% of employee compensation expenses to benefits, whereas private employers devote about 29% of compensation to benefits. Public employers also provide better health insurance and pension benefits. Health insurance accounts for 6.3% to 8.3% of private-sector compensation but 11.2% of state and local government employee compensation. Retirement benefits also account for a substantially greater share of public employee compensation, 8.1% compared with 2.8% to 4.8% in the private sector (Keefe, 2012).

In June 2012, the Government Accounting Standards Board (GASB), which sets the accounting standards for the public sector, approved new rules that will likely show public pensions funds are in a weaker financial position that previously thought. States and local governments will now have to post their net pension liability—the difference between the projected benefits payments and the assets set aside to cover those payments—up front on financial statements (Lambert and Byrnes, 2012). These updated standards were adopted in an attempt to be more transparent and provide more information for policy makers. Most go into effect in June 2013, others in 2014. Under the rules, pension funds that are considered adequate could continue to forecasts investment returns with their historic averages. Funds lacking sufficient cash to cover benefits most lower their projections to about 3-to-4%. According to Boston College, pension assets in 2010 covered only 67% of liabilities, and that under new accounting rules recommended by the Governmental Accounting Standards Board (GASB), assets would be measured as about 53% of liabilities for the same selection of plans (Munnell, Aubry, Hurwitz and Quinby, 2012). GASB will begin working on accounting for retiree health care later in 2012.

In response to the risings unfunded liabilities for pension and retiree health care, forty-three states enacted significant changes to their state retirement plans for public employees during the last three years (from 2009 through 2011). Legislative changes focused on increasing employee contributions for both new and existing employees; higher age and service requirements for retirement; reduced commitments to post-retirement increases (COLAs); changes in the formula for calculating benefits; and other reforms such as reduced benefits for those that retire or placing restrictions on retirees that return to work (Snell, 2012).

Social Security

No pension system can be discussed without further understanding the history of the largest one in existence, Social Security. Social Security covers approximately 94% of all workers in the United States. The 6% not covered are public workers, which translate into about a quarter of state and local government employees. Congress passed the Social Security Act of 1935 (SSA) offering a nationwide old-age pension system for workers through employer and employee contributions collected through the Social Security payroll tax, but the original legislation did not cover state and local government employees. The reasoning was unanswered questions regarding the authority to impose taxes on individual states. Creating a rift between public and private worker pension funds, a hole remained until Congress began amending the SSA fifteen years later (Livingston, 2008).

In 1950, Congress enacted Section 218 of the SSA allowing coverage to be extended to state and local government employees who were not covered by an alternative retirement system. However, this coverage was only available at the request of each state, through a formal agreement signed by the state and the Social Security Administration. In short, they are called Section 218 agreements. In 1954, another amendment to the SSA was adopted to allow public employees who were covered by a retirement system (except police officers or firefighters) to also be covered under these 218 agreements. In 1956, certain states were allowed to extend Social Security coverage to police officers and firefighters (Livingston, 2008).

Nearly fifty years after passing the Social Security Act, amendments were added preventing states from terminating Social Security coverage obtained under a 218 agreement. Effective, April 20, 1983, if social security coverage was voluntarily obtained through a 218 agreement with a state, it became permanent. The approval of the Omnibus Budget Reconciliation Act of 1990 later imposed mandatory Social Security coverage on state and local government employees beginning July 2, 1991 who were not covered by Social Security under a 218 agreement or members of a retirement system. This was to fill a void and ensure that all public employees have some type of retirement protection, either through Social Security or a plan offered through an employer (Nuschler, Shelton and Topoleski, 2011). Prior to Congress enacting Section 218 of the Social Security Act and clearing the air for states to voluntarily obtain Social Security for their public employees, Nevada moved forward with establishing its own public employee retirement system (PERS). That being understood, Social Security has excluded Nevada's state and local government employees since the inception of the SSA until the establishment of PERS in 1947.

Nevada's Public Employees' Retirement System (PERS)

Nevada's Public Employees' Retirement System (PERS) is overseen by the state Legislature, with an independent board, an Executive Officer and staff who manage day-to-day operations. This board was created along with a trust fund by amendments to the Nevada Constitution in 1971 when PERS moved to full actuarial funding. Later in 1977, the Interim Retirement Committee, now known as the Interim Retirement and Benefits Committee, was created to provide legislative oversight of PERS. This committee also monitors the Public Employees' Benefits Program (PEBP). It is important to note that it is the Nevada Legislature, not the PERS board that sets the benefits, determines which items of compensation constitute base pay, established the rate of benefit accrual per year of service. On the other hand, the PERS board is primarily engaged in monitoring investments, receiving actuarial reports, determinations of disability, and governance of staff (Legislative Council Bureau, 2012a).

Nevada PERS is a defined benefit plan. In Nevada, PERS employees do not participate in the Federal Social Security program. Pay roll based contributions are made into a trust established by the Nevada Constitution. A public employer can elect to pay both the employer and employee shares of the contribution; however, if the employer also pays the employees share, the employee salary must be reduced accordingly.

As of January 2012, 181 public employers participate in PERS with nearly 100,000 members, which include approximately 11,900 police and firefighters. An additional 46,000 retirees and beneficiaries fall under the PERS trust (Legislative Council Bureau, 2012a). It is important to note that not all state and local government employees fall under PERS. Separate retirement programs have been created for legislators, Supreme Court justices, district court justices, local judges, and the University of Nevada's professional staff. While supreme courts justices and district court justices participate in the states defined benefit program, justices of the peace and municipal judges may participate only if the board of county commissioners and city council elects to all them to enroll in the plan. Another notable exception is the Las Vegas Valley Water District (LVVWD), which operates its own defined benefit program (Legislative Council Bureau, 2012a).

PERS objectives are to provide a reasonable base income to qualified employees whose earning capacity has been removed or has been substantially reduced by age or disability, and will also be attractive to qualified employees by encouraging them to remain in government service. To maintain these objectives, PERS investment strategy for dollars being contributed to the trust is to generate an average annual return of 8% while minimizing risk. For historical purposes, PERS has maintained a twenty-five-year average annual return of 9% although recently returns have been much lower due to the Great Recession as show in the table below (The Segal Group, 2011).

Table 2: Market and Actuarial Value Investment Returns for NV PERS

	Regular Members				Police/Fire Members			
	Market Value Investment Return		Actuarial Value Investment Return		Market Value Investment Return		Actuarial Value Investment Return	
Year Ending June 30	Amount ($)	%	Amount ($)	%	Amount ($)	%	Amount ($)	%
2005	1,212,108,045	9.31	655,199,509	4.78	282,442,259	9.30	158,174,277	4.97
2006	1,269,981,705	8.83	943,516,255	6.51	300,369,858	8.83	227,032,573	6.63
2007	2,370,161,064	15.03	1,497,823,745	9.63	570,204,492	15.03	361,064,116	9.64
2008	(596,088,431)	-3.26	1,320,009,898	7.68	(144,603,728)	-3.24	321,274,088	7.64
2009	(2,834,457,823)	-15.98	497,747,740	2.68	(706,537,749)	-16.00	123,352,371	2.67
2010	1,641,734,286	11.03	537,022,624	2.82	419,574,635	11.03	141,729,146	2.93
2011	3,489,069,530	21.10	942,690,794	4.81	915,513,116	21.09	258,581,939	5.07
Total	6,552,508,376		6,394,010,565		1,636,962,883		1,591,208,510	
Five-year average return		4.89		5.33		5.06		5.36

The Segal Group (2011)

Investment returns using the market value method is based on the price that would be received to sell an asset (plan's investments) in a standard arm's-length transaction. This is basically the straight fair market value. The actuarial method takes into account the pension plan's investments and other property, but also includes relevant pension obligations, periodic costs or contributions. This is more realistic because the fair market value of the plan's assets is adjusted to compensate for future expectations.

Historically, PERS benefits have largely remained the same based on years of service, age at retirement, and compensation, with only major changes being made to employees enrolling in PERS after 2009. For example, an employee enrolled in PERS can expect to multiply their average monthly compensation (defined as the highest thirty-six consecutive months of earnings) by a percent (2.5% or 2.67%), and again by the number of years enrolled in PERS. For example, at 2.5%, someone working thirty years with an average monthly compensation of $8,000 will receive $6,000 per month in retirement. The percentage multiplier is strictly based on service years. Service prior to July 1, 2001 or post-2009 employees use the 2.5% multiplier, while those with service after July 1, 2001 (except those after 2009) use a higher 2.6%. There are additional restrictions on post-2009 employees in that they are subject to a cap on salary increases of 10% or more per year in the twenty-four months leading up to, and during the thirty-six months of highest compensation. Assignment-related and promotion compensation are not subject to the cap. Salary earned for work called "overtime" is excluded from calculating pensions; however, other forms of extra compensation related to work conditions, scheduling length of service such as callback, standby, holiday, shifts differential, extra duty, hazard, and longevity are included in the base compensation to which the formula multiplier is applied. Lastly, Nevada PERS generally requires five years of service for an employee to become "vested" for normal retirement benefits (Applied Analysis and Hobbs, Ong and Associates, 2008a). Employees can retire at any age with thirty years of service for regular employees and twenty-five years for police and fire department personnel. If a member decides to retire early, their monthly benefit is reduced by 4% for each full year prior to regular retirement age, and for post 2009-members, the monthly benefit is reduced by 6% (Legislative Council Bureau, 2012a).

There are also post-retirement compensation increases, limited to the lesser of 5% or the three-year average increase in the Consumer Price Index (CPI) after the thirteenth year. For post-2009 employees, these increases are limited after the twelfth year to the lesser of 4% or the three-year average increase in the CPI.

The table below highlights the retirement period for different PERS members based on years of service:

Table 3: Retirement Period for Different PERS Members Based on Years of Service

Pre-2009 Employees				Post-2009 Employees			
Regular Members		Police/ Firefighters		Regular Members		Police/ Firefighters	
Year of Service	Retire ment Age	Year of Service	Retire ment Age	Year of Service	Retire ment Age	Year of Service	Retire ment Age
30	Any age	25	Any age	30	Any age	30	Any age
10	Age 60	20	Age 50	10	Age 62	20	Age 50
5	Age 65	10	Age 55	5	Age 65	10	Age 60
						5	Age 65

The Segal Group (2011)

While PERS benefits are largely the same across employers, PERS contributions can differ depending on employer. Contribution options can include an employee-employer joint contributory plan or an employer pay plan. The majority of employees are under an employer pay plan (82%), but under either plan, employees pay one-half of the contributions towards their retirement. PERS sets the contribution rates based on historical return on investments and future liabilities (The Segal Group, 2011). A more detailed list of contribution rate changes by member groups in an employer-paid plan is shown below, but it's important to note that regular members and police/firefighters have seen their contribution rates increase 5 percentage points and 11.25 percentage points over the last twelve years, respectively.

Table 4 – Contribution Rate Changes By Member Groups In NV PERS Employer-paid Plan

	Description of Contribution Rate Changes		Contribution Rate	
Effective Date	**Regular**	**Police/Fire**	**Regular**	**Police/Fire**
July 1, 1997			18.75%	28.50%
July 1, 1999	No change	No change	18.75%	28.50%
July 1, 2001	Decrease 0.5%	No change	18.25%	28.50%
July 1, 2003	Increase 1.5%	No change	19.75%	28.50%
July 1, 2005	No change	Increase 3.5%	19.75%	32.00%
July 1, 2007	Increase 0.75%	Increase 1.50%	20.50%	33.50%
July 1, 2009	Increase 1.0%	Increase 3.5%	21.50%	37.00%
July 1, 2011	Increase 2.25%	Increase 2.75%	23.75%	39.75%

Alastuey (n.d.)

Nevada's Public Employees' Benefits Program (PEBP)

Most states have pay-as-you-go retiree health care financing. This means that each year a state must allocate funds from its operating revenue to pay for retiree health care. In addition to a pension with monthly compensation after retiring from public service, Nevada offers additional retiree benefits under its Public Employees' Benefits Program (PEBP). These benefits include a subsidy for medical, prescription drug, dental, and life insurance coverage to participating retirees, spouses, and survivors. Those on long-term disability and their spouses may also qualify for retiree health insurance benefits. Audits suggest that 90% of all active employees who retire and meet the eligibility criteria including receiving a pension benefit from PERS will participate in the PEBP plan (Legislative Council Bureau, 2012b). A high participation rate comes from the benefits offered, including the subsidy, which largely outweigh entering Medicare at age sixty-five. Unlike PERS, the state's retiree health insurance subsidy is not an inherent right for employees and retirees in Nevada (see NRS 287.0485 Statutes of Nevada, 2007) (Applied Analysis and Hobbs, Ong and Associates, 2008b).

The first group insurance for state employee was created in 1963 and in 1969, the Nevada legislature allowed local governments to negotiate to join the state insurance plan. Nevada's retiree health subsidy began for state employees in the 1970s. While it got off to a rocky start due to volatility in the insurance industry and many insurance companies not willing to bid on the State of Nevada health plan at the time, a self-funded plan (The Self Insurance Trust Fund) was created in 1983. While health care costs continued to rise, bringing higher premiums and reduced benefits, the trust was relatively stable. However, bankruptcy by the program's third party administrator in the late 1990s caused the Nevada State Legislature to once again look to change its health program. In 1999, the Legislature established the Public Employees' Benefits Program (PEBP), which separated risk management services from employee benefit services. In the same move, the Legislature created the PEBP Board, of which the Governor appoints eight members, with the ninth member being the Director of Administration (Legislative Council Bureau, 2012b).

In 2003, the Nevada legislature required local governments to subsidize non-state retirees in PEBP to the same extent the state subsidized its retirees, creating some significant unfunded liabilities at the local level. The legislature later reversed this and limited eligibility to non-state retirees to those hired prior to November 30, 2008. Concerned with an alarming estimated long-term unfunded liabilities up to $4.0 billion (Applied Analysis and Hobbs, Ong and Associates, 2008b), the Nevada legislature increased eligibility requirements in 2009 and eliminated future subsidies for state employee hired after January 1, 2012 (Legislative Council Bureau, n.d.); however it allows them to participate in PEBP until they reach Medicare age. As of July

2010, nearly 26,100 people were active in PEBP, with an additional 10,200 inactive (Hewitt, 2011; Legislative Council Bureau, 2012b).

Although PERS has a much higher unfunded liability, the state funds a significant portion of it each year, which is substantially different in how the liabilities of PEBP have been managed. Virtually no money has been set aside for future benefits for either present retirees or current employees who will later retire and be eligible for subsidies under current law. Instead, Nevada has continued to pay only current year cash cost of premium subsidies for present retirees rather than pay the larger annual required contribution, which would also cover future liabilities of current employees. Worse, in good years PEBP increased benefits without setting aside many dollars for future liabilities (Legislative Council Bureau, n.d.). The great recession put PEBP in an even worse position because it had to retract those additional benefits and then some, while also significantly increasing premiums, deductibles, and other out-of-pocket costs. In short, PEBP has strengthened its balance sheet by simply slashing its liabilities and increasing its revenue from participants; nevertheless, it still remains to be adequately funded.

In detail, the changes to the PEBP from fiscal year 2010 to 2011 reduced actuarial liability by 37.2% to $1.07 billion (Hewitt, 2011). Though this is significant, it's important to point out that the actuaries determined the present value of future benefits (liability) was near $4 billion in 2008. While the funded ratio for fiscal year 2011 has yet to be determined with the latest PEBP update released in June 2011, the ratio for fiscal year 2010 was 1.8%, one of the lowest in the nation. For comparison purposes, only Arizona (69%) and Alaska (50%) have funded their retiree health benefits at a rate of more than 50% (The PEW Center for The States, 2012).

A National Comparison

In addition to The Pew Center on the States (2012), biennial studies by the Wisconsin Legislative Council (Munnell, Aubry, Hurwitz and Quinby, 2012) provide key metrics on individual public employee retirement systems across the nation. With the latest study being completed in December 2011, salient points below are intended to relate Nevada's PERS with those of other jurisdictions to call attention to nationwide comparisons.

- Nationally, 54% of public employee retirement systems require employees to contribute more than 5%. Nevada currently requires 11.88% and 19.88% for regular members and police/firefighters, respectively. However, most Nevada workers are under the employer part as previously noted and contribute $0 from their earnings. Theoretically, these workers take lower salaries in lieu of paying into their retirement plans but there are problems with this practice that will be discussed later.

- The ratio of beneficiaries to active employees continues to rise, meaning those receiving benefits are increasing faster than new active employees (contributors). For 2010, the nationwide average is 1.87 or nearly 2 active employees for each beneficiary. In Nevada, the ratio of active to retired members and beneficiaries is more than 2.16 for regular members and 2.0 for police and firefighters. It is also important to note that former members who are vested but do not yet receive benefits account for an additional 11,900 regulars and 700 police and firefighters. While Nevada continues to be in a better position on this key measurement relative to the rest of the country, its ratio continues to fall in similar fashion. For example, active members in Nevada fell 2.5% in 2011, while retired and disabled members grew by 6.1% and 6.5%, respectively.

- Nevada has a five-year vesting period, similar to 52% of others public employee retirement systems nationwide. Nationally, only 2% offer immediate vesting while 24% require ten years.

- The formula multiplier for PERS in Nevada is either 2.5% or 2.67% depending on employment dates, is significantly higher than the average of seventy plans studied across the U.S. by the Wisconsin Legislative Council, which is 1.95%.

- Annual return on investment assumptions in Nevada have been held at 8%. Of the eighty-five plans reporting nationwide, only four use an assumption of less the 7%, with sixteen plans assuming an earnings rate over 8% in 2010. The average return over the last ten years has been 5.6%.

- Funding ratios in 2010 continued to show softness. A calculation based on actuarial valuations, using the value of assets and the accrued liability of a retirement system has been required since 1996. Although these disclosures are obligatory, few plans maintain a funding ratio 100%. As of 2010, only four plans have a funding ratio of more than 100%, although eleven plans have a strong ratio between 90% and 100%. The majority of retirement systems' funding ratio fall between 70% and 90%, but 31 plans of the 85 reporting in 2010 had a funding ratio of less than 70%. It's also important to note that the average funding ratio fell from 81.0% to 73.4% from 2008 to 2010. As of July 1, 2011, Nevada's funded ratio is approximately 70.6% (unfunded liabilities of $8.5 billion) for regular members and 68.4% (unfunded liabilities of $2.5 billion) for police and firefighters. Overall, Nevada's funding ratio has dropped nearly 10% since its peak in the latest business cycle (2007).

Discussion

By most accounts, Nevada's pension system is one of the most generous public employee retirement plans in the nation. The Nevada PERS plan caps benefits at 75% of retiring employees' three consecutive years during which their earnings were highest (90% for those that became members prior than July, 1, 1985); has no minimum age of retiring as long as the retiree had thirty years of service; has a low amount of employees who are required to actually contribute to their own retirement; has one of the highest formula multipliers used to calculate benefits (either 2.5% or 2.67% per year of service depending on employment dates); and some of the highest average salaries in the nation. In addition, Nevada PERS has one of the highest employer contribution rates in the nation. While higher contribution rates are typical of plans that do not include Social Security coverage in addition to a pension, like Nevada; the state ranks as one of the highest among plans that do not include Social Security coverage for both regular employees and for police and fire (Brainard, 2011). At the same time, Nevada ranks in the bottom fifth of states with regards to the percent of the pension liabilities funded. It is generally assumed, that states with 80% or less of pension liabilities funded are in serious conditions. Nevada is 70% funded (The PEW Center on the States, 2012).

The issue of how much public employees' financially contribute to their retirement in Nevada is problematic. Employees under the employer/employee pay plan (approximately 18% of Nevada employees are enrolled in this plan) contribute 11.88%; while those enrolled in the employer pay plan (approximately 82% of Nevada public employees) contribute $0 from their earnings. Ideally, the later workers take "lower salaries" in lieu of paying into their retirement plans; however, whether this occurs is highly suspect.

NRS 286.421 also reads in part: Payment of the employee's portion of the contributions pursuant to subsection 1 must be:
(1) Made ***in lieu*** of equivalent basic salary increases or cost-of-living increases, or both; (emphasis added) or
(2) Counterbalanced by equivalent reductions in employees' salaries.

This means if the rate goes up, the employee's share of the increase must be paid either by reducing his or her salary or reducing the cost-of-living adjustment (COLA) by the amount necessary to finance the employee's share. The problem lies in the latter circumstance. If the rate goes up 1%, and the employee gets a 3.5% COLA does that mean he or she would otherwise have gotten 4%? Employees often bargain for a pay raise when the contribution rate goes up, even though they contribute nothing (unlike their state counterparts, local government employees were granted collective bargaining rights). The reality is in many local governments, employers and employees on the employer-paid plan have long abandoned the notion of the employee's share, even to the point of putting language in contracts to the effect the employer pays 100% of the rate. This is entirely contrary to the certification public employers have to file with PERS that the rate change was funded either by a salary reduction or paid by the employer "in lieu" of a raise, which would otherwise have been awarded (see Legislative Council Bureau, 2012a).

With regards to retiree health care, Nevada has virtually no money set aside for future benefits for either present retirees or current employees who will later retire and become eligible for subsidies under current law. Nevada pays only current year cash cost of premium subsidies for present retirees rather than pay the larger annual required contribution, which would also cover future liabilities of current employees. Faced with a $4.0 billion unfunded liability in 2008, legislators reduced benefits and significantly increased premiums, deductibles and other out-of-pocket costs (Applied Analysis and Hobbs, Ong and Associates, 2008b). In addition, in 2007, they reversed course from requiting local governments to subsidize non-state retirees in PEBP to the same extent the state subsidies its retirees. This has reduced their actuarial liability to $1.07 billion, which is still an alarming unfunded cost. Further, in 2011, they essentially eliminated future subsidies upon retirement for employees hired after January 1, 2012 (they can still participate in PEBP until they reach Medicare age). However, even if you do not technically subsidize retirees directly and retirees are required to pay the same premium as everyone else, there is an implicit subsidy that may arise due to the fact that the group is older and that the collective premium of the group doesn't cover their cost. This is what creates an OPEB liability even when employers don't provide an actual cash subsidy.

The problem with public employers fully or partially funding both health care and pension obligations is that revenue used to make these payments will compete with other programs and needs, which places greater demands of higher taxes and making less money available for education, health care, public safety, safety-net programs and other essential services.

Theoretically, states like Nevada without home rule—the power of a local city or county to set up its own system of self-government, including the ability to tax, without receiving a charter from the state—have a better ability to implement uniform and minimal standards on public benefits and control costs. However, this may not be the case with Nevada. There are also economies of scale that can benefit a system like Nevada PERS since the vast majority of public employers participate in PERS. It is important to note that it is the Nevada legislature, not the PERS board, which sets benefits, determines which items of compensation constitute base pay, and establishes the rate of benefit accrual per year of service. Also, the Nevada Legislature sets the amount of retiree health care subsidy. A combination of undue influence of special interests and lack of transparency in Nevada has contributed to the state's generous retirement structure and the large unfunded liabilities found in both PERS and PEBP.

First, there is an inherent conflict of interest when elected officials have the ability to award pensions and other benefits to themselves and where they directly receive a financial benefit. In Nevada, state elected officials who are also public employees routinely vote on matters related to PERS and PEBP. Further Nevada elected officials directly benefit from the pension polices they approve. Additionally, union and employee groups carry considerable influence with regards to the policy choices that govern PERS and PEBP as well as the structure of the state's pension system. For example, the adoption of the language discussed above (NRS 286.421) has proven to be very union-friendly over time. Within a collective bargaining environment, the law has clearly made it challenging to ensure public employees are actually contributing to their pensions from their earnings. Increases in PERS benefits during times where the plans faced large unfunded liabilities and were already more generous that most other states calls into question the independence of state policy makers. In 1997, automatic post-employment pension benefits increases were enacted and in 2001, the service credit (or benefit multiplier) per year of employment was increased from 2.5% to 2.67% (Applied Analysis and Hobbs, Ong and Associates, 2008a). Further, the latter was done with little transparency or discussion on what the future costs would be needed to fund this enhancement. It was also adopted after the legislature suspended the open meeting law requirements, essentially allowing it to be passed in secrecy and with no media scrutiny. Finally, in 2003, the Nevada Legislature, despite the protests of local governments and taxpayers groups, mandated that local governments provide subsidized retiree health care to its employees to the same extent the state covered its employees, creating significant unfunded liabilities for local governments.

The future remains uncertain. Although tax revenues seem to be improving, the state's history of fully funding future obligations doesn't leave one feeling good. The Patient Protection and Affordable Care Act will also likely cause the state to spend additional dollars on health services, leaving less in the general fund for other services. While PERS is more stable than some other state pension plans across the country, the number of retirees is growing in proportion to the workforce, similar to Social Security's situation. While Nevada's younger workforce has shielded it from larger obligations in the immediate future, the shift in demographics in the long term remain a cause for concern.

Recommendations

The following recommendations are made to reform Nevada's public pay and benefits.

(1) <u>A moratorium on any increases to pensions until PERS is at least 90% funded.</u>

Legislators should place language in Nevada Revised Statuses (NRS) that prohibits the consideration of any new benefits to either the regular or police/fire PERS until the plan is financially sound. It is irresponsible to consider enhancements until the plan is adequately funded.

(2) Restructure PERS by creating a hybrid design for new employees and encourage existing employees to switch to the new hybrid plan.

A hybrid plan can be designed to combine elements of the existing defined benefit plan currently in existence in Nevada where retirees are guarantee a certain level of benefits with new 401(k)–style system where money is invested on behalf of the retiree. Moving PERS to a 100% defined contribution program would be problematic due to conversion and transition costs involved in such a switch. Putting new hires into a defined benefit plan means their contributions would stop flowing into the existing underfunded defined benefit plan, so other revenue would be needed to make up the difference. Further, making such a transition is unlikely to do much to resolve PERS' near- or medium-term fiscal problems. In fact, switching all new employees to defined contribution plans can actually increase costs in the near term. However a hybrid plan could be developed that continues a portion of the existing PERS as a defined benefit program while including a mandatory component that requires employees to participate in a 401(k)-type plan. All new employees would be required to participate. Existing employees can be encouraged to convert to the hybrid by increasing the employee contribution for those who opt to remain in the current PERS plan. Finally, moving public employees to a partial 401(k)-type will allow portability of these benefits so they can follow workers if they choose to switch jobs and move to the private sector or to another public sector job outside Nevada.

(3) Increase both current and prospective employee contribution levels into PERS and abandon the employer paid option.

Courts have generally held that existing pension benefits are protected, but increasing existing employees' contributions are generally permissible. The employer/employee pay plan portion that currently exists and allow for over 80% of workers in Nevada to contribute $0 from their earnings for their pension needs to be eliminated. There should be a set percentage for all employees to contribute from their earnings into their retirement plan. Further, specific legislation needs to be adopted that prohibit public employers from picking up the employee share or agreeing to pay the employee costs even if collectively bargained.

(4) Make changes to existing PERS plan for prospective employees including establishing a minimum retirement age, changing the formula multiplier (or service credit) for calculating benefits to mirror the national average, and removing longevity pay from the base compensation to which the formula multiplier is applied.

People need to work longer, and retirement before established pension ages should be curbed. Public sector workers should also not be retiring earlier than their private sector counterparts. The advantage of raising the retirement age includes giving the employee more wages, governments gaining more in taxes and paying out less in benefits, as well as the fact that having more people working, the economy grows at an increased rate (The Economist, 2011). A minimum retirement age should be established for public employees regardless of how many total years they work. Many states have been increasing the age to the Medicare age of sixty-five or Social Security age of 67. One way to accomplish this is to set a higher formula multiplier (or service credit) at the established minimum retirement age or reduce the service credit for retiring early.

The national average formula multiplier used to calculate benefits is 1.95 while Nevada's service credit is either 2.5 or 2.67 (depending on employment years), which is significantly over the national norm. Nevada's service credit should reflect the national average. Finally, the practice of longevity is an antiquated practice. Historically, longevity pay was implemented in order to retain public workers so that they would not leave and go into private practice that paid more. With wage and benefits between the private sector and public sectors at least equal, the need for longevity pay is unnecessary; however, it is a common component of local government employee compensation. A system that rewards employees for simply remaining with the agency sends the wrong message for employee performance. Removing it from the base compensation to which the formal multiplier is applied sends a clear message to public employers and employee groups.

(5) Make changes to governance of the PERS boards so outside directors with no vested interest are appointed to serve along with current beneficiaries; appoint an independent board to either set pension benefits (or at least be charged with making recommendations to the Legislature on benefits); and remove conflicts of interest by prohibiting elected officials who are public employee from voting on pension or retiree health care benefits.

Currently, beneficiaries do comprise the entire membership of the PERS board. Even though the board is primarily engaged in monitoring investments, receiving actuarial reports, determinations of disability and governance of staff—none of which can influence benefits—having outside directors appointed to serve on the governance structure is important. Having a separate board with all outside members (those not invested in the pension and retiree health care) responsible for setting benefits including determining which items of compensation constitute pay and establishing the rate of benefit accrual per year of service may provide more independence and avoid some of the current conflicts on interest. Having the legislature control most aspects of pension and retiree health care has not been good for taxpayers. Prohibiting elected officials who are also public employees for engaging in discussion or voting on benefits to PERS and PEBP will eliminate any self-dealing issues.

(6) Increase transparency in adopting public pay and benefits by requiring public hearings on any pension and other post retirement benefit increase or public pay enhancement. Require an independent analysis of pay and benefit cost that details how the enhancements will be funded now and in the future prior to adoption.

PERS and PEBP are governed by the state; however local governments collectively bargain pay, which becomes the base for calculated pensions. When collective bargaining agreements are voted on, oftentimes the details, commitments and costs stipulated by the agreements, are not publically discussed and disclosed. Often, once an agreement is reached and scheduled for a vote by the elected body, only selected pieces of information are shared with the public, while many of the mundane and complicated portions are not publicly discussed even though they are costly and often contain future financial commitments. At other times, these agreements are placed on consent agenda and do not receive a public discussion unless someone pulls it off the agenda and request it be heard. As the end of the state legislative session approaches, it is common practice for legislators to suspended rules that govern adherence to the open meeting law, allowing legislators to meet without informing the public and giving them the three-day notice required under the Nevada open meeting law. When pay and benefit increases are being considered, this practice should be prohibited.

As part of the public discussions, an independent analysis should be required that details the current and future costs to any public pay or benefit enhancement.

(7) When an impasse occurs with local government collective bargaining agreements on pay and benefits, disputes should be directed back to the elected body instead of going to an outside arbitrator.

As stated earlier, increase in pay has a direct impact on pension costs. All too often, elected officials can avoid their fiduciary responsibility by deferring to outside arbitrators to settle contact disputes. Elected officials should be ultimately responsible for controlling employee pay. Instead of requiring outside arbitration, pay disputes should be directed back to the respective elected body. Therefore, they can be accountable to the public for their employee costs. ■

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"An Area Previously Determined to Be the Best Adapted for Such Purposes": Nevada, Nuclear Waste, and Assembly Joint Resolution 15 of 1975

Andrew Newman

I. Introduction

In its Fiscal Year (FY) 2010 budget request, the Obama Administration stated that finding a solution to the nation's spent nuclear fuel and high-level waste "must be based on sound science and capable of securing broad support, including support from those who live in areas that might be affected" and proposed to eliminate the Yucca Mountain repository program.[1] In its FY 2011 budget request, the Administration did precisely that, declaring Yucca "not a workable option" and eliminating all funding.[2] The President created a Blue Ribbon Commission to comprehensively review policies for "managing used nuclear fuel and other aspects of the back end of the nuclear fuel cycle" and on 3 March, the Department of Energy (DOE) filed a motion with the Nuclear Regulatory Commission to withdraw the Yucca Mountain license application *with prejudice.*[3] This fulfilled

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1 Office of Management and Budget, "Terminations, Reductions, and Savings," *Budget of the U.S. Government Fiscal Year 2010* (2009): 68.

2 Department of Energy (DOE), Office of Chief Financial Officer, FY 2011 Congressional Budget Request.

3 The White House, Office of the Press Secretary, *Presidential Memorandum—Blue Ribbon Commission on America's Nuclear Future*; and Department of Energy, Blue Ribbon Commission (BRC) on America's Nuclear Future: Advisory Committee Charter. The Commission is to submit an interim report within eighteen months and a final report within two years. DOE seeks dismissal of the license application with prejudice because "it