

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON NEBRASKA RETIREMENT SYSTEMS
February 10, 2005
LB 144, 493, 691

The Committee on Nebraska Retirement Systems met at 12:15 p.m. on Thursday, February 10, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a hearing on LB 144, LB 493, and LB 691. Senators present: Elaine Stuhr, Chairperson; John Synowiecki, Vice Chairperson; Patrick Bourne; Philip Erdman; and Marian Price. Senators absent: Don Pederson.

SENATOR STUHR: Welcome to the Retirement Committee this afternoon. And I am Elaine Stuhr and I serve as Chair of the committee and I will make the introductions of the committee. And to my far right is Mr. Don Jones who is the committee actuary. Senator Price who is with us but out in the audience right now, Marian Price from Lincoln. Senator Patrick Bourne, I believe is coming, and we will recognize him when he does arrive. Our committee counsel, Jason Hayes. And to my left, immediate left, the Vice Chair of the committee, Senator John Synowiecki from Omaha; and Senator Phil Erdman from Bayard; and Senator Pederson is not with us today; and our committee clerk, Kathy Baugh. Just a few rules. Please turn off you cell phones and any pagers that you might have. Those wishing to testify should come towards the front of the room. And when you are testifying, be sure to print your name and then also spell it, your last name particularly so that the transcribers will be able to follow your testimony. If you have handouts, please give them to the page, and I'm sorry, I forgot to introduce our page, Matt Rathje from York, and he is here to assist us this afternoon. If you do not wish to testify but would like your name entered into the official record as being present, there is a form that you can sign, so please see the committee clerk. All right, today our bills are LB 144, LB 493, and LB 691, and we will hear testifiers as the proponents first, opponents, and neutral. And since the first two bills are of similar relationship, we're going to have testimony...we will have Senator Price open on hers, I will open on mine, and then we will ask the testifiers to come forth and make their comments in regard to both bills. Senator Bourne has just joined us. So, welcome, Senator Price, and you will open on LB 144.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 2

LB 144 493

SENATOR PRICE: Good afternoon, Chairman Stuhr and members of the committee. I am Senator Marian Price and I represent the 26th Legislative District in Lincoln, and I'm the principal introducer of LB 144. I introduce this bill at the request of Lincoln Public Schools. The purpose of LB 144 is to request the same level of responsibility from employees and the school retirement system when retirement benefits are verified. Under current state statute, employees have 90 days after receipt of their annual report from the retirement systems to dispute this report. If the employee does not dispute the report within 90 days, it's binding on the employee. The board and the retirement systems is not held to the same standard. This bill would require that the board, director, or retirement systems would correct errors within 90 days. If a correction is not made within 90 days, the report is binding. I believe it's only fair to require the board and the retirement system to be held accountable for the statements that are sent to employees. Employees rely on the statements to plan their retirement, and the lack of a board deadline to correct statements leaves employees in a vulnerable position. I thank you for your time and I will close when we have heard all of the testimony.

SENATOR STUHR: Okay, thank you, Senator Price. And I'm going to turn the proceedings over to our Vice Chair, Senator Synowiecki, and you may ask Senator Price if there are questions.

SENATOR SYNOWIECKI: Senator Erdman.

SENATOR ERDMAN: Senator Price, is there a specific circumstance or are there a set of circumstances that have, I guess, brought you to us today?

SENATOR PRICE: That have driven this legislation? Yes. And I...they have been explained to me, but I believe Dr. Virgil Horne or a representative of Lincoln Public Schools will give you this example.

SENATOR ERDMAN: We will wait for the good doctor.

SENATOR PRICE: But it is driven by just cause.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 3

LB 144 493

SENATOR ERDMAN: I was checking to make sure.

SENATOR PRICE: Oh, yes, it wasn't something I just dreamed up, sir.

SENATOR ERDMAN: Oh, even if it would have, Marian, that's no reason to question the bill.

SENATOR PRICE: Thank you.

SENATOR ERDMAN: Thank you.

SENATOR SNOWIECKI: Any other questions for Senator Price? Seeing no other questions, we'll have Senator Stuhr then open on LB 493, then we'll accept testimony for both bills.

SENATOR STUHR: Good afternoon, Senator Synowiecki and members of the Retirement Committee. For the record, my name is Senator Elaine Stuhr, S-t-u-h-r, and I represent the 24th Legislative District. And I'm here today to introduce LB 493. And this proposal would amend Section 79-907, as it concerns statements of information sent to plan members of the school employees retirement system. Currently, this section of law requires that statements be sent every two years by first-class mail to members of the school employees retirement system. As we have heard today, each statement contains information on the amount of credible service earned by members, their reported income, and other such information determined necessary by the director of NPERS, in order to calculate the member's retirement benefit. Plan members are asked to verify such information and may dispute it within 90 days after receipt of their statements. LB 493 would provide that after the 90-day period has elapsed, the Public Employees Retirement Board would maintain an ongoing fiduciary duty to modify or correct a member's statement if the board discovers an error in the information it has on record. The decision to make the correction would be within the discretion of the board and the board would be required to make a determination as to whether such a correction should be made within 60 days after discovery of the error that is brought to the board's attention. This bill should help to alleviate any concerns by plan members that once an error is discovered, NPERS will

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 4

LB 144 493

resolve the matter within a timely manner. So if there are any questions, I would be happy to answer those.

SENATOR SYNOWIECKI: Any questions of Senator Stuhr? Seeing none, thank you, Senator.

SENATOR STUHR: Thank you.

SENATOR SYNOWIECKI: We'll now take proponent testimony for both LB 144 and/or LB 493.

VIRGIL HORNE: Senator Synowiecki, members of the committee, my name is Virgil Horne, H-o-r-n-e. I'm representing the Lincoln Public Schools. Let me first respond to Senator Erdman's question. This is a concern of the Lincoln Public Schools, but this does not deal with a particular incident or a group of individuals. If you can imagine, if I may for a moment, that the next bank statement you get comes to you with a statement that says you have seven days to correct this or it's on there forever, and you have no decision on that. And the reason I use seven days is because seven days is about the same period of time in a month that equates to, if you get every year, which I think is the current practice, your statement from your retirement board. You have 90 days to make a correction on that issue. And quite frankly, the bill that's been offered by Senator Stuhr, if I understand it correctly and read it correctly, does allow for adjusting that to some degree. And what we would hope eventually the committee would come up with is that whenever better data is available to the retirement committee, that they would make the appropriate adjustment, whether it be up or down. I think that would be a necessary issue. There have been comments when we discuss the concept of this bill that perhaps it would not be possible to check the kind of checks that would be necessary by NPERS to make sure that the school districts weren't reporting the wrong thing. And what I would like to do is quote from the testimony offered by the executive director of the Nebraska Employees Retirement System last week, February 3, 2005, on the bill, LB 503, before this committee. "For us to be monitoring the schools, we do quite a bit of monitoring of the schools," and I'm quoting now from the transcript that was taken at the hearing, "And it may not fall under the term of audit from a technical term, but I would just like to highlight

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 5

LB 144 493

some of the things that we do, not to contradict what you are trying to do here. Don't get me wrong and don't misunderstand me, but just to...I want you to rest assured that we're not just accepting everything that the schools or the state agencies or the counties send in to us without question. We take our jobs very seriously and I hope you are not concerned about that. I'm not sure if you are, you know. I would like to lay your minds to rest just a little bit. We conduct comprehensive training for our employers." I go on to the next page. The executive director added, "and we do spend quite a bit of time on cases, individual cases that come to our attention. We monitor the reporting that the schools submit to us. They give us a lot of information in their monthly reports, automated I might add, reports, and we monitor. If we see salaries jumping, we talk about spiking, you know; salary spiking. If we see salaries inordinately high from one year to the next, that will almost automatically be a trigger for us to go out and investigate. And we do have quite a bit of authority right now in the existing statutes to demand from the employers information in an accurate and verifiable form as specified. We have access to their records and we do use that quite a bit, especially if we have questions that come up when we're working with a particular file." I read this testimony...end of quote, excuse me. I read this testimony because it seems to me that the executive director has indicated to this committee that they have the ability to do what we're asking to have happen. We're simply asking that both parties involved with this very critical issue of what my retirement is going to be like when I get there comes to mind. I would also point out that as you go through the retirement system as an employee, and to their credit they have well-run educational programs, and it is recommended as a participant in the program that you start when you are age 50 or earlier so that you can plan your retirement well. At that time is when you are looking at these statements trying to determine what kind of money are we talking about; what other kind of investments do I have to make in order to get to the level of income that I need when I do retire. So it's not like we're just looking at the last three years of these statements. So whether you adopt some of the things in Senator Stuhr's bill and some of the things in Senator Price's bill is obviously your decision. My only concern about Senator Stuhr's bill is that it still makes the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 6

LB 144 493

employee bound to make the correction. I don't know that it places all that much more emphasis on NPERS. That concludes my testimony.

SENATOR SYNOWIECKI: Thank you, Mr. Horne. Questions?
Senator Bourne.

SENATOR BOURNE: Virgil, are you testifying as a...today, more along the lines of as a beneficiary of the retirement, or as an employer for...? I'm trying to figure out really what is going on here. Say, you have a retirement account and there is supposed to be \$100,000 in there. And the statement says you have \$50,000 in there. What happens?

VIRGIL HORNE: That doesn't bother me at all. What bothers me is that if the account says I make \$50,000 and I think I'm getting credit for making \$50,000, and NPERS thinks I am making \$45,000 because when I retire if there is that much difference, it all boils down to the average of those last three years. As I am going through the retirement process, if I'm thinking that I'm contributing on this amount and that my average is \$45,000, I mean if my average is \$50,000, and I'm saying when I retire it's going to be based on around \$50,000, or if I can speculate that I'm going to get 3 percent raises or 6 percent or whatever it might be in the next five or six years or ten years, and if other legislation which you have passed, and which we supported goes into effect, you can do that even easier, and say, all right, let's say I've got the maximum raises for the next five, ten years, on my employment, that's where I'm coming from. Because right now the statement I get may or may not actually reflect what the retirement system is counting toward my salary.

SENATOR BOURNE: Does this...I've never seen a statement. I'm not in the plan. Does it show salary on there?

VIRGIL HORNE: It shows the number of years you've been in the program and it shows, if I read mine correctly, the credit...the reported amount that the school district reported to NPERS. And I'm...

SENATOR BOURNE: On an annual basis or in total since you've began...?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 7

LB 144 493

VIRGIL HORNE: On an annual basis.

SENATOR BOURNE: Okay.

VIRGIL HORNE: And I'm sure the executive director is here and can correct if I'm wrong, but that's my understanding and the way I read mine.

SENATOR BOURNE: And so the status of the law...say, you are supposed to make \$50,000. Somehow there is a mistake and you are...and it shows \$45,000, as in your example. And the current status of the law is if you, as the employee, don't object within 90 days, it's always...it's forever at \$45,000.

VIRGIL HORNE: Then it is done. And the other thing that I have a little concern about, but quite frankly if you make enough noise, and it's not an issue in Lincoln, but it could be in other places, those statements come out in the summertime. In some places you can find records...Lincoln schools are open year-round; it's not a problem...but there are other places in the state that I would guess, and I do not have this on factual information, that it would be very difficult to verify some of that stuff if you are a teacher in a smaller situation. Now, you could do it as soon as school started, obviously, but I just...that's where I made the point on when actual...I'm not suggesting anyone cheat...but if something came to light that can be verified, that this is the latest available information that is corrected information, why does there have to be this 90-day period?

SENATOR BOURNE: Do you know anyone that has had this happen where they...?

VIRGIL HORNE: I am not aware of anyone who has had it happen on salaries. I am aware of people who have questioned the number of years of service, which is also a critical issue.

SENATOR BOURNE: And they were told you didn't object in the 90-day period, and so they...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 8

LB 144 493

VIRGIL HORNE: That I cannot answer.

SENATOR BOURNE: Okay. Thanks.

SENATOR SYNOWIECKI: Thank you, Senator Bourne. Any other questions of Mr. Horne? Thank you for your testimony.

VIRGIL HORNE: Thank you.

SENATOR SYNOWIECKI: Other proponent testimony?

MIKE DULANEY: Senator Synowiecki, members of the Retirement Committee, my name is Mike Dulaney, D-u-l-a-n-e-y. I am the Associate Executive Director for the Nebraska Council of School Administrators. We are here in support of both bills, LB 144 and LB 493. We feel that probably LB 144 gets a little bit closer to our sentiments and concerns because it is a more direct attempt at accountability. And one of the themes of the bills brought before you, it seems to be accountability this year. I mean, it really does seem to, if we look at LB 411, for example, dealing with the salary spiking issue, something that we support, and then some of the other bills that you have, accountability is there. You know, that's what we want. And so we feel that we maybe could combine some of these things and put it into a package before all of your colleagues on the floor. But I don't have any exact examples to share with you either. This, I think, is maybe more of preventative thing, if anything. We have want to prevent the occurrence where a plan member is expecting a certain amount of salary based on the information, but when they go to retire and find out that only they were bound by that information. The retirement agency may be there is a mistake or whatever the case may be. But only the employee is bound. Well, that doesn't seem fair. And we do hear the director of the agency speak very often about fiduciary duty. And I know what that means; I know what the word means. But I've had some members come up to me and say, well, what exactly does that entitle us to us to? I mean, what do we get for that fiduciary duty? I think maybe that's what we're trying to get to with these two bills is to make sure that there is a fiduciary duty. There is a reciprocal arrangement between the employee, the member of the plan and the retirement agency. And so we would support both bills and we'll put it

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 9

LB 144 493

in your judgment on how this could come together. We would work with you, legal counsel with the committee. And that concludes my testimony.

SENATOR SYNOWIECKI: Thank you, Mr. Dulaney. Are there any questions of the committee for Mr. Dulaney? Seeing none, thanks again for your testimony.

MIKE DULANEY: Thank you.

SENATOR SYNOWIECKI: Other proponent testimony.

JOHN BONAIUTO: Senator Synowiecki, members of the committee, John Bonaiuto, B-o-n-a-i-u-t-o, Executive Director, Nebraska Association of School Boards. And we would echo the previous testimony that we would support both of these bills, LB 144 and LB 493, for the accountability purpose. And speaking on behalf of school boards and employers, the employers, I believe, try to give the best information they can about the employees. And having some experience with some school employees and even my own employees, it's hard to believe, but people don't watch as closely as they should the information that is happening about their retirement. And they just have an inherent trust or faith that the system is a good system and it's going to work and at some point it's going to take care of them, and they don't spend a lot of time. And so I'm afraid that without the accountability or having something in place that protects both the employees and the system, that something could get locked in that isn't right. And so we would encourage you to examine both of these bills. And as I said, I think that as Mike Dulaney had pointed out, LB 144 is a little more pointed, but I think there's a balance here and I think that it is just something to improve the system and help both the employee and the employer and the retirement system to make sure that what people think they've got is actually there. And with that I'll conclude my testimony. Thank you.

SENATOR SYNOWIECKI: Thank you, Mr. Bonaiuto. Any questions of the committee? Seeing none, thank you for your testimony.

JOHN BONAIUTO: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 10

LB 144 493

SENATOR SYNOWIECKI: Other proponent testimony.

HERB SCHIMEK: Members of the committee, my name is Herb Schimek, S-c-h-i-m-e-k, here in favor of both bills. We think it would be good policy and should be adopted in some manner. Any questions?

SENATOR SYNOWIECKI: Thank you, Mr. Schimek. Any questions? Senator Bourne.

SENATOR BOURNE: Thank you. Herb, I guess I'm trying to...again, I'm trying to figure out exactly what is going on. If my bank sends me a bank statement that's not accurate, I don't have...there's...you know, in the statute, in the current statute, there is a 90-day time period, but neither bill takes that out. I mean, shouldn't it be corrected regardless?

HERB SCHIMEK: That would be my opinion.

SENATOR BOURNE: Okay.

HERB SCHIMEK: If you have the documentation to prove what you are saying.

SENATOR BOURNE: Exactly. I mean, you can show you started with that district in 1970 and you can show that your salary in each of those years was X and Y, and...

HERB SCHIMEK: I think what you have to do is, historically there was very little documentation. We had school districts disappearing and the records basically went out the window. We actually were going back to old school annuals to prove that people had actually worked in some of those schools. And so we're really dealing with some past history that was not very well done. Today, I think most of that recordkeeping is in pretty good shape. But that's probably why that 90 days was there originally--just simply to try to get a figure that they could justify to put out.

SENATOR BOURNE: Thank you.

SENATOR SYNOWIECKI: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 11

LB 144 493

HERB SCHIMEK: Thank you.

SENATOR SYNOWIECKI: Other proponent testimony. Now the committee will hear opponent testimony. Opponent testimony. Seeing no testifiers, we'll now accept neutral testimony relative to LB 144 and LB 493.

ANNA SULLIVAN: Senator Synowiecki and members of the Retirement Committee, my name is Anna Sullivan; that's S-u-l-l-i-v-a-n. I'm the Director of the Nebraska Public Employees Retirement Systems. In regard to the two bills being heard today, LB 144 and LB 493, I have some concerns about LB 144 from a feasibility standpoint. If the 90-day requirement...and I'm going to give you a little history before I get to it, before I finish...but the 90-day requirement were imposed on the retirement office. We have 36,000 plan members that are active, roughly, in the school plan. We have 529 school districts in the state. And we receive records on every one from every district every month. If when we send our annual statements out we would be required to make sure that everything was correct on all 36,000 people, and that would essentially be every month, that would almost be an impossibility. I wanted to say that just from a feasibility standpoint. But we totally agree that member records to be correct. In fact, despite the current law, we regularly correct records or if there has been something submitted by a district that is in error because they are our source of information, if there is something that's been submitted incorrectly, we will go back to that school. And the statement goes to the member and it's an opportunity for the member to see what the school has sent us. Okay? If they dispute it, then it's an opportunity for us to go back. If we don't catch it from what the school sends us and the member has been given some notice, then generally the problem goes back to the school where there has been some...you know, for some reason they didn't enroll them timely so they lost a half a year of service credit, salary was reported incorrectly. I heard Mr. Horne talk about salary. There are any number of cases where we routinely will correct a mistake that has been made and we'll go back...I have a case right now that I know it goes back to the mid-70s, and this individual says that he worked but the school didn't put him on right away, and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 12

LB 144 493

he...it's a half a year service credit issue. Well, a half a year service credit means a lot. We've spent a lot of time on that with him and with the school. And it's to his benefit. The word fiduciary was used. We take that very seriously and we will...we're there to serve the members of the trust. A fiduciary is someone who oversees a trust on the behalf of a trustee...a trust...or the person that is a recipient of the trust. And we are there for that purpose. What we would like to see is the elimination of the 90 days. Now, the 90 days, from my recollection, comes from when the certified mailing requirement was inserted into statute for our statements, probably seven years or so ago, maybe not quite that long ago, and it was... At that time there was a proposal by...that did not come from our office; we did not request the Legislature introduce that...but there was an idea by this committee, by a prominent individual on this committee, that we send those statements out by certified mail, and they then would have 90 days to dispute. But that was a way to help us rectify past service credit so we wouldn't always be going back and looking at old records. We would say, you have 25 years, Mr. So-and-so; this is what our records show; if you disagree with that you have...you get your certified letter that indicates you've received your statement and you have 90 days from that date to dispute the service credit. We have since then, because of the automation of our plan, we have been able to add salary to the statement and we've only done that I think the last two years. And so the salary, I think, is a more sensitive issue. Service credit is obviously part of it. Those two are the two key pieces for calculating a benefit. But the salary we receive from the school,...we've talked about spiking in a previous bill...we often will have to analyze that salary and make sure it hasn't been spiked. And just because the school reports it to us, is it correct? You have authorized in LB 503, if it advances, that we're to audit or to review the records of the schools to make sure that they're reporting properly. So do I just take without question what the school sends me? I don't think you are asking me to do that. So that's kind of where we are. We...I would like to see the 90 days go away because, frankly, we'll fix it regardless. I don't know anybody that we have held up and said no to because of the 90-day requirement--not one person. I would be happy to answer any questions. I'm kind of windy there; sorry.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 13

LB 144 493

SENATOR SYNOWIECKI: Any questions of Ms. Sullivan?

SENATOR BOURNE: You answered my question. I just wanted to make sure that has never happened.

ANNA SULLIVAN: No.

SENATOR BOURNE: I mean, there should...I don't think that you...the logistics of reviewing 36,000 statements annually is undo...not doable. But...and there is an obligation on the beneficiary to review the information and make sure it's accurate, but they shouldn't be limited by the time frame. Thank you.

SENATOR SYNOWIECKI: Senator Erdman.

SENATOR ERDMAN: And if LB 144 did go forward, how...that would be financed through the plan members? It wouldn't be financed through general funds, correct?

ANNA SULLIVAN: The expense of doing that would have to be financed...we are not funded by general fund appropriations. I'm assuming it would have to come out of the plan assets. It would just be enormous. I don't...I can't even tell you what it would cost us.

SENATOR ERDMAN: Somebody thinks it would cost you \$360,000.

ANNA SULLIVAN: Yeah. Well, I mean, I'm just saying, you know, if I just added the staff that I would have to add and the amount of time it might take us, yeah.

SENATOR ERDMAN: Okay.

SENATOR SYNOWIECKI: Okay, thank you for your testimony. Any additional neutral testimony relative to LB 144 and LB 493? Seeing no additional neutral testimony, Senator Price to close.

SENATOR PRICE: Vice Chair Synowiecki and members of the committee, you have heard the testimony on these two similar bills. And I leave it in your capable hands to decide the life or death of these two bills or a merger between the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 14

LB 144 493, 691

two. Are there any questions?

SENATOR SYNOWIECKI: Thank you, Senator Price. Any questions of Senator Price? Seeing no questions, Senator Stuhr to close on LB 493.

SENATOR STUHR: Thank you, Senator Synowiecki. I just believe...I appreciate the testimony today because it is an issue that I believe we need to resolve. And I look to the committee to resolve this at a later time. So thank you.

SENATOR SYNOWIECKI: Thank you, Senator Stuhr. And that will now close the hearings on LB 144 and LB 493. The gavel then will be returned to the Chair, Senator Stuhr.

SENATOR STUHR: Thank you, Senator Synowiecki. We'll now open on LB 691 and the legal counsel will give us that information. Thank you.

LB 691

JASON HAYES: (Exhibits 1 and 2) Good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 691. This proposal would permit the Public Employees Retirement Board to impose a transaction fee upon a member's employee and employer account. This transaction fee could be assessed on each transfer made by an employee into and out of an investment fund category established under the defined contribution benefit for both the county employees retirement system and the state employees retirement system. Such fee imposed could be no greater than \$4 under his bill per transaction. And the board could not impose a fee upon transfers originating from employee or employer contributions being first deposited into an employee or employer account. The board could impose a lower transaction fee for transactions initiated by a member over the Internet on the on-line access system established by the board. Such changes proposed in LB 691 are based upon the recommendations made in the interim report from LR 322 heard last year during the 98th Nebraska Legislature's Second Session. This report studied the administrative and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 15

LB 691

investment fees charged for both the state and the county defined contribution plans. There was a concern that the ten basis point charge assessed annually by PERB upon the assets of each member's defined contribution account disproportionately affected those members with larger retirement accounts and also did not consider such expenses involving excessive day trading, for example, which places some additional costs upon the systems, particularly when NPERS staff time is involved. LB 691 would also establish procedures by which the board could apportion certain costs attributed to both the defined contribution benefit and the cash balance benefit from funds forfeited by employees who terminated employment prior to vesting. However, based upon information just handed to me this morning from NPERS, there appears to be additional issues that need to be addressed relating to these expenses paid out of the forfeiture fund, and it may be best to review such issues during an interim study. As a result, I am submitting AM 0366, and you should have that in front of you, which would removed the provisions from within LB 691 relating to expenses paid out of the forfeiture fund. And are there any questions that I may address?

SENATOR STUHR: Are there any questions for Jason? Senator Bourne.

SENATOR BOURNE: Jason, so whose idea was this to assess this \$4 fee per transaction?

JASON HAYES: It arose out of the interim study that was done this summer. Basically there was...really what the transaction fee does is it does more of a user fee which would offset some of the asset management fees that are currently imposed by NPERS, and that's under like a ten-basis point that's annually put onto those members' accounts. And I don't know if that addresses your question, but it just came out of that report.

SENATOR BOURNE: But you don't recall specifically where it came from?

JASON HAYES: No, just out of discussions that I had and seemed like one way to deal with the measure.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 16

LB 691

SENATOR BOURNE: Thank you.

SENATOR STUHR: Are there any other questions? Okay. Thank you. Those wishing to testify in support as a proponent of LB 691, please come forward. Welcome.

BOB CORNER: Thank you, Senator Stuhr, and members of the Retirement Committee. My name is Bob Corner. I'm a 28-year state employee, so I've been in the retirement plan now for quite a while for state employees, and I'm representing NAPE/AFSCME here today on this bill. We are in support of this bill, but I want to caution a couple of things about it. The fee itself we don't have a problem with because it says "may"; it's not always. But chances are down the road it may be something that everybody gets charged every time. Now, admittedly we do have some members probably; I don't know any of them personally, but I've been told there are some members that probably try to match the system with the stock market and make a lot of trades. Those are the people, I think, that this was primarily getting at because they are the ones that are costing the system excessive funds for extra work. There are a lot of members, and especially some of the older members, that we're concerned with. As you get closer to retirement, of course the concept and the idea is to be more conservative with those funds and not have them in maybe some of your higher risk funds. Now these people under this bill could be charged every time they do that, so. And us that are in the DP plan, ... I mean the DC plan, defined contribution plan, of course every dollar we remove out of our account is one less dollar we're going to have when we retire. Now I'd like to tell you that all of our retirees are happy and their standard of living is exactly the same as they were when they were state employees, and they are seeing the good life, quote, "in their golden years." Unfortunately, we've have a number of them had to come back and work for the state or find jobs elsewhere. They didn't realize, (a) I guess the cost of prescription drugs, especially if they had a number of drugs they had to take and what the federal government paid and what they didn't. And some of them just misplanned what it was going to cost when they retired, so we have a number of state employees coming back. We do support the amendment here, too, that was offered by the legal counsel because when the vesting time was changed

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 17

LB 691

several years ago from the five years to the current format, prior to that time with the five years there was always plenty of money to pay the expenses of the PER Board. But when that vesting was changed those funds, of course, people stayed with the state long enough to be vested and then they left, so. We understand there are problems there, and there are a lot of state employees are concerned with that and how those costs are going to be allocated. But what we don't want with this bill is there are several bills coming up in the future here that we're really concerned with, especially LB 366 and LB 447. What we don't want something out of this bill to be so costly that it may offset those bills. I'd be happy to answer any questions. But we do thank you for all your hard work on this committee, especially state employees.

SENATOR STUHR: Okay. Thank you, Mr. Corner. Are there any questions?

SENATOR BOURNE: We'll wait. I do have a quick question if you...

SENATOR STUHR: All right. Is there a comment that...and extra comment?

BOB CORNER: Well, there was some talk...I haven't seen an amendment but a chance for a temporary maybe instead of 156 percent the state would match at 157 to help set off some of these costs. That was really what I was referring to. We don't want that to interfere with LB 366 or LB 477 down the road. I have not seen that amendment but somebody...

SENATOR STUHR: Okay. All right, thank you. Senator Bourne.

SENATOR BOURNE: Bob, thanks for your testimony and I will tell you that even though I've been here for six years and when even though it says "may" impose, no offense to PERB or anyone in the audience, but that's rarely does that mean they won't do it, you know.

BOB CORNER: That was my point, yes.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 18

LB 691

SENATOR BOURNE: Okay. But, I mean, don't you think it would make more sense if we said, okay, you can do, say, ten transactions a year or 20 transactions a year, or some number, and then assess a fee. I mean, we've gone to great lengths in expanding these investment opportunities or options, I guess, and now we're kind of...so we made a policy decision to go that direction and now it seems to me we're going in a different direction and that we don't want people to allocate. Is that...?

BOB CORNER: Yeah, we would definitely be in support of something like that. That's...I said there may be other amendments or whatever your committee wants to decide, but, yeah, that would definitely be supportive of state employees to have something solid, because, I agree, "may" sometimes is "shall" down the road.

SENATOR BOURNE: Always "shall."

BOB CORNER: So if you have a set number, at least people would know before something would happen to them. Now one month...or, I mean, certainly you are probably be hearing or something, but, you know, you expect you can do that and then all of sudden there are going to be extra costs.

SENATOR BOURNE: Thank you.

BOB CORNER: Yes, that could be a concern.

SENATOR STUHR: Senator Synowiecki.

SENATOR SYNOWIECKI: Bob, thanks for your testimony. It seems our state employees all go from one extreme to another. We have a lot of state employees that are totally disengaged relative to their retirement plans, and it always go into the default plan as a result of that. And then on the other end of the extreme, they have probably instances of where there is almost day trading going on with their funds. You mentioned the vesting, and we...before I got here it was moved back to three years, and that may have negatively impacted some of the funds available that are now we're looking at charging members essentially for some changes in their plans in this bill. I don't want to put you on the spot, but what would your position be relative to

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 19

LB 691

a return to that five-year vestment?

BOB CORNER: I am only talking for myself here;...

SENATOR SYNOWIECKI: Right.

BOB CORNER: ...I'm not going to represent NAPE. But at the time that that happened, I was opposed to that because I could see this coming down the road that knowing that there was going to be some kind of cost because figuring there was not going to be enough money to pay for those expenses. So, personally, I wouldn't have a problem going back to five. I think, you know, if you're going to be vested in any retirement plan, maybe you should put some time in on that job before you are. And I think Nebraska is really...I mean, the three-year period in one year and then two years after that and you'd be vested I think is really a relatively short period of time compared to a lot of other states. So I would have no problem personally, going back to the five years.

SENATOR SYNOWIECKI: All right. Also I think it would serve as an incentive for people to hang around a little bit longer, too. As you know, we have a lot of turnover in state employment.

BOB CORNER: That's just it; we do have a lot of turnover.

SENATOR SYNOWIECKI: And then once they achieve that three-year threshold, they take off on us, if you will,...

BOB CORNER: Before it took five; now it takes three. You're absolutely correct.

SENATOR SYNOWIECKI: Yeah, they would stick around a little bit longer perhaps. And, again, I don't want to put you on the, need to put you on the spot here, but relative to giving state employees another window of opportunity for signing up on the cash balance program, we gave them a six-month window or something before. Any thoughts relative to those that are currently in the defined contribution plan giving them state employees another opportunity to sign up for the cash balance plan?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 20

LB 691

BOB CORNER: Well, if it's possible legally, unfortunately when that was offered to state employee it was probably the worst time it could have been offered because it was when the economy was really in the tank, so to speak. You had a number of quarterly statements come back where even though depending where you even have your money invested in conservative funds, you were losing money. And when people looked at the cash balance plan figuring maybe the 5 percent guaranteed every year, but when you had chances to make 15 or 20, especially if you were close, or eight or nine years out from retirement, I know a lot of people didn't even give it a second thought because they knew there was no way they were going to make up that money again in that short a period of time before they actually retired, and they were willing to take that risk to try to do that, to get more. If it was offered again would more people take it? I don't know, Senator. I think maybe they might. You know, any time you invest and the economy is going good and you are seeing quarterly statements when you have pretty nice increases, you would probably be reluctant to change. At the same time, if it tanked...if it's really going bad and you are seeing that and you are thinking, oh, gee, only 5 percent guaranteed; I may never make that up, then I may not want to so it's kind of a Catch-22.

SENATOR SYNOWIECKI: Well, thank you for your testimony.

SENATOR STUHR: Yes. Are there any other questions? Bob, I just had one. In relationship to the amount of the fee that was placed in the bill, do you think \$4 is an exorbitant amount compared to what you might (inaudible).

BOB CORNER: From what other state employees have told me, the dollar amount isn't what so much is important, is if they knew exactly what it was going to cost them when they did it. This may bother some. They would rather...you know for sure, or like Senator Bourne maybe said, a set number of transactions before that happens. But a number of people, they don't do a lot of changes. You know, they like and they wait and see what is going to happen, but there are some...there are some that do it on a daily basis, and those are the people probably that are running up the costs and maybe should be charged more because they are the ones that are costing the system, where a majority, a vast majority of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 21

LB 691

people aren't.

SENATOR STUHR: Right. Okay. Well, thank you very much for your testimony.

BOB CORNER: Thank you for your time, Senators.

SENATOR STUHR: Thank you for coming. Are there other proponents for the bill? Are there those wishing to testify in opposition to the bill? Those wishing to testify in a neutral capacity? Welcome.

ANNA SULLIVAN: Senator Stuhr and members of the Retirement Committee, my name is Anna Sullivan, S-u-l-l-i-v-a-n, Director of the Nebraska Public Employees Retirement Systems, here to testify on LB 691. I want to first say that I appreciate the comments of your legal counsel, Jason, with regard to the language in LB 691 that would essentially use the cash balance forfeitures for the defined contribution expenses. We had a concern about mixing those dollars, and I do have a handout and I don't know if Jason has had a chance to circulate this among you, but there are 15 copies of an e-mail and a copy of a private letter ruling from the IRS with regard to plan qualification and the impact that commingling those assets would have on our plans. And I'm saying this only to put it on the record. I understand, Jason, you have introduced an amendment to correct, to strike the offending language, if you will. The plans that we have are qualified by the IRS. In fact, we just had all of our plans requalified since the compliance audit was done in 2002. The law firm that won that contract with us worked diligently with us, with the IRS, and all of our plans were qualified. The state plan was picked out for some reason, because the county plan is almost identical to the state plan, but the state plan was picked out by the IRS and looked at in much more detail. We had a lot of questions on the state plan and the plan qualification issue is so sensitive because it allows the contributions to be not only contributed pretax--that's one section of IRS code, but all of the earnings that are in the plan during the year for every employee, if our plan were disqualified all of those earnings would be immediately taxable to the employee every year. It is just a huge issue. And this handout, if we can get it passed out...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 22

LB 691

JASON HAYES: I did. I did pass it.

ANNA SULLIVAN: You did.

JASON HAYES: Yes.

ANNA SULLIVAN: So everyone has that and so there is one on the record. That's very good; thank you, Jason. I apologize; I don't want to spend a lot of time on that then. But I do like to have the area covered on the record. The second part of that has to do with the forfeitures being a plan asset. I think it's very important, this discussion...we had a private discussion before this subject, before the hearing, with a group of folks, and it's important to note on the record that those forfeitures are plan assets, and it was made...pointed out very clearly to us. Now with regard to the issue of charging fees to help fund our expenses. The questions that have been raised about vesting and just having money to cover our expenses. First of all, the shortened forfeiture schedule, as we talked about, I think, on the hearing this summer, it did a couple of things. One is that it limited then to the amount of dollars that will be forfeited because the shorter schedule means that you have smaller accounts that will be forfeited. That's one. But, two, of course, then the shorter time frame, meaning that fewer people will actually forfeit. So the dollars have declined. I have just some real quickly some information on forfeitures. We had forfeitures that were accrued in 2003...excuse me, I'm going to give you two numbers that I can compare just so you see how the forfeitures have declined. In 2002, the forfeitures, we accrued \$995,000 and some cents on forfeitures. That was people, the employer-matching dollars that were given up by the employees who quit because they were not vested. In 2002 was the year that the vesting schedule would have changed. So 2003, in the...this is the state only...the forfeitures earned, if you will, or accrued, were \$418,000. So about a little less than half, so that had a direct impact on the forfeitures. And I don't have my 2004 numbers quite yet, but I expect it to probably be smaller than the \$418,000. Now, our expenses though have also declined. And I could think that what I got from the introduction was, and from our discussion this summer, is

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 23

LB 691

that really the bottom line is, how do we pay for the expenses in the defined contribution plan? And we have used forfeitures for many years because there has always been forfeitures available. But as of 12/31/2004 there will no longer be forfeitures in the defined contribution portion of this plan. Even if we were to extend the vesting schedule back to 5, kind of looking at Senator Synowiecki and thinking of his question of Mr. Corner, if we were to raise that vesting, that wouldn't help us because going forward all of our new members are in the cash balance program. It might help us to pay our expenses for the cash balance. But this private letter ruling and this memo that Jason has passed out to you indicates we cannot use the cash balance forfeitures for the defined contribution expenses. Therefore we have a balance as of 12/31 in our forfeitures for state plan members...I'll shuffle my papers here, excuse me...we have a balance 12/31/2004 of \$892,000 in the forfeiture account. And there will no longer be any more dollars added to that. There may be some small earnings because it is...the money is invested, but we are drawing down estimated about \$475,000 a year that we'll have for expenses in 2005. And so, we're estimating that will last us just about two years with earnings, before then we'll have to rely on either the ten basis points charge that we started in 2003, in July 2003, or some other source. And if you have a source (laugh) that you can present to us on how we could pay for the plan expenses without assessing the member accounts in some way. Now, to get to the transaction fees, and I'm going to go back to...I did a quick check and for the year 2003...again I don't have my annual report yet for 2004/12/31...for the year 2003 we had 475 transfers in the year between funds. And that's a per person count, you know. I also checked to see how many people do it on the Web...and that was on the Web, excuse me...that was on the Web. As most of you know, or maybe you've heard me say, every employee can set up a PIN, a personal identification account number, and go into a secure Web site and make transactions without...there is no human interaction; there is no extra cost to our plan. We've already paid for that recordkeeping, that software. It's part of the annual recordkeeping fee of \$25 a year. And everybody has paid for that. But there is not a lot of transactions. Now on the paper side. I had my staff check and we average about five a week...five people a week transferring their money. So if

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 24

LB 691

you take that times 52 weeks that will give you kind of a rough idea about how much you are talking in transactions and what it would generate. So we are open to suggestions on how we could fund the expenses for, not only the state plan, but the county plan, because those plan members have the ten basis points charge, as well, and we're using every dime of that ten basis points charge. I think I talked to you in a previous setting about the overall fee is 29 basis points when you have the investment fees on top of it, the investment managers. It's averaged based on Carol Kontor's testimony it's averaged about 29 basis points. That's .29 percent; not 29 percent. That's .29 percent. Put a decimal in front of that 29 when you apply the percentage. Or it's .0029 if you convert it to decimals. Per year; that's an annual number. So you've got to divide that by 365 to get a daily number. I'll be happy to see if I can answer any other questions. I've tried to think of stats I could give you, tried to think of information that might help you in your decision making. And maybe I've anticipated wrong. Maybe there is something else I've missed, but I would be happy to answer any questions you might have.

SENATOR STUHR: Are there questions for Ms. Sullivan? I just have one, Anna. Can you tell us how many people are actually in the defined contribution system, and...?

ANNA SULLIVAN: The...yes, go ahead; I'm sorry.

SENATOR STUHR: Okay. Go ahead.

ANNA SULLIVAN: The number as of 12/31 of '03...you have to understand, I'm waiting for my 12/31/04 report which should be available here the end of February, the first part of March. But as of December 31, 2003, I had 11,600 defined contribution members; 9,713 of those were active; and 1,887 were inactive accounts, people who had left the account...quit state government and just left their account intact. We have, on the other hand, cash balance members, as of that same date we had active 5,206 members; and inactive we had 56, for a total of 5,262. So it's about a one-third/two-third ratio on our state plan between the defined contribution and the cash balance. Now, all our new hires will be going into the cash balance, so that ratio

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Nebraska
Retirement Systems
February 10, 2005
Page 25

LB 691

very gradually will begin to shift. It depends on turnover; it depends on the economy; it depends on when people decide to leave state government or to stay. It's a huge unknown.

SENATOR STUHR: All right. Are there any other questions? If not, thank you very much for sharing that information.

ANNA SULLIVAN: Thank you. Yes. I will be available for any other questions you might have.

SENATOR STUHR: All right. Are there...is there anyone else that would like to testify in a neutral capacity? If not, that closes the hearing on LB 691.