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Appropriations Committee
February 13, 2008

[AGENCY 85]

SENATOR HEIDEMANN: Any other questions or comments? Seeing none, thank you. Is there anyone else wishing to testify on Agency 69? I thought they was getting up to come testify, but seeing no one else wishing to testify on Agency 69, Nebraska Arts Council, we're going to close the public hearing on Agency 69, open up the public hearing on Agency 85, the Employees Retirement Board. Is there anyone wishing to testify on Agency 85, the Employees Retirement Board? Welcome. [AGENCY 69]

PHYLLIS CHAMBERS: (Exhibit 10) Good afternoon, Chairman Heidemann and members of the committee. I'm Phyllis Chambers, C-h-a-m-b-e-r-s, director of the Nebraska Public Employees Retirement Systems, and last year I came before you and testified, requesting an appropriations for the conversion of our IT system. I would like to thank you for approving the funds for our information technology system and also to update you on our progress. After completing the RFP process, we contracted with Saber Corporation and our project began on August 6 of this year. So far, everything is moving along very well. We have...we've been staying within budget and we have many checks and balances in place. We've got the office of the CIO providing us with oversight, as well as the Nebraska Information Technology Commission and the quality...we have a quality assurance team from the University of Nebraska. The conversion should be complete within two years. This year I come before you to request our routine statutory requirements for Program 515 and several minor requests for Program 41. Under Program 515, I have a reduction request for \$41,000 for the Omaha service annuity, and a reduction request for \$448,000 for the State Patrol Plan. Both of these are recommendations from our actuary to maintain the proper funding of these accounts. And we are also requesting, based on the .7 of 1 percent contributions for the Omaha schools and the state school system, for \$168,596 for Omaha schools and \$517,510 for the state school plan. Again, those are all the statutory required contributions that need to be made. Under Program 41, which is our operations budget, I'm requesting \$48,500 for an actuarial audit. This is a recommended standard of the

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GFOA, the Government Finance Officers Association, and the State Auditor whenever you have an actuary serving for more than ten years. Our current actuary, Buck Consultants, has been our actuary for ten years now. We are also requesting \$35,000 for an updating of our IRS determination letters for all five of our plans. This is necessary to meet our compliance requirements and our IRS determinations were last...letters were last done in 2002, and there have been several significant changes in the tax laws and the federal laws, such as EGTRRA and the Pension Protection Act. Also, our state and county cash balance plans are new as of 2003 so they were not included in the IRS determination letters, so those need to be reviewed and approved. And we also would like to request \$25,000 to pay for accounting consulting fees. The Public Employees Retirement Board felt that this was necessary, due to the reconciliation of the recordkeeping services when we converted from Union Bank and Trust and then back again to Ameritas in 2006. Last year we hired an independent accounting firm to assist us with this process and to assure the PERB and the State Auditor that we are using the best practices for reconciliation of the accounts. To date, we've reviewed over 1,000 accounts and we hope to have this process finished by the end of this June, this fiscal year. All of our retirement plans are audited by the State Auditor. Last year, the Auditor was at our agency most of the year. The results of last year's audits shows that NPERS has a number of audit points and exit findings that need to be resolved. Many of those audit points were...have been listed in previous audits, going back four or five years. The board and I strongly believe that our agency does not have adequate staffing to perform our daily operations and fix the problems identified in the audits. In October, I made a deficit request for two additional employees--a retirement plan specialist and an auditor. We no longer need the auditor position because we took care of that problem internally. We converted an IT position to an auditor. Instead, I would like to modify my request and ask for two additional retirement specialists to work in our benefits department. This would reduce our request for...by \$15,000 per year. I think it's no secret that the babyboomers have reached the retirement age and we have seen an increase in the benefits request and processing that we have had to do at our agency. In 2007, we processed 165 more teacher

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retirements than we did the previous year--a 14 percent increase. The teachers' retirements are very time-consuming. They require verification of service credit and salaries, and the 7 percent salary cap has created additional staff work to obtain documentation from the schools for any salaries that are over the 7 percent. We're also required to process the school retirements within 60 to 90 days, to ensure that retirees will receive their first benefit payment on time. In addition, we processed 585 more distributions for state employees last year who were retiring or terminating than we did two years ago--that's a 30 percent increase; 638 more county distributions--a 120 percent increase over the past two years; and we've had 23 percent more calls at our call center for the past two years. Last year we answered 38,000 calls. We also have employees coming into our office. We met individually with over 700 plan members last year for retirement counseling and estimates. Last year we processed 45,000 qualified domestic relations orders, divorces; 600 purchase of service request for buying service; and approximately 160 death claims. All of these take a lot of extra work and calculations. To comply with LB328, we spent several months of additional staff time implementing the cash balance election that took place January 2. We had about 1,600 members switch to the cash balance plan. We're currently developing the State Patrol draw plan, LB324 that was passed last year, and that should be implemented in September 1 of this year. And we're also working to implement a new purchase of service method. All of these require additional work and must be absorbed by our team. Since 2000, NPERS has not added a staff person in the benefits department so I am requesting two additional retirement specialists to handle the processing if we're going to meet the work demands and begin to fix our audit problems. NPERS...this past year we processed \$300 million in benefits payments so we have a tremendous responsibility to the state and to our 100,000 members. We know that we want to do our jobs accurately and timely, and if we make mistakes we expend more time and money to fix them, and in some cases we bear the additional costs of lawsuits. I would appreciate your consideration of the two additional employees, also the cost of the accounting consultant, the actuarial audit, and the IRS determination letters. And if you have any questions, I'd be happy to answer them. [AGENCY 85]

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SENATOR HEIDEMANN: I just have a question on the Auditor,... [AGENCY 85]

PHYLLIS CHAMBERS: Uh-huh. [AGENCY 85]

SENATOR HEIDEMANN: ...that you're asking for \$61,711 in fiscal year 2007-2008. And that fiscal year is almost...it's half over. [AGENCY 85]

PHYLLIS CHAMBERS: Yes, so we wouldn't...we wouldn't need that much for this year. We know that...that was put in, in October, that actual amount was submitted in October, so... [AGENCY 85]

SENATOR HEIDEMANN: Okay. So we could prorate it out to how... [AGENCY 85]

PHYLLIS CHAMBERS: Right. [AGENCY 85]

SENATOR HEIDEMANN: Okay. [AGENCY 85]

PHYLLIS CHAMBERS: You could certainly prorate it out. [AGENCY 85]

SENATOR HEIDEMANN: Okay. [AGENCY 85]

PHYLLIS CHAMBERS: And that has been changed to a retirement specialist instead of an auditor. [AGENCY 85]

SENATOR HEIDEMANN: Okay. [AGENCY 85]

PHYLLIS CHAMBERS: Okay? [AGENCY 85]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 85]

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SENATOR NELSON: I think I'm a little confused. You said you didn't need the auditor. Is that right? [AGENCY 85]

PHYLLIS CHAMBERS: That's correct. We converted a position within. [AGENCY 85]

SENATOR NELSON: So now you're asking for two retirement specialists. [AGENCY 85]

PHYLLIS CHAMBERS: Yes, we are. [AGENCY 85]

SENATOR NELSON: Okay. So how do these figures change as far as...can you give us some figures of what the cost would be then? [AGENCY 85]

PHYLLIS CHAMBERS: Yes, it would be...well, if you look at the...just a second here...okay...if you'll excuse me just a moment. [AGENCY 85]

SENATOR NELSON: So your figures here on your request for retirement specialist, that covers two persons there our of \$53,000 out of cash fund and...? [AGENCY 85]

PHYLLIS CHAMBERS: Now I'm looking at this sheet so I don't know if you have this sheet, but for 2007-2008 it would be \$80,772 for a Retirement Specialist I, and for the second year it would be \$75,772. And so it would be two...times two. And I can...I can give you this sheet if that would help you. [AGENCY 85]

SENATOR NELSON: What? Yeah, we didn't get that as a handout, so... [AGENCY 85]

PHYLLIS CHAMBERS: I am sorry about that. [AGENCY 85]

SENATOR HEIDEMANN: We was just having a little bit of a problem because it wasn't matching what you had requested, and that was the confusion on our side. [AGENCY

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PHYLLIS CHAMBERS: That would be why. That would be why. [AGENCY 85]

SENATOR HEIDEMANN: So... [AGENCY 85]

PHYLLIS CHAMBERS: I apologize. [AGENCY 85]

SENATOR HEIDEMANN: ...I think we're going to get that figured out here. Are there any other questions? Senator Synowiecki. [AGENCY 85]

SENATOR SYNOWIECKI: Thanks, Phyllis. Help me to understand this Omaha service annuity, and I see we're looking at another decrease in funding to that. [AGENCY 85]

PHYLLIS CHAMBERS: Okay, now...all right. [AGENCY 85]

SENATOR SYNOWIECKI: I don't understand what you mean. [AGENCY 85]

PHYLLIS CHAMBERS: There's two issues with the Omaha service annuity. We've got LB968, which is separate from this request. Okay? [AGENCY 85]

SENATOR SYNOWIECKI: Is that Tom White's bill? [AGENCY 85]

PHYLLIS CHAMBERS: Yes, it is and that's a whole different issue. This is just our actuary's...actuarial contribution that we need based on what we're doing at the present time. [AGENCY 85]

SENATOR SYNOWIECKI: Okay, based upon what you're doing at the present time. How come I'm getting e-mail after e-mail after e-mail from retired teachers in Omaha about them realizing a decrease in their pensions? [AGENCY 85]

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PHYLLIS CHAMBERS: If you've got time, I'll try to explain it to you. [AGENCY 85]

SENATOR SYNOWIECKI: I understand there was a statutory change done some time ago,... [AGENCY 85]

PHYLLIS CHAMBERS: Right. [AGENCY 85]

SENATOR SYNOWIECKI: ...but I'm also of the under...I also, as I understand it, and believe me I emphasize as I understand because I don't fully understand it, that once we...one of the things with the defined benefit plan is once you enter into a contract with that employee and you got a defined set of benefits, that there's court precedent that you can't decrease that contract with that employee. [AGENCY 85]

PHYLLIS CHAMBERS: Well, as I understand it, we do not have the contract with the employee. OSERS has the contract with the employee. We are the pass-through agency. And so we are passing through...we are...we pass through the amount that the statute tells us to pass through. And as we understand it and when we got our...we got an AG Opinion this past year that stated that we were to pay...pay these...the Omaha service annuity on a reduced basis and all of...and the state teachers on a reduced basis. However, with the Omaha schools, they get their annuity on top of their formula annuity, where the state teachers do not receive the service annuity. It's incorporated in their basic benefit. [AGENCY 85]

SENATOR SYNOWIECKI: Uh-huh. [AGENCY 85]

PHYLLIS CHAMBERS: So it doesn't really...it hasn't been an issue for them. But we started reducing their benefit, from what I understand, and remember I've been here a year, we started reducing their benefit in...several different times it was done, and then it was changed back for various reasons. And in 2004, when we converted to the

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PIONEER system, it was my understanding that all the programming was done on a reduced basis and what that...for the benefit of the committee, what that is, is if...the statute in 1988, to our understanding, states that a teacher who retires prior to age 65, whether they have 35 years of service or whether they're disabled, if they retire before age 65, their service annuity is to be actuarially reduced, not their basic formula annuity benefit, just the service annuity, and that goes back to the statutes in 1988. Over the course of the years, they have...NPERS did pay them on an unreduced basis for several years. Then in 1996, Senator Wickersham got a clarification of the bill that said they are to be reduced, so they started reducing them again, and then we ended up having to pay them back. We had to pay them back extra money two years later. Then they got an AG Opinion in 1999 telling them they were to be reduced again. So the board, the NPERS board, voted at that time, the board voted to go ahead and pay them unreduced and get another...and get the Retirement Committee to pass another bill that says they could be unreduced. At that point, the Retirement Committee in 1999 said, we found the bill but nothing was ever done with it; we found the record of the bill. So from that point forward, it was our understanding that it should be paid unreduced...excuse me, it should be paid reduced. If I'm confusing you, I'm sorry. I do apologize. So this has been going on for years now and Omaha schools, last year when I came to work for the agency, they came down and told me that we owed them \$1.1 million for benefits that we have not been paying them. And we...actually, the actuary is submitting those figures to you and you appropriate the money for us to pay the service annuity. So if we are to be...if we should be paying them unreduced then we're going to have to request more money from the committee in order to pay those on an unreduced basis. But right now we're paying them reduced. Now this figure here is for...is for reduced benefits, so this...the \$41,000 that I mentioned is to make up the actuarial difference for the reduced payments, but the issue that's before the Retirement Committee right now is will you go back and change it so that anybody retiring prior to 1996, those payments will be unreduced? [AGENCY 85]

SENATOR SYNOWIECKI: The... [AGENCY 85]

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SENATOR HEIDEMANN: Senator... [AGENCY 85]

SENATOR HARMS: Mr. Chairman, what are our legal requirements here? I mean what... [AGENCY 85]

SENATOR HEIDEMANN: That would be a question that I would like to ask actually. [AGENCY 85]

SENATOR HARMS: Yeah, we need to find out legally what our... [AGENCY 85]

KATHY TENOPIR: Currently, the legal requirement is this is really a bureaucratic snafu on the part of both PERB, back in the day, and the Omaha retirement system. And what happens is a small group of people have gotten caught. Where they were getting unreduced benefits, now they're, according to the Attorney General, are...should be getting reduced benefits. The law says reduced benefits. [AGENCY 85]

SENATOR HARMS: So... [AGENCY 85]

KATHY TENOPIR: But they have, in the past, gotten unreduced benefits, contrary to what the statute actually says. [AGENCY 85]

SENATOR HARMS: So then what liability do we have? [AGENCY 85]

KATHY TENOPIR: I don't think we...well, the attorney for the Retirement Board is here. [AGENCY 85]

PHYLLIS CHAMBERS: Joe, would you like to address that question? [AGENCY 85]

SENATOR HEIDEMANN: If you would pull a chair up, Sam. [AGENCY 85]

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PHYLLIS CHAMBERS: Would you like to? Okay. [AGENCY 85]

JOE SCHAEFER: My name is Joe Schaefer. I'm counsel to the PERB. I'll try to answer your questions. I didn't bring any material on this, but I'll try to do the best I can off the cuff. The service annuity was initiated many years ago. It was offered to the members of the Omaha school employees retirement system at the same time, in 1945, that the other system, statewide system, was implemented. I think in the beginning there wasn't early retirement provisions in our system. In 1986, there was an early retirement bill that was adopted. And in 1988 a bill was adopted, and I'm sorry again I can't cite to the number of it right now, it might be LB160, that provided that if a member retired before achieving the age of 65 or achieving 35 years of service, their service annuity paid by the state of Nebraska would be actuarially reduced to reflect the fact that they were doing it before that standard. In 1996, a bill was introduced in this Legislature that provided a clarification, and I've examined the legislative history in great depth, that said it was a clarification that those were not to be paid on an unreduced basis. It did not contain the language relating to 35 years of service. It simply said if you retire before the age of 65, the service annuity paid by the state is actuarially reduced. The Omaha school employees retirement system didn't particularly care to have that term imposed, although it was a statutory enactment. In 1999, an Attorney General's Opinion was sought, and this was a formal Opinion, as to whether they were entitled, the Omaha school retirement system was entitled, to request on behalf of their members that NSERS pay them this unreduced amount. The Attorney General concluded that it was contrary to statute. That was in January of 1999. In March of 1999, the Public Employees Retirement Board met and at that meeting they voted to continue to pay unreduced and to go to the Legislature and ask that this problem be resolved with legislation that provided unreduced benefits because, again, this is the body that appropriates the money to the agency to pass through to Omaha. A bill was introduced, but the bill that was introduced dealt only with rule of 85 retirements. That's people whose age and years of service at retirement totaled 85, providing they were at least

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age 55. That bill did not go forward. It was...some parts of some bills were combined and adopted that year; that was not one of the things that was adopted. So since that time, there's been an ambiguity as to whether the board's decision, which is contrary to statute, was the law. Now it's my legal belief that people should be on notice from the...I believe it was April 17 of 1988 when the law was adopted that said it would be paid on a reduced basis. I would argue that people that didn't have 35 years of service after that time, I mean came into the service after that time, should have been on notice. The debate back and forth since...I think it's been since the computerized system was put in at NPERs has been that the programming was designed to do what the statute says to do, and when those payments were made in the computer system according to the statute, then the Omaha school employees retirement system said that's not enough money. That's where we got to today. So we have an outstanding claim for \$1.3 million, \$1.304 million, and there's been a letter sent out by one of the people from OSERS, which I don't know that I would agree is completely accurate, that says that the Nebraska school employees retirement systems pays the member benefits to their employees. We don't. We never have, to my knowledge. We pay a lump sum actuarial equivalent to OSERS. We don't maintain their membership records. They simply bill us when one of their members retires that qualifies and we pay them an actuarial equivalent. And I guess I'll stop right there if you have some questions about some of those points because that's very complicated. [AGENCY 85]

SENATOR HARMS: Yeah. Do we treat the Omaha Public Schools different than we treat other parts of public school education? [AGENCY 85]

JOE SCHAEFER: First of all, I want to apologize. Yesterday I had a hearing aid that went on the fritz. I would ask that you speak up just a little bit because I'm having... [AGENCY 85]

SENATOR HARMS: That's okay. I don't hear very well either, so...(laughter)...there's a lot of times on the floor I don't know. Let me ask the question. Do we treat the Omaha

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Public School System different than we treat other public schools throughout Nebraska?
[AGENCY 85]

JOE SCHAEFER: In statutes, yes, we do. In the Omaha system...both systems have a formula annuity and it's the years of service times 2 percent--the factor is the same--times final average compensation. [AGENCY 85]

SENATOR HARMS: So that's my question I'm really kind of after. Is that where we could actually be discriminatory? [AGENCY 85]

JOE SCHAEFER: Well, it's been that way from... [AGENCY 85]

SENATOR HARMS: I know it's been that way, but when you get right down to it, is...
[AGENCY 85]

JOE SCHAEFER: I guess if I remember the Nebraska statewide system, that might be my contention. But... [AGENCY 85]

SENATOR HARMS: That would be mine. [AGENCY 85]

JOE SCHAEFER: ...as my...from my position, I couldn't say that to you officially here today. [AGENCY 85]

SENATOR HARMS: Yeah, I know, but that would be mine. So I don't know. [AGENCY 85]

JOE SCHAEFER: But their service annuity is in addition. It's an additional amount to the formula annuity. In the school employees retirement system, that amount is subsumed within it because you get a choice between service and savings, or formula, but you don't get both. [AGENCY 85]

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SENATOR HARMS: Probably that whole thing is questionable, but I (inaudible).

[AGENCY 85]

JOE SCHAEFER: You know, I would be happy, at time other than at this hearing, to address any one of you or any group of you that have questions and be able to provide you with some information, because I simply don't have it with me today. But I would offer to do that whenever you would like to do it. [AGENCY 85]

SENATOR HEIDEMANN: Any other questions? Senator Synowiecki. [AGENCY 85]

SENATOR SYNOWIECKI: Well, thanks, Joe. It's been educational for me. One thing, historically, the Omaha Public School System had a retirement system that predates the state system, which explains why they're not...the school system's retirement system started well in advance of the statewide system. And somehow, and I don't understand it, that's how the service annuity I think, Joe, did it or did it not, that's how this kind of... [AGENCY 85]

JOE SCHAEFER: Yes. Their system, I believe, started in 1909; ours didn't come along until 1945. And they had the provision and when it was offered that it seemed to be fair to pay everybody the service annuity, in Omaha it was drafted so that it was an additional benefit and the statewide system turned out not to be. It was a choice. So that's where we got to where we are. [AGENCY 85]

SENATOR SYNOWIECKI: Now, Joe, you had referenced some Attorney General Opinions and some legislation that was introduced. I jotted down 1988, 1999, I think. Doesn't all that kind of predate a more recent judicial decision on the obligations of the state on a defined benefit plan relative to decreasing benefits? [AGENCY 85]

JOE SCHAEFER: I assume you're referring to Halpin decision, that was a State Patrol

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case. [AGENCY 85]

SENATOR SYNOWIECKI: The judges. [AGENCY 85]

JOE SCHAEFER: There are rather more nuances to that case than I think maybe we're prepared to discuss here today, but that is basically...stands for saying that if you have promised a benefit, and in that case it would be if the state of Nebraska promised a benefit of the service annuity to Omaha people when they retired, then they would get it, they would be entitled to it. And it's not...it doesn't stand for the fact that you can't change a benefit. For example, you could stop paying service annuities...you know, this is a hypothetical and I hope we don't go much farther with this, but you could stop paying them today for everybody that's hired after today. [AGENCY 85]

SENATOR SYNOWIECKI: Right. Right. [AGENCY 85]

JOE SCHAEFER: But for people who are working today, they've been promised a certain thing. And then the question arises, who promised them and what did they promise them, and that's where it gets a lot more than just citing Halpin. [AGENCY 85]

PHYLLIS CHAMBERS: And can you promise something that is against statute?
[AGENCY 85]

SENATOR SYNOWIECKI: What do you mean against statute? [AGENCY 85]

PHYLLIS CHAMBERS: Well, if the statute says... [AGENCY 85]

JOE SCHAEFER: If a promise is made contrary to what the statutory provision is. If, for example, which trumps which? If the Legislature enacts a law that says the benefits are paid on a reduced basis, and the PERB says, well, I think we should be paying them on an unreduced basis, which one trumps which? By the way, the Legislature is the one

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that appropriates the money to pay it. That's my point. [AGENCY 85]

SENATOR SYNOWIECKI: Uh-huh. [AGENCY 85]

JOE SCHAEFER: And I think what needs to happen is the Legislature needs to decide whether they want to pay them one way or the other, and then we go forward doing that. I think that's a progressive way of solving it. [AGENCY 85]

SENATOR HARMS: I still think even...and I might be wrong, but I think even though they started before, I still think there's a question there, in my mind, about the constitutionality of this whole issue. But, as I said, it's probably wrong and... [AGENCY 85]

JOE SCHAEFER: I'm probably going to not offer an opinion on that. [AGENCY 85]

SENATOR HARMS: I can understand that. [AGENCY 85]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you. [AGENCY 85]

PHYLLIS CHAMBERS: Okay. [AGENCY 85]

JOE SCHAEFER: Again, let me know and I'll try to help you. [AGENCY 85]

PHYLLIS CHAMBERS: Well, I would comment, too, we have two of our board members here. Denis Blank is our chairman, Don Pederson, and they have had to deal with this situation and they're...it's not been an easy decision for them, so we appreciate what they're doing for the PERB, and I'd just call attention to them. I don't know if they have any comments or not, so thank you. [AGENCY 85]

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JOE SCHAEFER: Thank you. [AGENCY 85]

SENATOR HEIDEMANN: Is there anyone wishing...else wishing to testify on Agency 85, the Employees Retirement Board? Seeing none, we will close the public hearing on Agency 85, and open up the public hearing on Agency 9, Secretary of State. [AGENCY 85]