

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

Nebraska Retirement Systems Committee
February 03, 2017

[LB278 LB413]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on February 3, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB278 and LB413. Senators present: Mark Kolterman, Chairperson; Brett Lindstrom, Vice Chairperson; Kate Bolz; Rick Kolowski; and John Stinner. Senators absent: Mike Groene.

SENATOR KOLTERMAN: (Recorder malfunction)...name is Senator Mark Kolterman. I'm from Seward and I represent District 24. I think I'll start over here on the left and have people introduce themselves.

SENATOR LINDSTROM: Senator Brett Lindstrom, District 18, northwest Omaha.

SENATOR KOLTERMAN: He's our Vice Chair.

SENATOR BOLZ: Senator Kate Bolz, I represent District 29 in south-central Lincoln.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31 in southwest Omaha.

SENATOR STINNER: John Stinner, District 48, Scotts Bluff County.

SENATOR KOLTERMAN: To my far right we have Katie Quintero who's our committee clerk and to my immediate left we have committee counsel, Kate Allen. Our page again today is Bobby. Welcome, Bobby. We're here today on hearings number LB278 and LB413. We'd like to ask you that if you're here to turn off your cell phones. If you want to testify, come forward. You know the rules. If you want to complete the blue sign-in sheet and hand that to Katie before you testify, we'd appreciate that. When you get here, spell your name and state your name. If you have handouts, please see to it that we have eight copies. And if you want to have something just read into the record and don't want to testify, please fill out a sheet. With that, again welcome. I'm going to turn it over to Vice Chair Lindstrom and we're going to get started.

SENATOR LINDSTROM: All right, we'll now open the hearing on LB278. Chairman Kolterman, whenever you're ready.

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Good afternoon. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I represent Legislative District 24 and I'm here today to introduce LB278. This bill is being introduced at the request of NPERS. It amends the county,

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

Nebraska Retirement Systems Committee
February 03, 2017

state, and school employees retirement act to create uniformity in the act's disability provisions. The definition of disability in each act is amended to clarify that disability is the inability to engage in any substantial gainful activity. This change in language will make it consistent with the definition of disability under Social Security. However, it will not change the standard PERB has used in reviewing disability applications. It also clarifies that a disability must be initially diagnosed or become disabling while the member is an active participant in the plan and there must be an expectation that the disability is a long-continued duration or will result in death. Again, this clarification does not change the standard that the PERB has been using or is currently using. The county and state plans add language which currently exists in the school plan that the medical examination may be waived if the PERB determines that extraordinary circumstances exist, including hospice placement or similar placement for a terminal illness or injury. LB278 strikes a current provision in the school plan that grants a school plan member up to five years from the termination of employment to file for work-related disability. Under the revised language, all disability applications must be filed within one year of termination of employment. The one-year period is consistent with the time frame in the other retirement plans. We've been working with NPERS on several minor amendments to the bill. AM152 is in your notebooks. It makes the following changes. The language in each of the plans regarding the promulgation of rules and regulations is changed from a "shall" to "may." Excuse me. Bobby, can I get a drink of water, please. And proposed new language in the school plan on page 19 is stricken because it is redundant. The stricken redundant language is already addressed in 79-953 and 79-954. A representative of NPERS will testify after me and will be able to respond to the questions you might have. With that, I would take questions. [LB278]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any questions from the committee? Seeing none, thank you. We'll now have proponents. [LB278]

ORRON HILL: (Exhibit 1) Good afternoon, Chairperson Kolterman, acting Chair Senator Lindstrom, and Retirement Systems Committee members. My name is Orron Hill, O-r-r-o-n H-i-l-l. I'm the legal counsel for the Public Employees Retirement Board and Nebraska Public Employees Retirement Systems. I'm here to testify on behalf of the PERB and NPERS as a proponent to LB278. In 1999, LB538 amended the school plan disability language to make it more consistent with the state and county plan and similar, but not identical, to the Social Security disability language. This cleanup bill is the next step in ensuring that the disability retirement provisions of the state, county, and school plans are clearly articulated and consistent with each other, as well as Internal Revenue Code compliant. The Pension Answer Book, by Stephen J. Krass, published by Aspen Publishers, is a primer on the federal law, specifically the tax law, for pension plans. It reads, in relevant part: To come within the exception of disability the individual must be unable to engage in any substantial gainful activity due to a medically determinable physical or mental impairment; the disability must be expected to result in death or to be of a long-continued and indefinite duration; and the individual must furnish proof of the

Nebraska Retirement Systems Committee
February 03, 2017

disability in the form and manner required by the IRS. It goes on to read, in relevant part, that whether or not the impairment in a particular case constitutes disability will be determined with reference to all the facts in the case. The following are examples of impairments that would ordinarily be construed as preventing substantial gainful activity: loss of the use of two limbs; certain progressive diseases that have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease; diseases of the heart, lungs, or blood vessels that have resulted in loss of heart and lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that, despite medical treatment, breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores; cancer that is inoperable or progressive; damage to the brain or a brain abnormality that results in severe loss of judgment, intellect, orientation, or memory; mental diseases requiring continued institutionalization or constant supervision of the individual; loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye at best correction; permanent or total loss of speech; and total deafness uncorrectable by a hearing aid. LB278's primary purposes include clarifying and codifying the standards used by the PERB when determining whether a member is eligible for disability retirement and ensuring that the Internal Revenue Code is complied with. It accomplishes these goals through several provisions, many of which have already been addressed by Senator Kolterman. It makes technical changes such as changing the word "a" to "any" or the word "long" to "long-continued" to comply with the recommendations cited in The Pension Answer Book which cites to Section 72 of the Internal Revenue Code. In addition, the current law is silent on whether a degenerative medical condition that existed prior to a member's active participation in the plan could qualify for a disability. As can be seen from the quoted sections of The Pension Answer Book, degenerative conditions that become disabling may qualify an individual for disability protections under the Internal Revenue Code. Further, this practice has long been followed by the PERB when evaluating whether an individual qualifies for disability retirement. The bill specifically states that a medical condition may be qualifying if it is either initially diagnosed or becomes disabling while the member is an active participant in the plan. This ensures Internal Revenue Code compliance and clearly articulates the standard and codifies the ongoing practice. Third, under the current law, a member must normally undergo a medical examination before receiving disability retirement benefits. The school plan currently has a provision that allows the PERB to waive that medical examination requirement under extraordinary circumstances. The bill extends this practical tool to the state and county plan. Fourth, the bill requires members in all plans to apply for disability within one year of termination, as has been discussed. Plan members who become disabled have consistently filed for disability retirement benefits within one year of termination. We do not foresee any disadvantages to our members by unifying the standard across all plans. We have worked greatly with the committee's legal counsel on some suggested amendments and those have already been discussed, so I won't repeat that testimony here to save on the time. Again, we see this as a technical cleanup bill that ensures Internal Revenue Code compliance, codifies practices, clearly

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

Nebraska Retirement Systems Committee
February 03, 2017

articulate standards, and ensures that members are well aware of how the disability provisions of their retirement plans function. We ask the committee to advance the bill with its proposed amendments. Subject to your questions, that concludes my testimony. [LB278]

SENATOR LINDSTROM: Thank you, Mr. Hill. Any questions from the committee? Senator Kolowski. [LB278]

SENATOR KOLOWSKI: Thank you, sir. Mr. Hill, are there any things that you feel should be added to this or is it fairly complete as your own feelings on the cleanup? [LB278]

ORRON HILL: I think the cleanup bill is a fairly good summarization of the federal tax law and how the PERB is actually functioning right now in the disability protocols. We could add specific conditions, but I think that that's really unnecessary since they already all are articulated in the Treasury regulations and the Internal Revenue Code themselves. And we can certainly look to those standards for guidance if necessary, Senator. [LB278]

SENATOR KOLOWSKI: Thank you. Appreciate it. [LB278]

SENATOR LINDSTROM: Thank you. Senator Bolz. [LB278]

SENATOR BOLZ: Can you tell me how you define gainful activity. [LB278]

ORRON HILL: There's...in essence, we look to the code for a lot of the guide on how we define substantial gainful activity. And as we can see, they've got some specifically articulated conditions of that nature. But they always look at it through the eye of the specific facts and circumstances of the case knowing that each medical condition can impact a person individually in different ways. What they look at is that if a condition or a similar condition to this nature exists, they generally will see that as a disabling condition. But what we specifically look at is, can an individual engage in any sort of productive benefit to society and get compensated for that benefit? That's generally how the Internal Revenue Code looks at it. One specific quote to address this out of The Pension Answer Book which is also citing to Treasury regulation 1.72-17A reads: An impairment that is remedial does not constitute a disability. An individual will not be deemed disabled if, with reasonable effort and safety, the impairment can be diminished to the extent that the individual not be prevented by the impairment from engaging in a customary or other sort of substantial gainful activity. So that's kind of one of the guiding principles that we use when evaluating a person's disability, as that does come right out of the Treasury regulations. Does that help at all? [LB278]

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

Nebraska Retirement Systems Committee
February 03, 2017

SENATOR BOLZ: I think so. I mean what I was really trying to better understand is what in practice gainful activity means. And assuming that gainful activity means someone's ability to make a living, I think I'm more comfortable with the language changing from "any" to "a." Just working in the disability field, people with all kinds of disabilities can do all kinds of things. [LB278]

ORRON HILL: Absolutely. [LB278]

SENATOR BOLZ: And so I just want to be careful at this language. The other piece I want to ask about is, why the change to "long-continued," partly because I am familiar with diagnoses that have intermittent symptoms. And so I'm just wondering what this change would mean for someone who maybe has multiple sclerosis which can change over time? [LB278]

ORRON HILL: Absolutely. As we quoted, multiple sclerosis is one of those types of conditions that can have tendencies to where, over time, it becomes degenerative. And then sometimes they're able to come back and able to engage again in substantial gainful activity. And so we look at those things as part of the analysis. And, for example, in the school plan they specifically address what happens if a person who is deemed to be disabled due to a long-continued or degenerative style condition is then able to return to work after rehabilitation and treatment. It gives a specific guidance on how to follow that. The specific change from "long" to "long-continued" is so we are complying with the exact language that's recommended by The Pension Answer Book and the Internal Revenue Code. We try to mirror that language the maximum extent we can so that there's no question about qualification of the plan. And that's why the specific and articulated change to "long-continued" is there. As the PERB has been implementing this under the term long for the state and county plans, as an example, they've followed the general principle that "long" meant "long-continued" as it does in the Internal Revenue Code for its guidance. In the school plan specifically, we'll talk a little bit about that, if an individual was deemed to be disabled legitimately so and then let's say after five years of rehabilitation, suddenly they're able to again engage in substantial gainful activity, 79-953 and 79-954 give protocols to NPERS on what they're supposed to do. They talk about if a person goes back to work in the school plan and is able to again engage in substantial activity, their disability retirement benefit will cease, their service credit will be reinstated, and then they will continue to accrue new service credit based upon their ability to work. And so that's one of the things that we look at when evaluating this long-continued in those sorts of degenerative or progressive conditions on how to define when a person is disabled and not disabled. The other thing that we do, Senator, as said, if a person is not in extraordinary circumstances, we have a medical evaluation that NPERS pays for and we get an independent physician to examine all the medical records, the individual, and make an opinion based upon their best professional medical opinion as to whether or not the individual meets the statutory definition of disability. And again, if a person wants to go back to work we could certainly have them...have their doctor provide

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

Nebraska Retirement Systems Committee
February 03, 2017

such evidence that they are, again, able to engage in that and we would consider that as one of the facts when making that determination. [LB278]

SENATOR BOLZ: Very good. I just want to make sure it's flexible enough to manage multiple situations. [LB278]

ORRON HILL: Sure. Absolutely. [LB278]

SENATOR LINDSTROM: All right. Thank you. Any other questions from the committee? Seeing none, thank you, Mr. Hill. [LB278]

ORRON HILL: Thank you. [LB278]

SENATOR LINDSTROM: Other proponents? Seeing none, any opponents? Also seeing none, any neutral testifiers? Seeing none, Senator Kolterman, would you like to close? [LB278]

SENATOR KOLTERMAN: Yes, I appreciate the questions. Just so you understand kind of the process we went through, the PERB came to us and asked us to take a look at this. And we did sit down with several of the organizations and talked through some of the concerns that they might have. So this has been vetted and all we're really trying to do here is clean up some language that needs to be cleaned up and make it consistent with the IRS as well as the other plans. So I appreciate your support on this bill and also appreciate your questions. [LB278]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any final questions? Senator Kolowski. [LB278]

SENATOR KOLOWSKI: Thank you, sir. Just wanted to double-check with you, Mark. On a yearly basis, are there X number of bills you like to go through and examine for clean up, or some become more important than others because of use or abuse? What method do you use? [LB278]

SENATOR KOLTERMAN: I'm pretty new at this, so what we've been doing is we've been asking for input from different organizations. This past summer we spent more time actually really sitting down with the PERB and the teachers and administrators. And last year we really spent a lot of time focusing on issues with the Patrol. So I think the next issue probably will come to the state and county. They're not quite as challenging because they're cash balance plans. But that gives you a little bit of an idea of how we've done it. So the bills that you see right now, I mean you're going to see some...like LB415 is coming in the next couple weeks and you're

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

Nebraska Retirement Systems Committee
February 03, 2017

going to see some of those are cleanup. Some of those are things that we feel need to be done to keep the plans solid and sound financially. So that's kind of how we've done it, Senator Kolowski. [LB278]

SENATOR KOLOWSKI: Appreciate that very much. Thank you for your planning and approach. [LB278]

SENATOR KOLTERMAN: And we don't like...typically we probably wouldn't like to see this many bills. It's...but we did spend an extreme amount of time this summer focusing on retirement issues. And so you guys are bearing the brunt of it over the noonhours. [LB278]

SENATOR KOLOWSKI: Thank you. Appreciate it. [LB278]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, that will end the hearing on LB278. We will now move on to LB413, also by Senator Kolterman. Chairman Kolterman, whenever you're ready. [LB278]

SENATOR KOLTERMAN: Good afternoon. Again, my name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, and I represent Legislative District 24 and I'm here today to introduce LB413. This also was introduced for NPERS as a cleanup to clarify several provisions in the judges and the Patrol plans. In both the judges and the Patrol plans, it extends the length of time from 90 to 120 days in which a member can file for retirement prior to retirement. So it actually gives them a little bit more time. A 120-day time period is consistent with the length of time allowed in the school plan and other defined benefit plans. In the judges plan, it clarifies that additional payment that PERB may authorize for the Tier II judges is, in fact, a one-time payment and not a COLA adjustment. So we're just cleaning that up. The current language refers to it as a one-time adjustment rather than one-time payment. Tier II judges are those hired after July 1, 2015. For those Tier II judges, if the plan is over 100 percent funded, the PERB is authorized to grant up to an additional 1.5 percent one-time payment. In the Patrol plan, the definition of officer is clarified to mean a law enforcement officer as defined under 81-1401 and only includes those who have satisfactorily completed a training program approved by the Nebraska Police Standards Advisory Council. Clarification of this definition does not change current eligibility requirements for membership in the Patrol plan. Representatives from NPERS will go into great detail about the changes and are here to respond to questions. But I would just say as an example, last year when we made changes to the Patrol plan and we added another tier, we are concerned about when is that...when do the new employees get added to the plan? Are they an employee when they're going through their training? Not necessarily. They're an employee once they complete their...and actually get hired on, on a full-time basis. So that's what we're

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

Nebraska Retirement Systems Committee
February 03, 2017

attempting to clear up here. So with that, I would try and answer questions or you can refer...I believe Orron is going to testify again. [LB413]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any questions? Senator Kolowski. [LB413]

SENATOR KOLOWSKI: Thank you, sir. Senator, when they're in their training are they not under contract or some kind of stipend, salary? [LB413]

SENATOR KOLTERMAN: They get paid, but they're not eligible for the retirement plan until they actually become a Patrol officer. And they're not a Patrol officer. They're still a recruit. [LB413]

SENATOR KOLOWSKI: Signing on with some entity is the... [LB413]

SENATOR KOLTERMAN: Correct. [LB413]

SENATOR KOLOWSKI: ...trip switch. Thank you. [LB413]

SENATOR LINDSTROM: Senator Stinner. [LB413]

SENATOR STINNER: Is there a normal probation period that they have? [LB413]

SENATOR KOLTERMAN: I can't answer that. I'll let them. That's a good question. I believe there is, but I don't know exactly. That's more a question of their employment. [LB413]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you, Senator Kolterman. We'll now have proponents. [LB413]

ORRON HILL: (Exhibit 1) Good afternoon, Chairperson Kolterman, acting Chairperson Lindstrom, and Retirement Systems Committee members. My name is Orron Hill spelled O-r-r-o-n H-i-i-l. I am the legal counsel for the Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems. I am here to testify on behalf of the PERB and NPERS as a proponent to LB413. Let me just restate, we see this as, again, a technical cleanup bill, polishing up some language, making sure that everyone understands the standards. Senator Kolterman has done a great job of already summarizing some of the major points, so I do just want to hit on those for the record. In the school plan, we allow individuals 120 days in which to

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

Nebraska Retirement Systems Committee
February 03, 2017

apply for their retirement. This gives them a little bit of extra time to think about it. It also gives NPERS the opportunity to start as much advance work on those retirement applications as possible. As there's been a consistent trend by the committee over the past two years to make the plans similar where possible, we felt that this was an appropriate standard to extend to the judges and Troopers as well, and it will also aid us administratively. I'd like to spend a little bit of time specifically talking about the other two points that Senator Kolterman raised. LB468 was signed into law on May 29, 2015. That bill outlined the cost-of-living protocols for judges hired on or after July 1, 2015. The language uses the term "supplemental lump-sum cost-of-living adjustment" and "supplemental lump-sum cost-of-living payment" interchangeably within the section that was amended. Both those terms appear. To avoid confusion and to ensure consistency and clarity, we would prefer that it read the same way. And we would recommend the language "supplemental lump-sum cost-of-living payment" as that's really how this legislation was designed, as a one-time, here's a check for the amount of the payment that you are owed after the PERB makes its decision. And again, this technical change will have no impact on how the PERB would grant such a payment in the future when those things were to occur. Finally, this bill clarifies the definition of officer in the Patrol plan. To be frank, in my opinion, the current definition kind of uses the term to define itself and that's difficult to implement so we wanted a little bit more clarification and we asked the committee and worked with the committee's legal counsel to prepare the definition. And Senator Kolterman has already hit kind of the highlights of those changes. We don't see this changing the eligibility of a Trooper in any way, shape, or form. Under how we operate the plan under the current law, Troopers...Trooper candidates are hired by the Patrol and as they attend their camp, they're classified as Trooper candidates, not as Troopers because they're not sworn officers. During that time they are receiving compensation from the state and they are members of the state employees retirement plan. And so they're allowed to contribute to that plan because of their status as a state employee. They're not eligible for the State Patrol plan because they are not sworn officers. Once they graduate and receive...take their oath and receive their certificate, that is the day upon which they transition into the Patrol plan and that's how we do things under the current law. This language just clearly articulates that standard, makes sure there is no question about that point. Again, we see all of these as technical changes that will not have an impact on how a person becomes eligible for a plan or how the payments will be issued, just to help make sure that there's no question about the clarity of the legislation. Subject to your questions, that concludes my testimony. [LB413]

SENATOR LINDSTROM: Thank you, Mr. Hill. Any questions from the committee? Senator Kolowksi. [LB413]

SENATOR KOLOWSKI: Again, thank you, sir. Mr. Hill, on the mention of the school plan, up to 120 days before qualifying for retirement... [LB413]

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

Nebraska Retirement Systems Committee
February 03, 2017

ORRON HILL: Yes. [LB413]

SENATOR KOLOWSKI: ...on that one, is that...do not the individual districts' dates drive most of that, because you have to have...you need to have some warning way ahead of time to line up new teachers, candidates for applications and interviews and all the rest. Is that extraordinary, the 120 days? [LB413]

ORRON HILL: The reason why we use 120 days is mostly for our administrative procedure, Senator. With 80,000 members and retirees across the school plan and most of those individuals, when they elect to retire, are doing so in the months of May, June, and July, we kind of get hit pretty hard. And so to ensure that we can pay out benefits as timely as possible under the act, we give them the 120 days prior to qualifying for retirement so that we can, again, get ahead of the curve, shall we say. The exactly negotiations about employment and retirement and when the individuals are going to stop working for the particular school districts are held, as you said, by the individual... [LB413]

SENATOR KOLOWSKI: Districts. [LB413]

ORRON HILL: ...school districts and those teachers. This just helps make sure that the individuals can give us enough time so that we can try to get their benefits out as quickly as possible. [LB413]

SENATOR KOLOWSKI: So the 120 would apply to the X number of years, so they qualify for rule of 85 or 90 or whatever the state would have? [LB413]

ORRON HILL: Regardless of whether they qualified under, say, age 65, 60 with 5 years of service, or rule of 85, once they're coming up on that point they can go, okay, it's 120 days before that date. I'm going to go ahead because I want to take my retirement benefits at this point. And that would kind of give the window and give us some time to respond and try to get their benefits out as quickly as possible. [LB413]

SENATOR KOLOWSKI: Thank you. I was just kind of confused at the number of days and where districts fit in. And it's important for hiring purposes. Thank you. [LB413]

ORRON HILL: Yes. [LB413]

SENATOR KOLOWSKI: Thank you. [LB413]

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

Nebraska Retirement Systems Committee
February 03, 2017

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you, Mr. Hill. [LB413]

ORRON HILL: Thank you. [LB413]

SENATOR LINDSTROM: Other proponents. Seeing none, any opponents? Also seeing none, any neutral testifiers? Seeing none, Senator Kolterman. [LB413]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Again, technical cleanups. Appreciate your time today. I would also like to take this opportunity to thank a lot of the people we've been working with. I think Mr. Lombard isn't behind us, Mr. Hayes is back there, Mike Dulaney. And then of course the legal counsel and Phyllis Chambers, the executive director, and also Kate Allen who's put in a tremendous amount of time on these. And we've got a few more to do yet, then we get into some other real discussions. But I guess I just want to express my appreciation for people coming together to try to make these plans as good as they can be. With that, I'd answer any question you might have. [LB413]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any final questions? Seeing none, thank you very much. And that will end the hearing on... [LB413]

SENATOR KOLTERMAN: And I didn't want to exclude Katie over here either. She's the one that gives us all nourishment during the (inaudible)...(laughter). Thank you. [LB413]

SENATOR LINDSTROM: Thank you. And that will end the hearing on LB413. Thank you very much for coming. [LB413]