

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

[LB414]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Friday, February 10, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB414. Senators present: Mark Kolterman, Chairperson; Brett Lindstrom, Vice Chairperson; Kate Bolz; Rick Kolowski; and John Stinner. Senators absent: Mike Groene.

SENATOR KOLTERMAN: (Recorder malfunction)...committee hearing. My name is Senator Mark Kolterman. I'm from Seward and represent District 24. I'd like to take this time to introduce the committee members, from my left.

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

SENATOR KOLTERMAN: To my far right.

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

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

SENATOR KOLTERMAN: Senator Kolowski will probably be joining us later. Senator Groene has asked to be excused. Our legal counsel is Kate Allen on my immediate left, to my far right is Katie Quintero, my clerk. And we have Bobby with us again today. Thank you, Bobby. We're here today on a hearing on LB414. I would ask that you abide by the following procedures. Please silence or turn off your cell phones. Those wishing to testify should come to the front of the room, be ready to testify. Please complete the blue sign-in sheets, hand them to the clerk. Please state your name and spell your name. If you plan to testify, keep your testimony concise. Try not to repeat. If you have handouts, please prepare the handouts and see that we have eight copies. And if you do not choose to testify, you're welcome to utilize the white sign-in sheets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of the hearing. So with that, we're going to get started. I'm going to turn it over to, my Vice Chair, Brett Lindstrom, and I'll introduce the bill. [LB414]

SENATOR LINDSTROM: We will now open the hearing on LB414. Chairman Kolterman, whenever you're ready. [LB414]

SENATOR KOLTERMAN: Thank you very much. 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

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

introduce LB414. Under LB414, an employer contribution rate is created in an unspecified amount. It also eliminates earmarking of all the court fees that are currently used to fund the Judges Retirement Plan. In the past ten years, the revenue from these earmarked court fees have ranged from approximate \$2.9 million to \$3.5 million per year. Last year the revenue was about \$3.4 million. Under LB414, the revenue from these currently earmarked fees would be deposited into the General Fund. The intent is to use this revenue to fund an employer contribution. I want it to be clear the proposed change in LB414 does not increase or decrease the amount of various court fees, nor does it affect any of the other earmarks on court fees from for various other programs. Each year when the actuary presents the annual judge's actuarial valuation report, it is pointed out that the use of the earmark court fees creates a flat funding stream that, unlike employer contributions in other plans, does not increase as compensation increases. In addition, despite several increases in court fees in the previous decade, court fees and been an unstable revenue stream that is difficult to measure on the actuary models funding projections. The establishment of an employer contribution rate will ensure that the annual contributions from the employer will not remain flat but instead will grow each year as the compensation increases. This will create greater funding stability in the Judges Plan and assist with long-term funding projections for the budget-planning process. I have met with the Governor's Office and with Chief Justice Heavican's Office and they have raised some issues that need to be resolved. In addition, the Treasurer has some technical issues that need to be addressed. I do not plan to move this forward but I'd like to have the hearing. I would also like to invite the Appropriations Chair when we sit down and talk with the parties involved to be there to work out these issues. This is merely a funding...how we fund the plans situation. With that, I'd be glad to respond to any questions. [LB414]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any questions? Senator Bolz.  
[LB414]

SENATOR BOLZ: Senator Kolterman, can you explain to me why the funding stream is volatile over time. [LB414]

SENATOR KOLTERMAN: Well, what we've seen is in the courts we're basically looking at what is coming through the courts. And so as some of the court, they aren't hearing as many cases, there's not as many fines. And so if those fines are...and sometimes a judge will waive a fine or a fee. Those fees don't get into the mix. And so then consequently they've remained pretty flat. We've not kept up with the need. Let me make it clear that the funding is going on, but we're appropriating money from the General Fund to make up the difference anyway. So why not just have the General Fund do it all and collect all the court fees and have it offset as much as it can. Does that answer your question? [LB414]

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

SENATOR BOLZ: It does. I guess I'm just wondering whether or not appropriating from the General Funds takes the way that we think about it to a different place and makes us pay less attention to whether or not the court fees are being assessed appropriately, being recouped appropriately, whether or not they're being set appropriately, just trying to better understand the issue. [LB414]

SENATOR KOLTERMAN: Yeah, well typically an employer plan, which this is--the judges are employees of the courts--and typically all four of the other plans that we have that we manage come from the General Fund or from contributions of the employees. And so we're just trying to kind of bring this into line and in keep that stability, you might say, there. [LB414]

SENATOR BOLZ: Um-hum. Thank you. [LB414]

SENATOR KOLTERMAN: And I understand your concern about how do we keep an eye on the court fees, but that's really a separate issue. [LB414]

SENATOR BOLZ: Okay. Thanks. [LB414]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Kolowski. [LB414]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Kolterman, this is really a great move and I want to commend you for bringing it forward to put it into the hold, as you said, right now. And I think it's fixing something that should not have been the way it was and we get ourselves back into a situation where we take care of this with General Funds. But I also hope we'll make adjustments as we look at all these issues with the revenue flow in our state and not be shy about taking care of things in a proper way and an equitable way as far as the differences that exist at the current time. Thank you very much. [LB414]

SENATOR KOLTERMAN: I appreciate that and I would like to respond to that a little bit. One of the concerns, and I think you'll hear it here, is from the testifiers that there is a concern that if we do make this change are we going to continue to make sure it gets funded properly? And that's a function that we already have for four other plans, whether it comes out of the judge's budget and we put enough into the courts to take care that, or whether it goes into the General Fund and Governor's budget. Those are the kind of things we need to sit down and work out. But I think we as a state owe it to these employees just like we do the other four plans to make sure that they're paid properly and it's accounted for properly. [LB414]

SENATOR KOLOWSKI: I agree. Thank you very much. [LB414]

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

SENATOR LINDSTROM: Thank you. Any other questions? Senator Stinner. [LB414]

SENATOR STINNER: So volatility tells me sometimes we're under and sometimes we're over. So if you're over what that distribution would be it would just...the difference would lapse into the General Fund? [LB414]

SENATOR KOLTERMAN: Yeah, it would go into the General Fund but very...I don't know if we've ever been over. I don't believe we have in looking at the past. The other side of that is we usually end up making an ARC which is the equivalent of the underpayment, the actuarially required contribution. So again, it's just a matter of accounting in my mind and making sure that we fulfill our obligations. I would like to compliment prior legislators that have taken a hard look at all the plans in the past and made a conscientious effort to fund them properly, because as you look at what's going on at like Omaha Public Schools and Omaha Fire and Police and Lincoln Fire and Police, those employers weren't funding them properly and they're in deep trouble and we're not. So this is just, again, an intent to make sure that ours stays strong and solid and sound. And I would hope that we can get those things ironed out. The other issues for this year is we know that there's going to be some trials and tribulations in the budget. I'm talking to two of them that are on Appropriations Committee. By possibly holding this over we can get a better picture of where we're at and appropriate more precisely. [LB414]

SENATOR STINNER: Thank you. [LB414]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much, Senator. We will now have proponents. Seeing none, we will now move to opponents. Also seeing none, we will have...we'll move to neutral testifiers. If you'd come forward, please. Good afternoon, Chief Justice. How are you? [LB414]

MIKE HEAVICAN: Very good. I am Mike Heavican, the Chief Justice of the Nebraska Supreme Court. Senator Lindstrom and members of the committee, good afternoon. I appreciate your time on this and I appreciate particularly Senator Kolterman's comments and I will say his very good intentions. We want to, as he indicated, we want to think about this awhile. We are very leery of giving up the dedicated court fees that now go into judges retirement. And we want to make sure that the guarantee...that there is a guarantee that this will be adequately funded if it's simply going to come from the General Fund. And particularly given the difficult budget situation that you all know that we are in, I fear that the Judges Retirement Fund might be shortchanged for short-term purposes which of course leads to long-term problems. Historically the judges fund has been the most adequately funded of all of the retirement plans that the state has and there haven't been a lot of times that the General Fund has actually had to be dipped into and those have been relatively small amounts that have been used. And we appreciate the fact that some

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

money is going to have to come from the General Fund at some point in time to keep the fund whole. But we want to study this proposal a little bit more before we say that we absolutely support it or that we absolutely oppose it. But again, appreciate everybody's work on this, particularly Senator Kolterman's. Be happy to answer any questions you might have. [LB414]

SENATOR LINDSTROM: Thank you very much. Any questions? Seeing none, thank you very much, Chief Justice. We will now have other neutral testifiers. Oh, that was close. [LB414]

PHYLLIS CHAMBERS: (Exhibit 1) I was waiting for everybody else. Good afternoon, Chairman Kolterman and Vice Chairman Lindstrom and Retirement Committee members. For the record, my name is Phyllis Chambers, P-h-y-l-l-i-s C-h-a-m-b-e-r-s, and I'm the director of the Nebraska Public Employees Retirement Systems. I'm here on behalf of the PERB to testify neutral on LB414. The PERB and NPERS are generally in favor of the policies that ensure the plans we administer are well-funded. NPERS, as Senator Kolterman said, we administers five employee plans: the Schools, Judges, State Patrol, State, and County. All of those plans are funded by employer and employee contributions except for the Judges Plan. The employee and employer contributions are paid as a percentage of salary. For example, the school plan, employees pay 9.78 percent of salary and the employers pay 9.88 percent. In the State Plan, employees pay 4.8 percent of salary and employers pay 7.49 percent of salary. The advantage of using a percentage of salary to fund the long-term benefits is that as salaries grow and the liabilities grow, the funding grows proportionately. The Judges Plan is funded by court fees instead of employer contributions as has been stated. The court fees are relatively constant, providing a flat funding mechanism. The actuaries have voiced their concerns regarding the court fees as a funding source. When the court fees are not sufficient to fund the plan, the state is required to pay an additional contribution calculated by the actuary. Since 2003, the state has paid additional contributions in 2003, '05, '13, '14, and 2016 for a total of \$3.1 million. And there's an attachment that shows what those contributions were. None of them were over \$1 million in contributions, the highest being \$803,000. Periodically, the Legislature has raised the court fees for funding the Judges Plan to keep up with this growing liability. Last year, LB468 increased the court fees available to the Judges Plan effective July 1 of this year. This change is estimated to result in about \$700,000 in annual court fees paid into the Judges Plan for this year. Even with the increase in court fees, the plan's actuaries have projected that the Judges Plan will need an additional required contribution of \$979,000 in 2017 increasing over the next five years to \$1.9 million in 2021. The 30-year actuarial projection shows that the court fees are not expected to keep pace with the future liabilities of the plan; therefore, the annual, additional required contribution by the state is projected to grow to \$7.7 million in 2046 and that's assuming all assumptions are met. We're using a current...the new assumed rate of return of 7.5 percent. As of July 1 of last year, which the valuation was...the most recent valuation was based on, there were 335 members in the Judges Plan. And of those, 149 members are active members working and contributing to the plan; 6 of them are inactive waiting for retirement; and 179 were

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

retirees and beneficiaries. The Judges Plan was 90 percent funded as of the last actuarial valuation. The judges...and implementing of these new assumptions effective July 1 of this year will lower the funded ratio of the plan by about 8 percent--about 4 percent for the mortality changes and about 4 percent for the investment return and other assumptions. The Judges Plan is the smallest of the defined benefit plans...of all of our plans and it is the best funded of NPERS defined benefit plan. LB414 redesigns the Judges Plan to add an employer contribution as a percentage of payroll and to eliminate the plan's reliance on court fees. It appears these changes would help ensure the plan is well-funded. However, as the bill contains placeholders, it is unknown what the employer contributions would be and what the actuarial impact would be on the plan. So at this point we're testifying neutral. That concludes my testimony. I provided you with some handouts showing some graphs of their funding. And as you can see with this, Senator Bolz, on the one graph you could see the court fees remain flat and the benefits and the liabilities continue to grow. So those additional contributions in the plan, the red bars, are growing. And so those would be...those are projected under the current assumptions that the actuaries are using. I'd be happy to answer any questions. [LB414]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Senator Bolz. [LB414]

SENATOR BOLZ: Question from the new kid. So I'm just trying to wrap my head around there are different kinds of judges, there are Workers' Comp judges and there are Supreme Court judges and there are county judges. So the employer contribution of the plan would have to be assessed from all of those different types of employers and that would have to be agreed upon. We'd have to figure that out. [LB414]

PHYLLIS CHAMBERS: They do that now anyway. We get court fees from the county courts and court fees for the district courts. And so those are all sent in to the retirement plan. But, yes, they would have to determine how they wanted to contribute those to us. And that's a detail that I'm not familiar with. [LB414]

SENATOR BOLZ: But I guess I'm trying to figure out the employer contribution, as it is now, is the same as the court fees. [LB414]

PHYLLIS CHAMBERS: Yes, right. [LB414]

SENATOR BOLZ: And so that would not change under this bill, or that would change under this bill? [LB414]

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

PHYLLIS CHAMBERS: That I think is an unknown. I'm not sure we know how that will be funded... [LB414]

SENATOR BOLZ: Okay. [LB414]

PHYLLIS CHAMBERS: ...or where...who's paying the bill. If the state appropriates it all to the court, maybe they pay those, maybe they charge the counties. That part of it I'm not sure. [LB414]

SENATOR BOLZ: Okay. Thank you. [LB414]

PHYLLIS CHAMBERS: Okay. [LB414]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you very much. Any other neutral testifiers? Seeing none, Chairman Kolterman, you're welcome to close. [LB414]

SENATOR KOLTERMAN: First of all, I'd like to thank Director Chambers and Judge Heavican for their...Chief Justice Heavican for their testimony. As you can see, there are some unanswered questions. That's why we want to hold it over. There's a question, do we just do it all as an ARC? Do we do it all as an employee contribution? No matter how you cut it, we've got to pay the bill. I think that if...and again, it all goes back to my feeling about all five of our plans: They're all in pretty good shape and we need to ensure that they stay in good shape because we can't afford to take a hiatus and allow them to dissipate and find ourselves in the same place a lot of other people are in. And we owe it to the people that we're employing that if we're going to have these plans that they're going to be there to pay them out. And so we're just trying to get a handle on that. It's going to take some time. We're going to have to work with the Chief Justice as well as the PERB as well as the Governor's Office as well as Appropriations to get this done. But I wanted to start the dialogue. And, as you know, maybe as new senator on this committee, if a bill is introduced in Retirement, it has to be introduced in the first biennium. So we couldn't have come in next year with a bill to introduce. So we'll get this introduced. We've had the hearing. Now we'll hold it over and take some time to evaluate and move forward. With that, I would answer any questions. [LB414]

SENATOR LINDSTROM: Thank you, Chairman Kolterman. Any final questions for the senator? Seeing none, thank you very much and that will end the hearing on LB414. [LB414]

SENATOR KOLTERMAN: And that will end the hearing, period. [LB414]

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

Nebraska Retirement Systems Committee  
February 10, 2017

---

SENATOR LINDSTROM: Thank you. Have a good weekend. [LB414]