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Nebraska Retirement Systems Committee
February 27, 2017

[LB31 LB415]

The Committee on Nebraska Retirement Systems met at 4:30 p.m. on Monday, February 27, 2017, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB31 and LB415. Senators present: Mark Kolterman, Chairperson; Brett Lindstrom, Vice Chairperson; Kate Bolz; Mike Groene; and Rick Kolowski. Senators absent: John Stinner.

SENATOR KOLTERMAN: Welcome. In the essence of time, we're going to get started. What you'll find is we have a quorum. There are two senators, Senator Stinner and Senator Groene, might or might not be here. But they're either introducing or, as an example, Senator Kolowski just came from introducing a couple of bills and I just came from introducing a bill, so we're all busy this time of year. My name is Mark Kolterman, I'm Chair of Retirement, from Seward, Nebraska. I represent District 24, which consists of Seward, York, and Polk Counties. On my left over here is...

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

SENATOR KOLTERMAN: On my far right.

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

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

SENATOR KOLTERMAN: And as I indicated earlier, Senator Stinner from Gering, District 48, is on the committee; and Senator Mike Groene from North Platte, District 42. I believe they are probably still in hearings. My staff today is Katie Quintero on my left over here is committee clerk. And committee counsel is Kate Allen. We have Robert Larsen, Bobby, and Jade Krivanek, correct? Today we're here on two bills, LB31 and LB415. The committee is going to take these two bills up as posted. LB31 will be first. Since I will be presenting, Senator Lindstrom is Vice Chair and he will run the hearing. Please turn off your cellphones if you have cellphones with you, silence them. If you wish to testify, come to the front of the room where Mr. Delaney is sitting there, and be prepared to get up and testify. We require a blue sign-in sheet. If you have handouts, we need approximately eight handouts. Please state your name and spell your name before you testify. Keep it concise, don't repeat what somebody else has covered if possible. And if you don't want to testify and want to submit written testimony, you can do that as well by filling out the sheets over there that would go into the permanent record at the end of today's hearing. Appreciate you all coming, really appreciate the young students that are going to be our

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future teachers over here on the left. Would you raise your hands, please? We have teachers to be that are here from various colleges throughout the state of Nebraska. Appreciate you coming and your interest in what we're doing here. With that, I'm going to go take the seat.

SENATOR LINDSTROM: We will now open the hearing on LB31 introduced by Senator, Chairman Kolterman. Whenever you're ready, Senator. [LB31]

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 LB31. The issue addressed in LB31 is brought to me by NPERs. The bill makes two changes to school employees in Class V School Employees Retirement Act. Under current statute, each school district may designate in the employee contract leave days that are granted to the employee for which the employee will receive full service credit under the retirement system. This means that service credit granted to employees varies from school district to school district and does not meet the IRS standard of a definitely determinable benefit. LB31 changes this provision so each employee receives the same benefit. Under LB31, for employees hired on or after July 1, 2017, credible service includes only the days and types of leave specifically itemized in statute; which includes: working days, used accrued sick and vacation days, federal and state holidays, and jury duty leave for which the member is paid full compensation by the employer. For employees hired prior to July 1, 2017, credible service remains unchanged and includes leave days for which the employee is paid regular wages, as part of the employee's agreement with the employer. The second change to the School Employees Retirement Act is a deletion of the employer school district authority to purchase credible service for a member. It was brought to my attention that this provision is being used primarily as a means to avoid litigation or to buy-out contracts for administrators. It is my opinion that objectives such as recruitment, retention, or in this case avoidance of litigation should not be achieved on the back of the retirement system. This is a consistent position that I have taken with all interest groups. In addition, when employers are able to purchase credible service this benefit can be unequally bestowed on members and result in disproportionate retirement benefits for plan members with similar years of service and salary. I believe this employer school district discretion needs to be removed. I want to clarify that this change proposed in LB31 still allows for employees to purchase credible service, that benefits remain consistent among all school districts. I would be glad to answer any questions you might have at this time. [LB31]

SENATOR LINDSTROM: Thank you, Chairman Kolterman. Any questions from the committee? Seeing none, thank you very much. We will now move to proponents of LB31. Proponents. Good afternoon. [LB31]

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MIKE DULANEY: Good afternoon. Senator Lindstrom, members of the committee, my name is Mike Dulaney, M-i-k-e D-u-l-a-n-e-y, executive director for the Nebraska Council of School Administrators. We are in support of LB31 and we're honored to work with Senator Kolterman and Kate Allen, along with NPERS, over the interim to address an issue that we honestly...I can say honestly we never thought about when this concept was developed. I want to take you back just a little bit in time, 1997 is when the legislation was passed into law that would permit this concept. Now, I should clarify, I'm speaking to the second piece of the bill that Senator Kolterman addressed in his open, and that has to do with purchase of service. And as Senator Kolterman said, the current law states that the employee and/or employer may purchase up to five years of service in contemplation of retirement. And that's a key piece of it: in contemplation of retirement. So back in 1997, Senator Wickersham was chair of this august committee and we were all in the school lobby trying to figure out ways in which what we might call high-end, high-cost employees could be encouraged to find retirement and thereby reducing the costs and expenditures to school districts. This was one method that we came up with. And Senator Wickersham introduced LB724, which was the bill passed into law creating this mechanism--up to five years of purchase of service. So we should note that a single year of service could cost, and the counsel behind me might clarify this, but I'm told \$60,000 or more. It's not cheap, it's not a cheap proposition. So recently we found instances, certainly not any instance that we condone at all, but instances when an employee of a school district was encouraged shall we say to leave, not necessarily in contemplation of retirement. And so they were trying to figure out ways to take care of the situation and an offer of purchase of service was one of those pieces used. We did not have that in mind, that's certainly not what was intended, to basically forestall or end a threat of lawsuit from an employee against the employer school district. That's not what we had in mind at all, and so we felt that that was an abuse of the system, of the current provision. So when this was brought to our attention, we addressed it through this legislation that Senator Kolterman introduced, and we are in support of it. I would be happy to answer any questions that you have. [LB31]

SENATOR LINDSTROM: Thank you, Mr. Dulaney. Any questions from the committee?
Senator Kolowski. [LB31]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Dr. Dulaney, what would be the number of people that might be using this as a tool for their own retirement? Any idea? [LB31]

MIKE DULANEY: Yeah, and we're not talking about the employee that is being encouraged to leave for noncontemplation retirement. [LB31]

SENATOR KOLOWSKI: Right. [LB31]

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MIKE DULANEY: That's a good question, Senator Kolowski. I don't know how many times...I think the cost is so prohibitive that it can't be used all that much. But then I think NPERS might have the numbers for you. I don't know how often it is used. I know of instances when we have a member who is in very good standing with his or her employer and simply wanting a way to get retirement a year early. And we offer this as one idea that they could use, whether it be on their own pay or through, you know, negotiated agreement with their school district. I just don't know how often it is used. [LB31]

SENATOR KOLOWSKI: So a cost-benefit analysis when you're looking at paying out a pretty good chunk of money to get an extra year of retirement. I'm having a hard time seeing the gain on that, over a lifetime when you're doing that. [LB31]

MIKE DULANEY: Yeah, you're right. Now again, this came into being in 1997 and over that period of time I would be interested to know how often it was used over time. You're basically buying a full...you're buying a year of service or whatever number of years at full actuarial cost. So that's employee/employer plus interest, and then that's not cheap. [LB31]

SENATOR KOLOWSKI: That should be all. [LB31]

MIKE DULANEY: Yeah. [LB31]

SENATOR KOLOWSKI: Thank you very much. [LB31]

MIKE DULANEY: Thank you. [LB31]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Bolz. [LB31]

SENATOR BOLZ: Forgive me for not knowing the ins and outs, I'm the newest member of the committee. So litigation would be a cost incurred by the school district, whereas this purchasing of service years...help me understand how the cash flows. [LB31]

MIKE DULANEY: Yes, very good question, Senator Bolz. Here's a scenario, an example of how, and I don't know exactly all the particulars of all these instances. There was two or three this past year. But we know that at least one might have been where the superintendent was in the middle of a two-year agreement, or there may have been a three-year agreement, and so counsel for the district may have advised the school board: look, the suit wants to have a couple of years of service in exchange for dropping the expectations for anything else in the other year or two of the contract. That's the kind of thing that may have been going on. I can't tell you all

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the details for those cases because I simply don't know them. We know that through NPERS that there were requests for applications for purchase of service. We're not privy to all the details that went behind it. [LB31]

SENATOR BOLZ: I'm not asking my question very well, but I'm trying to ask who pays for the litigation versus who pays for the purchasing of service years. [LB31]

MIKE DULANEY: Who pays for litigation? [LB31]

SENATOR BOLZ: Right. [LB31]

MIKE DULANEY: Well, what we could have, for example, an employment contract where the superintendent sues the employer, the school board, for firing the individual without honoring the conditions of the rest of the contract. And so negotiations could ensue for instead of pursuing litigation to instead have payment of the purchase as service. [LB31]

SENATOR BOLZ: I understand...I guess I'm not asking the question very well. Does the school district incur the cost, regardless of what the cost is? Are they paying for the litigation and the purchase service? [LB31]

MIKE DULANEY: Well, under the current provision it's the school employee and/or the school, the employer, the school board, can arrange to have an agreement for purchase up to five years of service in contemplation of retirement. And so, yeah, I mean that's how it could...it doesn't have to be the employer, the employee could purchase the years as well. [LB31]

SENATOR BOLZ: I guess I'm trying to figure out, I mean, if it's more cost-effective for the school board to do this instead of litigation, where's the harm? [LB31]

MIKE DULANEY: We feel that it might be not the best use of taxpayer dollars. And so I think that's the...I think that's what, I don't want to put words in the senator's mouth, but what Senator Kolterman had in mind is if you have an employee that you are wanting to move out because of maybe poor performance that expending taxpayer dollars for purchase of service would not be in the taxpayers best interest. That might be...yeah. [LB31]

SENATOR BOLZ: Okay, thank you. Thank you. [LB31]

SENATOR LINDSTROM: Senator Kolowski. [LB31]

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SENATOR KOLOWSKI: Thank you, Mr. Chairman. Dr. Dulaney, on the litigation, you're working with a lawyer on a particular situation. That would be something with superintendents, because they have separate contracts. So we may have 245 superintendents that would have that option of doing that. The teacher under contract is in a different boat entirely. [LB31]

MIKE DULANEY: Absolutely. Absolutely. [LB31]

SENATOR KOLOWSKI: So we're not talking about even scores here or apples and apples. [LB31]

MIKE DULANEY: Apples and oranges. [LB31]

SENATOR KOLOWSKI: It's apples and oranges totally. [LB31]

MIKE DULANEY: That's correct. [LB31]

SENATOR KOLOWSKI: So that is an entirely different angle perhaps that Senator Bolz is talking about compared to where a teacher is coming from. [LB31]

MIKE DULANEY: Right. [LB31]

SENATOR KOLOWSKI: I have worked with teachers and have relieved them of their contract because they're not doing their job properly. And the last four when I was a principal, that we had a situation with NSEA and they were all tenured teachers and they were all let go. I didn't have anything and our district didn't have anything to do with the legal aspect of buying days or years or anything out of that discussion of their leaving the district. It was they were gone, that was it because of the situation they found themselves in or the lack of credible teaching taking place. [LB31]

MIKE DULANEY: Correct, Senator. And this bill might be viewed as evening the playing field. Where it is the employee, because this is not taking away the prerogative of the employee to purchase service. [LB31]

SENATOR KOLOWSKI: Okay. [LB31]

MIKE DULANEY: It's simply removing the employer as that possible agent to purchase the service. [LB31]

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SENATOR KOLOWSKI: So the district would not have anything to do with it, but the person could? The individual teacher? [LB31]

MIKE DULANEY: That's correct. That's correct. Or an administrator. [LB31]

SENATOR KOLOWSKI: Thank you for your clarification. [LB31]

SENATOR LINDSTROM: Thank you very much. Any other questions? Seeing none, thank you very much for your testimony. [LB31]

MIKE DULANEY: Thank you. [LB31]

SENATOR LINDSTROM: Next proponent. [LB31]

ORRON HILL: (Exhibit 1) Good afternoon, Chairperson Kolterman, Vice Chairperson 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, I'm here to testify in support of LB31 on behalf of the PERB. First, we would like to thank Senator Kolterman for introducing LB31. I would also like to thank Kate Allen, NSEA, NCSA, and all the other individuals who have helped us work on this bill over the interim. LB31 clarifies the definition of credible service as has already been cited by Senator Kolterman. Over the years, the school districts and ESUs, I'll refer to them collectively as school districts, have created many different forms of leave within their employment contracts. For example, one school district contract includes 16 different forms of paid leave, 3 forms of unpaid leave, for a total of 19 forms of leave. By contrast, another school district only has two forms of paid leave. If the first school district offers a type of leave that allows a regular teacher paid time off and the second school district does not, then the teacher at the first school district would end up with more service credit than the teacher at the second school district. This disparity is counter to the idea that all members of the school plan should receive a substantially similar and definitely determinable benefit based upon their rendered service. Another complication arises when school districts use the same term to categorize a type of leave, but have different rules for implementing that leave. One example can be seen in the form of sick leave banks. Generally, a sick leave bank allows employees to donate their leave to other employees to cover periods of absence due to illness. While a noteworthy idea, it leads to disparate treatment of members and runs counter to the idea that all members of a school plan receive a substantially similar and definitely determinable benefit. Examples of the disparity include: not all districts offer this type of leave; some school districts only allow employees to donate a certain number of days to the sick leave bank, while others let employees donate as many as they want; some school districts only allow employees who donated to the sick leave bank to take days out, while others allow anyone to withdraw days

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from the sick leave bank. Another difference is that some school districts only allow employees to withdraw a specific number of days, while others don't have a cap on the number of days that can be withdrawn. Finally, some school districts only allow employees to withdraw days from the bank if the bank has a balance, while others allow the bank to go into debt. The PERB is not opposed to members using leave which they have earned through rendered service, but it is opposed to members using leave which they have not earned. The entire idea of service and creditable service is that an individual renders service to gain service credit for retirement. This sick leave bank idea is one which runs counter to that ideology. In a similar vein, some school districts allow employees to borrow leave from a future school year. Generally, under a borrowed leave program, employees use leave in the current year which they anticipate they will accrue in the next year. Some school districts require the employees to repay the school district for the borrowed leave if the employee does not accrue the leave in the future or does not return to work, while others don't require the teacher to return or repay the borrowed leave. Again, this leaves to disparate treatment amongst plan members. To ensure that all members are given a substantially similar and definitely determinable benefit based upon the services that they themselves have rendered, and not what they will render or that someone else has rendered, we think that this change in the definition of credible service should move forward and we would ask you to do so. LB31 also eliminates the school district's ability to purchase service at the end of a member's career. We refer to this as "air time." As has already been said, it was originally designed to help people reach retirement and was done in contemplation of retirement. However, NPERS has recently seen an increase in school districts purchasing "air time" for employees as a fringe benefit or as part of an employment litigation settlement package. The PERB and NPERS are strongly opposed to settling employment litigations on the back of the retirement system and LB31 mitigates this risk. For those reasons, the PERB supports LB31 and would ask the committee to advance the bill. Now I will try to address some of the questions that were asked previously if I can. I don't have the exact numbers of how many times we've seen school districts settle cases on the back of the retirement system, but we can certainly try to obtain that. I can think of at least four off the top of my head, and let me give one as an example. We had an individual who, according to the school district, wasn't meeting their expected performance standards. Rather than ending the contract and forcing the issue into litigation if that's where the employee was going to take it, they offered them a settlement in which they paid six figures to buy "air time," up to five years. And in this particular employee's case, it was about \$25,000 per year or a total bill of \$125,000. And to do this, it just caused the litigation to go away. Now, what that does from a retirement perspective is it increases that employee's benefit by 10 percent. So if we're talking about a let's say highly-compensated employee with many years of service and they have a \$4,000 a month benefit, it would increase their monthly benefit to \$4,400 each month, which would increase it substantially over the course of time. And if that employee lives an extended period of time, they can end up either recouping or exceeding that amount. That's kind of a gamble. And we at the retirement systems don't think that that gamble should be placed upon the taxpayers, and more importantly upon the members, because that does incur a liability

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for the plans over the long-haul. And so we would kind of ask that that be pushed back to the schools and have them settle their litigation through either any litigation funds they may have with the school districts or any insurance protocols that they have, rather than putting it on the plan members. Again, as has been said, teachers and administrators are different. It depends on salary and how many years of service they have. Many of the administrators tend to be a little bit higher on the salary scale, as they have their own unique contracts, versus the teachers and other educators are bound by their particular contracts. So I hope that addresses some of the questions and gives you some examples. And subject to your questions, that will conclude my testimony. [LB31]

SENATOR LINDSTROM: Thank you, Mr. Hill. Any questions from the committee? Senator Groene. [LB31]

SENATOR GROENE: This might have been asked, if it has I was in another committee. So Rule 85, you're sitting at 83. They can buy credits or something to push them over that Rule 85 so that they can retire? [LB31]

ORRON HILL: Yes, they could, Senator. [LB31]

SENATOR GROENE: And how do they buy those? [LB31]

ORRON HILL: Under the way the statute is written, they would submit an application to NPERS and get a cost estimate. We would run the calculation and it would be the actuarial cost, which would include the employee contributions, the employer contributions, plus what they call a cube formula, to calculate what the actuary would believe to be the cost of that benefit over the long-term. Then that estimate would be sent to the individual, the individual would determine whether or not they had the resources and thought that was in their best interest. If they did, then they would pay the money to NPERS through the proper channels and that service credit would be assigned to it. And that's a pretty simplistic explanation. [LB31]

SENATOR GROENE: And what you're saying is school districts are sometimes paying that to give it to teachers. [LB31]

ORRON HILL: Yes. Right now the statute allows the school districts to pay in that money with no compensation or contribution coming from the employee. So yes, they have that authority under the statute, and that's one of the things we're asking to be taken away so it eliminates the school's ability to settle litigation and those sorts of things on the back of the retirement. [LB31]

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SENATOR GROENE: Doesn't the statute say now you have to be, what, 53 or 55 to retire? [LB31]

ORRON HILL: Well, the statute says you have to be at a minimum 55, with 30 years of service under the Rule 85. And then there's also 60 with reduced retirement or 60 with 5 years, depending on how you wanted to... [LB31]

SENATOR GROENE: Does the circumstance...the circumvent the 55 that they can retire at 53 or something, or they still have to be 55. [LB31]

ORRON HILL: No, Senator, they still have to be 55. Yes. But if they were at 55 and say only had 28 years of service, they could purchase the two additional years. And if I misunderstood your question, I apologize. [LB31]

SENATOR GROENE: No, that's (inaudible). [LB31]

ORRON HILL: But yes, the minimum has to be 55 to qualify. [LB31]

SENATOR GROENE: For every year they gain another 2 percent, right? [LB31]

ORRON HILL: Yes, sir. [LB31]

SENATOR GROENE: Thank you. [LB31]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you, Mr. Hill. [LB31]

ORRON HILL: Thank you. [LB31]

SENATOR LINDSTROM: (Exhibit 2) Other proponents? Seeing none, we will now move to opponents. Anyone wishing to testify in opposition? Seeing none, any neutral testifiers? Also seeing none, we do have one written testimony in a neutral capacity from Mr. Nathan Leach. And with that, we'll move to closing. Senator Kolterman, whenever you're ready. [LB31]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Well, as you can see, there's some interest in this on the part of the school administrators and the PERB. To give you a little background...excuse me. This past summer we spent time with the NSEA, the PERB, NCSA,

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myself, my legal counsel, and we looked at things that cause heartburn for all people concerned. Actually, at the meeting we had where this came out, with the idea of eliminating school districts paying the contribution, was when we invited the attorneys for the school districts to come to the table and talk about concerns that they had. And they don't...they prefer not to be able to utilize this, so if we shut it off it just takes a tool off the table. As far as litigation is concerned, yeah, there is the potential of cost of litigation. But if somebody is being terminated for cause and then they sue, you've got an insurance company usually that will back you up and protect the board. And I've been involved in suits like that in the past when I was on the school board. So it's just a cleanup. It's pure and simple a cleanup. We're trying to eliminate potential for abuse and we thought that these two things would equal the playing field as far as the amount of time off and how that's interpreted as well as how we deal with school districts paying contribution. We're not taking anything away from a teacher or an administrator that want to pay this themselves. And that's been the case for many, many years. So with that, I would try and answer any questions you might have. [LB31]

SENATOR LINDSTROM: Very good. Any final questions? Senator Kolowski. [LB31]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. What would...where's NSEA on this in your discussion? Could you tell us where they're coming from? [LB31]

SENATOR KOLTERMAN: You know, obviously they're here and they're going to testify at the next hearing. I don't sense that there's a lot of negativism about it, you know? [LB31]

SENATOR KOLOWSKI: It seems like it wouldn't have been used very much. [LB31]

SENATOR KOLTERMAN: It's probably not used a lot. [LB31]

SENATOR KOLOWSKI: Hardly at all. [LB31]

SENATOR KOLTERMAN: Probably the biggest challenge is when you're negotiating a superintendent's or a principal's salary or something of that nature. [LB31]

SENATOR KOLOWSKI: Sure, sure. [LB31]

SENATOR KOLTERMAN: It could be used for teachers, however. I just don't feel that they thought it was used a lot. [LB31]

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SENATOR KOLOWSKI: Senator, I'm looking over your shoulder at the students that are going to be our teachers in the future, and they're looking and hearing us talk about 40 years and 35 years. And all I can tell you is it goes very quickly, and enjoy it all, and be of great service to our state. Thank you. [LB31]

SENATOR KOLTERMAN: Yeah, and look what it does to your hair. [LB31]

SENATOR KOLOWSKI: Half-price haircuts. [LB31]

SENATOR LINDSTROM: Actually, we're trying to increase sales tax on those. Anyway, any other questions from the committee? Seeing none, thank you, Senator Kolterman. And that will end the hearing on LB31. We will now move on to LB415. Senator Kolterman also has LB415, and we will open the bill...open on LB415 whenever you're ready, Senator Kolterman. [LB31]

SENATOR KOLTERMAN: This one will take a little longer. Even my opening will take a little longer because LB415 deals with a lot of issues. I appreciate the opportunity to be here. 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 LB415. Before I get into a description of the bill, I want to restate something that I've said many times. I support defined benefit plans for public employees as long as they're well funded and sustainable. In order to achieve that goal, though, I believe it is necessary to monitor events that cause funding impacts along the way and to make the necessary adjustments before plans get into a funding difficulty like we're seeing in some of our larger communities. For example, in 2014 the actuary projected that the school plan would be 100 percent funded in 2019 and no ARCs were projected for at least 30 years. But a number of things happened since 2014 and now the school plan is projected to not reach 100 percent funded status until 2035. And actuarially required contributions are projected to begin in 2020 and increase every year after that. So what happened? Since 2014 there have been two years of low investment returns: 3.9 percent in 2015 and 1.6 percent in 2016. And an experience study was conducted which resulted in two major assumption changes. Beginning July 1, 2017, the assumed interest rate will be reduced from 8 percent to 7.5 percent and a new mortality table will be used to reflect the fact that plan members are living longer. While the mortality experience is great news for our plan members, it's expensive news for the plans. When defined benefit plan members can retire in their 50s but mortality tables indicate they are living much longer, it means that benefits are likely to be paid over a longer period of time. My goals with the introduction of LB415 are to reduce long-term funding impacts, encourage public employees to work until they are truly ready to retire, and to assure that there are bona fide separations of service and no sham terminations. The majority of these changes are aimed at school plan members, including OSERS members, because they make up about two-thirds of the public plan membership and because this is where we have primarily seen these issues arise. I have been

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working since last May with representatives of school employees, school administrators, NPERS, and have met with a number of school groups since the bill was introduced. So let's start talking about it, the return to work actuarial study. In order to encourage members to work until they are truly ready to retire, we have to look at the practice of retirees returning to work after retirement and earning additional retirement benefits. This is known as a practice of double dipping. In some cases the employee returns to work either with the same employer or work for another governmental employer with a retirement plan. The committee has had an interest in this for the last couple of years: during the 2015 interim and in the 2016 Session. The Retirement Committee worked with the Nebraska Public Employees Retirement System and the state actuary to collect and analyze data on employees who have retired and returned to work. The March 2016 report, which is in your notebooks, included the following data collected on records between 2007 and 2015. There were 974 retirees who returned to work during this time period. From 2007 to 2015 we had 974 people return to work. By far the largest group to return to work are the school plans with 867 of those retirees. When counting your school retirees returning to employment, it is most often with the same plan. Thirty of 32 county plan retirees returned to work with county plan and 777 of the 867 school plan retirees returned to work in the school plan. For state retirees, 16 of the 31 who returned to work returned to the state plan. State Patrol retirees primarily return to employment in the state or county plan. Of the 42 that returned to employment, only 1 returned to the State Patrol plan. I believe he is now a corporal. The county hired 95 of the state...hired 82 retirees. However, the majority of these retirees came from the school and Patrol plans' employers. Finally, there were 140 school members who returned to the school plan a second or even a third time. Though the actuary stated that evidence did not point to a significant actuarial cost to NPERS plan from an actuarial perspective, she did point out that administrative costs and resources are required to determine subsequent retirement benefits. And as the number of retirees returning to work increases, the additional administrative work can increase dramatically. Also in discussing the financial impacts of re-employment after retirement, the actuarial report stated, I quote: In general, for members who are eligible to retire with unreduced benefits, an earlier retirement will result in high liability and cost for the system. Benefits are paid for a longer period and funding must be accumulated over a shorter period. Therefore, if the working after retirement provision shifts retirement patterns by incenting members who are eligible for unreduced benefits to retire and then return to work rather than continuing employment, there could be a cost impact to NPERS. For this reason, the age at retirement is a key data element in our analysis. The more generous and easily accessible the working after retirement provisions, short of breaks in services, ability to concurrently receive full retirement benefits, and salary, etcetera, the greater the additional value to the member and the more likely earlier retirement will occur. Let's talk about public perception. There's also a public perception problem about double dipping that we have to acknowledge and address. We hear from constituents who are angry about employees retiring and then returning to work and earning a second or even third retirement benefit. Most taxpayers employed in the private sector do not have an employer-sponsored retirement plan and if they do it's likely a 401(k) plan.

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Taxpayers express resentment about their tax dollars funding not only a retirement benefit they do not receive but also funding multiple retirement benefits for public employees. While I again believe that defined benefit plans provide some retirement security to our employees who have dedicated years of service to the public in order to retain these plans, we need to support...we need the support of the taxpayers and we need to be responsive when taxpayers raise concerns to us, particularly about fiscal and fairness issues. The proposed changes in LB415 aimed at encouraging plan members to work until they are truly ready to retire, discourage double dipping, and to avoid sham terminations, are in part intended to respond to practices that the public find unacceptable. Description/intent of LB415, the rule of 90: Prior to 1997, the school employees retirement plan had the rule of 90 which meant that in order for a school employee to earn a full retirement benefit, he or she had to work until the age and years of service equaled 90 with a minimum retirement age of 60. In 1997 the structure, the statute was changed and the minimum Retirement Act was dropped to age 55 and school employees have been under the rule of 85. LB415 returns to the rule of 90 with a minimum retirement age of 60. This would apply to school employees who have taken a refund or are hired or rehired on or after July 1, 2017. I believe this serves several policy goals. Number one, it will encourage employees to work until they are truly ready to retire and it will hopefully reduce the number of sham terminations. It is more in line with plan experience of employees living longer. And finally, it will benefit the solvency and sustainability of the school plan. I want to be clear. This change will not affect current members. It will not affect current members. The rule of 85 will still apply to those employees who were hired before July 1 of 2017. Elimination of exceptions to the 180 days' separation of service: Currently in the school plan a 180-day break in service is required for members before they can return to work. However, there are current exemptions to this break in service. For example, members may return if they provide intermittent, voluntary, or substitute service. This has created considerable confusion and uncertainty in determining what constitutes intermittent. Representatives from NPERS are here today to go into more detail about the challenges they face in working with employers and retirees regarding this question. Under LB415 these exemptions are eliminated in order to draw a bright line about what constitutes a bona fide separation/break in service. Retirees or terminated employees will be required to sit out the full 180 days with no exceptions. I understand that this change can create challenges for school districts who need substitute teachers, bus drivers, things of that nature. However, let me be clear. This change has no effect on those retirees or school employees who have been retired or ceased employment once 180 days have passed. After that 180-day break in service, these former members and retirees will remain available to provide voluntary and substitute service whenever called upon. Re-employment of retirees: Finally, the third policy piece of this bill is aimed at those retirees who seek re-employment with the same plan, with an employer in another state-administered plan, or the Omaha schools retirement plan. Again, the goal with this proposed policy change is to encourage people to remain working until they're ready to retire. It is also aimed at making sure that there are no sham retirements which are disallowed by the IRS. All public pension plans must remain in compliance with IRS requirements in order to retain tax-

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qualified status. It is the obligation of NPERS and this committee to make sure that the tax-qualified status is protected in order to keep these retirement plans available for public employees. Based on these policy objectives under LB415, a very important new requirement is added. Both the employee and the employer must certify that there is no prearranged agreement to return to work with the same employer in any capacity which includes, for example, as a consultant or a private contractor. It is my intent that a prearranged agreement can either be a written or a verbal understanding. In addition, the employee must certify that he or she has no prearranged agreement to begin working for an employer in one of the other state-administered plans, including the state, county, or State Patrol plans, or for an employer under the Omaha school employees plan. These certifications are aimed at ensuring our continued compliance with the IRS requirements. I want to be clear, again, this policy change does not prevent retirees from working after retirement. For example, retirees are free to work in the private sector at any point in time after retiring as a member of the public plan. Retirees are also free to work again for the same employer or for an employer in one of the other public retirement plans, however, there must be a 120-day break in service for retirees of the county, state, or Patrol plans, or 180-day break in service for all school and Omaha school retirees before the retirees can return to work. And finally, retirees may return to work after a three-year break in service if the member received an early retirement incentive. So in other words, if they've received an early retirement buyout incentive, we change it from 120 to 180 to actually a three-year break in service. The longer separation in service for employees who take an early retirement incentive are specifically put in place to discourage plan members from taking this cash or cash equivalent incentive and then returning to work right away. Finally, under LB415, if a retiree returns to work in one of the listed public retirement plans, the employee must work at least ten years to become vested. In addition, only service that is performed following the return to work will count towards vesting. No purchase of prior service is allowed, nor purchase of air time to get the ten-year vesting point. If an employee does not vest, then the employee will only be eligible to collect the employee contributions that were paid in with a minimum amount of interest. With that, I've covered a lot of ground. I'll try and answer your questions but there are people with a lot more ability that can do that behind me. [LB415]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any questions from the committee? Senator Groene. [LB415]

SENATOR GROENE: We've all seen it. One of our administrators in our bigger school districts retired. Best of my figures, he had put in 40 years so he's getting 80 percent of \$140,000, about \$100,000. He went down, ten miles down the road, stayed in his old home, went to a smaller school, became the superintendent there. Best I was figuring, he was making \$150,000 there plus \$120,000 retirement. Is that...that is actually what happens is not... [LB415]

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SENATOR KOLTERMAN: Yes, it is. And I would tell you that this bill was brought to me by NCSA, school administrators. They want to put an end to that as much as we do. [LB415]

SENATOR GROENE: This interim? [LB415]

SENATOR KOLTERMAN: It was after the interim study that we did with the people involved. [LB415]

SENATOR GROENE: But we seem to have a whole industry out there called interim superintendents moving from school to school doing a little less than what a new person would do because they're pulling down \$100,000-some in retirement at the same time. That...you want to stop that? [LB415]

SENATOR KOLTERMAN: Yes, sir, that's my intent. [LB415]

SENATOR GROENE: What others...the railroad, big railroad town, I think that's federal retirement. I think they have to be 60 years old before they can... [LB415]

SENATOR KOLTERMAN: I can't speak to that, sir. [LB415]

SENATOR GROENE: Have you looked into other states? We used...my wife worked for Colorado schools, public employees retirement. I think they're 60. Have you looked into any of those? [LB415]

SENATOR KOLTERMAN: I can't tell you that. There might be some answers behind me but we can find out for you. [LB415]

SENATOR GROENE: Thank you. [LB415]

SENATOR KOLTERMAN: We've had 60 in the past. That's why we went back there. [LB415]

SENATOR GROENE: I just wondered what the industry...what across the...a defined benefit pack... [LB415]

SENATOR KOLTERMAN: The intent, and I can't repeat this enough, my intent is not to abolish the defined contribution plan. My intent is to keep it as strong as possible so that we can make the payments that we promised people. And with the ARCs coming the way they are over the

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next 30 years, it's going to be a challenge because when you start looking at, as an example, in 2020 we know we're going to have an \$871,000 ARC. The next year is \$2...almost \$3 million. The next year is \$5.5 million, \$8 million, \$10 million. That's in addition to the 2 percent that we're putting in on an annual basis as a state. Those are actuarially required contributions and it's always an example from the actuarial studies that were done that increased our mortality. [LB415]

SENATOR GROENE: One more question. The part that says they have to stay out of the industry 120 days or something,... [LB415]

SENATOR KOLTERMAN: 180 days. [LB415]

SENATOR GROENE: ...that can be put into effect for present employees, can't it, because it does not affect an employment contract? [LB415]

SENATOR KOLTERMAN: Yes. Yes. Yes, it can. [LB415]

SENATOR GROENE: Thank you. [LB415]

SENATOR LINDSTROM: Any other questions from the committee? Senator Kolowski. [LB415]

SENATOR KOLOWSKI: Senator Kolterman. Thank you, Mr. Chairman. Geography plays a role. If I live in Omaha and I went across the river and work in Iowa, retired at 55 in Omaha doesn't...nothing impacts me in the state of Nebraska. [LB415]

SENATOR KOLTERMAN: Correct. Correct. Absolutely correct. [LB415]

SENATOR KOLOWSKI: But I just drive a couple more miles across the river, Council Bluffs, for example. [LB415]

SENATOR KOLTERMAN: Yes. We can't control Iowa. [LB415]

SENATOR KOLOWSKI: Understandable. But that... [LB415]

SENATOR KOLTERMAN: Good question though. [LB415]

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SENATOR KOLOWSKI: No, that...just to show the difference and that... [LB415]

SENATOR KOLTERMAN: Yeah. [LB415]

SENATOR KOLOWSKI: ...that boundary issue could go anywhere in the state depending on where you are... [LB415]

SENATOR KOLTERMAN: Correct. [LB415]

SENATOR KOLOWSKI: ...and where you might want to go to South Dakota or Wyoming or Kansas or anywhere else. [LB415]

SENATOR KOLTERMAN: Right. From what I've been told from administrators--I was just at their meeting last week--I've been at a lot of different meetings talking about these issues and it's my understanding we're seeing a large influx from Kansas administrators because they like what we have in Nebraska. [LB415]

SENATOR KOLOWSKI: I won't even comment on that. (Laugh) It's taking place in Kansas. [LB415]

SENATOR LINDSTROM: Any other...Senator Bolz. [LB415]

SENATOR BOLZ: As I understand the changes related to the retirement age and the rule of 85, this bill both changes from 55 to 60 and from 85 to 90, right? [LB415]

SENATOR KOLTERMAN: Correct. [LB415]

SENATOR BOLZ: Can you just help me understand why both in the same bill, why all at the same time? [LB415]

SENATOR KOLTERMAN: Well, actually, that's probably been one of the most difficult aspects of looking at this because we looked at, well, should we leave it at 85 and put 60 as a minimum, and then it's not really the rule of 85 anymore, it's still the rule of 90. This did the least amount of harm as far as the different configurations. Now I know that there will be people coming behind me that want to see it left the way it is. But at the end of the day our goal is to make sure people stay in the occupation and we protect the plans. And, you know, you don't find a lot of industries where people retire at 55. You know, we're...well, you're a long ways from that, you and

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Lindstrom, but Senator Kolowski and I, Stinner, and Groene, you know, we're closer and we're still working. It's just a...it's...and it's something that we've done in the past so it's not like we're reinventing the wheel here. [LB415]

SENATOR BOLZ: And are other states making similar changes? Are we ahead of the curve? Behind the curve? [LB415]

SENATOR KOLTERMAN: Yeah. You're seeing states make these types of changes to keep them solid. You know, we're very fortunate in the state of Nebraska because our plans are funded very adequately. You're seeing some states look at getting away from these types of plans and going to the cash balance approach. That's what I'm trying to avoid by keeping these strong. We don't want to do that. It's the last thing we want to do because a teacher, they have a big responsibility and they maybe don't get paid as well. They do have...we do need to give them good benefits. So we need to make sure that we can keep a strong package there for them in the long term. And so this, it is important to have a good retirement plan. But we are seeing some states go away from the defined benefit plans. [LB415]

SENATOR BOLZ: Thank you. [LB415]

SENATOR LINDSTROM: Thank you. Senator Kolowski. [LB415]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. We also have, Senator, the State Trooper under the plans with the state and if a State Trooper became a Trooper at 23 and at 48, 25 years later, puts in for retirement, that's...he's beyond 20. That would be 25 years. He or she could still get a county job, a county police job and be in a different retirement system and still put in another 10, 12, 15 years, and that's permitted, is it not? [LB415]

SENATOR KOLTERMAN: It's permitted but we have a ten-year vesting schedule that they're able to participate if they want to work and start another career and go another 10-15 years. They'll get their retirement plus the match if they've been there ten years. [LB415]

SENATOR KOLOWSKI: Okay. [LB415]

SENATOR KOLTERMAN: But we're really trying to encourage them to stay now in a...it's a little different with State Patrol because... [LB415]

SENATOR KOLOWSKI: Sure. [LB415]

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SENATOR KOLTERMAN: ...they have their DROP plan and they...some of them have their DROP plan and they also are required to retire I believe by the age of 60. So in essence we're forcing them out. But supposedly the reason we are is because they're worn out and it's not a young man's profession. [LB415]

SENATOR KOLOWSKI: It isn't. [LB415]

SENATOR KOLTERMAN: So does it make them eligible to be a deputy? Are they less...are they working less than State Patrol? I don't think so. So here again... [LB415]

SENATOR KOLOWSKI: So you asked about firefighters in the same way as State Troopers and others. [LB415]

SENATOR KOLTERMAN: Correct, yeah, although we don't write any firefighter bills. [LB415]

SENATOR KOLOWSKI: That's true. [LB415]

SENATOR KOLTERMAN: And we don't want to talk about that today. [LB415]

SENATOR KOLOWSKI: Too hot a topic. Okay. [LB415]

SENATOR LINDSTROM: We appreciate that. Any other questions from the committee? Seeing none, thank you, Senator Kolterman. [LB415]

SENATOR KOLTERMAN: Thank you. [LB415]

SENATOR LINDSTROM: We will now have proponents, proponents to LB415. Good evening. [LB415]

MIKE DULANEY: Thank you, Senator Lindstrom, members of the committee. My name is Mike Dulaney, M-i-k-e D-u-l-a-n-e-y, and I serve as the executive director for the Nebraska Council of Schools Administrators, NCSA. Very happy to support LB415. We appreciate Senator Kolterman bringing the bill to your attention. This was another example, as the bill prior, of a lot of careful planning, thinking, meeting over the interim. Our group, the NSEA, the NPERS, and counsel for the committee, Senator Kolterman, we all met to talk about the issues. I want to provide just a little bit of background of the Rule of 85 because Senator Kolowski was a beneficiary of the Rule of 85. But a lot of people don't know maybe where that came from or

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why and I think it's important to know. I was in the lobby when the levy limitations were just an idea in 1996 when Jerry Warner was Chair of the Retirement Committee and leading the Legislature through this very complicated effort to place limitations on school districts' levy authority. So in 1996, LB1114 passed and we knew, school districts knew that there would be levy limitations coming. They gave us a two-year window to prepare; 1998 was the first year of implementation of those levy limitations, \$1.10 at the time. That was the initial levy for schools. In the meantime, the lobby, the education lobby, at least some of us, certainly from my group and from the teachers group, were trying to figure out ways that we could help our clients, our organizations, our members, deal with the reduced spending authority and the reduced levy authority. One of the ways we thought of was to use retirement as a way again to help encourage high-end, high-cost employees to find the door on their own. And as Senator Kolterman said, we had the rule of 90; actually it was called a modified rule of 90 going into the 1998 Session. So we approached...NSEA and my group approached Senator "Bud" Robinson--some of you might remember Senator Robinson from District 16--and we asked if he would take LB822 and we pursued the bill. NSEA and my group jointly funded an actuarial study. We had to do that. We had to pay for that, our associations pay for it, in order to have the bill introduced. We did that as well. Wasn't a cheap proposition, but that's what we did. So we proposed the idea through that legislation to have a minimum age of 55 and 30 years, equaling 85, and thereby having a full retirement. Didn't mean they had to stop at 30 years. If they wanted to go beyond, they could, but we had that system. The idea again was to help school districts encourage the high-end employees to move out and hire cheaper staff, employees, whether it be teachers or administrators or cooks or librarians, the whole gamut. So we pursued LB822 effectively and had the bill passed and signed into law in 1998 and it went into effect that July and that's where it came. And so we were all curious how many would actually use this 85. And at the beginning it wasn't used that much. People kept working because people were used to working. People had, like Senator Kolowski, a predisposition to work until they could no longer work or didn't want to work any longer. But very few actually thought of, hey, I'm 55, I think I'll just retire. They kept working. It's now in the 2000s that we see more people using the 55 early retirement. Is that a problem? No, that...it's there. If they want to retire at that age, they can. Most have more than 30 years when they do retire. But the problem I think, as Senator Kolterman alluded, is in recent times employees, whether they be school administrators or teachers, deciding that they would retire and then go back into service and thereby have a benefit and a paycheck coming in. Very seldom, in fact, at no point have I heard of from my membership an individual saying, I want to retire a second time. In other words, they don't go back to work for...to vest again. They go back to work for a period of a couple, three years, maybe one year, and then they leave. But it's not for that second retirement, it's for the paycheck. Primarily I think that...and I can't speak for the teachers but I think probably the same case. The policy issue is whether, you know, you retire at age 55. I believe in the IRS Rule 401, as Ms. Allen would be able to quote better than I, you know, retirement is the bona fide separation for the purposes of retirement. You pick up your pencils and your...all your supplies, you go home, and you start fishing or you do whatever. Like

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Senator Kolowski, you run for the Legislature or whatever it is that you want to do. But we may have a situation where people are thinking, okay, I'm going to retire, I'm a young person, I'll wait out a year and then go back in. Now there is that example. There's also, and I think the preservation of this is worthwhile because there are times when, and I can give you examples, where a superintendent took another position very unexpectedly, say in March, and they finish the school year but that didn't leave enough time for the school board to do a permanent search. That takes time to do and so they have to hire an interim to get by for a year. And those cases I think we have...we've got to allow that that might occur. I don't believe this should be a cottage industry. I don't think it should be where you plan ahead, okay, I'm going to retire but I fully intend to come back in a year or two. That's not bona fide separation. And so we have talked to our members over and over. We believe that the best thing to do is retire meaning to retire. And if down the road you are called upon to help a school, well, then that's for you to contemplate. But it should be, as some would say or argue for, a one and done: one retirement. And this is a wonderful retirement plan. I wish I had it. And it's a wonderful thing. It's also very much on the minds of policymakers to do away with because it's costly. So we're trying to encourage our members to appreciate what they have and if they...if they're not ready to retire, then they should stay in the plan until they are ready to retire. So those are the major pieces that I wanted to share with you. There are other provisions of the bill that are important to note. And we hope to be able to work with this committee on those pieces as you deliberate the legislation. The provision about the ten-year vesting, I personally have no problem with it because I know that most of the administrators I work with have no intention of retiring a second time. So ten years that they'd say big deal, it's the paycheck that they are often looking for. So I don't have a problem with that piece. But there is a provision in the bill that says if you receive an early separation payment. Now bear in mind 245 school districts, there aren't that many school districts left that have early retirement programs, early "sep" programs, but there are a few. We believed, our group over the interim believed that it was not appropriate to receive an early separation payment and then a year later be back to work. That's not fair to the taxpayer. And really that's not true to what you meant to do in the first place, which was to retire. So that's why we have a provision in the bill to say you stay out for three years. That sounds well and good but I've been reminded several times that there are some employees that retire and they just want to be a substitute teacher going forward and shouldn't that be an exception? I would suggest that maybe that could be or should be an exception. Substitute teachers are in great demand and there's oftentimes where school districts simply can't find the personnel to come in on a short notice and take a class for a day or two. So I'll leave my comments at that and be happy to respond to any questions that you have. [LB415]

SENATOR LINDSTROM: Thank you, Mr. Dulaney. Any questions from the committee?
Senator Kolowski. [LB415]

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SENATOR KOLOWSKI: Just for clarification, I guess, thank you, Mr. Chairman. Dr. Dulaney, I'm from the rule of 101. I (inaudible) years, so I guess I wasn't very bright. I should have done something earlier. [LB415]

MIKE DULANEY: Yeah. [LB415]

SENATOR KOLOWSKI: It was a great run and I would not...I hope these young people have the same opportunities that we had. Thank you. [LB415]

MIKE DULANEY: And we appreciate your service. [LB415]

SENATOR KOLOWSKI: Thank you. [LB415]

SENATOR LINDSTROM: Thank you. Seeing no other questions, thank you very much for your testimony. [LB415]

MIKE DULANEY: Thank you. [LB415]

SENATOR LINDSTROM: Other proponents? Good evening. [LB415]

JON HABBEN: (Exhibit 1) Good afternoon, members of the committee. My name is Jon, J-o-n, Habben, H-a-b-b-e-n, executive director, Nebraska Rural Community Schools Association, about 195 districts across the state. This is a...I don't intend to read to you what I just handed out to you. The teaching background in me says don't ever do that. So I guess from my perspective what I want you to know is as the practitioner, not only the principal or the teacher and the principal and the superintendent but also somebody who has great intent to value the defined benefit plan, I looked at the bill and I started to think about it and I started to talk to Dr. Dulaney about it and I talked to others about it and something really jumped out at me and that was, we need to keep this. This is extremely important to future educators, not just educators like me or educators that will retire 20 years from now but this is important for educators down the road. How do we make sure that we've got a strong enough plan that is funded properly and the rules are clear so that we don't end up every year or two or three, especially if we're having some down economic times, feeling like we have to go through the defense of the defined benefit plan. And quite honestly, the last few years it's felt a little bit like that. And I understand why. But I want you to know when somebody decides that they're going to retire, they go through this internal discussion in their own head, with their spouse, probably with friends, trying to figure out what am I going to do, what am I not going to do, what do I want, what do I...you know, and I have to admit I was beyond the rule of 90 when I retired but my thought process was really

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pretty simple. There's a job that I want. I hope the guy that has it now stays in it for awhile so that I might have a chance to get that job. And lo and behold, he retires two or three years earlier than one expected. But if I didn't get that job, I was amazingly happy being superintendent of Falls City Public Schools. I really felt like I had a great circumstance because I had a job I really liked and I knew there was the possibility of a job that, given my government history/economics background, I really thought I wanted to do that before I was really done. The defined benefit plan allowed me that opportunity to think in a way that I might not have otherwise been able to think. My dad couldn't have thought in those terms but I could, and I value that very highly. And so when we talk about the possibility of needing to go to a rule of 90 in order to make this stable, in order to make this strong, in order to make this available to the future, then I've been telling our members we need to be supporting the rule of 90 because we don't ever want to let this go. We want to recruit teachers with it. We want to retain teachers with it. And we want this to be a strong underpinning of the entire education system. With that I'll close. [LB415]

SENATOR LINDSTROM: Thank you very much. Any questions from any other member of the committee? Seeing none, thank you very much. [LB415]

JON HABBEN: Thank you. [LB415]

SENATOR LINDSTROM: Next proponent. Seeing none, we will now move to opponents. Good evening. [LB415]

DENTON BEACOM: Good evening. Chairman Kolterman and members of the Retirement Committee, my name is Denton Beacom, spelled D-e-n-t-o-n B-e-a-c-o-m, and I'm president of the Student Education Association of Nebraska, representing 1,500 members across 17 two-year and four-year college campuses across the state. A few of those members are here with us today in this hearing. I'm a Wayne State College education major and I will student teach this fall. I am concerned about the effects of LB415. I believe its passage would further discourage young people from entering the teaching profession. As I will be hired after July 1, 2017, this legislation would directly affect me, my peers, and the retirement which we work hard to earn. Senators, enrollment in teacher prep programs has dropped significantly. According to the Nebraska Department of Education, there were more than 7,500 education candidates enrolled in Nebraska colleges and universities in 2003. Ten years later, there were 3,500 enrolled, a drop of more than 4,000. That's a 53 percent reduction. Tuition keeps rising. Teachers with bachelor's degrees earn far less than their private-sector counterparts, about 23 percent less. Student loans are more difficult to repay on teacher salary and, frankly, everyone knows starting salaries for teachers are austere. It's no wonder there is a teacher shortage and the shortage of qualified substitutes is a growing problem across the state. Reducing the retirement benefit for hardworking, professional teachers will only serve to aggravate these problems. And if you

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remember, the retirement system has already been bifurcated, for teachers hired after 2013 are already getting lesser benefits than those hired prior to 2013. Nebraskans want excellent, qualified teachers and top-notch education system in Nebraska and LB415 will hurt our ability to provide both. This bill targets teachers' ability to retire as well as their ability to substitute teach after their retirement. LB415 would add five more years on to a teacher's career when they have already given so much and they may be burned out after 30-plus years in the classroom. Make no mistake, teaching is difficult work. It is not easy. It is wearing. LB415 will not help recruit the quality teachers we need in our profession. In fact, I believe this bill would further discourage young people from entering the teaching profession in Nebraska. The Nebraska Department of Economic Development offered numbers in Sunday's Lincoln Journal Star that said on average nearly 12,000 Nebraskans age 25 and older with a bachelor's degree left the state every year from 2011 to 2015. Clearly, Nebraska did not offer them a reason to stay. LB415 gives these Nebraskans another reason to leave. Aspiring educators are the future of our schools. They are molding the foundation of our state's future and they deserve better. I am also concerned about this bill's changing regarding substitute teaching immediately following retirement. Many school districts need help from retiring teachers to address teacher shortages and the lack of substitute teachers that schools are now facing. Prohibiting teachers to return to work for three years following a voluntary termination agreement is yet one more reason for teachers to leave the state or consider other professions. There are times when filling a vacancy that a district has two options: either hire a retired teacher or leave the position unfilled. If this bill passes, school districts will find it more difficult to hire retired teachers to fill positions left open when no one else applies. As a state, we need these retired teachers to cover these challenging recruitment positions. In closing, I want to say teachers deserve the ability to retire with dignity after 30-plus years if they so choose. Retirement may be a long way off for me and my peers, but LB415, if adopted, we will deeply be affected. I ask you to rethink this bill. We are excited and look forward to our careers in education. We are the future of education in Nebraska. I think we should be heard, valued, and given fair consideration in these decisions. Thank you. And I will try to answer any questions that you might have for me. [LB415]

SENATOR LINDSTROM: Thank you, Mr. Beacom. Well done. Any questions from the committee? Senator Kolowski. [LB415]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Denton, good to see you again. I met you earlier today. Thank you for your statement and your concerns for the future. There is a great deal going on in the country as far as teacher preparation across the board right now. If you've heard of Educators Rising, that's something I'm deeply involved in with Phi Delta Kappa at a national level. I'm on the board of directors of their foundation and we've been backing that movement toward Educators Rising at this point in time. We have about 20,000 students nationwide that have signed up for Educators Rising. Half of them are students of color, which is really great. We have more and more needs in the urban centers of our country as well as

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everywhere else, but it's really a movement that's catching on and defining teaching by the national standards of...that are available at the current time is extremely important to us, to raise the new level of preparation of our teachers-to-be. I hope we will continue to grow our own, but I also know we bring them in from the outside. They come from other states. The quality of life in Nebraska is an important issue. I joked in another committee earlier today that I'm here because of the mountains and the seashore. Well, I don't know where they are because they're not around me anywhere. But it's a quality of life issue that has kept my wife and I here for 50 years. And we came from Illinois originally and this is a great place to be and your range of opportunities are many. And so all your peers behind you and the teachers that are with you today, thank you for your work, thank you for the difference you're making in the lives of these students. And we hope even though it's a difficult situation, I think you need to hear again what our Chairman of our committee has said. This needs to be something that we can fund and be reliable to make this work over time. And your...my example of 101, I can go with 85 or 90. I continued on to do more than that, and you'll have an opportunity to do the same. Is 90 the magic number? I don't know. But 85 was good. Your longevity is going to be a very important part of that. And it is an energy-draining profession that you could be in. Let me ask the students in the background, all your friends that are back there, how many have a grandparent that's over 90, raise a hand, would you, please? Okay, that's just a question, just a...you know, you're going to see more of us living longer and hopefully producing longer in our jobs than anyone has done before, and that's a possibility that we also look at also. My mother is 96. She'll be 97 in two months and I hope I have some of her genes somewhere in me that I can have a little longer life and see what happens on things. But thank you for your comments and thank you for your zeal about what you're feeling. [LB415]

DENTON BEACOM: Thank you, Senator. [LB415]

SENATOR LINDSTROM: Thank you, Senator Kolowski. I was going to ask, you say you went to Wayne State or are going to Wayne State? [LB415]

DENTON BEACOM: Yep. [LB415]

SENATOR LINDSTROM: What year are you currently? [LB415]

DENTON BEACOM: I'm currently technically a junior but I will be student teaching this fall. I'm a little bit ahead. [LB415]

SENATOR LINDSTROM: Okay. And when you were a freshman, was that...did you go in initially thinking you wanted to teach? [LB415]

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DENTON BEACOM: Yes, sir. [LB415]

SENATOR LINDSTROM: And when you thought about teaching, can you just tell me why you would have picked that profession? What was the basis for that? [LB415]

DENTON BEACOM: Because of the reward of how big of a difference I can make in kids' lives. I wanted to do something to make a difference in our world and in our country and I thought for awhile that that was law or politics. That was actually my big thing for awhile and I thought what a better way that I can make a much bigger impact every single day in my actions and what I do in a classroom. So that's why I chose education. [LB415]

SENATOR LINDSTROM: Thank you. And we appreciate that. We appreciate all the future educators on behalf of...I have young kids, and so thank you. I apologize if you have any of my kids because (laughter) they can be a handful. I just...one thing that popped in my head when this was going on is we talk about different retirement plans and particularly I know Senator Kolterman pointed out that if you're in a 401(k) plan, which most people are if they work for an employer, the Union Pacifics of the world, HJR, things like that. And if I were to, say, retire at age 55 and took my money and, say, kept it at the firm or rolled it into an IRA, I would not be able to access that money without penalty until 59.5. So just so we have a little bit of comparison as to what we have, I just...not a question, just something that to point out when it comes to the defined benefit versus the defined contribution what a lot of Nebraskans are dealing with and when they can retire. Social Security, the earliest you can take that is 62. So just keep that in mind. But again, we appreciate what you're doing for the state and we hope to keep you here. [LB415]

DENTON BEACOM: All right. Thanks, Senator. [LB415]

SENATOR LINDSTROM: Thank you. Senator Kolowski. [LB415]

SENATOR KOLOWSKI: Just for clarification, Senator Lindstrom, would you tell everyone who your high school principal was? [LB415]

SENATOR LINDSTROM: Senator Kolowski. (Laughter) [LB415]

SENATOR KOLOWSKI: The circle of life, it just keeps on going. [LB415]

SENATOR LINDSTROM: That's right. I will admit it was hard to not call him "Dr. K"...
[LB415]

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SENATOR KOLOWSKI: That's okay. [LB415]

SENATOR LINDSTROM: ...the first day, so, yeah, so we appreciate it. Any other questions from the committee? Seeing none, thank you, Mr. Beacom, appreciate it. [LB415]

DENTON BEACOM: Thank you. [LB415]

SENATOR LINDSTROM: Other opposition? [LB415]

JASON HAYES: (Exhibit 2) Senator Lindstrom and members of the Retirement Committee, my name is Jason Hayes, J-a-s-o-n H-a-y-e-s, and I represent the Nebraska State Education Association. The association opposes LB415 and there are several provisions in this bill that cause concern. I will highlight each area of concern and, if possible, provide an alternative proposal for you to consider. It is important to acknowledge first a few positive aspects about the plan. Regardless of any legislative changes, the statewide school plan is on track to being 100 percent funded by 2040. By 2045, the plan is projected to be 108 percent funded. These figures include the recent assumption changes going into effect in July 2017. The latest actuarial projection does show the plan will need an additional state contribution beginning in the year 2020 and continuing through the year 2035. These additional contributions are relatively small for the first half of that period, \$1 million in 2020 and \$3 million in 2021, but they do increase up to about \$50 million by year 2035. Changes could be made now but they do not need to be made this session and they certainly should not be done in haste. The plan has more than \$10 billion in assets and so comparatively \$50 million represents about one half of a percent of that amount. So to begin on the...one of the changes in LB415 includes changing the rule of 85 to the rule of 90 and changing the minimum retirement age from age 55 to age 60. Our concern is that when you make these changes at the same time, you basically end up getting a rule of 95 or higher. For example, a person starts teaching when they are 23. They work 37 years until the age of 60. The rule of 90 does not apply because 37 plus 60 equals a rule of 97. An actual rule of 90 would only apply to someone who starts working later in life, say around the age of 31. Most teachers start teaching after college at the age of 22 or 23, so leaving the rule of 85 as is but increasing the minimum retirement age to 60 more accurately addresses what I think Senator Kolterman is trying to achieve in his bill. Now about eliminating the exceptions to the 180-day rule following retirement: The school plan is the only NPERs plan with 180-day requirement. The judges, State Patrol, state and county plans are all at 120 days and have no exceptions. If you eliminate the exceptions by adopting LB415, it seems only logical to also set the period at 120 days to mirror the other NPERs plans. Having a 120-day period would still prohibit a newly retired teacher from signing a full year contract on September 1, but it would also help ease the shortage for substitute teachers in the state, especially in rural areas during the late fall period, including November and December. Now about the three-year restriction for voluntary

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termination agreements: These agreements are used by districts to reduce staff in tight budget years. They represent an agreement between the district and their employer. If an employee terminates and goes to another district within the state who needs a qualified teacher, then it would seem unreasonable to prevent that. Some of these agreements are small and may cover health insurance premiums for a limited period. A three-year restriction seems harsh, especially for these smaller types of agreements. Perhaps a de minimis level should be set in the bill such as \$20,000 or lower. Note there is another bill, LB457, currently in the Education Committee to determine if these agreements should be under the school budget lid and I believe if LB457 passes then it is unlikely that they will continue since they are typically done to alleviate budget staffing issues and are done outside of the lid. Finally, I want to address what happens when someone returns to work following retirement. Under this bill the vesting period is raised from five years to ten years for such individuals. Since it is unlikely that a person will work an additional ten years after retirement, especially after the age of 60, which is included in this bill, this effectively eliminates an employee from receiving their employer match. The employee still would be entitled to withdrawing their employee contribution but under current law this money would only earn interest equal to the daily one-year treasury bond rate. This rate is currently at 0.8 percent and has not been over 1 percent since November of 2008, over eight years ago. If you do increase the vesting period, then interest should be set at least ahead of inflation. The plan is set to have an assumed inflation rate of 2.75 percent. The interest rate should be set at that rate or better to ensure an employee is not having their contributions eroded by inflation, and I want to note the state and county employees have a minimum credit rating of 5 percent or better. LB415 is a complex bill and I suspect many of these changes are targeted at nonteachers who have higher salaries and negotiate individual contracts. We want to make sure this bill does not have any unintended consequences upon a teacher who legitimately retires but then is asked to substitute teach or return to work for a short period of time to cover an area of need within the state. And I thank you for your time and consideration. [LB415]

SENATOR LINDSTROM: Thank you, Mr. Hayes. Any questions from the committee? Seeing none, thank you, Mr. Hayes. [LB415]

JASON HAYES: Okay. Thank you. [LB415]

SENATOR LINDSTROM: Other opponents? Good evening. [LB415]

DeLORIS TONACK: Good afternoon. Thank you for letting us talk here. I've decided a little bit at the last minute to talk because I had to top your 101. I think I made the 102-old rule of 85. My name is DeLoris Tonack, D-e-L-o-r-i-s T-o-n-a-c-k. I began teaching just shy of being 21. I retired at age 62 due to a husband's illness. I still do part time. I'm not part of any additional retirement system. But I am a math and physics and statistics teacher. I also have a Ph.D., so I'm

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one of those more expensive people. My interest in retirement goes way back to 1970s, 1980s, even at a time when Don Wesely was the Retirement Chair. And I see him sitting there in the back of the room, so we've had many conversations over the decades. But when I do the math and I say, well, De, what if you had retired five years earlier? And I was on the upper end with a Ph.D. My goodness, I could have saved that retirement system \$6,000 to \$7,000 a year. Now if I live to be 80, that's quite a bit of money. And if I live to be 96, that's quite a bit of money there too. And when I left the Lincoln Public Schools system, the person that replaced me had a salary of about \$40,000 a year. So I look at both of those numbers multiplying by the years and you would have been ahead to have me retire at age 55 from the system. So when I look at what we talk about, and Jason already mentioned that the rule of 90 is actually more like a rule of 97, the math doesn't work for me. You'd be better off if I would have retired early, although I enjoy teaching too much and so I didn't. So thank you for your time. [LB415]

SENATOR LINDSTROM: Thank you very much for your testimony. Any questions from the committee? Seeing none, thank you very much. [LB415]

DeLORIS TONACK: Okay. [LB415]

SENATOR LINDSTROM: (Exhibits 4 and 5) Other opponents? Seeing none, there are two opponents that have written testimony. One is Roger Rea, president of NSEA retirement, and Liz Rea, retired Omaha teacher. We will now move to neutral testifiers. Any one wishing to testify in a neutral capacity? [LB415]

ORRON HILL: (Exhibit 3) Good evening, Chairperson Kolterman, Vice Chairperson Lindstrom, and Retirement Systems Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm legal counsel for the Public Employees Retirement Board. I'm here at the PERB's direction to testify on LB415 in a neutral capacity. The PERB understands that this bill is designed to address concerns over individuals receiving multiple pensions or receiving retirement benefits and a paycheck from the state and its political subdivisions. This is a public policy issue and we defer to the Legislature and Governor to set the state's policy. That being said, we would offer you some input on the bill to help ensure that you are able to make a well-informed decision. First, the PERB always supports protecting the tax-qualified status of the NPERS plans and clarity in the law. It is our opinion that the revisions to the definition of termination of employment and reinstating the rule of 90 in the school plan would support these goals. Since the rule of 85 was enacted in the school plan, we have seen an increase in the age at which individuals may collect Social Security, modifications to healthcare laws, increase in healthcare costs, and a consistent trend in members living longer. Members who retire under the rule of 85 are returning to work as full-time or part-time employees or substitutes to offset these expenses and address these legal requirements. This creates situations where individuals are receiving retirement benefits and a

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paycheck. Reinstating the rule of 90 should reduce the likelihood that retirees return to work. If the rule of 90 is reinstated, we recommend that the same early retirement reductions that were in effect under the old rule of 90 be reinstated. A copy of the page from an old school plan handbook discussing the early retirement reductions is attached to our testimony for your consideration. That being said, we understand that there may be other options that could accomplish the same objective. We would be willing to work with the interested parties to discuss the viability of those options. Second, multiple interested parties have expressed confusion over what is meant by the term "early retirement incentive." We ask that the term "early retirement incentive" be defined so that we know how to properly implement it in accordance with the legislative intent. Third, the Internal Revenue Service requires plan members to experience a bona fide separation from service with all employers covered by a retirement plan before the member receives their retirement benefits. Each plan administered by the PERB has a statutory waiting period that retirees must satisfy to experience such a separation. For example, the school plan requires retirees to wait 180 days before returning to work. However, in contrast to other plans and has already been discussed, there are exceptions to this 180-day rule. Over the past several years, the PERB and NPERS have encountered an increasing number of retirees returning to work in a manner that is inconsistent with these exceptions, especially those who return to work as a volunteer or a substitute on an intermittent basis. Removing the exceptions would create a consistent standard that is easier for all to understand and to implement. As an example, we had an individual who returned to work as a substitute working 70 percent of the days. It's hard to classify that as an intermittent employee when that would normally require someone to become eligible for plan participation because they're working more than 20 hours per week had they been a part-time employee. So that's an example of one of the issues we've had to address. Another issue we would like to discuss is that in the first year of the last biennium we did a poll of all the questions that had been asked that reached at least the agency legal counsel or director's level. Of the questions that reached that level, over 40 percent of them were related to returning to work, substitutes, intermittent status, and those sorts of things and those were questions that were asked by our members. By comparison, only about 360 questions had reached that level. Our call center in one week in the month of August handled over 1,800 phone calls. So there are many of those questions that can be addressed at the lower level, but that's to give you an example of the number of questions related to the definition of what does it mean to return on an intermittent basis, to demonstrate some of the administrative hurdles that NPERS has in administering that particular provision of the definition. Fourth, the PERB supports policies and practices that allow the efficient and accurate operation of the plans, as we just gave examples of. Addressing those issues would certainly help us in our efficiency in being able to administer the plans in accordance with the law. Requiring members to certify that there is no prearranged agreement to work after retirement will mitigate the likelihood that a retiree receives an unauthorized in-service distribution. This will help ensure that the plans maintain their tax-qualified status. Fifth, some members of the PERB are concerned about the ten-year vesting requirement for retirees who

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return to work. They are concerned that it may have a chilling effect on well-qualified retirees applying for positions of great need. We've also heard some of the other testifiers speak on that point. These PERB members suggest that a five-year vesting period may still accomplish the policy goal while reducing the chilling effect, especially when combined with the rule of 90. Finally, the PERB appreciates that the bill calls for schools and ESUs to report to the Nebraska Department of Education when a school or ESU employs a retiree. This helps the PERB obtain information necessary to administer the plan. However, under all the plans that are administered by the PERB, employers are required to provide information to the PERB in the form and manner requested and employers may face criminal sanctions for failing to do so. The administrative requirement would not be necessary if the employers would comply with the existing law, one of the challenges that we have had to face in this issue, especially when investigating the return to work of substitutes on an intermittent basis or other similar situations. Subject to your questions, that concludes my testimony. We would ask you to seriously consider this bill and the public policy that is behind it. Thank you. [LB415]

SENATOR LINDSTROM: Thank you, Mr. Hill. Any questions from the committee? Seeing none, thank you very much. [LB415]

ORRON HILL: Thank you. [LB415]

SENATOR LINDSTROM: (Exhibit 6) Other neutral testifiers? Seeing none, I do have a letter, read testimony in neutral capacity from Mr. Nathan Leach. And with that, we will invite Senator Kolterman to close. [LB415]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom and committee members, appreciate your patience, all of you. I know we don't like to schedule hearings this late, but we're going to get out of here earlier than I originally anticipated, so I guess that's good. Why do we have hearings? We have hearings to learn and to listen, hear concerns both pro and con. Over the last...since May of last year, Kate and I have had a lot of opportunities to do that both at the NSEA Board members, NCSA, NRCSA, School Board Association, OSERS. We've tried to be as open as possible about this bill. There's no 100 percent right way to do it. There's no 100 percent right way to do it and we know we're never going to please everyone. What you see here in LB415, which is a very thorough bill, are many moving parts. And I'm here to tell you that any one of them could be tweaked if the committee so desires and we're open to that. I will tell you, as I've said many times, I'm here to protect the defined benefit plan for all of our state employees that are in them. So when we talk about defined benefit plans, they are expensive to administer. And for the young people coming into the industry, I applaud them. I'm like you, Senator Kolowski. Everything doesn't have a dollar amount tied to it. Quality of life is something, is the reason I've stayed in Nebraska my entire life, as well as my wife. And I don't

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think you're going to find the quality of life any better than it is here in the state of Nebraska. From my perspective, having been in the investment business for many, many years, a defined benefit plan, even with the rule of 90, is a very, very strong retirement benefit. I think Senator Lindstrom can substantiate the fact that there are very few plans in this state that if you put in 10 percent the employer will match it with 101 percent above that. So in essence you've got 20-some percent going into the retirement plan every year. In addition to that, the state of Nebraska is putting 2 percent in as well, so approximately 23 percent of your paycheck is going into the retirement plan on your behalf. We're not talking about making that change anywhere in this bill. All we're talking about is saying, if you want to retire at age 60, don't bilk the system and try and get out early and then come right back to work. So again, there's nothing perfect about this bill. I would be the first to admit that. Has a lot of work gone into it? Absolutely, yes, there has been. Is it still open to change? Absolutely, there is that possibility, but I would encourage you to give it strong consideration, and if you have better ways of doing it, we are open to listening to those ways. With that, I would try and answer any questions any of you might have. [LB415]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any final questions for the senator? Seeing none,... [LB415]

SENATOR KOLTERMAN: We're done. [LB415]

SENATOR LINDSTROM: ...that will end the hearing on LB415. Thank you to all our guests for coming. Have a good night. [LB415]