

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Nebraska Retirement Systems Committee February 5, 2019

**KOLTERMAN:** Welcome to the Retirement Committee hearing, my name is Senator Mark Kolterman. I'm from Seward and represent the 24th Legislative District. I serve as Chair of this committee. The committee will take up bills in the, in the order that are posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. Committee members will be coming and go during the hearings. Since we meet over the lunch hour, senators may have other commitments or meetings. It is not an indication that we're not interested in your bills, it's just part of that process. To better facilitate today's proceedings, I ask you to abide by the following procedures: please silence or turn off your cell phones; move to the front row when you're ready to testify. The order of testimony: introducer, proponents, opponents, neutral, and closing will take place. If, if you're a testifier, please sign in and hand your blue sheet to the committee clerk when you come up to testify. Spell your name for the record before you testify, and be concise. It's my request to limit your testimony to five minutes or less. If you will not be testifying at the microphone but want to go on record as having a position, there are white sheets at the entrance. These, these sign-in sheets will become exhibits in the permanent record at the end of today's hearing. If you have written materials, we need at least eight copies. If you have written testimony but not have ten-- eight copies please raise your hand and the page will get them for you. To my immediate left is committee counsel, Kate Allen. And to my far left is committee clerk, Katie Quintero. We have two pages, Sam and Kelsey. And I'll let the senators introduce themselves, starting at my far right.

**BOLZ:** Senator Kate Bolz, District 29.

**STINNER:** John Stinner, Legislative District 48.

**LINDSTROM:** Brett Lindstrom, District 18, northwest Omaha.

**GROENE:** Mike Groene, District 42, Lincoln County.

**KOLTERMAN:** And Rick Kolowski has asked to be excused today. With that, we have two hearings. I'm gonna turn it over to Senator Lindstrom, Vice Chair.

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**LINDSTROM:** Thank you. We'll now open the hearing on LB34 introduced by Senator Kolterman.

**KOLTERMAN:** 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 here today to introduce LB34. This bill is being introduced at the request of the Nebraska Public Employees Retirement System. Currently, if a state or county plan member is terminated and files a grievance, the member is allowed to withdraw from his or her retirement account up to \$25,000 during the pendency of the grievance. LB34 eliminates this option. NPERS has identified a number of concerns with the current statutory authority to allow a distribution up to \$25,000 from the member's retirement account. The distribution during the pendency of a grievance is in violation of the IRS single distribution requirement for cash balance plan members. Number two, if a member loses a grievance or chooses not to return to work then the member is required to withdraw the remainder of the money in the member's account. This eliminates the member's option to keep the money in the account and continue to draw the guaranteed 5 percent interest on the cash balance accounts. If the member is under age 59 and a half at the time of the withdraw, then the federal tax penalty will also attach to the money when it's distributed to the member. Generally the member has spent most of-- all their amount distributed and then has to repay that distribution within two years. NPERS is consequently put in a position of being a bill collector and frequently has difficulty collecting the repayment of distributed funds when a member is reinstated. We work closely with NPERS and had a number of meetings with representatives from NACO as well as NAPE and AFSCME to discuss these proposed changes. During these meetings the representatives were assured that is not the intent of NPERS or my intent to interfere in any way with the employee's right to file a grievance. These changes relate strictly to making sure the state and county plans are in compliance with the IRS single distribution rule. In addition, we want to preserve distribution options for members and avoid the difficulties encountered by members in repaying withdrawn amounts. A representative from NPERS will follow my testimony, and I'd be glad to answer any questions you might have at this time.

**LINDSTROM:** Thank you, Senator Kolterman. Any questions? Senator Stinner.

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**STINNER:** This point on number two about when a member loses a grievance and-- or chooses not to return they have to withdraw the money. They could roll it over into an IRA account, couldn't they?

**KOLTERMAN:** They could, yes.

**STINNER:** So that would be another option.

**KOLTERMAN:** That's another option, but what are-- what, what we're really trying to do is to stop the grievance process-- not stop the grievance process but stop the distribution.

**STINNER:** Right.

**KOLTERMAN:** And, and again, we've worked closely with the unions. We-- we've met several times with the unions. They're very cordial. We gave them time to go back and discuss it. They said we understand the situation. The challenge we have is if you pay out \$25,000 for somebody that's in a grievance, while they're, while they're in their grievance are using that money to live on. And when-- if they win their grievance and they come back then it's hard to get blood out of a turnip-- they've spent their money. And so it-- this causes a lot of problems, and in addition to that, it's in violation to IRS code. So they've agreed to support this bill and I think you might hear testimony from that in a minute.

**STINNER:** But the \$25,000, if they couldn't repay it, would it have been a taxable event to them?

**KOLTERMAN:** Yes, it would.

**STINNER:** So they would of had to pay taxes on it.

**KOLTERMAN:** And if they're under 59 and a half then they also get the penalty, which is another 10 percent.

**STINNER:** That's right.

**KOLTERMAN:** Good question.

**LINDSTROM:** Senator Groene.

**GROENE:** So if an employee leaves employment, they are forced to withdraw the remainder of their--

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**KOLTERMAN:** No, this only deals with grievances, Senator Groene. They can-- if-- but if they, if they lose and they're-- and they've already taken the \$25,000-- up to \$25,000 then they, then they, then they have to take the balance out when they do--

**GROENE:** Why?

**KOLTERMAN:** --lose their grievance.

**GROENE:** Why?

**KOLTERMAN:** I don't know why. That's-- you can, you can ask that to following people coming up.

**GROENE:** So if somebody is in the retirement plan and they, they work as a teacher for 10 years-- or is this just the-- no, this is NPERS. A teacher, a state employee, and they work for the state for 20 years and they're 35 and they go do something or at 45 and they go do something else. They can't leave their money in there and let it grow?

**KOLTERMAN:** Yes, yes they can leave it in. This only deals with grievances.

**GROENE:** Why, why do we force them? Then maybe they want to leave it in there.

**KOLTERMAN:** Well-- and they'll be-- I'm sure Orron will be able to explain why they have to take the balance out. It has something to do with the fact that they've already triggered the money with the \$25,000 I believe. But, let him answer that question.

**GROENE:** All right, thank you.

**LINDSTROM:** Thank you. Any other questions? Seeing none, thank you, Senator Kolterman. We'll now move to the first proponent.

**RANDY GERKE:** Good afternoon, Chairman Kolterman, Vice Chairman Lindstrom and members of the Legislative Retirement Systems Committee. My name is Randy Gerke, that's spelled R-a-n-d-y G-e-r-k-e, and I'm a director of the Nebraska Public Employees Retirement Systems. I'm here at the direction of the Nebraska Public Employees Retirement Board to testify in support of LB34. Nearly every-- I, I have a prepared statement and nearly everything that, that I, I have written has been

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said by Senator Kolterman, but I'd be happy to answer your question if you'd like, Senator Groene.

**GROENE:** Don't use your time for that.

**RANDY GERKE:** That's because of the-- it's treated as a defined benefit plan under federal tax code and it's subject to the single sum distribution rules so it-- under the federal tax code. And so if they have taken a, a partial distribution because they have requested it through the grievance process. Once the grievance is satisfied, then they need to take the rest of their money out as well.

**GROENE:** Can I speak?

**KOLTERMAN:** Yep. Are, are you finished with your comments?

**RANDY GERKE:** Yeah, I, I-- I'd be happy to. I, I, I just wanted to thank everybody, but other than--

**GROENE:** That's by federal IRS regulation?

**RANDY GERKE:** Yes, it is. And, and I, I don't-- I, I, I can't quote you exactly what that is. But it-- yes, that it's called the federal-- it's a-- I'm sorry, the single sum distribution rule under federal tax.

**GROENE:** So if somebody re-- like I said quits after 30 years and they're 50, but they don't require-- they can't go in and say give me \$25,000 of my retirement and pay fed and keep the rest in there and, and let it grow? Once they want a lump sum-- not a lump sum, but a big, large payment, they're automatically lumped into this thing where they have to take it all out?

**RANDY GERKE:** Now, now if-- are we talking about grievance or, or just as a regular member? I-- under the cash balance plan that counts as a, a-- the single sum distribution rule. The defined contribution plan they can take out-- what we call systematic withdrawals or they can-- you know, that kind of a thing or they can take out an annuity. But we-- but they buy the annuity all at one time-- but in cash balance, because it's a defined benefit plan or considered that they are subject to that. Yes, everything they take that out all at one time.

**GROENE:** That, that makes sense--

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**RANDY GERKE:** OK.

**GROENE:** --because their, their retirement is based on 40 years at 2 percent a year. And if they take some out, they're getting a payment.

**RANDY GERKE:** That's correct.

**GROENE:** Yeah, you'd have to recalculate though.

**RANDY GERKE:** Um-hum.

**GROENE:** It's only on the defined benefit.

**RANDY GERKE:** Right, right.

**LINDSTROM:** Very good.

**GROENE:** Understood.

**RANDY GERKE:** And, and that comes to, to play here though with the grievance process. If they take this particular-- you know, a, a partial while filing the grievance.

**LINDSTROM:** Very good. Any other questions from the-- Senator Bolz.

**BOLZ:** Just, just for my education, is this, is this a frequent problem? Is this an issue that comes up a lot? Is, is it just best practice moving forward? I'm just wondering if this comes from a particular case or you've just identified it as an issue to pay attention to.

**RANDY GERKE:** This has been-- what's, what's difficult is for the repayment. We have only gotten 12 in the last year. There were 12 grievances filed that we became aware of-- only two asked for distribution. One of them solved their grievance or, or withdrew their, their distribution request before it was even given. One of them-- they did take the grievance distribution and we were-- they had 120 days then-- or what they did was they started working again and, and ended up quitting before they repaid. So, so, so that became an issue. We also had one that we didn't know had filed a grievance and they had-- they, they had requested payment of their, of their account balance which was more than \$25,000 which we paid out and then we had to go in and ask for that money back from them. So, so it's just kind of a nightmare to administer this, this piece of it. And like I said there were only 12 last year that, that even filed grievances that we

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became aware of. Now there is another issue also-- very oftentimes we're not aware of it. It's up to the member or the agency to tell us. The county's, we don't hear from them as often. The state's pretty good. The agencies are about letting us know if there's a grievance filed.

**BOLZ:** OK, thanks for the context.

**RANDY GERKE:** Um-hum.

**LINDSTROM:** Thank you. Any final questions? Seeing none, thank you.

**RANDY GERKE:** Thank you for introducing and for all your work.

**LINDSTROM:** Next proponent. Good afternoon.

**BETH BAZYN FERRELL:** Good afternoon, Senator Lindstrom, members of the Committee. For the record, my name is Beth B-e-t-h, Bazyn B-a-z-y-n, Ferrell F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of LB34. Senator Kolterman, Kolterman indicated he did meet with us during the summer and explained the reason for this bill. While we're not unsympathetic to someone who might need some funds during the grievance process, we do recognize that the IRS does dictate what needs to be done and therefore we support the bill.

**LINDSTROM:** Very good. Any questions from the committee? Seeing none, thank you. Next proponent. Seeing none, we'll now move to opponents. Seeing none, any neutral testifiers? Seeing none, Senator Kolterman, would you like to close?

**KOLTERMAN:** Thank you, again. This bill was-- is primarily cleanup language for the-- to meet the IRS qualifications. But it only-- it, it, it-- I got to thinking about your question, Senator Groene. The cash balance plan is a hybrid type of defined benefit plan. And so with the single sum distribution-- if they take some they have to take it all. And so rather than recalculate, if you lose your-- if you lose, you have to take the rest of the balance, and that's, that's according to the IRS because you've already taken part of it. The other, the other situation I'd like to point out is we did meet with NAPE several times with my staff and a-- and I-- and they were, they were sympathetic to their employees but they also understood that the dilemma that this puts NPERS in and they agreed that they would not testify today. So appreciate that. I would hope that we could move the

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bill forward. With that, I would entertain any questions you might have.

**LINDSTROM:** Thank you, Senator Kolterman. Senator Groene.

**GROENE:** To clarify, the last testifier said it was defined benefit which, which I would assume is the, is the public-- is teachers, State Patrol.

**KOLTERMAN:** It's, it's similar, correct.

**GROENE:** But the cash balance is also?

**KOLTERMAN:** It's a defined benefit type of plan, yes, because we guarantee it. At the end of the day we guarantee an annuity payment to them.

**GROENE:** With the annuity it isn't based on just the cash balance after 5 percent a year-- what-- whatever the--

**KOLTERMAN:** Yeah, we can guarantee them 5 percent a year plus, plus they're allowed to take an annuity at the end of the day in the cash balance plan. So it, it becomes a defined benefit type of plan.

**GROENE:** So it's not like a CD-- you get 5 percent-- if you, if you remove some of it out of your savings account and then you only get 5 percent what's on left-- less?

**KOLTERMAN:** No, you can't do that under a defined benefit plan.

**GROENE:** That's-- that doesn't follow those typical rules?

**KOLTERMAN:** Yeah.

**GROENE:** All right.

**LINDSTROM:** Any final questions? I guess just to clarify, just as a [INAUDIBLE]. So because it's a defined benefit, but it's also a hybrid, you can move it out of the plan and do-- and roll it over similar to a, a defined contribution.

**KOLTERMAN:** Yes, but at that point in time you'd lose all your guarantees.

**LINDSTROM:** Right. But, but you do have the ability verses--



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**KOLTERMAN:** You do have the ability--

**LINDSTROM:** --your traditional--

**KOLTERMAN:** Correct.

**LINDSTROM:** --defined benefit. This is the hybrid which allows you to do that.

**KOLTERMAN:** Correct. So it's got, it's got both aspects of--

**LINDSTROM:** Right. Any final questions? Seeing none, thank you, Senator Kolterman.

**KOLTERMAN:** Thank you.

**LINDSTROM:** Oh, and I do have one letter of support from John Antonich, Executive Director with Nebraska NAPE/AFSCME Local 61. And with that, that'll end the hearing on LB34. We'll now open the hearing on LB35 introduced by Senator Kolterman.

**KOLTERMAN:** 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. I'm here today to introduce LB35 at the request of the Nebraska Public Employees Retirement System. LB35 makes two changes. Number one, it clarifies that a state or county permanent employee must be at least 18 years old before he or she is eligible for membership in the state or county plan. And number two, it changes reemployment rules for county and state employee plan members effective January 1, 2020 so that when a state or county plan member reemploys, he or she goes back into the same defined contribution or cash balance plan in which they were last contributing. I'll let, I'll let Mr. Gerke discuss the, the rationale behind this. But the, the reality is when somebody reemploys, we can't have half their money in cash balance, half their money in a defined contribution. And so just creates problems, so we're clearing that up. And the other side is we're trying to make people eligible at age 18. So with that I would answer, answer any questions you might have.

**LINDSTROM:** Thank you, Senator Kolterman. Any questions from the committee? Senator Bolz.

**BOLZ:** Sorry if I'm asking the obvious question, but why the 18 change?

**KOLTERMAN:** It was requested by the PERB. That I, I believe it's because we, we have younger and younger people come into work and

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they're not eligible. And so we're just lowering it to where we're picking them up earlier.

**BOLZ:** Why aren't they eligible before 18?

**KOLTERMAN:** Because now I believe it's age of majority 19.

**BOLZ:** OK, thank you.

**KOLTERMAN:** Yeah.

**LINDSTROM:** Thank you. Any other questions? Seeing none, thank you, Senator Kolterman. First proponent.

**RANDY GERKE:** Good afternoon again, Chairman Kolterman, Vice chairman Lindstrom and members of the Legislative Retirement Committee. My name, again, is Randy Gerke, spelled R-a-n-d-y G-e-r-k-e, and I'm the director of the Nebraska Public Employees Retirement Systems. I'm here at the direction of the Nebraska Public Employees Retirement Board to testify in support of LB35. This bill proposes technical changes to, and codifies practices in, the state and county retirement plans. Nebraska revised statute 43-2101 set-- sets the age of majority to enter into a binding contract at 18. The state and county plans clearly states that permanent part-time employees must be 18 before entering the plan. However, they do not speci-- specifically state this rule for permanent, full-time employees. LB35 would clarify that permanent full-time employees must be 18 before entering into the contract to participate in the plan. Also in 2016, NPERS conducted an Actuarial Experience Study of the NPERS admini-- administered retirement plans as required by law. The Experience Study recommended that the plan should change the mortality assumptions, assumed rate of return, and other things. In order to implement the changes recommended in the Experience Study, statutory changes were required and a second tier was created in the state and county cash balance benefit. LB35 proposes changes to the state and county reemployment provisions that clarify the rules and codifies practice defining what benefit and what tier members will be in upon reemployment. This should help our member-- our plan members more easily understand what will happen should they reemploy. In conclusion, I'd like to thank Senator Kolterman for introducing this bill and Kate Allen and Orron Hill for working closely on the bill's preparation. Thank you for giving me the opportunity to testify and this concludes my testimony. I'd be happy to answer any questions you might have.

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**LINDSTROM:** Thank you, Director. Any questions? Senator Stinner.

**STINNER:** What happens if-- let's say I'm employed in a plan and I leave employment for a ten year period of time-- that plan is closed. New plan is opened, does this contemplate-- do I have to go back to the same plan that was closed or do-- am I eligible for the new plan?

**RANDY GERKE:** No, you, you would be put back into the last plan that you were in. So if you were in the defined contribution plan 10 years ago and you quit, you would be put back into the defined contribution plan.

**STINNER:** Even though you've closed that plan?

**RANDY GERKE:** The plan is closed, yeah.

**LINDSTROM:** I guess following up on that question. So say a, a employee was participating in the, the DC plan before he leaves-- rolls it out into an IRA-- comes back-- they automatically-- then would go back into a DC as well? I know the same, same-- but different path maybe.

**RANDY GERKE:** Yes.

**LINDSTROM:** OK.

**RANDY GERKE:** That's correct.

**LINDSTROM:** OK. Any other questions from the committee? Seeing none, thank you.

**RANDY GERKE:** Thank you.

**LINDSTROM:** Next, next proponent.

**BETH BAZYN FERRELL:** Good afternoon, Senator Lindstrom, members of the Committee. For the record, my name is Beth B-e-t-h, Bazyn B-a-z-y-n, Ferrell F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of LB35. We do see this as a technical cleanup. We're in support of it because it helps define what the expectations are if someone leaves the program and then rejoins it. I'd be happy to take questions.

**LINDSTROM:** Thank you. Any questions? Seeing none, thank you. Next proponent. Seeing none, I do have a letter in support from John Antonich, Dir-- Executive Director of Nebraska NAPE/AFSCME Local 61.

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Any opponents? Seeing none, any neutral testifiers? Seeing none, Senator Kolterman, you're welcome to close.

**KOLTERMAN:** The concern-- the, the reason this is being brought is at the present time I think we used these numbers on the floor this morning. There are approximately 3,500 people that are in the defined contribution plan yet for the county plan. And what we're finding is we're getting a lot of inquiries from those people that want to move into the cash balance plan. They've had three opportunities to do so and they've never chosen to do so. So what we're seeing there-- what we're anticipating is some people will quit for a short period of time-- six months, a year, whatever-- either roll their money out or leave it there and then come back and want to go into some-- the cash balance plan because that's to their advantage. So what the PERB is really trying to do is clean this up. So that if you leave-- when you come back, you're going right back into the plan you were in. No questions asked. So our-- and, and here again we talked to both NAPE and NACO about these concerns that we've had and it's really kind of a technical cleanup. Eventually, the people in the defined contribution plans will be eliminated because it's a closed group now. But for the time being, we're just trying to solve the problem before we have the problem. So that's the rationale behind the bill. With that, I would take any questions you might have.

**LINDSTROM:** Thank you, Senator Kolterman. Any questions from the committee? Senator Bolz.

**BOLZ:** Does it go without saying that the good people at the PERB will notify-- provide information about this change to people who quit? Is, is there-- is it necessary to proactively say that or is that a given?

**KOLTERMAN:** It's, it's a given. They're, they're more than happy to work with the people. They're very, they're very open-minded about the fact that-- you know-- and, and, and they're the ones that are getting the request to have a smooth-- you know, be able to move back in, but they're very education oriented and very proactive on this. And so, again, it's technical cleanup to make their life easier as well as-- and I think it really protects the people that are in the, in the cash balance plan because inside that cash balance plan what, what these people that are-- that have been there for 20 years and never chose to go in, they're missing out on the fact that they could get a seven and a half percent annuity long-term. And if they-- if-- so there's no-- that's why they want to move in now. There's some really strong guarantees in that plan. We're just trying to nip that in the bud

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ahead of time. If, if they-- if we were to allow that to open up again and move back in, we'd be really penalizing the people that are in the cash balance plan that chose to go there a long time ago. So--

**LINDSTROM:** Any other questions? Any follow up? Senator Groene.

**GROENE:** Follow up on Senator Lindstrom's question. Somebody's 20 years old, takes a job and runs a maintainer for ten years, and he's in the defined benefit. All right.

**KOLTERMAN:** The cash balance plan.

**GROENE:** No, he-- this was years ago. He was in the defined benefit. He cashes it out. You can cash it out, right? He's-- he don't ever plan on work for the county again. He's cashed it out. He took his money and put it in an IRA. Zero balance in his-- he comes back when he's 50 and decides I'm gonna run a maintainer for the next 15 years. Even though he's cashed it out he has to go back into the defined-- he's got zero balance and--

**KOLTERMAN:** He'd go back-- if he was in the defined benefit plan, he'd go back in it.

**GROENE:** Even though he's cashed it out--

**KOLTERMAN:** Correct.

**GROENE:** --and it's zero balance?

**KOLTERMAN:** He starts over.

**GROENE:** Well he doesn't start over, you're telling me he has to go back into the--

**KOLTERMAN:** Well he has to go back in, but if he's taken all of his money out he has to start over with the new money.

**GROENE:** But he can't say all right, I, I closed that, I'm, I'm a new employee.

**KOLTERMAN:** No.

**GROENE:** So it isn't really ever closed-- that account even though he cashed it out.

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**KOLTERMAN:** Well, he's got a zero balance in the account. But he has to go back in to what he came out of.

**GROENE:** That's fine.

**KOLTERMAN:** Yeah.

**GROENE:** You just clarified it.

**KOLTERMAN:** We're just clarifying that, absolutely.

**LINDSTROM:** And I think-- sorry to interrupt, other clarification is that we're talking about in this case the teachers plan versus somebody that's working for the state in the defined contribution. So there's a difference [INAUDIBLE].

**KOLTERMAN:** There is a difference, but, but we're also talking about cash balance which is also similar to a defined benefit plan and that's where I think Senator Groene was going.

**LINDSTROM:** OK. I'm not--

**KOLTERMAN:** Is that correct, Senator Groene?

**GROENE:** Isn't there some people still on the defined benefit that are county and state employees?

**KOLTERMAN:** It's, it's defined contribution or cash balance.

**GROENE:** All right, thank you.

**KOLTERMAN:** The cash balance is as I said is a hybrid defined benefit, and I assume that's what you were talking about.

**GROENE:** Maybe, I'll, I'll talk to--

**KOLTERMAN:** OK, we're get it clarified. Any other questions from the committee?

**GROENE:** You'll straighten me out.

**LINDSTROM:** Seeing none, thank you, Senator Kolterman.

**KOLTERMAN:** Thank you.

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**LINDSTROM:** And that will end the hearing on LB35, and that will end the, end the hearings for today.

**KOLTERMAN:** Thank you.