

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee January 26, 2022
Rough Draft

STINNER: Any additional proponents? Any opponents? Anyone in the neutral capacity? Seeing none, that concludes our hearing on Agency 76. We will open our hearing on Agency 32, Educational Lands and Funds. I do not see anybody. Do we have a letter? I do not have a letter, nor do I have anybody here, so we will conclude our hearing on Agency 32, Educational Lands and Funds. We'll try to maybe get a copy of that letter. It's probably lying around somewhere. OK, we will open on Agency 47, Educational Telecommunication Commission of Nebraska, and we have a letter, I believe, in support of-- of what we-- what the committee has recommended, so that will conclude our hearing on Agency 47, Education Telecommunications Commission of Nebraska. We will now open Agency 85, Public Employees Retirement Board. We also received a letter of support relative to our-- understand many challenges you face-- OK, they are supporting what we actually are trying to do there. That leaves-- and that concludes our hearing on Agency 85. We'll open our hearing on LB992, appropriate funds for Public Employee Retirement Board for a change to the Nebraska Public Employees Retirement System. Who is that?

_____: It's Adam.

STINNER: Oh, well, there you go. I feel like we're cheating [INAUDIBLE] compared to last night.

HILKEMANN: Yeah.

WISHART: Wait, what-- what happened last night?

STINNER: We went till 9:30.

HILKEMANN: Oh.

WISHART: I'm sorry [INAUDIBLE]

McDONNELL: I'm sorry. We were all here.

STINNER: I'm-- I'm good [INAUDIBLE]

WISHART: You need to head to our hearing. We're waiting for you. Appropriations, we're waiting for you. Yeah. Well, somebody is going to need to come and open on LB992.

KOLTERMAN: I could open on it.

HILKEMANN: I'll close on it. [LAUGHTER]

WISHART: OK, we'll-- otherwise, Mark-- otherwise, Mark says he'll open for you. OK, sounds good. OK. We'll see you soon.

STINNER: You knows what it's about [INAUDIBLE]

KOLTERMAN: Hmm?

STINNER: You know what the bill is about [INAUDIBLE]

KOLTERMAN: I don't know the details of it. He brought it to me, an I was going to--

WISHART: I feel like they're going to-- they're going to hit a block at that door and be like, how am I supposed to get here?

KOLTERMAN: Well, this is-- I can't open on this bill. I don't support it.

WISHART: Maybe that's the best bill to open on.

ERDMAN: You don't have to support it to open on it.

STINNER: Yeah.

ERDMAN: Just don't say anything.

STINNER: That's all right. You don't have to, Mark.

KOLTERMAN: I can open on it.

STINNER: We'll wait for him.

McDONNELL: He found it.

MORFELD: Hey! I just go where I'm told. You're ready for me, Chair?

STINNER: Absolutely.

MORFELD: OK. Let's get it going here. Thank you. Chairman Stinner, members of the Appropriation Committee, for the record, my name is Adam Morfeld; that's A-d-a-m M-o-r-f, as in "frank,-e-l-d, representing the "Fighting" 46th Legislative District, here to introduce LB992. LB992 would appropriate \$310,500 to the Public Employees Retirement Board for Program 41 to provide self-service

function under the Nebraska Public Employees Retirement System for retired members of the State Patrol, the Nebraska State Patrol, to add, remove, update and view payroll deductions. This bill was brought to me by concerned retirees who wanted to use their retirement money to pay for health insurance premiums. Last year, LB184 was introduced by Senator Brewer and heard in the Retirement Committee to change the state law to make this happen. At that time, the Retirement Systems said that the fiscal note for LB184 stated that, to make this change, it would cost \$310,500 to-- for the-- for the software to set up the system to allow these actions. I introduce LB992 to continue the conversation and make the case for why the Nebraska retirement-- retirees should be able to make updates and give retirees more flexibility in the use of their retirement funds. The federal government allows it, and other states do it, too, so I think it's time that Nebraska follow suit. I think there might be somebody behind me to make the case on why this bill is needed and provide a little bit more detail. I'd be happy to answer any questions, so.

STINNER: Any questions? Seeing none, thank you.

MORFELD: Thank you.

MATT SCHAEFER: Good afternoon--

STINNER: Afternoon.

MATT SCHAEFER: --Chairman Stinner, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, appearing today on behalf of the State Troopers Association of Nebraska in support of the bill. Federal law allows retired public safety officers to have the state deduct their health insurance premiums from their retirement benefit, but only if a state passes the law to allow that. Nebraska has not done so. Senator Brewer's LB184 from last year, as you heard, would have put such authority on the books specifically for the State Troopers to have that happen. During the hearing, there was testimony from one retired trooper indicating that health-- his health insurance premium was 42 percent of his net monthly retirement benefit, so obviously the cost of insurance is a real problem for retired Troopers. As-- as you heard, the fiscal note on LB184 indicated there would be a cost to purchase software to get this done. And so that is why essentially you have that bill before you. Our Troopers still believe this is a problem, a growing problem, and so we wanted to remove that barrier from having the state being able to get that done. About the same time this bill was introduced, I had a conversation with Senator Kolterman, who chairs our Retirement

Committee, along with his legal counsel. We talked about this bill. We talked about some pending federal legislation that would actually kind of take the state out from being a middleman so that retirees could just pay their insurance premiums directly and then deduct it off their tax form or file it with their tax form, and essentially the state wouldn't be part of the process anymore, so that-- that is promising. But I-- I do want to thank Senator Morfeld for introducing this. I think it sends an important signal to our delegation and to Congress that this is a real issue for our retired public safety officers. And so hopefully, either through this or through Senator Brewer's bill or through federal action, we can-- we can get this problem solved. I'd be happy to take any questions. I know this is your very last bill today.

STINNER: Any additional questions? Senator Dorn.

DORN: I guess I've got a question. So they-- when they retire, what-- I mean, are they allowed to stay on health insurance, or is that a-- if you choose or what-- where's that at?

MATT SCHAEFER: I think our State Troopers are in a unique position. So their health insurance plan is run or administered by the association or by the Law Enforcement Bargaining Council-- I don't remember which one-- and they have that agreement with the state. The employer, the state, kicks in the employer's share for the active Troopers. And then when the Trooper retires, they are allowed just to stay on that same insurance plan, but obviously there's no employer contribution, so they-- they pay the full amount, the full premium amount.

DORN: Then they have to make up the full amount.

MATT SCHAEFER: Exactly, and that's where it gets expensive.

DORN: But how long a period? I mean, can-- for forever or do they at some point in time go on something else or--

MATT SCHAEFER: I-- I think-- I think until they can qualify for Medicare.

DORN: All right.

STINNER: Senator Kolterman.

KOLTERMAN: Thank you, Senator Stinner. Don't they have mandatory retirement at age 60?

MATT SCHAEFER: Yes.

KOLTERMAN: So that's five years that they've got to be on, or they have the opportunity to stay on the plan for five years until they get to Medicare, and then they-- they-- with retirees' benefits, a lot of people go on Medicare supplement like everybody else.

DORN: So while they're active, we're picking up a share of that. But once they retire, mandatory at 60, then it's all on them.

MATT SCHAEFER: Correct.

DORN: OK.

MATT SCHAEFER: Some would get insurance through a spouse who's still working, but others-- others don't have that opportunity.

STINNER: Senator Hilkemann.

HILKEMANN: Is this-- is this-- is their insurance plan different than the overall insurance plan that the state provides?

MATT SCHAEFER: Yes, the state employees are on a different health insurance plan than the State Troopers, yes. The State Troopers administer their own plan.

HILKEMANN: Is the Troopers' insurance more expensive than the regular state employees'?

MATT SCHAEFER: I don't have the premiums in front of me. I-- I would assume that it's either comparable or even better if-- because I think the Troopers have the option to-- to go with the state insurance pool or to run their own plan. I can follow up with you on that.

STINNER: Do-- do all of them have bank accounts?

MATT SCHAEFER: Bank accounts?

STINNER: Bank accounts. I'd have an ACH set up so that they could deduct it out of my account after I had my retirement--

MATT SCHAEFER: Yeah.

STINNER: --check put in.

MATT SCHAEFER: I think the problem here--

STINNER: I mean, that's how I do it.

MATT SCHAEFER: Yes, so I-- perhaps somebody who is testifying after me that can-- can help legal counsel. But my understanding is that the retirement benefit, they would need to deduct from their retirement benefit, before it gets to the retiree's account, the amount for the health insurance premium, so carve that out and send that to the insurer. Once it hits the retiree's account, the-- under current law, under current federal law, they wouldn't be eligible for this-- for this deduction, so that is why there's federal legislation that would allow, I think, the scenario you are suggesting, which is retiree receives his retirement check and then he can pay the insurer directly. That's what the federal legislation would allow for. But currently federal law allows the state to deduct essentially the premium from the retirement benefit before it reaches the retiree and send it directly to the insurer. That's my understanding.

STINNER: OK. Any additional questions? Senator Erdman, I'm sorry.

ERDMAN: Thank you, Senator Stinner. Thank you, Mr. Schaefer, for being here. How many-- how many people we're talking about?

MATT SCHAEFER: My notes from last year's testimony said there are 42 retiree Troopers on the-- on the retirement-- on-- on getting insurance through the insurance plan.

ERDMAN: So why does the software cost a third of a million?

_____ : Exactly.

MATT SCHAEFER: I don't know. We thought it sounded expensive as well.

ERDMAN: Ten thousand would be a lot. Forty-two people?

MATT SCHAEFER: Yes.

ERDMAN: We need to find out what the real cost is. That is not it.

KOLTERMAN: [INAUDIBLE]

MATT SCHAEFER: We would be interested as well.

KOLTERMAN: He's got that information.

STINNER: Any additional questions? Seeing none, thank you.

MATT SCHAEFER: Thank you.

STINNER: Any additional proponents? Seeing none, any opponents? Seeing none, anyone in the neutral capacity? I knew [INAUDIBLE]

ORRON HILL: Greetings, Chairperson Stinner and Appropriations Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Public Employees Retirement Board and the deputy director and legal counsel for the Nebraska Public Employees Retirement Systems. If I use the acronym PERB, P-E-R-B, that stands for the PERB; if I use the acronym NPERS, N-P-E-R-S, that stands for NPERS, or the Nebraska Public Employees Retirement Systems. I'm here to testify in a neutral capacity on LB992. First, I'd like to thank Senator Morfeld on behalf of the PERB and NPERS for his interest in ensuring that we have the funds necessary to administer the retirement plans that we have charge over. However, we have several questions and concerns regarding the language and intent of LB992. In the interest of time, I will discuss several concerns at a high level, but will be glad to take any questions that the senators of the committee may have. First, there is no legal authority in the laws governing our plans which allows us to do what LB992 is asking us to do. Implementing the self-service system without such authority could jeopardize the plan's qualified status by having to do something that is not articulated in our governing law, also known as our plan documents, which would be inconsistent with the relevant provisions of the Internal Revenue Code. Moreover, there were prior attempts to adopt such authority, but those bills have not been advanced. Those have been-- one example of that would be LB184, which has been previously referenced. Thus, we question the necessity of this appropriation at this time since we don't have legal authority to take action with the appropriation. Second, the bill talks about authorizing payroll deductions. NPERS does not administer the state's payroll system, nor do we distribute payroll to retirees. Thus, we question whether we would be able to accomplish the bill's intent as stated in the language of the bill itself. Third, under Internal Revenue Code Section 402(l), which authorizes the ability for retirement plans to make such deductions that have been discussed previously, also known as the HELPS provision, retired public safety officers who have their insurance premiums paid directly by the retirement systems to their insurance carriers can take advantage of these tax benefits. Congress is continuing to consider legislation that would eliminate the requirement for retirement systems to pay these costs directly and instead allow retired public safety officers to pay it and then still claim the tax credit. For example, HR6436, introduced by represent-- Representative Steve Chabot of Ohio, addressed that-- that exact issue in the 116th Congress. If this legislation is passed, it would eliminate the need

for both the legal authority previously introduced under a separate bill and the appropriation under LB992. Fourth, the bill's language creates several operational concerns for NPERS and the PERB. Examples include, but are not limited to: (1) The bill as drafted requires NPERS to implement more functionality than was originally discussed in the statement of intent introduced by Senator Morfeld. The bill itself is broadly worded and, as written, could apply to state employees who are not public safety officers under the definition of Internal Revenue Code Section 402(1), which appears to be what they're trying to address. Thus, we question whether there is sufficient funding to address this and whether or not, even if we implemented it now as written, if we could accomplish the true intent of the bill as written. Additionally, the amount of the appropriation was not adjusted for the rising IT programming costs and eliminated the staffing that NPERS requested to implement the LB184 program. As we noted in our testimony under LB184 and reflected in our fiscal note for LB992, there is no off-the-shelf product that we can use to just plug and play into the system. It would have to be custom-drafted programming because our system is a uniquely custom-drafted program. As drafted, LB992 applies to individuals who are not eligible to the tax benefit under Internal Revenue Code 402(1) and based on the introducer's statement of intent, however, we narrowed the scope of our fiscal note for LB992 to limit it only to what the statement of intent said. If an amendment was not forthcoming to narrow the scope of LB992 as drafted, we would likely have to adjust our fiscal note higher to reflect amendments to both the state plan, as well as additional staff to accommodate that feature for those who would be unable to take advantage of that tax benefit. Finally, and perhaps most importantly, the only authorized deductions are allowed tax withholdings, federal and state, specifically Nebraska. Our online services already offer that functionality, and our members can do that perfectly fine. We ask the Appropriations Committee to carefully consider whether LB992 as drafted is the best course of action, since we do not have the legal authority to carry out its intent or its language as written, and request that you provide us with any feedback you may have. Subject to your questions, that concludes my testimony. Thank you.

STINNER: Senator Wishart.

WISHART: Well, following up on-- first of all, thank you for being here. We were wondering who you were over in the corner. Following up on Senator Erdman's comments, am I correct in the fiscal-- I don't have the fiscal note in front of me. It's three-- about three hundred thousand?

ORRON HILL: The actual fiscal note for LB992 has an addi-- has a one-time expenditure of \$378,288.06 for the programing costs it would take to modify our system, including the-- to create the interface, to allow the individuals to sign in, make those changes, and then also to automate our system to communicate with the DAS payroll system, which is also part of the process of distributing retirement benefits, so there's multiple layers of computer system that would need to be addressed.

WISHART: So if the federal government moves forward on allowing this to happen across the country, regardless of whether states play that middle role or not, are we looking at a \$300,000-plus fiscal note?

ORRON HILL: Well, then it would no longer be a requirement for NPERS to do what is being asked.

WISHART: OK.

ORRON HILL: So if they move forward with the legislation that was pending under the 116th Congress, there would be no need for the functionality that is being requested--

WISHART: OK.

ORRON HILL: --nor the appropriation that would pay for it.

WISHART: OK, thank you.

STINNER: Senator Erdman, I'm sorry.

ERDMAN: Thank you, Senator Stinner. Mr. Hill, I am always amused that people come in, in the neutral capacity, that are always opposed to the bill. Pray tell why you came neutral when not one comment you made led me to believe that you were neutral.

ORRON HILL: Well, Senator, we've been told that we-- and there's actually legislation pending before this body that says state agencies are supposed to come in, in a neutral capacity, and so with respecting that expressed intent by the body, we always prefer to testify neutrally and raise concerns and questions rather than say we would not carry out the bill if it were passed.

ERDMAN: So if we pass LB992, you're OK with that?

ORRON HILL: Well, Senator, we would do whatever we would be required to do; however, without the legal authority to effect the appropriation, we would have a pot of money that we could not spend.

ERDMAN: So who directs you as a state agency to come in neutral? Who made that decision?

ORRON HILL: Well, our Public Employees Retirement Board and our director discussed this at our board meeting on Monday in open session. We discussed the possibilities of the different types of testimony and, again, while not wanting to be in a position of opposition because we know that there are those within the Legislature that do not like agencies to take that position. We elected to come in neutral with concerns and questions.

ERDMAN: I am more concerned about people not coming in the right category than I am about being against it.

ORRON HILL: Understood, Senator.

ERDMAN: It-- it aggravates me when people come neutral.

ORRON HILL: Understood.

ERDMAN: And I'm not going to get over that. And so share that with whoever is your advisors on this, what I think about neutral.

ORRON HILL: Understood.

ERDMAN: Thank you.

STINNER: Any additional questions? Seeing none, thank you.

ORRON HILL: Thank you, Senator.

STINNER: Anyone else in the neutral position?

McDONNELL: I hope not.

STINNER: God help us. [LAUGHTER] Seeing none, that concludes our hearing on LB99--

DORN: Closing.

STINNER: Oh, I'm sorry.

MORFELD: I'm in support. I won't-- I won't belabor it. I know you guys had a late night last night. The only thing I want to say is, first, the language that-- the language that we had-- that we had introduced here was based on the fiscal note from LB184, which I believe was Senator-- I believe that was Senator Brewer's bill--

based on LB184, so that's why we brought this language. We're happy to tweak the language. I would love to see Congress take action. That being said, Congress doesn't take action very much anymore. So, you know, who knows? Maybe this gets in an omnibus bill or something like that in Congress, and it eliminates the-- the problem that creates the different tax liabilities and things like that. But that being said, if it's too broad and then it allows other public employees to take advantage of this type-- type of functionality, then I-- I don't think that's necessarily a bad thing, either, for those individuals. So I'm happy to work with the committee and I'm happy to revise this. I'll also talk to Senator Brewer, as well, and see if maybe there's some way that we can pair this up and, I don't know, get a Speaker priority or something like that.

McDONNELL: The federal--

STINNER: Senator McDonnell.

McDONNELL: The federal legislation that-- that Mr. Hill mentioned, how long has that been sitting there?

MORFELD: That's a great question. I don't know the answer.

ORRON HILL: It was introduced in 2021, Senator.

McDONNELL: All right, thank you.

MORFELD: Thank you. Sounds like a year or so, so. So anyway, happy to work with the committee. I do think this is something we need to address. And I'm not an expert on programming things and how much that costs, so I can't speak to the fiscal note, so thank you.

STINNER: Any additional questions?

DORN: Yeah, I-- I guess some clarification here. You talked a little bit about-- I don't know who it was talked about until we pass-- basically, if I understood it right, until we pass LB184, this legislation will not give us the authority to do what you're intending to do, I mean. Did I understand that right?

MORFELD: Yeah, I believe that's the case, and I think that's an important consideration. So I'll talk to Senator Brewer. I'll see what we can do on that-- on that end. I'll clear up a few other questions here, and then we'll circle back with the committee.

STINNER: OK, very good. Any additional questions? Seeing none, thank you.

MORFELD: OK, thank you.

STINNER: And that concludes our testimony on LB992, and that concludes our hearings for the day.