

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Nebraska Retirement Systems Committee February 23, 2021  
Rough Draft

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**KOLTERMAN:** My name is Mark Kolterman. We're going to go ahead and get started in the essence of time. Welcome to the Retirement Systems hearing. I'm from Seward, represent the 24th Legislative District, and I serve as Chair of this committee. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following: Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it's necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and exit doors to the hearing room. We request that you will wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches a seating capacity or near capacity, entrance door will be monitored by the sergeant of arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing, wear a face mask covering while waiting in the hallway or outside the building. To better facilitate today's proceedings, I ask that you abide by the following procedures: Please silence or turn off your cell phones. Move to the front row when you're ready to testify. Order of testimony will be introducer, proponents, opponents, neutral, and closing. Testifiers need to sign in. Hand your blue sign-in sheet to the committee clerk when you come up to testify. Spell your name for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes. If you will not be testifying at the microphone but want to go on the record as having a position on a bill being heard today, there is white sheets at the entrance where you leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit or eliminate handouts if possible. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page

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for distribution to the committee and staff when you come in to testify. We'll need eight copies. If you have written testimony but don't have the eight copies, please raise your hand now so one of our pages may make copies for you. To my immediate left is committee counsel, Kate Allen. To my left at the end of the table is committee clerk, Katie Quintero. Committee members with us today will introduce themselves beginning at my far right.

**CLEMENTS:** I'm Rob Clements, represent District 2: Cass County, parts of Sarpy and Otoe.

**McDONNELL:** Mike McDonnell, Legislative District 5, south Omaha.

**STINNER:** John Stinner, Legislative District 48, all of Scotts Bluff County.

**KOLTERMAN:** Again, Mark Kolterman, District 24: Seward, York, and Polk Counties.

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

**SLAMA:** Julie Slama, District 1: Otoe, Johnson, Nemaha, Pawnee and Richardson Counties.

**KOLTERMAN:** Our pages today are Kate from UNL. She just left. She's majoring in political science and sociology; and Caroline from Omaha, who's ma-- who's majoring in political science. And they both attend UNL. The committee will take up the bills today in the following order: LB144, LB145, LB146, LB147, and LB582. With that, I will turn the meeting over to Vice Chairman Lindstrom and I'll be opening on LB144.

**LINDSTROM:** We'll now open the hearing on LB144 introduced by Chairman Kolterman.

**KOLTERMAN:** Good afternoon. My name is Mark Kolterman and I represent Legislative District 24. I'm here today to introduce LB144, which is the first of five bills I introduced as a package related to the transfer of management of the Class V School Employees Retirement System to the Public Employees Retirement Board. Legislative Rule 5, Subsection 15 requires retirement bills that propose structural changes or could result in funding impacts to retirement systems be

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introduced in the first 10 days of the 90-day session, otherwise known as the long session. LB144 has, therefore, been introduced merely as a placeholder bill that can be carried over to the 2022 session, where it could be used as a vehicle to clarify or address any cleanup or other issues that may arise during the interim related to the management transfer and to incorporate any issues identified in the compliance audit, which is required under LB145, which we'll also hear today. I would be glad to answer any questions that you might have.

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

**KOLTERMAN:** Shall we move on?

**LINDSTROM:** I got to have any proponents for LB144? Good afternoon.

**CHERYL LOGAN:** Good afternoon, Chairman Kolterman and members of the Retirement Systems Committee, my name is Cheryl Logan, C-h-e-r-y-l L-o-g-a-n. I serve as the superintendent of the Omaha Public Schools. I am here to testify in support of LB144. I would like to begin my remarks by taking a moment to thank you, Senator Kolterman and members of this committee, for your partnership and willingness to work with the Omaha Public Schools. While the genesis for what we are here to discuss today came before my time, I have enjoyed the opportunity to work with you and the committee to get where we are today. The passage of LB31 in 2019 resulted in a report which was published last summer. Since that time, the Omaha Public Schools Board of Education and I have thoroughly reviewed the report with an eye toward implementing the recommendations of the LB31 study. I have taken part in many discussions with stakeholders as both a member of the Board of Trustees of OSERS and as a member of the Better Together Coalition. I am happy to report that the Board of Education and I wholeheartedly support the package of bills that have been introduced to transfer the management of OSERS to the PERB. We did not come to this decision lightly. Our support is the result of extensive discussion, consultation, and focus on the best interests of the retirement system. We believe that the transfer of management is a logical next step to take for the long-term health and stability of the OSERS plan. The package of bills includes the allocation of certain costs to the district. The Board of Education is prepared to cover those costs as they view doing so as an investment in the long-term health of the

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plan. The Omaha Public Schools is very appreciative of Senator Kolterman and the Retirement Committee legal counsel, Kate Allen, for their deliberative, collaborative, and comprehensive approach to drafting this legislative package. With respect to LB144, we recognize it to be a placeholder bill. We understand that it stands as a vehicle should the need arise to address issues that might arise in the implementation process. For that reason, Omaha Public Schools supports LB144 as a part of the legislative package to transfer the management of OSERS to the PERB. Thank you for the opportunity to share our Board of Education's position on this important bill package. Thank you.

**LINDSTROM:** Thank you, Dr. Logan. Any questions from the committee? Seeing none, thank you.

**CHERYL LOGAN:** Thank you.

**LINDSTROM:** Any other proponents to LB144? Seeing none, any opponents to LB144? Seeing none, any neutral testifiers? Seeing none, we did have letters for the record: one in support from Dr. Daniel Hoeck with the Omaha School Administration-- Administrators Association and one neutral with Better Together Coalition. Senator Kolterman, you're welcome to close on LB144.

**KOLTERMAN:** I think what I'm going to do is waive closing for now, because the whole package, I'll get an opportunity to close on at least a few of the bills before we leave here.

**LINDSTROM:** OK. That'll end the hearing. Any final questions? Seeing none, that will close the hearing on LB144. We'll now open the hearing on LB145.

**KOLTERMAN:** Good afternoon again. My name is Mark Kolterman. I represent Legislative District 24. I'm here to introduce LB145, which is the second of five bills we are hearing this afternoon. I introduced these bills as a package related to a transfer of management of the Class V School Employees Retirement System to the Public Employees Retirement Board. The purpose of LB145 is to require additional examination and evaluation regarding the transfer of management. In 2019, legislation was enacted for the Public Employees Retirement Board, the PERB, to complete a work plan which examined necessary tasks, estimated costs and proposed a timeline for a

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transfer of management of the current Class V School Employees Retirement System to the PERB. The work plan was completed last June and the Nebraska Retirement Systems Committee conducted a public hearing on September 18, 2020, for the presentation of the findings of that plan. Since the completion of the work plan, the Nebraska Retirement Systems Committee has continued to work with Omaha Public Schools, the various interest groups in the current Class V School Employee Retirement System, as well as the PERB to move forward with legislation to authorize the transfer of management. In the process, questions and concerns have emerged which require additional examination. For example, I learned late last fall that the IRS legal compliance audit has never been conducted on the OPS Retirement System to determine if the plan is in compliance. This is an important process that the PERB has been doing for many years to ensure that the six retirement systems they administer are in compliance. During a compliance audit, the Retirement System contracts with a law firm with attorneys who specialize in public pension, IRS compliance issues. The firm is retained to review the plan documents and administrative regulations, policies and procedures to determine if the plan meets all state and federal statutory requirements for a qualified plan. I believe that it is important to obtain a completed compliance audit prior to the management transfer of this Retirement System to PERB in order to receive specific written recommendations on any necessary statutory amendments and any recommendations to update, clarify, or create any required policies and procedures to ensure that OSERS-- the OSERS plan is in full compliance with the Internal Revenue Code qualifications criteria, federal, state and constitutional law. Just as a reminder, last year when Groom Law and Seagle presented their most recent compliance audit on the SEC's retirement plans administered by NPERS, the compliance auditors noted that it is common to find some compliance issues. I have confidence that the OSERS plan has been administrated well and any compliance issues identified in a compliance audit can be addressed and taken care of. However, I feel it's very important that we follow through on this. As introduced, LB145 also requires the Auditor of Public Accounts to conduct an audit of OSERS beginning in 2021, which includes an extensive audit of the operation of the Retirement System. The annual audits that have been conducted on OSERS have been primarily limited to a review of the financials and do not include much, if any, operational audit of the administration and management of the plan. I believe it is important

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to identify any operational issues prior to transfer of management to the PERB so that the Board of Trustees, the Board of Education and the school district can follow up on any identified operational issues and comply with any recommendations to draft or amend any specific policies or procedures. LB145 provides that the cost of conducting a legal compliance audit and the cost of the APA audits will be expensed against the Retirement System and are not the financial obligations of Omaha Public Schools. As originally introduced, LB145, required both the compliance audit and an audit by the Auditor of Public Accounts to be completed in 2021. Last week, I filed AM219 to the bill to amend the timing of these audits. I also shared the AM with all of the representatives on the board-- or on the committee. I believe the number one priority is the completion of the compliance audit in 2021. And I'm, therefore, amending the bill to delay the AP audit requirement until 2022. AM219 also inserts a deadline for completion of the compliance audit as November 15, 2021, so there is sufficient time to present the findings of the compliance audit to the Retirement Committee at a public hearing and more importantly, to allow sufficient time for the appropriate parties to draft necessary legislation to address any audit issues that might have come up. This language would be introduced in the 2022 session as AM-- as an AM to LB144, the placeholder bill, which we just talked about. And a hearing would be scheduled to provide an explanation of any changes and opportunity for public testimony will exist at that time. As introduced, LB145 also requires the PERB to identify and examine a list of issues that have emerged since completion of the LB31 work plan in June of 2020. AM219 deletes the list of topics and now requires identification and examination of issues which related to maintaining the OSERS plan as an IRS qualified plan and fulfilling the board's fiduciary responsibilities and duties. It also includes requirements for written reports to the Retirement Committee, the purpose authorized to bill the OPS for their services and expenses related to the additional work that they will perform under this bill. Finally, I want to address a number of questions that have been asked, comments that have been submitted, and issues that have been raised to me and my legal counsel. One of the comments I've received is that OSERS is not statutorily required to conduct a compliance audit. Though there's no statutory requirement to conduct a compliance audit, the Class V School Employees Retirement Act in Section 79-980 requires the plan to be administered in compliance with all IRS requirements.

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This is a fiduciary duty and responsibility of the board of trustees and the plan administrator. This is a stat-- this is statutory language contained in all plans. Completion of periodic compliance audits is considered to be a best practice of public employee plans administrators to fill-- to fulfill their fiduciary duties and responsibilities to meet the statutory compliance requirements. Another question was submitted asking if the compliance audit is being done in anticipation of transferring the management and governance to NPERs, then why should OSERS bear the cost of this audit instead of the employer? A compliance audit process is extremely detailed and it relies on the participation and knowledge of those who have been involved in the administration of the plan on a day-to-day operations. During an IRS legal compliance audit, there's a review of all Retirement System statutes, written rules and regulations, policies, procedures, and guidelines that have been prom-- promulgated and in this case by the OSERS staff and board of trustees, the Board of Education and the school district. The firm conducting the compliance audit then conducts personal interviews with all parties who are involved in the administration and operation of the plan. If there's a lack of documentation or documents with conflicting information, for example, or any other audit points identified in the compliance audit, then the persons who have been administering the plan involved in the day-to-day operations of the plan are the people most knowledgeable about how the plan has been administered and are in the best position to draft any necessary documents to detail the policies of how these processes and procedures are being carried out. If the compliance audit was not conducted until after management was transferred, the PERB and NPERs staff would have no knowledge of how to respond to the questions about previous day-to-day operations or how to respond to questions about unwritten policies and procedures. So I also want to respond to the question of why OSERS plan should bear the-- OSERS plan should bear the cost of the compliance audit instead of OPS as the employer and the plan sponsor. The plan sponsor, which is the school district, is responsible for paying all retirement plan expenses which confer a benefit on the plan sponsor as opposed to conferring benefits on the plan participants. These expenses are known as plan settlor expenses and are clear the obligation of the employer school district as plan sponsor. However, ensuring that a plan is being administered and in compliance with all qualified plan requirements is in the best interests of the plan participants and thus is an appropriate expense

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assessed against the OSERS plan. I want to point out that the cost of each of the compliance audit that have been conducted on the six plans administered by our PERB have all been paid for by those plans, not the state of Nebraska. Finally, a question was submitted asking why the costs of the audit conducted by the Auditor of Public Accounts is approximately double the cost for the annual audit conducted by the OSERS plan. The audit conducted by the State Auditor is far more comprehensive than the limited financial audits that have been conducted on the OSERS plan because it includes an extensive audit and review of operations, including a review of all written procedures, policies, rules, regulations, and guidelines and thus requires additional staff time to complete the audit. So in other words, what you heard me say earlier on was the fact that we're requesting the-- the audit, the compliance audit this year and then next year will dovetail that with the Auditor's audit from the state of Nebraska, which is-- which is being done on an annual basis of all of our plans. So with that, as you can see, we've heard a lot of testimony from various people throughout the last four or five years. And we're at a point in time when it's time to move forward. With that, I'd try to answer any questions anybody might have from the committee.

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

**CLEMENTS:** Thank you, Senator Lindstrom. Thank you, Chairman Kolterman. On the leg-- I guess you call it the legal compliance audit, if there are shortcomings from what the plan documents or what the operation is, what will be the next thing to be done?

**KOLTERMAN:** That's why we have the placeholder bill in place. It gives us time to correct those-- those potential errors or potential flaws and then come back next year after we have another hearing. They make that report to us. They make the corrections. They come back to us. At that point in time, we put that into-- into the placeholder bill as an amendment that those corrections have taken place and we move forward.

**CLEMENTS:** And that-- those changes, there would be changes in procedures, I suppose, that we're going to have to be implemented by.

**KOLTERMAN:** By the PERB.



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**CLEMENTS:** By the PERB, OK.

**KOLTERMAN:** Yeah. You know, we, in all honesty, we don't anticipate a lot in that regard. But again, since there-- I mean, the plan was put into statute in 1951. And since 1951 there, to our knowledge, there has not been a compliance audit ever. And if you go back to the early 1900s when the plan was put into place by Omaha Public Schools, we don't know from the time it was put into place to 1951. So we're just-- we're-- we're thinking-- we think it's important since ours are done about every eight to ten years. And I think there will be some people could answer those questions coming behind me. We think it's important that if we're going to manage a plan, that it come to us as clean as possible. And if and again, we don't anticipate a lot of challenges, but if there are, we want to have an opportunity to clean them up. So that's-- that's the reason for the placeholder bill.

**CLEMENTS:** Yes, I'm glad to see that. Yeah. Thank you.

**KOLTERMAN:** Thank you.

**LINDSTROM:** Any other questions from the committee? Seeing none, thank you. We'll have our first proponent.

**CHERYL LOGAN:** Chairman Kolterman and members of the Retirement Systems Committee, my name is Cheryl Logan, C-h-e-r-y-l L-o-g-a-n. I am the-- I serve as superintendent of Omaha Public Schools. I am here to testify in support of LB145. I would like to again begin my remarks by taking a moment to thank Senator Kolterman and the members of this committee for your partnership and willingness to work with the Omaha Public Schools. While the genesis for what we are here to discuss today came before my time, I have enjoyed the opportunity to work with you and the committee to get to where we are. The passage of LB31 in 2019 resulted in a report which was published last summer. Since that time, the Omaha Public Schools Board of Education and I have thoroughly reviewed the report with an eye toward implementing the recommendations of the LB31 study. I have taken part in many discussions with stakeholders as both a member of the Board of Trustees of OSERS and as a member of the Better Together Coalition. I am happy to report that the Board of Education and I wholeheartedly support the package of bills that have been introduced to transfer the management of OSERS to the PERB. We do not come to this decision

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lightly. Our support is the result of extensive discussion, consultation, and focus on the best interests of the Retirement System. We believe that the transfer of management is the logical next step to take for the long term health and stability of the OSERS plan. The package of bills includes the allocation of certain cost to the district. The Board of Education is prepared to cover those costs as they view doing so as an investment in the long-term health of the plan. The Omaha Public Schools is very appreciative of Senator Kolterman and the Retirement counsel, Kate Allen, for their deliberative and comprehensive approach-- approach to drafting legislation. LB145 would require OSERS to undergo both a compliance audit to ensure the plan is operating within all state and federal laws, as well as a regular audit conducted by the State Auditor of Public Accounts. LB145 would also provide the PERB with the ability to further examine the OSERS operations as it prepares the work plan to implement the transfer of management. I understand that Senator Kolterman introduced AM219 as an amendment to delay the audit conducted by the State Auditor until 2022, which will give OSERS more ability to focus on conducting a compliance audit this year. The amendment also further clarifies the PERB's examination of OSERS in relation to the transfer of management and the PERB's ability to bill the district for their time and efforts. We recognize that the transfer of management is a complicated process. Many details will need to be identified and addressed through this-- this process. The compliance audit, the State Auditor's audit, and the PERB's analysis of the plan will be critical to ensuring a thorough, deliberate, and smooth transfer of management. For these reasons, Omaha Public Schools supports both LB145 and AM219 as a part of the legislative package to transfer the management of OSERS to the PERB. Thank you for the opportunity to share our Board of Education's position on this important bill package. Thank you.

**LINDSTROM:** Thank you, Dr. Logan.

**CHERYL LOGAN:** You're welcome.

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

**CHERYL LOGAN:** Thank you.

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

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**ROBERT MILLER:** Good afternoon. Good afternoon, Vice Chair Senator Lindstrom, Chairman Kolterman, and the committee members. I'm Robert Miller. That's R-o-b-e-r-t M-i-l-l-e-r. I live in Omaha and have been an educator for 20 years in the Omaha Public Schools. I currently serve as the president of the Omaha Education Association, representing 2,800 certificated staff members and currently the vice president of the Nebraska State Education Association. I'm testing [SIC] today in support of LB145 for both OEA and the NSEA. The changes within LB145 further the best interest of the plan for the members by making sure that the plan is in compliance with the IRS rules and regulations as well as other state and federal laws. This is another positive step to ensure all pieces are in order for a smooth transfer of management. OEA and NSEA is in support of LB145.

**LINDSTROM:** Thank you, Mr Miller. Any questions from the committee? Seeing none, thank you. Next proponent. Seeing none, any opponents?

**WALTA SUE DODD:** I was hoping I didn't have to take off my mask since I'm getting an implant.

**LINDSTROM:** Good afternoon.

**WALTA SUE DODD:** Good afternoon, Senator Kolterman and the members of the committee. For the record, I am Walta Sue Dodd, W-a-l-t-a S-u-e D-o-d-d, and I live in Omaha, Nebraska, District 5. I am the president of the Omaha Education Association, Retired, an organization of about 900 members. And I am also a retired member of OSERS. I'm here today to testify in opposition to LB145. All the questions you heard from Senator Kolterman were my questions when we met with him. So LB145 requires a compliance audit for OSERS. It is significant to note that OSERS is not otherwise required to conduct a compliance audit and that this audit is being requested by the Legislative Retirement Committee, not OSERS Board of Trustees or its members. The Auditor of Public Accounts will audit the Retirement System. At the recent OSERS board meeting, it was noted that this kind of audit is an estimation of a cost of about \$50,000, which is almost five times the cost of the annual financial audit that OSERS conducts every year. The money to pay for the audit will be charged to the OSERS trust fund. In addition, the findings will be reported at a public meeting rather than at an OSERS Board of Trustees public meeting. OSERS currently conducts a financial audit every year, has an actuarial audit every

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year, and has an actuarial experience audit every four years. In addition, all the benefits that OSERS provides are spelled out in state law. None of the audits OSERS conducts have produced any questions that the plan is not being administered in a compliance-- in compliance with state law. As a result, it is hard to imagine how the plan can be in violation of state or federal law. It is unclear what a compliance audit will reveal that has not already been covered by the audits that OSERS routinely conducts right now. But more problematic than that is the unfunded mandate that this bill represents. We know the Legislature is not eager in having federal agencies that require the state to spend money on federal government mandates without getting reimbursed. Furthermore, local Nebraska governing bodies also resist unfunded mandates from the state government. This is no different. It has been said that a compliance audit will help OSERS to be more seamlessly transitioned into the state retirement plan. Since the transition has been introduced at the request of the Omaha Public Schools and the Legislature, I should say Retirement Committee, we submit that the cost of this compliance audit is more properly board-- borne by the Legislature or OPS and not by OSERS or its member trust fund. The study completed under LB31, 31 on a potential transfer management and governance of OSERS to the state retirement plans indicate that it would cost between 3.8 and \$6.1 million to update and modify the computer system for the state retirement systems to accommodate the unique benefits structure of OSERS. If the state were to assume the management of the plan and the costs borne by OPS, so should the cost of the compliance audit. Unfunded mandates are never well received. While we request or we question the wisdom or the need for a compliance audit, the most problematic part of this bill is the notion that the unfunded mandate should be paid by the members of OSERS. If the compliance audit is done, it should be paid by the parties that requested it. In this case, that would be OPS or the Retirement Committee, especially since OPS unilaterally requested the bill to transfer management of OSERS. All costs should be paid by them. Thank you.

**LINDSTROM:** Thank you for your testimony. Any questions from the committee? Senator Stinner.

**STINNER:** So your contention is that you're completely in compliance with all the IRS regulations.

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**WALTA SUE DODD:** Yes.

**STINNER:** And a compliance audit has never been performed to validate what you're saying.

**WALTA SUE DODD:** It had-- was performed in 1951 when OPS combined all of their retirement systems into one which is OSERS. That's the last time it was done.

**STINNER:** OK, 1951 is a long time ago. I was born in 1951 and I'm old so.

**WALTA SUE DODD:** Well, I was born in 1944. I'm a little older.

**STINNER:** You got me on that one. But I will say this, that over a period of now 70 years there's been a lot of changes as it relates to retirement plans, IRS rulings, the like of that. Wouldn't you, as a board of trustees person, want to know that you're in compliance on annual or a periodic basis with all the rules and regulations associated with the retirement plan?

**WALTA SUE DODD:** Well, I attend the OSERS meetings as a member and they had been discussing compliant audit that they were thinking about doing themselves, but they were not forced to do it or to comply with that. But they were thinking about doing it on their own. It was never really opposing to do a compliance audit. It's just that being mandated to do it and pay for it at the same time.

**STINNER:** Let me ask you this. On the audit side of things, do you have a full-scale audit with an opinion associated with that from the accountants, or is it limited in scope just to the investments?

**WALTA SUE DODD:** We don't handle the investments at all. All of ours deal with management.

**STINNER:** So what does your audit look like? I mean, what does it cover? Do you remember from your management engagement letter from the auditors what they're performing to do or what they intend to do in their audit?

**WALTA SUE DODD:** I've seen it, but I haven't gone over it completely, no.

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**STINNER:** I understand it's limited in scope and.

**WALTA SUE DODD:** There are three different types of audits that OSERS completes, not just the financial part.

**STINNER:** OK, so you look at-- they they do a full-scope audit which includes the looking at the administration of the plan, the internal controls associated with it, and make sure they do a detailed test, put together the financials, make sure that they validate that the assets, meeting the assets of the plan.

**WALTA SUE DODD:** All I can say is on the summary they talk about the management, but I haven't seen the complete form.

**STINNER:** OK. That's what the intention is, is to have a full-scope audit from front to back.

**WALTA SUE DODD:** I understand that.

**STINNER:** And--

**WALTA SUE DODD:** What I don't understand is who's going to pay for it.

**STINNER:** OK. That's your contention then. That's your--

**WALTA SUE DODD:** Yes.

**STINNER:** --opposition is who pays for it.

**WALTA SUE DODD:** Yes. It's a mandate. If this passes, it would be a mandate that the members of OSERS pay for it.

**STINNER:** OK. I understand your opposition now. Thank you.

**WALTA SUE DODD:** You're welcome.

**LINDSTROM:** Any other questions? Senator Clements.

**CLEMENTS:** Thank you. Yeah, thank you, Ms. Dodd. On having the OSERS, you know, I'm a new member on the committee. When you say the OSERS members will pay for it, is that going to reduce somebody's retirement benefit?

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**WALTA SUE DODD:** No, it will not. But we have a trust fund that we have in reserve for bills that we pay or to have money for anyone that leaves the system. The money's there to pay the-- pay it out if they want to withdraw it. So it's different things that you keep money for. It's like a slush fund or I don't know what they call it, a slush fund or or what is done, but it's a trust fund, just like the Social Security trust fund that's always available to you.

**CLEMENTS:** And how does money get into that?

**WALTA SUE DODD:** Contributions by members and the school board.

**CLEMENTS:** Members. Are members the retired-- retirees?

**WALTA SUE DODD:** And active.

**CLEMENTS:** And active. OK, so retirees and active members would have to restore that legal audit fee.

**WALTA SUE DODD:** Well, we're already a billion dollars in the hole with unfunded liability. So, yeah, we would have to contribute.

**CLEMENTS:** All right. I just mainly wanted to make sure it wasn't going to hurt anybody's retirement benefits. I didn't think it would.

**WALTA SUE DODD:** Well, we were told by Senator Kolterman that nothing would affect our benefits.

**CLEMENTS:** Yes, that's good. Thank you.

**WALTA SUE DODD:** But he's only here for another year and a half.

**LINDSTROM:** Any other questions? Seeing none, thank you. Any other opponents to LB145? Seeing none, any neutral testifiers to LB145?

**CLEMENTS:** All right. Vice Chair Lindstrom is having to leave, so I'm going to take over. Would you tell us how you-- what position are you here to represent?

**ORRON HILL:** Certainly, Senator Clements. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the deputy director and legal counsel for the Nebraska Public Employees Retirement Systems and also the

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statutory lawyer for the Public Employees Retirement Board. I'm here today to testify on LB145 in a neutral capacity and mostly to provide the senators with any information related to a compliance audit that they might be curious to ask about. As has been told, we recently had a compliance audit conducted on our six plans, of which I was a key component in the team that responded to that compliance audit. And we wanted to offer our services in case there are any questions about the nature of a compliance audit, what was entailed, and how the report came about. We take a position of wanting to offer education and information to the senators to the best of our ability so that they can make the best public policy for the citizens of the state of Nebraska. If that is what the legislative branch and the executive branch feel is the way to go, that being the PERB taking over administration, we will do whatever we can to support that position. Subject to your questions, that would conclude my testimony, Senator.

**CLEMENTS:** Thank you. Are there questions? Senator Stinner.

**STINNER:** I do. Just for the record, if we're deemed to be not in compliance with the IRS, what ultimately could happen to those plans?

**ORRON HILL:** The worst-case scenario, which is typically where lawyers like me jump to, Senator, is that the plan could be disqualified. That could have a significant impact on all of the benefits as the assets would become immediately taxable to the members, and that would have a very negative impact on them overall. However, it is unlikely the IRS would disqualify a plan as opposed to giving them the opportunity to correct deficiencies. There are multiple avenues in which they can go about voluntary self-correction or more guided correction tools that the IRS can work with you on if there is a question regarding the plan's eligibility and qualification status.

**STINNER:** Thank you for that.

**CLEMENTS:** Thank you. Any other questions? Yeah, that sounded pretty serious if you're not in compliance and the-- I think the bill is asking for a report by November 15, 2021, of the compliance audit. Is there time to have that completed do you think?

**ORRON HILL:** I believe if they if OPS and OSERS select the right provider, they could get it done by that time. Just kind of as an



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example, we provided documentation in December. In January, we had our in-person interviews. In February, we had a report ready for the PERB to review in draft form by April. So we were ready to go very quickly. The compliance auditors that we chose for our plans were very efficient.

**CLEMENTS:** Thank you. That makes me feel better. It looks like if it hasn't had an audit for 70 years, there might be a lot to look at. But glad to hear that sounded like it would be possible. Any other questions? Seeing none, thank you.

**ORRON HILL:** Thank you, Senator.

**CLEMENTS:** Is there anyone else who wishes to testify in the neutral position on LB145? Welcome.

**RUSS KARPISSEK:** Thank you, Senator Clements, Senator Kolterman, members of the Retirement Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor of Public Accounts, Charlie Janssen. We did want to come neutral in this. We're happy to work with the Legislature when-- when asked to. And we appreciate the amendment to move the, our part a year later. Since I'm kind of talking to the Appropriations Committee, too, we need some people to be able to get things done in the right amount of time. And also, we do appreciate that the money would be in here and not come out of our General Fund appropriation because that is what we use to do state agencies. We don't want to get into the argument of who's going to pay for it. I think we would understand all sides of that, but mainly to say that we'd be happy to-- to work with the committee and legal counsel to do what we can to help this process. I was just thinking I was on this committee for eight years and I'm really surprised that we're to this point. I didn't think we'd ever see this maybe coming together, so. Thank you, Senator.

**CLEMENTS:** Are there questions? Senator, Senator.

**STINNER:** I have a question or two. One of them is about the fees. Have you looked at the scope of what the audit had been done and why all of a sudden it's claimed that you're doubling the fees?

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**RUSS KARPISEK:** Well, Mary Avery put together an estimate and I should have brought copies for everyone. Mary has estimated that the first year would be 690 hours, which would come to \$35,880. The second year would be 520 hours, which would come to \$27,040. And everything that we charge is actual costs. So there's no fees. We're not making money on it. It'd just be actual cost. So that is an estimate. It could be less. We would hope that it would be less and not more. We try to be pretty conservative on giving a bidder number.

**STINNER:** How do your fees compare to other CPA firms that are out there?

**RUSS KARPISEK:** Well, usually if we're looking at counties or cities, I would say that we usually are higher. And the reason for that is that we look at all of the statutes and make sure that they're all followed. I'm not trying to say anything bad about CPA firms because they do a good job. But usually what I have seen anyway is they usually look at the numbers and do the numbers balance and is it all where it should be, where our team will go in and look at things, make sure the statutes are followed, make sure federal, state laws are followed, and then usually do some tests, too, to make sure that things are-- are ran in the right way. So I would just think that we would, what I see is we are usually a little higher. But just my opinion, we do a more detailed job. I don't want to say a better job, but look into more things.

**STINNER:** So you do somewhat of a compliance audit as opposed to just a financial statement.

**RUSS KARPISEK:** Somewhat to make sure that the laws are followed also. I want to make sure to say that we do not do a performance audit because that is legislative Performance Audit Committee. And so we try to be careful there but.

**STINNER:** OK, thank you.

**CLEMENTS:** Any other questions? Seeing none, thank you, Mr. Karpisek.

**RUSS KARPISEK:** Thank you, Senator. Thank you, committee. Thank you, Kate.

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**CLEMENTS:** Anyone else to testify in a neutral capacity on LB145? Seeing none, Senator Kolterman, would you like to close?

**KOLTERMAN:** I think I will take an opportunity to close now that I listened. The process that we're involved in right now, three years ago, we started this or actually four years ago we started this process and we did it with the investments to the Nebraska Investment Council three years ago. And it's been working very, very well. You, Senator Clements, you asked who puts the money into this plan. I would tell you that the teachers put money into the plan. The school districts put money into the plan, and we as a state contribute 2 percent of the salaries into the plan as well on an annual basis. And it's budgeted along with the teachers from the Nebraska teacher retirement program as well. I would say that even if this transfer of management didn't occur, probably the most important thing we can accomplish is the fact that we need to have an audit of this plan to test the qualifications from the IRS perspective. So even if this didn't happen, I would think that the people that are in this plan would be chomping at the bit asking for an audit. Because if for some reason this plan was not deemed to be in compliance, there would be a lot of headaches in Omaha, Nebraska. And so with that and also in closing, I would say that the reason that we're asking the plan to pay the costs is because I talked about it in my opening. These are-- these are what's referred to as settler funds. We use those in our state teacher retirement, our State Patrol, our judges, our counties, our-- our cities. All the plans that we use right now that these audits are done and paid for by the plan members themselves. And so I just assume that why would we do it any different than anybody else does it? And so with that, I would try and answer any questions you might have regarding LB145.

**CLEMENTS:** Any other questions? Seeing none, thank you.

**KOLTERMAN:** Thank you.

**CLEMENTS:** I see we have written-- written testimony submitted by John Peetz of Omaha School Employment [SIC] Retirement System. And that closes the hearing for LB145. I will open the hearing for LB146.

**KOLTERMAN:** Thank you, Senator Clements. Good afternoon again. My name is Mark Kolterman. I represent Legislative District 24 and I'm here to

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introduce LB146, which is one of the five bills introduced as a package related to the transfer of management of the Class V School Employees Retirement System to the Public Employees Retirement Board. LB146 adds definitions to the Class V School Employees Retirement Act to clarify who is eligible for membership in the Class V plan and-- and to define termination of employment, which establishes limitations on service can be provided during the 180-day period following termination to ensure that a bona fide separation of-- of service has occurred. The proposed definition of termination of employment in the Class V plan codifies current OPS Board of Education Policy Number 4039 regarding reemployment during the 180-day period following termination or retirement. The current OPS policy allows voluntary, unpaid bona fide service without limitation during this 180-day time period. Temporary service is also allowed after a 30-day waiting period following termination if it's to accomplish a specific purpose or task not to exceed one year. Substitute service is allowed on intermittent basis, which is defined in LB146 as no more than eight service days during a calendar month. I appreciate the work OPS has done to establish this policy and the steps the district has taken to ensure that a bona fide separation of service has taken place. They've done a very good job in this regard. LB146 also clarifies the definition of term in employment in the Schools Employee Retirement Act by providing the definition of an intermittent service, which at the current time is not-- undefined under LB146 intermittent service is limited to no more than eight, excuse me. Under LB146, intermittent service is limited to no more than eight service days in a calendar month. In addition to providing clarity for members of the school plan, the plan administrators, the changes in LB146 establish statutory policy parameters for the PERB to follow, which are broader than the current limitations on allowable substitute service in the school plan. It has the added benefit of increasing the number of allowable days a retiree or terminated teacher can provide substitute service in all school districts throughout the state that are having a difficult time finding enough subs to cover their needs. Defining "intermittent" in the School Employees Retirement Plan will alleviate some of the NPERS call center and legal counsel staff time currently spent reviewing specific substitute service fact scenarios and responding to questions about how much service is allowed during this 180-day break in service when there's no current definition of what constitutes intermittent. However, establishing these new parameters

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in statute will also add to the workload and responsibilities the NPERS internal auditors will need to increase their review of any substitute service provided during the 180-day separation of service timeframe. This additional auditing will be necessary to ensure that the amount of substitute service provided by an individual retirees and the terminated members is within the specific statutory allowable limits to make sure the school plan remains in compliance with state laws and federal IRS Code qualified plan requirements and limitations. I appreciate the additional workload that will fall on the current NPERS audit staff and therefore support adding an additional internal auditor as noted in NPERS's fiscal note. I believe it is a responsible request. I appreciate NPERS's and the PERB's commitment to administering the retirement system to ensure compliance with the IRS and other federal and state requirements. Just to be clear, this will not require General Funds because all staffing expenses are assessed against the Retirement System administered by the PERB. I also want to clarify something based on questions I've received from OSERS members about the 180-day break in service in the school and OSERS's plan. All the other plans administered by NPERS have a requirement of 120-day break in service. However, unlike the school and OSERS plans, no service of any kind is allowed during that 120-day break day period. So even though the time period is longer in the school and the OSERS plan, the 180-day period allows some service as proposed in LB146 would allow up to 48 days of substitute service during the 180-day period. I'd be glad to respond to any questions. I'd like to let you know that there's a representative for NPERS who will be testifying and can answer any specific questions you may have about how NPERS currently interprets intermittent service. This came about as a result of-- this bill came about as a result of looking at the quality work that was being done by the Omaha Public Schools in relationship to the the plan that we administer as a state. I liked the-- liked what I saw. We talked to NPERS about it. We thought this would be a good opportunity to clarify some of the language. It would give us an opportunity to free up some of these people that are retiring early and let them sub up to 48 days in a-- in that 180-day period, in other words, eight days a month. We just saw this as a win-win. And it's as a result of what we studied and learned from OPS. So with that, I would try to answer any questions you might have.

**CLEMENTS:** Are there questions? Senator Stinner.

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**STINNER:** So do you have an opinion from the IRS or some authoritative source that says that still, even though you have 48, that still is a qualified plan?

**KOLTERMAN:** I don't have a legal opinion, but there's a legal counsel that's going to be following me that will address that issue for you.

**STINNER:** OK.

**KOLTERMAN:** And I think they believe that it's-- it is OK.

**CLEMENTS:** Any other questions? I had one question is fairly obvious, but I think the determination of-- determination of service after termination is that one reason why you think we need a compliance, legal compliance audit?

**KOLTERMAN:** It's one of them. It's one of them. But at the same time, I saw this as an opportunity to improve both plans because neither one have been in statute. If we put it in statute, it shows that we are intending to comply. Right now, the statute is pretty unclear. In our current plan, it says intermittent. And you weren't-- I don't know if you were here the first time we talked about this on the floor. I don't think you were, Senator, but the issue about what constitutes intermittent came up, and I think I'll let representatives from NPERS talk about that. But I think this is a step in the right direction.

**CLEMENTS:** OK, thank you. Any others? Thank you, Senator. Next we'll have proponents for LB146.

**CHERYL LOGAN:** Good evening again. Still Cheryl Logan, C-h-e-r-y-l L-o-g-a-n, superintendent of Omaha Public Schools. LB146 provides needed clarity to the definition of termination of employment in both the OSERS and NSERS state statutes as it pertains to a recent retiree's ability to provide substitute service. School districts across the state depend on recently retired teachers to serve as substitute teachers. School districts across the state often struggle to find substitute teachers. The pandemic has exacerbated the problem. This bill would ensure that districts all across the state have a clear and uniform standard for utilizing recently retired teachers to provide sub service. We especially would like to thank our legal counsel, Kate Allen, the Nebraska Public Employee Retirement Systems

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legal counsel for working with the various school district partners to draft a bill that would be beneficial for districts across the state. For these reasons, Omaha Public School supports LB146 as a part of the legislative package to transfer the management of OSERS to the PERB. Thank you for the opportunity to share our board's position on this important bill package. Thank you.

**CLEMENTS:** Thank you, Dr. Logan. Are there questions?

**CHERYL LOGAN:** Thank you.

**CLEMENTS:** Seeing none--

**CHERYL LOGAN:** Thank you.

**CLEMENTS:** --thank you. Another proponent for LB146, please. Welcome.

**COLBY COASH:** Thank you, Senator Clements. Members of the Retirement Committee, for the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h. I'm here today representing the Nebraska Association of School Boards in support of LB146. My testimony also reflects the support of the Nebraska Rural Community Schoo-- Rural Community Schools Association and the Nebraska Council of School Administrators. Collectively, we're all supportive of the clarifications provided in this bill regarding the ability of separated educators to substitute teach. Finding substitute teachers is a challenge in districts all across Nebraska, and the demand for substitute teachers is always high. But it's been even higher in the past year. The current pandemic has no doubt amplified the problems as remote learning and health concerns now play into a decision to provide substitute teaching. As the committee is aware, retired educators make up the bulk of the pool from which districts can draw to meet their substitute demands. LB146 addresses the demand in an important manner by defining that term "intermittent." And it clarifies the number of days a separated employee may substitute within that 100, now 180-day separation period. This-- this clarity allows greater availability of substitutes in districts across the state. Retired educators are vital to the operation of schools and the provision of uninterrupted learning for students. And we thank Senator Kolterman for including this as part of his bill. And we urge the committee to advance it.

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**CLEMENTS:** Thank you, Mr. Coash. Are there any questions? Seeing none, thank you for your testimony. Are there other proponents for LB146? Seeing none, are there opponents on LB146? Seeing none, is there anyone who would like to testify in the neutral capacity on LB146? Welcome.

**RANDY GERKE:** Thank you. Good afternoon, Chairman Kolterman, Senator Clements, and members of the Retirement Systems Committee. My name is Randy Gerke, that's spelled R-a-n-d-y G-e-r-k-e, and I am the director of the Nebraska Public Employees Retirement Systems, which I will refer to as NPERS. I have been asked by the Public Employees Retirement Board, the PERB, to testify in a neutral capacity on LB146. LB146 provides for termination of employment and defines intermittent substituting during the initial 180 days following retirement to be eight days in a calendar month. Currently to best protect the members' retirement benefits, NPERS generally would recommend retirees wait at least 180 days before rendering any service with the employer and that the retirees do not prearrange or return to work following retirement. If a retiree plans on substituting during the 180 days following retirement, NPERS would recommend that the service be unscheduled, infrequent and of short duration. Retirees often want to know a set number of days that they can work that will meet this criteria. Under current law, NPERS cannot provide them with a set number of days. If this bill were to pass, it will provide clear guidance to both NPERS and our plan members. However, it will also create a standard that will need to be audited. NPERS has requested through a fiscal note the cost of hiring an additional auditor to our internal audit team to ensure that the school plan is in compliance with the provisions of this bill. I'd like to thank Senator Kolterman for introducing this bill. I'd also like to thank Kate Allen and those who worked on LB146. Additionally, I would like to thank you, the committee, for considering it. With that, I would conclude my testimony and I'd be happy to answer any questions.

**CLEMENTS:** Any questions? I have a question. I was curious about-- I don't know the federal regulations, IRS Code is. Is it NPERS's opinion that LB146 would fall within the IRS Code?

**RANDY GERKE:** I think that our opinion would be that it's at the upper limit of the IRS Code.



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**CLEMENTS:** All right. Upper limit--

**RANDY GERKE:** We're generally more conservative than this, but--

**CLEMENTS:** I think it was--

**RANDY GERKE:** --we do certainly see that, you know, the need for it for the substitutes, as you heard before me.

**CLEMENTS:** All right. So we're also asking for a compliance audit before this plan shifts management. Do you support that request?

**RANDY GERKE:** We think it would be a good idea.

**CLEMENTS:** Think it's a good idea.

**RANDY GERKE:** Um-hum.

**CLEMENTS:** All right. And your current-- the current plans for teachers, I think it was mentioned it's a 120-day after termination. Is that what the state teacher plan is? I heard 120 days mentioned.

**RANDY GERKE:** Yes. No, it's 180 days, is not-- is it not?

**CLEMENTS:** Oh.

**RANDY GERKE:** Yeah, 180 days.

**CLEMENTS:** I'm sorry. I must have heard wrong, 180.

**RANDY GERKE:** It's 180 days.

**CLEMENTS:** With no service during that period of time.

**RANDY GERKE:** Intermittent service.

**CLEMENTS:** OK, there is-- there is some. Very good. Thank you.

**RANDY GERKE:** Uh-huh.

**CLEMENTS:** Is there any other testimony in the neutral capacity?

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**ORRON HILL:** Good evening, Senator Kolterman and Retirement Systems Committee members, Senator Clements acting as the Chair. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Nebraska Public Employees Retirement Board, Nebraska Public Employees Retirement Systems. I'm here today to testify in a neutral capacity on LB146, mostly in response to any questions the committee may have regarding our opinion related to the standards set forth in the proposed bill. There's been some questions regarding the plan and a couple of points of clarification I'd like to raise before I turn it over to you for questions. Senator Clements, you asked about the duration of the time window after termination for determining a bona fide separation from service. We administer six plans. For the state, county, Patrol, judges, and defined-- and deferred compensation plan, it's a 120-day window with no ability to render any service of any kind to an employer covered by those plans. In the school plan that we administer, it's currently a 180-day window and they allow intermittent substitute service, but intermittent is not defined in state statute. So that there is a distinction and that's why you did hear them talk about the 120 days with no service as it relates to the other plans that we administer. Another point related to the standard is you asked about the Internal Revenue Code sections that we have reviewed. At the National Association of Public Pension Attorneys seminars, they actually invited the general counsel of the IRS to come and testify several years back. And they pointed to a private letter ruling, a private letter ruling 201137048 [SIC] if I'm remembering the number correctly, I might have gotten off one or two digits, but I think that's the exact number. And in that standard, the IRS actually looked at the rules related to reemployment following a termination of governmental plans. The tax code itself doesn't actually lay out rules as it relates to what constitutes a bona fide separation from service. So the IRS looks at it on a fact and circumstance specific basis. However, in the private letter ruling, they cited to code Section 409A, which is for nonqualified plans and said that the rules laid out in the nonqualified plans should guide some of the analysis. Generally under 409A the rules are there is a rebuttable presumption that there was a bona fide separation from service if the retiree renders less than 20 percent of the time in service that they did prior to retirement. So if you have a five-day-a-week employee, if they came back one day a week, there's a rebuttable presumption that there was a bona fide separation from service, so long as it was not prearranged,

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was unscheduled, truly intermittent, and truly only on an as-needed basis and there was no evidence showing that it was prearranged. You're just going to transfer to part-time status. There is no presumption if you render between 20 percent and 50 percent of the time that you did before retirement. And there is a rebuttable presumption that there was not a bona fide separation from service if you render more than 50 percent of the time. So when you heard Director Gerke talk about us being conservative, the guidance that we have traditionally put out to the members of the Retirement Systems that we administer in the schools plan is to work less than 20 percent of the time, or if you were a full-time teacher, five days a week, no more than one day a week, no more than four days a month. The statute, as proposed under LB146 would put us into that area where there is no presumption one way or the other. That generally that I, as a pretty conservative lawyer, would-- would question because I don't want to jeopardize the members because the response from retirement is that we then have to collect back all the distributions that we have made. I don't like to do that to our retirees. Now, that being said, we did talk with the compliance auditors during our compliance audit about termination of employment and talked about some of the potential conditions that might come in. And they said this is an area where the IRS would probably render an opinion. But those opinions generally are very expensive to obtain. Traditionally, they start at a cost of about \$25,000. So if that was something that wanted to be done, it would have to be looked at fairly closely to make sure it was properly done. The other thing the compliance auditors said is if your plan documents are clear and you're following the standards it's more likely to be upheld than not. The biggest concern with our plan is that "intermittent" is not defined. And so it is very nebulous and the facts and circumstances thus drive the issue. By properly defining it and saying this is what we mean as the policymakers of the state, the legislative body and the executive branch, should you both approve, it then gives us a standard we can enforce, but it also requires us to actually enforce that standard. Hence, the additional need for the auditor.

**CLEMENTS:** Thank you. Are there other questions? Senator Stinner.

**STINNER:** Does employment-- if I go from the Gering school district and I worked my, I think it says eight days a month or something would be

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fit into the intermittent, could I then go to Scottsbluff or Minatare or some other school system and work eight days there a month?

**ORRON HILL:** They could not. That's going to be one of the challenges for ensuring the rules are followed. In a multiple employer plan with over 260 employers, we're going to need to monitor across employers the amount of substitute service that is being done by the retirees. More importantly, however, that's something the retirees are going to need to know because they're the ones that ultimately have the worst-case outcome should it be found that they're not complying with the statute because we would be required to collect back the distributions that we have received. And then on top of it, we would also have to have them make up missed contributions based upon the pay that they received because there was no bona fide separation from service. And so that's the standard. And it's-- it's kind of an all or nothing when you set a line like this. You either complied or you didn't. And with a multiple employer plan for the members and the employers, they need to know that you have to make sure they're not cross-pollinating, for lack of a better term, with substitute; and the member has to track all districts to make sure they're not violating the rules.

**STINNER:** So that's what-- that's what we were talking about, adding another auditor to make sure--

**ORRON HILL:** Correct.

**STINNER:** --you're In compliance. Is it the individual that suffers the consequences or could it be the entire plan?

**ORRON HILL:** The worst-case scenario, as I said, a lawyer we always jump to that, is that the plan could be put in jeopardy. However, I don't think that that's very likely because it is actually the individual's actions that would result. And as long as the plan responded appropriately when it discovered that a violation was in place, we can protect the plan by making sure that we then follow through with the response that's necessary so that the worst-case scenario is very unlikely to occur as long as we're able to catch and monitor and keep people from doing what is not right under the new standard.

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**STINNER:** Would there be any exception in extreme cases similar to COVID when you really had to hire some substitute teachers and fill in for a long, longer period of time?

**ORRON HILL:** Currently, as written, the law does not provide for any-- or the bill does not provide for any exceptions, nor does our law. The IRS really doesn't like that. They don't want there to be any indication whatsoever that there wasn't a bona fide termination of employment. And-- and the compliance auditors were saying that the IRS is starting to review those areas and look at them fairly closely. And so that's part of the reason why we look at them very closely as well.

**STINNER:** Thank you.

**CLEMENTS:** Any other questions? You know, regarding the comment about 20 percent or one day a week, eight days a month is more than one day a week. What's your opinion about that being larger than the 20 percent?

**ORRON HILL:** I think Director Gerke put it well when he said that is higher than we've generally recommended. However, since it's not above the 50 percent threshold, it doesn't put us into the area where there's a rebuttable presumption that there was not a bona fide separation from service. I certainly would like to avoid that category, and that would be the strongest opinion I could give because that would, on its face, put the plan in jeopardy. And I would not recommend that. At this point where there is no presumption, which is the eight-day threshold, that's where the policymakers of the state need to decide, is that what you feel is the best avenue for us as a state to pursue? And then we will carry out what the policymakers tell us to do.

**CLEMENTS:** And can this be avoided by a teacher who would leave the state plan and go work in OPS, is that-- is there an exception or a loophole there?

**ORRON HILL:** There's no statutory exception. However, because OPS is not part of our plan, it is-- it does occur where an individual will leave the School Employees Retirement Plan and go work at OPS full time immediately because it's a separate employer. It would be no different than if a teacher decided to go work at Wal-Mart, for

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example, after they had retired. They're not prohibited from working at all. They just can't work for an employer covered by the plan.

**CLEMENTS:** OK. Then they're two-- they would still be considered two separate employers, and that [INAUDIBLE]

**ORRON HILL:** Correct.

**CLEMENTS:** --situation. I see. Any other questions? Seeing none, thank you, sir.

**ORRON HILL:** Thank you.

**CLEMENTS:** Anyone else here to testify in a neutral capacity for LB146? Seeing none, do you care to close?

**KOLTERMAN:** Just a couple of remarks. For years, we've had situations where people have moved back and forth from Omaha Public Schools to the state teacher retirement plans and not back and forth, but make a move when they retire. And because this is just a management agreement, that will not have any effect. So in other words, we're not merging this in with our plan, and I'll be addressing that in LB147 next. But I hope that clarifies your question.

**CLEMENTS:** Yes, thank you. And there were-- LB146, there were five position letters and two letters of written testimony. And that will conclude LB146.

**KATE ALLEN:** Could you read those names into--

**CLEMENTS:** The position letters--

**KATE ALLEN:** Yes, all of them.

**CLEMENTS:** --are from Dr. Mark Adler, Ralston Public; Dr. Bill Robinson and Angie Baumann, Norfolk Public; Enid Schonewise, Westside Community; Dr. Daniel Hoeck, Omaha School Administrators; Kyle McGowan, Nebraska Council of School Administrators. Written testimony of support: Jason Hayes, NSEA; John Peetz, Omaha School employment-- Employees Retirement System. And that concludes LB146 and we'll open with LB147. Welcome.

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**KOLTERMAN:** Thank you, Senator Clements. Good afternoon. My name is Mark Kolterman. I represent Legislative District 24. I'm here to introduce LB147, which is the third of five bills you're hearing today that I introduced as a package related to a transfer of management of Class V School Employees Retirement System to the Public Employees Retirement Board. I've been on the Retirement Committee for six years and I've chaired the committee for five of those six years. Since I've been with this committee, I've been working with OPS on various issues related to investments and management of the Omaha School Employees Retirement System, otherwise known as OSERS. In 2015 and 2016 at the request of OPS, we worked with all interest groups to develop and ultimately pass LB447, which moved the investment authority from the board of trustees to the Nebraska Investment Council. The bill also changed the governance of the OSERS plan and shifted administrative authority to the board of trustees. I have continued to work with OPS the last several years as they have expressed interest in moving the administration and management authority from the OSERS Board of Trustees to the Public Employees Retirement Board, known as the PERB and the PERB administers the six plans for the state of Nebraska. At the request of OPS in 2019, I introduced LB31, which required the PERB to put together an extensive work plan by June of 2020 to identify the tasks necessary to transfer the OSERS management to the PERB, project the timeline for transition, and transfer and estimate cost-- and estimate cost for the transfer, including ongoing costs for the PERB to administer the plan after the transfer. PERB presented the plan to the Retirement Committee on September 18 in 2020. The work plan projected a transfer timeline of approximately three years with the transfer date of September 1, 2023, and estimated a range of costs to complete this transfer. The lowest transfer cost estimate was \$3.8 million. The highest was \$6.1 million, and the average most likely cost was estimated to be about \$4.2 million. The OPS Board of Education reviewed the work plan projected and the timeline and the cost and at its August 2020 Board of Education meeting adopted a formal motion to move forward with the transfer. OPS has affirmed its sole responsible-- it's solely responsible for all transfer cost. The state of Nebraska will not assume any cost for the transfer. The following-- following the committee hearing in September and the OPS Board of Education formal motion to move forward with the transfer, we began working on legislation for the necessary statutory changes to achieve the transfer. Those changes are contained in LB147. This bill

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establishes a transfer of duties and responsibilities for management of the Class V Retirement System to the Public Employees Retirement Board effective September 1, 2024. The effective date was delayed one year because of the additional audits that must be completed this year, as described in LB145, which the committee heard earlier this afternoon. LB147 describes planning and tasks that must be completed to accomplish the transition and transfer. It inserts dates throughout the entire Class V School Employees Retirement Act when specific Board of Education and Board of Trustees responsibility cease related to retirement system management and transfer to the PERB, which includes the termination of the board of trustees. Once the transfer has occurred, a representative from OSERS will be added to the membership of the PERB. I want to note that this morning I filed AM295, which designates that the OSERS seat on the PERB has to be and the OSERS member who is a teacher. I think this is appropriate since teachers make up a large portion of the OSERS membership. In addition, it is consistent with the longstanding designation of a teacher as one of the school plan representatives on the PERB. LB147 identifies the school district of Class V Retirement Systems as the party responsible to pay all related costs of the Public Employees Retirement Board for its services and expenses related to the transfer of management. I also want to be clear that no transition or transfer costs will be assessed against the OSERS plan. The bill also makes it clear that the Class V school district remains solely financially responsible and liable for all funding requirements of the Class V Retirement System during the transition and after the transfer of management to the Public Employees Retirement Board. LB147 clearly establishes that the state of Nebraska, the PERB, and the Nebraska Public Employees Retirement System are not liable for any of OSERS plan funding requirements. It also clearly establishes that on the date of transfer, the state of Nebraska, the Retirement Board, and the Nebraska Public Employees Retirement System and their respective officers, members, employees, and agents are indemnified and held harmless by the Class V school district from any and all liabilities, claims, suits, losses, damages, and costs that arise from or reasonably related to the conduct, decisions, actions, inactions, or omissions in the Board of Trustees, the Class V Board of Education, or the Class V school district, or any consequences arising during the course of performing their respective duties and responsibilities for or actions or services related to or in support of the retirement



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system under the Class V School Employee Retirement Act until the date of the transfer. My stated condition and commitment from the beginning of this process is that the state will not take on any funding responsibility for the transfer of management from any of the plan's funding obligations or any liabilities associated with the Omaha School Employees Retirement System, either before or after the transfer occurs. I have also been clear, very clear about this, that it's not a merger of the OSERS plan with the school plan or any other plan administered by the PERB. And I would describe my intent that the transfer of management, the transfer of management to the PERB will not take away or change current benefits of OSERS members. Finally, I want to acknowledge that I've received a number of questions I'm going to address-- that I'm not going to address because they are merely hypothetical in nature. As you know, as you have heard in all my introductions, I have identified and responded to specific questions and comments in my introduction on each bill. I have met, worked with, and listened to interested parties and representative organizations and taking their concerns into consideration. As you've seen, I've introduced several compromise amendments to bills in this package in response to the questions and the requests. That concludes my testimony. I'd be glad to try and answer any questions that you might have at this time.

**CLEMENTS:** Any questions? Seeing none, we'll--

**KOLTERMAN:** I might-- I might make one more observation.

**CLEMENTS:** All right.

**KOLTERMAN:** I've been on this committee for six years now, and this might be my last bill that I get to introduce because the next bill is going to be introduced by legal counsel, Kate Allen. And so there might be some people behind me that are happy to see me not introducing bills anymore. Anyway, with that, I hope you have fun questioning.

**CLEMENTS:** All right, thank you, Senator Kolterman. Are there proponents for LB147?

**CHERYL LOGAN:** Good evening again. Cheryl Logan, superintendent of Omaha Public Schools. Good evening, committee members and Senator

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Kolterman. LB147 lays out the process, duties, and responsibilities for the transfer of management of OSERS to the PERB. The bill makes clear that Omaha Public Schools will pay for the cost of the transition and reimburse the PERB for costs incurred while implementing the transition. The bill also indemnifies the state and the PERB from any liability of funding the OSERS plan and from the unfunded liability of the plan. LB147 also makes clear that OSERS will remain a separate, siloed plan under NPERS. We want to make clear that while OSERS will be managed by the PERB going forward, the Board of Education remains solely responsible for the funding and the liability of OSERS. For these reasons, Omaha Public Schools supports LB147 and the newly introduced amendment as a part of the legislative package to transfer the management of OSERS to the PERB. Thank you for the opportunity to share our Board of Education's position on this important bill package. Happy to take any questions.

**CLEMENTS:** Are there any questions?

**CHERYL LOGAN:** Thank you.

**CLEMENTS:** Thank you.

**CHERYL LOGAN:** One more time. I'll see you in a minute.

**CLEMENTS:** All right. Are there other proponents for LB147?

**ROBERT MILLER:** Good afternoon, Senator Clements and Retirement Committee. I'm Robert Miller, R-o-b-e-r-t M-i-l-l-e-r. I live in Omaha and have been an educator for 20 years with the Omaha Public Schools. I currently serve as the president of the Omaha Education Association that represents 2,800 certificated members and the vice president of the Nebraska State Education Association. I'm testing [SIC] today in support of LB147 for both the OEA and the NSEA. The OEA is a member of the Better Together Coalition, a group of stakeholders that contribute to the Omaha Schools Employee Retirement System. This group was informed-- was formed by Dr. Logan when she became the superintendent of Omaha Public Schools. Bringing stakeholder representatives together was a significant step in the effort to address common interests and to explore options to address the unfunded liability of OSERS. During the first two meetings, it was agreed that the coalition would be solution focused and not to let the past hinder our progress. Senator

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Kolterman met with the coalition, and I invited him to the OEA Board of Directors meeting to answer our questions regarding the transfer of management and how that would affect our members. We shared a significant concern that OEA members had expressed regarding the loss of a teacher's voice during and after the proposed management transfer. OPS is the largest district in the state, and the OEA board believes that having a designated active OPS OSERS member on the PERB board would be imperative. That concern led to the OEA Board of Directors to initially take a position of opposition to the transfer of management. When I learned about the two amendments being proposed that would address our concern, I scheduled an emergency meeting with the OEA board to share the new information. After a lengthy discussion with much appreciation to Senator Kolterman and his staff for addressing our concern, the board voted to support LB147. In closing, change can be difficult as it changes what we've known. This is a big change for members of the OSERS, and we needed and received validation that our voices are being heard. Thank you for listening to and-- listening to and understanding the importance of maintaining the voice of teachers during and after the transfer. The OEA will continue to work with Senator Kolterman and this committee to ensure a smooth and successful transfer of management of our members' retirement system. Thank you.

**CLEMENTS:** Thank you. Are there questions? No questions. Thank you, sir. Are there other proponents for LB147? Seeing none, is there anyone wishing to testify in opposition? Welcome again.

**WALTA SUE DODD:** Thank you. Good evening. Or is it afternoon? Thank you for having us here. For the record, I am Walta Sue Dodd, W-a-l-t-a S-u-e D-o-d-d. I live in Omaha, Nebraska. I'm the president of the Omaha Education Association-Retired and an association of about 900 retired members of the Omaha Employees Retirement System, OSERS. I am also the retired member of OSERS, and I'm here today to testify in opposition of LB147. LB147 outlines the process from transferring both the management and governance of the Omaha Public Schools Retirement System, OSERS, to the state retirement system. OEA-Retired has a firm stance against transferring either the management or governance of OSERS to the state. In December of 2020, we conducted a survey of all of our members on the topic. More than 80 percent of the respondents were opposed to closing the Omaha office of OSERS and losing their voice on the OSERS board. In addition, the OEA-Retired Board of

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Directors unanimously opposed to the transfer. My most recent testimony against this bad idea was in September of 2020 at the hearing on LR318 on the results of the study of transferring our call in LB31. It is significant to note that the transfer of management and governance of the Retirement System does not address or provide solutions to reduce the current unfunded liability and does not mitigate the additional ongoing transfer of OSERS management to the state. I am also on the BTC committee, and the reason I thought we were meeting was to take care of our unfunded liability, come up with some solutions, and also to talk about how to improve the ARC. But we found out it was not. It was LB31 to investigate transferring OSERS over to the state. In fact, the report suggests that the transfer of OSERS management to the state will have a higher administrative cost than leaving OSERS as a stand-alone retirement plan, and that transfer of management will significantly reduce the member services that OSERS members currently have and have come to expect. In addition, OSERS members will have to have no say in governing the board for the transfer system. OSERS members currently elect the trustees representing the members on the OSERS board. While-- why is this transfer of management being process-- proposed? We understand that it's a transfer of management was initiated at the request of the Omaha Public Schools. They stated at their last hearing that they wanted to get out of the retirement business. It is important to note that OPS is not in the retirement business. OPS has no role in management of the day-to-day operations of OSERS, and OPS is prohibited of having a role by state law. The OSERS staff is paid by the OSERS trust fund dollars and so are the operational costs. OPS gains nothing from transferring management of the Retirement System to Lincoln, but OSERS members lose a lot. Retirement members know the value of having access to retirement counseling on short notice and close to home. OSERS members investigated their retirement benefits for at least three or more years prior to their actual retirement. And much of that investigation includes personal counseling. The director of the State Retirement System stated in one of his presentations that the level of service would not be available-- that level of service would not be available if the OSERS Omaha office were to be closed. I know that some say this is the world of Zoom meetings and remote learning, and we are adjusting to not having face-to-face meetings. But no one, I mean, no one, absolutely no one is advocating that we close all face-to-face school sessions and trying to educate our

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students entirely by remote methods. Remote learning is just not an effective way to get information delivered. It may cost less, take less time, but it's not nearly as effective as having an in-person learning. The same is true of our retirement counseling. The transfer of management to Lincoln is estimated to cost that 3.8 to 3.1 million just to update the computer system at the state level to accommodate our unique budget, our benefits structure. More problematic is that there is absolutely no retirement counselors on the state retirement staff who understand and can explain the OSERS benefits. While they may change-- this may change over time, it is the case now. The bill does not have any initiatives for current OSERS staff to transition to the State Retirement System, compounding the problem even more. In addition, the director of the State Retirement System stated that all school employees retirement seminars are held during the second semester of the year. Not only that, but it takes at least three months lead time to get a counseling session. OSERS members benefit from quick access to retirement counseling during the entire year. We do not want that to change. OSERS is the second oldest continuously operating retirement system for school employees in the nation. Since 1909 it has paid benefits, provided retirement counseling to OPS employees and retirees. It has done so with the lean staff housed in Omaha, giving OPS employees unique and valuable access to retirement counseling as they consider and plan for their retirement. Transferring OSERS management and governance to the state is a bad idea. It is opposed by the OEA-Retired active members also of the system, by the [INAUDIBLE] of the system, and by OSERS Board of Trustees. I ask that you allow that to continue by not advancing LB147 to the full Legislature. As I have stated in previous testimony on this subject before this committee, if it ain't broke, don't fix it. Thank you.

**CLEMENTS:** Thank you. Are there questions? Thank you, Ms. Dodd, for your testimony. Are there others in opposition to LB147? Seeing none, is there anyone wishing to testify in the neutral capacity? Welcome. Thank you for coming again.

**RANDY GERKE:** Good evening again. Good evening, Chairman Kolterman, Senator Clements, and other members of the Retirement Systems Committee. My name is Randy Gerke. That's spelled R-a-n-d-y G-e-r-k-e, and I am the director of the Nebraska Public Employees Retirement Systems, which I'll refer to as NPERS. I have been asked by the Public

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Employees Retirement Board, the PERB, to testify in a neutral capacity on LB147. LB147 provides for the transfer and transition of administration of the Class V School Employees Retirement System. You will remember that LB31 from the last session directed NPERS to provide a work plan with time and cost estimates to accomplish this transition. There are many differences between how NPERS administers the state school plan and how the Omaha plan is administered. What I would like to get across with my testimony is that NPERS is here to help. We fully understand that this is a very big and important project and affects many fellow Nebraska citizens. If the wishes of the Legislature and the executive branch are that LB147 is to move forward and be enacted, NPERS and the PERB are willing to and able to accomplish this goal. I'd just like to thank Senator Kolterman and the Retirement-- Retirement Committee for allowing me to testify. And with that, I'd just be happy to answer any questions that you might have.

**CLEMENTS:** Any questions? I heard one comment in opposition that the plan would have higher management cost if this goes through. Do you have an opinion about that?

**RANDY GERKE:** I believe that in LB31 the study showed that we were actually just slightly under them. It isn't, you know, I'm going to give-- give full credit that it's not going to solve the unfunded liability at all. But-- but it's very-- it was very comparable.

**CLEMENTS:** Thank you. I believe that's it. Thank you for your testimony. Are there others wishing to testify in a neutral capacity on LB147? Seeing none, I have position letters of support from Sarah Curry of the Platte Institute and Dr. Daniel Hoeck, Omaha School Administrators Association. Oh, and opposed Connie Hill, Omaha Area Retired School Employees Association and neutral from the Better Together Coalition. That concludes LB147.

**KOLTERMAN:** I want to close on it though.

**CLEMENTS:** Oh, excuse me.

**KOLTERMAN:** That's fine.

**CLEMENTS:** Welcome to close.

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**KOLTERMAN:** Yeah, I'd just like to say a few things. First of all, a lot of work's gone into this. We have business leaders from Omaha, Nebraska Association of School Boards, Nebraska Council of School Administrators, NSEA, OEA, the Board of Education, Better Together Coalition, the PERB, and OSERS all working on this bill or these bills, so to speak. You know, I just heard that if it ain't broke, why don't fix it. Well, the state plans, we have six plans that we administer as a state. The least funded plan that we have is 89 percent. That's the State Patrol. I will tell you that the plan that we're talking about is 64 percent funded. It's a billion dollars short. I'd say that's broken. I think it needs to be fixed. I have complete confidence in the PERB that they have the ability, as does Omaha Education Association, the teachers, as does the administration of OPS. I just think that it is broken and it needs to be fixed. I don't like the idea that we're sitting here talking about a problem that exists in Omaha. But I will tell you this. NPERS, the people that administer our six plans, have over 250 member schools in our plans. It's-- it's over 90 percent funded. They get the same advantages that Omaha Public Schools will get if we manage this plan. As far as the retirees are concerned, I will-- I will tell you that we are no intent on changing any benefits. I've made that very clear. I'm not sure we can change benefits. But I will tell you, as far as service is concerned, NPERS has been servicing people all over this state, from Scottsbluff to Sidney to Lincoln for many, many years. And I don't hear very many complaints about what they do. So if we can expect people to drive from Sidney to Lincoln or call or work over the Internet, I don't see that as a problem. The last thing I will say is the only time a retiree has to make a change or need service in a plan is if they have a beneficiary change or if they change their bank account because their plan is just like Social Security. They get a check every month in the mail or directly deposited into their bank account. Now you tell me what kind of service that needs. So with that, I'd like to close on this bill and move forward to the next bill. Thank you very much.

**CLEMENTS:** Are there any questions? Seeing none, that closes the hearing on LB147.

**KOLTERMAN:** Senator Clements, I would like to take about a ten-minute break. It's been about two hours. It won't take long. And we'll come

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back and finish up the final bill that's going to be introduced by my legal counsel.

**CLEMENTS:** All right, we're in recess until then.

[BREAK]

**KOLTERMAN:** We'll now open on LB582 so-- is this on? We're going to open on LB582. Go ahead.

**KATE ALLEN:** OK. Good evening. My name is Kate Allen. That's K-a-t-e A-l-l-e-n. I'm the Retirement Committee legal counsel and I'm here to introduce LB582 on behalf of the committee. LB582 is the fifth of five bills introduced as a package related to transfer of management of the Class V School Employees Retirement System to the Public Employees Retirement Board. I want to begin with a little background. Numerous questions have been asked about who requested this bill and why it has been introduced. Senator Kolterman wants to make the record clear this bill was not introduced at the request of OPS or any other entity. He felt this bill was necessary after questions and issues began to emerge during meetings and conversations with OPS representatives last November and December about the roles and authority of the Board of Education and the Board of Trustees, both before and after governance changes in 2016 under LB447. Those questions triggered significant additional research, including a review of which ent-- entities provide specific operational services and which entities fulfill various administrative duties involving the Retirement System. Examination was conducted of available written policies, procedures, and rules and regulations that had been adopted by the Board of Trustees and the Board of Education. Requests were made to provide any policy and procedure manuals or other documents related to administration and operation of the Retirement System. It was discovered that though the governance authority was shifted from the Board of Education to the Board of Trustees under LB447 in 2016, the Board of Education has since adopted several policies related to the Retirement System, and the school district continues to-- to conduct a great deal of the administrative services and obligations for the Retirement System. It was additionally discovered that no new policies or procedures have been adopted by the Board of Trustees since 2016 when it was granted authority to administer the plan other than updating their actuarial fact or policies. As part of this research, a



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legislative history was also conducted. The original legislation to codify the Retirement System for OPS was introduced and passed in 1951, which indicated that the Retirement System was established as a trust in the name of the school district. From 1951 until 2016, 65 of the past 70 years, the Board of Education was vested with the authority to administer the Retirement System, and the Board of Trustees was a subset of the Board of Education, not a separate entity. Until 2016, the Board of Education had several of its members on the Board of Trustees, and the Board of Education either directed or approved all decisions and actions of the trustees. LB582, as introduced, reinstates the planned governance in the plan sponsor, the Board of Education. As introduced, it was-- it will occur on an unspecified date. It also reestablishes the authority of the Board of Education to administer the plan and to approve and direct all Board of Trustees decisions. It clarifies the roles and responsibilities of the Board of Education and the trustees, which reestablishes that the Board of Trustees is a subset of the Board of Education. The bill includes an additional duty of the Board of Trustees to facilitate the transition and transfer of management to the PERB, which is the goal of the Board of Education. LB 582 also terminates the membership of the current Board of Trustees on an unspecified date and requires the Board of Education to appoint all the members of the Board of Trustees, as it used to do prior to the governance change in 2016. As introduced, the members of the new Board of Trustees includes the superintendent of schools, two business persons with financial experience, an active participant in the Retirement System, annuitant, and an undesignated number of school board members, it also includes the limitation that's always been in statute that if an appointed active member retires, the member is no longer eligible to serve on the Board of Trustees. Senator Kolterman has introduced AM229 which was filed in the Journal and it's been shared with you. It sets July 1, 2021, as the date administrative authority will once again be vested in the Board of Education. The current Board of Trustees will serve until July 1, 2021, when the new board will begin. It also designates that two school board members will serve on the Board of Trustees and designates that instead of one active participant and an annuitant, two members of the Retirement System will be appointed. However, one member is go-- is to be a teacher. After reviewing the history of the Retirement System representation on the Trustee Board, a teacher has always been designated to represent the members. In

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keeping with this historical tradition, the amendment continues that requirement. The amendment also eliminates the current statutory provision that a Retirement System representative loses his or her eligibility to continue serving on the Board of Trustees upon retirement. Doing away with this eligibility limitation for new appointees will avoid interruption of representation if a trustee retires. This will provide for more continuity of Retirement System members serving through the three-year period that this board will be in place during the transition and transfer period that ends on September 1, 2024. Changes in the current administrative structure are necessary to enable the PERB to have a clear understanding of who is responsible for all the administrative authority, control, operations, services, and establishment of policies. OPS has clearly stated that its goal is to transfer the management of the OSERS plan to the PERB. The purpose in granting the Board of Education the authority to appoint new members of the trustees is to provide an opportunity for the Board of Education to select trustees who share their commitment to move forward towards a smooth transition and transfer of management. I want to note that following the introduction of this bill, Senator Kolterman has met with members of the Better Together Coalition, which is made up of representatives of all OSERS member groups, OPS, and the OSERS Board of Trustees. And he has responded to many of their questions during these meetings. He's also received over 50 written questions regarding all the bills introduced in this package. And as you have heard, he's incorporated his responses to many written questions and comments in the introduction of each bill. After the bill was introduced, he received a request to specify in statute how the Board of Education will select new members. In his discussion with BTC and OPS, he has expressed his belief that that question-- that issue is up to the Board of Education to determine its selection process and how it wants to appoint new members. Concerns have also been expressed that expertise will be lost by terminating the current Board of Trustees. He has noted in response that there is nothing in the bill that would prevent the Board of Education from making the decision to reappoint any of the current Board of Trustees members. He has encouraged and continues to encourage member groups to work directly with the Board of Education about these issues. And finally, a concern has been raised that there are no qualifications in LB582 for new appointments to the Board of Trustees. The only Board of Trustees member who has ever had statutory qualifications or expertise

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eligibility requirement is the business person, the business persons who are required to have financial expertise. LB582 retains that expertise requirement for those business persons who will be appointed. One last comment raised concerns that there are no training or continuing education requirements. I want to point out that there's never been training or education requirements for the Board of Trustees members, and they're-- I also want to note there are no training or continuing education requirements either for the PERB board members. That concludes my testimony. Are there any questions?

**KOLTERMAN:** Thank you, Miss Allen. Questions? OK, let's move to proponents.

**CHERYL LOGAN:** Good evening. Cheryl Logan. I serve as superintendent of the Omaha Public Schools. Good evening again, committee members, Chairman Kolterman. LB582 will direct-- will return direct administrative responsibility over the OSERS-- keep forgetting to take this off-- LB582 will return direct administrative responsibility over the OSERS plan to the Board of Education as it existed prior to the passage of LB447 in 2016. The Board of Education understands transfer responsibility back to the Board of Education is a necessary step to trans-- transitioning management to the PERB. The bill provides that the board will appoint seven new board members to a newly constituted OSERS Board of Trustees. I understand that Senator Kolterman introduced AM229 to clarify the membership of the new board. The Board of Trustees will be responsible for implementing the actual transition of management to the PERB. The new Board of Trustees will exist under-- until the PERB takes over the administration on September 1, 2024. For these reasons, Omaha Public School supports LB582 and AM229 as a part of the legislative package to transfer the management of OSERS to the PERB. Thank you for the opportunity to share our Board of Education's position on this important bill package. Thank you.

**KOLTERMAN:** Thank you, Dr. Logan. Any questions? I just have a question for you.

**CHERYL LOGAN:** Oh.

**KOLTERMAN:** I think it probably came as somewhat of a shock when I told you about this last bill, when I introduced it several weeks ago, a month ago, probably. Just for the record, you had no indication that I

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was going to introduce this type of legislation, did you, as a school board?

**CHERYL LOGAN:** No, we did not, and shock is the nicest word that I could say, Senator Kolterman. [LAUGHTER]

**KOLTERMAN:** I just felt that just so the rationale behind this, my legal counsel has talked a lot a bit-- about it, but my rationale is this is a big undertaking.

**CHERYL LOGAN:** Yes, sir.

**KOLTERMAN:** And there's nothing in this that prevents you from appointing certain people that have been on the-- on the OSERS board or or other new people that can bring some value to the-- to the table. But I just felt from my perspective, it would be a lot easier dealing with one board instead of two, because that's just the rationale behind the whole process. So I brought this unknowing to everybody involved. But after looking deep dive into the whole system over the last 45 to 60 days, I just felt it was important. So thank you for your testimony.

**CHERYL LOGAN:** Thank you. And I also like to thank you, because after it was introduced, you did take the time to explain it to us and we went from shock to understanding. So I appreciate that. We all did appreciate that very much.

**KOLTERMAN:** Thank you.

**CHERYL LOGAN:** You're welcome.

**KOLTERMAN:** Any additional support?

**ROBERT MILLER:** Good evening, Chairman Kolterman and committee members. I am Robert Miller, R-o-b-e-r-t M=i-l-l-e-r. I live in Omaha and I've been an educator for 20 years with the Omaha Public Schools. I currently serve as the president of the Omaha Education Association, representing 2,800 certificated members and the vice president of the Nebraska State Education Association. I'm testifying today in support of LB 582 for both the OEA and the NSEA. Our support of LB582 focuses on a voice and representation for teachers on the trustee board. Educators have always had a voice and representation on the OSERS

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Board of Trustees. The OEA board wants that voice to continue and not to have it lost in the process. The amendment to this bill allows that to continue. OEA looks forward to the opportunity to work with the Omaha Public Schools Board of Education on how the identification of that teacher's voice is identified. Our members want to make sure that their retirement is sound and strong, whether they are retiring in 3 years or in 20. They have counted on this their entire career. These selected trustees are valuable pieces of the overall puzzle. Members rely on them for their knowledge, experience and representation. All stakeholders-- stakeholders must have their voices heard and recognized in this process. OEA appreciates that Senator Kolterman recognizes that importance and made sure educators are heard on the trustee board. This addressed our major concern about the transfer of management. The amendment to LB582 fully recognizes that voice is important and it matters. This will allow the members who are active participants in OSERS to have their voice heard. There has been no road map on how to best accomplish this task at hand. Many individuals played a significant role in getting those voices of many elevated to those who can make those decisions. OEA appreciates knowing that this committee values the voice and representation of all, that you listen to those who are impacted from the decisions that are made in this building. Those of us who rep-- those of us you represent are taking notice and appreciate your time on this matter such as this. Thank you.

**KOLTERMAN:** Thank you, Robert. Any questions? I have one again. Just for the record, I kind of caught you off guard with my first amendment as well, didn't I, my first bill?

**ROBERT MILLER:** Correct. Yes, very much.

**KOLTERMAN:** And after listening and talking with you, we made the decision to make changes. Is that correct?

**ROBERT MILLER:** Correct.

**KOLTERMAN:** Thank you.

**ROBERT MILLER:** Yep.

**KOLTERMAN:** Appreciate working with you, Robert.

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**ROBERT MILLER:** Thank you, Senator Kolterman.

**KOLTERMAN:** Any other proponents? OK, opponents. Hello, Walta Sue.

**WALTA SUE DODD:** Hello, Senator.

**KOLTERMAN:** Welcome.

**WALTA SUE DODD:** We're going to disagree again. Good afternoon, Senator Kolterman and members of the committee. For the record, I am Walta Sue Dodd, W-a-l-t-a S-i-e D-o-d-d, and I live in Omaha, Nebraska. I am president of the Omaha Education Association-Retired, and our organization has about 900 retired members of the Omaha Employees Retirement System, OSERS. I am also a retired member of OSERS and a teacher. I am here today to testify in opposition to LB582. LB582 will dissolve the current Board of Trustees for the Omaha Public Schools and-- I should say the Omaha School Employees Retirement, OSERS, and replace it with a new board consisting of several members of the Omaha Public School Board of Education. In 2016, the Legislature passed LB447, which created the current OSERS board. Now, by law, all members of the trustees, for OSERS are democratically elected by the constituents that they represent. There are four member trustees, two represent the certificated staff, which is made up of teachers and administrators; one represents the classified staff, which no one has mentioned; and one represents the annuitants. In addition, the OPS superintendent is on the board as a voting member by virtue-- by virtue of her position. LB582 would cut the member representation on the OSERS board in half, would remove the democratic process of electing trustees to represent the members, would install members of OPS board as trustees, and would retain two business representatives. This not only is a bad idea, but it has also proved to be unworkable in the past. Even more problematic is that this new board would serve only a short period of time, perhaps two or three years, before the board could be dissolved completely. The new board would be dissolved when the OSERS management and governance is transferred to the state Retirement Systems. Even if the transfer were to occur, and that is not a given, it is unwise for public policy to have inexperienced board managing \$1.4 billion of trust fund money that serves more than 10,000 members, adding to the craziness in the fact that the new board would be appointed entirely by the OPS Board of Education. If the past actions of the OPS Board of Education are indication of future

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actions, it is unlikely that any of the current-- current OSERS trustees would continue with one exception, the OPS superintendent. Prior to 2016, OSERS had three representatives from the OPS board serving on trustees-- as trustees. The OPS board members seldom attended OSERS meetings, did not participate in trustee training sessions, and generally were absent. In fact, the OSERS meetings were rescheduled to be able to accommodate the work schedules of the OPS board members and they still did not attend meetings. One training session was set up for a Saturday morning to help educate all the trustees on various matters. The OPS board members indicated they could attend the Saturday meeting, so consultants were brought from the outside of Nebraska to conduct the training. Two OPS board members canceled shortly before the meeting and-- and one canceled the day of the meeting. The track record of OPS board members learning about retirement matters is poor, and there is no reason to believe that will improve for a board that will be temporary at best. It has been stated that five-- LB582 will return the OSERS board to the configuration that existed prior to 2016. That is not true. The prior 2016 board, there were 10 members of the OSERS board and 5 of them included superintendent being members of the Retirement System. It is unclear how large the OSERS board could be under LB582, which has been corrected. But the voice of members would be greatly diminished on the reconstitution of the board and that there will be no democratic process to select members of the trustees. Perhaps the most troubling aspect of this potential change is governance and management for OSERS. It almost guarantees that a reconstituted board will not have the background, training, or experience to understand and manage the Retirement System. And a new board will be in place for such a short period of time that they will not be able to acquire the knowledge to do the job of pension oversight effectively. If there is a transfer of governance and management to the state Retirement System, it would be wise at least to have trustees who are knowledgeable and experienced to ensure that transfer is done properly. You don't realize what you have once when it's gone. You realize what you had when you can't find anything else like it. LB582 in its present state is not a sound idea. We ask that you indefinitely postpone LB582. Thank you.

**KOLTERMAN:** Thank you, Walta Sue. Any questions? I do have a couple of questions. Do you see anything in the amendment or the bill that

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prohibits the school board from appointing the people that currently exist on the OSERS board?

**WALTA SUE DODD:** No, I do not but let me clarify. I know the board members, I know the OSERS trustees and one of the reasons to get rid of the OSERS trustees and not reappoint them is because there are members on there that voted not to support this bill.

**KOLTERMAN:** Well, I just have a lot of faith in the-- in the school board and the-- and the teachers association that came in in support of the bill. I believe that they can do the right job. And I think that at the end of the day, they're going to do what's in the best interest of the Omaha Public School system as well as the retirees.

**WALTA SUE DODD:** The teachers changed their mind when you took the annuitant out of the bill and put in teacher.

**KOLTERMAN:** There's an annuit-- you can have an annuitant on the committee by the way.

**WALTA SUE DODD:** I know there is two members that can be on there. But in the original bill, you had annuitant and not teacher. So annuitant came out, teacher went in, OEA changed their vote from opposed to in favor of it because they had-- now have a member of the Board of Trustees.

**KOLTERMAN:** And they've made that very clear. But I want you to understand that I did that because I was listening to the people that-- that we worked with. And an annuitant can serve on this board, contrary to what you're telling people.

**WALTA SUE DODD:** I know they can sit on the board if they're appointed by the school district.

**KOLTERMAN:** I have no reason to believe that there won't be good quality people that are going to be appointed to this board.

**WALTA SUE DODD:** I believe that--

**KOLTERMAN:** Thank you for your testimony. Any additional questions? Thank you very much.



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**WALTA SUE DODD:** You're welcome.

**KOLTERMAN:** Anybody else in opposition?

**WALTA SUE DODD:** That was sarcasm, you know.

**KOLTERMAN:** Anybody in the neutral position? Now, I have a couple things that we need to read into the record. On this bill, LB582, we have position letters in support by Sarah Curry, the Platte Institute; Dr. Daniel Hoeck, Omaha School Administrators Association. Opposed are Connie Hill, Omaha Area Retired School Employees Association. Neutral would be Better Together Coalition and neutral with written testimony is John Peetz, Omaha School Employees Retirement System. I also want to-- between the time that Senator Clements took over and Senator Lathrop or Lindstrom left, we missed reading into the record that position letter for LB145. I want to read that today or now: support was Sarah Curry, the Platte Institute; Dr. Daniel Hoeck, Omaha School Administrators Association. Opposed was Connie Hill, Omaha Area Retired School Employees Association. And neutral was Better Together Coalition. And written testimony of support was John Peetz, Omaha School Employees Retirement System. And then finally on LB146 there was a neutral by Better Together Coalition. With that, we've had a full day. I will close the hearings. Thank you, everybody, for coming.