

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Retirement Systems Committee March 3, 2021  
Rough Draft

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**KOLTERMAN:** I'm going to start reading because I believe-- I haven't talked to anybody else about the hearing today. I assume Senator Slama and Senator Lindstrom will be here. But, let's get started with this. And then we have a confirmation. Keith Olson is on the line for the Nebraska Investment Council. And you should have all received the information on Keith in your electronic packets. At the same time, welcome to the Retirement Systems Committee hearing. My name is Senator Mark Kolterman. I'm from Seward and represent the 24th Legislative District. I serve as Chair of the 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 wear a face covering while in the hearing room. Testifiers may remove their face covering during the testimony to assist committee members and transcribers in clearly-- clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by the Sergeant of Arms. To better facilitate today's proceeding, I ask you abide by the following procedures. Please silence your cell phones. Move to the front row when you're ready to testify. The 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 possible. 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 are white sheets at the entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit the amount of handouts. Written materials may be distributed to committee members as exhibits only

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while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. And we'll need 8 copies. If you have written testimony and you don't have 8 copies, would you raise your hand now? All right. To my immediate left is committee counsel Kate Allen, to my far right at the end of the table is committee clerk, Katie Quintero. The committee members with us today will introduce themselves beginning at my far right.

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

**McDONNELL:** Mike McDonnell, LD5, south Omaha.

**SLAMA:** Julie Slama-- oh.

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

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

**KOLTERMAN:** And our page today is Jenna. So thank you, Jenna. The first thing up will be a confirmation of Keith Olson, who has served with us already. And are you on the line, Keith?

**KEITH OLSON:** Yes, and I am on line.

**KOLTERMAN:** You want to tell us a little bit about how long you served and why you want to serve again.

**KEITH OLSON:** I served one term and I'm-- there are several reasons why I want to serve again. I find that with the rest of, most of council members, incredible integrity and the highest level of that, folks. I learn from them all the time. And I think-- I think Nebraska citizens who are-- who benefit from the fund are very, very well taken care of. So, I think-- I continue to want to be a part of that-- that quality community, and in addition, I think that-- and I expect that is unique and beneficial. I've spent 30 years as an investment conservator manager at what I would call the wholesale level. I was a natural investor of funds. I lived in-- I grew up in Omaha, lived in New York City, worked there, went to Tokyo, set up an office in western [INAUDIBLE] in Tokyo, Japan. I went back to New York City and worked

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for a couple of years. I went up to Montreal and Quebec to build a Asian minimum operation for [INAUDIBLE] and then I got a job in Hong Kong, where I spent the last 12 years of my career in Hong Kong. And, and in that, in that space of time managing Asian equities in Hong Kong, I co-founded the western [INAUDIBLE] organization and have recently sold that. Currently-- then I came back to Omaha, Nebraska. My wife, Sharon, and I came back to Omaha, Nebraska, mainly because Sharon's mother was not well and Sharon wanted to come back to take care of her mother. And so that got us thinking about her, maybe we should come back to Omaha and did that. I have since got my doctorate degree from Creighton University and I'm teaching investment management courses and financial modeling courses and travel abroad courses at Creighton University.

**KOLTERMAN:** All right. So you have-- you have a very strong financial background here. You've been in the private sector. You're educating and the Governor has reappointed you to another term. Our relationship with this committee and the Nebraska Investment Council has been very strong. With that, I would ask if there's any questions of any of my committee members. Thank you for being with us today. I would ask if there's any proponents in support of this nominee today? Are there any opponents-- and in the neutral position? With that, Keith, thank you for coming up. Thank you for your willingness to serve again, you've done a great job. We-- as I said, we've got a great relationship with the Investment Council and all of you have a very strong interest, and thank you again.

**KEITH OLSON:** Thank you, Mr. Chairman. Thank everyone involved in the committee.

**KOLTERMAN:** Thank you. With that, I'll close the confirmation hearing. The next item up is LB184. So with that, Senator, Colonel Brewer, would you please come forward and tell us what you're up to here today.

**BREWER:** Thank you for this opportunity to spend lunch with you. Age is going to get the best of me. Fortunately, if needed, I know that Senator McDonnell has a spare set there, so we'll be fine. All right. Good afternoon, Chairman Kolterman, and members of the Retirement Committee. My name is Tom Brewer, T-o-m B-r-e-w-e-r, and I represent the 43rd Legislative District, which is 13 counties of western Nebraska and I'm here today to open on LB184. LB184 allows retired

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state troopers to use the pretax dollars from their retirement benefits to pay for health care insurance. Federal law allows this. It gives states the power to make this change for public safety officers. State law specifically allows our retired troopers to stay at their own expense in the same health plan that they retired on. I'm aware that the general issue has been looked at before. This Legislature has looked at how it could work not just for our troopers, but also for state and local public safety officers. It is my understanding that the retirement office raised several concerns back then. They identified changes and the problem of retiree qualification and identifying public safety officer. They also had concerns on how to coordinate multiple insurance plans and how to handle it when a retiree moves from the state of Nebraska. I would strongly emphasize, those concerns should not be in play with LB184. This bill only deals with Nebraska state troopers. There would be no trouble in determining if they qualify under the federal law as public safety officers. The retirement system would only be paying one health insurer, the one the state is already familiar with because it's what they use. I just want to stress that, you know, the men and women of Nebraska State Patrol have made many sacrifices for safety. This bill would make a large impact for the retirees at little cost to us. I can answer-- you know, the answer if it's too hard, hopefully isn't what we look at here, because this is a step to allow them so that they would have this benefit. Federal law allows us to do this for our public safety personnel. My staff and I-- I've been working and will continue to work on any amendments or any technical challenges that are identified. Thank you, and I'll be available for questions.

**KOLTERMAN:** Thank you, Colonel Brewer. Any questions? Yes, Senator Clements.

**CLEMENTS:** Thank you, Mr. Chairman. Thank you, Senator Brewer. I don't have my information with me. Is there a fiscal note with this?

**BREWER:** I believe, you know, I can answer that. Too many bills on hand. Yes, there is. This would be cash fund and it would be \$361,038 is what they have on expenditures, 2022, and so, yes, there is a fiscal note with it.

**CLEMENTS:** Will this have every retired trooper in this or do they opt-in if they want to?

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**BREWER:** I believe it's opt in if they want to, but I will be followed with someone who-- will be followed by someone who can probably answer that.

**CLEMENTS:** OK. Thank you.

**BREWER:** For sure.

**KOLTERMAN:** Any other questions? Seeing none, you're going to stick around for close?

**BREWER:** I'll stick around for close. You bet.

**KOLTERMAN:** Thank you. First proponent. Welcome.

**CHRIS LUTES:** Good afternoon, committee members. My name is Chris Lutes. That's spelled C-h-r-i-s L-u-t-e-s. I am employed as an investigator with the Nebraska State Patrol and have been by-- employed by the State Patrol since 2008. I'm here today testifying as a dues paying member of the State Troopers Association of Nebraska, over STAN. I'm also the treasurer of the State Troopers Association of Nebraska and the State Law Enforcement Bargaining Council, or SLEBC. I also hold the position on the SLEBC Labor Negotiations Committee. And I'm here before you today to testify in support of LB184. Now, the purpose of LB184 is to provide retirees of the Nebraska State Patrol the opportunity to have health care premiums automatically deducted from their monthly retirement benefits pretax, and thus it's going to create a financial savings for our retirees. Now, I believe it's important to ensure that the committee understands a few key points, especially in light of the opposition testimony which may not portray an accurate picture of what LB184 is attempting to accomplish. So point number one is that the State Law Enforcement Bargaining Council is a self-insured organization, which also encompasses the Nebraska Conservation Officers Association and the Nebraska State Fire Marshals Association. SLEBC members do not belong to the same insurance plan as those personnel within the Nebraska State Patrol, who are not SLEBC bargaining members. And the opportunity to utilize the SLEBC health care plan is only extended to troopers, investigators, and sergeants within the Nebraska State Patrol and participating members of the Conservation Officers Association and Fire Marshals. Now, upon retirement, and this will be point number two, a SLEBC member may opt to maintain their health care plan while paying 100 percent of the

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health care premium. Prior to retirement, the member currently pays 17 percent of the monthly care premium and the state pays the remaining 83 percent. Point number three. The sworn NSP employees and retirees are paid on a monthly basis, meaning payroll and any money-- any automated clearinghouse or ECH transactions only occur once per month, per sworn employee or retiree. Point number four. As of today, only 43 NSP retirees are enrolled in the self-insured retiree health care plan, as provided by the State Law Enforcement Bargaining Council. Items three and four are extremely significant and if we're attempting to objectively examine the intent and scope of LB184, the Nebraska Public Employee Retirement System, or NPERS, has continually taken an obstructionist position regarding this topic, as well as many other topics, such as military service credits and years of service credits for NSP employees who have break in service. And the fiscal note attached to this LB and presented by NPERS is egregiously inflated. If adding a single ACH transaction to 43 employees once a month is projected to cost the state in excess of \$300,000, I might suggest a strong review of the way NPERS and the State of Nebraska Department of Administrative Services conducts business. Secondly, LB184 is intended to apply only to members of the State Troopers Association of Nebraska, who are covered by the self-insurance health care plan and choose to remain on the plan as a retiree. LB184 is not proposing a pretax health care premium ACH for all retirees covered by the NPERS system. Again, we're only talking about a small number of retired employees that currently sits at 43 retirees. We're not opposed to extending such a benefit to other state employees who may fall under the NPERS umbrella, but LB184 is currently only intended for those members as previously explained. By way of example, I would like to put some perspective on this topic. Now, according to most recently available census data, the state of Nebraska has over 27,000 state employees. Nearly all, if not all of these employees are paid via direct deposit and have multiple ECH transactions occur for each paycheck. Some employees are paid bi-monthly, others are monthly. The ACH transactions occur for deductions such as health care premiums, dental care premiums, vision care premiums, flex-spending withdrawals and other life insurance premiums, among others. Direct deposit payroll is an ACH itself. Governor Ricketts has implemented a concept that we as Nebraska state employees are teammates. Our most valuable resources are our teammates and we must do whatever we can to protect, elevate and care for our teammates. And I'm sure the committee would agree that once an employee retires, there's still a teammate and we

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have an obligation to continue caring for them, protecting them and ensure that they are financially independent so that they remain productive, contributing members of our communities. LB184, if passed, would help ensure that we are taking care of our teammates. We strongly urge the committee to support LB184 and allow it to move to the legislative floor for discussion. Our intent is to help provide possible solutions for an issue that can improve the quality of life for some of our retirees rather than throw up roadblocks and have an obstructionist attitude on the matter. I thank you for your time today and I welcome any of your questions.

**KOLTERMAN:** Thank you. I have a question. Do you know if there's somebody from STAN that's going to follow you today?

**CHRIS LUTES:** We do have a member of our retirees, representative for the STAN board, and I believe he is going to be following me today.

**KOLTERMAN:** OK, because I that might have some questions or maybe-- I just don't know who to ask these questions of. I've got some questions I want to ask and--

**CHRIS LUTES:** Yes, sir, I can remain behind.

**KOLTERMAN:** All right. Thank you. Any questions? Seeing none, thank you for your testimony.

**CHRIS LUTES:** Thank you.

**KOLTERMAN:** Next proponent. Welcome.

**MARTIN COSTELLO:** Thank you. Good afternoon, Senators, Senator Kolterman, and members of the committee. My name is Martin Costello, M-a-r-t-i-n C-o-s-t-e-l-l-o, and I am a retired state trooper with 30 years of service to the state of Nebraska and I am testifying in support of LB184. I'd also like to thank Senator Brewer for bringing this matter forward. And I do serve on the executive board of the State Troopers Association as the elected retiree representative.

**KOLTERMAN:** OK.

**MARTIN COSTELLO:** I may paraphrase my testimony a little bit, because Mr. Lutes already hit on some of the issues and I don't want to be too repetitive for you. But the Federal Pension Protection Act of 2006

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contains a provision permitting eligible retired public safety officers to exclude up to \$3,000 for qualified health insurance premium paid from the retirement benefit directly. LB184 would make this possible for retired state troopers and public safety officers in Nebraska, although this bill currently only addresses state troopers. And just for your information, my entire-- I pay the entire benefit and I have since 2014 since I retired. I currently spend 42 percent of my net retirement income for my health insurance premium. So this would be an incredible savings and help us out. Most people when they retire from the State Patrol, seek other employment or they get on their spouses. That didn't work out for me and my spouse is self-employed, so this is our only option as far as having health insurance goes in that regard. And that 42 percent far exceeds any expectations that we had when we did our retirement planning. Oh, many years ago, we had no idea that in health insurance costs would skyrocket the way that they have in the last-- last few years. That sort of a thing. I first approached members of the retirement board on this on 2016 and made a presentation to them and they listened to me very kindly. They were very cordial, and they took a month-- there was a typo in my testimony that says I was back in November of 2018. It was 2016 the following month, so I apologize for that typo. They had-- they advised me then that they had reviewed my request and in their view that it was not possible to do that because it was increasing the benefit, and there is a state statute which is referenced in my testimony and there's a copy on the back of it just in case you want to read it without having to look it up, without any legislative action. I would have disagreed. I wasn't really given an opportunity to testify because I wasn't on the agenda. They were very kind to give me the report right then. And I didn't-- they had a full agenda that day, so I did not take up their time. In my view, it became more of an issue of a benefit that had already been earned by the members in the retirement system, just changing the distribution of it. It wasn't really adding anything to it other than maybe some convenience as far as how it was distributed and that sort of a thing. I did approach it to my state senator for it. I was referred at that time by the state senator to approach somebody on the Retirement Committee itself. We went back and forth a couple of emails. I gathered more information, and by the time that we got all that stuff done, it just was too late to get a bill introduced and so it kind of languished again as far as that goes. Another thing on there that I don't know how it's reflected in the bill currently, but I was also told that since I have



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participated in the draft program, under Nebraska law, even though I served 30 years, under Nebraska law that constituted an early retirement. And it may not make me eligible, which I mean, if that's the way it is, that's the way it is, but that may be another concern that could be looked at in the form of an amendment or something of that nature just in that regard. I'm certain I'm not the only person that covers as far as that goes in that sort of a thing. And I said, I'm trying to-- I don't want to duplicate existing testimony here real quick. Health insurance payments can be clearly limited to people that are only in state approved plans. That's what my research had shown years ago when I first started this, that most states have approved plans that they will disperse insurance to. That would prevent some of the concerns of going to multiple-- multiple agencies or multiple insurance companies. So you'd still have one point of contact as far as SLEBC goes is-- and making the administrative sides of those things much easier. Already mentioned there are 43 retired troopers as of today that are currently on the system that already get automatic disbursements into a bank account or a savings account or even in some cases, debit cards. So the difficulty of adding one more transaction to that pile, to me seems to be easier than the proposed A bill, which is-- which seems to be very large and overreaching as far as what they're trying to do, that sort of a thing. I guess the only other thing I would answer to, I would mention to just as a reminder that state troopers have to retire at age 60, so there's a 5-year gap in there that before they can enter into Medicare and some of those other programs that are out there so, and a lot of them and in this case, currently 43 have to make up those-- those differences out of their pocket by themselves. They would still would be paying it. It would just allow them a few advantages as far as deductions in the way the taxes are done in that regard and save them a little bit. For myself, it's almost two monthly premiums make a big difference. If my wife wasn't such a hard worker and our-- we have worked so hard to pay off our house before I retired, it would be a big bite out of our income and cause us some difficulty in that regard. So anyway, that's all I have. Thank you for your time. I'd be happy to answer any questions if you may have some.

**KOLTERMAN:** Any questions? I have a couple of questions.

**MARTIN COSTELLO:** Sure.

**KOLTERMAN:** So, and I-- you're on the retirement board?

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**MARTIN COSTELLO:** No, I'm not. I'm on-- the retiree representative to the State Troopers Association Executive board.

**KOLTERMAN:** OK, well, maybe you can answer these questions for me. If we were to adopt this-- this bill, and we passed this legislation, would this be-- do you look at this as a benefit enhancement or do you look at this as just another-- what would you-- would you look at it as a benefit enhancement?

**MARTIN COSTELLO:** It would certainly benefit me. I mean, there's no question about that. But it's a benefit that I already receive. It would just distribute it in a different manner so that I could take advantage of some tax savings is what it would come down to.

**KOLTERMAN:** So we do have what's known as a VEBA on the books, a Voluntary Employees Beneficiary Plan with the State Patrol. Can you tell me about that VEBA?

**MARTIN COSTELLO:** I have to plead ignorance. I've been retired for seven years now. That doesn't sound familiar to me at all. So I'm sorry, I can't offer any input or information in regards to that.

**KOLTERMAN:** OK, there is one. It's my understanding it was negotiated and it allows for up to 400 hours of unused sick leave that can be put in the VEBA, and there's other things that could be used for. So I'm just wondering if you know anything about it.

**MARTIN COSTELLO:** Oh, I know I was on the bargaining team a couple different times in my tenure with the State Patrol, and that was one of the things that have been discussed at various times. For those people who are already retired, you can't participate in it because you don't have any sick leave left or anything to put into the plan, but it does allow you to set aside some, some hours that you can use those to pay some of your health insurance costs in retirement.

**KOLTERMAN:** You can also use it to pay medical expenses, include-- including post retirement health insurance programs as well as some premiums, so I'm just-- I'm just wondering if you-- if you have any input on that.

**MARTIN COSTELLO:** You know, it would-- it certainly considering the cost of health insurance, it would probably help defray maybe a year or two's premiums for them and sometimes you'd want to save a little

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back in case of you have to make up for out-of-pocket expenses and that kind of stuff, something that I've experienced myself just recently. But, you know, that's-- that's certainly a great benefit to them. But this is a totally separate and at least in my opinion, separate thing, because the people that are already retired can't take advantage of the VEBA currently because they're no longer employed with the State Patrol, but it also--

**KOLTERMAN:** I'm just wondering if, you know, I don't know how long that's been in place, if you had an opportunity to benefit from it or not.

**MARTIN COSTELLO:** Yeah, that's that's all since I retired from the Patrol, so.

**KOLTERMAN:** All right.

**MARTIN COSTELLO:** Other than just a little bit of incidental or ancillary information, I don't have any specifics on that, sir. I'm sorry.

**KOLTERMAN:** All right. Well, we'll see if anybody behind you-- following you might have some information on that. Any-- any additional questions?

**CLEMENTS:** Yes.

**KOLTERMAN:** Yes, Senator Clements.

**CLEMENTS:** Thank you, Mr. Chairman. Thank you, Mr. Costello. I am just wanting to make sure that this-- the \$3,000 would-- would be deducted from your current retirement. I-- like it's \$250 a month. You would-- would that reduce your monthly pay by \$250?

**MARTIN COSTELLO:** The \$3,000 as referred to in the Pension Protection Act of 2006, that allows you a right across the board deduction from your total annual income from your federal income tax. So that's how that defrays. So at the end of the year, if you paid your insurance from your retirement benefit directly, then you could have a line item deduction on your federal tax return of \$3,000 from your net gross income.

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**CLEMENTS:** OK, this-- so this plan with this proposal would take all of your health insurance out of your retirement benefit before you are given it, is that it?

**MARTIN COSTELLO:** That's correct.

**CLEMENTS:** And so then it would not be a taxable portion that you receive, would just be reduced on your tax return--

**MARTIN COSTELLO:** Yes, that's--

**CLEMENTS:** --in the first place and you wouldn't need the \$3,000?

**MARTIN COSTELLO:** And that's part of the Federal Protection Act. As far as that goes that's-- that's the limit that you can deduct that-- of that total expenses of \$3,000. That's the cap they put on.

**CLEMENTS:** The amount that would be reduced from your retirement with this proposal would be more than 3,000.

**MARTIN COSTELLO:** It would be the amount of the monthly premium, which in my case is just right at \$1,800 a month every month, so.

**CLEMENTS:** I see. All right, thank you.

**KOLTERMAN:** Any additional questions? Seeing none, thank you for coming.

**MARTIN COSTELLO:** Thank you very much.

**KOLTERMAN:** Appreciate it. Any additional proponents? OK, any opponents? Welcome.

**ORRON HILL:** Thank you, Senator Kolterman. Good afternoon, Senator Kolterman, and members of the Retirement Systems Committee of the Legislature. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Public Employees Retirement Board and the deputy director and legal counsel for the Nebraska Public Employees Retirement Systems. I will refer to the Public Employees Retirement Board as the PERB, spelled P-E-R-B, and the Nebraska Public Employees Retirement Systems as NPERS, spelled N-P-E-R-S for the duration of my testimony. I've been asked here by the PERB to testify in opposition to LB184 as drafted. Our concerns with the bill as drafted revolve

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around three substantive areas, cost, compliance and liability. To ensure a proper context, I wish to begin by providing some background information. The PERB and NPERS were approached by a retired state trooper about the Healthcare Enhancement for Local Public Safety Officers or HELPS program. A number of years ago, we reviewed the materials and the governing provisions of the tax code. We responded to the retiree at a subsequent meeting indicating that a change in law would be required before such a program could be implemented. This was in part due to the strict technical requirements of such plan under the federal tax code. We also indicated that to the retiree that the PERB and NPERS are restricted by state law from seeking enhancement to planned benefits through legislative process. See Nebraska Revised Statute 84-1503.02(2). In 2018, the Public Employees Retirement Board and NPERS were again approached regarding the HELPS program, this time by the Nebraska Retirement Systems Committee of the Legislature. We were asked to provide information responsive to LR373 that was researching the HELPS program and possible legislation to follow. And PERB responded by email with concerns and approximately five and a half pages of unanswered questions that would need to be addressed before the PERB and NPERS could implement such a program. Additionally, as part of our research, NPERS director Randy Gerke contacted seven other retirement plans who had recently implemented a HELPS program to determine what impact, if any, the HELPS program had on their operations. Director Gerke learned that each plan that implemented the HELPS program did so in accordance with a change in state law, consistent with our request for a change if this were to be pursued. Additionally, the provisions of each plan document were not consistent from plan to plan. Thus, the retirement systems are not consistently implementing the HELPS program across the nation. They each have individualized, customized plans. Third, all of the retirement systems would rather not have been implementing such a program. In fact, one retirement system indicated they were required to hire seven full-time employees to manage the workload that had come forth. Neither the PERB nor NPERS were approached about the program again until December 29, 2020, when I was contacted by a representative of the State Troopers Association. I responded the same day, providing some of the background information and some big picture items we would be concerned about with the bill. For example, we said the bill would need to amend the specific plan documents so that they could be properly reflective of the federal tax code and survive an audit. Second, the bill would need to address how the anti-alienation,

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anti-assignment and anti-attachment provisions of the plans would be impacted or implicated or modified, given the strict interpretations of those provisions by the Nebraska Supreme Court in the J.M. v. Hobbs cases. Third, the bill would need to address how a start-up in ongoing costs would be paid. On December 30th, I was provided a draft version of the bill to review. I replied the next day and expressed some additional concerns. I indicated that I did not believe in my professional legal opinion, the bill did what needed to be done to provide NPERS the technical guidance it needed in the statute. The language did not amend any of the provisions of the Nebraska State Patrol Retirement Act to authorize such distributions or provide guidance in how we would carry that out. The language was also lacking many of the technical provisions that would need to be incorporated in the State Patrol Retirement Act from the Federal Tax Code and Omnibus Crime Control and Safe Streets Act. One provision of the particular concern for us was the language found in 26 United States Code 402L4B, which indicated in part, a member must have retired by reason of disability or attainment of normal retirement age in order to be eligible to take advantage of the HELPS program. The normal retirement age in the State Patrol plan is age 55. There are early retirement options that many troopers take advantage of, such as retiring at age 50 with 25 years of service. It did not appear that this early retirement would make these members eligible for planned participation. And so we raised that concern early so that it was well-informed for those that were interested. Additionally, the plan did not-- the bill did not discuss what would happen at the age of 65. The bill, as drafted, does not say that it is limited only to retirees and only to the one insurance system. It just says comply with 26-402L, which as some other states were administering it, applied to all private insurers so deep that creates a significantly greater workload under the way the bill is written than if it was narrowly tailored. Additionally, the bill does not discuss the interplay between the deferred retirement option plan or drop that is within the State Patrol and how that would interplay with this type of an arrangement. We make note of the drop because it was a hurdle during our last determination letter for the patrol plan. It caused the termination letter to be delayed as we went back and forth with the IRS to make sure it was in compliance. At the time, we didn't have to deal with the interplay of the HELPS program and the drop, and we would be concerned about the technical requirements and satisfaction of them all. I also mentioned there were a number of administrative

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issues that were yet unaddressed. I provided a handout that list a number of questions that the PERB staff have that we would need answered before we could implement such a program. The cost of the bill is certainly a topic of debate at today's hearing. We believe it is a true and accurate cost based upon our best understanding of the bill as written. The testimony you've heard previously today has narrowed the scope of the bill, but that is not reflected in the language of the statute. We would need to see an amendment if it were to truly reduce that capacity. Additionally, there are these compliance questions and more that I've already identified for you today. We don't want to have a plan that becomes disqualified under the federal tax code. We actually have a statutory duty to operate our plan in such a way that that does not happen. Without these questions being answered, it will be difficult for us to maintain our statutory mandate. Finally, we are concerned about liability. Nothing in this bill provides for any protection to the state, the PERB, NPERS, or their officers or assigns should errors or omissions occur. There are other such provisions in other types of retirement benefits, and we would ask that the committee consider such protection in the event that errors or omissions occur. For the foregoing reasons, the PERB and NPERS would ask the committee not to advance the bill. Subject to your questions, that concludes my testimony.

**KOLTERMAN:** Thank you. Yes, Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you very much for being here today. I appreciated your testimony towards this and I-- I-- it seems that the concerns regarding this legislation are technical, but not complete end stage for negotiations. Would you be willing to work with Colonel Brewer on a potential amendment that addresses these concerns?

**ORRON HILL:** We could certainly take that into consideration. However, my client has advised me that they are not interested in pursuing this at this time because we do not have the ability at this time to maintain the staffing levels and do that level.

**SLAMA:** OK, so at this point, you're just shaking your head no.

**ORRON HILL:** Unfortunately, Senator, that is the way things are going to have to be at this time.

**SLAMA:** All right. Thank you.

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**KOLTERMAN:** Any additional questions. I have one or two here. OK, Orron, it's my understanding-- understanding that under LB84-1601, the State Patrol, they're allowed to stay on the group plan until they're age 65. Under this bil, what happens then? Does the benefit then apply to other medical plans that they would enroll in, and we'd have to take care of each individual plan? And if so, where would that leave NPERS?

**ORRON HILL:** That's a great question, Senator, and is one of the questions that we have. The bill, as written, does not restrict only to the insurance. Under the provision that you cited, 84-1601, it says they're allowed to do that. Nowhere does it say that they would also not be allowed to do that for other types of insurance. More importantly, in the sections that actually amend the State Patrol Retirement Act, the bill is so broadly drafted that we can only interpret it in a way that it would apply to other insurance programs and therefore we would have to be able to facilitate and interface with any private insurance carrier under the way the bill is currently drafted.

**KOLTERMAN:** So if an individual goes out, buys a supplement somewhere and coordinates it with their Medicare, you'd be on the hook to deal with each and every one of those that might come forward.

**ORRON HILL:** Under the way the bill is currently drafted, that is correct, Senator, yes.

**KOLTERMAN:** OK, and then the second question is, does the bill provide minimum language needed for compliance with the tax code?

**ORRON HILL:** I, in my professional opinion, do not believe it does. It does not include many of the provisions that are discussed in 402L, or it's implementing treasury regulations that guide how plans are supposed to administer such programs. That is very important and takes a lot of time to make sure it gets right. Just as a recent example about the importance of technical compliance, we submitted our state and county cash balance plans for a determination letter before that program closed. We had correspondence back and forth with the IRS because they missed one of the sections of statute that is required to be in there and we had to illustrate to them, yes, it is in the statute, here it is. And we also identified it for them in our rules and regulations, which allowed those plans to have termination



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letters, but the IRS does check to make sure that the plans contain all the technical language they're supposed to contain.

**KOLTERMAN:** OK, then-- and finally one last question. Under-- we've had some inquiries from county law enforcement. Since we administer the county's plans, they want the same type of benefit. Would that compound the problem as you see it?

**ORRON HILL:** Yes, it would. And it would likely increase our fiscal note and possibly our ongoing costs. We would obviously need to do an assessment that would factor in all of the potential county employees that might be covered. Additionally, it wouldn't be a surprise if we might see corrections officers or potentially judges who focus on criminal courts also being interested in such a program because they might qualify as a public safety officer under the relevant federal statutes.

**KOLTERMAN:** OK, thank you. That's all the questions I have. Any additional questions? Seeing none, thank you, Orron, for coming. Any additional opponents? Anyone in the neutral capacity? OK, seeing none. Do we have anything for the record, written, or we have nothing written, so that will conclude our hearing on LB180. I'm sorry. Senator, I'm sorry. I didn't mean to cut you off there. Please come in close for us.

**BREWER:** All right. Well, as you can see, it's a little more complicated than-- than what we have just on the surface when initial-- introduced the bill. I still think it's something that is worthy of having a full discussion on. You know, I-- I'm a little troubled by the fact that the idea that there isn't enough here to even have a discussion or look at any amendments, I think that's kind of a wrongheaded way of looking at. I'd like to dig in and figure out, you know, if we're talking about 365-K and 43 individuals, that's about \$8,400 apiece. Maybe that cost is legitimate, but I just, you know, again, I'm in an area where I don't have a lot of knowledge but I will be very interested in learning more now that I see some of the challenges. But I guess what I would like to leave it is, whatever we can do to figure out a amendment or how to change this to make it better or right, I'm open for that. But again, I'm going to have to get a whole lot smarter on retirement.

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**KOLTERMAN:** Well, I appreciate you coming and I appreciate the bill. I would invite you to come and speak with my legal counsel and I, because we have done a little bit of background work on this and who might be able to give you a little better perspective. But a good hearing. I appreciate the bill coming forward today.

**BREWER:** Appreciate you. Appreciate your time.

**KOLTERMAN:** All right. That will conclude the hearing. Thank you. Now, we'll move in to our final bill LB20-something-- 209. Senator Mike McDonnell. Welcome, Senator.

**McDONNELL:** Thank you, Chairperson Kolterman, and members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. The purpose of LB209 is to allow certain county and city employees the ability to voluntarily contribute into their governmental 4-- 457B account, it designated Roth contribution. Under current federal IRS rules, the governmental employees have the ability to voluntarily contribute money into a designated Roth account. Due to the current Nebraska state law regarding 457B plans, this is not allowed. Current Nebraska law states all contributions into a 457B plan shall not have state or federal taxes taken out. The bill allows certain governmental employees the ability to contribute to accounts allowable under current IRS rules. We have drafted an amendment to ensure there is no impact on the state plan. It is not our intent to impact the Nebraska retirement system or interfere with the administration of the state plan. There are proponents who will be testifying after me that are going to share their experiences with you. I'm here to try to answer your questions and also be here for closing.

**KOLTERMAN:** Thank you. I appreciate that. Any questions for Senator McDonnell? Seeing none.

**McDONNELL:** Thank you.

**KOLTERMAN:** First, proponents. Welcome. Yeah, the guy before he was pretty messy.

**McDONNELL:** You'd better clean up-- [LAUGHTER]

**MATT BARRALL:** Good afternoon, Senators of the committee, and Chairman Kolterman. Thank you again, Senator McDonnell, for bringing this bill

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to the committee. My name is Matt Barrall, spelled M-a-t-t B-a-r-r-a-l-l, and I'm the vice president for the Nebraska State Fraternal Order of Police. I'm here today, not just in representation of the men and women in law enforcement, but in a way, a voice for all public employees in regards to their potential supplemental retirement options. But I'm also here because this bill-- bill began two years ago as a conversation with my county on a way to supplement the current Nebraska Public Employees Retirement System. I'm lucky enough to work for Sarpy County, who has long recognized that there are certain shortfalls in the NPERS system, and we have worked together to provide additional options for the county employees to build up their own retirement with their own funds. In our meetings, we discovered that the state of Nebraska had not updated the laws pertaining to deferred compensation plans for almost a decade. When 48-1401 was written over 40 years ago, the IRS did not allow for Roth style contributions. Fortunately, that was updated in 2011. Unfortunately, no one sought to bring these statutes up-to-date until now. I never thought that what I viewed as a language clean up bill would take two years to bring to this committee. And I would like to thank Senator Kolterman for providing his initial guidance on how to draft this bill two years ago. But the truth is, the majority of governmental employees within the state of Nebraska do not have a supplemental plan outside of what is offered to them by their employers, whether they be municipal, county and state employees. They deserve to have all legal options available to them. This is the way that an individual can use their own money to better their retirement future. It is unfortunate that six counties in the state of Nebraska do not offer their employees a supplemental plan and have to contract with NPERS to provide that plan. Senator McDonnell has created the amendment to limit any state involvement, which hopefully this will now make those six counties engage with a financial group and maybe start this on their own. My hope is that when this passes, that those counties can better help their employees. There is no fiscal note for the other 87 counties because they engage in a financial organization that creates and manages their plan. Sarpy County has three. Each of those three financial companies have a nationwide system and they have been offering these Roth style contributions for a decade. In closing, this bill is designed to harmonize current out-of-date Nebraska statutes so they are compatible with federal law and to give another option to the rank and file to provide for their future. We are not reinventing the wheel and we're not telling any entity that they have to comply with

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this plan. It is merely providing an option that is currently available under federal law. Hopefully the members of this committee, as well as the entire Unicameral, will see that as this bill is written and now amended, will give government employees another tool in their supplemental retirement toolbox to provide for the peace of mind that comes with planning and executing their own retirement. Thank you.

**KOLTERMAN:** Thank you. Any questions? This is quite the amendment that we just received, so I assume we'll have an opportunity to discuss that. Thank you very much for coming today.

**MATT BARRALL:** Thank you.

**KOLTERMAN:** Additional proponents. Welcome.

**JIM MAGUIRE:** Chairman Kolterman, Senators of the Retirement Committee, I guess it's afternoon. Good afternoon. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e, and I'm here representing the men and women of the Omaha Police Officers Association. We are here in support of LB209 and we are thankful for the assistance of Senator McDonnell of introducing this bill. All this bill does is it removes an obstacle in state law and will allow government employees the ability to have a designated Roth account in his or her own voluntary deferred comp plan. IRS allows for the account, so this will make state law more consistent with federal IRS tax rules. Thank you.

**KOLTERMAN:** Thank you. Any-- any questions? Thank you very much.

**JIM MAGUIRE:** You bet. Thank you.

**KOLTERMAN:** Additional proponents. Opponents. Seeing none, are there any in the neutral position.

**ORRON HILL:** Good afternoon again, Senator Kolterman, and Retirement Systems Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm here today to testify in a neutral capacity on LB209 at the direction of the Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems. I'd like to begin by saying initially our organizations were opposed to the bill as drafted. When we looked at the original bill, we had a difficult time determining what the language was actually asking us to do. I consulted several of my peers. There were three different opinions on

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what the bill asked us to do. And as the old joke says, ask three different attorneys what a law means, we'll get three different opinions. Unfortunately, it proved true this time. However, we've had the wonderful privilege through Senator McDonnell's office to work with some of the other stakeholders on this bill, and they were willing to propose an amendment that would not cause us to influence our plans at this time. That amendment is now before you, and that has now shifted our position to a neutral position. We do want to make sure we explain our fiscal note, though. The fiscal note represents what our initial understanding of the bill to be, that is the cost to stand up a Roth provision. The big concerns obviously lie around doing an RFP for a record keeper, updating our computer systems to track the contributions and interest accordingly, and all of the standard administrative processes associated with that. As the amendment would not ask us to do those things, obviously that fiscal note would need to be amended to reflect it should the amendment be included and passed by the committee and the Legislature. Subject to your questions, that concludes my testimony.

**KOLTERMAN:** Thank you. So, Orron, if I read this amendment correctly, it really takes you out of the Roth IRA conversation with public employees.

**ORRON HILL:** That is how we read the amendments, Senator, yes.

**KOLTERMAN:** Is the OSERS-- OSERS, got them on the mind. Has the NPERS and the PERB, is that correct?

**ORRON HILL:** Correct. Yes, that is how we see the amendment.

**KOLTERMAN:** So as an example in Seward County, the county I represent, comes forward and says we have our own Roth IRA plan available to public employees. It stands alone from NPERS?

**ORRON HILL:** It would, yes.

**KOLTERMAN:** It would allow them to do this.

**ORRON HILL:** That's how we see the bill.

**KOLTERMAN:** According to state statute. OK, that's how I read it, so-- so there wouldn't be a fiscal note either.

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**ORRON HILL:** That-- that leads right into why I said we would need to amend our fiscal note based upon the amendment.

**KOLTERMAN:** Thank you. Appreciate you coming. Any other questions? Seeing none, thank you very much.

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

**KOLTERMAN:** Any additional neutral? Senator McDonnell, you want to close on this bill, please? Nice to get this amendment today.

**McDONNELL:** I apologize on the short notice with the amendment, but again, it's real simple, and I promised Senator Kolterman that I'd be brief. Was trying to harmonize the state statutes with federal law, give people the opportunity to participate in a Roth, at the same time have no negative financial impact to the state system. Thank you.

**KOLTERMAN:** OK. Seeing no other testifiers, no other bills, no other-- nothing else to do, I'm going to adjourn this-- can you please stick around for just a short [RECORDER MALFUNCTION].