

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

KOLTERMAN: Welcome to the Retirement System 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 that you attend-- those attending our hearings to abide by the following rules. Please silence or turn off 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. You know-- everybody that's here knows that you have to sign in with a blue sheet. Spell your name for the record before you testify. Be concise. And you can go on the record-- we don't have any letters at this time, though, so. We ask that you please limit or eliminate handouts. If you do have handouts, have enough for eight copies. If you have written testimony, but do not have eight copies, please let our page know. To my immediate left is committee counsel, Kate Allen. To my far right at the end of the table is Katie Quintero, our committee clerk. The committee members who are here today will introduce themselves beginning at my far left.

SLAMA: Hi. Julie Slama, District 1.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

STINNER: John Stinner, District 48: all of Scotts Bluff County, Kimball and Banner County.

McDONNELL: Mike McDonnell, LD 5, south Omaha.

CLEMENTS: Rob Clements, LD 2, Cass County and eastern Lancaster.

KOLTERMAN: Thank you. Our page today is Chloe. She's a UNO Maverick majoring in political science. And with that, we're going to start with two hearings today. LB700 is the first bill up. I'll introduce it and turn it over to Senator Lindstrom.

LINDSTROM: Welcome, Chairman Kolterman.

KOLTERMAN: Thank you. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I represent Legislative District 24 and here today to introduce LB700, which I introduced at the request of the Nebraska Public Employees Retirement System. It primarily eliminates obsolete language and makes changes to several duties of Public Employees Retirement Board, known as the PERB. In addition, it eliminates the requirements for school employers and members to report early retirement incentives to the Retirement System. The proposed changes

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Nebraska Retirement Systems Committee February 2, 2022

are, number one, it eliminates obsolete investment option language in the County and State Employees Retirement Acts. It adds vesting language that was inadvertently left out in our reemployment provisions that were adopted in 2019 under LB34 in the State Employees Retirement Act. It eliminates obsolete dates for the Nebraska Investment Council and the PERB to file their annual reports with the Nebraska Retirement Systems Committee. It eliminates obsolete requirements for NPERS to create annual reporting forms for political subdivisions. It eliminates obsolete language regarding the Legislative Council Retirement Study Fund. And it adds template investment language to the County and State Equal Retirement Fund provisions. It updates the deadline for the next compliance audit to be conducted no later than December 31 of 2028. It broadens the job qualifications for the NPERS director. And it strikes the current statutory language regarding NPERS' attorney Nebraska Bar Association membership. The intent of this change is to clarify that the NPERS attorney is not required to be a dues-paying member of the Nebraska Bar Association. However, the attorney must be authorized to practice law in the state of Nebraska. It also-- it also authorizes the PERB to hire an attorney for a six-month probationary period pending approval to practice law in Nebraska. It amends the retirement education training provisions to allow paid time off for judges, State Patrol, and school plan members to also attend live webinar sessions offered during regular work hours. It eliminates the distinction of the state and county plans between under age 50 and over age 50 education programs. Instead of authorizing two paid workdays to attend under age 50 sessions and two paid workdays to attend over age 50 sessions, members webinar-- members would be authorized to receive three days of paid workdays to either attend in-person or live webinar training sessions during the regular work hours. And it eliminates school employer and member reporting requirements regarding early retirement inducements. A report has been prepared by the Retirement Committee legal counsel based on the data collected by NPERS and OPS regarding early retirement incentives that have been awarded since 2018. A copy of that report has been distributed to all of you committee members and is also available on the legislative website. There's an amendment, AM1583, and I'll talk about that. I introduced AM 1853 [SIC] over a week ago, so there would be sufficient notice to stakeholders and all interested parties. Though the amendment is 24 pages long, the actual changes are very minimal. That amendment eliminates requirements of the Class V School Employees Retirement Act for the OPS school district and OSERS members to report early retirement incentives. This was inadvertently left out of LB700. And at the request of our committee legal counsel, AM1583 also

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Nebraska Retirement Systems Committee February 2, 2022

realphabetizes several words which were out of alphabetical order in the definition sections in the School and Class V Employees Retirement Acts. So at this time, I'd respond to any questions you might have. But as I said, all of this is-- most of this is pretty much boilerplate and we do have legal counsel from NPERS here that will try to answer any questions you might have. I will say this. The reason that we don't want to have to collect the data any longer for the early incentive program is based on the fact that, and they'll talk more about this, that plan is working quite well. But NPERS has really no way of-- it's not part of the plan and it's something that we ask them to do, which is not in the scope of the plan. So I'll let them talk a little bit more about that as we go forward. At that-- at that, I would answer any questions.

LINDSTROM: Thank you, Chairman. Any questions? Senator Slama.

SLAMA: Thank you, Mr. Vice Chairman, and thank you, Mr. Chairman, for being here today. So correct me if I'm misunderstanding this. But the introduced LB700 has improperly alphabetized definitions.

KOLTERMAN: Yes. I have a very OCD legal counsel and she realphabetized it.

SLAMA: That's-- that's wonderful of her. Thank you, Mr. Chairman.

KOLTERMAN: You're very welcome.

LINDSTROM: Any other questions? Seeing none, thank you. We'll now go to proponents of LB700. Good afternoon.

ORRON HILL: Good afternoon. Greetings, Chairperson Kolterman, Vice Chairperson Lindstrom, and members of the Retirement Systems Committee. 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 or PERB and the deputy director and legal counsel for the Nebraska Public Employees Retirement Systems or NPERS. I'm here to testify in support of LB700 and AM1583 here now-- hereinafter collectively referred to as LB700. The PERB and NPERS proposed many of the changes in this guidance. We also got some additional input from the Revisor's Office as well as the committee's legal counsel on some of the text, and we will support all of those changes and are appreciative of their efforts. In the interest of time and to minimize duplication, I'll just kind of hit three of the big focuses for the PERB and NPERS for your attention. The first is to update the language regarding the deputy director and attorney, or sorry, the director and attorney job

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Nebraska Retirement Systems Committee February 2, 2022

descriptions and qualifications. This language hasn't been updated for over two decades, and so we'd just like to bring that language more consistent with how those types of jobs are advertised in the field. The second is to repeal the early retirement inducement reporting requirements. And I want to spend a little bit of time on this. The PERB and NPERS asked that this be repealed because it's not really giving us much of a benefit and it's starting to cost plan assets that were not originally anticipated when the bill was passed. Most importantly, due to changes in the pricing of how data is stored that are dictated by the Office of Chief Information Officer or OCIO, if I use that acronym. Further, we also believe after looking at the data that the changes that the Legislature put into effect to address the double and triple dipping issues that were of a concern in 2017 have worked. If you look over that report, you will see the trends downward in both the total number and value of the early retirement inducements. I'll be glad to field any questions related to those should you have any during that time. But perhaps most importantly for NPERS is that waiting on getting this information from the reporting agents for the school districts or the members themselves is slowing down our ability to process benefits in a timely manner. And as you know, the people in our plans rely upon their retirement benefits and we want to get those out the door as quickly as we can. So getting rid of that will help us. Finally, the last thing I want to focus on is the update of our educational programs. Necessity breeds ingenuity and invention. The COVID-19 pandemic brought out a whole bunch of information and created opportunities for us to evolve our education programs. We did so and have been using that as a platform to test online webinars and training. And there's a few specific things that we'd like to do. First, we'd like to combine the two programs, one for those under age 50 and the other for those over age 50, into one program that serves all of our members. The second is we would like to ensure that we get more participation. Since 2015, we've had to cancel approximately 43 percent of our under 50 seminars just due to lack of interest in attendance, and we think we could better use our resources in other ways. And so we would ask for support in that. Our web presence has significantly increased over the last two years. For example, in 2021, we held 35 separate web events that reached 2,466 attendees. We also added 10 YouTube videos that offer instruction regarding retirement or how to prepare those forms when applying for retirement. These videos included video presentations of our full online webinars, so those who couldn't even attend the webinars had access to that same resource 24 hours a day, seven days a week. And finally, as of last month, our YouTube channel had over 10,000 views. We're very proud of that. That means more and more people are getting

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Nebraska Retirement Systems Committee February 2, 2022

access to their retirement information. So subject to your questions, Senators, and given the success of these programs, we would like to have those changes put into place so that we can better serve our members and we support all of the language in LB700. I would like to thank Kate Allen and the Revisor's Office for their input on the legislation, Senator Kolterman for introducing the bill, and you all for allowing us to present today. And on a final note, Senator Slama, when you have a legal counsel for a retirement system and for a committee that are pretty, as I call it, CDO, because it's otherwise out of alphabetical order, that is part of the reason for some of the language in LB700.

SLAMA: And we're lucky to have them.

ORRON HILL: Thank you.

LINDSTROM: Thank you, Mr. Hill. Any questions from the committee? Senator Clements.

CLEMENTS: Thank you, Mr. Vice Chair, and thank you, Mr. Hill. The eliminating the reporting requirements for early retirement inducements is one thing that I really noticed and would like to discuss that a little bit more. The early retirement inducements, I'm not sure if that's paid by the plan or the local school district. Who pays that?

ORRON HILL: Those are paid by the local school districts.

CLEMENTS: All right. So it is not a-- a function of something the plan has to manage or pay for. Is that one reason why it's being eliminated [INAUDIBLE]?

ORRON HILL: Yes, that's exactly correct. It is not associated with the plan in any way, shape, or form. We don't administer any of the early retirement inducements or incentives through the different school districts. We were just asked to collect the data as there was a concern about double and triple dipping several years ago. And so we served as that repository of information.

CLEMENTS: And the decrease in the election of the early retirement inducements or payment of it, has some of the legislation that's been brought affected that?

ORRON HILL: I would say absolutely. When you look at the trend data in the 2017-2018 timeframes, some of those amounts of those early retirement incentives or inducements were over some of the caps that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

were put on in legislation at that time as well. So it has brought that down. There's been, as you can see through the data, there was obviously concerns by the school districts about negotiated agreements and contracts. And so there's been-- it's been a slower decline than an absolute cliff drop off. But it is working its way forward. I think you will also hear potentially from some of the school districts today about how they've attempted to negotiate those provisions out of their contracts following the passage of that legislation to address the legislators' concerns.

CLEMENTS: And did I see that Omaha Public Schools has eliminated that as a function?

ORRON HILL: Our understanding, we didn't collect the data from Omaha Public Schools since we don't administer their retirement plan. But my understanding from discussing-- discussions with their director is that Omaha went back to the negotiating table and negotiated that out of their contract. But I think there'll be those who will testify to that later on.

CLEMENTS: OK. Thank you. I just appreciate the explanation.

ORRON HILL: Absolutely, Senator.

LINDSTROM: Thank you. Any other questions? Seeing none, thank you, Mr. Hill.

ORRON HILL: Thank you.

LINDSTROM: Next proponent.

JASON HAYES: Good afternoon, Senator Lindstrom, members of the Retirement Committee. I'm Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, director of the government relations for the Nebraska State Education Association. The NSEA supports LB700. Specifically, we support eliminating the school employer and member reporting requirements regarding early retirement inducements. This will help reduce paperwork inside school offices, as well as costs associated with processing those reports by NPERS, thereby saving plan resources. We also support amending the retirement education training provision so that school members will receive paid work time to either attend in person or live webin-- webinar training sessions during regular work hours. Retirement and financial planning education, particularly when it is done many years in advance of retirement, help members prepare and financially plan for a successful transition to their eventual

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

life following retirement. For these reasons, we ask the Retirement Committee to advance the bill. And I thank you for your time today.

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

JASON HAYES: Thanks.

LINDSTROM: Next proponent.

BLAIR MacDONALD: Vice Chair Lindstrom, Chair Kolterman, and members of the Nebraska Retirement Systems Committee, my name is Blair MacDonald, B-l-a-i-r M-a-c-D-o-n-a-l-d. And on behalf of the Omaha Public Schools Board of Education, I'm appearing before you today as a registered lobbyist. I am here today to express support for LB700. We have been working closely with Chairman Kolterman and the committee over these past several years to harmonize the Omaha School Employees Retirement System with the Nebraska School Employees Retirement System. We support LB700 as it continues to bring OSERS into parity with NSERS. Our support today encompasses AM1583 to LB700, which would remove an early retirement incentive reporting requirement in both the OSERS and NSERS plans. Omaha Public Schools no longer offers early retirement, as you heard previously from previous testifiers, and AM1583 is fundamentally an acknowledgment that the reporting is no longer necessary. We are pleased to offer our support for LB700 and AM1583. And we would like to take this opportunity to once again share our appreciation for the great relationship we have had with Chairman Kolterman and the committee. Thank you for your time. I'll happily answer any questions you may have.

LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you. Any other proponents? Seeing none, any opponents? Any neutral testifiers? Senator Kolterman, you're welcome to close.

KOLTERMAN: Thank you, Senator Lindstrom. I just want to make a general observation. I appreciate the support that we had on this legislation and the explanation that Orron Hill has indicated. Senator Clements, I, too, I think that the early incentive program is working. It's obvious from-- from the research that we did. By no means do we want to stop that legislation. It's just the reporting to the PERB that we want to put an end to. The legislation would still be in place. So-- and it's worked. Obviously, Omaha just did away with theirs. There are school districts that are still utilizing it, but they're following the guidelines that the law spells out. But we really don't have a good mechanism to collect that data and continue to utilize it in the

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Nebraska Retirement Systems Committee February 2, 2022

plans. That's really the issue here. So with that, if you have any other questions, I'd be glad to try to answer those for you.

LINDSTROM: Thank you, Chairman. Any follow-up questions? Seeing none, thank you. That will end the hearing on LB700. And we will now open the hearing on LB1043.

KOLTERMAN: Again, my name is Mark Kolterman. I represent Legislative District 24 and here-- and I'm here to introduce LB1043, which I rep-- which I introduce at the request of Nebraska Public Employees Retirement System, known as NPERS. You may recall this bill that I requested a motion to suspend legislative Rule 5, subsection 15 in order to introduce it in a short session. While the need for this bill does not present an emergency. I supported introducing a bill this year because NPERS is dealing more and more frequently with specific scenarios described in this act, and it's important to codify the rules in order to maintain the IRS plan compliance. For a little background, I want to start with a little bit of why these requirements are important. The federal tax code requires that an individual terminate employment with all employees covered by a multiple-employer retirement plan before an individual can take a distribution from the retirement plan. The School Employees Retirement Plan, known as the School Plan, is a multiple-employer retirement plan. The state of Nebraska is an employer covered by-- the state of Nebraska is an employer covered by the School Plan because specific employees of the State Department of Education, known as the Nebraska NDE, Department of Health and Human Services, known as DHHS, and the Department of Correctional Services, known as DCS, participate in the School Plan. Specifically, state school officials employed by NDE are eligible for School Plan membership and certified teachers employed by either DHHS or DCS who are covered by the State Code Agency Teacher Association, known as SCATA contract, are also eligible for School Plan membership. I want to be clear. The language in this bill and the intent of this bill is to cover any agency of the state which may in the future employ certified teachers who are covered by the SCATA contract or its equivalent successor recognized by the state of Nebraska as exclusive and sole collective bargaining agent for all teachers other than temporary teachers employed by the agency of the State of Nebraska. I want to point out that all other state of Nebraska employees partici-- participate in either State Employees Retirement Plan, the Judges Retirement Plan, or the Nebraska State Patrol Retirement Plan. LB1043 codifies the current practices and rules for certified teachers covered by the SCATA contract, who are employed by either DHHS or DCS, and for state school officials employed by NDE. In addition, it addresses rules for NDE state school

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

officials, as well as DHHS and DCS certified teachers covered by the SCATA contract who previously or subsequently are employed by a school district, educational service unit, or any other state agency. LB1043 proposes really one change from current practice and policy. It eliminates an NDE state school official's ability under 79-920 to elect whether to remain in the School Plan or join the state plan when the individual is hired to work for the NDE as a state school official. There's also an amendment to this bill. AM1667 does not change the original intent of the bill as introduced. It just strikes some various terms and substitute language, which is more specific in order to provide greater clarity. So again, Orron Hill will be here to testify and try and answer any questions. There are really a lot of technical questions about the IRS requirements, and he can answer those for you. I really am bringing this bill because we've been working on this for several years and I know it's a short session. But-- but my-- my intent was so that we could make it easier on those of-- those three of you that will be here next year. You won't have to worry about this. So with that, I will turn this over to the proponents and go from there.

LINDSTROM: Thank you, Chairman. First proponent.

ORRON HILL: Good afternoon again, Chairperson Kolterman, Vice Chairperson Lindstrom, and Retirement Systems Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Public Employees Retirement Board and the deputy director and legal counsel for the Nebraska Public Employees Retirement Systems. I'm here to testify in support of LB1043 and AM1667, hereinafter collectively referred to as LB1043. Senator Kolterman did a great job of explaining the reasons for the bill and what it does, so I'm going to jump past that and go to what may be more educational informational for the committee. I agree with Senator Kolterman wholeheartedly. We need clear rules in our plans to define what termination of employment and reemployment rules exist, especially when we have an employer like the state of Nebraska that participates in multiple different retirement plans, including the multiple-employer school plan. All told, NPERS has documented at least 15 different factual scenarios that are created by the language in the current statutes that LB1043 helps us address. It will help our employers by giving them clear guidance. It will help us by ensuring we can educate the employers, as well as help our members by giving them the opportunity to know in advance what their treatment is going to be. It's a win-win-win for all the stakeholders involved, and we would definitely ask for your support. One example, I'll give you 3 of the 15. I won't bore you with all of them, but the first example was in December of 2021. So it is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

recent and it is current. An individual who worked for DCS or Department of Correctional Services and participated in the state plan, terminated that position and went to work as a teacher in a different DCS facility after obtaining their teaching certificate. Pursuant to the SCATA labor contract, the individual stopped participating in the state plan and started participating in the school plan. Since the individual was still working for the state of Nebraska, the individual had not terminated employment with the employer providing that plan and therefore was unable to take a distribution from their state plan. They didn't understand that at the time. Once we explained it to them, they understand it--understood it but were disappointed in the result. However, they accepted it as it is the requirement under both the current state law as well as the federal tax code. LB1043 just helps by better articulating these rules and letting people know in advance what those rules are. A second example occurs when an individual terminates employment with a school district or educational service unit, I'll call them school districts for short, and goes to work with the State Department of Education or NDE. Under the current law, the individual will either participate in the state plan or the School Plan, based upon a number of factors, such as whether the individual is required to hold a teaching certificate for the position at NDE, how much time has passed between when the individual terminated the school district and when they went to work for NDE and then whether or not the individual retired or took a distribution in between that time. Depending on the unique facts and circumstances, the individual will either be forced into the state plan or may elect to choose participation in the School Plan or state plan. As Senator Kolterman described, the election will go away and the statute will now dictate clearly what the result will be. Analyzing these facts and applying the law as currently written is challenging for many of our members, as well as the employers. And by having the statute dictate the result, it simplifies the process for everyone. The final example occurs when an individual who participates in the School Plan while working for NDE, DHHS or DCS terminates that position and attempts to go work for a school district. The current provisions of Nebraska Revised Statutes 79-921 do not speak to this particular fact pattern. We have to look to the other provisions of the act. By adopting the provisions of LB1043, it will guide the employers as well as the members as to what the results for those situations are as well. For these reasons, the PERB and NPERS ask for your-- ask for you to support LB1043 and advance it from committee with AM1667. And we'd like to thank Kate Allen, the Revisor's Office, and Senator Kolterman for the parts they played in the drafting and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

introduction of these bills. Subject to your questions, that concludes my testimony.

LINDSTROM: Thank you, Mr. Hill. Any questions? Senator Clements.

CLEMENTS: Thank you, Mr. Vice Chair, and thank you, Mr. Hill. The-- I recall that for the teachers plan, we have the retirement termination of employment defined as working eight days a month or less. Is that provision in some of this language?

ORRON HILL: The definition of termination of employment is not affected by the language of LB1043. Simply, what plan membership is affected is by the amendment to 79-921. The termination of employment is found in 79-902. So it's a separate section of law, Senator.

CLEMENTS: People in either of these plans, are they still subject to part-time employment requirements of the eight days a month or less?

ORRON HILL: I understand your question. Yes, Senator. So for those individuals that retire from the School Plan and want to go work for a school district, whether they're retiring from the Department of Education, DCS, DHHS, or a school district, they're still subject to those eight-day limitations of substitute or voluntary service on an intermittent basis during 180 days. That does stay in effect, yes.

CLEMENTS: And do you still believe that the eight days a month rule qualifies under IRS guidelines?

ORRON HILL: Senator, we believe as long as we're allowed to enforce it and as long as the employers and members comply with it, we should be just fine in that regard. So far, it has been working very well. We've got a lot of education out there to the employers as well as the members: frequently asked question pages, notice pages that these are the rules. And we've even added some of that information into the retirement packets that go out to members before they actually apply for their benefits. So we're well on top of that and ready to go.

CLEMENTS: Yeah, thank you. I have had conversations with both administrators and teachers. Teachers may be complaining a little bit, but I'm glad to inform them that they can pay back all of their retirement if they exceed this, and the state has pushed the limit to the maximum that we think would be allowed. And it is good that we have a more clear definition of the requirement rather than just something that said a reasonable amount of time. Appreciate knowing that that's still in effect.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

ORRON HILL: Yes, Senator. And I would like to thank the Legislature for passing that more firm date on behalf of our member services department. One of the very frequent questions that they received was how many days can I sub after I retire? Before the passage of that bill, we couldn't give them a set number. Now we can, and it's made their lives a lot easier. So again, thank you to this body for making that happen.

CLEMENTS: Thank you.

LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you, Mr. Hill. Next proponent.

JASON HAYES: Senator Lindstrom and members of the Retirement Committee, I'm Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, director of government relations for the Nebraska State Education Association. The NSEA supports LB1043. We support eliminating the election option for certificated teachers who are School Plan members and remain in the School Employees Retirement Plan when they take a position with the state of Nebraska. Rarely does a member elect not to remain in the school plan, and so the clarification helps reflect what is current practice. We ask the Retirement Committee to advance the bill. And I'll just add the-- the eight-day clarification last year has also helped my life as well, because I get a lot of questions from members who want to know what that delineation is. And-- and instead of responding with a one-page email, I can do it in a couple of paragraphs so.

LINDSTROM: All right. Thank you, Mr. Hayes. Any questions? Seeing none, thank you.

JASON HAYES: Thanks.

LINDSTROM: Next proponent. Any opposition? Any neutral testifiers? Chairman Kolterman, if you'd like to close.

KOLTERMAN: Thank you again, Vice Chairman Lindstrom. I would just say this, that we-- we did reach out to all the parties involved in this to get their support, and so we had no negative comments. They worked with us. They all evaluated what we're trying to do, and my legal counsel did that and we found out that they're all on board. So appreciate your green light on this bill.

LINDSTROM: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee February 2, 2022

KOLTERMAN: Thank you. And I'd be happy to try and entertain any questions.

LINDSTROM: Any final questions? Seeing none, thank you, Chairman. And that will close the hearing on LB1043.

KOLTERMAN: Can we take ten minutes so I can brief the committee, go into Executive Session?