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Nebraska Retirement Systems Committee
February 12, 2007

[LB612 LB613]

The Committee on Nebraska Retirement Systems met at 9:00 a.m. on Monday, February 12, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB612 and LB613. Senators present: John Synowiecki, Chairperson; Tom White, Vice Chairperson; Philip Erdman; Lavon Heidemann; Russ Karpisek; and LeRoy Louden. Senators absent: None. [LB612]

SENATOR SYNOWIECKI: Good morning everyone. I want to welcome you to the Nebraska Retirement Systems Committee. I'm John Synowiecki and today we will be accepting testimony on two legislative bills, LB612 and LB613. Before we get started I would like to introduce members of the committee and committee staff. To my far right is Mr. Donn Jones, the committee actuary. Next to him is Senator LeRoy Louden from Ellsworth. Taking a seat right now is Senator Tom White from Omaha, vice chair of the committee. To my immediate left is Senator Phil Erdman from Bayard, Nebraska. Senator Lavon Heidemann will be joining us a little later as I understand it. Senator Russ Karpisek is from Wilber, Nebraska. Welcome, Russ. The committee clerk is Laurie Vollertsen and Jeremy Nordquist is the research analyst and he will be introducing the first bill. If Senator Heidemann arrives he'll be introduced as well. I think most of the folks here know the rigamarole. Sign-in sheets are available. Please fill them out legibly. Please disengage any cell phones if you have them on ringer, please, so they do not interrupt the testimony. We will first hear proponent testimony, followed by opponent testimony, and then any neutral testimony. When you come forward please clearly state and spell your first and last name. As you all know, we are developing a record here and we need that information. Reading someone else's testimony is not allowed, but if you want to submit written testimony we would be happy to distribute it to members of the committee and it will be established as part of the record for each individual for the bill that you submit it for. With that, we will proceed to the introduction of LB612. Jeremy Nordquist, who is the research analyst for the committee, will provide the introduction. Welcome. [LB612]

JEREMY NORDQUIST: Good morning, Senator Synowiecki and members of the Retirement Committee. I am Jeremy Nordquist, N-o-r-d-q-u-i-s-t, and I am the research analyst for the Retirement Committee. Today I introduce committee bill LB612 for your consideration, a bill to redefine compensation for the school employees retirement system. In 2005, the Legislature enacted LB503, which contained provisions intended to address what has commonly been referred to as salary spiking by school employees in anticipation of termination of employment for purposes of retirement. LB503 implemented an annual compensation cap of 7 percent for each of the last five years of employment that proceeds actual retirement. In addition, if a member receives compensation increase that exceeds 7 percent the employing school district is required to inform the retirement board that said member has received an increase exceeding the 7 percent cap. The intent of LB503 was to put in statute legitimate reasons for an

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increase in a member's compensation of more than 7 percent, including if the member experienced a substantial change in employment position; the additional compensation was the result of a collective bargaining agreement, or; the additional compensation was the result of a district-wide permanent benefit change for a category of school employee. LB612 seeks to add an additional legitimate exemption to the 7 percent cap by allowing compensation in excess of 7 percent to be included if an employee received an educational degree during the last five years of employment. I believe there will be individuals testifying after me that can explain the impact and the need for this legislation. Thank you, Senator Synowiecki and members of the committee, for your consideration. [LB612]

SENATOR SYNOWIECKI: Thank you, Mr. Nordquist. Any questions from the committee? Seeing none, thank you. We will now accept proponent testimony for LB612. Proponent testimony. Good morning. [LB612]

KEN BABCOCK: Good morning. I'm Ken Babcock, K-e-n B-a-b-c-o-c-k, with Lincoln Public Schools. And Lincoln Public Schools could support LB612. I think we have some concerns about it. The major concern is that it adds the exemption of an advanced degree, but negotiated agreements have many lanes and columns. And for example, LPS, we recognize a B.A. plus 18--a bachelor's degree plus 18 hours--and that would not be an advanced degree. We also recognize a Master's and a Ph.D. So we would suggest that the language be broader. Also, you know, if a teacher becomes nationally certified we accept that. So if you have any questions on that I would... [LB612]

SENATOR SYNOWIECKI: Questions from the committee for Mr. Babcock? Yes, Senator White. [LB612]

SENATOR WHITE: Would those situations cause an increase over 7 percent in a given year? [LB612]

KEN BABCOCK: Yes. [LB612]

SENATOR WHITE: Both of them. What kind of increase would they cause? [LB612]

KEN BABCOCK: Well, depending on the lane structure, there are many school districts that, for example, for moving from a B.A. to a B.A. plus 18 that could be a 5 percent increase in itself, plus any increase for longevity or any increase in the base. Now all of those...you know, I'll back up a little bit. If we're going to add this language to the law I think it just has to be as broad as possible. These things are contained in our negotiated agreement, so in my opinion, it would be excluded from the 7 percent cap without a change in the law. But if we're going to change the law to add for advancement on the salary schedule--basically, that's what it is--then I would suggest that we make that as broad as possible. And a possibility that I thought of is increase in compensation due to

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salary schedule advancement, additional experience, or an employer-accepted achievement or educational degree. For example, at Lincoln Public Schools we have our own in-service department so teachers can take in-service during the school year and we count that as equivalent to college hours. So they could have a bachelor's degree plus 18 hours of our in-service hours and still move on the salary schedule and possibly put them over the 7 percent. And that's also in the negotiated agreement. So I would...you know, we could support it, but I would think that we would want that language broader to take care of anything that would cause that increase. [LB612]

SENATOR WHITE: Have you drafted language that you believe would be acceptable? Is it in writing? [LB612]

KEN BABCOCK: Yes, and I can get that to you. [LB612]

SENATOR WHITE: Thank you. [LB612]

KEN BABCOCK: Also, if I could, within the law, or in the legislative bill, there was movement of sections. And if I could take a look at it here. For example, on page 12...we'd take a look at page 12. Okay. On line 5, it talks about the determination of compensation. All right? And then on page 13, on line 16, it talks about in determination of compensation. I'm thinking that on page 12, line 5, we wanted that language deleted, because mostly it's just repeat. The new language that starts on page 13 is mostly a repeat of what's on page 12, although there are some changes. There are, for example, the compensation base, that base year, which was 2005, in the changes it makes the base year 2007. And I don't know if that was meant to be or not or if we just "reratcheted" up a couple years. And if...one of the things that I did want to point out in that moving that language from one place to another is on the language concerning category, it defines category. The old language is page 12, line 23. It starts down at the bottom of page 12 and it talks about a category, and the new language is in the middle of page 14. And when that was transcribed from 12 to 14, the new language doesn't make any sense. The old language talks about a category means either all employees who are administrators or certificated or all employees who are not administrators or certificated or both, and quite frankly I have a little problem following the old language. But the new language states that all employees who are not administrators or certificated teachers or who are not administrators or certificated...so I think within the new language on 14 one of those nots have to go. It was just transcribed, you know, incorrectly. [LB612]

SENATOR SYNOWIECKI: Mr. Babcock, relative to the determination of compensation, the old language was for determination of members on or after July 1, 2005. This bill simply adds that Lincoln Public Schools then could recognize an attainment of an educational degree for purposes of increase of compensation above and beyond 7 percent. It doesn't dictate what Lincoln Public Schools gives for an advanced degree or

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a degree. It just simply indicates that effective under the new language effective July 1, 2007 that it may be a legitimate recognition within the employee's retirement calculations that an advanced degree could and may put that employee above 7 percent increase in salary. Isn't that your understanding? [LB612]

KEN BABCOCK: Yes. [LB612]

SENATOR SYNOWIECKI: We're simply adding one category of recognition to that and that's how bill drafting simply drafted it. [LB612]

KEN BABCOCK: Yes, and I understand that. The intent is to, if I understand the intent correctly, it is to if someone earns the advanced degree which puts them over 7 percent, because the school recognizes the advanced degree... [LB612]

SENATOR SYNOWIECKI: And it would allow them to be recognized within the retirement calculation. [LB612]

KEN BABCOCK: Right, right. [LB612]

SENATOR SYNOWIECKI: Okay. [LB612]

KEN BABCOCK: And what I was simply saying is if we are going to recognize that as a legitimate reason for going over the 7 percent and being recognized by the retirement system that we need broader language to recognize the other things other than just an advanced degree. It could be moving from a bachelor's to a bachelor's plus 18 or a bachelor's plus 18 to a Master's degree, because those also earn teachers more money in LPS system and a myriad of other systems. [LB612]

SENATOR SYNOWIECKI: Okay. Any other questions for Mr. Babcock? Senator Louden. [LB612]

SENATOR LOUDEN: Yes. I've followed this along a little bit and fella says I usually chase cows and cabled hay more than I did retirement, but I have some idea. As I read this here, during the 60 months, which is five years before someone retires, anything more than 7 percent above their compensation can't be used for their retirement package. Is that the way this... [LB612]

KEN BABCOCK: That's how I understand it, yes. [LB612]

SENATOR LOUDEN: Now, but they put in here if you have some increase from an educational degree, why it can go over that. Now if someone is about to retire then they go out and get them some substantial more education in the last three or four years before they retire then their retirement benefits would increase substantially. Is that

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correct? [LB612]

KEN BABCOCK: That's possible. [LB612]

SENATOR LOUDEN: And you want to change the language so that they could go more than 5 percent. They could spike even higher when you say take some of the language out that this 5 percent wouldn't be enough or that some of your degrees would be 5 percent? Is this what you're telling me? [LB612]

KEN BABCOCK: No. What I'm saying is that I think the law or the legislative bill its impetus was a temporary ruling at the retirement system, in the retirement system, that movement on a salary schedule and the vast majority of the districts within the state of Nebraska have a salary schedule that rewards people for experience in further education. And how I understand it that a retirement office said that's not part of the negotiated agreement. So movement on the salary schedule isn't part of the exemption for negotiated agreement, and thus if you move on the salary schedule...let's say you get a Master's degree, you go over the 7 percent, then we're not going to count what you went over that 7 percent. Then there was some reaction from educators that said well, yeah, this is part of the negotiated agreement. And we have an exemption in here for negotiated agreement. You know, the salary schedules have been in existence for 50 years. And for example, at Lincoln Public Schools movement on the salary schedule is part of the negotiated agreement. There are some years we don't move and there are some years we do. Some years we give them step movement down for their experience and some years we don't. So that came back then. There was a reaction to that and then this bill was drafted. It said okay, we're going to take care of that. We're going to make sure that if somebody gets an advanced degree then that is outside of that 7 percent cap. And I don't have a problem with that, but what I'm saying is if the intent of the bill is to take care of that 7 percent cap and how that interaction interacts with movement on the salary schedule then we just don't want to put just an advanced degree, because we have a lot of different ways that teachers are paid within a negotiated agreement based upon rewards for education and further experience with the district. You know, if the retirement system would have stayed with their initial thought that movement on the salary schedule was outside of the 7 percent cap there would have probably been some sort of hearing in court about that, because there is an exemption for negotiated agreements and that material is covered in the negotiated agreement. All I'm saying is if we're going to add this, if we're going to add educational degree, then we should go ahead and add broader language to cover those things that are currently already in negotiated agreements that may put a teacher above the 7 percent. [LB612]

SENATOR LOUDEN: Okay. Then if it would just plainly cap, you said you didn't have a problem with if he wasn't going to change the law. Your idea is if we're going to change the law then it should be broader. Then you don't have a problem with just capping it at

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7 percent? That's it? Advanced degrees or no, because I don't see where having an advanced degree in the last few years of someone's retirement is going to do the school system that much good. The reason you increase salaries for advanced degrees is when you got these people down in the trenches and then you're able to hire them for several years and so you're willing to compensate them for that. But for the last five years the only reason they're getting an advanced degree is to get a higher retirement rate. Is that correct? [LB612]

KEN BABCOCK: Well, I don't know what the motives would be for people. Generally, you're exactly right though. People don't get advanced degrees in their later years of their career. Generally, you know, they start right out of college and when they get hired and they start working on a Master's and Master's plus some hours. You know, I certainly am not aware of anybody who is, you know, at age 50 or whatever starts to work on a Master's degree in order to go above that 7 percent cap. And the worth to the district of a degree that's a relative thing, too, you know? If someone wants to get a degree when they're 50... [LB612]

SENATOR LOUDEN: But when you say if we broaden it to just add 18 hours or something like that someone could go in there and get some extra hours like that and still increase their retirement benefit. [LB612]

KEN BABCOCK: Certainly. And it's my opinion that they can do that now under the negotiated agreement, because there's an exemption in here. You can go over the 7 percent cap if your compensation is due to the negotiated agreement. All the salary schedules are within the negotiated agreement. What worries me here is by adding this specific language is that then we're pointing this out that okay, that this seems to be something special even the advancement to it because of a Master's degree is in the negotiated agreement too, but we're pointing this out by...and then we're leaving out some others. And that kind of worries me then for interpretation sake. You know, for example, there's many school districts, including Lincoln Public Schools, that reward teachers if they become nationally certified, and it is quite a process to become nationally certified and very, very few teachers get it. And we then pay teachers additional money if they get that. That is not an advanced degree. It is a national certification and it is known nationally that those folks generally have better results in the classroom. So we recognize that. So I think that if we're going to add something to the law, I think that the law should be broad enough to take care of those things that we reward teachers with. [LB612]

SENATOR LOUDEN: Okay, thank you. [LB612]

SENATOR SYNOWIECKI: Thank you, Senator Louden. Senator Heidemann has joined us. Welcome, Lavon. Any other questions for Mr. Babcock? Seeing none, thank you for your testimony this morning. [LB612]

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KEN BABCOCK: Thank you. [LB612]

SENATOR SYNOWIECKI: Next testifier in support or as a proponent for LB612.
[LB612]

MIKE DULANEY: Senator Synowiecki, members of the committee, my name is Mike Dulaney, D-u-l-a-n-e-y, and I'm the associate executive director for the Nebraska Council of School Administrators. We would like to provide a little bit of clarification for the record with regard to this issue. It is our understanding that during the interim there was some confusion among various legal counsel in the Capitol and the state office building about what the language did or did not do in LB503, the language that created the 7 percent rule. We felt in our minds that the language was clear. We didn't see any particular problem until that controversy arose. It was our position that if, in fact, there is some disagreement among the legal minds that we would certainly support legislation that would clarify that and I think Mr. Babcock is trying, in his testimony, trying to offer some ideas on how to exactly to do that. We would like to be a part of that process too to make sure that we get that exclusion for the agreements under collective bargaining to make sure that those are excluded from the rule. That was the intent of LB503 passed in 2005. So we would like to be a part of those discussions as we move forward.
[LB612]

SENATOR SYNOWIECKI: Thank you, Mr. Dulaney. Questions for Mr. Dulaney? Seeing none from the committee, thank you for your testimony. [LB612]

MIKE DULANEY: Thank you. [LB612]

SENATOR SYNOWIECKI: Additional testifiers in support of LB612. [LB612]

JOHN BONAIUTO: Senator Synowiecki, members of the committee, John Bonaiuto, B-o-n-a-i-u-t-o, executive director of the School Boards Association. We would support the bill and I think that it's important to have this dialogue, because the clarifications are going to be important in the interpretations of where we go from here, because the organizations have really supported working hard to make sure that situations do not occur that would allow people to spike their salaries and we want the system to be actuarially sound. But in doing that, we don't want to create situations where employees are going to find themselves where they have, in good faith, gone to school, taken care of their own expenses and were hoping to have the ability to not only move on the salary schedule, but to receive that compensation and have that compensation count toward their retirement. And I think having the negotiated agreements clearly exempted when we look at the salary schedules and if you have people that are moving down a year for just longevity and then start to move over, you could move beyond that 7 percent in a hurry. If you have a person, and this would I think address what Senator

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Louden was getting at, that has been working on an advanced degree, a doctorate, and has done the coursework, but has not finished the dissertation which sometimes takes a lot longer than people would like to have happen, the district could benefit from the person's education and experience, but it may take until their toward the end of their career by the time they get the big book report finished. So there are situations that could occur which would have a person that would finish an advanced degree late in their career just because it's a long process. But we would work with the legal counsel and the committee in any way we can to make this clarification workable. With that, I conclude my testimony. [LB612]

SENATOR SYNOWIECKI: Thank you, Mr. Bonaiuto. Senator Erdman. [LB612]

SENATOR ERDMAN: John, in that last example that you gave where the individual was pursuing a doctorate wasn't the school district already benefitting from their experience? All that they were lacking was a simple stamp of approval that they had received their degree? [LB612]

JOHN BONAIUTO: Absolutely and that's... [LB612]

SENATOR ERDMAN: And I think what Senator Louden is getting at is you're going to reward somebody for simply getting the degree and not necessarily benefit from their experience and so I'm still grasping for the answer as to why...and I passed a note to the chairman. I remember when we were discussing the spiking bill and why specific things were put in here was to avoid circumstances where you reward folks, and in fact, I believe it was the administrators that we ran into some problems with that this became an issue and I let Mister...let Mike off the seat a little bit there when he was up there, but if you continue to water this down outside the existing guidelines or if the example that Senator Louden uses, and I don't know that you answered his question exactly, but the school district is still benefitting from those. I guess I want to see a demonstrated need of why this needs to be added in your opinion, beyond those examples that you gave me, because in the light of what you've given me I see Senator Louden's point even more clearly. [LB612]

JOHN BONAIUTO: Well, and I think your point is one where if a person is working on a doctorate that the district is benefitting from that person's education experience, but in districts if there is an additional amount given for that advanced degree, the person hasn't moved to that level until they've finished the degree. And they may not finish the degree until late in their career. So that would be one of those situations, and I don't know it would be the same with other degrees, but I was thinking for terminal degree of that nature, and that may be a unique situation. [LB612]

SENATOR SYNOWIECKI: Any additional questions from the committee? Seeing none, thanks, John. [LB612]

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JOHN BONAIUTO: Thank you. [LB612]

HERB SCHIMEK: Senator Synowiecki, my name is Herb Schimek, that's spelled S-c-h-i-m-e-k, representing the Nebraska State Education Association. This problem first came to our attention last fall when a number of school districts were receiving letters from the retirement system saying that you have to justify their whole staff getting an increase of over 7 percent. They were not paying attention to the law which said the negotiated agreement was outside the 7 percent. And so therefore it was thought that maybe they needed to have some clarification. That's where this bill came from. I don't see a great need in this to tell you the truth, but if there needs to be a bill we will certainly help the legal counsel, and remembering this legal counsel inherited the bill from the previous legal counsel. And so I think there was some misinterpretations that probably got into the legislation. We'll be very willing to work with the committee to get this cleared up. Any questions? [LB612]

SENATOR SYNOWIECKI: Senator Erdman. [LB612]

SENATOR ERDMAN: So Herb, you don't see a need for the bill? Essentially you're saying that the interpretation that was adopted by the public employees retirement system caused this problem and their interpretation is the issue, not the language? [LB612]

HERB SCHIMEK: I think many...that was a major problem to tell you the truth. Now I do think that some of the exceptions that the gentleman from Lincoln made could be included in the negotiated agreement and that would take care of the problem. [LB612]

SENATOR SYNOWIECKI: So Herb if a collective bargain agreement gives deference to attainment of an educational degree you're saying therefore that the system, the retirement systems, is not recognizing that? [LB612]

HERB SCHIMEK: They weren't at the time. [LB612]

SENATOR SYNOWIECKI: Okay. [LB612]

HERB SCHIMEK: Now they've withdrawn some of those letters... [LB612]

SENATOR SYNOWIECKI: They have. [LB612]

HERB SCHIMEK: ...since a amount of heat was brought to bear. [LB612]

SENATOR SYNOWIECKI: Okay. Any additional questions from the committee? Senator Erdman. [LB612]

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SENATOR ERDMAN: And isn't it also true, Herb, that there's different executive leadership at the retirement system as well... [LB612]

HERB SCHIMEK: Yes there is. [LB612]

SENATOR ERDMAN: ...that may also address some of these concerns as well? And I guess what I'm looking for, obviously this program that we have for school employees is value that needs to be maintained for its longevity. The interpretation has to be clear. [LB612]

HERB SCHIMEK: Correct. [LB612]

SENATOR ERDMAN: And that effects, you know, your members and John's members and the administrators as far as their ability to actually administer the plan and make sure that information is reported correctly. Can you tell me that you believe and that the groups generally that are here believe that it was an error in interpretation or do you believe that there is some ambiguity? [LB612]

HERB SCHIMEK: There may be a small need to clear up a few small points, but I think that could be done in a meeting with the legal counsel of the Retirement Committee and the retirement system and maybe our representatives. And then maybe they could bring back whatever they need to to you and you could decide what to do with it. [LB612]

SENATOR SYNOWIECKI: Any other questions from the committee? Seeing none, thank you for your testimony this morning. [LB612]

HERB SCHIMEK: Thank you. [LB612]

SENATOR SYNOWIECKI: Additional testifiers in support or as a proponent of LB612? Seeing none, opponent testimony? Opponent testimony relative to LB612? Seeing none, neutral testimony? Seeing no neutral testifiers, that will close the hearing on LB612. LB613 will be the next bill heard by the committee. Jeremy Nordquist will provide the opening. [LB612 LB613]

JEREMY NORDQUIST: Good morning again, Senator Synowiecki and members of the Retirement Committee. I'm Jeremy Nordquist, N-o-r-d-q-u-i-s-t, and I am the research analyst for the committee. Today I introduce committee bill LB613 for your consideration. LB613 would change current employee and employer retirement contribution rates under the School Employees Retirement Act. There's a bill summary in your binder that will lay out in a table what I'm about to go through here. The current employee contribution rate is 7.83 percent of compensation and is scheduled to return to 7.25 percent on September 1, 2007. LB613 would set the employee contribution rate

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at 7.3 percent. Currently, the employer matches the employee contribution with 101 percent matching rate. Employers are therefore currently contributing 7.908 percent of compensation. LB613 would set the employer contribution match at 108 percent. Under LB613 therefore employers would contribute 7.884 percent of compensation. The current rate was set as part of a two year contribution rate increase in 2005 in order to make up for poor investment performance earlier in the decade. Rather than allow the contribution rates to fall back to pre-2005 levels, LB613 would find a middle ground. LB613 gives the committee a public policy option to consider, which addresses the future funding of the school retirement system. LB613 seeks to provide some stability and sustainability to the fund. We do not have updated projections on the future needs of the plan. The last actuarial study completed shows that the system required a total contribution of 16.15 percent of pay for the current fiscal year, however the needs of the system are not fixed and will fluctuate with investment performance among other things. The current contribution level is 16.50 percent and it is sufficient to meet the required contribution for the current fiscal year, however it is scheduled to fall to 15.27 percent of pay. As I said, LB613 would fall in the middle with a total contribution of 15.88 percent of pay. The rates provided in LB613 are not magic. They were drafted into this legislation after discussions were held with my predecessor and interested parties. They are simply a point for debate and discussion. Thank you, Senator Synowiecki and committee members for your consideration of LB613. [LB613]

SENATOR SYNOWIECKI: Thank you, Mr. Nordquist. Any questions of Mr. Nordquist from the committee? Senator White. [LB613]

SENATOR WHITE: When was the last actuarial assessment? [LB613]

JEREMY NORDQUIST: When it was completed, I'm not sure. It was done and we got received at the end of last year--fall of 2006. I believe it was completed in June. [LB613]

SENATOR WHITE: Okay, thank you. [LB613]

SENATOR SYNOWIECKI: Any additional questions? Thank you, Jeremy. Any proponent testimony for LB613? Proponent testimony? Any opponent testimony relative to LB613? Opponent testimony? [LB613]

JOHN BONAIUTO: Senator Synowiecki, members of the committee, John Bonaiuto, B-o-n-a-i-u-t-o, executive director of the Nebraska Association of School Boards. And we really struggle when we have to oppose a bill of this nature, because when the system was in a bit of trouble because of poor market performance we went to our members and said we really need to bump up the rate and keep this system strong. And we stood up in front of groups and said this will be for this period of time and it will roll back. And so, you know, I've sat through meeting and the communication has been good as far as we knew this was coming up front and it was going to be a struggle to

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sign on, because if we go back to our members and go back on our word on this there's going to be a time when we need to go to the well again and they're going to look at us and they're going to shake their head and say, you know, we've been there. And cost-wise to individual school systems, this is substantial. And what we're saying is we're moving the rate forever. You know, we're going to abandon the 101 percent ratio. We're changing the employer contribution and we're moving the employee contribution slightly. And you know, this is in the face of the Governor saying we really need to watch spending. There's just a lot happening this session and so, you know, we would recommend that we keep an eye on the performance of the plan. We want the plan to be healthy and remain viable for the employees. And if we have to come back and have this discussion again, I'd rather do it after the roll back then to say we're not sure whether we need this or not, but let's keep it at this higher rate and then we'll just go from there. With that, I'll conclude my testimony. [LB613]

SENATOR SYNOWIECKI: Thank you. Any questions from the committee? Senator Louden. [LB613]

SENATOR LOUDEN: Then you're saying, John, that you would like to see it rolled back to that 7.25 percent for the employees? [LB613]

JOHN BONAIUTO: Both. We should go back to where it was prior to the increase to deal with the market downturn and that would be at the 2005 level, and keep the 101 percent ratio with the employers. And we're fine with that. [LB613]

SENATOR LOUDEN: Okay, thank you. [LB613]

SENATOR SYNOWIECKI: Senator White. [LB613]

SENATOR WHITE: Can you tell us what percentage of our liability is funded now? And would there be a situation, if this were tied to an acceptable funding level, that we would roll it back at that point rather than a specific date? [LB613]

JOHN BONAIUTO: Senator, I do not know the answer to that question. I don't have that data. Maybe someone else that's going to speak would have that specific data. So I... [LB613]

SENATOR WHITE: In principle, would you be comfortable with an idea that if the fund is fiscally solvent, we've hit the mark, then we roll it back? [LB613]

JOHN BONAIUTO: And that would be something we'd look a lot more favorable at. And our understanding was that we were keeping it at the higher rate to increase the reserve fund. And so if that's the case, then my assumption is that the system is sound. [LB613]

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SENATOR WHITE: So the kind of...I mean, you don't like this indefinite date. You do accept that if the system needs the money that we have to maintain its integrity? [LB613]

JOHN BONAIUTO: Yes. [LB613]

SENATOR WHITE: Could your members accept that if we had a trigger, agreed upon trigger, of certain financial standards are met, then it rolls back? Would that be more palatable? [LB613]

JOHN BONAIUTO: We'd sure take a favorable look at that. [LB613]

SENATOR WHITE: Thank you. [LB613]

SENATOR SYNOWIECKI: Mr. Bonaiuto, I had a question. [LB613]

JOHN BONAIUTO: Okay, sorry. [LB613]

SENATOR SYNOWIECKI: If you don't mind. [LB613]

JOHN BONAIUTO: I was struggling with me... [LB613]

SENATOR SYNOWIECKI: Oh, do you need to go? That's fine. [LB613]

JOHN BONAIUTO: No. No, you're just fine. [LB613]

SENATOR SYNOWIECKI: If we roll them back is the plan sustainable at the rates in your judgment? [LB613]

JOHN BONAIUTO: We would hope it is. And that is the sincere hope of the employers on the employers' side, because this is such an important plan to the employees. And you know, we've had discussions with, of course with the Revenue Committee to say you know, these kinds of increases, it would be nice if they were outside the lid to help school districts with their budget growth and their levy limits. But I think we're always looking at the data wanting to make sure that this plan is healthy and sustainable. [LB613]

SENATOR SYNOWIECKI: Any other questions for Mr. Bonaiuto? Seeing none, thank you for your testimony. [LB613]

JOHN BONAIUTO: Thank you. Excuse me for my bad voice. [LB613]

HERB SCHIMEK: Didn't know we had a whoopee cushion. (Laughter) [LB613]

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JOHN BONAIUTO: I did not put that there. [LB613]

SENATOR WHITE: Only in Senator Synowiecki's committees would that happen.
(Laughter) [LB613]

HERB SCHIMEK: (Exhibits 1 and 2) Mr. Chairman, my name is Herb Schimek, S-c-h-i-m-e-k. I represent the Nebraska State Education Association. I'm submitting written testimony for you today. I implore you to please read it. I've been working with the school retirement system for over 30 years. There are certain things that some people don't realize. One, the rate is set every September 1 by the actuary on determining whatever the needs may be. That's how that 7.25 ends up being there and the school board is 101 percent of that. Two years ago, the downturn in the market caused a hole in the system. So therefore we agreed to a two year increase to help make up some of that difference. Now if you will look at this yellow chart that has been handed out or maybe has not. If you look at the bottom line, you'll see what the state has contributed as a percent of the total assets over a long period of time. By the way, this was done by the State Investment Council and was presented in testimony last year. You'll notice from '96 to 2003 the state took a vacation and did not contribute any funds in that period of time. And then last year they contribute three-tenths of one percent and have come back online. Now the unfunded liability has been traditionally, I believe, the state's responsibility. If you increase these rates as the bill says then really the members and the school boards are coming up with the state's share and the state will take a holiday for a long period of time. We're basically not unwilling to sit down and discuss this, but we do think that taking the state off the hook for the foreseeable future is not right. I sent to each one of your offices this book that just came out that has all the retirement systems in the nation and what the state contributes and what all the different groups contribute and how it works. You'll see in there that Nebraska is quite low compared to other states, so therefore there's really no justification for even giving them a bigger break than they already have. Do you have any questions? [LB613]

SENATOR SYNOWIECKI: Herb, thanks for your testimony. I understand and can appreciate your opponent testimony, but likewise can you understand and appreciate the committee having to have at least put this bill and to keep all options open? [LB613]

HERB SCHIMEK: Oh, I have no problem at all with that. [LB613]

SENATOR SYNOWIECKI: Right, right. Okay. Any questions from the committee?
Senator Heidemann. [LB613]

SENATOR HEIDEMANN: You talk about leaving the state off the hook. Either way it's going to go back to a state obligation. I mean, if the school boards kick up to the 108 percent it's going to be shown as a need and TEEOSA will take care of it at that time.

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[LB613]

HERB SCHIMEK: Two years down the road. [LB613]

SENATOR HEIDEMANN: But eventually the state's going to pick this up one way or the other. [LB613]

HERB SCHIMEK: Basically I don't look at it that way. [LB613]

SENATOR HEIDEMANN: Okay, then I have the wrong view of it according to what you're thinking, but tell me why I'm wrong. [LB613]

HERB SCHIMEK: You're saying that state is basically paying the school board's share? [LB613]

SENATOR HEIDEMANN: It will be shown as a cost, a need, and eventually TEEOSA is going to pick that up. [LB613]

HERB SCHIMEK: They'll pick up 40 percent of it. [LB613]

SENATOR HEIDEMANN: Okay. [LB613]

SENATOR ERDMAN: More than zero, though, isn't it, Herb? [LB613]

HERB SCHIMEK: Yeah. [LB613]

SENATOR HEIDEMANN: I was just reading the fiscal note. That's... [LB613]

HERB SCHIMEK: Yes. [LB613]

SENATOR WHITE: Mr. Schimek, are you aware that this was litigated in federal court with regard to the judges and it was determined that it was contractual promise obligating the state to pay this, and an order was accordingly entered on the judge's pension fund saying that we don't have an obligation. Has your association looked at that legal precedent? [LB613]

HERB SCHIMEK: We've looked at it. We thought the state was in a pickle and we helped out. And I've got to say the school boards and administrators were in on that and we are all in it together. We've never passed a bill in the Legislature that the school boards and administrators have not been on board with. We've worked very closely together. [LB613]

SENATOR WHITE: So you're saying you stepped up a couple years ago rather than

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going to court... [LB613]

HERB SCHIMEK: Yes. [LB613]

SENATOR WHITE: ...to enforce what could have been your contractual rights. [LB613]

HERB SCHIMEK: Right. [LB613]

SENATOR WHITE: Thank you. [LB613]

SENATOR SYNOWIECKI: Senator Erdman. [LB613]

SENATOR ERDMAN: And Herb just for the sake of history, part of that agreement that you stepped up for was a result of enhanced benefits that were the result of discussions with Chairman Wickersham in the mid-nineties. Is that not correct? [LB613]

HERB SCHIMEK: No, not really. I think those enhanced benefits were paid for at the time as part of the rate. [LB613]

SENATOR ERDMAN: Well, then I think that the testimony from the year when we passed this was incorrect then, because that was part of the basis for the groups I believe coming forward and agreeing to be a part of this solution was the fact that in the mid-nineties we made substantial improvements to the teacher's employees retirement plan. Part of the understanding at that time with Chairman Wickersham was that in the event in the future that was needed to be in assistance there would need to be an increased contribution that everybody would be willing to be at the table to have that discussion, not agreeing to make any specific amount, but that it would be going forward. LB407, as I recall, changed the responsibility specifically to this state from the previous way that the plan was, and even though LB407 stated that it was my understanding and from the testimony from the enactment of this legislation that put our contribution rates at the level that they are, much of that reason was because that the teachers, the school boards, and the administrators were trying to keep good faith with this committee that made a substantial investment in those plans in the mid-nineties. Now if you can correct my record then we probably also have to go back and correct my recollection of those testimonies, because I was here for those. So I'll have to go back and look as well. [LB613]

HERB SCHIMEK: Well, so was I. Been here for 30 years, but I don't recall it in that sense. [LB613]

SENATOR ERDMAN: Okay. [LB613]

SENATOR SYNOWIECKI: Senator White. [LB613]

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SENATOR WHITE: And technically, past consideration is no consideration and that's no defense. If you made an agreement in the nineties for enhanced benefits and gave concessions, that does not legally entitle the state to try to extract new concessions 10 years later, Senator. [LB613]

SENATOR ERDMAN: Agreed, Senator White. My point wasn't to belabor that. It was just simply a reality of where we had come from, not an obligation of the state. [LB613]

SENATOR SYNOWIECKI: Herb, I'm not of legal training at all and Senator White is very well schooled, but isn't there demonstrated difference between a constitutional officer and...does the role of a constitutional officer play a role in the discussion relative to the potential for litigation on this back two years ago? [LB613]

HERB SCHIMEK: I'm not a lawyer. [LB613]

SENATOR SYNOWIECKI: Okay. Senator Heidemann. [LB613]

SENATOR HEIDEMANN: On the chart that you handed out, is there any data for 2005? [LB613]

HERB SCHIMEK: No, because the data that they used to hand out this chart was a year old. It had to be because I was that was the actuarial study they used. [LB613]

SENATOR HEIDEMANN: Okay. [LB613]

HERB SCHIMEK: And as I said, this was prepared by the State Investment Council in their presentation. [LB613]

SENATOR SYNOWIECKI: Any additional questions from the committee? Seeing none, thanks, Herb. [LB613]

HERB SCHIMEK: Thank you. [LB613]

MIKE DULANEY: Senator Synowiecki, members of the committee, again, my name is Mike Dulaney, D-u-l-a-n-e-y, representing the Nebraska Council of School Administrators. And our organization is somewhat unique among the three, because our members are both members of the school employees retirement plan and therefore they have an interest in that, but they are also the management side of school administration. And so we want what's best for the system. We want that very clear. We feel that you did the right thing by having a bill on the table so that if, in your opinion, something is necessary that we at least have a vehicle to do that. That said, we cannot support the 108 percent employer rate, which of course is currently 101 percent, and we

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feel that if the committee feels a need to raise the employee rate and also the employer rate that we would like to be a part of those discussions. Again, we do feel...I mean, we just came out of that two year period and we were a part of that, as Senator Erdman pointed out, we were a part of that agreeing to LB503 and the rate increase. And then of course we had that two year spinning lid exception contained in LB503 too. Really that's what pacified most school districts. They felt okay, well at least we have that. And I don't recall exactly, Senator Erdman, if that was select file or general file that we got that from Senator Raikes, his amendment, but that really did allow school districts to relax a little bit. And of course, that's gone beginning September 1. So if the committee is so inclined to give us that spinning lid exception then I guess that it's another ballgame. But we again, just want to be a part of the discussions. We assume that you're going to be going through the numbers and working with groups to see what exactly is necessary and so we would like to be a part of those discussions as the session moves forward. [LB613]

SENATOR SYNOWIECKI: Thank you, Mr. Dulaney. Questions for Mr. Dulaney? Seeing none, thank you for your testimony this morning. [LB613]

MIKE DULANEY: Thank you. [LB613]

VIRGIL HORNE: Chairman Synowiecki, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing the Lincoln Public Schools. From our point of view, we have two contract problems. The first is the verbal contract that was our understanding with the Legislature that this was a two year situation and that's the way we put it into our projection system. Our second is a written contract that we have with our teachers, which is a two year contract. With the effective date of this bill, we essentially will increase the teachers' salaries through no effort of our own, and also change our budget system, because our raises include any kind of benefit for retirement and any other benefit that we have. So when we said our teachers got a 5 percent raise that included insurance benefits and the whole shooting match. Now this bill would come along and within a matter of months would change that. And whether you want to call this sarcastic or what, this is already the middle of February. April 15 is the deadline for doing anything major that a school district can do to adjust their budget, which is essentially tell the teachers when they're not rehired for the following year. So the time lines of this bill, even if you decide to do it, are very, very tight, and in a situation like the Lincoln Public Schools has, which has a two year contract, it puts us almost in an impossible situation. Obviously if you pass the bill we'll comply and we'll change other things, but it will have a direct impact on our budget and potentially our classrooms. That concludes my testimony. [LB613]

SENATOR SYNOWIECKI: Thank you, Mr. Horne. Questions from the committee? Seeing none, thank you for your testimony this morning. [LB613]

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VIRGIL HORNE: Thank you. [LB613]

SENATOR SYNOWIECKI: Additional opponent testimony? The committee will now entertain neutral testimony, LB613, neutral testimony. Seeing no testifiers, the public hearing is now closed on LB613 and that will close the public hearings for today's session of the Nebraska Retirement Systems Committee. [LB613]

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Disposition of Bills:

LB612 - Held in committee.

LB613 - Held in committee.

Chairperson

Committee Clerk