

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

[LB950]

The Committee on Nebraska Retirement Systems met at 12:10 p.m. on Tuesday, February 2, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB950. Senators present: Dave Pankonin, Chairperson; Jeremy Nordquist, Vice Chairperson; Lavon Heidemann; LeRoy Louden; and Heath Mello. Senators absent: Russ Karpisek.

SENATOR PANKONIN: I want to welcome everybody to the Retirement Systems Committee today. And also let you know a couple little rules we have here, it's not near as complicated as some committees. We don't use the light system but we do ask that you either turn off your cell phone or put it on manner mode for everyone involved so we don't have those interruptions. I'm Senator Dave Pankonin, I represent District 2. I live in Louisville. And I'll have...I'll first introduce our clerk, Denise Leonard, and our legal counsel, Kate Allen, is at the table. But I'll have the senators introduce themselves.

SENATOR NORDQUIST: Jeremy Nordquist, I represent District 7 in downtown and south Omaha.

SENATOR MELLO: Senator Heath Mello representing District 5, south Omaha and Bellevue.

SENATOR LOUDEN: LeRoy Louden, District 49 in northwest Nebraska.

SENATOR HEIDEMANN: State Senator Lavon Heidemann, District 1, southeast Nebraska.

SENATOR PANKONIN: Thank you, senators. We just have one bill to hear today and it's a committee bill, Kate Allen is going to introduce it. And then I know we'll have some testifiers to add to her information. So, Kate, whenever you're ready.

KATE ALLEN: Very good. Good afternoon, Chairman Pankonin and members of the Retirement Committee. My name is Kate Allen, spelled K-a-t-e A-l-l-e-n, and I'm legal counsel to the committee. I'm here to present LB950 which was introduced at the request of the Nebraska Public Employees Retirement System. LB950 makes a number of technical and clarifying changes to the state administered retirement plans which I will briefly summarize. Joe Schaefer, legal counsel for Nebraska Public Employees Retirement System, will testify after me and go into more detail regarding each of the proposed changes. LB950 clarifies in the county, state and school employees retirement plans that a disability must have occurred while the member was a participant in the plan. In the County Employees Retirement Plan it also clarifies that disabled county employees are not required to receive medical examinations after age 55, the age of retirement eligibility. Retirement related LB403 provisions are inserted

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

into the deferred compensation plan--County Employees, Judges, State Patrol, School Employees and State Employees Retirement Acts. LB403, which was introduced and passed by the Legislature last year, provides in part that a person is not authorized to participate in the state administered retirement plan if he or she is a noncitizen or not lawfully in the United States, and may not receive retirement benefits pursuant to such plan. Language is stricken in several sections of the County and State Employees Retirement Acts prohibiting use of forfeiture funds to pay administrative costs for the defined contribution and cash balance plans. Use of forfeiture funds is explicitly enumerated in Section 23-2319.01 of the County Employees Retirement Act and Section 84-1321.01 of the State Employees Act. Forfeiture funds are employee contributions deposited to plan member accounts that are forfeited by plan members who cease employment before vesting occurs. Definitions in the School Employees Retirement Act are amended to clarify when termination occurs and who qualifies as a temporary, regular, part-time, and substitute employee. The School Employees Retirement Act is further amended to clarify which Department of Education employees may elect to become members of the School Retirement Plan and which employees are automatically enrolled in the State Employees Retirement Plan. Finally, I wanted to let you know that in the last few days, representatives from Lincoln Public Schools and the Nebraska Department of Education have contacted Joe Schaefer and me about a couple of technical amendments regarding part-time employees and termination in the School Employees Retirement Act. I believe these proposed changes will help clarify LB950 and we'll be working with Joe to draft those. I'd be glad to respond to any questions. [LB950]

SENATOR PANKONIN: Thank you. Are there any questions? Seeing none, we'll have our next testifier. Kate knew the drill and spelled her name out on her own. But we'll ask that if you come forward to please spell your name for the benefit of the clerk and the transcribers. [LB950]

JOE SCHAEFER: Good afternoon, Senator Pankonin and members of the committee. My name is Joe Schaefer, J-o-e S-c-h-a-e-f-e-r, and I'm legal counsel to the Public Employees Retirement Board and today I'm testifying on their behalf as a proponent of LB950. LB950 was prepared at the request of the Retirement Systems to address several issues that are primarily technical in nature. I'll go through the various issues individually and indicate the sections and the retirement plans in which the requested change appears. The first change is to incorporate the provision from last year's LB403. That language is now found at Section 4-108 of Nebraska statutes, which limits participation in the retirement plans that we administer to only those persons who are citizens or qualified aliens and who are lawfully present in the United States. That change is placed in the statutory sections which comprise each retirement plan document so that the document is complete without requiring reference to the other sections of law. The language applies to county, judges, school employees, Patrol, state employees, and the deferred compensation plans that we administer and is found in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

Sections 1, 9, 12, 17, 18, and 25 of the bill. The next change removes language on the use of forfeiture money in the county and state plans. The allowable use of forfeiture money is set forth in other sections of statutes. In the case of the sections dealing with the defined contribution plan obsolete. In both the county plan and the state plan all new employees hired on or after January 1, 2003, participate in the Cash Balance Plan. And since vesting occurs after three years of participation, there have been no unvested defined contribution members since January 1, 2006, which would be subject to forfeiture. We've stricken the language in Sections 2, 3, 4, 5 for the county plan, and the language is stricken in 19, 20, 21, and 22 for the state plan. Also in dealing with forfeiture accounts language establishing the State Employer Retirement Expense Fund is being moved from Chapter 23, which is the county plan document, to Chapter 83, which is the state plan language. And that change is accomplished in Sections 7 and 23 of the bill. Next, for each of the plans listed, the bill limits disability retirement to cases in which the onset of the disabling condition or injury was after employment commenced. The director had been concerned about the issue this past year, because on one occasion an employee of the state terminated very shortly after having been hired and then filed for disability retirement. This required a physician to conduct a disability examination and expending staff time to process the retirement. By taking disability retirement this member saved, if I remember correctly, 30-some dollars because the 10 percent early withdrawal penalty that the IRS levies would not apply in a disability situation. I don't believe the plans were ever intended to provide disability retirement benefits for disabilities that were incurred prior to the fact that someone was hired. And new language makes that more explicit. The language applies to county, school, and state plans and is found in Sections 6, 14, and 24, respectively. Also included in Section 6 of the bill is a correction to the age after which a county plan member who is retired by disability could be required to have a follow-up disability examination. That's changed from 65 to 55, which 55 is the normal retirement age, just as it is in the state plan. Next the bill amends the definition of regular employee, substitute employee and temporary employee in the school plan. New language clarifies that a temporary employee is someone hired to work for a limited time to accomplish a specific task or purpose. And once that purpose or task is complete, the temporary status of the employment ends. If a temporary employment extends into a second year it will no longer be considered temporary. As to regular employees, the new language provides that employees initially hired to work fewer than 15 hours a week, which is the threshold for participation in the plan, must begin participation if their work hours increase to more than 15 hours a week in three calendar months of the plan year. In the change included on substitute employees the requirement that the work be intermittent is removed from the definition, but the employment would still be temporary. I would note that we've received communication from a school district with a question about determining when part-time rises to regular employment. And we have spoken with counsel to make it clear, if there's a committee amendment or other amendment, that that would be an average 15 hours a week for each of the three calendar months that the language talks about. Those changes are all found in Section 10 of the bill. The bill contains language to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

clarify participation of certain Department of Education employees who had previously been school employees participating in the school plan. The bill provides that if the employee terminates from the school and then retires within the 180 days immediately prior to their employment with the department they will participate in the state plan, not in the school plan. If the employee did not retire within the previous 180 days, the employee could elect participation in either of those two plans for these employees. This provision applies only to those employees of the department who are required to hold a certificate as certification is described in Section 79-807. Those changes are found in Sections 10 and 12 of the bill. Since the bill was introduced, the Department of Education has forwarded two other suggested changes to the bill. And Imprest has no objection to their changes and would...and we've asked your committee counsel to include them in any possible committee amendment or other amendment that might be made to the bill. Next, a change in the definition of termination of employment is intended to recognize that not all employees in the school plan or not all employers in the school plan are public schools. We, for example, have ESUs and we have some state employees who teach in state schools, etcetera. That change is also found in Section 10. There are a couple of other technical changes including changing references to federal law in the Class V plan which is Omaha. Those changes...that change is found in Sections 15 and 16. And finally, the bill contains the emergency clause so that its operative date can be July 1, '10 which is the beginning of a new plan year for the defined benefit plans where most of these changes are made. This is for ease of administration and also to simplify the process for our State Auditor. With that, I'd do my best to respond to questions that you might have about the changes I've covered fairly briefly and, I might say, very capably by your counsel. [LB950]

SENATOR PANKONIN: Thank you, Mr. Schaefer. We'll get to questions in a second. I'm going to ask the first one. Obviously, from being on the committee a little while, this is an ongoing process. And how much of your time, I'm just curious and for the record, do you spend on updating this every year? Because, obviously, there's issues that come up, and how does that process kind of work, for you to present this every year? [LB950]

JOE SCHAEFER: As we progress through the year there are instances that occur that we see something that maybe hadn't occurred before or is becoming more prevalent, rises to the point where we think that a change is needed there. Sometimes people bring suggestions to us. It's more or less ongoing. I do quite a few other things besides legislation. But during the year I tend to collect those items and then some time, as we head towards a new legislative session, I try to work with the principles who are interested in the change, drafting and putting together what we'd like to do. So I don't keep track of my time but it takes a fairly considerable effort for a couple of months out of the year or three to get that all together. And again, I want to give kudos to your committee counsel, she's been wonderful to work with and it makes this a whole lot easier than it might be otherwise. [LB950]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

SENATOR PANKONIN: Thank you, Mr. Schaefer. Questions? Senator Mello. [LB950]

SENATOR MELLO: Thank you, Chairman Pankonin, and thank you, Mr. Schaefer, for your testimony. Just two quick questions. One in the provisions regarding LB403, does the system know, can you provide the committee at all the number of potential noncitizens that this would apply to that are currently members or participants or have invested in the retire...all of the retirement systems combined? [LB950]

JOE SCHAEFER: Well, there has for a long time been a provision in the school plan that prohibits persons not legally here. And that would, of course, be our largest plan. I would say, however, that we, this very moment, this very morning I had a communication about a person who assumed another person's identity to participate in the retirement plan. And then things didn't sort of add up. Why would two different people, for example, have the same beneficiary? We discovered that we had someone who was not legally eligible to participate in the plan. The contributions were being made in their name. And the other person who had been in the plan said, wait, I don't understand this, I'm not working there. So those kind of things do occur occasionally. I wouldn't say it's a great number of times. But because the prohibition says that they can't participate...if they do make contributions then we have to back those out and the contributions, because they come from the employer, they would go back to the employer and we let them sort it out because they essentially have the duty to determine whether the persons that they hire are eligible to participate in the plan. [LB950]

SENATOR MELLO: So is this a widespread...I mean, is this a widespread issue then? Does this happen on a very regular basis or is this an isolated incident from the day or...? [LB950]

JOE SCHAEFER: I would say it's not widespread. I would also say that it occurs often enough that we wanted to make it explicit in the plan document. [LB950]

SENATOR MELLO: Okay. Okay. One other questions, it's maybe just a definition, so to speak. How did you come up with the one year or how was the one year determined in regards to the length of employment for a temporary employee? [LB950]

JOE SCHAEFER: Well, we sometimes come across people who are paid, for example, because there's a grant. And a lot of those tend to be an annual process. And a couple years ago we encountered a person who had been working as a temporary employee for many years. And it just strikes me that after a certain length of time, and I don't know whether it's 1 year or 5 years or 50 years, that if you continue to work at a place for 17 years you're probably not all that temporary. And so because those periods of grant seem to be, in many cases, a year, that seemed to be a logical thing. That if your grant

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

is going to be an ongoing process that was reasonable. [LB950]

SENATOR MELLO: Okay, thank you. [LB950]

SENATOR PANKONIN: Senator Louden. [LB950]

SENATOR LOUDEN: Yeah, thank you, Senator Pankonin. Mr. Schaefer, I have a couple of places here, I guess, I was kind of curious about. I think one of them is here on Section 9, and I think the other one is in, what, Section 13 or so. But anyway the one in Section 9 is about judges. And you put new language in there they can't participate in the retirement program unless they're a United States citizen or qualified alien. Do we have any judges that aren't United States citizens? I mean,... [LB950]

JOE SCHAEFER: I would say the odds of that occurring are extremely small. [LB950]

SENATOR LOUDEN: Well, I was going to say, that was my next question. Is this kind of an insult or common sense to put language like this in there or is there a special reason that that kind of language had to be in there? [LB950]

JOE SCHAEFER: Well, I would hope it wasn't certainly intended to insult anybody's common sense. There's a similar provision in the State Patrol. And those two plans... [LB950]

SENATOR LOUDEN: I see that too. [LB950]

JOE SCHAEFER: ...those two plans seemed to have the most rigid scrutiny over the persons hired. It was intended to be that we treat all of our plans the same because we have six different plans and it pertains to all six that we simply inserted in all six. [LB950]

SENATOR LOUDEN: Because in the State Patrol you can't get that law...certification for a law enforcement officer unless you're a citizen. [LB950]

JOE SCHAEFER: Correct. [LB950]

SENATOR LOUDEN: And so I kind of wondered about that. Then when you get over here about that State Employee Retirement Expense Fund, and there's new language for that. And before was there...whenever there was that balance that was forfeited, did that just go back into the retirement fund or has it always went into this employers expense fund? [LB950]

JOE SCHAEFER: Well, it has gone into expense fund. That's not new language. What it is, is that language was in a section in the county plan. And it is simply stricken there and the exact verbatim language is moved. It's simply moving the language, it doesn't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

change the language. [LB950]

SENATOR LOUDEN: I see. Okay. And does that...now is that like in teachers retirement I'm more familiar with. The teachers contribute and the school districts contribute. But if the teacher doesn't teach five years or whatever it is they can get their contributions back. But what was contributed for them by the district stays in the fund. Now is that the money we're talking about? Is that forfeiture money or where... [LB950]

JOE SCHAEFER: Yes. It does go back to a similar thing. In the school plan, with a couple of very minor exceptions, a nonvested employee will only be able to get back the contributions that they remitted or that were remitted on their behalf, plus regular interest which is set in statute. And if they leave before they're vested, which is five years in the school plan, the money remains in the plan and it funds benefits for all the people who eventually take benefits. You know in the state and the county plans, vesting occurs after three years. And if an employee terminates vesting, you know in other words before they've worked for three years, the money goes to the process that is in the statute to use it. We hold some of it back in case they come back to work. If they come back to work we reinstate the employer contributions. And when that money gets to a certain amount then there's an amount that is transferred away and an offsetting contribution comes from the Imprest Payroll Fund and it goes into this employer expense fund. And it's used to offset expenses in both defined contribution and cash balance elements of the respective plan. That doesn't sound very clear, but I'd made it a lot clearer than if you'd tried to read the statute. [LB950]

SENATOR LOUDEN: Okay. Well, is this...how much of a...how much money is in that fund at any given time? [LB950]

JOE SCHAEFER: I don't know the amount. Our accounting person isn't here right now, I can't answer that. [LB950]

SENATOR LOUDEN: But I mean is this a significant amount or...? [LB950]

JOE SCHAEFER: It could amount to, I suppose, \$1 million, just guessing. I hate to even name a number because I don't know. [LB950]

SENATOR LOUDEN: But that's what I mean. And I was just wondering where some of these plans, when they get in trouble, if that money should have been reverted back some of these plans. But this is the...the county...the state employees is the only one that that's done with, though, huh? [LB950]

JOE SCHAEFER: Correct. The state and the county plans are...all the members in that plan are either in the defined contribution option or they're in the cash balance option. And it doesn't pay a formula annuity, none of those pay a formula annuity like the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

school, the judges and the patrol, which could have insufficient funds to pay those formula annuities. They're essentially what in private industry you would call a money purchase annuity that you would get in, for example, the cash balance plan. If you have X dollars you convert it using the factors and the dollars determine the annuity. It's not based on service. [LB950]

SENATOR LOUDEN: Okay, thank you. [LB950]

SENATOR PANKONIN: Other questions for Mr. Schaefer? Mr. Schaefer, I've just got one last one just to clarify what Senator Louden was getting at. Even though it might not make sense, I think it goes back to LB403 again, why the judges and the patrol, even though we think that's a very, very small chance that we would have an illegal in either one of those. That's why the language is there, correct, to be consistent? [LB950]

JOE SCHAEFER: Correct. Yeah. [LB950]

SENATOR PANKONIN: Yep, that's what I assumed. Okay, thank you. [LB950]

JOE SCHAEFER: You're welcome. Thank you. [LB950]

SENATOR PANKONIN: Any other proponents of LB950? Welcome, Mr. Hoffman. [LB950]

JERRY HOFFMAN: Thank you, Chairman Pankonin, members of the committee. My name is Jerry Hoffman, J-e-r-r-y H-o-f-f-m-a-n. I'm here representing the Nebraska State Education Association and in favor of LB950. And I'm not going to speak to any of the technical details, which I think have been adequately covered by both Ms. Allen, your legal counsel, and Mr. Schaefer with the Public Employees Retirement Board. But I do want to say that NSEA is what I would characterize a good partner and has a good working relationship with the Public Employees Retirement Board, this committee, the Department of Education and others and are vigilant observers, if you will, of the public employee retirement system and, in particular, how it affects the school employee retirement system. So we are in favor of LB950 as the technical changes are required to both maintain and continue to preserve the retirement systems that the state managers. With that, I would be able to entertain any questions if you have any. [LB950]

SENATOR PANKONIN: Thank you, Mr. Hoffman. Any questions? Seeing none, you're excused. [LB950]

JERRY HOFFMAN: Thank you very much. [LB950]

SENATOR PANKONIN: Thank you. Any other proponents? By the way, the clerk appreciates how well trained our testifiers are to have their testifier sheets filled out. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

might just make an aside here. Our clerk, Denise Leonard, we very much appreciate, I'm also on the HHS Committee. And she filled in for Erin Mack who had maternity leave and did an admirable job. But that committee is a little more complicated and so...but we appreciated her service there. And I think she'll enjoy being back to her own committee. [LB950]

BRIAN HALSTEAD: Senator Pankonin, members of the Retirement Committee, for the record, my name is Brian, B-r-i-a-n Halstead, H-a-l-s-t-e-a-d. I'm the assistant commissioner and general counsel for the Nebraska Department of Education. We're here in support of LB950. We want to thank the public employees retirement system for working with this. I think, as this committee is well aware, the department is an employer who participates in two separate retirement systems. There is the State Employees Retirement system, which I happen to be a member of, and there's the School Employees Retirement Act for which the Commissioner of Education gets to participate in. We have had an ongoing issue about hiring people out of the public schools who were in the school retirement system. They are coming to work at the department. They're understanding that they are going to be in the state retirement system when they come to the department and not lose any of their benefits under the school retirement system. So in that regard we're supportive of the language that the public employees retirement system has put in this bill. We would ask that you add some clarifying language on page 28, line 6, after the word "employment" add the phrase "except as provided in Section 79-920.2." And then when you turn to page 31, in line 8 insert the word "public" before "school" because you've already defined a public school in the act, and that would apply not only to the school districts but the Educational Service Units. We certainly want to thank the committee for its consideration. I'd be more than happy to answer any questions you might have. [LB950]

SENATOR PANKONIN: Thank you, Mr. Halstead. I think our counsel is already aware of those. And we've talked about it. I just want to ask you, did you see the fine chart that was prepared by Mr. Schaefer? [LB950]

BRIAN HALSTEAD: I have not seen the chart, no. [LB950]

SENATOR PANKONIN: It's in our materials today. But I think you're going to...and this really helped me understand it versus looking at the language in the bill. So, I forgot to thank Mr. Schaefer for that and I think you'd want to take a look at it. It seems to me like it does follow it and make it easier. So... [LB950]

BRIAN HALSTEAD: Yeah. [LB950]

SENATOR PANKONIN: I think you'll like that. [LB950]

BRIAN HALSTEAD: Good. [LB950]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Nebraska Retirement Systems Committee
February 02, 2010

SENATOR PANKONIN: And it refers to those sections, by the way. [LB950]

BRIAN HALSTEAD: Great. Thank you very much. [LB950]

SENATOR PANKONIN: Any other questions? Okay. Other proponents. Seeing none, is there anybody in opposition of this bill? Anybody wants to testify in the neutral position on LB950? Seeing none, we'll close the hearing on LB950 and this session of our committee. Thank you for attending. [LB950]