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Nebraska Retirement Systems Committee  
February 05, 2016

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[LB805 LB922 LB986]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Friday, February 5, 2016, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB805, LB922, and LB986. Senators present: Mark Kolterman, Chairperson; Al Davis, Vice Chairperson; Mike Groene; Rick Kolowski; Brett Lindstrom; and Heath Mello. Senators absent: None.

SENATOR KOLTERMAN: Welcome to the Nebraska Retirement Systems Committee hearing. My name is Mark Kolterman. Senator Davis will be joining us, as will Senator Groene from North Platte. We have with us though Rick Kolowski from Omaha, Brett Lindstrom from Omaha, and Senator Heath Mello from Omaha. Our committee counsel is Kate Allen. Our committee clerk is Katie Quintero. And our page today is Jacob Kawamoto. He's a political science major at UNL. We're here today for the hearings on LB805, LB922, and LB986. If you have a cell phone please turn it off or mute it. Those wishing to testify should come to the front of the room, be ready to testify as soon as possible. We'll start with the proponent testimony, then opponent, and then finally neutral. Please complete the blue sign-in sheets. When you come up, please state your name and spell your name. Keep your testimony concise. Try not to repeat what someone else has covered. If you have a handout, please submit it to...at least eight copies to our clerk. And if you do not choose to testify, you may submit comments in writing and have them read into the official record. So first up we have Senator Mello, LB805. Would you please open? Require periodic study of certain retirement plans and reports.

SENATOR MELLO: Good afternoon, Chairman Kolterman, members of the Retirement Systems Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Over the past several years, I've become increasingly concerned about the health and funding progress of all of our public defined benefit plans, but in particular, local political subdivision defined benefit plans, some of which are severely underfunded. I believe pension plans provide valuable benefits earned by our public employees but that they need to be monitored carefully and funded as needed in order to remain sustainable for the long-term. Defined benefit plans are routinely monitored annually through valuation reports which, one, calculate the amount of actually determined contributions, an amount that if contributed consistently and combined with investment earnings would be sufficient to pay promised benefits in the full over the long term; and second, measure the plan's funding progress. In 2014, I introduced LB759 to give the Retirement Systems Committee oversight of those local political subdivision plans that are funded below 80 percent according to their most recent valuation report. In the past two years, five plans have been funded below 80 percent and thus have been required to present those reports to this committee outlining their plans to become fully funded. These plans include Douglas County, the Lincoln Police and Fire, the City of Omaha Civilian Plan, the City of Omaha Police and Fire Plan, and the Eastern Nebraska Human Services

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

Agency. LB805 addresses another reporting requirement to assure timely oversight of the funding progress of defined benefit plans by not only the Retirement Committee but local political subdivisions. The bill requires that each political subdivision to conduct an experience study on each defined benefit plan at least every four years. Experience studies gauge the reasonableness of the assumptions used and of the risks assumed by the plans, which allows actuaries to identify changes that may be needed to maintain a plan's solvency. Experience studies are needed to enhance the reliability of the annual valuation reports and to ensure that the plans are properly funded. The four political subdivisions who currently...who are currently providing annual reports to this committee were contacted and asked how often they conduct their experience studies. The Eastern Nebraskan Human Services Agency does it every four years. Douglas County does it every two years. Lincoln Police and Fire does it every currently five years. And the City of Omaha Police, Fire, and Civilian Plans also does it every five years, though their contract with Cavanaugh Macdonald references a triennial experience study. In recent years, we have seen low interest rates in the volatile investment markets, and as a result, many public pension plans have reduced their investment return assumption rates. I believe assuring that their experience studies are conducted at least every four years will help political subdivision...the political subdivisions assess the reasonableness of the economic and demographic assumptions used in their plans and provide timely information to make sure any adjustments in order to maintain the solvency of their plans both to the public and to the Legislature moving forward. With that, I'd be happy to answer any questions you may have. [LB805]

SENATOR KOLTERMAN: Are there any questions? Thank you, Senator Mello. [LB805]

SENATOR MELLO: Thank you. [LB805]

SENATOR KOLTERMAN: You're going to be here to close, aren't you? [LB805]

SENATOR MELLO: Yeah. [LB805]

SENATOR KOLTERMAN: Are there any proponents of this bill? Any opponents? Anybody neutral? Senator Mello waives closing. We'll close the hearing on this bill. (Exhibit 1) We do have...to read into the record, we do have support for LB805 from the city of South Sioux City. They wrote a letter in support. We'll put that on the record. Okay. We're going to move on with the hearings. And, Rick, you're going to have to... [LB805]

SENATOR KOLOWSKI: Yes, sir. Happy to. [LB805]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

SENATOR KOLTERMAN: ...take the Chair role. [LB805]

SENATOR KOLOWSKI: Senator Kolterman, welcome. [LB805]

SENATOR KOLTERMAN: Thank you. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I'm here today to introduce LB922. This bill was introduced at the request of the Public Employees Retirement Board. LB922 simply restaggers the terms of the members of the board so the vacancies occur more evenly. There are no substantive changes to the duties of the board. And I assume they're here to testify in support. So, any questions? [LB922]

SENATOR KOLOWSKI: Hearing none, thank you very much. Do we have proponents for this bill, please, LB922? Welcome. [LB922]

ORRON HILL: (Exhibit 1) Thank you. Good afternoon, Chairperson Kolterman, acting Chairperson Kolowski, and other Retirement Systems Committee Members. My name is Orron Hill, O-r-r-o-n H-i-l-l. I am the legal counsel for the Public Employees Retirement Board. I am here to testify at their request in support of LB922. The PERB consists of eight members appointed by the Governor. The current law appoints PERB members to five-year terms. The law also staggers those terms to provide for continuity of leadership. However, in one of these years, there are three PERB members appointed, while in a different year has no appointments. LB922 adjusts the terms so that no more than two PERB members would be appointed or reappointed in any one year. This ensures continuity of leadership, and experienced and knowledgeable membership. LB922 clarifies that if a PERB member's position is vacated during the term, the member's replacement would, at least initially, only be appointed to serve the remaining term. Following expiration of the remaining term, the replacement or another member would be appointed or reappointed for the normal five-year term. We appreciate the Retirement Systems Committee's support of this bill and Senator Kolterman's willingness to introduce it, and we would ask that you vote to advance it to General File. Thank you. This concludes my testimony. I would be happy to take any questions. [LB922]

SENATOR KOLOWSKI: Any questions, please? It certainly makes sense. Thank you very much for your presentation. [LB922]

ORRON HILL: Thank you, Senator. [LB922]

SENATOR KOLOWSKI: Any additional proponents for the bill? Any opponents to the bill, please? And anyone neutral? Seeing none, closing. You waive closing. Thank you very much, sir. Next up we have LB986, Retirement Committee, Senator Kolterman, please. [LB922]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

SENATOR KOLTERMAN: Thank you again. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. LB986 is a bill introduced by the committee that changes several of the duties of the Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems Director. The purpose is to assure that the committee and the Governor receive more timely actuarial information in order to provide sufficient time for deliberation and planning for budget impacts and consideration of policy changes that may be necessary due to actuarial findings. LB986 as introduced makes the following changes. It requires the executive director of NPERS to provide the first and final draft copies of the annual valuation reports and the experience studies to the committee and the Governor as soon as the drafts are received from the actuary. The drafts are considered confidential documents and criminal penalties are added if confidential documents are shared with unauthorized persons. The experience studies must be conducted at least every four years or at the request of the Retirement Committee. It requires the actuary to present the experience study to the Retirement Committee at a public hearing within 30 business days following presentation of the experience study to the PERB. If the PERB does not adopt one or more of the recommendations in the experience study, a written report explaining the board's rationale must be submitted to the Retirement Committee within ten business days. Following introduction of the bill, I received several communications about a number of concerns regarding the criminal penalties, questions about persons not included in the bill who committee members and the Governor may need to discuss the drafts with and questions about whether these drafts are considered public records. In response, it's my recommendation that the bill should be amended as follows. The penalty provision should be eliminated as well as a description of who can see the draft received by the committee members and the Governor. The draft actuarial valuation reports and the experience study delivered to the committee and the Governor should still be considered confidential documents. The draft actuarial valuation reports and the experience study should be exempted from the Public Records Act and not considered public records. This relieves concerns about a request to the Governor or committee members for copies of the draft under the Public Records Act before the PERB has a chance to hear the presentation and consider action. The PERB has also raised concerns about several provisions in the bill, but since they're here today to testify they will speak to those concerns. Thank you. [LB986]

SENATOR KOLOWSKI: I will now move the Chairmanship back to Vice Chairman Davis. [LB986]

SENATOR DAVIS: Any questions of Senator Kolterman? Thank you, Senator Kolterman. [LB986]

SENATOR KOLTERMAN: Thank you. [LB986]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

SENATOR DAVIS: We'll take the first proponent of LB986. Are there any proponents? Are there any opponents to LB986? Welcome. [LB986]

ORRON HILL: (Exhibit 1) Thank you. Good afternoon, Chairperson Kolterman, Vice Chairperson Davis, and other Retirement Systems Committee members. My name is Orron Hill, O-r-r-o-n H-i-l-l. I am the legal counsel for the Public Employees Retirement Board. I am here at their request to testify in opposition to LB986. First, the PERB discussed LB986 at its meeting on Monday, January 25, 2016. The PERB has no problem and is fine with the actuary providing a report to the committee within 30 days following the presentation of the report to the PERB, and with providing a written response to the committee within 10 days of the PERB making a decision not to agree with or follow an actuarial report. However, the PERB is opposed to two provisions of the bill. First, the PERB understands the reasons supporting the committee's desire to review reports prior to their public release at the PERB meeting. The PERB has no problem releasing the final drafts prior to the PERB meeting; however, the PERB is opposed to releasing the first drafts. These are lengthy documents. The first drafts often contain numerical and clerical errors. In some cases, the language is changed to clarify meaning. Regardless of the committee's decision, the PERB respectfully requests that the drafts remain confidential until they have been publicly presented at the appropriate PERB meeting. Whether you are an accountant, an attorney, actuary, or an elected official, any professional would be concerned about releasing a first draft of their work product. This is why it is called a draft. Attached to the written testimony you will find an e-mail from the PERB's actuary, Pat Beckham, outlining her concerns regarding the release of first drafts of reports. You will also find attached a letter from a PERB member, Kelli Ackerman, regarding her concerns about providing first drafts. Again, the PERB has no problem with providing final drafts. Second, the PERB also understands the reasons supporting the committee's desire to conduct experience studies every four years. The PERB is not opposed to conducting an experience study every four years. However, the PERB is concerned with the clause that requires an experience study "at the request of the Nebraska Retirement Systems Committee". The purpose of an experience study is to analyze the plans over a representative cycle and make intelligent decisions regarding the assumptions and funded status. To be effective, an experience study must cover a sufficient number of years and have a sufficient data pool for proper analysis. There is a concern that experience studies over shorter time periods are unnecessary and will not provide enough data for making critical decisions. The PERB is opposed to this language, and respectfully requests that this language be removed from the bill. The cost of this year's experience study is \$48,000. Such costs are included in the actuary's contract and incorporated into NPERS's biennial budget. A deficit budget request would be needed to cover the costs of ad hoc experience studies. It is difficult to justify to members that spending their trust funds on unnecessary studies is an appropriate use of funds or consistent with the PERB's fiduciary duty to the members. The PERB believes our requests are reasonable and in keeping with sound administrative policy. We respectfully request that the committee

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

reconsider the language in LB986 and revise the bill's language to address our concerns. This concludes my testimony and I would be happy to take any questions. [LB986]

SENATOR DAVIS: Thank you, Orron. Are there any questions? Senator Groene. [LB986]

SENATOR GROENE: On the preliminary one, study, do you always have that, a copy of that now kept? [LB986]

ORRON HILL: I want to make sure I understand... [LB986]

SENATOR GROENE: Not the preliminary study, but the...what's the term that we're talking about? [LB986]

ORRON HILL: The first draft, Senator? [LB986]

SENATOR GROENE: First draft, excuse me. [LB986]

ORRON HILL: It is my understanding that we do get a first draft and we review that document. I would certainly defer to some of our experts on that if you'd like some more information. [LB986]

SENATOR GROENE: So right now if I got the final draft and I said, well, I wonder what the first draft looked like, would you give it to me now? [LB986]

ORRON HILL: Again, I would have to defer that to the PERB and the director to find out the information on that. [LB986]

SENATOR GROENE: You know, let's get right down and dirty. We just want to make sure, I think some people do, that pressure by the PERB doesn't change the...any changes in the...that's my opinion. I don't know about anybody else. That's any organization. Accounting, you have double-checks. In government you should too. That pressure from somebody, a political person, PERB, that pressure isn't put on the auditor to make changes other than just grammatical so there's always that ability for the elected officials here to check that. That's why I think this is a good bill. But I was just curious if your last final draft, if I could ask for that yet now and compare the two. [LB986]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

ORRON HILL: We could certainly take that request to the people with the authority to make that. I unfortunately don't have the authority to make that decision for you, Senator. [LB986]

SENATOR GROENE: Thank you. [LB986]

SENATOR DAVIS: Any other questions? Thank you, Orron. [LB986]

ORRON HILL: Thank you, Senator. [LB986]

SENATOR DAVIS: Next opponent. [LB986]

PHYLLIS CHAMBERS: Good afternoon. [LB986]

SENATOR DAVIS: Welcome. [LB986]

PHYLLIS CHAMBERS: Chairman Kolterman and Vice Chairman Davis and members of the committee, my name is Phyllis Chambers, P-h-y-l-l-i-s C-h-a-m-b-e-r-s, and I'm the director of Retirement Systems. And I just wanted to comment on the previous question by Senator Groene. To answer your question, sir, we never change anything that would be anything that has to do with our opinion. The only thing we would change is if the numbers don't add up. So we get the numbers. We go line by line through every number and make sure it's right. And if something was worded improperly or left out, we would just ask that they clarify what that means. We would never change a document or...neither would the actuaries. It would be against their professional standards to change something that we would ask them to do... [LB986]

SENATOR GROENE: What about the part I asked, are those...? [LB986]

PHYLLIS CHAMBERS: Do we have the drafts? Yes, we would have several. I mean, so in other words, we'd get one. Our finance officer goes through and takes last year's and this year's and compares every single line. [LB986]

SENATOR GROENE: Can I ask a question? So they're public knowledge? I could get a FOIA, a citizen could and go look at the first draft? [LB986]

PHYLLIS CHAMBERS: No, drafts...well, drafts are not considered public information. I mean really, they're your professional work papers. [LB986]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

SENATOR GROENE: All right. I just wondered. [LB986]

PHYLLIS CHAMBERS: So I mean if you wanted to see them, I would share them with you as a member of the Retirement Committee. But basically... [LB986]

SENATOR GROENE: I could go sit in your office and look them over if I wanted to. [LB986]

PHYLLIS CHAMBERS: Yes. [LB986]

SENATOR GROENE: Let's clarify. I don't think you did anything wrong, Phyllis. I'm not sitting here... [LB986]

PHYLLIS CHAMBERS: No, (laugh) okay. [LB986]

SENATOR GROENE: You guys do a good job. We're one of the few states that have a good, solid retirement plans. But I'm just thinking accountability and transparency is all I'm thinking here. [LB986]

PHYLLIS CHAMBERS: Well, transparency is once we get that final draft. You know, we just want to send you the...we would be happy to send it to you prior to the meeting so you can see what the numbers are. I think basically you're not going to want to see every single number. [LB986]

SENATOR GROENE: No. [LB986]

PHYLLIS CHAMBERS: You're just going...you're basically wanting to know what are the assets, the liabilities, and what's the funded ratio, right? But this...I should have brought a copy of a report so you can see how lengthy it is. But we go through it and comb through it. [LB986]

SENATOR GROENE: An initial report...an initial draft, are there recommendations in there? [LB986]

PHYLLIS CHAMBERS: No, no. [LB986]

SENATOR GROENE: Oh, there isn't? The drafts from the actuary come in the final? [LB986]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

PHYLLIS CHAMBERS: Yes, yes. [LB986]

SENATOR GROENE: So there's no recommendations in this one then. [LB986]

PHYLLIS CHAMBERS: Yes, it's just report...it's just... [LB986]

SENATOR GROENE: It's just numbers. [LB986]

PHYLLIS CHAMBERS: Right. Those are numbers and then they do the presentation. Once all the numbers are done, then they do that PowerPoint presentation. And when all that's done, they go, should we send it to the printer? We say, it's good to go. We've checked everything. And so it's basically a matter of proofreading every line. It's not trying to change anything or keep anything from the committee. [LB986]

SENATOR GROENE: Well, I...I never seen one. I didn't know if the actuary comes in with recommendations and recommendations are already in the preliminary draft and if those things could be changed from the final draft from somebody's political pressure. [LB986]

PHYLLIS CHAMBERS: No. [LB986]

SENATOR GROENE: That's not the case. [LB986]

PHYLLIS CHAMBERS: Absolutely not. [LB986]

SENATOR GROENE: All right. Thank you. [LB986]

PHYLLIS CHAMBERS: No. Okay. [LB986]

SENATOR DAVIS: Anyone? Any other questions? I have a couple, Phyllis. [LB986]

PHYLLIS CHAMBERS: Okay, sure. [LB986]

SENATOR DAVIS: So I think it might make the committee comfortable if we could see one of those. Would that be possible for us to do? [LB986]

PHYLLIS CHAMBERS: Sure, sure. [LB986]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

SENATOR DAVIS: Could you bring one over to us and to our offices? [LB986]

PHYLLIS CHAMBERS: You bet. We'll get you one this afternoon. [LB986]

SENATOR DAVIS: And let us look at that. [LB986]

PHYLLIS CHAMBERS: Yeah. [LB986]

SENATOR DAVIS: Did...we have this letter from your actuary. Did you solicit that request or was that her own actions? [LB986]

PHYLLIS CHAMBERS: I talked to her about it and then she said she would send a letter. So it was a mutual...it was mutual on her part and ours, that we wanted you to be aware of how the process worked and that, you know, there's really about a week's time frame when we get these because they're working so on the clock. They're working...they're sleeping five hours a night and working all these different ones. And we're doing the same because we're getting ready for the joint meeting, the preparation to present this all to you, to get it all in final form, to get it to the printer. It's not a matter of keeping anything from anybody, really. I mean, behind the scenes we're just working like crazy. So I hope that helps. [LB986]

SENATOR DAVIS: Well, I think it does. [LB986]

PHYLLIS CHAMBERS: Okay. [LB986]

SENATOR DAVIS: I hope you understand why the committee felt strongly that something needed to be addressed and why we're having this discussion. [LB986]

PHYLLIS CHAMBERS: Well, I really didn't understand that maybe you thought we were changing the report because that isn't really the case. It's more a matter of, is everything correct? [LB986]

SENATOR DAVIS: Any other questions? Senator Kolowski. [LB986]

SENATOR KOLOWSKI: Just a statement and I think things are very much dependent upon process and trust in who we have working on these things. And I would no more want to see a first draft than I would of a dissertation which is really boring to read. So I guess I trust what

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

you're doing and how you're going about it and whatever the committee wants to see as a sample of the first draft, I think that would put us to rest as to... [LB986]

PHYLLIS CHAMBERS: Okay, you bet. [LB986]

SENATOR KOLOWSKI: ...what it looks like and what form it takes and then how you work with those figures. Thank you. [LB986]

PHYLLIS CHAMBERS: All right, certainly. We'll get that to you this afternoon. [LB986]

SENATOR DAVIS: Thank you. Any other questions? Thank you, Phyllis. [LB986]

PHYLLIS CHAMBERS: Yes. [LB986]

SENATOR DAVIS: Next opponent. Anyone testifying in the neutral capacity? Welcome, Senator Wickersham. [LB986]

BOB WICKERSHAM: (Exhibit 2) Senator Davis, Senator Kolterman, other members of the committee, for the record, my name is Bob Wickersham, B-o-b W-i-c-k-e-r-s-h-a-m. I'm here in a neutral capacity concerning LB986. And it isn't that I want to comment directly on the provisions of the bill, perhaps, but to recognize what I think is the focus of the bill, and that is to provide a kind of a management tool, if you will, for both actuarial valuations and experience studies that can affect the plans. And probably the most important of those are the experience studies in which economic or demographic factors are changed and the changes may or may not substantially impact the economic or the actuarial valuation of the plans. They may result, for example, in an actuarially accrued liability once they are placed in effect. Now, I've observed the implementation of experience studies. And it seems that it, the current process, catches you in a position where you may find it difficult to respond. That is to...the Legislature may find it difficult to respond. If, for example, you had an experience study and it's made substantial changes in the actuarial health--I'll characterize it that way--of a plan and that occurred in an odd-numbered year, you would find it difficult, you'd have to suspend the rules under the current rules of the Legislature to introduce legislation in the next session to change the plans in any way that affected benefits. Now you might or might not want to do that but it would depend, in that instance, solely on the timing of the experience study. You might be caught out of sync. So my suggestion and I have--the clerk I hope has caused to be distributed--an outline of a plan to manage the presentation and adoption of recommendations from an experience study and how to fit those into a schedule that provides the Legislature with an appropriate opportunity to respond to any changes in the actuarial health of the plan that might be indicated when the assumptions

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

are adopted. Now, in...we can go through the framework that I would suggest to you. And much of it is pretty...would follow current practice, but it has a couple of additions. For example, I think that...my understanding is that PERB is in the process of having an experience study completed and it's expected that that will be presented in August of this year. Now, if that's presented in August of this year and PERB under the current processes adopts the recommendations, whatever those recommendations are, it's my understanding that they will affect the...immediately affect the actuarial valuation of the plans. I see no reason not to delay the effective date of any changes in the actuarial assumptions. I would delay the effect of the actuarial assumptions for the cash benefit plans to January 1. That's the start of a plan year. I would delay the effective date of the changes in the defined benefit plans to July 1 of the following year because that's the start of the next plan year and would affect then the actuarial valuations for the appropriate years. In the meantime, because the experience study would have been produced in 2016, the Legislature in 2017, under your existing rules and likely knowing what the impact of the actuarial...changes, any changes in the actuarial assumptions might be, would be able to respond if you chose to or if it was important enough to do that. But the timing, it would be important to you because any changes you might make in 2017 would then impact the following actuarial valuation. And you may, in effect, get an experience...get an opportunity to right the ship before you're being told the right to ship, if that makes any sense to you and I hope it does. There's an example attached of a sample time line. I think it's accurate. I hope it's accurate. Any errors are mine. [LB986]

SENATOR KOLOWSKI: So it's a draft. [LB986]

BOB WICKERSHAM: Excuse me? [LB986]

SENATOR KOLOWSKI: It's a draft then? (Laugh) [LB986]

BOB WICKERSHAM: Well, Senator,... [LB986]

SENATOR KOLOWSKI: I'm kidding. [LB986]

BOB WICKERSHAM: ...if I can...it's something that I've been thinking about for several months. But frankly, making sure that I had all of the...I've been perhaps a little less diligent than I might have. Maybe I'm a little bit careless assuming that if I made an awful error that at least the committee counsel would catch it and fix it before you did anything about it. [LB986]

SENATOR KOLOWSKI: Thank you. [LB986]

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

Nebraska Retirement Systems Committee  
February 05, 2016

---

BOB WICKERSHAM: Is that...? Okay. [LB986]

SENATOR DAVIS: Any questions of Senator Wickersham? [LB986]

BOB WICKERSHAM: All right. Thank you. [LB986]

SENATOR DAVIS: Thank you, Senator Wickersham. Anyone else testifying in the neutral capacity? If not, that will close the hearing on LB986. [LB986]