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Nebraska Retirement Systems Committee
February 18, 2009

[LB365 LB424 LB612]

The Committee on Nebraska Retirement Systems met at 12:10 p.m. on Wednesday, February 18, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB365, LB424, and LB612. Senators present: Dave Pankonin, Chairperson; Jeremy Nordquist, Vice Chairperson; Lavon Heidemann; Russ Karpisek; LeRoy Louden; and Heath Mello. Senators absent. None.

SENATOR PANKONIN: Welcome to the Nebraska Retirement Systems Committee. I'm Senator Dave Pankonin from District 2. Our Vice Chairman, Senator Nordquist, is here. We expect the other senators or some of them to be here shortly but we know it's the lunch hour so we want to go ahead and get our hearing started, so the other senators may be coming as we go along. The agenda, we go by the agenda that was posted, the order of the bills. And at like all the hearings, we ask that you either silence your cell phones or turn them off, if you would please. When you come forward, clearly state and spell your name. And if you're ready to testify, move to the front. The standard rules apply here as well. The first two bills today I'm going to introduce. I'm going to turn it over to Senator Nordquist so we can move along. Thank you.

SENATOR NORDQUIST: All right, we will begin the hearing on LB365 and, Senator Pankonin, you're recognized to open. [LB365]

SENATOR PANKONIN: Good afternoon, Senator Nordquist and members of the Nebraska Retirement Systems Committee. My name is Dave Pankonin, D-a-v-e P-a-n-k-o-n-i-n, and I'm here to introduce LB365. LB365 provides two retirement plan enhancements for judges who retire after July 1, 2010. First, the legislation increases the retirement benefit for judges who serve 20 years or less on the bench. Currently, a judge's retirement benefit is computed at 3.5 percent of his or her final average compensation multiplied by the number of years of service as a judge, up to 20 years of service, for a maximum benefit of 70 percent. Since some judges are appointed later in their professional lives and do not serve 20 years before retiring, this change would give such a judge a higher retirement benefit if he or she retires before serving 20 years. The benefit would be computed by providing such a judge with a 3.75 percent annual benefit for years 1 through 10, and a 3.25 percent annual benefit for years 11 through 20. This proposed change will not increase the total benefit to a judge who serves up to 20 years. The second change in LB365 is to provide judges who serve more than 20 years an increased benefit of 1 percent per year for years 21 through...to 25, with a maximum additional benefit of 5 percent. Currently, a judge serving more than 20 years receives no increased benefit other than the increase he or she could receive from earning a higher salary in years 21 to 25. [LB365]

SENATOR NORDQUIST: Thank you, Senator Pankonin. First, I'd like to recognize Senator LeRoy Louden from the 49th Legislative District who's joined us, and Senator

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Russ Karpisek from Wilber, Nebraska, is coming in as well as Senator Lavon Heidemann from the 1st Legislative District. I have a first question. We passed a bill last year related to this plan. What, do you remember or do you know what that did? I can't remember if it was on the front end or on the back end, but made a change in... [LB365]

SENATOR PANKONIN: Right. [LB365]

SENATOR NORDQUIST: I can ask the people. [LB365]

SENATOR PANKONIN: Senator, I might mention if we look at this sort of action on the way, we would also have to look at the, which is my next bill, about judges' contribution rates and that they work together and that sort of process. [LB365]

SENATOR NORDQUIST: Yeah. Sure. [LB365]

SENATOR PANKONIN: But testifiers behind me may be able to answer that question. [LB365]

SENATOR NORDQUIST: All right. Great. Are there any questions from the committee? Seeing none, thank you, Senator. We will entertain proponent testimony. Thank you. [LB365]

BILL MUELLER: Senator, thank you. My name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska District Court Judges Association in support of LB365. As Senator Pankonin has described, this bill does provide for two additional enhancements to the judges retirement plan. Let me start out by saying that this bill has been introduced this year as a placeholder. As the committee is aware, Rule 5, Section 15 of the Rules of the Legislature require that any bill proposing a structural change which impacts the benefits or funding status provided under a public retirement plan must be introduced only during the first 10 days of a 90-day legislative session. So if there are going to be any enhancements made to a retirement system either this session or next session, that bill has to be introduced this session. We realize that times are not great for a retirement plans and we do not intend to promote this bill this session. We did want to have a bill introduced in the event that there was a desire and support on behalf of the committee to enhance the judges' retirement benefit. I'd be happy to answer any questions that the committee may have. [LB365]

SENATOR NORDQUIST: Thank you, Mr. Mueller. What did we do last year, the legislation on this? [LB365]

BILL MUELLER: Last year we reduced the early retirement penalty. [LB365]

SENATOR NORDQUIST: Okay. [LB365]

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BILL MUELLER: In other words, a judge who retires before they reach the age of 65, before the bill passed last year, received a significant reduction in their retirement benefit, something like 9 percent a year for every year that they retired before 65. The bill that the Legislature passed last year still has that penalty but I believe it's something like 3 percent a year so that a judge could retire early and receive less penalty. [LB365]

SENATOR NORDQUIST: Great. And I would imagine that if you guys...if we choose to go forward with this bill over the interim, the Judges Association would conduct an interim study on the impacts on the plan? [LB365]

BILL MUELLER: We certainly would be interested in doing that. In looking around the committee, all of you have served on the committee or are knowledgeable about the committee's work. Before any enhancement is proposed to a retirement plan, an actuarial study would have to be commissioned. The judges did commission such a study last year. We actually priced both of these benefits in the bill, but I think our plan and I assume that the Legislature would require that we have an actuarial study prepared for next session that would actually price these two benefits. [LB365]

SENATOR NORDQUIST: Great. Yeah. Thank you. Any questions from the committee? Seeing none, thank you, Mr. Mueller. [LB365]

BILL MUELLER: Thank you. [LB365]

SENATOR NORDQUIST: Any other proponent testimony? Seeing none, opponent testimony? Seeing none, neutral testimony? Seeing none, Senator Pankonin waives closing on LB365. That will close the hearing on LB365 and we'll take Senator Pankonin's opening on LB424. I want to recognize Senator Heath Mello, just arrived, represents District 5. [LB365 LB424]

SENATOR PANKONIN: Good afternoon again, Senator Nordquist and members of the Nebraska Retirement Systems Committee. My name is Dave Pankonin representing Legislative District 2 and I'm here to introduce LB424. LB424 was likewise introduced as a placeholder bill in the event a contribution adjustment is necessary to the judges retirement system in the next plan year. It would raise judges' contribution rates to an unspecified amount beginning July 1, 2009. As Mr. Mueller has explained the previous bill, this likewise is in, in case action is needed over the next couple of years as we move forward on some of these retirement issues. Thank you. [LB424]

SENATOR NORDQUIST: Thank you, Senator Pankonin. Any questions from the committee? Seeing none, thank you. Any proponent testimony on LB424? Seeing none, any opponent testimony on LB424? Seeing none, any neutral testimony? Senator Pankonin waives closing on LB424 and that will conclude the hearing on LB424. Thank

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you. [LB424]

SENATOR PANKONIN: Thank you, Senator Nordquist. I, also in my haste to get the meeting started today, I failed to introduce our committee legal counsel, Kate Allen, and our committee clerk, Denise Leonard, and appreciate their efforts as well. I think we've got everybody here now and the next bill is Senator Avery's bill, which is LB612. Senator Avery. [LB612]

SENATOR AVERY: Thank you, Mr. Chair and members of the committee. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in the Legislature. I am bringing before you LB612 which seeks to eliminate the perceived and actual inequality in public school employee salary and benefit package compensation. It does this by preventing public schools from doing several things. One, it prevents them from depositing more than 101 percent of the employee's required contribution match funds into the Nebraska public employee retirement for any employee unless it does so for all employees. Second, it prevents public schools from reimbursing in any manner an employee's contributions to the Nebraska public employees' retirement fund unless it does so for all employees. Thirdly, it prevents the public schools from contributing to an employee more than 101 percent of such amount as may be necessary to maintain the solvency of the system as determined by the Nebraska Board of Education upon recommendation of the actuary and trustees unless it does so for all employees. And finally, it prevents public schools from providing any other type of payment or reimbursement of payment into the Nebraska public employees retirement fund on behalf of an employee unless it does so for all employees. The key here is fairness and an attempt to make sure that all employees get included in any of the extra benefits that might be provided by public schools. Let me state here at the outset that Nebraska public school teachers, faculty, and administrators are a group of dedicated people striving for excellence in our schools and I think, in general, do a very good job. Every day our public school teachers struggle with lesson plans, trying to come up with new ways of teaching and communicating with the students. Often, they expend some of their own resources in providing supplies. They spend a lot of their time outside the classroom getting ready for the in-class experience. Public school administrators find innovative ways to encourage and promote teaching and developing a conducive environment for teaching in our schools. So I want to indicate that I am a strong supporter and defender of our public schools. I support the school aid formula. I believe that public education is one of our greatest assets and I certainly believe that we have a tremendous system here in Nebraska that needs to be preserved. So this bill does not question the character or the success of our educators. The bill is about fairness and compensation. We're in difficult economic times and I am a realist about that, and I know that we have to be very careful about how we allocate our resources, particularly in a time of scarcity, so this means that we have to make tough choices about how we're going to use those scarce resources. But I am troubled that limited funds are not being directed to students, not being directed at the curriculum or not being directed at

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the teachers in the classrooms but, instead, much of those resources are being spent on increasing salaries of officials who are already highly compensated. For example, last year in Lincoln six public school executives were awarded up to 14 percent of negotiated hiring benefits, including salary increases, cell phones and laptop allowances, merit pay, increased percentage of base salary to the Nebraska public employees retirement fund, and a new benefit and that new benefit was a stipend to reimburse funds contributed to the Nebraska public employee retirement fund. Statutory language, existing language, requires that public school employees shall deposit into the School Retirement Fund 7.28 percent of their total salary compensation. The formula then requires that the public schools deposit a 101 percent match of the employees' required contribution, that is the 7.28 percent, into the retirement fund. The remainder of Nebraska public school teachers and administrators received an approved, across-the-board, nonnegotiated 4.5 percent cost-of-living salary increase. Their base salary increase to the retirement fund did not increase, nor did they receive reimbursement for any of the funds they contributed to that retirement fund. These are ordinary, hardworking teachers and my concern is that they're getting the short end of the stick while already highly paid, highly compensated executives are getting added benefits that are not available to teachers. These are taxpayer dollars and we have to be careful how we spend them. It is...my interest in this legislation derives from the fact that in Lincoln alone the public schools utilize 64 percent of the property taxes that are collected, and I believe we need to be sensitive to how that money is being used. Taxpayers have the right and responsibility to question how their taxes are spent. This is not unique in Lincoln. It's just true throughout the state. What I'm seeking to do with this bill is to ensure a more fair use of the scarce dollars to make sure that front-line teachers get a share of these tax dollars that are used to compensate our administrators. With that, I will stop and take any questions that you might have for me and wait for others. [LB612]

SENATOR PANKONIN: Okay. Thank you. Thank you, Senator Avery. And we're sure all glad you're back... [LB612]

SENATOR AVERY: Thank you. Thank you. It's good to be back. [LB612]

SENATOR PANKONIN: ...and looking well. Any questions for Senator Avery? Senator Louden. [LB612]

SENATOR LOUDEN: Yes, thank you, Senator Avery. When I look at your bill, I guess on the statement of intent, it said match contributions for any employee unless it does so for all employees. Should you just strike that? Why should it do it for any of them? I mean, do we need to put that in there? Because then you'll raise...you raise everybody's wages and we're talking about, you know, some of the administrative people that aren't exactly on food stamps getting this raise. [LB612]

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SENATOR AVERY: Right. Well, it would still be up to the school boards to make that decision. But if they were going to decide to essentially make the personal contribution to the retirement fund on behalf of the employee, they'd have to do it for all employees and not just for a select, very, very limited number. I believe it was six in the OPS system. [LB612]

SENATOR LOUDEN: Okay. Thank you. [LB612]

SENATOR PANKONIN: Senator Heidemann. [LB612]

SENATOR HEIDEMANN: Say if they recognize that they had an imbalance, which you (inaudible) with the situation that you describe us, and they wanted to go back and make that right, wouldn't this bill prohibit them from doing that? [LB612]

SENATOR AVERY: An imbalance in that they were...that... [LB612]

SENATOR HEIDEMANN: They treated some employees better. [LB612]

SENATOR AVERY: ...were undercompensated? [LB612]

SENATOR HEIDEMANN: Yeah. [LB612]

SENATOR AVERY: All right. This would prevent them from providing this particular benefit without providing it to others, yes. [LB612]

SENATOR HEIDEMANN: So if they wanted to go back and treat the teachers of the other employees as they did the administrators, it wouldn't allow them to do that without, once again, treating the administrators in the same fashion. [LB612]

SENATOR AVERY: Right. And have you ever known that to happen, Senator? I'm sorry, I'm not supposed to ask you questions, am I? [LB612]

SENATOR HEIDEMANN: I was just... [LB612]

SENATOR AVERY: Yeah. [LB612]

SENATOR HEIDEMANN: ...this bill would prohibit them from... [LB612]

SENATOR AVERY: Right. [LB612]

SENATOR HEIDEMANN: ...correcting an imbalance. That's...would be correct? [LB612]

SENATOR AVERY: Yes, but I don't know if such an imbalance exists or has ever

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existed because the way it works now the school system already contributes a portion to your...of your salary or base salary to your retirement. The employee then contributes a portion. What I'm trying to prevent is having the school districts pay the employee contribution as well as the school system portion unless they're going to provide that for all. If you just pick out four or five employees and say, we're going to pay your share of your contribution as well as the district's contribution and, by the way, that's not going to go to ordinary teachers, you've got to come up with your own contribution, that's what I'm trying to stop. [LB612]

SENATOR HEIDEMANN: Okay. [LB612]

SENATOR PANKONIN: Seeing no other questions, thank you, Senator Avery. [LB612]

SENATOR AVERY: Thank you. [LB612]

SENATOR PANKONIN: Proponent testimony...testifiers. Welcome. [LB612]

HERB SCHIMEK: (Exhibit 1) Thank you, Mr. Chairman, members of the committee. My name is Herb Schimek, that's H-e-r-b S-c-h-i-m-e-k, representing the Nebraska State Education Association. This bill, LB612, is very easy to understand. It is simply based on equity for the members of the Nebraska School Retirement System. The bill prevents any employee from getting a sweetheart deal that other employees in the same facility would be unable to receive. The school retirement legislation has improved tremendously over the last 30 years through the combination efforts of the Nebraska Association of School Boards, Nebraska Council of School Administrators, and the NSEA. These groups have worked long and hard to build this system and, thus, have been very productive to the system. NSEA strongly opposes anything that would threaten the equity of all members of that system. Once we start allowing divisions among different groups within the retirement system, we will be pitting one group against the other. And the NSEA supports LB612 and hopes it will be reported to the floor and given quick passage by the body. And it goes without saying that the retirement system we have built over the last 30 years is a good one now, but it's taken us 30 years of baby steps to bring that about. We salute the Legislature because they helped us accomplish this. When I first started with NSEA, I would get telephone calls from...I used to call them the little old ladies--my wife would probably kill me for saying that--but they would be crying, literally, after teaching 45 years and getting just a pittance. Today they get a decent, fair retirement system and we strongly object to anything that would harm that in any way, whatsoever. Many states throughout the nation have all kinds of different limits on retirement; ours does not. It is a good system that treats everyone very equitably and we want to preserve that. As far as people who might have gotten through this loophole, I think that would continue for the year until the new bill went into effect. That might have answered one of the questions that people were thinking. Any questions, I'll be glad to answer. [LB612]

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SENATOR PANKONIN: Thank you, Mr. Schimek. Are there any questions? Seeing none, any other proponent testifiers? [LB612]

HERB SCHIMEK: Thank you. [LB612]

SENATOR PANKONIN: Proponent testifiers? All right. We will move to opponent testifiers. Please come forward. [LB612]

JOHN BONAIUTO: Senator Pankonin, members of the Retirement Committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of Nebraska Association of School Boards, and we're appearing as an opponent of this bill this afternoon. We're also happy to see Senator Avery back and I'll try not to get myself in too much trouble since he's a member of the Education Committee and I have to sit before him a lot more frequently. The...you know, I have to agree with my colleague who is a proponent of this bill that this is a good system. The retirement system is a good system. Unfortunately, that's where our agreement ends. On this issue, I don't see this bill solving a retirement system problem. There isn't really a loophole or a sweet deal here. I think you have school boards who are employers, and this is an employer working with an employee group--it could be teachers, it could be administrators, it could be other employees of the school district--and determining through the bargaining process how the taxpayer dollars are going to be spent. And, as far as the administrators, you know, administrators are hired like most all of the employees but it is a market system, and a fair market system for some administrators may mean that you receive benefits in a little different way. Or, if I am an administrator that is in a higher tax bracket, it may make sense for me to bargain or negotiate with a board and say, it would be better for me if you paid a portion of my retirement because that doesn't impact the system, doesn't make any difference who's paying into the system or how it's being paid as long as it's being paid, but as an employee I get the full benefit of that dollar being paid that way because the employee doesn't have to pay the taxes on it. Actually, it saves taxpayer money because then the school district or the employer, as the employer for that individual, doesn't have to pay additional taxes or FICA on that contribution. It really is an employer/employee issue. There's nothing that says that the teachers couldn't bargain for this right now. It is part of a process that, you know, I think that school boards and their employees work out. I would venture to say in many districts you would find that the administrators have a different insurance deductible than the teachers because that is done by bargaining group. If the administrators have a \$1,000 deductible, we don't force the teachers to have a \$1,000 deductible for their insurance, and I think that is what we're talking about here, that the employer, the school board, should have some ability to make these decisions as they're working with their different groups. Administrators have a 260-day contract, depending on what type of administrator you are. If you're a district office administrator, it may be a 12-month contract. If you're a principal, it might be a shorter contract. So all of these things are

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differences. I would say the bottom line here is, you know, school boards are accountable to the people that elect them, just like you are accountable to the people that elect you. If there is a school board that does something that their constituents or the community doesn't feel is right, they have the ability to unelect them at the next election. So I would urge you not to get involved in...it's a process that really isn't a retirement system issue. It sounds to me more like a local issue dealing with the school board and the employees. With that, I'll conclude my testimony. [LB612]

SENATOR PANKONIN: Thank you, Mr. Bonaiuto. Any questions? Senator Nordquist. [LB612]

SENATOR NORDQUIST: Just real quick, yeah. These are plans that we set up in statute and we administer through NPERS, so I think it's a little bit more than a local issue. But do you think that we...these boards, by putting this into a...not directly in salary but putting it into a compensation package, which at times can be pretty complex to understand, is maybe not being fully transparent with the compensation of those administrators to the public? [LB612]

JOHN BONAIUTO: Yeah, I don't...I don't believe that that is the intent or...this would be a small piece and so I don't think they're hiding any. The alternative would be to put this in salary and let the administrator pay it. Again, it depends on the local situation so I really...my sense is it's not to hide this portion of a compensation package, looking at total compensation. In some instances, and this practice may be a little more widespread than it appears to be on the surface as far as there may be a number of districts that are doing this, and so if you have an administrator moving from one district to another and that administrator has had this type of an agreement with their employer, they may bring that to the new district who has not been doing this and say, you know, in my previous district they allowed me to do this and it was a good situation for me and it was a good situation for the district. And I think that's how some districts get involved in this. So again, it's part of the market system. [LB612]

SENATOR PANKONIN: Any other questions? Senator Louden. [LB612]

SENATOR LOUDEN: Yeah. Thank you for your testimony. And I...in our notes here we've got what was out of the Lincoln JournalStar on what happened with Lincoln here. Of course, I'm a long ways from Lincoln but I do pay school tax down here in Lincoln. And when you start saying they put 8.5 percent of their salary in a tax-deferred annuity, you know, as part of a package and, as you say, that would save some taxes, well, I'm on the Revenue Committee and we're looking for revenue and when you have people that (laughter) that are doing funny business out here, it's, you know, it's quite...it's kind of not exactly transparent, as Senator Nordquist has said, and then there's always room for that. And besides, this is tax money and I think it should be. If you're going to pay your superintendent \$275,000 a year, then write her out there, that's what we're going to

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pay the superintendent and he can pay his taxes on it just like anybody else. If you go down here and work for anybody else, you're going to pay your tax on it. Why should they have a benefit that other people don't have, I guess? [LB612]

JOHN BONAIUTO: And, Senator, I appreciate your question and I can't speak for that exact situation other than to say that, again, I think in this market-driven, employer-employee environment, there are a host of different options that people look at. And I did think long and hard about my comments because as I looked across this committee and I looked at a member of the Revenue Committee and a member of...the Chair of the Appropriations Committee and I thought, oh boy, I could get myself into trouble here in a hurry, but that is a fair question. You're always looking for ways to maximize people's contribution to the state in various areas because that's what makes things run and you don't want to shield or shelter too much of the taxable income. But again, this is an acceptable and I think a legal option that adds to that package that can be crafted by the employee and the employer. [LB612]

SENATOR LOUDEN: Well, when you mentioned that, yeah, it...whether it's legal, it's probably not illegal, but I don't know whether it's right or not. I guess I have a problem with some of these packages like that. When you say it's market-driven, is it market-driven or is it paranoia-driven? I mean I've been on a school board and hired teachers back in the sixties... [LB612]

JOHN BONAIUTO: Absolutely. [LB612]

SENATOR LOUDEN: ...when we couldn't find teachers and I know how this works, one school district competing against the other. So that's the reason I ask, is it market-driven or is it simply a case of a bunch of school board members get paranoia that, oh, my Lord, that guy might leave us so we've got to, you know, and turn it wrong side out for him? [LB612]

JOHN BONAIUTO: Well,...and I think that the school board members understand that they have to be more creative in trying to keep good employees and their administrators, because there is that worry that your superintendent or your administrators can leave and go to another district. And so I do believe it is market driven and I can only say that I--getting off course a little bit--do appreciate the fact that as I usually look through or across a committee, there are a number of members that have served on local school boards so you understand exactly what I'm talking about. And the market has changed and trying to attract and keep good employees is a challenge. [LB612]

SENATOR LOUDEN: Okay. Thank you. [LB612]

SENATOR PANKONIN: Senator Karpisek. [LB612]

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SENATOR KARPISEK: Thank you, Senator Pankonin. Mr. Bonaiuto, you say this doesn't affect the retirement system. The same money is being paid in, just by different people. [LB612]

JOHN BONAIUTO: Yes, Senator, and that's...I think that's my point, that I think we have a situation here that should not cause any problem for the system itself, that the same amount is being paid whether it's coming from the employee's pocketbook or the school board coffers. [LB612]

SENATOR KARPISEK: And maybe it's in the wrong committee for this comment, but if the school has a limited supply of money and they have to cut out on something but they're paying more in this, I see that as a problem. [LB612]

JOHN BONAIUTO: And that is noted, Senator, and I appreciate that. I think, you know, from our members' perspective and working with school boards on budget issues and negotiations and...my members look at total compensation and so there's going to be so much money on the table and that's the way it usually works. So whether it's a compensation package that has this as a piece of that package or it's a compensation package that says, well, we're not going to do this but we will do this, I think it's going to be pretty much the same dollars. They may just be distributed differently. I think boards have that discussion with teachers when they negotiate in the bargaining process. We're going to have a pool of money here and we could put some in health insurance, we could put some in salary. We could do various things with this pool or pot of money but this is what it's going to be, and they try to get as close to that amount as possible. So I don't think this creates more of a liability but I don't think that without this it would be less of a liability either. [LB612]

SENATOR KARPISEK: Thank you, Mr. Bonaiuto. Thank you, Senator Pankonin. [LB612]

SENATOR PANKONIN: Senator Nordquist for another question. [LB612]

SENATOR NORDQUIST: Yeah, real quickly. On the definition of compensation that we use in the school plan, how much of like...just like in this JournalStar article, the payment to the annuity, cell phone, laptop allowance, life insurance, how much of that is considered compensation for purposes of their contribution to the retirement plan? Is any of it? [LB612]

JOHN BONAIUTO: Senator, I'm not sure that I know the answer to that question. [LB612]

SENATOR NORDQUIST: Okay. We'll take a look at it. [LB612]

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JOHN BONAIUTO: But it's a reasonable question. Beyond the traditional things that...but some of the other areas, I can tell you they'd be taxable. (Laugh) I'm not sure about how they work with the retirement system. [LB612]

SENATOR NORDQUIST: Okay. Okay. Thank you. [LB612]

SENATOR PANKONIN: Okay. If no other questions, I've got a quick one as well. Obviously, and being the first testifier you've probably got more of the questions, John, but this board maybe has learned some things in this Lincoln situation. Do you think that's going to be kind of a warning to your organization because of the somewhat negative publicity that resulted? From being with the Association of School Boards, what are you hearing from your membership and maybe specifically this board? [LB612]

JOHN BONAIUTO: Well, I think that this is a good board and I think that their belief is that they're elected to do a job and this was part of the job they needed to do. Now sometimes you do something, you get the negative publicity and you realize that maybe we could have gone about this a different way. But knowing the folks that serve on that board and how they do approach these issues, they're always learning. And so other boards look at this and they say, gosh, the first person maybe that sticks their head up a little bit too far (laugh) is the poster child for learning to do something a little differently. And so that may be the case in this situation. [LB612]

SENATOR PANKONIN: Okay. Any other questions for this testifier? Seeing none, thank you. [LB612]

JOHN BONAIUTO: Thank you very much. You know, you're right about that first testifier and my colleagues always are pushing to see who gets to go up first. (Laugh) [LB612]

SENATOR KARPSEK: We saw you guys looking at each other. (Laugh) [LB612]

JOHN BONAIUTO: I drew the short straw. (Laugh) [LB612]

SENATOR PANKONIN: Okay. Other opponent testifiers? Welcome. [LB612]

ED ZIMMER: (Exhibit 2) Thank you. I thought, in the interest of your education and particularly mine, maybe I should go next. I'm Ed Zimmer, E-d Z-i-m-m-e-r. I wear several hats and I need to explain just briefly which ones I'm wearing today. For 12 years, I've been an elected volunteer member of the Lincoln Board of Education. I'm speaking for myself today, one of seven. I'm not speaking as the board. I'm a past-president of Nebraska Association of School Boards, and for many years I've been a member of the legislative committee and John Bonaiuto graciously is willing to claim me today and I appreciate that. To shorten my testimony, I've shared a guest editorial

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the JournalStar was kind enough to publish for me last month which addresses my board's recent action on the executive contracts. And as Senator Avery made clear, LB612 is a response to that action and I'll focus on LB612 and I'll take your questions on anything you ask me. LB612 will do nothing to strengthen the state school employees retirement system. The type of benefit it restricts makes full payment to the system. It's a direct contradiction of Nebraska's cherished and wise policy of local control of school districts, abridging school boards' ability to recruit and retain top talent. It restricts a benefit which several districts have found beneficial to attract top performers in highly competitive specialties. Our budget and policy decisions are overseen by the board's patrons--our voters. That's how a representative democracy is supposed to work. I have offered my services to and been elected by my constituents four times. LB612, as drafted, is unwise, unnecessary, and unclear. This intrusion on a local board's ability to negotiate with employees would decree that a particular pension benefit must be granted to all employees if granted to any. Before teachers, principals, or administrators could successfully negotiate for this benefit, fully paid pension benefits would apparently have to be extended to every part-time employee, every retiree driving a bus for a few hours, every teenager working the summer as a temporary groundskeeper. It seems nonsensical but I don't find any exclusions in the clear, simple words "unless the school district does so for all employees." Please don't advance this flawed policy. Don't take negotiating and retention tools away from your local, elected, volunteer school board members. Thank you for your attention. I welcome your questions. [LB612]

SENATOR PANKONIN: Thank you, Mr. Zimmer. Are there questions for Mr. Zimmer? Senator Nordquist. [LB612]

SENATOR NORDQUIST: Mr. Zimmer, thank you for testifying today. Did you, when you made this decision on the compensation package and in the past, did you...what kind of discussion and did you guys have amongst yourselves about kind of the transparency aspect with the public, and what are your thoughts on that? [LB612]

ED ZIMMER: Our contracts, like everything in a district, are public documents and are frequently requested by members of the public. Somewhat like the school finance formula, we don't really adopt every budget till we explain the school finance formula. I've been in lots of public budget meetings. A clear, simple answer to the school finance formula is not a true answer and these contracts are complicated. Our employee contracts are complicated, but we do act on them openly in public. They're public documents. Obviously, we didn't communicate as fully as folks wished. That's one reason that I thought it would be worthwhile to put an article in the paper and they were willing to do it, put my name on it, because it was an action I think the board was well informed on and it was a situation of competition and attracting employees that we very much needed who had had similar benefits in other places and brought those to us and argued strongly for them and then working our equity within an employee group. And, no, it was not an easy decision and, no, it's not one that's gone down real easily but I

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think was a correct one and it's an ability that school boards need to have. [LB612]

SENATOR NORDQUIST: All right. Thank you. [LB612]

SENATOR PANKONIN: Other questions? Senator Louden. [LB612]

SENATOR LOUDEN: Yes. When...I see where you had...you gave, well, 14 percent of their salaries as negotiated annuities. Now is that taxable or will that be deferred, and does that...do they have to pay into their retirement on that amount of money? [LB612]

ED ZIMMER: What I'm certain is that they do it correctly. And I'm also certain that, as a board member and as an architectural historian, I'm not a good tax advisor so I'm not certain of the exact answer to that, sir. [LB612]

SENATOR LOUDEN: Well, you must have been something because you voted, you voted for this so you had to know what you were doing. I mean... [LB612]

ED ZIMMER: And that's correct and I'm certain it was...that both the contract was in order and how it's handled is in order. The tax law behind that, to my mind, school boards are policy setters and budget monitors. We adopt budget and set policy for the board. I don't...and we have excellent employees. I don't know the legal nuances of every aspect of that contract. I do know what we compensate our employees and that we do so competitively and fairly to retain a good team. [LB612]

SENATOR LOUDEN: Well, my concern is if you're paying wages and slipping it past without paying some of the deductibles that should have been paid on, I guess would be my concern. [LB612]

ED ZIMMER: What I'm sure is that we're paying everything that should be paid. [LB612]

SENATOR LOUDEN: The other thing, I see where, according to this article, that Mary Campbell, as an assistant, she got the same...she got the same...same type of contribution. She got a 14 percent of her salary towards an annuity instead of all in dollars and cents. Is that correct? [LB612]

ED ZIMMER: I don't have the article in front of me that you do, sir. We have a small executive team that run a very large business and operation. Mary Campbell is one of those top six employees that we were trying to bring in to kind of a level playing field among them and they are the group that we've been speaking about, Mary, as probably whereas one of our newer employees within that team. And it was going out to the market for the couple most recent hires that brought...I think the benefit that's particularly in LB612 to us. Another district had been using it and a new hire successfully negotiated to retain a benefit he had had elsewhere in Nebraska. [LB612]

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SENATOR LOUDEN: Okay. [LB612]

ED ZIMMER: Mary, as a new employee, also then sought similar compensation to the team she'd be working with. [LB612]

SENATOR LOUDEN: Okay, here's my problem and I'll lay it out to you. When you start putting those annuity contributions or some tax-deferred annuity or something like that in there, that does...maybe necessarily my problem is, is that part of your wages and is that considered their wages or their compensation for retirement purposes later on but yet, in the meantime, they're slipping this by and not paying retirement fees on that? This is where I have the problem. I mean, it's just like stock options with corporations and stuff. Were you in fact trying to slip money past without having to pay some taxes or some retirement funds on it? [LB612]

ED ZIMMER: I'm sure we were operating correctly and legally and that the contract which would be available, and I'd gladly provide it to you, it was properly structured and was paying...both the district and the employee were paying as they should under the laws. I think these would be both federal and state laws. And it was not...it was...our contracts are structured to attract and compensate fairly the key employees we need, not to dodge. And in fact, this bill doesn't address anything about...the pension payment is full. It's exactly how it gets to the system and I'm confident that that's true of our contracts. [LB612]

SENATOR LOUDEN: Okay. Thank you. [LB612]

SENATOR PANKONIN: Thank you. Any other questions for Mr. Zimmer? Seeing none, thank you for attending. [LB612]

ED ZIMMER: Thank you very much. [LB612]

SENATOR PANKONIN: Any other opponent testifiers? [LB612]

MICHAEL DULANEY: Senator Pankonin, members of the committee,... [LB612]

DENISE LEONARD: I'm sorry. I need to have your paper, please. [LB612]

MICHAEL DULANEY: Is that good? [LB612]

DENISE LEONARD: The paper. [LB612]

MICHAEL DULANEY: Oh, I'm sorry. [LB612]

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DENISE LEONARD: Thank you. [LB612]

MICHAEL DULANEY: Senator Pankonin, members of the committee, my name is Mike Dulaney. I'm the executive director for the Nebraska Council of School Administrators, last name D-u-l-a-n-e-y, and we're very pleased to be here to talk about retirement issues with you. I'm going to start with Senator Nordquist's question about compensation. Now interestingly, the definition of compensation, that little section in the large definition provision is one of the most opened up pieces of law that we...that Mr. Schimek and I look at it seems like every session and we're constantly looking at what is the right thing there. Now some of the dialogue has been, well, maybe all compensation should be attributable to retirement, but currently, of course, the provision says that salary is how you base the contribution. So it's the contribution rate times salary. And I look back at the counsel for the retirement agency and I just do not believe that benefits would be part of that. And so that's one issue that came up in the discussion so far today. No, I want to focus on, first of all, I know for a fact that Senator Bill Avery is as proeducation as they come and we respect the incredible work that he has done for the Education Committee and continues to do, so we know that he cares deeply about K-12 education, about school officials and school employees generally. So we know that he is bringing an issue because he believes strongly that it should be here in front of you. What I want to do is talk about why some of this is going on and maybe some things that you're not aware. And the fact is that in rural Nebraska there is quite often a need, and I think Senator Heidemann was talking about this or maybe Senator Loudon, whether this is school-board driven. The fact of the matter is there are a few administrators/superintendents out there that receive this type of benefit package because they're trying to lure quality administrators to them and it's not always easy to do to get the type of person that they're looking for. The superintendent of schools is, of course, the leader of the school district and that person has to have a number of qualities to manage and lead a school district. And so that, you know, it's the prerogative of the school board, always has been, to try to use whatever means necessary to attract the right person to them. Going to the equity issue that Mr. Schimek brought up...and I got to tell you this, we wouldn't be here today talking about this incredible school retirement system if it wasn't for Herb Schimek and NSEA. That's a fact. He has been here for a long time. He has done tremendous work on behalf of school employees, most of whom don't know he exists but they should because he has been that...been that incredible, and so we certainly respect the opportunity to work with him. Now on equity, I suppose we could dice that up any number of ways, but I just want to draw your attention to one provision in law, in the school employees retirement system, and that's called a 7 percent rule. Now that actually is a rule that my organization, the school administrators, came to this committee a number of years ago when Senator Stuhr headed up the committee because we had an issue that we felt that we had a responsibility to address. The slang terminology was "spiking," and what was going on was, in very limited number of incidents, of basically conversion of benefits to salary. And, Senator Nordquist, that kind of gets to what you were talking

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about, and we did not feel that that was an honorable thing to do. It was not ethical and we wanted to put an end to it. My organization came to the table to say here's our solution, and that is to install a 7 percent rule, meaning that no more than 7 percent of your salary increase in any one year would be attributable to retirement calculations I believe in the last six months of employment or prior to termination of employment for purposes of retirement. And so we believe, as Senator...as Mr. Schimek does, that we need equity in the system, but I want to draw your attention. The 7 percent rule has an exclusion and the exclusion is for anyone in a collective bargaining agreement. Well, there may be a few out there but I don't think there's too many administrator collective bargaining units. They are teachers, of course, that we're talking about. So if you are a teacher in a collective bargaining unit, then you are excluded from the 7 percent rule, meaning that it could be beyond 7 percent and all of that would be attributed to the retirement calculation. Now did my members particularly like that? No, but that's the way...that's the way that piece of legislation went and that's the law now. So is it equitable? I don't know. I guess we could debate about that. True equity within the system probably doesn't exist, but this is how we've structured it so far. This is the way we developed the retirement plan. We're certainly very, very happy with the way it is right now. I will say this also: My members appreciate the fact that they have one of the best defined benefit plans out there. They are fortunate people to have it. I wish I had it. I wish we all had it, it is that good of a system. If we felt that there was any abuse of the system, I would be the first to be in front of you talking about a solution to the problem, let me assure you that. As to the LPS situation, I know these individuals, I work with them. Happen to know Dr. Susan Gourley is one of the highest respected superintendents in the nation and that is why, I think, that the school board of Lincoln works very hard to retain that caliber of leadership. I know the other administrators involved and I have equal respect for the job that they do. And so, you know, it's about retention of good people and this school board in Lincoln is doing what they can surely to retain those people. The last thing I would want to bring up is the fact that if this bill became law, then teachers would, in effect, not have the opportunity to have this of their own. It seems to me, and I'm not a negotiator, I don't pretend to be a negotiator so I may be naive here, but it seems to me that negotiating teams would want to have every single opportunity to leverage or negotiate for whatever item that they may think they could have, whether it be a complete reimbursement of the contribution, as the case we're talking, or a partial reimbursement of the contribution, whatever the case may be. It just seems to me logical that you'd want to keep all options open but, again, I'm not a negotiator. That's just my own personal thought. With that, Senator Pankonin, I'll close my comments and ask if there's any questions. [LB612]

SENATOR PANKONIN: Thank you, Mr. Dulaney. You probably maybe answered some questions, but if there is further questions we will...Senator Nordquist. [LB612]

SENATOR NORDQUIST: Thank you, Mr. Dulaney. I'm not sure if the spiking provision would kick in here but...in this line of question. First, on the...on our...on this plan, what's

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the final average compensation as calculated over what period of time? [LB612]

MICHAEL DULANEY: It's a three year... [LB612]

SENATOR NORDQUIST: Okay. [LB612]

MICHAEL DULANEY: They...well, I should say, they take the highest, they take the highest three years of compensation. I'm looking back to make sure. [LB612]

SENATOR NORDQUIST: Okay, highest three years, okay. [LB612]

MICHAEL DULANEY: The highest three years of salary. [LB612]

SENATOR NORDQUIST: Okay. Okay, let's say that we, you know, had an employee that, you know, gradually they, you know, got cost of living. Their highest three years were at the end. If they went along most of their career and had, you know, \$20,000 or whatever tucked aside that was their contribution, out of their salary but in compensation, going to the retirement, you know, paying their portion, and then they got to those last three years and they negotiated, well, I don't want to do that anymore, I want that all in my salary, wouldn't that have a negative impact actuarially on our plan because they weren't paying contributions on that \$20,000 but they're going to be receiving that \$20,000 retirement benefit? [LB612]

MICHAEL DULANEY: Do you mean...and, Senator, just to make sure I understand, you mean like kind of a backdoor conversion right at the right time prior to... [LB612]

SENATOR NORDQUIST: Yeah, and it seems like that could potentially happen. [LB612]

MICHAEL DULANEY: Well, and I don't know. I guess I'm not...I'm not knowledgeable enough to know. I will say this. The 7 percent rule is meant to... [LB612]

SENATOR NORDQUIST: Prevent. [LB612]

MICHAEL DULANEY: ...you know, if there is a conversion in the last, say, three years of employment. And the idea is, hey, I want to, you know, kick up that salary a little bit so that I have a higher benefit when I retire. [LB612]

SENATOR NORDQUIST: Uh-huh. [LB612]

MICHAEL DULANEY: The 7 percent rule is meant to say, okay, you do what you want but only 7 percent of that is going to be used for purposes of retirement calculation and... [LB612]

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SENATOR NORDQUIST: On the 7 percent, what's the time frame on how that gets applied? [LB612]

MICHAEL DULANEY: The last...it's 60 months, I believe, is what it says in statute and so that would be the five years... [LB612]

SENATOR NORDQUIST: Okay. Okay. [LB612]

MICHAEL DULANEY: ...prior to. And so...and I've always said, you know, the retirement agency does a tremendous job and they have to calculate this somehow and I think they have their hands full sometimes with a number of different contracts and computing that. [LB612]

SENATOR NORDQUIST: Uh-huh. [LB612]

MICHAEL DULANEY: I think I should defer to Mrs. Chambers on some of those questions. [LB612]

SENATOR NORDQUIST: Sure. And I'll follow up with them. Thank you. [LB612]

MICHAEL DULANEY: Okay. [LB612]

SENATOR PANKONIN: Thank you. Any other questions? Seeing none, thank you. [LB612]

MICHAEL DULANEY: Thank you. Thank you, Senator. [LB612]

SENATOR PANKONIN: Any other opponent testimony today? Seeing none, anybody in the neutral position that would like to testify? Welcome. [LB612]

WANDA CAFFREY: (Exhibit 3) Thank you. Good afternoon, Chairman Pankonin and members of the Retirement Committee. I am Wanda Caffrey, that is W-a-n-d-a C-a-f-f-r-e-y. I'm here today to testify in a neutral capacity on LB612 on behalf of LIBA, the Lincoln Independent Business Association. LIBA has reviewed this bill and would like to point out what we believe may be some unintended consequences that may affect the taxpayers of Lincoln Public School systems. Let me explain. The 2008-2009 budget for Lincoln Public School systems indicates that total salaries for this year are \$208,285,060. All permanent public school employees who work at least 15 hours a week on an ongoing basis are required to contribute 7.28 percent of their salary to the Nebraska Public Employees Retirement System. As the bill is currently worded, it would appear that since LPS has recently added language to the contracts of its executive committee that would reimburse these LPS executives for their contribution to the

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NPERS system, then LPS would also have to reimburse every employee in the district in a like manner. Therefore, it would appear that LPS would be required to contribute somewhere in the neighborhood of \$15 million if they're required to reimburse all employees for the NPERS contribution as well. This would seem to be an unfunded mandate and I would wonder if the state will be providing additional state aid to compensate the taxpayers of Lincoln for this mandate. LIBA would like to ask that this committee consider the following amendment which would prohibit any reimbursement for the employee contribution to NPERS. These reimbursements are nothing more than additional salary. In the spirit of transparency, LIBA feels that if a school district decides to increase an executive's salary, then they should call it a salary increase and not try to disguise it as a reimbursement. We offer the following, and I don't know if you want me to go through specifically each page and each line that we've notated, but in essence we're just suggesting that perhaps the verbiage "unless the employer does so for all employees" be removed from the proposed bill. Thank you, and are there any questions? [LB612]

SENATOR PANKONIN: Well, thank you for coming, bringing this material, and we will take it under advisement. But we'll see if there's any questions. Senator Louden. [LB612]

SENATOR LOUDEN: Yeah. Thank you for bringing this forwards because that was a question I had asked Senator Avery in his presentation, if something like that should be deleted in there. And I appreciate you bringing this forwards. Thank you. [LB612]

WANDA CAFFREY: Thank you. [LB612]

SENATOR PANKONIN: Any other questions? Seeing none, thank you. [LB612]

WANDA CAFFREY: Thank you. [LB612]

SENATOR PANKONIN: Any other testifiers in the neutral position? Seeing none, Senator Avery, would you like to close? [LB612]

SENATOR AVERY: I apologize for keeping you here longer, but there's some things I think I have to say. Central to the opposition testimony seemed to me to be the argument that school boards cannot compete in the marketplace for top administrators without having this authority, and I find it hard to believe that because if you want...if you want some bad enough, pay them the \$250,000 or whatever and I suspect you'll get the person you want. The thing is that teachers got a 4.5 percent raise and they were required to count in that 4.5 percent their increased benefits, so that the actual cash increase was about 2.5 maybe or 2.6 percent. And it seems to me that we need to pay more attention to how we treat our teachers. Administrators are doing fine, folks. And don't tell me that you can't recruit an administrator for \$250,000 or whatever it is you

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want to pay them without somehow slipping in some extra compensation here in these benefit packages that are not always that transparent to the public. There's something else that seems to be implicit here and that is somehow, I'm a hotshot administrator and I'm worth it and so you shouldn't be questioning these things. I don't think necessarily that top administrators are more valuable to kids and to the school system than the teachers. It's those front-line teachers who make the difference in your kids' lives. They don't even have any...most of the administrators don't have much contact with the students at all, but the teachers are the ones that matter. I don't share the view that the top administrators are as crucial to our school system as are the teachers; think it's quite the opposite. It's the teachers that make the institution of our schools the great learning instrument that it is. With that, I will stop. I have to be at another hearing in a few minutes and I haven't had lunch either. (Laughter) [LB612]

SENATOR PANKONIN: Thank you, Senator Avery. Any other follow-up questions for Senator Avery? Seeing none, thank you. [LB612]

SENATOR AVERY: Thank you. [LB612]

SENATOR PANKONIN: This concludes the hearing on LB612 and also the committee hearing today. Thank you. [LB612]

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Disposition of Bills:

LB365 - Held in committee.
LB424 - Indefinitely postponed.
LB612 - Held in committee.

Chairperson

Committee Clerk