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Nebraska Retirement Systems Committee
February 20, 2013

[LB263 LB321]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Wednesday, February 20, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB321 and LB263. Senators present: Jeremy Nordquist, Chairperson; Al Davis, Vice Chairperson; Danielle Conrad; Russ Karpisek; Rick Kolowski; and Heath Mello. Senators absent: None.

SENATOR NORDQUIST: (Recorder malfunction)...Systems Committee. I'm State Senator Jeremy Nordquist. I represent District 7 in downtown and south Omaha and the Chair of the committee. We have two bills today, LB321 and LB263. We'll take them in that order. Just a few housekeeping items: If you are going to testify, there are testifier sheets in the back corner. Please fill those out and give them to the clerk when you come up. Please state and spell your name so we have that for the record. Please silence your cell phones, so that isn't picked up in the microphone and recording system. I'm trying to think if there's anything else. Otherwise, to my left is Kate Allen, our committee counsel; to my far right, Laurie Vollertsen, our committee clerk. Senator Karpisek, would you start with introductions, self-introductions? (Laughter) That's twice I've done that.

SENATOR KARPISEK: He does it to me all the time. I don't know what he wants. Russ Karpisek, District 32, from Wilber.

SENATOR NORDQUIST: Sorry.

SENATOR KOLOWSKI: Rick Kolowski from the Millard area, District 31.

SENATOR DAVIS: Al Davis, District 43, from almost all of western Nebraska. (Laughter)

SENATOR MELLO: Heath Mello, District 5, south Omaha and midtown.

SENATOR CONRAD: Danielle Conrad, north Lincoln, District 46.

SENATOR NORDQUIST: Great. With that, we'll invite up Senator Crawford to open on LB321.

SENATOR CRAWFORD: Thank you. Good afternoon, Chairman Nordquist and members of the Retirement Committee. My name is Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. LB321 strikes language in Nebraska statute that now states that cities of the first class are required to spend down police officers' sick leave and vacation time before paying disability wages for officers who are temporarily disabled. We ask these officers to put

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themselves in harm's way for us every day. If one of these officers is injured in the line of duty, she could come back to work with no sick leave to take care of herself or someone in her family who gets ill before she has time to accumulate more sick leave. Moreover, we do not want to create any incentives for officers to avoid injury or avoid having injuries taken care of because they would be worried about a concern about losing benefits. This issue came to my attention first from the Police Union president in Bellevue. It was brought to his attention by his colleague in La Vista. I met with Bellevue Police Union president and officers from various departments in Sarpy County and we discussed several issues of concern about retirement and disability. But this provision stood out as something that was pressing and we felt could be easily addressed by the State Legislature in this session. The police officers feel that a required spend down is unfair and that it is particularly unfair for it to be state mandated. I agree, and agreed to introduce this bill to strike that mandated spend down language. There are a couple officers here today to testify about the importance of striking this mandatory spend down sentence from our state statutes. And I urge you to act on this matter quickly. Thank you. [LB321]

SENATOR NORDQUIST: Thank you, Senator. Any questions from the committee?
Senator Karpisek. [LB321]

SENATOR KARPISEK: Thank you, Senator Nordquist. Senator Crawford, would this have anything to do only if it was job-related disability? [LB321]

SENATOR CRAWFORD: That is my understanding. [LB321]

SENATOR KARPISEK: Thank you. [LB321]

SENATOR NORDQUIST: Great. Any additional questions? Seeing none, thank you. [LB321]

SENATOR CRAWFORD: All right. Thank you very much. [LB321]

SENATOR NORDQUIST: Now we will take proponent testimony. Welcome. [LB321]

BRYAN WAUGH: (Exhibit 1) Good afternoon, Senator Nordquist and members of the Retirement Systems Committee. My name is Bryan Waugh, it's B-r-y-a-n W-a-u-g-h, and I'm a sergeant at arms with the Nebraska Fraternal Order of Police; current past-president of the La Vista Fraternal Order of Police, Lodge 28; and I'm also a police officer with the city of La Vista for 15 years, currently a police sergeant with the La Vista Police Department. You have a copy of my prepared statement supporting LB321 and also the FOP's support of this legislation as well. The reason behind the legislation, as Senator Crawford just spoke of, is to simply protect the earned leave of a police officer in the event he or she is injured in the line of duty and suffers a temporary disability. The

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current language requires that that police officer use all earned or accrued leave, to include vacation time, sick leave, or any other associated leave, whether it's personal leave, comp time, things like that, whichever different agencies may have available, and amending that language would allow officers to be eligible for the workmen's compensation wage replacement benefit without using all their accrued leave. We feel as though this is penalizing the officer performing their duties, which is obviously a dangerous job. There can and will be injuries that happen in the line of duty as a police officer. And officers take all the steps they can to avoid that, however, they do happen. And we feel as though the officers are simply being penalized that earned leave they have available to them prior to the workers' compensation benefit being implemented. I'm not suggesting that an officer continue to earn leave while they're off on disability. We would simply want to make sure that the balance that they have at the time of that injury is going to be maintained. Officers...that leave is earned as a benefit for the officer to use for vacations, for sick time, whether it's for themselves or for their family, and by going off work for...we've had an example, this happened in our agency, where an officer was injured on duty. He was fighting with a violent felon when taking him into custody. He had suffered a significant knee injury. He was off work for six months. At the time this happened, he was a fairly new officer so he had already had a limited amount of vacation and sick leave available. He was required to deplete his entire balance of leave prior to workers' compensation benefits taking effect. When the officer returned to duty, he had a zero balance. This kind of sets up a few different scenarios that hypothetically could happen. If the officer were to become ill from another illness, whether it's the flu or perhaps his wife was going to have a baby, that officer would have no leave available after coming back to work for an on...and again, these are on-duty related injuries. This is not something that would happen off duty playing softball, for example. This is something that happened in the performance of his duties. Another example that I would like to share, in doing some research on this particular bill, we noticed there's a little bit of a disparity as it relates to a police officer and a firefighter. Under the same type of situation, there is no language that I could find that would indicate that a firefighter would be required to burn all of his accrued leave prior to workers' compensation benefits being implemented, whereas a police officer it does. And there could be a scenario, it happens all...there a scenarios where a police officer and a firefighter could both respond to the same call, whether it's a car crash, whether it's a house fire. They could both be injured at that call. The police officer is going to be required to burn all of his annual leave or whatever leave he has accrued, and the firefighter is not. There seems to be an inequity as it relates to two public safety professionals doing the same job, injured at the same time, and one is going to be required to burn his annual leave, the other one will not prior to this benefit implementing. Also, I think it should be understood that when an officer is off on a work-related injury, it shouldn't be perceived as this officer is out enjoying himself on vacation. It's far from that. These officers are often required to go through grueling rehabilitation. They want to get back to work. Police officers are driven to do the job. That's why they signed up to do what they do. They're not out trying to milk the system

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or whatever analogy we could come up with. They simply want to get back to work. And they want to maintain that earned benefit that they have available to them. So I thank you for your time. On behalf of the men and women in law enforcement in Nebraska, the Fraternal Order of Police, we would hope you support this bill and get it onto the floor for a vote. [LB321]

SENATOR NORDQUIST: Thank you. [LB321]

BRYAN WAUGH: I'll stand for questions. [LB321]

SENATOR NORDQUIST: Great. Thank you for your testimony today. In your testimony here it just says some disparity across the state in how cities are interpreting this language. Can you elaborate on that from your anecdotal? [LB321]

BRYAN WAUGH: We did a bit of research prior to this, and Senator Crawford and I and others with the FOP have kind of... [LB321]

SENATOR NORDQUIST: Uh-huh. [LB321]

BRYAN WAUGH: ...wanted to see...get a feel for how other cities or agencies are using this particular bill. [LB321]

SENATOR NORDQUIST: Uh-huh. [LB321]

BRYAN WAUGH: And we have found that there is some...there are agencies and cities that perhaps are not requiring the officer to deplete their leave prior to workers' compensation benefits being applied,... [LB321]

SENATOR NORDQUIST: All right. [LB321]

BRYAN WAUGH: ...whereas where I work, I can speak... [LB321]

SENATOR NORDQUIST: Sure. [LB321]

BRYAN WAUGH: ...for where I work, obviously, we've had examples of this happening. So it's being implemented the way that it's written; however, there may be... [LB321]

SENATOR NORDQUIST: Uh-huh. Sure. [LB321]

BRYAN WAUGH: ...other areas that it is not. [LB321]

SENATOR NORDQUIST: Okay. Great. Any additional questions? Senator Davis. [LB321]

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SENATOR DAVIS: So this is only for cities of the first class. [LB321]

BRYAN WAUGH: Yes, sir. [LB321]

SENATOR DAVIS: Do you know what...how it works in metropolitan cities or in villages?
[LB321]

BRYAN WAUGH: I wouldn't have that answer, sir. I'm sorry. [LB321]

SENATOR DAVIS: Thank you. [LB321]

SENATOR NORDQUIST: Okay, thank you. Any other questions from the committee?
Senator Kolowski. [LB321]

SENATOR KOLOWSKI: Sergeant Waugh, thank you for your service... [LB321]

BRYAN WAUGH: Thank you. [LB321]

SENATOR KOLOWSKI: ...and thank you for testifying today. I would simply make a statement of backing up what you're presenting, because of the fact that I have a...my younger brother was a 20-year state trooper in the state of Illinois and one of his sons is now a city officer in their hometown area. And the amount of...the number of opportunities they have for such things to happen is beyond the scope of most people's understanding. [LB321]

BRYAN WAUGH: Sure. [LB321]

SENATOR KOLOWSKI: And I would certainly support what you're asking for here and wonder why it was set up this way, in such a way that it eliminated you from doing this. [LB321]

BRYAN WAUGH: Sure. [LB321]

SENATOR KOLOWSKI: Could you respond to that? [LB321]

BRYAN WAUGH: You know, I don't have...I wouldn't be able to speak to the history of why that's in place. I know that it's been there for quite a while and it's been something that's been a concern of ours, as a local FOP. And we've brought it to the state and we've talked with other agencies. It's definitely a concern across this...as far as our metropolitan area, where we work. But I couldn't speak to the history of how long it's been there or why it's even there, to tell you the truth. [LB321]

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SENATOR KOLOWSKI: Let me ask you another question on do you have disability insurance that if you were injured and could not return, you would have income flow for the rest of... [LB321]

BRYAN WAUGH: Yes, it's an optional benefit that the police officers have available to them through the city. [LB321]

SENATOR KOLOWSKI: Do you...optional? It's not provided for you? [LB321]

BRYAN WAUGH: Right. [LB321]

SENATOR KOLOWSKI: You have to pick it up and pay for it? [LB321]

BRYAN WAUGH: Yes, sir. [LB321]

SENATOR KOLOWSKI: Okay. Would you have to, if injured on the job, would you have to deplete all of your sick leave and other days before the disability would kick in as well... [LB321]

BRYAN WAUGH: Yes. Yes. [LB321]

SENATOR KOLOWSKI: ...as any of the other services? [LB321]

BRYAN WAUGH: Yes, sir. [LB321]

SENATOR KOLOWSKI: Okay. Thank you. [LB321]

SENATOR NORDQUIST: Okay. Thank you, Senator. Any other questions? Seeing none, thank you for your testimony. [LB321]

BRYAN WAUGH: Thank you, Senator Nordquist. I appreciate it. [LB321]

SENATOR NORDQUIST: Yes. Next proponent. Any additional proponent testimony? Oh, come on up, Matt. Welcome. [LB321]

MATT LATHROP: Thank you very much. [LB321]

SENATOR NORDQUIST: Yeah, give it to Laurie there. [LB321]

MATT LATHROP: Good afternoon, Senator Nordquist, members of the committee. Thank you for having me here. My name is Matt Lathrop, L-a-t-h-r-o-p. I'm an attorney in Omaha, Nebraska. I practice primarily in the personal injury area. I have workers' compensation clients as part of my practice. I'm here on behalf of the Nebraska

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Association of Trial Attorneys testifying in support of LB321. I would first of all start by echoing what the officer...his previous testimony, and I won't reiterate it. There were a couple of things I would add on top of that testimony and the first thing is I do represent employees in workers' compensation cases and I have clients who are law enforcement in workers' compensation cases. I will tell you in the normal arena of workers' compensation, an employee is not required to surrender his or her vacation, sick leave, other things. So if I work in a packing plant and I'm injured, if I work for Werner Trucking and I'm injured, any other industry in Nebraska, that is not a requirement. And if it happens, as a lawyer, it usually requires one letter to the employer and that sick or lost time is reinstated. And the second point or the second thing I would add is I do represent officers who have been injured in the line of duty and these are not, you know, I would...if I were to idly imagine how this happens, you know, a gun fight or an arrest situation. But the clients that I represent, I had a law enforcement officer who was injured while leaning into a car, helping someone who was lost. She was giving directions to this person, saying, well, you got to go down this street. And while she was leaning in, a careless driver ran into the back of the car she was leaning into, and she was injured as a result of that. The other officer I represent was asked to go investigate a child endangerment phone call, went out to a home in a very rural area of Douglas County. And when he was going around the back of the building, he fell in a hole that was not...it was a hidden hole. He stepped on a piece of plywood that collapsed. He fell and he injured his back. And so these officers, these officers are injured doing things that we really want them and need them to do. What I didn't hear from the officer, probably because of his modesty, is these people are trained in risk assessment, they're trained in risk recognition, they are trained in understanding that they're putting themselves in a risky situation or in harm's way, and they still go and do it. And I can tell you that when they do that, they do it in the most careful manner possible. I have plenty of workers' compensation clients who are injured because they participated in the negligence that developed the injury. But we don't expect this from those clients. With police officers, who have risk assessment as part of their training, we are penalizing them for being injured doing what we ask them to do. So I think it is...I can't imagine why we have this exception in the law. And so really anything else I say would probably take away from what the police officer said, other than to say we support this amendment. If there are any questions... [LB321]

SENATOR NORDQUIST: Thank you, Matt. Any very difficult questions for the testifier? (Laughter) I see none. [LB321]

MATT LATHROP: No. [LB321]

SENATOR NORDQUIST: Thank you. [LB321]

MATT LATHROP: Thank you. [LB321]

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SENATOR NORDQUIST: Yes. Any additional proponent testimony? Seeing none, any opponent testimony? Welcome, Lynn. [LB321]

LYNN REX: Hi, Senator Nordquist, members of the committee. My name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today respectfully opposing this measure. We do know that this...there's no statutory requirement for this for the firefighter statutes, but we think that either there should be or the committee needs to look very seriously at this issue. We do oppose deletion of this. My understanding is that the public policy behind this was so that you don't end up in a situation where you have folks that there's any public policy that would really encourage disability. Now do I think the police officers are out there trying to intentionally become disabled? Absolutely not. My father is a former police chief. I don't believe that. But I do know that the public policy consideration in many plans includes the fact that you don't simply...you know, the reason we want to use this up is because once you've used up your sick leave and your vacation time, you are on disability payments, you're not working then. It isn't as though you have to go to work to get that disability payment. By definition, you don't. So we respectfully oppose this measure. I think it is...I understand why the officers have frustration with this, but I also can tell you that we talked to municipalities across the state on Monday of this week and of the first-class cities that were involved in that conference call, and they included South Sioux City, Sidney, Plattsmouth, Grand Island, and Alliance, and there may be one or two others that I'm forgetting, all of them are in strong opposition to removal of this language. And I think that even though the language itself is not in the fire statutes, they also apply it that way on the fire side. Of course, we have far fewer paid fire departments in the state of Nebraska. I would also suggest that I'm not in any way indicating that when Senator Crawford or others indicated that other cities may be doing something different that may very well be the case. I don't know how they can be doing that on the police side, but they've told me that they do have some reports that cities are doing something different when it comes to this issue. So with that, I'd be happy to...we actually are putting out a survey... [LB321]

SENATOR NORDQUIST: Okay. [LB321]

LYNN REX: ...in the League, we don't have all the results back, just to find out for sure what's going on out there,... [LB321]

SENATOR NORDQUIST: Sure. [LB321]

LYNN REX: ...because I think that's very important. [LB321]

SENATOR NORDQUIST: Okay. [LB321]

LYNN REX: But I'd be happy to respond to any questions that you might have. [LB321]

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SENATOR NORDQUIST: Great. Thank you. Just so what would be the harm in modeling, doing it the same way as on the fire side, where it would be bargained I suppose? [LB321]

LYNN REX: I'm sorry? [LB321]

SENATOR NORDQUIST: Where it would be bargained for if we took this out, what would be the harm in doing that? [LB321]

LYNN REX: Well, I think that there is an issue because there's...I mean in terms of the public policy of why it was put here in the first instance,... [LB321]

SENATOR NORDQUIST: Uh-huh. [LB321]

LYNN REX: ...I think that that was a good public policy, first and foremost. And certain things are subject to bargaining and certain things are not. [LB321]

SENATOR NORDQUIST: Uh-huh. [LB321]

LYNN REX: So I don't know whether or not other cities may have bargained it away. I would submit that they don't have the authority to do that,... [LB321]

SENATOR NORDQUIST: Uh-huh. [LB321]

LYNN REX: ...when the state statute clearly indicates... [LB321]

SENATOR NORDQUIST: Yeah. Yeah. [LB321]

LYNN REX: ...that this is what they're supposed to be doing. [LB321]

SENATOR NORDQUIST: But is that what's happening on the fire side, is it's left up to bargaining? [LB321]

LYNN REX: I don't think so. [LB321]

SENATOR NORDQUIST: Okay. Okay. [LB321]

LYNN REX: I don't know that,... [LB321]

SENATOR NORDQUIST: Okay. [LB321]

LYNN REX: ...but that's what we're going to find out. [LB321]

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SENATOR NORDQUIST: Okay. [LB321]

LYNN REX: I wish I could answer you... [LB321]

SENATOR NORDQUIST: Okay. No, no problem. [LB321]

LYNN REX: ...by saying I know for sure, but I don't. And I will find out and get that information to you. [LB321]

SENATOR NORDQUIST: Sure. Okay, great. Senator Conrad. [LB321]

SENATOR CONRAD: Thank you, Lynn, for coming down. Always appreciate your credible testimony. And I was going to ask you if you could speak to maybe the discrepancy or lack of uniformity in terms of application that Senator Crawford noted, but I imagine that your research will be provided to the committee that might complete that picture. I did want to just draw out a little bit further the underlying public policy issue, which you mentioned, and not being familiar with the origins of the statute but based upon your information or understanding, it was this restriction was put into place in order to ensure that we're not encouraging people to utilize disability. Is that right? [LB321]

LYNN REX: Well, for example, I can tell you that...so this is back in the negotiations when the League was negotiating with both first-class city police and fire to change from a defined benefit plan to transition into a defined contribution plan. And of course, as you remember, the officer that was hired before January 1, 1984, in both instances, gets the greater benefit of either one of those plans. That being said, I think what's important to note is that even at that time some of the police officers and police chiefs in particular were supportive of this language, because I remember this language being discussed even at that time. And they believed that it was important to keep the language in, and those were the police chiefs. And we were negotiating with a number of different groups, and of course that's management versus others that are not in management. So I guess my thought, Senator, is that first and foremost we want to find out for you what cities are in fact doing with respect to this. We will obviously share that information with the committee because I do think that it's important that cities are doing it the same way and that officers are being treated the same way. I know that there are restrictions, and even in the private sector are there in terms of whether or not you can even get an additional disability policy, because the whole concept is that you've got to make sure that you don't create the incentive to be disabled. And that being said again, I just want to underscore I'm not in any way, shape, or form suggesting that police officers or firefighters go out, intentionally trying to get hurt. I, personally, don't have the courage to do what they do and I appreciate their public service. [LB321]

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SENATOR CONRAD: Okay. And back to just that incentive piece, do you know of any information, anecdotal, objective or otherwise, wherein that fear has been realized in other jurisdictions that don't apply this type of restriction? [LB321]

LYNN REX: I can tell you that there was a firefighter in one of our cities of the first class, and I will get the detailed information on it. I know it's been submitted to the Business and Labor Committee on another bill. But this particular measure is actually LB21 on mental-mental, but to just show that on the physical side that there are issues that come to play. And this particular firefighter was able to get disability in one city and then went someplace else and got a job basically doing the same thing. [LB321]

SENATOR CONRAD: Okay. And I think that we can agree that there's potentially isolated incidents or bad actors in any area of public policy... [LB321]

LYNN REX: Absolutely. [LB321]

SENATOR CONRAD: ...that we're looking at, but sure. [LB321]

LYNN REX: As I've said to your committee counsel, you know, it's 1 percent of 1 percent of 1 percent. [LB321]

SENATOR CONRAD: Right. [LB321]

LYNN REX: But sadly, those are also things that your providers take into consideration when you're trying to get coverage. [LB321]

SENATOR CONRAD: Right. Absolutely. And we obviously have to try and legislate to do the most good for the most people. [LB321]

LYNN REX: Absolutely. [LB321]

SENATOR CONRAD: And if we can agree that there's probably not widespread abuse in this regard, maybe it would be a good opportunity to maybe go back and look at an issue that hasn't been looked at since 1984. [LB321]

LYNN REX: I think it's always good to go back and review it. [LB321]

SENATOR CONRAD: Okay. [LB321]

LYNN REX: I do think, though, that there was a public policy reason why it was put in, and my understanding is that on the fire side, cities are operating, even though it's not statutory, several of them are doing that as well. That being said, I don't know exactly what's going on with all of our 30 first-class cities with respect to the police side,...

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[LB321]

SENATOR NORDQUIST: Uh-huh. Sure. [LB321]

LYNN REX: ...and that's why we're going to find out what's going on... [LB321]

SENATOR CONRAD: Great. Thank you. [LB321]

LYNN REX: ...and then we'll let you know. [LB321]

SENATOR NORDQUIST: Okay. Great. [LB321]

LYNN REX: You're welcome. [LB321]

SENATOR NORDQUIST: Additional questions? Senator Davis. [LB321]

SENATOR DAVIS: I'll ask you the same question I asked the officer earlier. Can you come up with a description of how it's done in other larger communities and smaller communities? Is this just a special exemption for first-class cities or a special category for first-class cities here? [LB321]

LYNN REX: Well, Senator, this is for first-class cities only. [LB321]

SENATOR DAVIS: Uh-huh. [LB321]

LYNN REX: And that's because there is no statutory benefit for cities of the second class and villages when it comes to the police and fire side. Those cities have got benefits that come into play, and those are defined contribution plans. So those are benefits that come into play under different statutes... [LB321]

SENATOR DAVIS: Uh-huh. [LB321]

LYNN REX: ...in Chapter 17 and other statutes. But this is a plan that when the Legislature back in the '60s, I believe it was 1965, pretty sure of that, but when the Legislature mandated a defined benefit plan for first-class city police and fire back in the '60s, they did not provide any funding for that. This was all...I don't know if this language was there at that time, but certainly the defined benefit plans were put in place. This was all part of that. The disability provisions were part of that, as I recall. So essentially, municipalities at that point were facing unfunded liabilities and there were a number of reasons for that. Maybe cities could have perhaps done a better job in terms of the unfunded liabilities, but also the Legislature, unlike the other plans that you have on the teachers' side, the judges and others, the Legislature didn't put a dime in, never did. So we had cities from day one, cities of the first class, and then we had 27, now we've got

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30, and they started out in the hole. And how much in the hole they were depended on how experienced their personnel force was. So if you had officers that had been with you for 20-some years, you're going to have huge unfunded liabilities... [LB321]

SENATOR DAVIS: Uh-huh. [LB321]

LYNN REX: ...compared to a newer force at that time. So the short answer is, yes, this is solely for cities of the first class, but that's why, because the Legislature put that mandate in for first-class city police and fire. [LB321]

SENATOR DAVIS: Okay. One other question. [LB321]

LYNN REX: Yes. [LB321]

SENATOR DAVIS: There's no fiscal note with this because it doesn't relate much to the state. But do you have any idea how it would impact the cities? [LB321]

LYNN REX: We're asking that question too. [LB321]

SENATOR DAVIS: Okay. Thank you. [LB321]

SENATOR NORDQUIST: All right. Senator Kolowski. [LB321]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Ms. Rex, the State Patrol, are they under a plan that would not have these same kind of restrictions, or the county sheriffs? [LB321]

LYNN REX: I don't know. They obviously have a different plan. State Patrol has a defined benefit plan. Your committee counsel would know the answer to that. But your State Patrol have a different plan, which is defined benefit. It's the same thing I think with sheriffs. It's not defined benefit but it's under some kind of a money management plan, defined contribution, is it not? [LB321]

SENATOR NORDQUIST: Uh-huh. Yeah. Yeah, it's a hybrid plan, yeah. Yeah. [LB321]

LYNN REX: Yeah. I can't speak to what provisions are in there as it applies to disability. [LB321]

SENATOR KOLOWSKI: Okay. Thank you. Thank you. [LB321]

SENATOR NORDQUIST: Okay. Any additional questions? Senator Conrad. [LB321]

SENATOR CONRAD: Sorry, Lynn, I just have one other kind of general... [LB321]

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LYNN REX: Sure. [LB321]

SENATOR CONRAD: ...philosophical question. And I'm new to the committee so I apologize if this is off base. But when we're looking at the general policy considerations involved in this issue, I wanted to just get your feedback as to what the League's position might be on the fact that vacation time is not intended to be utilized for recovery from an on-the-job injury. [LB321]

LYNN REX: Uh-huh. [LB321]

SENATOR CONRAD: Right? I mean that's really I think what Senator Crawford and proponents are trying to get at here. And I appreciate it was the subject of additional negotiations far beyond our time, but if you just want to address that kind of general policy consideration about what vacation time is and what it was intended for and whether or not you think it was intended to be utilized to recover from on-the-job injury. [LB321]

LYNN REX: Well, I think that the language that you have before you is a result of the fact that in some cities they went away from what we traditionally call vacation time, and some cities have personal leave time. Some...obviously they've got sick leave time on top of that. So we're going to find out that kind of information, too, for you,... [LB321]

SENATOR CONRAD: Okay. [LB321]

LYNN REX: ...because I think it's a different question when it's vacation time versus other types of time. [LB321]

SENATOR CONRAD: Yes. Very good. Thank you. [LB321]

SENATOR NORDQUIST: Great. Thank you. Any other questions? Seeing none, thank you. [LB321]

LYNN REX: Thank you very much. [LB321]

SENATOR NORDQUIST: Any additional opponent testimony? Seeing none, any neutral testimony? Seeing none, Senator Crawford, would you like to close? Thank you. [LB321]

SENATOR CRAWFORD: Thank you again, Chairman Nordquist and members of the Retirement Committee, for the opportunity to appear before you today and for your great questions for me and the other people who are testifying. I'll touch on a couple of points that have been raised in the testimony so far. One is about the history. That was

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our first question when we had this brought to us, is when did this get added or was there a story behind when this got added to the statute? So we asked the legislative history office. We weren't able to find a time when this clause got added. So I mean the law was amended in '92, '86, and '83, but that wasn't the spend down provision. And so we don't have a good story about it as an added amendment. Our thought was it was probably some controversy over somebody, you know, probably got left, you know, left in and it was a sensational story and that might have led to it being added to the statute. But we didn't really find...we don't have a good answer to that question of where that clause came from. Second, in terms of the policy question, if there is a concern about overuse of disability, I would ask the committee to consider whether or not requiring spend down of accumulated leave is an appropriate response to that problem, if it exists. So I mean I don't know if that problem exists, but even if it does exist or if there's a concern about that, it seems to me that requiring spend down of sick leave, personal leave is not an appropriate way to address that issue. And it's particularly inappropriate when we see that it's not done in other industries, so we are putting this punitive policy in for all police officers, not just ones who we might have concern about whether or not they're trying to work the system. It affects all police officers and it's punitive for all of them. And it's not something that other...that workers in other industries, who aren't putting their lives on the line for us, are having to deal with. So I think those are important considerations as you think about those policy questions. I'll look forward to hearing what we find from the surveys about what other cities are doing. Our very informal discussions with FOP members in other places and my own discussions with my own police chief, the basic sense we were getting, the sense we were getting from those discussions is that there were often other things cities were doing as opposed to requiring this straight...this strict mandated spend down. So it will be interesting to see what we hear from that survey. Basically, this LB321 strikes a state mandate that officers spend down their credits before earning disability wages or pensions. If a police officer is hurt in the line of duty, the state should not require that disabilities come out of sick time or personal time. Disability is not vacation or personal time, and it's important that police officers should not have to sacrifice that time to take care of them...sacrifice that time so that when they come back on the job they would not have time to take care of themselves or their family as necessary. And it's particularly critical that we are not mandating cities to do this, so that we're not mandating cities to treat police officers in this way. LB321 provides for local control. Notice we did not add new language to forbid this. What we did at this point is simply strike the language. And so if there are important discussions or collective bargaining to happen at the local level to deal with some issues of accumulated leave for permanent disability, those may be necessary. So we may...we're leaving it open so that it becomes a local control and collective bargaining issue and we take it away from being a state-mandated issue, and particularly take it away from being a, I would say, perverse state-mandated issue where we're mandating this spend down. So I urge you to act quickly on LB321 to strike this mandatory spend down language. Thank you. [LB321]

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SENATOR NORDQUIST: Great. Thank you, Senator. [LB321]

SENATOR DAVIS: Thank you. [LB321]

SENATOR NORDQUIST: Any final questions? [LB321]

SENATOR CONRAD: I do. I have one. Sorry. [LB321]

SENATOR NORDQUIST: Oh, Senator. [LB321]

SENATOR CONRAD: Senator Crawford, thank you. It's an interesting topic. And if maybe you don't know, if maybe your staff could provide as a follow-up with the committee, if you're aware of any provisions within the workers' compensation code or... [LB321]

SENATOR CRAWFORD: Uh-huh. [LB321]

SENATOR CONRAD: ...or other aspects of our civil code, for that matter, to deal with a potential fraud instance or situation. I'm guessing there's probably a catchall or another provision on the books someplace for those potential bad actors that might be out there and who seek to abuse the system, so that we could achieve the public policy objectives that Lynn Rex talked about a little bit in preventing some of those situations from happening. And I just...I don't know if you know off the top of your head, but I thought... [LB321]

SENATOR CRAWFORD: Right. [LB321]

SENATOR CONRAD: ...maybe that that might be a good follow-up point with the committee. [LB321]

SENATOR CRAWFORD: I appreciate that point, Senator Conrad. I am, you know, I imagine those provisions are already in statute, but we could find them so we can reassure you that there are other mechanisms to deal with that issue. [LB321]

SENATOR CONRAD: Great. Thanks so much. [LB321]

SENATOR CRAWFORD: Thank you. [LB321]

SENATOR NORDQUIST: All right. Thank you. Thank you. That should be it. Thanks. [LB321]

SENATOR CRAWFORD: Thank you. [LB321]

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SENATOR NORDQUIST: Yep. All right, Kate will go up to introduce LB263, which is a bill introduced on behalf of the Retirement Committee. [LB263]

SENATOR MELLO: A lot of questions on this one. (Laughter) [LB263]

SENATOR NORDQUIST: Yes. Now is the time. [LB263]

KATE ALLEN: I don't know. They're rubbing their hands together. I don't have a good feeling about this. [LB263]

SENATOR CRAWFORD: They're going to eat their own. [LB263]

SENATOR NORDQUIST: Let her have it. [LB263]

KATE ALLEN: I know, exactly. (Laugh) [LB263]

SENATOR NORDQUIST: It's only a 120-page bill, so we've got lots of questions. [LB263]

KATE ALLEN: Yeah. Yeah. There you go. [LB263]

SENATOR CONRAD: Let's take it up line by line. [LB263]

KATE ALLEN: That's right. It seems like kind of Mr. Burns' fingers. [LB263]

SENATOR NORDQUIST: Whenever you're ready, Kate. [LB263]

KATE ALLEN: Okay. Good afternoon. For the record, my name is Kate Allen, that's K-a-t-e A-l-l-e-n, and I am the legal counsel for the Retirement Committee. I'm here today to introduce LB263, which was introduced by the committee on behalf of the Nebraska Public Employees Retirement System, also known as NPERS. The bill incorporates annual updates and technical cleanup changes. This year the bill also includes a number of additions and changes recommended in the compliance audit, which was completed by outside counsel in 2012. A compliance audit is conducted every four to ten years to make sure the plans are in compliance with IRS provisions and that plans meet all requirements as a qualified plan status for purposes of the IRS. LB263 includes changes in the County, Judges, State Patrol, School Employees, Class V School Employees, and the State Employees Retirement Acts, and changes to statutes that govern the Public Employees Retirement Board. The bill is 151 pages, so I will summarize the major changes briefly by category. Phyllis Chambers will testify on behalf of NPERS and will be able to go into greater detail about the proposed changes and answer specific questions. The compliance audit recommended a number of changes, including the following. In the county plan, it's necessary to clarify that only

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those employees who meet the definition of county employee are eligible to participate in the plan. LB263 gives the board the authority to determine when an eligibility determination needs to be made, and if employees are found to be ineligible then those employees will become inactive members but will be deemed fully vested for the purposes of retaining their employee contribution amounts. Another change deals with part-time employees in the county plans. Part-time employees have the option of whether or not to join the plan. However, there is currently no time limit as to when this option must be exercised. In the compliance audit, it was recommended that a provision be added to the plan that part-time county employees must exercise the option to join within 30 days of initial employment. Internal Revenue Code 414(h)(2) pickup language is being inserted into all the plans clarifying that employee contributions are considered tax deferred employer contributions. New language is being added which designates the type of account that DROP funds are placed in and clarifies that these accounts are subject to Internal Revenue Code Section 415 maximum benefit limitations. Language is inserted in the Public Employee Retirement Board statutes that board duties include maintaining the plans' qualified status pursuant to Internal Revenue Code Section 414(d), and forfeiture language is clarified in the county and state plans. There are also a number of separate changes brought to the committee by the Omaha School Employees' Retirement System to update the Class V School Employees Retirement Act. They include the following: The statute is updated to comply with the current practice of completing an annual actuarial report. Current statute requires that these actuarial reports be completed only every three years. Qualifications are clarified for the actuary that is employed by the board. The board is authorized to determine the amount of interest on purchase of service credit and delayed payments. Changes are adopted in response to the amendment of applicable state tax laws. And the limitations on maximum benefit that may be paid under Internal Revenue Code Section 415 are incorporated by reference. And the required registration fee for preretirement planning programs is eliminated. It makes it permissive. There are also a number of miscellaneous provisions that have been added to various plans. The definitions of "retirement date" and "retirement application" have been added to all the plans. The period is extended from 30 to 180 days for Patrol members to apply for vesting credit for years of service in another Nebraska governmental plan. And school members are required to file the retirement application 120 days rather than 90 days prior to effective date of member's initial benefit. In the School Employees Retirement Act, there are a number of changes and proposed additions to definitions in the act. Termination of employment is determined as the end of the member's contractual agreement, or by the employer if there's no contract or partial fulfillment of a contract. All school employee contracts are required to specify the contractual period of employment, including start and end date of the contract. A member is not deemed terminated if the board determines that a claimed termination was false and was not a bona fide separation, or the member was compensated for a full contractual period but the member terminated prior to the end of the contract. As introduced, service that is allowed within 180 days of termination is clarified as voluntary service provided at least 60 days following

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termination, or intermittent substitute service provided at least 60 days following termination that does not exceed 120 cumulative hours under any employer. The new language also requires the employer school district to be responsible for maintaining a record of the employee's substitute service hours with all employers as that information is reported by the employees. The definition of "regular employee" is clarified to include employees who provide service less than 15 hours per week but provide more than 500 hours within a plan year. It adds language clarifying that once this threshold is reached, contributions will begin with the next full payroll period and apply to all future employment with the same employer. Since the bill was introduced, there has been further conversation with NPERS' staff about the proposed changes to the definition of "regular employee" and service allowed within 180 days of termination. There appears to be interest in postponing these changes and conducting a more thorough review and discussion over the interim about redefining these provisions at this time. And finally, in 2011 the Legislature changed the salary cap provisions by eliminating all exemptions and replacing the 7 percent cap with a 9 percent cap for one year, and then going to an 8 percent cap thereafter. As introduced in LB263, the definition for "compensation base" is clarified to establish a 2007 base year for the 9 percent cap and a 2008 base year for the 8 percent cap. It also clarifies that the five-year cap is not limited to service with one employer but covers all school employers. I'm continuing to work with NPERS to further clarify these capping provisions so the language corresponds with the original intent of the legislation that was passed in 2011. And finally, I've continued to hold several meetings with NPERS' staff since the introduction of LB263 and am continuing to work with them and others regarding necessary amendments to further clarify the proposed changes and updates in this bill. And I'd be glad to answer any questions. [LB263]

SENATOR NORDQUIST: Okay. Thank you, Kate. Are there questions from the committee? Senator Karpisek, did you have a question? [LB263]

SENATOR KARPISEK: No, not at all. Thank you, Senator Nordquist. [LB263]

SENATOR NORDQUIST: Oh, okay. All right. Anyone else? Seeing none, thank you. Any proponent testimony? Thank you. [LB263]

MIKE DULANEY: Senator Nordquist, members of the committee, my name is Mike Dulaney, M-i-k-e D-u-l-a-n-e-y. I am the executive director for the Nebraska Council of School Administrators, and I most sincerely apologize that you are not able to enjoy just a regular lunch period when... [LB263]

SENATOR NORDQUIST: That's all right. [LB263]

MIKE DULANEY: ...and it's unfortunate. We feel bad for you, but we also appreciate that you give that up so that we can talk about these important issues. I just want to say, you know, on the process...and compliment your legal counsel. Ms. Allen put in a lot of

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time during the interim period and brought us in to what...the parties that were...would be involved in the actual implementation of this very exciting piece of legislation. And actually, I enjoyed that because our school business managers and our superintendents in the smaller schools are those individuals that actually take what you pass into law and put that into practice. And so we tried very hard this year, thanks to Kate, to bring those individuals to the table and they were actually able to discuss, okay, how would this work and why it wouldn't work and so on. And so everything, and I'm of course talking about the school piece, not the other relevant to county and the other plans, but to the school piece. The other...and we thank you, Kate, for all that work and also to NPERS because they were obviously very much involved with that. And then recently, at the LB553 hearing, is when this idea of changing the "regular employee" definition from 15 to 20 hours came up during that hearing, and of course it wasn't part of that bill. But we're involved with other groups like NSEA and the School Board Association to try to reduce liability to the school plan. We know that that's a huge issue in front of you and we appreciate all the work you're doing on that. And the idea was if we move it from 15 to 20, that would theoretically result in fewer or at least a few people less into the plan. It would exclude those people. And as I understand, talking to Kate, that it might actually do that and so I just want to say we support that, that idea of moving from 15 to 20. It's not what we talked about this summer. You know, we were actually kind of going with the same definition, 15 hours, and kind of working with that. But since it came up at the hearing on LB553, we'll say, yes, absolutely. If it will in fact reduce the number of people coming into the plan, then why not? And, Senator, that would conclude my testimony. [LB263]

SENATOR NORDQUIST: Great. Thank you, Mike. Any questions from the committee? Seeing none, thank you. [LB263]

MIKE DULANEY: Thank you. [LB263]

SENATOR NORDQUIST: Any additional proponent testimony? Seeing none, any opponent testimony? Seeing none, any neutral testimony? Welcome, Phyllis. [LB263]

PHYLLIS CHAMBERS: Good afternoon. I don't want to keep you from your lunch either, but I appreciate the opportunity to speak to you today. I'm Phyllis Chambers, P-h-y-l-l-i-s C-h-a-m-b-e-r-s, director of the Nebraska Public Employees Retirement Systems, and I'm testifying neutral on the bill. That's what our board has asked me to do on all of our bills, so...but I do appreciate the opportunity we've had to work with Kate on this, to work with NCSA and NSEA, and our staff has had a lot of input in it. And it does impact what everyone in the field does and it impacts what we do. So your decisions really do matter. This bill would clarify retirement statutes for the state, county, school, judges, and Patrol plans, all of them. The bill defines the retirement application process and dates. It clarifies the compensation base year and the 8 percent and 9 percent capping rules. And it corrects the minimum accrual COLA dates and rates that we have in

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statute. It increases the application period for vesting credit for the school and Patrol plans. So there are a number of issues and it is 155 pages so there's quite a bit there. The bill also incorporates some changes recommended by NPERS' 2012 compliance audit, as Kate mentioned. It adds the employer contribution pickup language, IRS Code 415 contribution limits, and required minimum distribution language. And it also states that part-time employees who voluntarily join the state and county plan would need to do so within 30 days. Right now they can join at any time if they're part-time, and IRS frowns on having an open enrollment period for employees. The LB263, this bill authorizes the PERB to determine when an employer is no longer qualified as a governmental plan, and we do have some issues with that so that language will be needed in the future. And also it clarifies that the PERB determines if a member falsely claims to have terminated and determines...and also determines the repayment of the benefit if that were to occur. I wanted to talk a little bit about purchase of service, because that's included in here. Last year I reviewed the purchase of service credits in the school plan that occurred between January and October, so I didn't have a full plan year. But I did this in October, prior to legislative season, so I didn't get the full information. But I did provide it to the actuary and I did look at what members are paying for purchase of service, and they do this in order to retire early and receive a greater benefit. It is a benefit that we offer to the school employees. There were 114 members who purchased service credit last year, and there are several types of purchase of service. So we have "airtime," and that is where a member purchases up to five years of additional service credit in their final year before they retire. There's also out-of-state service they can purchase. If they teach in Kansas or Colorado or another state, Washington, California, they can come to Nebraska and purchase that service here and they can refund it in the state where they're from. We do not allow them to purchase service here and there for the same time period, so they have to give it up if they're going to purchase it here. We also have a leave of absence. If someone takes a sabbatical or maternity leave or exchange teaching program, they can purchase service for that. And then there's refunded service and that's when an employee teaches for a while or is in the school system for a while. They leave and, for whatever reason after they terminate, they come back to the system. And they're allowed to purchase the service that they refunded. They took a lump sum distribution of their plan years ago. If they refund within three years, they just pay the refunded amount plus whatever the going interest was for the years that they took the refund. So we have to go back and we look at what was it in 1983 when you refunded, what was it in '84, what was it in '85, and we charge them that interest. If they purchase after three years, we charge them the 8 percent assumed rate per year. The majority of the members purchase refunded service of all of our purchase of services. Most of them are purchasing refunded service. Last year we had 61 members purchase 222 service credits. They paid 8 percent interest on those and it amounted to about \$1 million in their purchase cost to purchase those service credits. The average cost of the service credit was about \$4,500. This is far below what it costs to purchase out-of-state service, leave of absence, or "airtime." We use the actuarial cost when we're charging for those, which is,

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on average, is about \$15,000 to \$16,000 per credit, so quite a bit more. I asked the actuary to calculate what the estimated costs would be if the members who purchased the refunded service were to pay the actuarial cost. He estimated it would be about \$2.9 million, so almost \$2 million more if they would have purchased it with the actuarial cost. LB263 provides for the PERB to set the interest rates for purchase of service, but I think we should be looking at whether members purchasing refunded service should be paying for the actuarial cost, not just paying the interest on that money that they've had the ability to use all these different years. And I would be happy to provide you with some further information on those purchase of service costs. There are some other changes proposed in the bill. Kate covered most of those. We do have some concerns about the current requirement for...we would like to keep the current requirement of the 180-day break in service and not change the language about intermittent service or require any specific hour...number of hours for people to allow people to work. It's really a nightmare to try to keep track of those hours for us, for the employees. And then we have to be audited and the auditors are going to say, are you keeping track of how many hours these people are working during their 180-day period? Frankly, we would really like it if the 180-day break in service was...there was no service involved in the 180-day break. Sometimes that's not practical for some reasons, but we do think that that should be very limited. And also, the IRS frowns on working during the break in service. There has to be a bona fide break in service and we have determined it to be 180 days in statute. We aren't in favor of changing the part-time rules for participation in the plan, partially because it's already...we have it already set up. Again, we're doing it this way. We have it in our employer manuals, in our employer training, this is how we do it. So we would have to be changing that and then also keeping track of who came in when and what part-time rules they're under, then also be audited on those things. So every time we change the plan, we're subject to being...to keeping track of it and being audited on it, and the same with the employers as well. And again, I do appreciate all the work being done on NPERS' bill and all the technical changes and the work with Kate. And our new attorney, Matt Effken, is going to be working with us on this, so...and I appreciate the work from the other employee groups that have a vested interest in how we...how...the outcome of this bill. So with that, I'd be happy to answer any questions. [LB263]

SENATOR NORDQUIST: Thank you. Any questions from the committee of Director Chambers? Yes, Senator Davis, please. [LB263]

SENATOR DAVIS: Ms. Chambers, you said you're not in favor of changing the part-time rules. [LB263]

PHYLLIS CHAMBERS: Well, there are several different scenarios being proposed for the part-time. So if you increase it, I don't know that it will make a lot of difference. It's certainly something we can ask the actuary if there would be that much difference in it. I know in the private sector, probably 20 hours is more common. The school...in the

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school plan we've had various years or various time frames and hours required. We've had 1,000 hours, we've had 500 hours, we've had all these different hours that we have to keep track of. And so then if you go to changing, we'll have some working 15 hours, some working 20 hours, and then we just have to keep track of that over and over again. So I would give it serious consideration. [LB263]

SENATOR DAVIS: Thank you. [LB263]

PHYLLIS CHAMBERS: Uh-huh. [LB263]

SENATOR NORDQUIST: All right. Thank you. Any additional questions? Seeing none, thank you. [LB263]

PHYLLIS CHAMBERS: Okay. Thank you. [LB263]

SENATOR NORDQUIST: Any additional neutral testimony? Seeing none, that will conclude our hearing on LB263. Thank you. [LB263]