

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee November 6, 2020
Rough Draft

KOLTERMAN: Welcome, everyone. Thank you for coming. This is a Retirement Systems Committee hearing. My name is Senator Mark Kolterman. I'm from Seward, Nebraska, and represent the 24th Legislative District. And I serve as, as Chair of this committee. The committee will take up the bills in order that are posted. Our hearing today is your, is your public part of the legislative process. And this is where we will get reports from various people that have been asked to testify. Committee members will come together. Come, I think-- I think what you see is what you get today. I am not sure if Senator Groene is coming. They have some COVID issues in his office, I do know that. Senator Bolz, I'm not sure-- she's indicated she won't be here. Senator Kolowski will not be here. And Senator Stinner will call in. So that's-- if you hear somebody click in and out, that will be Senator Stinner, probably. Please silence your cell phones. We ask that you wear a mask, if you have one with you, I appreciate that, while testifying. Move to the front when you're ready to testify and then spell your name for the record before you testify. If you are calling in, please do not put your cell phones on speaker mode because it gives us bad feedback in here. Last time we had one of these hearings, it was kind of ugly. The other thing that I would say is if you do have to leave the conference from the distance, hang up and call back in, because if you put yourself on hold, then we get background music. So we're just trying to be a little bit proactive on how we deal with the call-ins. The first hearing today will be LR315. It's a presentation of the legal compliance audit. Randy Gerke, the NPERS director, and Orron Hill, the NPERS legal counsel, who are usually in attendance at these hearings, notified me this morning that they've been exposed to COVID. And to be cautious, they're monitoring the hearing and Orron will call in when it's time to testify. The second hearing, we'll just have the presentation of reports by the political subdivisions with the underfunded defined benefit plans. We'll probably take a short break between the hearings. But with that, I'll open the hearing number LR315 and the presentation of the legal compliance audit. I believe, Orron, are you on the line?

ORRON HILL: Yes, Senator, I'm on the line.

KOLTERMAN: OK, do you want to go ahead and-- we have your handout in front of us.

KATE ALLEN: [INAUDIBLE]

KOLTERMAN: Pardon me?

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KATE ALLEN: [INAUDIBLE] should go over the compliance audit first.

KOLTERMAN: OK, so somebody is going to go over the audit and then, and then we'll go from there.

ORRON HILL: Yes, Senator, I would like to take this opportunity, if I may, to introduce David Powell and Melanie Walker, the two of the three attorneys who acted as the legal compliance auditors for this event. And David and Melanie, I will turn it over to you to go ahead and do the presentation, please.

DAVID POWELL: Thank you, Orron.

MELANIE WALKER: Thank you.

DAVID POWELL: Thank you. Thank you, Senator. Can you all hear me?

KOLTERMAN: Not very well. Try talking slower. And I don't know what to tell you.

DAVID POWELL: Is this any better?

KOLTERMAN: It's a little better.

DAVID POWELL: OK. Let me know [INAUDIBLE]

KOLTERMAN: We--

DAVID POWELL: But first, to introduce ourselves, my name is David Powell.

KOLTERMAN: OK.

DAVID POWELL: And I'm an attorney [INAUDIBLE]. OK, I'm an attorney with the Groom Law Group in Washington, D.C. I don't know. Well, I keep hearing feedback, even though I'm not on my speaker phone.

KOLTERMAN: I--

DAVID POWELL: Can you hear me adequately?

KOLTERMAN: I'd prefer you not be on a speakerphone, if possible.

DAVID POWELL: Yes, I am not on the speakerphone.

KOLTERMAN: OK.

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DAVID POWELL: But I hear the feedback anyway.

KOLTERMAN: Well, that's better than it was so.

KATE ALLEN: He's hearing that.

DAVID POWELL: OK, well, well, I'll proceed. And we'll largely be following the PowerPoint report that I think you have in paper form and is based on the lengthier [INAUDIBLE] report [INAUDIBLE] that you should also have.

KOLTERMAN: Can, can--

DAVID POWELL: But to introduce ourselves first--

KOLTERMAN: Can you hold on for a second?

DAVID POWELL: I'm David Powell.

KOLTERMAN: We're, we're not getting a good signal here. Can you hold on for just a minute, please?

DAVID POWELL: Yes, I'll hold.

CHUCK HUBKA: I'm trying to think of what to suggest, since he's the only one.

_____ : The caller--

STINNER: John.

_____ : -- has joined the conference.

KOLTERMAN: Welcome, Senator Stinner. Would you make sure that you don't-- that you kind of mute us and just listen, because we're having audio difficulties again.

STINNER: OK, thanks.

KOLTERMAN: Yeah. Kate, can you control anything with that over there?

KATIE QUINTERO: Just the volume.

KOLTERMAN: Just the volume. Turn-- try turning the volume down just a little bit. Mr. Powell, are you still there? Mr. Powell?

DAVID POWELL: Yes.

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KOLTERMAN: Are you still there?

DAVID POWELL: I'm still here.

KOLTERMAN: OK, why don't you try it now.

DAVID POWELL: OK? Again, I think we were just introducing ourselves first. My name is David Powell with the Groom Law Group in Washington, D.C. I've practiced in the employee benefits area for decades. Our firm is the largest group of employee benefits lawyers in the country. And that's all we do, 80-lawyers-plus doing employee benefits. We represent a number of state retirement systems. I'm going to ask Melanie Walker from Segal company, who does the compliance review with us, to introduce herself. And then I'm going to jump into the executive summary of our findings. Melanie?

MELANIE WALKER: Thank you, David. Can everyone hear me OK?

KOLTERMAN: Yes.

MELANIE WALKER: OK. Thank you. My name is Melanie Walker. I'm from Segal. We are an employee benefits firm, an actuarial firm, so we work with pension plans and [INAUDIBLE] plans of all types. And I'm, like David, I'm an attorney and I've worked with public sector plans for 20-plus years.

KOLTERMAN: Thank you for joining us today, both of you. I would say--

DAVID POWELL: Thank you.

KOLTERMAN: I'd say we just proceed.

DAVID POWELL: We'd like, we'd like to begin just getting the executive summary of our findings and then we'll go through describing--

_____ : The caller--

ORRON HILL: Orron Hill.

_____ : -- has left the conference.

KATE ALLEN: Orron hung up.

KOLTERMAN: OK, go ahead.

DAVID POWELL: Could go to the executive summary. Well, what we found was that the system is substantially in compliance with the terms of

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the plan, the state law requirements, the Internal Revenue Code, Section 41(a) and 457. These requirements that apply to the systems plan and the [INAUDIBLE] regulations and their applicable federal laws. There is no such thing as a plan that does not have any errors, but we did identify a few areas of administration, not as to form or statute, but as to administration, that warrant further review by the system. And we'll be getting into those. We would observe that the retirement plan administration is inherently difficult and, yeah, there's no such thing as a plan that is entirely free from ambiguity. But we did find that Nebraska PERS administers their plan pursuant to internal control governing or reviewing the plan procedures and consistent with those plan operations. Melanie, can I turn it over to you for just a brief overview of exactly what we did in our review?

MELANIE WALKER: Yes, thank you, David. The next couple pages of our presentation describe the areas of federal income tax law that apply to qualified plans, which we reviewed for this compliance audit. And I won't read you these, I'll let you just review them yourself. But as you can see, our review covered a wide array of Internal Revenue Code rule, regulations, and workplace laws and just general plan administration topics. Then if you, if you keep going one more page, I think it's important before we discuss our findings to give a brief overview of the methodology we followed for this review. First, we requested from the system various documents that govern the plan and administration statutes, board policies, forms and procedures and then we reviewed these documents, first to become familiar with how your plans operate, but also to review the plan documents to determine if they comply with IRS code. The next step in the process is we came on site there in Nebraska and interviewed some retirement system executive staff on all aspects of plan operations over one and a half days. And then finally, we drafted this report, this report of our findings and recommendations, which form the basis of this discussion today. It's important to note that the topics we covered in the report include both issues being covered through our interviews and plan document review, as well as some issues that the, the retirement system specifically asked us to address. And I will-- I, I keep going, yeah. So let's go, keep going through the presentation. We're in section one, and we divided our report into sections. And this first section covers issues that relate to all of the plans or multiple plans under the system. And then later sections will cover issues that affect specific types of plans that we reviewed. The next page just lists the topics that are covered in this section. And I'm going to talk about the first topic which addresses the plan you-- that allow at the state, county [INAUDIBLE] plans to make-- the members can make

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payments via irrevocable payroll deduction authorization to the, into the plan to repay a refund or [INAUDIBLE] or prepaid benefit as required [INAUDIBLE]. These payments are made through irrevocable payroll deduction authorization on a pretax basis using a special [INAUDIBLE] plan called [INAUDIBLE] under the tax code. [INAUDIBLE] on a pretax basis and they pay into the qualified plan, so long as certain requirements are met under IRS [INAUDIBLE]. And those rules include that [INAUDIBLE] the writing, that the employee contributions will be picked up by the employer through a formal action.

KOLTERMAN: Ma'am.

MELANIE WALKER: An employee cannot have the ability-- yeah?

KOLTERMAN: I hate to interrupt, but you're just gobble. We're not understanding hardly anything you're saying. For example, what page are you on right now?

MELANIE WALKER: I am on, I believe it's page eight of the presentation.

KOLTERMAN: I don't know what to tell you here. We just have a very bad connection.

CLEMENTS: Slow down a little.

DAVID POWELL: Yes, do you hear the same feedback that we are hearing?

KOLTERMAN: Yes.

DAVID POWELL: Yes, it's very distracting to try to talk while you hear the feedback as well.

MELANIE WALKER: Yeah, I can hear an echo of my own discussion.

KOLTERMAN: OK.

DAVID POWELL: It actually sounds a little bit better now.

KOLTERMAN: Yeah, you do.

DAVID POWELL: Well, no, it doesn't.

KOLTERMAN: I think part of it. Are you talking directly into your phone or are you on a-- do you have a microphone or--

MELANIE WALKER: Yes. No, I'm talking directly into my phone.

KOLTERMAN: OK.

DAVID POWELL: Yeah. Same here. Just holding it up to my face.

KOLTERMAN: That's a little bit better. Try turning your volume down just a hair, if you can.

CHUCK HUBKA: Is it possible one of them just can call direct into the room and then they just give the report, just the one?

KATE ALLEN: They each-- they're breaking up the report. They each give part of it.

DAVID POWELL: Right. Is this any better? I did turn the, the sound down, but I still hear the feedback.

KOLTERMAN: Well, that's a lot better.

MELANIE WALKER: Yes, David, that time, I didn't hear your echo.

KOLTERMAN: Let's--

DAVID POWELL: [INAUDIBLE]

MELANIE WALKER: Can you guys hear me a little better?

KOLTERMAN: Let's talk one, let's talk one at a time and take it very slow, if you would.

MELANIE WALKER: OK, I will do it. And if I'm getting garbled, please speak in again. That's, that's helpful. We'll try to address that. So we are on page eight of the presentation and we're talking about a rule, a plan rule that allows the state, county and school and patrol plan. The members can make payments from their payroll deductions to the plan to repay a refund or purchase service credit or repay benefits as required if they return to work before a bona fide termination. These payments are made to a irrevocable payroll deduction authorization on a pretax basis. You can do this through a special rule for governmental plan under the tax code that allows employers to deduct amount from the employee's paycheck on a pretax basis. And they make their payments to the qualified plan, so long as they meet certain requirements under IRS guidance. Those requirements are that the employer specifies in writing that the contributions employee makes is-- are picked up by the employer through a formal action. Employees also can have no ability to elect out of this deduction and receive the pay in cash. So that's the basis of our--

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that's the first issue. So in 2006, the IRS took the position that in order for these pretax claims to be picked up, any election of a contribution by the employee must be entered into the first time the employee is eligible to participate in the plan. And as a rule, that any employee choice between out-of-pocket cash and tax-deferred benefits is impermissible for governmental plan. They call this an impermissible cash or deferred agreement or CODA. This means that if you're going to do an employer pickup of employee contribution, like you do for employee contributions to the plan in general, they're mandatory, but there's no election by the employee, then this happens with any sort of election by the employee to have a pickup, has to be done at the-- when the plans, when they're first eligible for the plan. It cannot be made at a later date. This means that these irrevocable payroll deduction authorizations that are made any time during employment to, for example, repay a refund is an impermissible CODA. Now, prior to 2006, the IRS had rulings that specifically permitted this type of arrangement specifically for purchasing service credit. But over time, they sort of changed their mind, especially after a revenue ruling on employer pickup came out in 2006. So it appears that any irrevocable payroll deduction authorization under the state plan to purchase service credit or repay refunds or repay benefits does not satisfy the definition of pickup and is an impermissible CODA that should that they-- you should not continue. So we talked to the system about different ways you can do that. It's not an impermissible cash or deferred agreement if it's done on an after-tax basis or the plan can-- or the member can pay these, repay these amounts through rollovers or a lump-sum payment. I'm going to pause there and see if there are questions or and then turn it on to David for the next topic.

KOLTERMAN: All right. Thank you. Do we have any questions? Senator Clements.

CLEMENTS: Yes. Does the-- do the Nebraska plans allow, currently allow purchase of service credits?

KOLTERMAN: Yes.

KATE ALLEN: Yes.

KOLTERMAN: Did you hear the question?

KATE ALLEN: The school plan does.

MELANIE WALKER: Yes.

DAVID POWELL: Oh, yes, they do.

MELANIE WALKER: Yes, they do.

CLEMENTS: Now, does that mean you can add some years of service to your actual years of service with the payment?

MELANIE WALKER: Correct.

CLEMENTS: And does Nebraska allow that?

KOLTERMAN: Yes.

KATE ALLEN: Yes.

CLEMENTS: OK.

KATE ALLEN: The school plan does.

CLEMENTS: Thank you.

KOLTERMAN: The school plan does allow for that.

DAVID POWELL: Yeah, the statute.

KOLTERMAN: Any other questions? All right. Thank you. Go ahead.

DAVID POWELL: OK, I will pick up with the next--

_____ : The caller has joined the conference.

DAVID POWELL: -- 10 on page 10, and it is that when erroneous payments are made occasionally to participants, such as a person starts to receive a benefit claiming a termination of employment, but it turns out not to have been bona fide. They come back fairly quickly within the holdout time period, which is 120 days for most plans. There are procedures in the plan for having those paid back to the plan. But one thing that we discovered was that those repayments do not include any interest for the period that the participant mistakenly held them. And the IRS revenue procedures on correcting overpayments, which is what these are called, overpayments to participants, states that not only do you have to make efforts to recover the overpayment, but that that should also include earnings on that overpayment. The theory being that it should put the plan assets back in the position they would have been in had the overpayment not occurred. But as I just mentioned, the, the current processes don't include such interest. The, the IRS has issued a number of different ways in which you can

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measure those earnings or interest. But we did raise this with Nebraska PERS. Let me stop there before I go to the next point, see if there's any questions.

_____ : The caller--

STINNER: John.

_____ : -- has left the conference.

KOLTERMAN: So, so my question, this is Senator Kolterman. My question is the-- have you, you talked to the NPERS and the PERB board about how they can correct the problem?

DAVID POWELL: We did have, yeah, various discussion, discussions of the various ways in which that can be addressed.

KOLTERMAN: OK. Thank you.

DAVID POWELL: Sure. Let me move on to the next point, which is on page 11 of the PowerPoint, and it is that occasionally an employer will make an error in the contributions that it makes to the plan. I mean, this is common in, in pretty much every private and public retirement system, that contributions may be made by mistake. Somebody transposes a digit or that sort of thing, which is usually referred to as a mistake of fact. The IRS--

_____ : The caller--

STINNER: John.

_____ : -- has joined the conference.

DAVID POWELL: -- for pension funds such as those of the Nebraska PERS, that the money that's in the fund is only to be used exclusively for the benefit of the participants and beneficiary. And pursuant to that, they've said that once money goes into the trust, it should not go back out of the trust to the employer, should only be used to pay benefits with a limited exception of if the error was made within the last year and is on account of a mistake of fact. Oh, yeah, also, that's-- the amount going back is not to include earning, just the amount of the erroneous contribution. What we found was that on occasion, older mistaken contributions were being returned, but at least for public plans, there is a workaround for this issue, which is the rule only says that you can't send the money directly back to the employer. It does not say that you can't give a credit to the employer

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against their next contributions. So what we were suggesting is that for older mistaken contributions by employers that are outside of the one-year period, that those mistakes be corrected through giving them a credit, rather than sending money out [INAUDIBLE].

KOLTERMAN: OK.

DAVID POWELL: Assuming there's no questions on that.

KOLTERMAN: Yeah, do we have any questions from the committee? OK, we're with you. Thank you. Move on to cybersecurity.

DAVID POWELL: Certainly. Well, also, reasonable allocation of expenses on page 12. Just to touch on this. It is an important point that each of these separate plans, there are really five qualified plans here, plus the 457(b) plan, only pay for their own expenses. Now, sometimes expenses are a little difficult to divide up. You are permitted to make reasonable allocations. The record keepers that, outside record keepers that assist the system do make such efforts when they enter into the contract with the system. But we suggested that the system should review how they're dividing it up and just document that, in fact, you know, each, each plan is only paying its own reasonable share of the expenses. Moving on, we didn't, we did not find an error in that, we just suggested that they beef up their documentation. On cybersecurity on page 13, this is something that we, we raised not because we found an issue in it, but because it is such a prominent concern right now. As an employee benefits firm, we are seeing a lot of our clients having hacking attacks. And it is not just at the record keepers and at the employer's system. What is more frequently happening all the time is hacks of the participants obtaining information so that the hackers access the participants' benefits and have benefits distributed into accounts where they can no longer be recovered or traced. This is an increasing issue. We did discuss it with the system. As you can see on the following page, 14, in this case, it is the State Treasurer rather than the Nebraska PERS that is responsible for the cybersecurity. But moreover, the Nebraska system continues to use paper distribution forms, but because of the notarial requirements, which are much harder for criminals to, to use to create a false distribution request. So our only real point on this, even though we think it's important and raised it, is that Nebraska PERS should continue to monitor this because it is an increasingly criminal cyber activity. If there's no questions on that, I would turn it over to Melanie for some discussion on what we found on lost participants and uncashed checks.

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MELANIE WALKER: Thank you, David. So we're on the next slide, 15, and we're going to talk about exercising due diligence and searching for lost participants. Tax deferred retirement plans under the Internal Revenue Code, have a duty to make a reasonable effort to locate missing participants at the time when a minimum distribution is required to be paid. Generally, a minimum distribution is required to be paid once the member retires and reaches age 70 and a half. And that age has now been increased to age 72 under federal legislation that, that was enacted last year called the SECURE Act. There is some IRS guidance on what constitutes due diligence for this purpose, and the IRS guidance requires that when you're locating lost participants, you would need to follow the steps in their guidance and that includes the step to attempt to contact the lost participant via first class-- I mean, I'm sorry, via certified mail. We discovered that the system is doing this, but they're using first class mail. So considering that the focus of enforcement on required [INAUDIBLE] by the IRS, we recommended that they modified their procedures for locating lost participants to include attempting at least one time to contact the participant via certified mail, which also creates a kind of document trail to-- so you can prove that the attempt to contact this participant was made. Now, in discussions with the system after, after our report and after this COVID pandemic began, using certified mail may not be practical at this time and so we advise that the plan can likely use some other method that reasonably likely to be able to contact a participant if, if certified mail is not practical. I'm going to pause there to see if there's any questions about that. So next on slide 16, another area of plan operations which we discussed with the system was how to handle benefits that are forfeited and remained unclaimed after you reach that required beginning date. Currently, all of the plans in your system are required to, by statute, to transfer any benefit that the plan is able to pay to a member by this age 70 and a half or 72 to the State Treasurer to be held in the state's unclaimed property fund. And we had a discussion about other commonly used methods for unclaimed benefits that are used by similar statewide retirement systems. So if we keep going on, now we're on 17, 17, slide 17. And one of the ways that are commonly used by statewide retirement systems is that the assets-- is that if benefits are treated as forfeited and then the assets remain in the plan fund, rather than the state's unclaimed property fund, and they could be subject to restoration and distribution to a member if the lost participant or beneficiary contacts the system at a later date. Now, first, we have to note that if the plan-- the system desires to keep these unclaimed benefits in the plan's trust fund rather than unclaimed property fund, it would require statutory change. But one

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advantage to keeping the forfeited assets and the investment income on those amounts in the system would, would be that these assets can offset plan liabilities, which would be beneficial to the funding status of the plan. On the other hand, you have to note that keeping the money in the system's trust fund may or may not be beneficial to the system overall, it would have to be something that was determined, because they would be responsible for keeping participant records for a long period of time and then administrative costs to, to maintain a system for finding lost participants and keeping these unclaimed benefits in their own trust fund. Although it is sort of, on the other side, it PERS-- the system is already required to do due diligence in searching for lost participants, as we just discussed, so they may already be taking much of the effort that's needed before they, they transfer money to the unclaimed property fund. So this is just a discussion that we had and that it was important that we captured in our report, if this is something that the system or the Legislature wants to explore. And then I would like to just update on this. There is some new guidance on, from the IRS on unclaimed property funds, state unclaimed property fund. And there's two pieces. Mainly the IRS said that when a system transfers assets of unclaimed benefits to, to this sort of unclaimed property fund of a state, this is considered a distribution and the plan must withhold taxes on that amount and report it on the form 1099-R. Further, the IRS said that when this type of distribution is made, once the participant comes to claim it, they could claim and self-certify that they, this is one reason why they did not get an opportunity to roll over the benefit and avoid the taxation, so that there's usually a rule, a rule that says you have to, once you receive a distribution, whether in actuality or it's, it's considered that because others in federal income tax rules, that you have to, you have 60 days to roll it over and avoid that income tax. So the IRS basically says if that money is sent to unclaimed property fund, you have to pay taxes, the system, the retirement plan has to take taxes out of it. And but the participant who did not get an opportunity to roll it over could at some point roll it over someone-- somewhere and get, you know, those tax amounts back. OK, I'm going to pause for a minute and see if there's questions. And if not, I'm going to turn it over to section 2, issues affecting your defined benefit plans, to David.

KOLTERMAN: I don't see any questions. Go ahead and take section 2.

DAVID POWELL: OK. OK, I'm going to talk about some issues that affect the defined benefit plans in particular. And if you look at page 19, I have two listed there. One is bona fide terminations of employment and the other is cash or deferred arrangement issues. One thing about both

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of these issues is that they are not within the operational remit just of the board. These are both issues, operational issues that involve the actions of the participating employer and the participant as well. So not totally within the control of the system. And this comes out in some of the recommendations when made-- in light of these issues. Taking the first one on page 20, all of the Nebraska plan require that someone have a termination of employment to receive a benefit. In other words, nobody is supposed to get a retirement benefit while they are still in service. That's sometimes colloquially known as double dipping. And this is a very standard provision in state retirement systems. So if a person were to be paid when they have not actually had a termination of employment, that would be what's referred to as an operational failure of your plan documents. And the IRS would consider that a disqualifying failure, which would need to be corrected. In other words, as, as an overpayment which would, you know, generally has to be sought-- be returned. And one of the particular issues for state retirement systems is they are not the employer of the participant. So there can be difficulties in figuring out when somebody has had a bona fide termination of employment. And in fact, if you look at page 21, moving on to that, that is why it is common for public retirement systems to have what sometimes is referred to as a holdout provision or return to work provision, which Nebraska has, which generally says that we will not allow people to come back to work for a participating employer within 120 days, it's 180 days for the school system, or we will consider that not really to have been an original bona fide termination of employment. And if that, that is an effort to get to the issue that the system is not the employer, the participating entity is the employer, so if it's hard to know when a bona fide termination has occurred, you would institute these sorts of holdout periods to just make it, you know, very difficult to have a phony termination, where somebody would retire but immediately come back and there was not an actual--

_____ : The caller--

STINNER: John.

_____ : -- has left the conference.

DAVID POWELL: Connected with, with that point that there has to be a bona fide termination of employment, another thing that we, we see frequently in the public plan space and discussed a number of entities with, with Nebraska, is people coming back as purported independent contractors, when in fact, they're really common-law employees and not bona fide independent contractors. And we discussed with Nebraska PERS

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at length the, the rules for differentiating between employees, bona fide common-law employees and independent contractors, as well as when someone is an employee. And the standard for determining when there is a bona fide termination of employment, which is a facts and circumstances determination. It's, it's really based on the intent at the time of the departure--

_____ : The caller--

STINNER: John.

_____ : -- has joined the conference.

DAVID POWELL: -- Nebraska's particular holdout period. So what our recommendations on this were are, again on page 22. And the first one is more outreach to the employers to understand the implications of this, that it is important from a tax qualification standpoint and to understand how to differentiate between bona fide employees, common law, bona fide common-law employees and independent contractors and the rules around return to work. We also pointed out that there is, in fact, an IRS form. If, if the facts and circumstances are difficult, the form can be filed by an individual or it could be filed by the employer. Technically, the system does not have standing to file, but they can certainly ask to review the form. But those forms, once filed with the IRS, laying out the facts of the particular employment arrangement or a purported independent contract [INAUDIBLE] do lead to the IRS ruling one way or the other. So you have something you can rely on. In addition, if there are particular questions, it's possible to go for an IRS private letter ruling on return to work. We had pointed out to them that there is a very well-known one from 2011 pointing out that you cannot simply say that you're retiring and then come right back to work. That that is not a termination of employment and that the IRS would likely be happy to issue another such ruling on other facts. And then lastly, just for completeness, to point out that even though what I was referring to is double dipping, when you're receiving your pension and your salary at the same time, is not very common in the public plan space. It's somewhat more common in the private sector. It is not always impermissible under the Internal Revenue Code. It's to point out in particular to the Legislature that the IRS would allow a distribution from a retirement plan while the person is in service if the plan allows and if the person is over normal retirement age. So in theory, the statute could be amended to say once a particular type of employee, like a teacher reaches age 65, they could continue to work and they could start to receive their retirement benefit. I do want to point that out. However, it's not

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required. The plan has to permit it. So that would be a matter for the Legislature to permit it if they so desire. It is not, not required and-- but it is permitted to do that. Is there any questions on that?

KOLTERMAN: Yeah, this is Senator Kolterman. I have a question about that. This termination of employment, doesn't matter which plan we're talking about. It's a challenge, especially in the school plans as we struggle to find employees to go back to work. And it doesn't necessarily just mean educators. It's also the bus drivers and the people that work in the janitorial services area. What, what do other, what do other states-- are they using this idea that once you hit age 65, you could start getting your retirement and continue to work? Or how low can you put that age of retirement in a plan so that we might get around this ruling? I don't know how to put it any other, other way than that.

DAVID POWELL: Sure. No, I, I do understand. This, in fact, is a very common discussion. And we've discussed with a number of other state retirement systems, even to the point of preparing draft legislation to allow in-service distributions for particular types of employees where there is perceived to be a need, and teachers often seem to be one subject, or people not to retire once they have obtained the retirement benefit they want and stay away and, you know, wind up with needing more, more teachers. But I have to say, so far I have not seen any state retirement system specifically adopt that change. The-- purely my surmise is that's more for political reasons than, than anything else. But I would say, also add one proviso to that, which is in the pandemic, a number of states have issued exceptions for various types of state employees whose jobs are considered and important in this emergency, to allow them to be rehired without regard to return to work rules. I think those have been more executive actions than legislative actions, but there has been some of that in some states. Melanie, do you-- oh, before I leave that, the "as low as you can go" was, in fact, changed recently by the tax act known as the SECURE Act back in 2019. And it is now as low as 59 and a half. It used to be 62. Again, I haven't seen any, any state retirement systems actually profit that low. Melanie, did you want to add anything to that?

KOLTERMAN: OK, go ahead and proceed. I don't see any other questions.

MELANIE WALKER: I'm sorry, this is Melanie. I just wanted to kind of second what David said and, and, and mention that there are systems that develop a process for bringing back to work critical employees that are not subject to, you know, the 180-day or 120-day period before they can return to work for, you know, for certain purposes.

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And it could be temporary or it could be permanent and the process can be controlled by the Legislature, by, or by the system, however, works best for your particular situation. So there I do see that in many different states.

KOLTERMAN: I might just say that this is a problem that we've had long before COVID came around. Especially in light of the fact that we have some of these school districts in rural areas, that it's hard to attract young people to come back to and it's just been a challenge. But we'll, we'll continue to look at that and continue to work at it. And I know that the PERB and NPERS and OSERS are constantly looking at that issue. So-- but thank you for your input there. Let's move on to section 3 of issues affecting the defined contribution cash balance.

ORRON HILL: Senator Kolterman.

MELANIE WALKER: [INAUDIBLE].

ORRON HILL: Senator Kolterman, this is Orron.

KOLTERMAN: Yes?

ORRON HILL: Do you mind if I ask one point of clarification really quickly, please?

KOLTERMAN: Absolutely. Go ahead.

ORRON HILL: David or Melanie, whoever would like to answer, in order to drop that age to 62 or 59 and a half, we would actually have to lower the normal retirement age in the plans to those ages. Is that correct?

DAVID POWELL: Yes, yes.

ORRON HILL: That was my understanding, I just wanted to make sure that, that I understood that correctly.

KOLTERMAN: And Orron, that would have to be done through statute.

DAVID POWELL: Yes.

ORRON HILL: Yes, Senator, that was [INAUDIBLE].

KOLTERMAN: We might have some work to do this year. Let's, let's move on to section 3. Thank you.

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DAVID POWELL: And actually, before we do, Melanie, did you want to mention the cash deferred arrangement issue for the school plan?

MELANIE WALKER: Yes, and I will do that briefly. It's a similar issue that, as David just discussed with respect to bona fide termination, because it's an employer issue that the system doesn't necessarily have control over. But they did bring this issue to our, our attention and wanted us to opine on it. It's an issue relating to the cash or deferred arrangement. It's a problem specifically for the school plan. In this particular circumstances, some schools' participating school district employers want to offer something called the dual option to current employees that do not receive health insurance coverage. So option one is that the employee gets an additional amount to buy health insurance on their own. Option two is that the employer covers them on their health insurance coverage, but they do not get that additional money. Current employees are under option one, but they want to offer-- they offered them a one-time election to switch to option two within a specified period. And only-- future hires are only in option two. So this really concerns employees that can have the option to switch. So because the employee can make an election to choose between cash now or benefits later at a time that's not when they're first eligible for the plan, then this is an impermissible cash or deferred arrangement. However, again, it's not, it's not that the system that is causing it, it is the employer. So it's an employer problem to solve. It affects the system because the benefit received under the school plan will be different depending on some employees elect option one or two because of the compensation amount for purposes of calculating the benefit. And as David mentioned, on the bona fide termination issue, the main thing that the system can offer is to educate employers on this as a CODA issue that probably would not pass muster with the IRS and encourage them to, to change or eliminate this dual option availability. OK, now we're gonna turn to section 3 and David is going to talk about issues affecting the state and county plans.

DAVID POWELL: Yes. And just to observe the cash deferred arrangement that Melanie was just talking about has been becoming higher and higher on the IRS's list of things that they have, have been emphasizing as issues. So moving on to section 3, some issues affecting the defined contribution, cash balance plans in the state and county. First one I want to briefly mention on page 27, and it's really more, probably more of an observation than an issue, but there's a question of exactly what types of entities are allowed to be in a governmental retirement plan. And the IRS has had the definition of that under study for years and are planning to issue proposed

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regulations on it. They even have draft regulations already out. The one plan where there may be some gray area entities is really the county plan. We, we've raised this in the past, we raised it again with the Nebraska PERS. And it does happen that they have a subcommittee that is monitoring those employers. In other words, a county hospital, healthcare entity, athletic fitness facility, those are the sort of things we consider in the gray area. We don't generally advise moving gray area entities into or out of the plans at this point. But just note that it's important to continue to monitor it. And if the IRS comes out with guidance to evaluate it then and see if there are any entities where there's an issue as to whether they can really be in the county plan or not, subject to whatever transition relief the IRS would decide to issue. On page 29, we had recommended that the system put the cash balance plans into the IRS for a determination letter. There just happens to be a window of opportunity for cash balance plans to get an updated IRS determination letter. So I should probably mention the IRS closed down the opportunity to get an IRS review and a favorable opinion letter a number of years ago. But they've made a couple of exceptions over time and they made one for cash balance plans. And in fact, at the direction of Nebraska PERS, we did file those with the IRS back on August 21. It will probably be many months before we hear from the IRS again. But, but that was done. Melanie, would you like to talk about section 4?

KOLTERMAN: Before you go there--

MELANIE WALKER: Yes?

KOLTERMAN: -- can I ask a question of either Orron or one of you? When we talk about these, these small, like the hospitals and athletic fitness facilities, we're very limited in what we have there, aren't we?

ORRON HILL: Senator, this is Orron. Yes, there is few employees at the fitness centers. The county hospitals can be a little bit larger in employee number, but there's very few of the hospitals that actually participate in the plan. So few in employer number and then, depending on which type of employer, few in employee number as well.

KOLTERMAN: OK. So it's not a huge concern on our part, but it is--

_____ : The caller--

STINNER: John.

_____ : -- has left the conference.

KOLTERMAN: Is that correct, Orron?

ORRON HILL: Senator, it's still, yeah, it's still something we want to keep our eyes on in case the IRS does come out with guidance to make sure that if there is something that presents to be a red flag, we can be quick to respond.

KOLTERMAN: So, as I recall, a year or so ago, we had a hospital that pulled out of the plan. And I think we're down to maybe one. Would that be accurate?

ORRON HILL: Yes, Senator, that is accurate.

KOLTERMAN: OK, thank you. I just wanted clarification on that. Let's move on to section 4 and close this up.

MELANIE WALKER: Thank you. This is Melanie again. Section 4 deals with a couple of very minor issues regarding the deferred compensation plan. So the first one is just a plan document issue. Currently, the plan document provides for investment changes elected by participants to be made only in percentages. But in actual practice, the plan allows people to make investment changes using specified dollar amounts as well. So we recommend that the plan be amended to allow both, just to reflect actual practice. And then let's keep going on slide 32. The-- currently the deferred compensation plan restricts participants who receive an unforeseeable emergency distribution. They suspend deferrals to the plan for a period of six months. This rule mirrors a rule that was required for 401k plans that offer hardship distribution. So if you made a hardship distribution for a 401k plan, you had to suspend contributions for six months. So a lot of deferred compensation plans adopted that rule as well. Seems like a good idea. But there were two federal laws that were passed in 2018 and, I think '17 and '18. And then there's some final regulations that, that now prohibit a plan from suspending contributions as a condition of obtaining a hardship distribution in 401k plans. And for this reason, we recommend that the deferred compensation plan consider eliminating that same rule that it was mirroring and no longer suspend deferrals after an unforeseeable emergency distribution. This is not specifically required of the deferred compensation plan and so there's no specific deadline, but it's a recommendation. OK. So I think that is everything. I'm going to turn it back to David to see if he has any final comments or if we want to talk about anything in the appendix.

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DAVID POWELL: Well, I will just point out that on page 35, we have a list of a few additional items that we had discussed the legal aspects of with Nebraska PERS. Not really so much issues as to questions as to how things should operate, including how some very quirky rules for the 457(b) plan on making salary reduction elections work with different payroll cycles was one. We had discussions about various particular employee independent contractor issues, including say coaches or teachers who might also be acting as athletic official. There's, there's some discussion of that at the end of our longer report. Happy to discuss that further. That there be sensitivity around the deferred retirement option plan designs, the DROP, as to any potential CODAs there, because as we mentioned a couple of times, the IRS does not want to see any employee making a choice that will have a-- in return for a different impact on their salary or payments of leave, severance, things like that in exchange for a different benefit. Not a particular policy reason for that, but it's in the Internal Revenue Code, it's been there since 1986. And the IRS feels strongly that those sort of elections that affect your benefits and salary should not be permitted. And lastly, we addressed the rules for rollovers into the deferred compensation plan. That I think summarizes our report. I would then open it up for any further questions that you all may have.

KOLTERMAN: Thank you very much for your report, David and Melanie. I appreciate your patience as we work through the challenges of the audio here. Orron, do you have anything else you would like to say or anything you'd like to bring forward? We do have as a committee, we've got your response and we have the crosschecked review from, from Groom Law as well as Segal, the subcontractor, that will be put in as part of the record. So Orron, this is your opportunity if you have anything you'd like to address. Otherwise, your response has been very thorough. Appreciate that.

ORRON HILL: OK, Senator, there's just a couple of things I want to, I guess, touch on real quick in response to perhaps some of the questions that came in, if, if I may.

KOLTERMAN: Go ahead.

ORRON HILL: OK, so one of the things that was discussed was the possibility of lowering the normal retirement age to allow for either in-service distributions or potential quicker returns to work. I do want to make sure that it's pointed out that the Legislature understands that lowering the normal retirement age can have a significant cost to the plan and increase the cost of the benefits. So

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we would really want to talk to the actuaries and make sure we've got a very good study put together, because I would hate there to be any sort of unexpected, actuarially required contribution that would come about due to any change on that point. So we will need to, to consider that piece as far as our discussions on that point. As stated in our written comments, many of the points that they have brought up, we have already taken steps to address either by drafting or preparing revisions to the plan document for the DCP or updating the regulations in response to the guidance that we have been given. A couple of very specific things that we have done as far as the certified mailing goes, we immediately instituted the practice of requiring at least one certified mailing attempt and we are adjusting the regulation to make that mandatory. In addition, what we've also done is as far as the suspension of deferrals to the unforeseeable emergency distribution, we amended the DCP plan document in May to correct that issue after it had been brought to our attention. And then we also did some research into the point on the DCP about the specific dollar amount versus the percentage. And admittedly, I think that when we were responding to the interview questions, we may have been confused by the question. And that was our mistake, certainly not the auditor's. And we actually do not allow specific dollar amounts under section 6.2 of the DCP, but do under 6.3. So there is a distinction there. So we think that issue has been addressed and I apologize for any confusion that may have been there. Lastly, on all of the other points, we are going to continue to work with the stakeholders, whether that be the Legislature, Governor's Office, other policymakers, the unions, the employers, the employees to continue educating them on any of the difficult areas that may exist or challenging areas that exist. And that would include if there is a desire by the Legislature to consider any of the alternatives to the state unclaimed property fund. Subject to your question, Senator, I will end my comments there, since you have everything else in writing, unless there are specific questions by you or the other members of the Legislature.

KOLTERMAN: Thank you, Orron. Any questions? We have no questions on this end. So we're going to close down the hearing. I would like to thank Orron Hill and Randy Gerke for being on the line. Also David Powell and Melanie Walker. And I will just say for the record that Senator John Stinner from out west in Scottsbluff-Gering was on the line. We have Senator Lindstrom and Senator Clements. And that, that will conclude the hearing for this LR315. Thank you, everyone. I think we're going to move right into LR317, unless I see anybody that wants-- so we're going to move forward. We have with us today, Lauren Cencic and Curt Simon. So if the two of you would come forward and

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make your presentation. They represent Metro Area [SIC] Transit hourly employees. You want to-- we can pull another chair up there. You good? All right.

LAUREN CENCIC: He'll make me do it.

KOLTERMAN: Welcome. Would you say your name and spell your name and go ahead and testify?

LAUREN CENCIC: Thank you very much. Good afternoon. My name is Lauren Cencic, last name is C-e-n-c-i-c, and I'm the CEO for the transit authority of the city of Omaha, doing business as Metro. With me today is Curt Simon, the former executive director for Metro, who is here to help assist with any questions the committee may have for us. Metro is the public transit provider for the Omaha metropolitan area, providing fixed paratransit and express services. Metro also provides services to the cities of Council Bluffs, Bellevue, La Vista, Papillion and Ralston, by virtue of agreed upon service contracts with those municipalities. Attached to my testimony is a revised 2020 reporting form for underfunded political subdivision pension plans. My initial submission of this form inadvertently omitted the additional corrective actions that we have implemented to improve the funding status of the Metro Area Transit--

_____ : The caller has left the conference.

LAUREN CENCIC: -- hourly employees pension plan since 2019. These include contribution increases--

_____ : The caller--

MELANIE WALKER: Melanie Walker.

_____ : -- has left the conference.

LAUREN CENCIC: -- by both the employer and employee of 0.25 percent for years 2020, 2021 and 2022.

_____ : The caller has left the conference.

LAUREN CENCIC: Since 2016, we have increased the employee contribution from 6 percent to 7.25 percent, increased the employer contribution from 6.5 to 7.75 percent, as well as changed the normal retirement age from 65 to the age when the employee reaches full retirement for the purposes of receiving Social Security benefits. We eliminated an early retirement option and changed the benefit factor percentage used in

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the calculation of the monthly benefits for employees hired after January 1, 2018. In addition, a one-time lump sum contribution to the plan in an amount equal to 1 percent of the total wages of active plan participants was made for the period beginning July 1, 2016, and ending on August 31, 2017, making the effective employer contribution rate 7.5 percent since July 1, 2016. Additionally, in our 2020 actuarial valuation report, we have reduced our assumed rate of return from 6.75 percent to 6.5 percent and updated the mortality table from RP-2000 table to the Pub-2010 base table for the MP ultimate scale. These assumptions were reviewed by Metro's pension committee yesterday, November 5, 2020. We have 195 active members in our plan, 201 members in pay status and 39 terminated members as of January 1, 2020. The funding status of the plan is 66.7 percent. This funding status reflects the changes in assumptions in our 2020 actuarial valuation report. Without the revised assumptions for the rate of return and mortality table, the funding status of the plan would have been 69.6 percent, which would have been an improvement over our 2019 funding status. However, we felt the adopted changes are prudent and realistic. In 2020, due to the COVID-19 pandemic, our hourly employees' working hours have been reduced, thus causing a lower amount that the employees and employer will contribute to the plan in 2020. A resolution will be brought to the Metro board of directors later this month to approve a one-time lump sum payment of \$350,000 in the hourly plan trust. This \$350,000 represents the estimated difference in calculated employer contribution attributed to the reduction in working hours for the year. This lump sum payment is subject to approval of the board and is not accounted for in the funding status reported above. Please, I thank you for giving me the opportunity to address the committee, and with that, I'd be happy to answer any questions you may have.

KOLTERMAN: Are there any, are there any questions from the committee? Just a general comment. It looks to me like you're doing everything you possibly can to improve your plan. I'd like to thank you for your attention to all-- and the report that you have here. You're going in the right direction and you should be commended for lowering your assumed rate as low as you have. With that, I see no. Thank you for your report.

LAUREN CENCIC: Thank you.

KOLTERMAN: One of these days, we'll get you over that 80 percent mark.

LAUREN CENCIC: We're working on it.

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KOLTERMAN: You are working on it. Thank you. OK, so next we have Javier Hernandez from OPPD. Is Javier here? We'll move past and come back to that when he shows up. Dr. Logan from OPS and OSERS. Welcome, Dr. Logan.

CHERYL LOGAN: Thank you. Back in the principal's office. Good--

KOLTERMAN: OK.

CHERYL LOGAN: It's the same joke I use every year--

KOLTERMAN: I get that.

CHERYL LOGAN: -- so I apologize.

KOLTERMAN: I get that.

CHERYL LOGAN: I can't. I couldn't resist.

KOLTERMAN: Believe me, I've been to the principal's office a lot more than you ever have.

CHERYL LOGAN: You probably have. Good afternoon. Thank you for a moment of levity, I appreciate it. Senator Kolterman and members of the Retirement Committee, my name is Cheryl Logan, C-h-e-r-y-l L-o-g-a-n. I am superintendent of Omaha Public Schools. We continue to be a growing district that educates approximately 53,000 students. In my time as superintendent, I have had the opportunity to work with almost all of you as we continue to do all we can to solidify the Omaha School Employees' Retirement System. I want to thank each of you publicly for your support of OSERS and its members. As you know, I appeared before this committee in September to voice the Board of Education's support for the findings of the LB31 report and to encourage the introduction of legislation transferring management of OSERS to the PERB. The Board of Education and I are incredibly appreciative of Senator Kolterman's willingness to work with us in drafting legislation during this interim to prepare a bill for introduction in 2021 to transition the management of the OSERS plan to the state. This is not a decision we come to lightly. The LB31 study outlines the transition will carry significant cost. The Board of Education is prepared to cover these costs and work with the PERB to ensure a successful transition over the next two years. We are only asking for transfer of management essentially the day-to-day operations of OSERS. We understand that the OSERS plans would remain a separate and distinct retirement plan from the other NPERS plans. To be clear, the Omaha Public Schools will remain fiscally responsible

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for the unfunded liability. Since 2016, OSERS has benefited from the experience of the Nebraska Investment Council as they took over the investment authority for OSERS. That was part of our recognition that we were not well-equipped to manage the investments for retirement systems, system of OSERS's magnitude. As a logical next step, we believe that OSERS will benefit from the experience of the PERB, which manages multiple retirement plans spanning our entire state. The LB31 report projects that OSERS will realize cost savings with the transfer of management to the PERB. Those savings, while modest in the short-term, will have an impact on the system with the passage of time. As I shared with you in September, the district continues to make its additional actuarially required contribution on a timely basis. Moreover, in a year which, where we have budgeted for a larger ARC contribution than was required, our board authorized contributing the full budgeted amount to OSERS. The district made its ARC payment of \$21,356,991 in August. That's \$1,531,740 in excess of what was required of the district to pay this year. Payment of the ARC is our obligation as a district. We all understand that also comes with difficult decisions affecting every employee in our workforce and every student in our care. The ARC payments have a significant impact on our budget. We continue to seek ways to mitigate that impact while managing the budget of the state's largest school district. Sound financial management and fiscal prudence will be essential to our ability to manage both our responsibility to educate students and our duty to OSERS and its members. We continue to meet with our Better Together Coalition stakeholders, which include representatives from Omaha School Employees' Retirement System, OSERS; Omaha Education Association, OEA; Nebraska State Education Association, NSEA; Service Employees International Union, SEIU; retirees; and the Omaha School Administrators Association, OSAA. We look forward to the completion of the ongoing drafting of LB31 so that we can share and discuss it with our partners. I would like to thank Senator Kolterman for his continued support and participation in discussions with the Better Together Coalition. We're very hopeful that the transfer of management becomes a reality with the passage of a bill next session. We look forward to possible changes for the OSERS plan as we look ahead and as we seek consensus on other steps that will aid in the stabilization of OSERS long-term. As the process continues, we will keep Senator Kolterman and this committee apprised of our progress. Thank you for the opportunity to speak with you today. I'd be happy to answer any questions you might have.

KOLTERMAN: Thank you, Dr. Logan. Are there any questions? Senator Clements.

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CLEMENTS: Thank you, Dr. Logan.

CHERYL LOGAN: No problem.

CLEMENTS: On the-- this letter that we have, it talks about the actuarial value of assets and the market value of the assets.

CHERYL LOGAN: Yes.

CLEMENTS: And the market value being lower. How do you account for that difference?

CHERYL LOGAN: You know, I don't, I didn't, I didn't bring the answer to that today, but I certainly will get it to you.

CLEMENTS: I assume the actuarial value is more of a cost basis than the market value.

CHERYL LOGAN: That--

CLEMENTS: Unless it just decreased.

CHERYL LOGAN: It did. It actually has-- it did decrease, yes.

CLEMENTS: Thank you.

CHERYL LOGAN: OK.

CLEMENTS: That would be good to just see what the difference came from.

CHERYL LOGAN: OK, I'll send an email on Monday morning.

CLEMENTS: OK, thank you, Doctor.

CHERYL LOGAN: Sure. My pleasure.

KOLTERMAN: Anything else? Seeing no other questions, I'd just like to make a comment. I would like to thank Dr. Logan, but more importantly, also the Omaha Public School Board, as well as OSERS. Together, we've worked through a lot of challenges here over the last couple of years. And when this, when this legislation was passed that we had this hearing once a year, I don't think anybody thought of the value of it. But since we've been doing this, I think I've been involved now for six years. We've seen most of our plans working with us more closely and going in the right direction. And I'd just like to compliment you

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on that. So thank you. We'll continue to work on a bill that we're working on. And I appreciate you coming today.

CHERYL LOGAN: Thank you. I'll pass along the thanks to the school board. Thank you very much. Appreciate it. And get the answer to Senator Clements on Monday morning.

KOLTERMAN: Now, is Javier here yet? If he's not, then we're going to move to Omaha Civilian Plan, Bernard in den Bosch and Pat Beckham. No strangers to the committee.

BERNARD in den BOSCH: Unfortunately.

KOLTERMAN: How are you, Bernard?

BERNARD in den BOSCH: Oh, thank you. Hopefully, everybody is healthy.

KOLTERMAN: Welcome, Pat.

PATRICE BECKHAM: Thank you. Good to see you.

BERNARD in den BOSCH: Good afternoon. Good afternoon, Senator Kolterman, members of the committee. Bernard in den Bosch, first name, B-e-r-n-a-r-d, last name, three words, first word, lowercase i-n, second word, lowercase d-, as in David, e-n, third word capital B-, as in boy, o-s-c-h. I'm sorry. I'm here Pat Beckham, I'm gonna let her do that part.

PATRICE BECKHAM: Patrice Beckham with Cavanaugh Macdonald. P-a-t-r-i-c-e Beckham, B-e-c-k-h-a-m.

BERNARD in den BOSCH: Members of the committee, we provided by mail on October 8, the letter, which included the report, as well as a table with the information requested, a copy of the actual report prepared by Cavanaugh Macdonald effective January 1 of 2020, and the most recent experience study, which, as you'll see in this case, was completed in February of 2018. We do anticipate that a new experience study will be done next year, the first part of the year. As this-- unfortunately, as Senator Kolterman recognized, we've been here more than once. We did ask Ms. Beckham to make one significant change to the actuary report, at least as far as people's understanding. And we asked her to include a funds, funded status progression as part of that annual requirement. I'll highlight that briefly. I'm not going to regurgitate what I've put in our report, but we're obviously available to answer questions. That particular item estimated the fund would be fully funded in 2048. As I think the report indicates, we made

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significant changes approximately five years ago, starting a cash balance plan effective March 1 of 2015 for any employees that were hired after that date. The fully funded ratio was-- time to fully fund it has stayed the same, and I certainly understand it's a long way away. We've attempted, we've followed the actuarial advice and we seem to be, we're moving in the direction, though obviously we understand with the level of funding, there's always that risk. I will point out that at this point in time, approximately between 38 and 39 percent of our employees as of January 1 of 2020 had started their employment after March 1 of 2015 and were in the cash balance plan. So we've had a significant turnover. And that's, frankly, I think Ms. Beckham will be able to answer questions if there are any, certainly a benefit to the plan and a benefit to as we move to more and more people in the cash balance plan, it will help move us towards getting to an appropriate level of funding. So both-- either of us are happy to answer any questions, certainly. Ms. Beckham has a lot more knowledge and can answer a lot better, a lot more careful questions than I can, so.

KOLTERMAN: Go ahead. Senator Clements has a question.

CLEMENTS: Thank you, sir. Either, whichever one you want to answer this, seeing that you're having people move to the cash balance plan, they will not contribute to the defined benefit plan in the future. Is that right?

BERNARD in den BOSCH: The, the answer is that's incorrect. They're actually defined benefit-- the cash fund is a type of defined benefit plan and they contribute to the same corpus.

CLEMENTS: OK, so the funding, you know, they're still helping the funding of the previous defined benefit? Good.

BERNARD in den BOSCH: And that's why I brought it up, because their, their funding probably helps the plan more because of the differential than the funding for somebody who was in the previously established plan.

CLEMENTS: It looks like your interest rate or investment returns have been exceeding your assumed rate, but your unfunded liability is still growing. Can you account for that? Well, especially the printout I got, 2018, you only paid 86.8 percent of the ARC. Do you have a 2019 percentage that you're paying?

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BERNARD in den BOSCH: Senator, I can say that I know the, the shortfall is 2.8 percent. It's in the report.

CLEMENTS: A hundred minus 2.8, 97.2.

PATRICE BECKHAM: Actually on exhibit 14, on page 29 of the valuation report, it shows both the actuarial contribution and the total employer contribution. So for the year ending 1231, 2019, the actuarial contribution was \$17.3 million and the actual employer contribution was \$15 million. That shortfall is \$2.3 million. Just a reminder, this plan is funded with fixed contribution rates. So the actuarial rate moves around, but the actual money coming into the plan is fixed in the bargaining agreements. So we do see that variation from year to year. I would also point out that assumptions were changed-- help me, Bernard, 2017 for the--

BERNARD in den BOSCH: They went back to the 2019-- actually 2018.

PATRICE BECKHAM: 2018 valuation, we changed both the investment return assumption and the mortality assumption and the investment return assumption changed from 8 percent to 7.5, which is a significant change. And the mortality change was also fairly significant. So strengthening those assumptions actually increases the liability. So it looks worse, but actually you're on the more conservative path in recognizing your liabilities and funding them. So it's a positive.

CLEMENTS: And is there a period of time that you're trying to fund this unfunded liability? Is there a plan for that?

PATRICE BECKHAM: Again, with fixed contribution rates, the, the real question is, given the current contributions and expected payroll, when do we think the plan will reach full funding? And on that vein, it's in 2048, expected to reach 100 percent funded.

CLEMENTS: Thank you.

PATRICE BECKHAM: You're welcome.

KOLTERMAN: Any other questions? I have a question or just an observation. First of all, you are moving, I mean, you've done some things right here. You, you moved your assumed rate down to 7.5 percent. I mean, some of them are even going lower than that anymore. But you're moving in the right direction. The question has been over the years, and what you're talking about is a fixed rate, the amount of money you can put into this plan. Your limit, you're limited to how

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much the city can put in other than above and beyond the employers'-- employees' contribution by city charter. Is that not correct?

BERNARD in den BOSCH: Yeah, there's a city charter provision that requires that the employer and employee rates be substantially equal. Now, obviously, if we see the rates here, you'll see different numbers. But what happens prior to the time we attempted to do pension reform, they were roughly equal. And when the, the effort to try to get the system fully funded resulted in the city putting in additional funds percentages, and then there was a reduction in benefits for existing employees. And those were actuarially calculated by Ms. Beckham and then the intention was to offset those. But you're correct, there is a, there is that limitation in the city of Omaha charter that they should, they need to be substantially equal, I think is the correct terminology.

KOLTERMAN: So my, my question is, and I've asked this every year, so I'm pretty consistent, have you given any more thought to changing your charter so that the city, the employer can actually put more money in? I mean, it's an obligation to the taxpayers. They're the ones that set this plan up. And I hate to say it that way, but a promise has been made to these employees. Some way, we've got to get this plan funded before 2048.

BERNARD in den BOSCH: I will make--

KOLTERMAN: Just a question.

BERNARD in den BOSCH: I'll make this pledge as we sit here today. The charter convention occurs every ten years. The last one was in 2013. I would antici--

KOLTERMAN: 2023.

BERNARD in den BOSCH: So there will be one in the next year or two. And I anticipate the mayor has some flexibility as when she does it. My expectation is that I wouldn't be surprised if maybe the spring of 2022, once the election has occurred and that, that's done, that that will be something she's interested in moving forward. We've had some discussions about having the charter convention earlier. I will make the pledge to you that I will ask them to consider that question.

KOLTERMAN: All right. Well, thank you. Other than that, are there any other questions? I won't be here, so I won't have to worry about it. But you're going to be coming back for a few years, so you're going to have to deal with Senator Clements over here because Lindstrom and I

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are gonna be gone. Thank you. Let's move on to the Omaha police and fire--

BERNARD in den BOSCH: Thank you.

KOLTERMAN: -- pension plan.

BERNARD in den BOSCH: Again, thank you, Senator Kolterman, members of the committee. Bernard in den Bosch, first name, B-e-r-n-a-r-d, last name, lowercase i-n, second word, lowercase d-, as in David, e-n, third word, capital B-, as a boy, o-s-c-h. I'm here with the systems actuary Patricia [SIC] Beckham. I'll let her spell her name.

PATRICE BECKHAM: It's actually Patrice Beckham, P-a-t-r-i-c-e, Beckham, B-e-c-k-h-a-m. Thank you.

BERNARD in den BOSCH: And much like I indicated previously, on October 8, we provided a report through a letter and a table containing the requested information. There was an actuarial report done effective January 1 of 2020 and an experience study done on March 15 of 2018. And as, as with our previous plan, we do anticipate having an experience study done next spring as well. Again, much like we did with the civilian plan, we did ask Ms. Beckham to make one addition to our actuarial report, and that was to include a funded, funding status projection. That always gives us an idea of kind of where we are and if we're still going in the direction that we hope to, especially when, with the dramatic changes that were made here, we want to make sure that we are. The projection prepared, effective January 1 of 2020, indicated full funding in 2046. We are roughly 10 years into the pension changes that occurred. The first changes were done by the police union in October of 2010 and by the fire union in December of 2012. And that year has frankly remained consistent as we've gone through the time. And frankly, that's kind of what you hope for. That means, even though we've certainly had some ups and downs, we seem to be, the progression seems to be going in the right direction. And that is with some changes to the actuarial assumptions that occurred two years ago. Didn't reduce the investment quite as much as we did for civilian, went from 8 to 7.75, but also made some other changes as well that all have a tendency to kind of lower that trajectory a little bit. I want to point out one number, because it struck me as I reviewed the report, because I know as we sit here today being 54 percent, 54.3 percent funded is certainly not something that you want to brag or go home about. On the other hand, I do want to point out, as you look at the report, on December 31 of 2008, the system was 38.6 percent funded. As of January 1 of 2020, we're 54.3 percent funded.

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Obviously 54.3, as I said, is not something you necessarily want to write home about. But even with the change of assumptions, we had significant changes in pension benefits. We have seen the slow and steady increase in the fund that was anticipated based on the advice of the actuaries. So and we have a 10-year window to look at and to say, hey, this is, we're actually seeing things acting out as we, as we hoped they would. And frankly, we hope they continue to do so. Obviously, a lot of that is going to be based on investment returns and the ability to stay within a reasonable line of the bogey that's established. So I wanted to point that out because just, just to understand how long the process is. And even though I know it's, as you look at us and you see the number, it's a little bit scary, but we do feel like progress is occurring just as was anticipated and we hope that continues. So I'm happy to answer any questions.

KOLTERMAN: Thank you, Bernard. Any, any questions for either one of them? Just again, general observation in this plan as well. The ARCs are important. And if you can't fund the ARCs 100 percent because of your, because of your charter, that needs to be looked at. I just make the same comment here that I had on the last plan. I agree, you're moving in the right direction, Bernard.

BERNARD in den BOSCH: It's been slow.

KOLTERMAN: And I appreciate the fact that it's been a, it's been a negotiated process for the last, at least since I've been around, for the last five years, even longer than that. But you realize you have a problem and you're working towards trying to fix it. And I appreciate that. With that, I don't have any other questions. Does anybody?

BERNARD in den BOSCH: Thank you.

KOLTERMAN: Thank you.

BERNARD in den BOSCH: Much nicer to me this year than last year.

KOLTERMAN: Thank you.

BERNARD in den BOSCH: Last year I think I went away with some welts. Take care.

KOLTERMAN: OK. Now we're going to move to Lincoln police and fire, Paul Lutomski and Pat Beckham again. Appreciate you coming. This, this, again, is a plan that I would say has taken seriously the intent of this legislation, has done a good job of managing their plan. And I appreciate the efforts that you made. We had a meeting a week or so

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ago and it went really well, just so the committee knows. They met with me. And, and it will be down a little bit from a year ago. That's why they're back. A year ago, they didn't have to come, but they, they changed their assumed rates. And I'll let them talk a little bit about that. So, Pat, go ahead.

PATRICE BECKHAM: All right. Thank you.

KOLTERMAN: Paul, welcome.

PAUL LUTOMSKI: Thank you. Shall I say my name and spell it?

KOLTERMAN: Yes.

PAUL LUTOMSKI: My name is Paul Lutomski, spelled P-a-u-l, last name is L-u-t-o-m-s-k-i. I'm the city of Lincoln police and fire pension officer. Thank you for inviting us today. Pat is going to present our pension survey.

PATRICE BECKHAM: Thank you. Is it OK if I take this down?

KOLTERMAN: Yeah.

PATRICE BECKHAM: My glasses are steaming up.

KOLTERMAN: Mine are too.

PATRICE BECKHAM: It just proves I'm full of hot air, I think. Yeah, Patrice Beckham, P-a-t-r-i-c-e B-e-c-k-h-a-m, I work for Cavanaugh Macdonald in the service of retained actuary for the city of Lincoln police and fire pension plan. It's our pleasure to be with you today. Thank you for the opportunity to answer any questions you might have. As all of the systems, we submitted information to the committee in October using the questionnaire that you sent out. And in the interest of time, I'm just going to highlight one thing. And Senator Kolterman kind of stole my thunder. The regular quadrennial experience study for the plan was performed in 2019, and the recommended changes to the assumptions, which included lowering the investment return assumption from 7.5 to 7.25 percent incrementally over five years so five basis points a year, as well as updating the mortality table and retirement rates were first reflected in the August 31, 2019, valuation. As a result of those assumption changes, the funded ratio decreased. It would have been 81 percent on the old assumptions and we would not be sitting here. And it was decreased to 78 percent. But again, those are difficult decisions. But they're the right decisions to make because the assumptions are critical for giving us a best estimate for the

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liabilities that targeted benefit payments in the future. So we, we know how much money should be put away each year to, to pay for those benefits. If all assumptions are met in the future, the plan is projected to be fully funded in the 2043 valuation. The city does contribute the full actuarial contribution. That change happened in, was it 2017? 2016 or 2017, the ordinance changed and--

PAUL LUTOMSKI: It was changed in 2016.

PATRICE BECKHAM: 2016. And, and so now the city contributes the full actuarial rate. So when the assumptions changed, the costs went up, the city contributed that additional amount. With that, we would be happy to answer any questions the committee might have.

KOLTERMAN: Any questions, Senator Clements or Senator Lindstrom? Again, thank you for your hard work. I, the statute is there for a reason. Pretty much today just to put it on the record. But the reality is you are working in the right direction. Thank you very much.

PATRICE BECKHAM: You're welcome.

KOLTERMAN: Appreciate your efforts. OK, we're going to move on to Douglas County, Joe, Joseph Lorenz. Welcome.

JOE LORENZ: Hi. Good afternoon, Senators. My name is Joe, J-o-e, Lorenz, L-o-r-e-n-z. I am the finance director for Douglas County. In terms of our plan this year, what I can tell you is that we continue to make slow but steady progress in increasing our funding. This year, the funding status came in at 66.8, which was 1.2 points higher than a year ago. Our assumed rate of return is 7.5 percent, which you say may seem high. But in terms of what we've actually been able to accomplish, our average return over the last five years has been 8.9 percent and over the last 10 years has been 8.3 percent. And we do that keeping a, our money in 55 percent equity, 35 percent fixed income, and 10 percent real estate. We don't invest in alternatives. We don't do private equity or hedge funds. And we don't-- we don't really chase yield. So but at the same time, we, we do things like for the majority of our large cap money, we put it in index funds which have lower fees. And so, like I say, our returns have exceeded our 7.5 percent assumption over the, you know, the recent past. The next point is on our ARC. Every year for the past five years, we've been contributing over 100 percent of that payment. We anticipate doing the same for this year. We-- our, ours is an employer-employee contribution at 8.5 percent of salary. And that seems to be working

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enough that it generates the required amounts to make the contribution for ARC. You know, I've talked to you about this over the years, that we really made our big change about eight or nine years ago when we got rid of the rule of 75 and changed the benefit formula from 2 percent of pay to a percent and a half of pay and changed the maximum retirement income from 60 percent of the participants' final average compensation to 45 percent. And so we really did that eight or nine years ago. And we've seen the results from that. We've been able to increase our funded ratio by 9, 9 percentage points. But as I tell you every year, turning around a mature, defined benefit pension plan takes time. So we're, we're doing it, but it's a gradual process. The only real significant change we made this year was we changed our mortality table to a public employee G2010 table with longer life expectancies and we increased our salary scales. And the impact of doing that cost us 1 percent in funding. So whenever you change mortality tables, I'll say you kind of move the goalpost. I don't know how you can really compensate for it. It happens. It cost us a percent. But if it's more reflective of what the actual mortality experience will be, then it's a good thing to do. The other thing, our plan, we're 58 percent active employees. So on a mature plan, that's a good thing, that you always want to have over 50 percent of your employees contributing and in an active status. And just one other point I like to make about our commitment, really trying to manage this plan, is in union negotiations with our correction guards. They wanted a early retirement plan similar to that, that we offer our sheriff's deputies. And what we came back to them and said, yeah, we can do that, but we can't give you anything that will impact the funding of the plan. We worked with Silverstone, our actuary, who determined that if they would increase the employee contribution from 8.5 to 10.5 percent of their pay, it would be neutral to the plan funding. So we offered that to the union. They accepted it and that's what we did. So, you know, we're always, they're coming to us for things like DROP and things like that. And we tell them, when our status of our plan is, when we're at this level of funding, we can't really do anything like a DROP plan. We haven't done a COLA since 2002. So we're continuing to really try and manage our plan and to get the funding up to a fully funded level. One last point on COVID, in terms of the county, our tax proceeds are really still tracking where they should be, so we have funding that way. And we were fortunate enough that Douglas County received \$166 million of CARES Act money, which I've been charged with administering. But we did do some things working a lot, you know, we've been working a lot with the Governor and his staff on that since we're the only two entities in the state of Nebraska who received money. And one of the things we did was use a

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presumptive clause for public health and public safety salaries, which gave the county about \$25 million that we were able to put in our general fund. So we've actually, during this crisis, been able to strengthen our balance sheet, which was fortunate. And then, you know, I attached a page from our actuary, Silverstone, and they said there's been no significant COVID-19 impact on the plan. And so I think we're pretty solid from that perspective. And so that's my brief summary and I'd be glad to take any questions.

KOLTERMAN: Thank you, Mr. Lorenz. Go ahead, Senator Clements.

CLEMENTS: Thank you, sir. I am reading the summary of your plan. I'm new to this, but it says in 2016, the interest crediting rate on member contribution was changed from 5 percent to a 10-year treasury. Did that lower the rate?

JOE LORENZ: Oh, yes, significantly, and probably by about 250 to 300 basis points. So because it's a contributory plan, if the employee would leave when they were not fully vested, they would get their money back plus 5 percent. So that not only changed it, all of a sudden they were earning more like 2 percent interest because that's the Treasury rate. So that was something that helped, helped the plan. Yes.

CLEMENTS: OK, I was curious as to why you even worked with an interest crediting rate with it's a defined benefit plan. But that's for--

JOE LORENZ: Because it's an employee contribution plan so that when they, they leave, they, they're allowed to earn a return on the money that they've had with us.

CLEMENTS: If they leave with a lump sum, you're talking about.

JOE LORENZ: Yes. Yes.

CLEMENTS: Rather than taking the retirement plan.

JOE LORENZ: Right. And it's their option. Yes.

CLEMENTS: All right. That explains what's going on there. And I was assuming it probably did drop the rate quite a bit.

JOE LORENZ: Yes.

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CLEMENTS: And then it says here that the salary scale in the actuarial assumption was increased. Does that mean that employee contributions increased?

JOE LORENZ: Yeah, because it's a percentage of salaries, but it's also because it's based on now either 60 or 45 percent of total compensation. So if you're increasing what the average compensation is, that amount will be higher too.

CLEMENTS: All right. And I think that's it. I think your investment returns do look very positive. That's good. Do you have 100 percent funding deadline or target?

JOE LORENZ: It's projected for, I think, 2042 or 2043? Hopefully we'll be able to beat that. One thing that's been interesting this year as we've been seeing more early retirements under the rule of 75, and I was talking to HR and looking at this, and we really think it's kind of driven by the pandemic. I don't know if you want to call it fatigue or what, but a lot of people who are in their mid 50s and under the old rule of 75 who are eligible for early retirement are taking it. So in some ways, that's more expensive for the plan. But the other thing is that it's really moving the active members of the plan to the point now where we made this change in funding about nine years ago. And I would say starting next year, more than 50 percent of the participants, active participants will be under the new, the new lower funding requirements.

CLEMENTS: Thank you.

KOLTERMAN: Thank you very much. Any other questions? Appreciate you coming.

JOE LORENZ: Thank you.

KOLTERMAN: See you next year.

JOE LORENZ: OK.

CLEMENTS: See you next year.

KOLTERMAN: Eastern Nebraska health agency, last one. Glen Gahan, is that correct?

GLEN GAHAN: That's correct.

KOLTERMAN: Good. Welcome, Mr. Gahan.

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GLEN GAHAN: Good afternoon, Senators. My name is Glen Gahan, G-l-e-n G-a-h-a-n. I'm an actuary working with the Silvertone Group representing Eastern Nebraska Human Services Agency and their pension plan. And I believe you have a copy of the state form for the report for the pension plan. And also we had submitted the most recent actuary report experiential study and funding forecast. I'll just make a few comments about the report and welcome all questions. The pension plan itself covers just over a thousand participants, 620 are actives and 302 were retirees in pay status as of January 1 of this year. The current funded status is 73 percent. It's a slight drop from the last actual valuation, which was in 2018, because we do formal valuations every other year. It was 74 percent two years ago. The initial funding status this year would have been also 74 percent, but they updated the mortality table to the PubG mortality table with improvement scale, so it dropped down to 73 percent. The assumed investment return is 7 percent. And currently the members contribute 2.75 percent of pay and the employer contributes 9.5 percent of pay. And as we've discussed and is noted in the report, the employer contribution has increased in the past. From 2010, it was 5.5 percent, increased a half percent per year. It reached 9.5 percent in 2018. And while that's where it is as we speak today, there are current negotiations with the union to increase the member's contribution to 3 percent. And once that is agreed to, the employer is going to increase their contribution from 9.5 percent to 10 percent. And when I talked to the executive director just this week asking about the status of that, she said she was hoping it would occur by January 1, which is more, more, more than likely it may not actually happen until March 1. But it's, it's an ongoing negotiation, so I can't tell you that it's a 100 percent done deal as we speak today. In the past, as you see, they contri-- have contributed more than the ARC. This year, however, the calculated ARC was 13.46 percent. So even with the increase in the member and the employer contribution, we would be at 13 percent this year. And of course, those are, you know, actual pays are going to determine how much money comes in to compare to the ARC. And that's yet to be seen. But when we did our projections with these increased contributions, in five-- I'll double-check that. By year, by year 2030, we're projected to be over 80 percent, so in 10 years. And then, you know, it's a fairly slow increase on, as you see with other kinds [INAUDIBLE] to year 2047 we're forecasted to get over 100 percent. With that, I'll stop and just ask for questions and clarifications.

KOLTERMAN: Do we have any questions? Senator Clements.

CLEMENTS: These two charts, the one goes to 2057, the other 2047.

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GLEN GAHAN: Yes.

CLEMENTS: And is that because the 2047 is assuming that you're going to increase those contribution amounts?

GLEN GAHAN: Yes. Yes, sir, that's correct. They would, if they, if those decreased contributions didn't materialize, then we actually forecast that it would take another 10 years to get to 100 percent funded.

CLEMENTS: Well, I think it's important that you implement those, 2057 is really a long ways away.

GLEN GAHAN: Right. Agreed.

CLEMENTS: The employee contribution is significantly below the agency's shares. Is that a negotiated--

GLEN GAHAN: It is a negotiated item, and as I sat here last year, that question came up. So I'm pleased, I'm happy to report that it's under negotiation to increase it now. It's been at 2.75 for a number of years.

CLEMENTS: But what you said was you're raising the employee a quarter of a percent but the employer half a percent?

GLEN GAHAN: Yes.

CLEMENTS: All right, let's see here. And currently at about 73 percent funded, is that it?

GLEN GAHAN: That's right.

CLEMENTS: OK, thank you.

KOLTERMAN: Any additional questions? Thank you for coming.

GLEN GAHAN: Thank you very much.

KOLTERMAN: And we close this hearing. I failed my duties to introduce our pages. [INAUDIBLE]. Claudia Fricker from Midland, Texas. She's a student at UNL. She's, she's majoring in international economics. Welcome. And Kennedy Zuroff from North Dakota, correct? She's, she's going to UNL and majoring in political science and psychology. Thank you for the wonderful day, appreciate everybody being here. I'll see most of you next year. And with that, I'm going to close the hearing. Thank you.