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**KOLTERMAN:** My name is Senator Mark Kolterman. I'm from Seward, Nebraska, and represent the 24th Legislative District. I serve as Chair of this committee. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following. Due to social-distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it's necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and the exit doors to the hearing room. We, we request that you wear a face mask covering while in the hearing room. Testifiers, testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face cover-- face covering while waiting in the hallway or outside the building. To better facilitate today's proceedings, I ask you to abide by the following procedures. Please silence or turn off your cell phones. Move to the front row when you're ready to testify. Order of testimony: introducer, proponents, opponents, neutral, and closing. And then testifiers, please sign in, hand your blue sign-in sheet to the committee clerk when you come up to testify. Spell your name for the record before you testify. Be concise. It may-- it is my request that you limit your testimony to five minutes or as much as necessary. If you will not be testifying at the microphone, but want to go on the record as having a position on a bill heard today, there are white sheets at the entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit or eliminate handouts. Written materials may be distributed to the committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need eight copies.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Nebraska Retirement Systems Committee February 9, 2021

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If you have written testimony, but not have the eight copies, please raise your hand now so the page can make copies for you. To my immediate left is committee counsel Kate Allen. To my far left, at the end of the table, is committee clerk Katie Quintero. The committee members today-- with us, beginning on my far right are--

**CLEMENTS:** Senator Rob Clements, District 2, Cass County and Sarpy and Otoe.

**McDONNELL:** Mike McDonnell, LD 5, south Omaha.

**STINNER:** John Stinner, Legislative District 40-- 48, all of Scotts Bluff County.

**KOLTERMAN:** It's my understanding that Senator Lindstrom is, is watching via NET. He had another commitment, but he is going to watch and will have questions appropriately as, as, as well as Senator Slama, who couldn't be with us today. My name is Mark Kolterman, as I've already indicated. The committee members-- or the pages are Claudia and Erin. They're with us in the back. So at this time, we'll take up LB16. Since I'm going to introduce this bill, I would ask Senator Clements to run the hearing for me.

**CLEMENTS:** All right. We'll open the hearing for LB16.

**STINNER:** You notice four Appropriations people are here?

**McDONNELL:** And early.

**STINNER:** And early.

**CLEMENTS:** Welcome to the Retirement Committee.

**KOLTERMAN:** Thank you, Senator Clements. Good afternoon. My name is Mark Kolterman. I represent the 24th Legislative District and I'm here to introduce LB16. This bill was developed in collaboration with the Supreme Court and representatives of the district and county judges. I appreciate the great working relationship over the years with Chief Justice Heavican, Corey Steele, and other court representatives in coming together to address funding and other issues related to the judges retirement plan. LB16 as introduced proposes to add an annual contribution from the state of 4 percent of total compensation of all judges beginning on July 20-- July 1, 2021, and increasing the

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percentage to 6 percent beginning July 1, 2023. The state contribution will be deposited in the judges retirement fund. The purpose of the bill is to create an annual contribution that grows automatically with increases in judges' salaries. Currently, earmarked court fees are the only other source of scheduled contribution to the judges retirement fund other than the member contributions. Court fee revenues have varied significantly over the years, with the amount of revenue trending downward, in part because of the increased utilization of traffic diversion programs. More recently, the court fee revenue dropped significantly due to the pandemic. I will also be introducing AM135 today, which has been distributed to you. I have shared the AM with all interested parties that I've been working with, working with on this bill and I also filed it yesterday so that it appeared in today's Legislative Journal so that it's available to the public. AM135 eliminates a state contribution of 2,000-- in 2021 and 2022 because the Governor's budget bills included the total amount for this year's arc and the amount for next year's pro-- projected arc. Thus, the state contributions are not necessary in 2021 and 2022. Therefore, the first state contribution will begin in 2023 and would be 5 percent of total, total compensation rather than 6 percent. This reduction in the state contribution percentage was made in consultation with the actuary after she had an opportunity, opportunity to review the projected additional court fee revenue proposed in LB24. The amendment also clarifies that total compensation will be based on the total compensation as reported in the most recent actuarial valuation report that is required pursuant to Section 84-1503. This statutory reference is a statute that requires the Public Employees Retirement Board to contract with an actuary to complete annual valuations on each retirement system the PERB administers, which include, which includes the Judges Retirement System. I want to, I want to add an additional comment on a question that was raised just today. The state contribution is intended to provide a reliable funding mech-- mechanism to offset the annual arcs. It is not intended to create a mechanism that will overfund the plan, which could then trigger consideration of additional benefits. I'm working on an amendment to LB16 that will clarify that if the funding status of the plan reaches a specified percentage over 100 percent for three consecutive years, then the state contribution percentage would be reduced. I would be glad to answer any questions that you might have. I also want to note that Chief Justice Heavican is here today and will follow after my introduction.

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**CLEMENTS:** Thank you. Are there any questions from the committee?  
Hearing none, we'll open it up for proponents for LB16.

**MIKE HEAVICAN:** It's like going to the gym.

**CLEMENTS:** Please, please rise, Your Honor, and be seated.

**MIKE HEAVICAN:** Thank you. Good afternoon, Senator Clements, committee members, appreciate your consideration of LB16 and eventually LB24. I want to start by thanking Senator Kolterman for working with us on the judges retirement plan and thanking Kate Allen for all the work that she does and all of her knowledge in this particular area. My name is Mike Heavican, Heavican is spelled H-e-a-v-i-c-a-n, and I am the Chief Justice of the Nebraska Supreme Court and as noted, I'm here in support of LB16. As Senator Kolterman stated, LB16, as well as LB24, is the result of a joint effort. The issue is sustainable funding for the judges retirement plan and LB16 goes a long way toward that goal by implementing a funding mechanism that grows as salaries increase. The current funded ratio for the judges plan is 97 percent, the highest of the three defined benefit plans for state employees. Historically, the judges plan has had a ratio close to or above 100 percent. However, it is the only one of the three plans that has a major funding source not related to salaries or an employer contribution. That is, of course, court fees. Court fees are set by the Legislature and do not change frequently, nor have there been consistent adjustments for inflation or wage increases. As a result, revenue from this source is not guaranteed to grow. I agree with Senator Kolterman that an additional funding mechanism is necessary. As you know, this is not a new concept since a similar method is used to fund the school retirement plan. I am also in agreement with the amendment as proposed by your Chairman, Senator Kolterman, and the further amendments that he talked about-- he hasn't drafted yet, but he's talked about. I'm sure that we will work with him and not have any objection to those. LB16, as amended, is needed to sustain funding for judges' retirement. I request the bill will be sent to the floor. Are there any questions from anybody today?

**CLEMENTS:** Thank you, Justice Heavican. Are there any questions? I have no questions. Thank you for your testimony.

**MIKE HEAVICAN:** And again, thank you very much.

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**\*TIM HRUZA:** Senator Kolterman and members of the Retirement Committee, My name is Tim Hruza (T-I-M H-R-U-Z-A) and I am here today on behalf of the Nebraska State Bar Association in support of LB16. The NSBA works to foster a healthy state court system that provides access to justice for all Nebraskans. LB16 furthers that effort by ensuring that the financial system serving as a foundation for our courts remains healthy and stable. This is important so that judges and the state court system can focus on their work and do not risk being faced with serious financial instability in the retirement structure. For these reasons, the NSBA asks the Committee to advance LB16 to General File.

**\*RANDY GERKE:** Good afternoon Senator Kolterman and members of the Retirement Systems Committee. My name is Randy Gerke. I am the director of the Nebraska Public Employees Retirement Systems. (NPERS) I have been asked by the Public Employee Retirement Board (PERB) to testify in a neutral capacity on LB16. Generally, the PERB and NPERS support ensuring the plans we administer are well funded. Funding for the judges' plan comes from judges' contributions, investment income and court fees with the State contributing any Additional Required Contribution that is necessary. Court fees have proved very difficult to predict. The Judges Plan has seen lower court fees reported over a number of years. By adding an annual state contribution as a percentage of all judges' salaries to the plan's funding mechanism, it should help to address any shortfall from lower court fees in the future. I would like to thank Senator Kolterman for introducing LB16. I also would like to thank those that worked with him on the bill's preparation. Thank you also to the Committee for considering LB16.

**CLEMENTS:** Are there other proponents for LB16? Seeing none, is there anyone in opposition to LB16? Seeing none, is there anyone who wants to testify in the neutral position? Seeing none, were there any letters regarding LB16? That concludes--

**KOLTERMAN:** There, there were letters.

**CLEMENTS:** Oh, go ahead.

**KOLTERMAN:** LB16 proponents were Tim Hruza, Nebraska State Bar Association, in support and neutral was Randy Gerke, Nebraska State Public Employees Retirement System.

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**CLEMENTS:** All right, thank you. That concludes the hearing for LB16 and we'll move on to open the hearing for LB24. Welcome again.

**KOLTERMAN:** Thank you, Senator Clements. Good afternoon, again. My name is Mark Kolterman. I represent the 24th District and I'm here to introduce LB24. The Judges Retirement System has been historically funded in part by various court fees earmarked specifically for the judges retirement fund. In the last decade, despite several increases in these earmarked court fees, revenue has continued to decline overall due to several factors, including the increased availability and use of the diversion program for some traffic violations. In 2020, the pandemic caused a significant decrease in court fee revenue, including a drop of \$400,000 in the last quarter of 2020 fiscal year and a drop of over \$300,000 in just the past six months. Additionally, new actuarial assumptions were adopted in 2020, the experience study, that will increase the amount of funding necessary to sustain the judges plan. One of the new assumptions adopted lowered the investment rate from 7.5 to 7 percent. A reduction in the assumed rate generally means an increase in the amount that needs to be contributed to maintain the long-term sustainability of the retirement system. To provide additional revenue for these increased funding needs, I have worked in collaboration again with the Supreme Court, Justice Heavican, to develop LB24, which proposes to increase several court fees and increases the earmarked amount of other court fees. The proposed court fee changes will begin July 1, 2021. Several earmarked amounts will continue to increase annually through July 1, 2025. The bill also includes several minor cleanup provisions clarifying that court fee revenues are reported monthly, rather than quarterly to the State Treasurer. It further clarifies that the State Court Administrator's Office remits the information about the collection of such fees to the director of the Nebraska Public Employees Retirement System. Legislative Rule 5, Subsection 15 requires that-- the Retirement Committee to get an actuarial analysis on any bill that impacts the structure or funding of any retirement system. This actuarial analysis must be distributed to all members prior to a vote on Final Reading. I would be glad to answer any questions that you might have. Again, the Chief Justice is also here and will follow my introduction. With that, if you have questions, I'd be glad to try and answer those for you.

**CLEMENTS:** Are there any questions? Senator Stinner.

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**STINNER:** Thank you, Senator Clements. Do-- have you worked up anything that would tell us what the total dollars are associated with these fee increases?

**KOLTERMAN:** I do. They might be on the back side in your sheet there.

**STINNER:** Oh, I should probably look at that, huh? All right, sorry. Thank you.

**KOLTERMAN:** That's all right. I had those made and I didn't bring one for myself, so--

**CLEMENTS:** Any other questions? The-- on the figures on the back that is the increase in the fee, is that what that-- these figures are?

**KOLTERMAN:** Yes. It, it shows, yeah, the amount there.

**CLEMENTS:** Yeah, OK.

**KOLTERMAN:** Hopefully that won't be necessary. The other thing I would indicate is in, in those outer years, there is some concern that maybe that's too high. We're going to have to take a look at that, but again, a lot of-- we have to test this through the actuaries when it's all said and done and we're going to rely heavily on them and they've been doing a lot of work for us over the years. It's been the same actuary for the last six years and she does a wonderful job for us. I think you're all familiar with them.

**CLEMENTS:** Yes. Any other questions? Seeing none, are there proponents for LB24?

**MIKE HEAVICAN:** Filled out the blank sheet with both the LBs on it. I don't know if that helps any. Good afternoon again, Senator Clements and committee members. My name, again, is Mike Heavican. Heavican is spelled H-e-a-v-i-c-a-n, and I am the Chief Justice of the Nebraska Supreme Court here in support of LB24. The issue, once again, is sustainability for funding for the judges retirement plan, specifically the, the court fee section of that plan. At one time, revenue from court fees was sufficient, along with member contributions and investment returns to fully fund the judges retirement plan. But as Senator Kolterman outlined, this has not been the case in recent years. There are multiple reasons for the revenue decline, including those given by, by Senator Kolterman, but it should

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also be noted that several of these fees have not increased since 2005. It is time to update court fees. Clearly, the revenue from court fees is an essential part of funding for judges' retirement. It is not, not only essential, it is still hugely the greatest percentage of that funding. The need for additional revenue is also necessary, as Senator, Senator Kolterman stated, due to the proposed change in actuarial assumptions. LB24 is a reasonable proposal. The fee increases are minimal and the increase is gradual. In addition, even with the increase our court-- of our court fees, they still compare favorably with surrounding states. I request that LB24 and the proposed cleanup provisions be voted out of committee along with LB16 and I would be happy to try and answer any questions you might have at this point.

**CLEMENTS:** Thank you. Senator Stinner.

**STINNER:** I do have a question, Chief Justice. With caseloads-- we, we continue to talk about caseloads in different areas. And even on the caseload side, we actually approved an additional judge for, for the juvenile court in Omaha or use the specialty courts as an answer now toward trying to keep our prison population in check. Do you see a need or do you see, in the near future, requesting more, more judges and how many would that be?

**MIKE HEAVICAN:** Resources for judges is a very difficult kind, kind of thing to predict. What has been my experience over the time that I've been here, which is now going on 15 years, this often divides into a rural-urban issue. Our need for judges increases particularly in Douglas County and has to some extent in Lancaster and Sarpy Counties. The number of cases total around the state has not gone up. As, as a matter of fact, it has kind of steadily and gradually gone down. So the caseload generally is lighter and becomes more-- becomes lighter in rural areas. It is very difficult to move judges from rural areas to urban areas and we are very careful about that. You ultimately are the body that has to do that if any are moved. In my time here, I think we've moved three judgeships: two from the Panhandle, one to Kearney, one to Lincoln, and one from District 5, which is generally the Wahoo-Schuyler-Columbus-York area, to Lincoln. We have added judges in-- we've added judges. I think we added an additional judge in Lincoln and we have added at least one, maybe two in Omaha, but that's the general gist of things. Our need for more judges to do specialty court matters is primarily in Lincoln and Omaha, so that's



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where we need judges. And the only way to get them is to either add judges or to move them from rural Nebraska and you're probably going to add some judges at some point in time, not a lot. You know, in the next ten years, you may add one or two judges.

**STINNER:** OK, thank you.

**CLEMENTS:** Any other questions? Seeing none, thank you, Justice Heavican.

**MIKE HEAVICAN:** Thank you very much.

**\*TIM HRUZA:** Senator Kolterman and members of the Retirement Committee, My name is Tim Hruza (T-I-M H-R-U-Z-A) and I am here today on behalf of the Nebraska State Bar Association in support of LB24. The NSBA works to foster a healthy state court system that provides access to justice for all Nebraskans. In similar fashion to LB16, LB24 works to provide financial stability to the retirement system that supports Nebraska judges and our courts. To do this, the bill seeks a stepped-up increase in filing fees. While the NSBA is sensitive to increased filing fees as they can be a barrier to access for certain litigants, the aim of this increase is a worthy one and the need to do so is clear. The NSBA supports LB24 and asks the Committee to advance it to General File.

**\*SPIKE EICKHOLT:** Members of the Committee: My name is Spike Eickholt, appearing as Registered Lobbyist on behalf of the ACLU of Nebraska in opposition to LB24. Our position in opposition to this bill is very narrow. We oppose the funding mechanism proposed in this bill-that of an increased court fee-and we do not oppose the intent of the bill. We recognize the state has an obligation to fund judges' retirement. This bill, along with several other bills this session, proposes to increase court fees. We see court fees as a user fee for those people who are processed through, or prosecuted in, the court system. This fee increase, while admittedly minimal, would pass the cost of this bill in a manner that disadvantages the poor and impacts people of color disproportionately. We would respectfully suggest that any funding necessary for the cost of funding judges' retirement be used with current court fees (by diverting existing dedicated funds), or by state general funds.

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**\*TESSA STEVENS:** Chairman Kolterman and members of the Retirement Committee, my name is Tessa Stevens, my first name is spelled T-E-S-S-A and my last name S-T-E-V-E-N-S. I am an attorney in Grand Island, Nebraska and I am testifying on behalf of the Nebraska Collector's Association in opposition to the increase of court costs found in LB24. The NCA membership makes up some of the largest users of civil county court in this state, which is where collection lawsuits are primarily filed. As written, LB24 would ultimately increase the cost of filing a lawsuit by \$2.00 in 2021 up to a \$6 increase by 2025. Please understand that the NCA does not oppose the purpose behind these funds nor takes a position on the need for funding. Rather, the NCA opposes LB24 because it increases filing fees when other funding sources may be available as well as proposes incremental increases over a period of time when future funding needs are uncertain. The NCA has observed an increasing trend in proposing court cost legislation in efforts to fund new programs or remedy existing funding deficits, leaving us concerned with the never-ending demand for increased fees. Our concern is evident this session by the fact that four different bills have been proposed to increase filing fees. In addition to LB24, LB150, LB308 and LB352 have been introduced and collectively these bills contain six different increases to court costs. If all the bills pass as written, court costs would increase by \$9.50 in 2021 and a total of \$16.50 by 2025. Considering that the current filing fee in civil county court cases is \$46, these increases are enormous. The 2021 total fee increase is more than 20% of the current costs and by 2025 it would be more than a 36% increase. Such significant increases are not sustainable. The NCA is asking this committee to consider other funding sources to help combat the deficient within the Judge's retirement fund. As we understand it, subsequent to this bill being introduced, Governor Ricketts has pledged \$1,078,925 from his budget to combat the deficit this year alone as well as additional funds in the future. These are funds that LB24 did not take into consideration and could very well eliminate or reduce the need for LB24 this year. We also understand that LB16 proposes additional funding for Judge's retirement by way of the General fund. The NCA believes there are still additional remedies which exist to help offset the down turn in court cost revenue. For instance, when the NCA met with Senator Kolterman prior to this hearing, the NCA identified instances where the courts and judges are not always collecting costs from defendants, even when they could be. We also discussed programs such as diversion that may allow a

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defendant to avoid payment of costs. All of these scenarios where cost revenue is lost should be analyzed by this committee to determine if changes can be made to the process before simply raising costs across the board for its users. Because the Governor has pledged money to help the fund, this committee has additional time to study and analyze these issues. The NCA suggests that holding an interim study would be the most prudent vehicle to determine what further funding is necessary and if there are other ways to increase court cost revenue. Regardless of how the committee proceeds with 2021 court fees, it would certainly be premature to approve a fee increase that will take place five years in the future. LB24 proposes an annual increase to the fund through 2025, however there are too many variables to know if such increases are truly necessary at this time. While supporters of this framework can speculate about future needs, the reality is that costs should only be increased based on proven factual data. Such data is not available at this time. For example, none of us in this room would have anticipated the pandemic of 2020 and the effect it has on court cost revenue. Nor did the proponents of this bill anticipate the Governor pledging money from his budget to help remedy the problem. Who knows what the next five years will bring. As other funding needs arise, the legislature should be determining at that time which funds court costs should be allocated to. It is simply too difficult to predict what the future holds. At a minimum, these fees should be analyzed by our legislature on a yearly basis and not set to increase over a period of time without review. We ask this committee not to forget that the judicial system is not meant to be a user fee-based service. Increasing fees limits access to the Courts and put a burden on the average citizen as well as those who can least afford it. Court costs are often taxed to the consumer in a collection action. These fees put a burden on citizens who are already struggling to make ends meet. This burden extends from the consumer all the way through the businesses who are trying to recover money already owed to them. Main street business will have to pay more initially and will be affected at the time of repayment as well. These burdens are not intended by our judicial system and should be limited by our Legislature. The NCA truly believes that our Legislature needs to look at the issue of increasing courts costs on a big picture scale and take into consideration the funding needs of all fee recipients as well as what is best for the users of the Courts. It is imperative that our Legislature manage these fees as a whole, rather than only considering the need for each requested fee individually. Fee increases, as

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insignificant as they may seem in considering them individually, can quickly become detrimental if not managed on a large scale. We firmly believe that an interim study is the best way to review and manage the funding deficit that LB24 seeks to remedy. Please join the NCA in opposing LB24. Thank you for your consideration.

**\*RANDY GERKE:** Good afternoon Senator Kolterman and members of the Retirement Systems Committee: My name is Randy Gerke. I am the director of the Nebraska Public Employees Retirement Systems. (NPERS). I have been asked by the Public Employees Retirement Board (PERB) to testify in a neutral capacity on LB24. Generally, the PERB and NPERS support ensuring the plans we administer are well funded. The Judges Plan has seen lower court fees reported over a number of years. Increasing the amount of court fees routed to the Judges plan should help to address this funding shortfall. In addition, the bill updates statutory language to allow for the courts, the Treasurer, and NPERS to better leverage technology and increase operational efficiency. I would like to thank Senator Kolterman for introducing LB24, and those who worked with him on its preparation. I also want to thank the committee for considering this bill.

**CLEMENTS:** Are there other proponents for LB24? Are there any opponents for LB24? Seeing none, is there anyone here to testify in the neutral position? Seeing none, Senator Kolterman, do you care to close? He waives closing. Thank you and do we have letters?

**KOLTERMAN:** We do and I meant to say earlier on LB16, Don Wesely also sent a letter in support of from the county judges. But on LB24: Tim Hruza, representing the Nebraska State Bar Association, sent in a letter of support. Don Wesely from the county judges sent a letter of support. Opponents were Spike Eickholt, ACLU of Nebraska; Tessa Stephens, Nebraska Collectors Association. On the neutral position was Randy Gerke, Nebraska State Public Employee Retirement System, and we'll get you copies of all those letters.

**CLEMENTS:** All right, that closes the hearing on LB24.

**KOLTERMAN:** Thank you.

**CLEMENTS:** Throwing it back to you, Mr. Chairman.

**KOLTERMAN:** We will be in touch. Thank you very much.

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**MIKE HEAVICAN:** Very good, thank you.