

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee March 2, 2023

McDONNELL: [RECORDER MALFUNCTION] Retirement Systems Committee. My name is Mike McDonnell. I represent Legislative District 5 in Omaha and I also Chair this committee. Today, we will be hearing testimony on LB378 and LB196. Committee hearings are an important part of the legislative process and provide an important opportunity for the legislators to receive input from Nebraskans. If you plan on testifying today, you will find blue testifier sheets on the table inside the doors. Fill out a yellow testifier sheet only if you actually testify before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included in an exhibit in the official hearing record. If you have-- if you, if you are not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12 p.m. Central Standard Time the last work-- working day before the hearing. Please note that position letters to be included in the official record must be submitted by way of Legislature's website at nebraskalegislature.gov. A new feature of the website allows testifiers with disabilities to submit their testimony for the record on the site. The website will be the only method for submission of letters for the record, other than testifying in person. Letters and comments submitted by way of email or hand-delivered will no longer be included as part of the hearing record, although they are a viable option for communicating with-- your, your views with your individual senators. Keep in mind that you may submit a letter for the record on the website or testify at a hearing, but not both. We will begin each bill hearing today with the introduce-- introducer's opening, opening statement, followed by proponents of the bill, then opponents and finally, by anyone speaking in the neutral, neutral capacity. We will finish with closing statements by the introducer if they wish to give one. We ask that you begin your testimony by giving your first and last name and spell them for the record. If you have copies of your testimony, please bring us at least ten copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you, you will not be allowed to read it. We will be using a five-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning

and when the red light comes on, we ask you to wrap up your final thoughts and stop. As a matter of committee policy, I'd like to re-- remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, although you may see senators use them to take notes or stay in contact with staff. I would ask everyone to look at their cell phones and make sure they're on the silent mode. Some senators will be using their laptops to pull up documents and follow along with each bill. You may noted-- you may notice committee members coming and going. That has nothing to do with how they regard the importance of your bill under consideration. Senators may have bills coming up to introduce in other committees or other meetings to attend to. And with that, I'd have the committee introduce themselves starting to-- with-- to my right, Senator Vargas.

VARGAS: Senator Vargas-- Tony-- District 7, downtown and south Omaha.

CLEMENTS: Rob Clements, District 2.

IBACH: Teresa Ibach, District 44, which is southwest Nebraska.

HARDIN: Brian Hardin, District 48: Scotts Bluff, Banner and Kimball Counties.

McDONNELL: Assisting the committee today are to my far right, Tim Pendrell, committee clerk. And to my right, Neal Erickson, the committee's legal counsel. The committee pages are Maggie Massey, who is, who is a UNL student. We appreciate, we appreciate her being here today. With that, we will begin. Senator Bostar.

BOSTAR: Thank you. Good afternoon, Chairman McDonnell, members of the Retirement Committee. I'm Eliot Bostar. That's E-l-i-o-t B-o-s-t-a-r. I represent Legislative District 29. I appear to present LB196, legislation that makes three changes to the retirement and benefits of members of the Nebraska State Patrol. First, LB196 sets the contribution that each officer of the Nebraska State Patrol makes to the State Patrol Retirement Fund to 8 percent of each officer's monthly compensation and increases the contribution of the state to the State Patrol Retirement Fund to 25 percent of each officer's monthly compensation. Next, LB196 changes the benefit received by surviving spouses of officers of the Nebraska State Patrol from 75 percent to 100 percent of the amount of the officer's annuity for the

remainder of the surviving spouse's life. And finally, LB196 establishes that the benefit paid to a retired member or beneficiary shall be increased annually by the percentage change in the consumer price index, or 1 percent, whichever is greater. Reaching sufficient staffing levels has become increasingly difficult in the last five years for our police departments. While recent increases in pay are appealing, many departments are not yet seeing a corresponding increase in recruitment numbers. According to the International Association of Chiefs of Police, nationally, 78 percent of police agencies reported having difficulty recruiting qualified candidates, 75 percent of police agencies reported that recruiting is more difficult now than five years ago, 65 percent of police agencies reported having too few applicants for open positions, 50 percent of police agencies reported having to change policies and qualifications for candidates and 25 percent of police agencies reported having to reduce services. In the Nebraska Examiner article published February 21, 2023, that I've distributed, Colonel John Bolduc, superintendent of the Nebraska State Patrol, told the Legislature's Appropriation Committee that there are currently 69 vacant posts for state troopers out of an authorized force of 482 uniformed officers. That's up from approximately 60 vacancies in December and 54 vacancies in July of last year. Nebraska is losing members of the State Patrol at an alarming rate. And in order to maintain our State Patrol workforce, we must look for new ways to recruit and even more importantly, retain the troopers already serving the state of Nebraska. According to information provided by the State Law Enforcement Bargaining Council, which is also before you, LB196 would position employee contributions within one percentage point of the mean comparable from listed states. We would match the South Dakota rate and offer a more attractive employee rate than Iowa. But LB196 makes Nebraska more competitive, but hardly puts us out of line with our surrounding and comparable states. The Lincoln Police Department officers currently sit at an 8 percent employee contribution rate for the defined benefit pension. And while Omaha Police Department officers pay 16.1 percent for their pension, they also receive full post employment healthcare until death. I have heard this described as 8 percent for the pension and 8 percent for the post employment healthcare. Establishing competitive contribution rates, increasing surviving spouse benefits and connecting retirement benefits paid to increases in the consumer price index will go far in attracting and retaining our state police

workforce. Behind me are members of the Nebraska State Patrol who go more in depth on the individual components of legislation and the impact they will have. And I would encourage you to support and advance LB196 and I'd be happy to answer any questions you might have.

McDONNELL: Thank you, Senator Bostar. Any questions for Senator Bostar? Are you going to stay to close?

BOSTAR: I absolutely will.

McDONNELL: Thank you. Proponents?

TOM NESBITT: Good afternoon, everybody. Chairman McDonnell, nice to see you. And members of the Retirement Committee, my name is Tom Nesbitt, T-o-m N-e-s-b-i-t-t, and I'm testifying today in support of LB196 as a former state trooper, a former colonel of the Nebraska State Patrol. I believe I am uniquely qualified to offer some insight into LB196 and challenge our law enforcement agencies that-- excuse me, that are challenging our law enforcement agencies in recruiting officers. Our State Patrol is authorized 482 officers. When I was a colonel, I had over 500 authorization. There is just-- simply just not enough troopers in today's society. And the way the environment and public safety is faced with on a daily basis, we need more troopers, as we do other officers as well. Currently, the Patrol has 413 troopers, which is 69 short from the authorized strength that they're allowed to have. This problem is just getting worse by the day, unfortunately. The Patrol has 15 more vacancies than where they were just eight months ago as well. I personally have recruited people to come out and to join the Patrol and apply for that have had an interest in getting involved. More times than not, one of the big concerns they have is a percentage of their paycheck for the Patrol that goes in a retirement system, which is close to 19 percent. And currently LPD and OPD, for the retirement part, is 8 percent that they're paying so that's quite a difference. And as I talk to them and try to talk to them in joining the statewide law enforcement agency, which of course I think is the best law enforcement agency in the state of Nebraska, and, and push for that, they said, you know, Colonel, we-- it, it really makes a damper on the paycheck. And why would I do that? You know, what do I have to gain from that? So that's a, that's a huge issue in, in getting recruits. Governor Pillen is, is taking a good step in getting the pay significantly increased. But one

overlooked aspect is-- has been the, the sum that these troopers pay every month. My daughter was a trooper. Now she's no longer a trooper. And I remember when she called me the first paycheck she got, I'll never forget that. Of course, her name is Bailey [PHONETIC] and I said, Bailey, you got your first paycheck. You got to really be excited about this. But I remember getting mine and she said, Dad, do you know what they took out for my pension? And I said, Oh, yeah, probably \$300, \$400. And she was like-- she said, Dad, they took \$1,000 of my paycheck. She says, I just-- she says, this is really difficult. I bought a house and etcetera and, and doing that and I'll never forget that. And, and as I've talked to other troopers about that, it just has a significant effect on-- and adverse to, to how they would do that. And when they can go to other agencies and transfer out, which is what's happening-- we know that-- and, and going to the metro areas and paying less for retirement and getting more pay, it makes a big difference. I know that the rate is a function of state law and cannot be adjusted by collective bargaining. It's totally in the Legislature's hands and Retirement Systems in how this would take place. I believe that you've all received a comparison that shows Patrol. It has a significant higher requirement contribution than other states. You should have that and, and what's going on there. And that is what the Commission of Industrial Relations used in cases that there was a dispute of any kind with the CIR. And some of those states don't require any contribution of a trooper, period. And the average is about 77 percent. As I previously stated, the Patrol is out of line with other key large agencies inside this state. Obviously it's Omaha and Lincoln, they're the big ones that end up recruiting a lot. And when Lincoln's paying 8 percent and Omaha does pay 16 percent, but also keep in mind they got lifetime health benefits included in the retirement, which is a huge, huge thing for, for them not only in recruitment, but the money factor in that as well. And it, it is an issue. I'd like to just briefly talk about the COLA. When I was a colonel of the Patrol, the COLA, we, we started the COLA. We were very blessed to be able to do that through the Legislature Retirement Systems and, and I can tell you, I can't tell you how many retired troopers and, and widowers that I talked to that were living on very little money and able to hardly make ends meet because we didn't get the Social Security benefit that, that others do get that. So that's a huge thing that we need to fix because it's just not keeping up. It really isn't. What, what is in place for

the COLA is not keeping up with what is-- the cost of living is. And I'd like to encourage you that, that, that you increase that as well and support that. At the end of the day, Nebraska needs to do something if we're going to reverse the trend of the declining trooper recruitment classes and rising vacancies. One of the obligations and maybe the most significant one is for government to abide public safety. We know that. That's a very significant thing to, to provide that and I believe LB196 will accomplish that task. So I'd like to thank you for allowing me to be here today and talk to you.

McDONNELL: Thank you for your testimony. Thank you for your service to, to our state. Any questions? Thank you. Proponents. Welcome.

MARTIN COSTELLO: Thank you. Good afternoon, Senators, Mr. Chairman. My name is Martin Costello, M-a-r-t-i-n C-o-s-t-e-l-l-o. I am a retired 30-year veteran of the Nebraska State Patrol and I'm also the elected retiree representative for the State Troopers Association of Nebraska. I'm here to testify today in support of LB196 and I'd like to thank Senators Bostar and Brewer for bringing this matter forward, forward. I've kind of split my remarks into three sections. Trying to be as brief as I can, but just cover the basic points. First one I'd like to talk about is the COLA. Kind of doing it out of order from the way that the bill is drafted, but it made sense to me to discuss it in this order. And I want to make it very clear that as a retired person, I do appreciate the COLA very much, but the current 2.5 percent rate is, is kind of limiting. This year, I got enough out of the COLA to put a tank of gas in my truck. And again, it was nice and, you know-- and my truck is a super turbo-charged high-mileage-- it actually gets more mileage-- or better mileage than my wife's car does and all that other kind of stuff so it's not like a big gas hog, that sort of a thing. And it was helpful, but it barely made a dent in the money on everything that we spent. You know, just using me as an example, right now, over 95 percent of my retirement benefit goes to cover my health insurance-- I wish-- I should have worked for Omaha, I guess-- covers our health insurance, our property insurance on our house, which keeps climbing up and sneaking up on us, our vehicles and then we have-- of course, we have to be able to pay insurance on all those kinds of things in case it burns down. That kind of-- that covers-- that takes 95 percent of my entire retirement benefits. So we're living on my wife's piano lesson money is what we are for the most part. So the COLA would help make a little dent in that. And I'm not expecting any

kind of a post release and all that other kind of stuff, just something that would make the COLA count a little bit more rather than be limited to the 2.5 percent cap. Because if you look at inflation and everything going on, that sort of thing-- and when inflation drops, then the COLA would drop and it just makes sense to do it that way and kind of help out in that regard. It certainly would make a reasonable difference in, in that case. I'd also like to talk about the death benefit to a surviving spouse. It's just one of those things that's very important for me. Like I said, I'm a 30-year veteran of the Patrol. If you look at the hours that you work, days, nights, holidays, weekends, get called out in the middle of the night-- I retired as a sergeant and I got a lot of phone calls in the middle of night where I had to get up and deal with things and assign people to those sort of things. And your spouse is a part of that as much as you are. The only difference is, is they don't put on the hat and get in the patrol car and drive away. You know, they're there to deal with all the family matters and school events and holidays and things all by themselves, that sort of thing. And in a lot of cases, they don't know if you're coming back. You know, it's just one of those things that they have to deal with. They are a part of our careers as much as we are. And to me, it's very important to make sure that when I'm gone-- and probably odds are if you look at all the charts and everything, I'm going to go first, but that my wife is taking care of for something that I paid for and that I earned over 30 years and doesn't get penalized just because I happen to go first. And I just think it's a fair way to do it and especially for that because without your spousal support, clearly you can't do the job as a state trooper and do it without having all the family concerns that are-- weigh on you already, but without knowing you've got somebody there that has your back and under those circumstances. Let's see here. Lost my track. The retirement contribution thing, it's one of the things that somebody actually I was talking to the other day asked me why I cared because I was retired. Well, you know, the State Patrol is still very much my agency. You know, when I retired, I had spent over half of my life working for the State Patrol. It's not something that you do that long without becoming very attached to it, without believing in the mission, without being part of the service oriented as far as that sort of thing. And during my time there, especially as a supervisor, I saw a lot of people come and go. And a lot of it, not all of it, but a lot of times, it was because of the retirement contribution. When I

started in 1984, it was 8 percent. I saw that creep up to 19 percent before I retired in 2014. And there are people that are, there are just going, we can't do it anymore. We've got, we've got house payment, we've got kids to support, all that other kind of thing. And it just kept eroding away and when they could move someplace else and get a comparable salary, at least at that time, and have that make a big difference-- and some people thought they could invest it themselves and make up the difference. I'm not that smart. I have to rely on other people to do that sort of thing. And so that was an option for them. We saw very experienced, highly trained people that we had a lot of money and a lot of years invested in just walk away and go work for somebody else who reaped the benefits for that. And I think it's a very important consideration, as Colonel Nesbitt mentioned, to help recruit people and to help retain the people that we have because I saw more than one person leave under those circumstances. Every now and then, they come back. You know, the grass is greener on the other side of the fence, but you still need a lawn mower. But for the most part, when they were-- when they left, they came back-- or they didn't come back and somebody else is getting the benefit. And a few of them left law enforcement altogether, which was unfortunate because they were good people. But I believe that that change would have a direct, direct impact on the retention and recruitment of new officers. So that's, I guess, the end of my remarks, if any-- unless you have any questions or anything for me, so. And I appreciate your time.

McDONNELL: Well, thanks for being here. Thank you for your testimony and, and your service to our state. Any questions from the committee? Thank you.

MARTIN COSTELLO: Thank you.

McDONNELL: Other proponents. Any other proponents? Any opponents, opponents? Anyone in the neutral?

ORRON HILL: Good morning. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Nebraska Public Employees Retirement Board, or PERB, P-E-R-B, and the Nebraska Public Employees Retirement System, NPERS, N-P-E-R-S. I am here to testify at the direction of the PERB in a neutral capacity on LB196. The PERB and NPERS administer the Nebraska State Patrol Retirement System, or

Patrol Plan. LB196 amends the Patrol Plan in a way that will have a direct impact on the benefits and funding of the plan. We wish to provide this committee information relative to LB196's proposed amendments. First, an actuarial study is required under this bill. Legislative Rule 5, Section 15 states in relevant parts that no bill for which an actuarial study is necessary to determine the cost of such proposed changes shall be enacted until an actuarial study has been conducted and the results have been presented to the Legislature. NPERS contracted actuary believes LB196 provisions will have a significant cost to the plan and has recommended a full cost study to quantify the impact. The estimated fee for this study is \$10,000. A copy of the actuary's communication was attached to our fiscal note so that you could have it for your review. NPERS does not currently have spending authority in our budget to pay for such an actuarial study, thus a funding mechanism for the cost of the study is necessary. We recommend delaying the adoption of LB196 until an actuarial study has been funded and completed in accordance with the legislative rules. Effective July 1, 2023, LB196 changes the contribution rates for all Patrol Plan members. For the tier 1 Patrol Plan members, LB196 reduces the member contribution rate from 16 percent to 8 percent, eliminates the employer match contribution of 16 percent and replaces it with a 25 percent employer contribution rate and creates a total contribution rate of 33 percent, up from 32 percent. For tier 2 Patrol Plan members, LB196 reduces the contribution rate from 17 percent to 8 percent. It eliminates the employer matching contribution rate of 17 percent and replaces it with an employer rate of 25 percent and creates a total contribution rate of 33 percent, down from 34 percent for the tier 2 members. The reduction in total contributions will have an impact on the Patrol Plan's funding. It may lead to larger actuarially required contributions from the General Fund to cover the cost of the Patrol Plan. We cannot predict those costs until the actuarial study is complete. Additionally, LB196 proposed cost of living adjustment and death benefit enhancements do not contain an effective date like the contribution rate changes. Because LB196 contains an emergency clause, the COLA and death benefit enhancements would go into effect the day after the Governor were to sign LB196 into law if passed by the Legislature. This does not provide NPERS any time to make the necessary programming changes to our pension administration system or to prepare for implementation, nor to provide the actuary a date

certain from which to calculate the costs. NPERS recommends all LB196 provisions become effective on the same date and that the effective date be the start of the Patrol Plan's year, which is July 1 of every year. This would also be consistent with past practice. We also have questions and request clarification on how LB196 benefit enhancements apply to all categories of Patrol Plan members: actives, inactives, retirees and beneficiaries. Article III, Section 19 of the Nebraska Constitution states in relevant part, and I quote, The Nebraska Legislature shall never grant any extra compensation to any public officer, agent or servant after the services have been rendered, except that retirement benefits of public officers employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement, end quote. The Nebraska Supreme Court has held that retirement benefits are a form of deferred compensation. NPERS is concerned that LB196's benefit enhancements as drafted may run afoul of the constitutional provisions if applied to inactives, retirees and beneficiaries, except for perhaps the COLA. We recommend LB196 be amended to clearly indicate how these benefit enhancements apply to ensure consistency with the constitutional provision. Past practice has been for benefit enhancements to only apply to plan members who are actively contributing to the plan on or after the effective date of the benefit. However, we could certainly discuss options should the Legislature desire to do so. Finally, while the PERB and NPERS are not allowed to advocate for benefit enhancements, we thank Senator Bostar and his support staff for working with us to address our concerns about LB196 and getting in touch with the stakeholders. This allowed us to have a brief conversation last night with the State Troopers Association of Nebraska lobbyist and they indicated they understood and listened to our concerns and were going to draft some potential legislation for us to work with them and review. And we would be happy to review such proposed legislation. Finally, I want to extend a special thank you to Sean Flowerday, who has been instrumental in forging those communication bridges. Subject to your test-- questions, that concludes my testimony.

McDONNELL: Thank you, Mr. Hill. Is there any questions? Thanks for being here. Anyone else who would like to testify in the neutral capacity? Seeing none, Senator Bostar.

BOSTAR: Thank you, Chairman McDonnell and members of the Retirement Committee. We are-- well, as was stated, we're, we're working out those issues that were brought forward and, and working on an amendment. Unfortunately, we just-- we didn't have time before the hearing to get that drafted-- well, finalized, drafted and distributed to all of you, but I assure you that once that is done, we will be sending it over to all of you. I do want to just close by again, sort of drawing your attention to the, the SLEBC handout and, and just sort of how remarkably out of line we are with other states when it comes to the amount that we are asking the members of the Nebraska State Patrol to contribute for their, for their pension benefits. The mean is-- you know, the average and the median are both 7 percent for our comparative states. This bill would only bring it to eight. We would still be higher than the average, but eight is a lot better than 19. And it doesn't match anything in our comparative states for other, for state law enforcement issues and it doesn't come close to matching anything in the state either. We talked briefly about how, you know, the Omaha contribution is, is high as well at 16 percent. But what they're getting for that is significantly more and effectively the portion of that that funds the pension side is about 8 percent. So this would sort of bring that in line as well. And so I, I would implore the committee to try to take some action on resolving some of this. We have, we have a recruitment crisis in law enforcement, not just State Patrol, but across the state. But this is a significant hindrance to what the State Patrol is currently able to do in the realm of recruitment and retention. Because, you know, even if we can get them in the door, when this much of their paycheck is, is getting taken away, it's really easy to go to a different department, even in the state. They don't-- they probably don't have to move. Everybody needs officers right now and so our, our State Patrol is currently in a, in a really tough spot. And I would ask all of you, my colleagues, to, to help me try to address that. And with that, I'll take any final questions.

McDONNELL: Any questions? Yes.

HARDIN: Have post exit interviews been conducted with any of the folks who may have moved on to another department or another division or at the same time in their early retirements because of this pay, the realities of the situation? Can we get a number of that?

BOSTAR: I can, I can certainly ask. I know from my just-- this is anecdotal, but my conversations with members of the Patrol, this comes up a lot.

HARDIN: Yeah.

BOSTAR: But I will absolutely see if we can get some if there's some more concrete statistics or numbers available that I can get to you.

HARDIN: I'm imagining it's a large number.

BOSTAR: That would be my guess.

McDONNELL: Senator Conrad.

CONRAD: Yes. Thank you so much. Thank you, Senator Bostar. Appreciate you bringing this bill forward. I think it's important and interesting, but one thing I was looking at when I was preparing for the hearing-- and it was addressed a bit in some of the testimony provided here today and it was noted in the fiscal note that probably just because of timing, that, that the measure doesn't take into account some of the recent pay adjustments that have been negotiated by the Governor's Office. And I think actually the Governor's work in regards to our public employees is probably one of the bright spots of his administration thus far and is part of that preliminary budget that the Appropriations Committee has put out. So I, I just wanted to get some more information about that. And then I wanted to make sure as well, because I think there's a lot of shared values in terms of ensuring that our law enforcement officers have the resources they need to do their difficult job, advancing our shared public safety goals and recognizing the workforce challenges writ large and in particular to public safety officers in the crisis of recruitment and retention that we see in Lincoln and Omaha, the State Patrol, at Department of Corrections. And obviously they have different work but related work. I want to make sure that we're not looking at this too myopically. And I want to make sure that we have an understanding-- if you or your staff know or we can follow up on it after the hearing, I want to know what the total package looks like. I want to know what comp and benefits look like for some of the major departments that we are in competition with for State Patrol to see, you know, how we can level the playing field without hurting our other communities in this

kind of recruitment and retention challenge that we find ourselves with. And so if you and your staff and other stakeholders would maybe help the committee to get a better understanding of kind of here's what it looks like for OPD, for LPD, for NSP when you look at the retirement piece and the comp piece and the other benefits piece. That's, that's one thing that I think would be helpful to getting a better understanding if you'd be able to, to maybe help us put some of that together.

BOSTAR: Yes, so absolutely.

CONRAD: That was long winded, but thank you.

BOSTAR: And so just to sort of respond to some of that, I, I too applaud the Governor in his focus on trying to increase some of those compensations that are overdue, frankly. And, and you're right, we need to ensure that our comparative employments across the state are, are commensurate because, you know, what we have now is we're recruiting from each other from within Nebraska, right, and we need to get away from that. And frankly, we do need to get to a place where Nebraska itself is an attractive place for these careers. I don't mind saying that I hope we get to a place where we are pulling individuals from other states and bringing them in. We will absolutely.

CONRAD: OK.

BOSTAR: Collect that information and distribute it, but yeah, your point is well taken.

CONRAD: Yeah. And, and I know that you and Senator Geist are also working on one of your measures. I think it's-- I looked quickly since I didn't have all the numbers in my head-- LB447 that you introduced and that she prioritized, which would, if adopted, would also provide additional benefits in terms of understanding with that-- those total packages looked like. So I was just trying to think more broadly about some of the other issues that are pending and appreciate it.

BOSTAR: Yeah, absolutely. And that's right and, and hopefully that will get adopted because I think that's another valuable piece that we can add to this, this whole conversation. I just-- you know, if you're-- let's say that happens, right, and we're, we're expanding

the, the benefits and sort of total compensation packages of law enforcement across the state. If we don't get some of these-- the pension contribution piece for State Patrol under, under control, there's always going to be that issue where if you're with the State Patrol, 20 percent of your paycheck is going out the door, where if you just instead do a lateral to-- maybe you live in Lincoln, you go to Lincoln or Omaha-- you go to Omaha, where, you know, maybe we get compensations are similar, but you're losing so much here that doesn't-- that's not happening everywhere else. And so-- and hopefully we can, we can narrowly also look at this piece of it. But, but yeah, thank you.

CONRAD: Yeah, I, I appreciate that. And, and the other point that one of the troopers made in, in his testimony, which I thought was compelling, definitely resonated with me coming from a law enforcement family regarding the death benefits components is that there, there is an impact on family as a whole and that needs to be recognized. So I appreciate that and thank you for your testimony and be happy to work with your office and the committee to kind of figure out the right timing for some of these technical aspects and then have better information available to make sure we're addressing the public policy goal.

BOSTAR: Thank you.

McDONNELL: Any other questions? Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Senator Bostar. The fiscal note is not very clear. It talks-- and it talks about a letter attached to-- attached letter from the actuary. And I have no attached letter from the actuary, which I'd like to see. Then-- let's see-- the-- yeah. The pension plan mentioned a full cost study needs to be done. Do you agree with that?

BOSTAR: Yes, I do.

CLEMENTS: Before we can--

BOSTAR: And, and we're-- and we've been working with all the stakeholders to ensure that we're bringing you something that will accomplish everything in the order that it needs to so that we can all

feel comfortable addressing this problem. And I hope to have that to you all soon.

CLEMENTS: The fiscal-- real fiscal impact is very unclear, I'm sure.

BOSTAR: Agreed.

CLEMENTS: Actuarial required contributions are going to increase significantly, it looks to me. So thank you. I'll be looking forward to having that.

BOSTAR: Yeah. Thank you.

McDONNELL: Any other questions? Thank you, Senator Bostar, for being here.

BOSTAR: Thank you all.

McDONNELL: We also have a-- 14 letters from proponents, no opposition and no neutrals. I'll now turn over the hearing to Senator Ibach.

IBACH: Thank you, Senator McDonnell. We'll now open the hearing on LB378. Senator McDonnell.

McDONNELL: Thank you, Senator Ibach. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. I'm here today to introduce LB378, a bill that is a response to Attorney General's Opinion from last year. The Opinion requested that NPERS address the phrase "qualified alien" used in current statute. Current statute requires a lawful presence to be a member of the various state retirement plans. Our statutes currently use citizenship or qualified alien status to establish that lawful presence. I won't go into great detail on this, both in the interest of time and considering that there are NPERS staff members here who know this topic much better than I do. But I-- my understanding is that this issue arose because the federal Immigration and National, National Act [SIC] does not directly define qualified alien. The resulting AG Opinion suggesting perhaps using a different approach and in the Opinion, and in the Opinion suggested looking at statutory approaches from Arizona and Minnesota. LB378 is modified after the Arizona approach and lists ten documents that one of which an employee provides to an employer and is maintained by the employer to document

lawful presence. With that, I'll close. And this bill has no fiscal impact.

IBACH: Great. Are there questions from the committee? Seeing none, thank you. Will you close--

McDONNELL: I will be here to close.

IBACH: --or--

McDONNELL: Thank you.

IBACH: Proponents of LB378.

ORRON HILL: Good afternoon. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm the legal counsel for the Nebraska Public Employees Retirement Board, or PERB, P-E-R-B, and the Nebraska Public Employees Retirement Systems, NPERS, N-P-E-R-S. I'm here to testify at the direction of the PERB in support of LB378. For many years, Nebraska law has restricted eligibility to participate in the retirement plans administered by the PERB and NPERS based upon immigration status. The most recent amendments to such laws were adopted in 2009 and '10. The current law limits membership to employees who are U.S. citizens and qualified aliens under the federal Immigration and Nationality Act and are lawfully present in the U.S. However, the law does not define the term "qualified alien." Moreover, the INA does not define the term "qualified alien" in its definitional section. However, the term "qualified alien" is defined in Title 8 United States Code, U.S.C. Section 1641(b) to include a specific list of unique statuses. During the past several years, individuals who wanted to participate in the retirement system questioned whether they were eligible to participate in the retirement system based upon their current federal immigration law and the Nebraska law. NPERS sought an Attorney General's Opinion to aid us in properly applying both the federal and state laws. In August 2022, the AG issued an Opinion that, in summary, stated the Nebraska law was not as clear as it could be, recommended asking for an amendment to clarify the law, proposed other states' laws as templates and established a multi-part test that NPERS must currently employ to determine whether an individual is eligible to participate in the retirement systems under the current Nebraska law. Since the AG's Opinion was issued, NPERS has used the multi-part test for 53

individuals and has received requests for review even as recently as yesterday. These reviews are time consuming since they require the member and employer to provide significant documentary evidence and involve a detailed review of federal immigration law and regulation. I am the one who does that regulation review because I'm the only attorney for NPERS. Moreover, NPERS is performing, performing these reviews to ensure consistency across all employers participating in all retirement plans so that there is not a disparity based upon those who may not be as familiar with the governing rules. The PERB and NPERS agree that the AG's Opinion, that a statutory change would be the best way to obtain clarity on the topic and increase operational efficiency. We proposed the language of LB378 to Senator McDonnell and thank him for introducing the bill. As Senator McDonnell has already said, LB378 creates a list of ten documents that individuals can provide to their employer to show their eligibility to participate in the retirement plan. It also requires the individual and employer to produce current documents upon the PERB or NPERS' request, such as during an audit. These changes will greatly simplify the process for potential plan members, employers and NPERS by simplifying the documentation requirement and eliminating the need for a detailed review of federal immigration law and regulation on a case-by-case basis. Late yesterday afternoon, NPERS was contacted by some stakeholders about some potential amendments to LB378, such as adding one or two specific items to the list. Specifically, a permanent resident card was one of the items that was discussed. We're willing to work with the stakeholders regarding these potential revisions. I would like to thank Senator McDonnell for introducing the bill on our behalf and the legal counsels for this committee, both Kate Allen and Neal Erickson, for their assistance in drafting the legislation and getting it forward. Subject to your questions, this concludes my testimony.

IBACH: Great, great. Thank you very much. Are there questions for this-- Senator Conrad.

CONRAD: Thank you, Vice Chair Ibach. Thank you. Mr. Hill. Just I think your testimony was instructive and I think Senator McDonnell's open and-- was clear as well. But just knowing how complex the intersections of these different legal systems that are presented in this legislation, I thought it may be helpful, if you know or could provide just, like, for-- perhaps a concrete example of somebody who

might be impacted by this. Is it DACA? Is it TPS? Is it-- you know, I'm guessing it's folks who have legal presence, work authorization. They're here. They're working hard. They're paying their taxes. They're paying in and we just need to, to make sure to kind of clear things up.

ORRON HILL: I would love to, Senator.

CONRAD: OK, thanks.

ORRON HILL: Thank you. So one of the first big questions that we dealt with-- and I'll use the school plan, our largest plan as an example. The school plan has a unique provision that says, much like these, only permanent residents or U.S. citizens are eligible. Those who are tempor-- it uses the words "temporarily present" are not eligible to be in the plan. And that has created some concerns, especially since that provision was adopted in 1945 and the federal immigration laws have changed significantly in the almost 80 years since that time. The qualified alien definition found in 8 U.S.C 1641(b) does not include visa holders. And that is one of the most likely areas that would be significantly impacted by this. Under federal law and immigration. H-1B visa holders are supposed to be offered the same benefits as U.S. citizens. However, under that qualified alien definition, which is the only place where it is defined in the INA, they would not be eligible. And that was one of the specific reasons why we asked for the AG's Opinion was to help us figure out how do we reconcile this apparent conflict in the law? Because federal law says we should probably be having them in the plan, but state law is telling us we probably shouldn't. Obviously, federal immigration law kind of preempts the field. So as expected, the AG's Office said, yes, we want these into, into the plan. Now, depending on whose count you go by, there's either 65 different types of federal visas or 185 different types of federal visas and some of them have different subparts where they come here initially, for example, to be students and others come here to be on a work status. Sometimes the students are eligible for work status, sometimes they aren't. So right now what the AG's multi-part test requires is for us to do an individualized analysis of each visa and each visa subtype to determine why they're here. Is it based upon their employment and can they obtain work authorization and can they-- or are they required are the exact words-- to be provided the same benefits as United States citizens or other employees of that

particular employer? And that is a very complicated and legally difficult analysis. Honestly, our reporting agents, the ones who are supposed to make these determinations, the bookkeepers at the schools, the HR reps, the payroll personnel, they just don't have the level of expertise to feel comfortable making those decisions and have really said we need help with this. We're coming forward to try to give them help by instead of having to make these legal determinations that require in-depth interplay of the law, if you can get a copy of this document, the decision is made for you. So the H-1B visa holders is a very predominant, predominant area, especially with state employees, as the agencies are hiring more and more H-1B visa holders to help fill in gaps.

CONRAD: Perfect. Wow. That's a very impressive answer. Thank you very much. I appreciate it.

ORRON HILL: You're very welcome.

VARGAS: [INAUDIBLE]

CONRAD: Yes.

VARGAS: OK, OK.

IBACH: Thank you, Senator Conrad. Are there other questions from this committee? Seeing none, thank you for your testimony.

ORRON HILL: Thank you.

IBACH: It was very helpful. Are there other proponents of LB378? Seeing none, are there any opponents to LB378? Seeing none, anybody in the neutral? No neutrals. Senator McDonnell to close.

McDONNELL: I'll waive unless there's questions.

IBACH: OK. For the record, we had one proponent, no opponents and no neutral letters submitted. So thank you very much. That closes the hearing on LB378.

McDONNELL: And that ends our hearings for today. Thank you for being here.

