

Transcript Prepared by Clerk of the Legislature Transcribers Office
Nebraska Retirement Systems Committee March 28, 2025

BALLARD: [MALFUNCTION] Committee. My name is Beau Ballard, from District 21. We'll have-- starting out having our members of the committee and committee staff do self-introductions, starting with my left with Senator Juarez.

JUAREZ: Good afternoon. Margo Juarez from south Omaha, District 5.

SORRENTINO: Tony Sorrentino, Legislative District 39, Waterloo and Elkhorn.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

CONRAD: Danielle Conrad, Lincoln.

CLEMENTS: Rob Clements, District 2.

BALLARD: And our committee clerk is Connie Thomas. And our committee pages are Jacob and Sam, both studying at the University of Nebraska-Lincoln. This afternoon we'll be taking up two bills, LB689 and LB317, and will be taken up on order of listed outside the room. On the table near the entrance, you will find green testifier sheets. If you're planning to testify today, please fill out the sheet and hand it to a page when you come up. This will help keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during the bill's hearing. If you do not wish to testify, but would like to record your position on the bill, please fill out the yellow sheet near the entrance. Also, I'd like to note the Legislature's policy that all letters for the record must be received via an online comment portal by the committee by 8 a.m. the day of the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We will ask if you have any handouts that you please bring 12 copies and give them to the pages. If you need additional copies, the page can help you make more. Testimonies for each bill will begin with the introducer's opening statement. After the opening statement, you will hear from supporters of the bill and those from in opposition, followed by those speaking in the neutral capacity. The introducer of the bill will be given an opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name. And please also spell it for the record. Because this committee meets over the noon hour, we will be using the 3-minute light system. We will begin the testimony with the light turning green. The yellow light will mark the 1 minute warning. And then when the red light

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comes on, we'll ask you to finish your final thoughts. Remind everyone, including their senators, to please silence or turn off your cell phones. And we'll begin our hearing with LB689 with Senator Lonowski.

LONOWSKI: Good afternoon. Thank you, Chairman Ballard and members of Nebraska Retirement Systems Committee. Thank you for scheduling this hearing for LB689 so late, per my request. For the record, my name is Senator Dan Lonowski, D-a-n L-o-n-o-w-s-k-i, and I represent the 33rd Legislative District. I am here to introduce LB689 to amend the days for when retired teachers could return to substitute as a teacher, as cited in our state statutes, provide intermittent services. Included in my comments will be AM734 that I filed on the floor last week and shared with the committee. For those unfamiliar with my background, I've loved teaching. I taught for 35 years and I retired from that profession 2 years ago. However, I still have a passion for taking care of our teachers out there. For any teacher who has just retired, there is a member-- and is a member of the school employee retirement plan, the maximum number of days that a person may teach during the 180-day bona fide period of separation will not change with LB689 and the amendment, AM734. The legislation and the amendment eliminates the current statutory restriction of a retired teacher's intermittent work for a school of only 8 calendar days per month, and establishes a cap on it to not exceed 40 days per semester, 180 days long. We have a lot of issues with finding qualified substitute teachers in Nebraska, especially in remote areas. High-quality instruction that teachers provide to students is paramount. Some schools, however, notably those in less populated portions of our state, continue struggling to find respected substitute teachers when it involves more than 8 days in a row. If a school needs a substitute teacher for 10 days, 12 days, 14 days, or any consecutive days that are under 40, the school would be required to find more than 1 substitute teacher. In my case, I was a Spanish teacher, and to find a sub after 8 days might be somewhat difficult, if not impossible in that area. My amendment, AM734, addresses an important change to LB689, which strikes provisions of the bill. It replaces them with provisions that limit retired teachers who participate in a state employee retirement plan to provide no more than 40 days of intermittent service or substitute teaching during that semester while inside of their 180-day separation period. I want to emphasize the actual number of days a newly retired teacher may return to work initially during the retirement is capped at 40 days. LB689 and AM734 do not authorize an unlimited number of intermittent work days for retired teachers who are members of the plan. Representatives from Nebraska Public Employee Retirement Systems met

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with me in January to express their concerns that LB689 may jeopardize the school employee retirement plan and possibly make the IRS, Internal Revenue Service, declare the state's plan unqualified. That is not my intention with this legislation, and it took a lot of time to subsequently schedule conversations with the IRS attorneys about my bill to get their feedback. My conversation with the IRS was brief. They did not state a position either supporting or opposing LB689. They just hesitated to provide official ruling on this bill. In my conclusion, I make it a point of asking for the committee support for my legislation. But for LB689, I will refrain and respectfully ask the committee to conduct an interim study to consider appropriately amending our statutes on this to help schools obtain the best substitute teachers possible, notably newly retired teachers, while also safeguarding our school employee retirement plan from any problems of an-- of any IRS audit. We must never forget schools want the students to-- and they want that they deserve great substitute teachers. Please give this attention it deserves. Thank you, Chairman Ballard, and members of this committee for your consideration of LB689 and AM734. I will attempt to ask [SIC] any questions you may have.

BALLARD: Thank you, Senator. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairman. Senator Lonowski, thank you for bringing this. I was unaware that there was a limitation on the consecutive days. So I have two questions. Why was there ever a, you know, a statute that limited it to-- was it 8 days, I believe it was in a row consecutively? And secondly, I'm pretty familiar with the IRS, what in God's name do they have to do with this?

LONOWSKI: Thank you, Senator Sorrentino. So I don't know how long ago, 16 or 18 years ago, and I was at Adams Central, there were a couple of nearby districts, one where a, a superintendent retired and one where a principal retired, and they literally turned around and signed new contracts. And at that point, then the Legislature said we're, we're not-- we don't want teachers to double dip. That's not our intention. We're OK with teachers turning around and, and teaching, but the, but the signing of a long-term contract was, was not the, was not the reasoning and the Legislature stepped in and, and came up with some new rules. The 8-day rule, really-- and that's only been in, in effect for a little bit. It, it was a longer time. So the 8-day rule was trying to keep a newly retired person from abusing that rule. And a, and a school says, you know what, Lonowski, we want you back next year. So we know you're retiring in May, but, hey, August 14, we expect to see you day 1. So--

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SORRENTINO: But they were still limited to 40 days, just not, just more-- no more than 8 in a row. Is that correct?

LONOWSKI: So-- yes. So right now it's 8 days in a row for that 180-day period. But after 8 days, if, if, let's say, a young lady is pregnant--

SORRENTINO: Right.

LONOWSKI: --and she has to take her maternity leave. So-- and this has actually happened, a teacher who was, like, yeah, I'll come. Well, they can only come for 8 days, not for the quarter that may be needed or what have you. So it, it kind of limits a school, you know, especially a, a school in a, in a desolate area where we got three subs, two of them are taking care of the softball coaches and, and-- or one of them is, and another one is taking care of the speech or drama or whatever. And so it just limits it. So instead of 8 days per month, which is a total of 40 days for that first semester, I'd just like to see the 40 days anywhere. It might be 10 here, it might be 2 here, and so that's what my amendment offers.

SORRENTINO: OK. And as far as the IRS, any idea what the IRS would have to do with this?

LONOWSKI: No, sir. I try to keep my distance. I, I, I would say that they weighed in and, and to get an expert opinion would have-- for them to write an expert opinion would cost the state.

SORRENTINO: I have an opinion, but it wouldn't be expert.

LONOWSKI: Yes, sir. Thank you.

SORRENTINO: Thank you.

BALLARD: Thank you, Senator. Additional questions? Senator Conrad.

CONRAD: Thank you, Chair Ballard. Thank you, Senator Lonowski, always good to see you.

LONOWSKI: Thank you.

CONRAD: And thanks for flagging upfront about your intentions to carry out an interim study and providing some background. I, I know we talk about these issues a lot in Education Committee and Senator Juarez, of course, sits on that committee with both of us. And we know a lot about the teacher shortage that exists. We've had a lot of discussions

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about alternative certifications to get more teachers in the classroom, etcetera, etcetera. So when--

SORRENTINO: Sorry.

CONRAD: That's OK, we've all been there. So that's one thing. I, I appreciate the concepts that are in the-- in this legislation that you're bringing forward. And I think if we can figure out the technical aspects, it's a good thing to have people who are actually trained teachers returning to the classroom, because not all subs have a background in education, right, and so we just want to put that on the record. And then in the long-term capacity for an illness or a pregnancy or whatever other reason a teacher might need a, a longer period away from the classroom, I think there can be a lot of continuity for kids when they have a long-term sub versus a new face in front of the classroom every so many days, if, if that's possible. So I just-- I wanted to lift up some of those additional policy considerations on the record. And, and I'm hopeful the committee will be able to work together with you and the other stakeholders to figure out how to make this work in light of what's best for kids and the teacher shortage that we have out there.

LONOWSKI: Thank you. And, and I will say the, the last thing I want to do is to cause some retiring teacher to have the--

CONRAD: Right.

LONOWSKI: --the retirement rug drug out from--

CONRAD: Yes.

LONOWSKI: --underneath and they have to go back into the system, if you will. So I want to make sure that we get it right. And we've had-- I've had some good discussion with legal counsel and, and some other people, but want to still get this out there.

CONRAD: OK. Thank you.

BALLARD: Thank you. Any additional questions? Senator Clements.

CLEMENTS: Thank you, Mr. Chair. Thank you, Mr. Lonowski. In the few years I've been on this committee, I believe we had a 180-day dropout requirement for a retiring teacher. And we were told that if we didn't have some kind of restriction that teachers, if they went back to work too soon, then IRS could say you didn't really retire. You need to pay back all the retirement benefits you've received since you retired.

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And we did do some research and came up with the 8-day provision to allow them to come back sooner than 180 days. But on your provision here, it looks like the 40 days could be 20 days in September and 20 days in October. That would be 40 days. Is that what you're contemplating would be possible?

LONOWSKI: Thank you, Senator Clements. That is exactly it. Yes.

CLEMENTS: All right. Thank you.

BALLARD: Thank you, Senator Clements. Additional-- Senator Juarez.

JUAREZ: Thank you. And, Senator Sorrentino, I don't know if you remember this, and I wanted it to be out on the record, but I am an IRS retiree. It's just to remind you. Thank you very much. I wanted that on-- officially on the record.

LONOWSKI: Is that to me, Senator Juarez? I apologize.

JUAREZ: So my question is, of course, do you plan on getting the IRS issue cleared up, you know, in your interim study because, of course, I am very concerned about not getting this issue resolved clearly with IRS, you know, for the future?

LONOWSKI: Thank you, Senator Juarez. It is my plan to clear it up. I don't know if it's possible. I also know there's a, a committee of superintendents and some other educators out there that are looking at 120-day reduction instead of 180 days set out. And so I, I think the important thing to me is they're not allowed to sign into a long-term contract. And I've looked at some other states around us and they do some different things. And so I don't, you know, I'm still trying to figure out how the IRS is different per state. And, as I said, I, I try to keep my distance. So, yeah.

JUAREZ: Well, I will just say, I'm sure that if we researched it, as much as I loved reading the IRS regs, you know, laws and regs, I'm sure we could figure it out. So I want to provide that positive support that we can get that accomplished.

LONOWSKI: Senator Juarez, I will be looking you up. Thank you.

JUAREZ: Thank you.

BALLARD: Thank you, Senators. Any final questions? Seeing none, thank you. Any proponents for LB689? Good afternoon.

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DAVID KRAMER: Good afternoon. Good afternoon, Chairman Ballard, members of the Retirement Systems Committee. My name is David Kramer, D-a-v-i-d K-r-a-m-e-r. I am here today on behalf of the Omaha Public Schools in support of LB689. By way of background, the changes proposed in LB689 impact language that was adopted by the Legislature in 2024 when it passed LB198. LB198 was the result of a collaborative effort among several stakeholder groups, including the Nebraska Public Employees Retirement System, the Nebraska Council of School Administrators, the Nebraska State Education Association, legal representatives from school districts throughout the state, and this committee. LB198 addressed a significant problem facing all school districts in the state, and a problem which the Omaha Public Schools is particularly invested in resolving the shortage of substitute teachers. Recent retirees provide school districts across the state with highly qualified potential substitutes. This is where it gets technical. Both NPERS and OSERS require a bona fide separation from service in order for the retiree to be eligible for a distribution of benefits under those plans. The requirement for a bona fide separation from service is rooted in federal law and is necessary for a retirement plan to remain tax qualified under the Internal Revenue Code. Under IRS regulations, a bona fide separation from employment is a fact-specific determination that can occur in as little as one day. Unlike the IRS, Nebraska statutorily adopted a bright-line rule that a bona fide separation from service doesn't occur until after a 180-day break in service. To put that in perspective, a teacher who retired at the end of their contract on July 31 was not able to serve as a substitute teacher until roughly January 1 of the following year. LB198 sought to clarify that during the 180-day period, a retiree could serve as a substitute if that service was intermittent. LB198 then defined intermittent to mean not greater than 8 days per month. LB689 would eliminate the reference to the 8 days per month. We believe that this would provide an opportunity for retirees to serve as substitutes more than 8 days per month, so long as it remained intermittent, ensuring the original separate-- and ensuring that the original separation from employment was bona fide. We recognize that this change could create additional administrative responsibilities for NPERS, should they need to conduct case-by-case evaluations on whether a bona fide separation from employment had indeed occurred. Because of that, we've been in regular communication with NPERS and with the other stakeholders. We welcome the opportunity to work collaboratively with them, with this committee and with Senator Lonowski to further expand the ability of recent retirees to fill the need that school districts have for substitute teachers within the bounds of the Internal Revenue Code. I'd like to close by thanking

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Senator Lonowski for introducing LB689 and the committee for its consideration. I'd be happy to answer any questions.

BALLARD: Thank you, Mr. Kramer. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairman Ballard. Thank you for your testimony, Mr. Kramer. That clears up a lot of things. One quick question. In your research in redefining intermittent to not be bound by 8 days consecutive, did you or your firm in any way, shape, or form talk to the Internal Revenue Service or this is just your legal opinion, I guess?

DAVID KRAMER: So, so, first of all, I want to be clear that the current law does not require or does not limit to the days to being consecutive.

SORRENTINO: Right.

DAVID KRAMER: They can be-- so the introduction of the amendment is what now expands that to be 40 days as opposed to 8 days per month, which is what the current law is. The IRS is generally not willing to provide legal opinions. We have not submitted a private letter ruling.

SORRENTINO: That's what I was going to say.

DAVID KRAMER: And I would say that for the years that we represented the Omaha School Employees Retirement System, our practice was to evaluate these consistent with the IRS regs on a case-by-case basis. And throughout that 50-year period, we never had any issues with any of our retirees or any challenges to that. So I hope that answers the question.

SORRENTINO: And private letter rulings are really only good for that particular reason.

DAVID KRAMER: For that particular, for that particular plan, for that particular case. We do welcome the opportunity for the interim study, and I'm confident that we will be able to assist in terms of doing additional broad-based research about other state plans and public plans and interpretations about intermittent service that the IRS may or may not have opined on.

SORRENTINO: Thank you, Mr. Kramer.

DAVID KRAMER: Thank you, Senator.

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BALLARD: Any additional questions? Seeing none, I look forward to that study. Thank you, Mr Kramer.

DAVID KRAMER: Thank you, members of the committee. Have a great day. Thank you.

BALLARD: Any additional proponents? Seeing none, anyone in opposition? Good afternoon.

TAG HERBEK: Chairperson Ballard, members of the Nebraska Retirement Systems Committee, I am Tag Herbek, T-a-g H-e-r-b-e-k, legal counsel for the Nebraska Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems. I'm here to comment in opposition to LB689. The PERB is statutorily mandated under 84-1503 to maintain the qualified status of retirement plans in accordance with IRS instructions. Failing to maintain the qualified status, the plans could result in fines, employee deferred trust funds being subject to instant income tax payments, and other forced penalties. This qualified status mandate is not prioritized and is not-- and is often at odds with wants and desires of employers and employees who are not held to the same standard. Just as a school district doesn't want to lose its role to an accreditation, neither does NPERS want to lose qualification. It's our understanding the unamended LB689 eliminates the bright-line 8 days of inadvertent service standard already agreed to by all stakeholders in 2021 originally with LB146. Because the NPERS's state law mandate to maintain the qualified status of the school plan, NPERS absolutely would not allow unlimited substitute service as indirectly guided by IRS regulation, subsection 1.409A-1(h), if the bright-line 8 days of intermittent service is removed, removed, and would like-- we would likely allow no days or fewer than 8 days per month of substitute service, depending on facts and circumstances during the 180-day required bona fide separation period in order to maintain IRS expectations. For the committee's information, I've handed out committee testimony that was originally with LB146 in 2021. This testimony would show the bright-line 8 days of intermittent service substitute service standard was put into place with buy-in from all affected parties with much thought and consideration, and resolved a large gray area in the plan for retirees, otherwise placing retirement benefits in jeopardy by possibly working too much during the IRS required bona fide separation period. Removing the bright-line intermittent service standard, and relying on gray, murky facts and circumstances to determine if a plan participant has a bona fide separation of service under the plan, could dramatically drain time and monetary resources from an already understaffed agency, which might be required to delay or demand

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repayment of retirement benefits in some circumstances, depending on the facts and circumstances of each attempt at substitute service. I will also note the OSERS's plan given to NPERS to administrate has not received an IRS plan qualification determination letter, and is still in the process of trying to attain that letter to be recognized by the IRS as a qualified plan. Disruption of the IRS's granting of the qualification letter with reestablishment of intermittent work gray areas would be imprudent. NPERS is also opposed to AM734, which attempts to allow substitute teaching during a bona fide separation period to be done for a total of 40 days at the separation period, with no monthly limitation. There is no statute, regulation, notice, written opinion, or letter ruling from the IRS in existence expressly allowing such activity during the required, required bona fide separation period for a retirement plan participant. With no IRS guidance, the plans may be negatively exposed and unable to show written proof the requirements of AM734 are compliant-- can I continue--

BALLARD: Please continue.

TAG HERBEK: --with the IRS code and guidance. If AM734 is something the committee would like to further consider, NPERS would suggest the attainment of a private letter ruling from the IRS in order to have documented proof the amendment would not disqualify or negatively affect the plans. Under Revenue Bulletin No. 2025-1, the IRS cannot orally issue a letter ruling or other reliable guidance. If audited, NPERS may not be able to get a retroactive approval of a plan change created by AM734. NPERS would need approximately \$12,500 to \$25,000 to pursue submitting a letter ruling request.

BALLARD: Thank you for your testimony. Are there any questions?
Senator Sorrentino.

SORRENTINO: Senator Ballard, thank you. I'm focusing on the handout that you gave us, I guess it would be the fourth paragraph, and I'll quote from there: Because of NPERS's state law mandate to maintain the qualified status of the school plans, NPERS absolutely would not allow unlimited substitute service. And then it goes on to say: as indirectly guided by IRS regulation 1.409A-1(h). I'm keying in on the indirectly, and this really isn't on point, is it?

TAG HERBEK: It could use legalese. I will say that it is on point in that it-- that was guidance given to our previous legal counsel attending a conference by a presentation put on by an IRS agent. He said that if you want to ground that somewhere, if you want to ground

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an intermittent service rule-- I don't know the exact conversation, I wasn't there-- but if you wanted a place to ground how long somebody could work during a, a bona fide separation period, that's somewhere you could at least look to put some grounding on it.

SORRENTINO: So it, it's not necessarily saying this is the IRS regulation, it's being quoted as something you--

TAG HERBEK: I'm-- I wrote it as indirect because I didn't want to overrepresent it.

SORRENTINO: I appreciate that. Thank you.

BALLARD: Thank you, Senator Sorrentino. Additional questions? Seeing none, thank-- oops, I'm sorry. Senator Juarez.

JUAREZ: That's OK. I was just going to make a comment that I know all of us are aware, but I-- you know, I want it to be on the record that we also have to be cautious in going forward when you consider how the staffing is being reduced at the IRS. So I don't think anything's going to come quick. Thank you.

BALLARD: OK. Thank you, Senator Juarez. Seeing no additional questions, thank you so much for being here. Additional opposition testimony? Good afternoon.

TYLER CUMMINGS: Good afternoon, Chairman Ballard and members of the committee. My name is Tyler Cummings, that's T-y-l-e-r C-u-m-m-i-n-g-s, and I am the Interim Director of the Nebraska Public Employees Retirement Systems. I'm testifying in opposition of LB689 and AM734. And today, I want to focus on the historical context of the provisions related to returning to work as it relates to the school retirement plan. In 2000, termination of employment did not allow a retired member to return to work within the same planned year or within 180 days, whichever was longer. In 2002, this provision was changed to not allow retired members to provide any regular service within 180 days of termination. In 2010, intermittent substitute service was allowed within the 180-day separation period. In 2021, intermittent service was defined as 8 days of substitute service per calendar month within the 180-day separation period. And, finally, just last year, unlimited substitute service was allowed within the 180-day period if the member was not requesting a distribution of their retirement account. Each time there is a change in the return-to-work provisions, it creates additional administrative hurdles. We have to inform members and employers of these changes,

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update handbooks and other guidance, and implement new processes to ensure members and employers are compliant with the new rules. We have now gotten to the point with the 8-day subbing rule, where members and employers have fully digested this provision and to change it once again creates a burden for our members, employers, and staff. We feel as though attempting to change the threshold of intermittent service or definition of termination period does little to address the actual problem schools are facing. Teacher shortages have stemmed from a variety of issues, none of them being the return-to-work provisions implemented by various retirement plans. Our fear is the continued erosion of the return-to-work thresholds that would add risk to the plans while not fully addressing the reason for the shortages. All the while, it continues to create confusion for members, employers, and staff when these changes occur. We felt the changes made in 2021 and 2024 satisfied the desired outcomes for all stakeholders involved and feel that no changes are needed at this time. Thank you.

BALLARD: Thank you, Mr. Cummings. Are there any questions? Seeing none, thank you so much for your testimony.

TYLER CUMMINGS: Thank you.

BALLARD: Additional opposition testimony? Good afternoon.

JASON HAYES: Hello. Chairman Ballard and members of the Retirement Systems Committee, my name is Jason Hayes, J-a-s-o-n H-a-y-e-s, and I'm here testifying today on behalf of a coalition that includes the Nebraska State Education Association, the Nebraska Association of School Boards, and the Nebraska Council of School Administrators. I'm here to express our opposition to LB689. First, let me acknowledge Senator Lonowski's intent with this bill. We appreciate the goal of increasing the opportunities for retired teachers to return as substitute or temporary employees, or temporary employees soon after retirement. There's no question that Nebraska schools need experienced personnel to address staffing shortages. However, we have concerns about the approach taken in this bill, specifically its removal of the existing 8-day safe harbor provision within the 180-day post retirement period. This provision serves a vital purpose. Under the current law, the 8-day safe harbor allows retirees to return to work intermittently, no more than 8 days in a calendar month during the 180 days following retirement, without putting their retirement benefits at risk. This is not an arbitrary limit. It's a clear, practical standard that balances the needs of schools with the protection of retirees and the integrity of our retirement systems. It ensures compliance with both state rules and federal tax regulations enforced

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by the Internal Revenue Service, which is critical to maintaining the tax-qualified status of Nebraska's public retirement plans. LB689 destabilizes this current balance. As drafted, it eliminates the 8-day safe harbor entirely, replacing it with either an undefined framework or, as in AM734, a potentially longer 40-day period. Both options are problematic. Removing the 8-day limit altogether leaves retirees and school districts in the dark. Without a clear standard, they'll struggle to know what's permissible, risking unintentional violations that could jeopardize benefits. On the other hand, extending the limit to 40 days raises red flags. Federal guidelines require a bona fide separation from service to avoid what's called an "in-service distribution" exceeding a reasonable threshold like the current 8-day cap could invite audits, penalties, or worse. Let me emphasize, the 8-day provision works. It's predictable and manageable, retirees rely on it when deciding whether to return to work, and school districts use it to maintain flexibility and staffing. Without it, retirees may hesitate to step back into the classroom fearing they'll cross an unclear line and lose benefits. That hesitation will only worsen Nebraska's teacher and staff shortages. Meanwhile, school districts will face increased administrative headaches, trying to interpret vague rules or navigate the fallout of noncompliance. I urge this committee to preserve the 8-day safe harbor provision. It's a proven safeguard that protects retirees, supports schools, and keeps our retirement system secure. Thank you for your time and consideration. I'm happy to answer any questions you may have.

BALLARD: Thank you, Mr. Hayes. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairman. Very quick question. Do you believe that there is a, a big difference between the urban schools meaning Omaha Public Schools and Lincoln versus western Nebraska with regard to that 8-day limitation?

JASON HAYES: Oh, yeah, certainly, certainly. I mean, you've got a larger pool of employees to draw from. You've got employees from the OSERS plan that may have recently retired, being able to, to work in the statewide plan because it's a different plan benefit. So they're not subject to the same 180-day provision. So, yeah, I mean, a school out in Minden might have more issues. One thing I wanted-- I didn't include in my testimony, which I think is very important, is that one of the things the agency relies on to determine their interpretations of statute is a legal compliance audit. And the most recent one was done in 2020. And I'll be happy to send this to members of the committee. On page 18 and 19, it goes through and outlines at least

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Groom Law Group who was conducted to-- or who was obtained to conduct this legal compliance study went through and basically said-- and they, they-- the only thing they were able to really pull from was treasury regulation that applied to, I believe, a 409, you know, a 409A plan to compare how that would apply to a 401(a) plan. And they looked at a 20% threshold during that break in service. So I would be happy to submit that to the committee members. I think another important part of this is that the plan document, they are the statutes. And a plan document, as the Legislature has defined it, that break in service is 180 days. So you may have other pension plans across the country that define that as 90 days. I know our other, other public plans are at 1-- 120, and I think that's a valid point to look at during an interim study, in terms of why do we have other retirement plans administered by the state that are at 120 and you've got the school plan at 180? So there's a lot of, a lot of things that would be wrapped up into an interim study. But I think, as an agency, interpreting state statute, there's a reason why we have legal compliance audits. And I know there was another one done, I think, in 2011 when I was at NPERS. But they, they really are the guidance that the agency uses to interpret state law. And I think that will provide the committee with, with some additional information on that.

SORRENTINO: Did you say that that study was done by the Groom Law Group?

JASON HAYES: Yes.

SORRENTINO: All right. Thank you. I'm familiar with them.

JASON HAYES: Yeah.

SORRENTINO: OK. Thank you.

JASON HAYES: OK.

BALLARD: Thank you, Senator Sorrentino. Additional questions? Seeing none, I actually have a record, just a record correction. You, you-- your president of the NSEA wrote a letter of support, but wrong bill, correct?

JASON HAYES: I think that got submitted by an aide, so, yes.

BALLARD: OK.

JASON HAYES: OK. Thank you very much.

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BALLARD: Just for the record.

JASON HAYES: Yes. Appreciate it.

BALLARD: All right, thank you, Mr. Hayes. Appreciate it.

JASON HAYES: OK. Thank you.

BALLARD: Any additional opponents? Seeing none, anyone in the neutral capacity? Seeing none, Senator.

LONOWSKI: Thank you, Chair Ballard and committee. I appreciate taking your lunch time, and I apologize to anyone if I burden them by requiring new, new regulations. I compare this to my time in Afghanistan, when we had rules of engagement, and the generals were saying this is the way it's done, and people are shooting and there's dirt flying up in front of my face, but I shoot up in the air to give somebody a warning before we engage. Why? Because if you're a teacher or a student in the classroom, you know if your sub is qualified or not qualified. You know if, if you're being taught well that day or not well. I also appreciate regulations and rules. I appreciate that the online testimony and the in-person testimony by the NSEA and NPERS was here for us. As for now, I really would, would like to table LB689, as I said, and I mentioned in my opening remarks, I respectfully ask the committee to conduct any interim study to consider appropriately amending these statutes to help schools obtain the best substitute teachers possible, notably retired teachers who are participating in the employee retirement plan. I appreciate it very much. Thank you.

BALLARD: Thank you, Senator. Any final questions? Seeing none, thank you so much.

LONOWSKI: Thank you.

BALLARD: That closes-- we have-- for the record, we have two proponents and two opponents on LB-- and zero in the neutral on LB689. That closes our hearing on LB689. And I will turn it over to Senator Sorrentino.

SORRENTINO: Thank you, Senator Ballard, you are recognized to open on LB713.

BALLARD: All right. Thank you, Senator Sorrentino and members of the Nebraska Retirement Systems Committee. My name is Beau Ballard. For the record, that is B-e-a-u B-a-l-l-a-r-d, and I represent District 21

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in northwest Lincoln, northern Lancaster County. LB713 would eliminate the definition of "prior service" under the School Employees Retirement Act. LB713 is just intended to be a placeholder bill in the event of any changes to retirement plans administered by the PERB Board or Nebraska-- or the Retirement Systems. At this point, I'd be happy to answer any questions, but to reiterate, this is just a placeholder bill.

SORRENTINO: Thank you, Senator Ballard. Are there any questions from the committee? Seeing none, we will ask if there are any testifiers who are proponents of LB713? Seeing none, do we have any testifiers or opponents of LB713? Are there any testifiers who are neutral on LB713? Seeing none, Senator Ballard, you are-- waive closing. And we do have for the record, no proponents for LB713. We have one opponent and zero neutral. So that will close our hearing on LB713-- and I'll let you take over the mic--

BALLARD: Go ahead.

SORRENTINO: --and close our testimonies for today. Thank you.