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## **PUBLIC EMPLOYEES RETIREMENT BOARD MEETING**

**JANUARY 22, 2018**

9:30 A.M.

A regular meeting of the Public Employees Retirement Board convened at 9:30 a.m., Monday, January 22, 2018, in the 1526 Building, 4th Floor, Conference Room 4D, 1526 "K" Street, Lincoln, Nebraska.

The Board members were notified of this meeting by the Agenda posted on the PERB SharePoint website on Friday, January 12, 2018. Public notice of this meeting was published in the Lincoln Journal Star and Omaha World Herald on Monday, January 15, 2018. J. Elliott chaired the meeting and M. Nuss recorded the minutes.

### **MEMBERS PRESENT:**

JANIS ELLIOTT, CHAIR  
DENNIS LEONARD, VICE-CHAIR  
DENIS BLANK  
KELLI ACKERMAN  
JIM SCHULZ  
MICHAEL WALDEN-NEWMAN, EX-OFFICIO

### **ABSENT:**

J DERR  
PAM LANCASTER  
ELAINE STUHR

### **NONMEMBERS PRESENT:**

RANDY GERKE Director	MIKE DULANEY Nebraska Council of School Administrators
ORRON HILL Legal Counsel	MIKE MCGOWAN Nebraska Council of School Administrators
PATTY PIERSON Retirement Plan Supervisor	DAVID M. LUDWIG Educational Service Unit Coordinating Council
JACK HARDY IT Manager	MARIA DAVIS Retirement Specialist
TERESA ZULAUF Controller	MITCH SNYDER Retirement Specialist
MELISSA NUSS Administrative Assistant	NANCY REIMER Ameritas
JOHN WINKELMAN Education Manager	NEIL SULLIVAN State Budget Office
	NEIL BATEMAN Retired Teacher

**Agenda Item 1:** J. Elliott stated this meeting will follow the Nebraska Open Meetings Act and a copy of the Act is located on the table by the door.

**Agenda Items 2 and 3 – Meeting Called to Order:** J. Elliott called the January 22, 2018, Board Meeting to order at 9:30 a.m. Present at roll call: D. Blank, J. Elliott, D. Leonard, K. Ackerman, J. Schulz, and M. Walden-Newman. Absent: P. Lancaster, J. Derr, and E. Stuhr.

**Agenda Item 4- Election of Officers:** J. Elliott, opened nominations for Board Secretary. D. Leonard nominated R. Gerke for Board Secretary. J. Schulz seconded the motion. D. Blank moved nominations cease and a unanimous ballot be cast for R. Gerke. D. Leonard seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz.

R. Gerke opened nominations for Board Chair. D. Leonard nominated J. Elliott for Chair. J. Schulz seconded the motion. D. Blank moved nominations cease and a unanimous ballot be cast for J. Elliott. D. Leonard seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Abstain: J. Elliott. Motion carried.

J. Elliott opened nominations for the Board Vice-Chair. D. Blank nominated D. Leonard for Vice-Chair. J. Schulz seconded the motion. D. Blank moved nominations cease and a unanimous ballot be cast for D. Leonard. J. Schulz seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Abstain: D. Leonard. Motion carried.

**Excuse Board Members:** D. Blank moved to excuse J. Derr, P. Lancaster, and E. Stuhr. D. Leonard seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

**Agenda Item 5 – Approval of Minutes:** J. Schulz moved for approval of the minutes of the December 18, 2017, Board Meeting. K. Ackerman seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

**Agenda Item 6 – Approval of Budget Status Report & December 2017 Retirement Report:** D. Blank moved to approve the Budget Status Report and the December 2017 Retirement Report. D. Leonard seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

**Agenda Item 7 – Public Comments or Correspondence from Citizens:** There were no public comments or correspondence from citizens with business not scheduled on the agenda.

**Agenda Item 8 – Nebraska Council of School Administrators Outreach:** J. Elliott thanked Mike Dulaney, Executive Director of the Nebraska Council of School Administrators

(NCSA), and his team for appearing as a part of the Public Employees Retirement Board's (PERB) outreach.

M. Dulaney thanked the PERB for inviting NCSA and congratulated the PERB members for re-election to their offices. He congratulated R. Gerke on his appointment as Director of NPERS, and extended his appreciation for the opportunity to continue his work with R. Gerke, as the new Director, as well as O. Hill, who the NCSA works with regarding matters of NCSA members.

M. Dulaney stated the NCSA is an organization comprised of approximately 1,600 active school administrators in Nebraska, with a total membership of nearly 2,400. He commented that the largest subgroup of their membership is comprised of retired members, of which there is a separate retirement affiliate. NCSA was formed in 1971, and has been a good partner to educational participants in the community. M. Dulaney has been with NCSA for 26 years, and stated NCSA is passionately dedicated to improving public education.

M. Dulaney is proud of past work with the Nebraska State Education Association (NSEA) on a bill which expanded the PERB membership to include one school administrator and one teacher. He acknowledged the intense work conducted by NCSA and O. Hill on LB 415. He commended the PERB on continued legislative efforts for Schools, as well as the other plans, particularly during times of challenging legislation. NCSA appreciates the year round effort of the PERB to responsibly administer the retirement plans.

M. Dulaney stated efforts will continue to address teacher and substitute teacher shortages in Nebraska. He commented these issues will be addressed alongside NSEA through continued legislative and educational efforts. M. Dulaney outlined the duties of the Association, commenting that the NCSA is a non-profit C6 corporation. He stated NCSA's central functions are lobbying and government relations, providing professional opportunities to school administrators for furthering education, and providing important connections between fellow administrators. NCSA has seven staff members, with a newly added Communications Director.

J. Elliott thanked M. Dulaney for the educational efforts, training, connections, and communication NCSA provides its members. M. Dulaney commended P. Chambers, R. Gerke, and O. Hill on the educational efforts and continued outreach to member groups, and thanked the PERB for their efforts on behalf of Nebraska retirees and future retirees.

**Agenda Item 9 – Legal/Legislative Update:** O. Hill provided the Board with a list of legislation introduced dealing with retirement concerns, as of January 19, 2018, and requested guidance from the PERB as to what testimony should be presented.

LB 548 is a carry-over bill from the previous legislative session, which provides for the consolidation of the Class V School Employees' Retirement System and the School Employees Retirement System of the State of Nebraska. Amendment (AM) 1506 eliminates the merger of the Omaha Schools Employee Retirement System (OSERS) with the NPERS School Plan and inserts other substantial provisions, including a Tax Equity and Educational

Opportunities Support Act (TEEOSA) intercept provision, which requires the Nebraska Department of Education to transfer 10% of the TEEOSA funding assigned to Omaha Public Schools to OSERS. O. Hill stated the former recommendation was for opponent testimony, but the proposed changes of AM 1506 would support a move to neutral or proponent testimony.

The PERB discussed conflicts of interest. O. Hill clarified, based on past opinions from the Accounting and Disclosure Office, PERB members may vote as fiduciaries of the plans, even if the vote may personally impact the PERB member, as long as fiduciary obligations are honored.

D. Leonard moved the PERB testify in a neutral position on LB 548 if AM 1506 is approved and passed. No second. Motion returns to the floor. No further motion was made on LB 548.

J. Elliott directed R. Gerke and O. Hill to be present during the hearing for LB 548 to provide assistance to the Legislative Committee regarding the bill.

LB 698 and LB 699 are technical bills, which O. Hill presented in tandem. LB 698 modifies sections of the various retirement acts to make it optional for the PERB to promulgate rules and regulations when the PERB feels it is necessary, rather than requiring the PERB to promulgate rules and regulations even when the statute is clear. LB 699 corrects scrivener errors in the drafting of LB 415 and harmonizes the definition of actuarial equivalent across the plans.

LB 1005 is in response to the Saunders Medical Center matter. This bill addresses certain employers' withdrawal from the County and School plans, the assessment of plan liabilities, and the PERB's authority to act in such matters. O. Hill recommended proponent testimony as the PERB has asked for this authority. The PERB discussed provisions of the bill.

J. Schulz, Chair of the PERB Legislative Review Committee, offered comments on LB 1005 prior to Board Committee Reports under Agenda Item 10. The Committee suggested additional provisions for the bill, including: addressing School plans with similar multiple employer issues and to limit future entry to the plans by eligible entities during a one year opt in time period. The Retirement Committee will be consulted as to the attachment of an emergency clause to address Saunders Medical Center's urgency and to address the statutory closing, as a decision must be made by eligible entities before January 1, 2019.

J. Schulz moved the PERB testify in favor of LB 1005. D. Blank seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

O. Hill presented the following bills with a recommendation of no testimony:

LB 141 adopts the Revised Uniform Unclaimed Property Act, modifying how unclaimed property will be handled in Nebraska.

LB 169 exempts the amount received as a retirement benefit under a retirement plan qualified under §§ 401(a) or 403(a) of the IRC and OSERS and NPERS plans from state income tax.

LB 388 amends the rules related to electronic notaries.

LB 482 outlines protocols for contracting. It prohibits state agencies from including the following contract clauses: a term that requires, prohibits, encourages, or discourages bidders, public contractors, or subcontractors from entering or adhering to a collective-bargaining agreement relating to construction under the public contract; a term that discriminates against bidders, public contractors, or subcontractors based on status as a party or nonparty to, or the willingness, or refusal, to enter into a collective-bargaining agreement relating to construction under the public contract.

LB 696 adds one more judge to Tier II.

LB 725 requires payment to a small business creditor on or before the fifteenth calendar day, as opposed to the 45<sup>th</sup> calendar day. This may have a small impact on internal processes.

LB 728 and LB 738 deal with federal tax reform. This may effect 1099R data.

LB 791 would remove sergeants from the law enforcement collective bargaining category and move them to the supervisory bargaining unit. It also makes disciplinary and investigatory procedures of the Nebraska State Patrol not subject to bargaining.

LB 814 requires Department of Administrative Services (DAS) to promulgate rules and regulations regarding bid protests, in excess of \$50,000, be deemed to be contested cases under the Administrative Procedure Act and subject to judicial review. O. Hill noted concerns of the bill's impact, as it binds DAS to follow the Administrative Procedures Act. This may present challenges for NPERS in timely contract procurement, and could potentially delay contract processes from 8 months to a year if there was a bid protest. O. Hill asked the PERB for guidance on testimony position. NPERS currently holds two contracts over the \$50,000 threshold effected by the bill. O. Hill stated DAS is currently in opposition to the bill. The PERB directed O. Hill to contact DAS and offer written support of their position.

LB 851 amends the Superintendent Pay Transparency Act (Act) and limits superintendent and Educational Service Unit (ESU) administrator compensation. Reporting agents will have additional responsibilities in applying expanded definitions of "benefit" and "salary." As of the effective date of the Act, no school district or ESU may contract with a superintendent or ESU administrator for a compensation package that is greater than 5 times the compensation package offered to a beginning teacher. At this time, O. Hill is offering no recommendation on testimony.

The following bills are presented with testimony recommendations from R. Gerke and O. Hill respectively:

LB 944 provides, changes, and eliminates provisions relating to appropriations. The bill increases the salary limit in Program 41, Administration of Retirement Systems and Deferred Compensation, and increases the General Fund and program total in Program 515.

R. Gerke noted that, at this time, it is unknown what the Appropriations Committee's recommendation will be. He stated that standard procedure would be to write a letter to the Appropriations Committee thanking them for their recommendations once they are given. The PERB confirmed standard procedures should be followed for Appropriations Committee recommendations.

LB 950 authorizes a write-off of \$22,091.91 for request number 2018-17705, made by NPERS for payments made to individuals who were deceased and proper timely notice was not given of the member's death. The hearing is scheduled for 1:30 p.m., on Monday, February 26, 2018, the next PERB meeting date. T. Zulauf will represent R. Gerke at the hearing if the PERB meeting is not concluded.

LB 997 limits political subdivision spending on administrative employees to no more than 5% of its budget. O. Hill does not recommend testimony, but the bill could potentially impact salaries and compensation.

LB 1003 authorizes 360 hours of military leave for employees who normally work 159 or more hours in 3 consecutive weeks and scheduled to work 24 hours shifts. O. Hill does not recommend testimony.

LB 1029 reduces the amount of time an entity shall either accept a power of attorney or request certification, translation, or an opinion of counsel to 3 business days. It also increases the liability of an entity who refuses to accept an acknowledged power of attorney. This directly effects O. Hill as the only legal counsel at NPERS, who noted the current reasonable amount of time is 7 days. PERB discussed concerns for contingency in the Legal Counsel's absence. The PERB discussed the potential impact of the turnaround time on agencies with limited legal counsel or agencies who may rely on the Attorney General's office for legal counsel. O. Hill spoke with the Nebraska State Bar Association Government Practice Group Chair to receive input as to what position the State Bar will take on the bill. The PERB directed O. Hill to monitor the bill and keep the Legislative Review Committee up to date on its progress.

LB 1072 gives preference to purchasing Nebraska products and goods and services from a resident bidder over a nonresident bidder, if the bid submitted by the resident bidder is comparable in price to a bid submitted by a nonresident bidder and otherwise meets required specifications. "Resident bidder" is redefined to include, in part, a limiter that reads "whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has their principal place of business in this state." No recommendation was given for testimony.

LB 1129 prohibits state employees from certain political activities while on state time. Discussion held on PERB members sitting on the Board. O. Hill stated "Political Club"

definition is not clearly defined, but collective bargaining groups do not appear to be a member of a political club. O. Hill confirmed that NPERS employees who work at the poll sites should not be effected. Should the bill pass, J. Elliott suggested NPERS employees are properly educated and trained to understand proposed provisions. Discussion of PERB indicated no testimony be given, at that time.

As a standing request, O. Hill would like authorization to meet with the Legislative Review Committee to hold meetings for legislation requiring immediate attention.

O. Hill would like to schedule a meeting with the Regulation and Policy Review Committee to commence its regular reviews of policies.

J. Elliott stated Committee appointments will be discussed during Agenda Item 12.

It was clarified that Committee Chairs may always call a meeting.

D. Leonard moved to approve the Legal/Legislative Update. K. Ackerman seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

The PERB took a break at 10:50 a.m. and reconvened at 11:04 a.m.

**Agenda Item 10 – Board Committee Reports:** J. Elliott stated J. Schulz has requested to be on the Legislative Review Committee. D. Leonard recommended J. Schulz Chair the Legislative Review Committee. J. Elliott stated she will re-assign P. Lancaster from the Education Committee and appoint her to the Regulation and Policy Review Committee. J. Elliott will provide re-assignments for review by the PERB before the next PERB meeting and will confirm those appointments at the next PERB meeting. Due to immediate need for legislative reviews, J. Elliott stated the Legislative Review Committee will consist of J. Schulz, as Chair, D. Leonard, and K. Ackerman.

J. Schulz stated that recommendations of the Government Employer Review Committee had been provided during Agenda Item 9, the Legal/Legislative Update. J. Schulz thanked O. Hill for expediency in providing language and the work by Senator Kolterman and Kate Allen to move LB 1005 through the Legislative Committee. O. Hill commented that N. Sullivan, State Budget Analyst, stated during the break that LB 1005 does not specify which cash fund the money would be routed through to pay for actuarial studies. O. Hill thanked N. Sullivan for his insight. It was recommended language be included in the bill to identify spending authority for employers to pay for any actuarial study done to support their decision to leave a plan. Recommendations on the routing of money will be discussed during a Government Employer Review Committee meeting to include R. Gerke and T. Zulauf.

**Agenda Item 11 – Accountability and Disclosure Forms:** R. Gerke provided the PERB with information for filing their Financial Disclosure forms by March 1, 2018, which shall be completed and submitted to the Accountability and Disclosure Office and NPERS.

**Agenda Item 12 – Director’s Report:** R. Gerke discussed the confirmation hearing with the Legislative Committee and reported that it went very well.

He commented that his testimony on LB 698 and LB 699 before the Legislative Committee went well.

R. Gerke reported on the governor’s recommendations to the Legislature, regarding Personal Service Limitation (PSL), Retirement, and FICA portions for P. Chambers. The salary portion of sick and vacation payout may be moved above the line to PSL.

R. Gerke stated the Benefit Adequacy Study (BAS) request was not approved by the Governor, and the presumption is the Legislative Retirement Committee will not enter a recommendation. R. Gerke proposed that NPERS may ask for a BAS as part of a future Biennium Budget request.

R. Gerke reported the Program 515 increase of \$519,171 was approved.

The PERB discussed the denied approval of the BAS request. The Fiscal Office asked NPERS if there was an industry standard for the frequency of such studies, and Cavanaugh Macdonald indicated there does not appear to be. To address the question as to whether the BAS is for benefit enhancement, R. Gerke stated he advocated for the study as a strong educational tool. J. Elliott stated, as responsible fiduciaries, the PERB must have BAS information vital to the proper administration of the plan. The PERB discussed raw data needed to provide responsible fiduciary guidance to the plans and plan members. J. Elliott stated the PERB would continue to encourage the Appropriations Committee to approve a BAS.

R. Gerke reported on the new Benefit Estimator on NPERS’ website, and thanked Melissa Kolm for her work on the Estimator. He encouraged the PERB to investigate its functionality. He reported he and Cecelia Carter, Director of the Omaha Schools Employee Retirement System, used the Estimator together to explore questions about Cash Balance Plans.

R. Gerke stated the actuaries provided a test copy of the modeling software to NPERS, which allows users to explore factors which contribute to un-funded liabilities.

He noted that 1099R’s will be sent to all plan members ahead of schedule, and new tax tables will be implemented after the January 25, 2018, benefit run.

R. Gerke commented that the NPERS Annual Report is being prepared for submission to the Retirement Committee on March 23, 2018.

D. Leonard moved to approve the Director’s Report. J. Schulz seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

**Agenda Item 13 – Board Education/Travel Requests:** There were no requests.

**Agenda Item 14 – Future Meetings/Agendas:** The next PERB meeting will be Monday, February 26, 2018. J. Elliott requested O. Hill remain in contact with the Legislative Review



Committee, and asked the Committee Chair to provide a report at the next PERB meeting. She also commended the weekly Legislative updates provided to the PERB by O. Hill.

**Agenda Items 15 and 17 – Executive Session:** At 11:28 p.m., D. Blank moved that the Board exit Regular Session and convene in Executive Session for the purpose of discussing applications of plan members and legal matters: Personnel Matters; Protection of Public Interest, Prevention of Needless Injury to the Reputation of an Individual; Update on Pending Litigation; Protection of Public Interest. K. Ackerman seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

At 12:23 p.m., D. Blank moved that the Board exit Executive Session and reconvene in Regular Session. D. Leonard seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

**Agenda Item 16 – Board action on Executive Session Topics:** No action taken.

**Adjournment:** J. Schulz moved that the meeting adjourn. K. Ackerman seconded the motion. Members voted as follows: For: K. Ackerman, D. Blank, J. Elliott, D. Leonard, and J. Schulz. Against: None. Motion carried.

The meeting adjourned at 12:24 p.m.



Randy Gerke  
Director