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## **PUBLIC EMPLOYEES RETIREMENT BOARD MEETING**

**FEBRUARY 26, 2024**

**9:30 A.M.**

A regular meeting of the Public Employees Retirement Board (PERB) convened at 9:30 a.m., Monday, February 26, 2024, in the First Nebraska Administrative Building, Lower-Level, Training and Development Room, 1526 "K" Street, Lincoln, Nebraska.

The Board members were notified of this meeting by an Agenda posted on the PERB SharePoint website on Tuesday, February 13, 2024. Public notice of this meeting was published in the Lincoln Journal-Star and Omaha World-Herald on Friday, February 16, 2024. K. Ackerman chaired the meeting and B. Dinges recorded the minutes.

### **MEMBERS PRESENT:**

KELLI ACKERMAN, CHAIR  
JANIS ELLIOTT, VICE CHAIR  
GERALD CLAUSEN  
CHARLES NEUMANN  
JIM SCHULZ  
ALLEN SIMPSON  
LUKE SPLATTSTOESSER  
JUDGE THOMAS ZIMMERMAN  
ELLEN HUNG, EX-OFFICIO

### **NONMEMBERS PRESENT:**

JOHN MURANTE  
Director  
TYLER CUMMINGS  
Deputy Director/OSERS Plan Manager  
TAG HERBEK  
Legal Counsel  
HEATHER CRITCHFIELD-SMITH  
Educational Services Manager  
TERESA ZULAUF  
Controller  
JOHNETTA LANG  
Data Services Manager  
MELISSA NUSS  
Benefits Manager  
JACK HARDY  
IT Manager

BRENDA DINGES  
Member Services Manager  
JAYDEEP DESHPANDE  
OSERS Transfer Project Manager  
ZACH WELLS  
Auditor of Public Accounts  
CASSONDRA DOBBS  
Auditor of Public Accounts  
NEAL ERICKSON  
Legislative Retirement Committee  
RYAN WALTON  
State Budget Officer  
ERIC ASBOE  
Supreme Court  
MIKE JAHNKE  
Retired PERB

**Agenda Item 1:** K. Ackerman stated this meeting will follow the Nebraska Open Meetings Act and a copy of the Act is provided electronically via a link on the final agenda posted on the Nebraska Public Employees Retirement Systems' (NPERS) website, on the Attorney General's website, and a copy of the Act is located on the table by the door.

**Agenda Items 2 and 3 – Meeting Called to Order:** K. Ackerman called the February 26, 2024, Board Meeting to order at 9:30 a.m. Present at meeting: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, T. Zimmerman, and E. Hung.

**Agenda Item 4 – Approval of Minutes:** G. Clausen moved for approval of the minutes of the January 22, 2024, Board Meeting. Motion was seconded by J. Elliott. Members voted as follows: For: J. Elliott, G. Clausen, J. Schulz, A. Simpson, and T. Zimmerman. Abstained: K. Ackerman, C. Neumann, and L. Splattstoesser. Against: None. Motion carried.

**Agenda Item 5 – Approval of Budget Status Report & January Retirement Report:** J. Schulz moved to approve the Budget Status Report and the January 2024 Retirement Report. Motion was seconded by T. Zimmerman. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

**Agenda Item 6 – Public Comments or Correspondence from Citizens:** K. Ackerman took this time to recognize and thank M. Jahnke for his time on the Board and presented him with a plaque. K. Ackerman also recognized the new Board members L. Splattstoesser, and C. Neumann and the reappointment of G. Clausen.

**Agenda Item 7 – School-Judges-Patrol Audit Report:** Z. Wells and C. Dobbs gave the Audit Report.

Presentation materials were included in the meeting materials. Discussion followed the presentation.

J. Elliott moved to approve the School, Judges, Patrol Audit Report. Motion was seconded by A. Simpson. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

**Agenda Item 8 – Legal/Legislative Update:** T. Herbek gave the Legal/Legislative update.

Presentation materials were included in the meeting materials. Discussion followed the presentation.

T. Zimmerman moved to approve the Legal/Legislative Update. Motion was seconded by C. Neumann. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

**Agenda Item 9 – Omaha School Employees’ Retirement System (OSERS) Transfer Project:** J. Deshpande gave the OSERS Transfer Project update.

Presentation materials were included in the meeting materials. Discussion followed the presentation.

T. Zimmerman moved to approve the OSERS Transfer Project Update. Motion was seconded by J. Elliott. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

**Agenda Item 10 – Director’s Report:** J. Murante gave the Director’s Report.

J. Schulz moved to approve the Director’s Report. Motion was seconded by A. Simpson. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

**Agenda Item 11 – Board Committee Reports:** There were none.

**Agenda Item 12 Board Education/Travel Requests:** There were none.

**Agenda Item 13 – Future Meetings/Agendas:** The next PERB meeting is on March 18, 2024.

**Agenda Item 14– Executive Session:** At 10:48 a.m., T. Zimmerman moved that the Board exit Regular Session and convene in Executive Session for the purpose of discussing applications of plan members: Case Review No. D-24-2 and Case Review D-24-3; Prevention of Needless Injury to the Reputation of an Individual; Personnel Matters; Protection of Public Interest, and Update on Pending Legal Matters. Motion was seconded by C. Neumann. K. Ackerman repeated the motion for the record. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

At 11:45 a.m., G. Clausen moved the Board exit Executive Session and reconvene in Regular Session. Motion was seconded by C. Neumann. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

**Agenda Items 15 – Board Action on Executive Session Topics:** T. Zimmerman moved for approval of Case Review No. D-24-2 and D-24-3. Motion was seconded by A. Simpson. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

J. Elliott moved to approve the expense allocation for NPERS PSL be made according to the pro rata formula of the membership distributed to the Board and kept in the Director's office of the respective plans administered by NPERS and to have such allocation reviewed on at least an annual basis. Motion was seconded by L. Splattstoesser. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

J. Schulz moved to approve changes according to the provided Exhibit A for agenda item 15.b regarding changes to the Deferred Compensation Plan due to SECURE Act 2.0 effective February 26, 2024. Motion was seconded by T. Zimmerman. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman

**Adjournment:** A. Simpson moved that the meeting be adjourned. Motion was seconded by J. Elliott. Members voted as follows: For: K. Ackerman, J. Elliott, G. Clausen, C. Neumann, J. Schulz, A. Simpson, L. Splattstoesser, and T. Zimmerman. Against: None. Motion carried.

The meeting was adjourned at 11:57 a.m.

# NPERS

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**DATE:** February 26, 2024  
**TO:** Public Employees Retirement Board (PERB or Board)  
**FROM:** Tag Herbek, Legal Counsel for PERB  
**SUBJECT:** Request to Change to Deferred Compensation Plan under Secure 2.0

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## **REQUEST**

For the PERB to approve adoption of the attached Exhibit A changes to the State of Nebraska Deferred Compensation Plan.

The effective date of the restatement of the State of Nebraska Deferred Compensation Plan will become the date the Board approves the plan restatement. The Director will sign the plan restatement after Board approval. (Section 9.11 State of Nebraska Deferred Compensation Plan)

## **SUMMARY**

Before Secure 2.0, IRS regulations required participants in governmental 457(b) plans to request changes in their deferral rate prior to the beginning of the month in which they wanted their deferral to be made. This rule did not exist for other defined contribution plans.

After Secure 2.0 passage, governmental 457(b) plans can now allow elections to be made at any time prior to the date the compensation being deferred is available. NPERS has incurred situations making this a necessary plan provision.

## **AUTHORITY**

Section 9.10.2 (State of Nebraska Deferred Compensation Plan) states the Board may amend the provisions of the Plan at any time, provided, however, that no amendment will affect the rights of Participants or Beneficiaries to the receipt of a payment of benefits or to all other amounts deferred at the time of the amendment.

  
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Tag Herbek, Legal Counsel

4.3 Commencement of Participation. An Employee will become a Participant as soon as administratively practicable following the date NPERS receives the Employee's participation election. ~~Such election will become effective no earlier than the first day of the calendar month following the month in which the election is received by NPERS. This rule applies even if a Participant is paid on a biweekly basis.~~ A new Employee may defer Compensation during the calendar month in which the Participant first becomes an Employee if the Employee completes a participation election and submits it to NPERS on or before the first day on which the Employee performs services for the Employer. At the time of initial election a Participant must agree to defer a minimum of twenty-five dollars (\$25.00) per month. The Participant's total annual compensation will be reduced on a pay period basis by the amount indicated on the Participant's election.

4.6 Amendment of Annual Deferrals Election. Subject to other provisions of the Plan, a Participant may revise the Participant's participation election, including a change of the amount of the Participant's Annual Deferrals, the Participant's investment direction, and Beneficiary designation at any time. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals will take effect as soon as administratively practicable of the first day of the calendar month following NPERS' receipt of the election. A change in the investment direction will take effect as of the date provided by NPERS for all Employees. A change in the Beneficiary designation will take effect when the election is received by NPERS.

9.7.3 In order to utilize the Plan for the deferral of Compensation other than accrued but unused bona fide sick, vacation, or other leave, an Employee must have established an account by enrolling in the Plan ~~prior to the month of termination~~ and entered into an agreement to defer such amounts before the compensation is currently available to the individual ~~prior to the month of termination~~ in accordance with Code § 457(b)(4).

9.7.4 In order to utilize the Plan for the deferral of accrued but unused bona fide sick, vacation, or other leave an Employee must have established an account by enrolling in the Plan ~~prior to the month of termination~~ and entered into an agreement to defer such amounts before the compensation is currently available to the individual ~~prior to the month of termination~~ in accordance with Code § 457(b)(4).

9.11 Effective Date. This restatement of the State of Nebraska Deferred Compensation Plan will become effective on February 26, 2024 ~~May 18, 2020~~.

EXHIBIT A

**26 USC 457(b)(4) (current statute language) (12/29/2022)**

**(b) Eligible deferred compensation plan defined**

For purposes of this section, the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer-

- ...
- (4) which provides that compensation-
    - (A) in the case of an eligible employer described in subsection (e)(1)(A), will be deferred only if **an agreement providing for such deferral has been entered into before the compensation is currently available to the individual**, and
    - (B) in any other case, will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,
- ...

**26 USC 457(e)(1)(A)**

**(e) Other definitions and special rules**

For purposes of this section-

**(1) The term "eligible employer" means-**

- (A) a State, political subdivision of a State, and **any agency or instrumentality of a State or political subdivision of a State**, and ...
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