APPENDIX

2012SC906

TABLE OF CONTENTS:

App. A-1: Attorney General Opinion 04-04

KEN SALAZAR
Attorney General

DONALD S. QUICK
Chief Deputy Attorney General

ALAN J. GILBERT
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

FORMAL	)	
OPINION	)	No.04-4
	)	Alpha No. TR TR GANCN
of	)	November 18, 2004
	)	
KEN SALAZAR	)	Changes to PERA Retirement
Attorney General	)	Benefits and Contributions

This opinion concerns limits to the ability of the General Assembly to alter retirement benefits for public employees under the pension program administered by Public Employees' Retirement Association of Colorado ("PERA"). It is issued at the request of Colorado Treasurer Mike Coffman.

Questions Presented and Answers

Question: What, if any, limitations exist upon the Legislature's ability to reduce the capacity of current employees to earn additional retirement benefits to assure the long term actuarial soundness of the plan?

Answer: The rate and amount of retirement benefits may qualify as a partially vested pension right protected by the contract clause of the constitution. An adverse change to a partially vested pension right is lawful only if it is balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan. Once a PERA member fulfills all the statutory requirements for a pension benefit, retires and begins receiving a pension, the member's fully vested pension right cannot be reduced by the General Assembly.

Question: What, if any, limitations exist upon the Legislature's ability to increase the percentage of their wages current employees contribute to PERA in order to assure the long-term actuarial soundness of the plan?

Answer: The percentage of wages that employees contribute to PERA may qualify as a contractual right protected by the constitution, but that legal conclusion is not certain.

Employees have some reasonable expectation that contribution rates to PERA may increase because of historical increases and the PERA statute that reserves the right of the General Assembly to change the rate of employer and member contributions. If the rate of employee contributions is in fact a protected contractual right, any increase by the General Assembly would be an adverse change to a partially vested pension right, and would be lawful only if the change is balanced by a corresponding change of a beneficial nature, is actuarially necessary, or strengthens or improves the pension plan.

Discussion

Background

PERA is the administrator of a defined benefit pension plan that provides retirement benefits for State employees and certain municipal, city, county, and school district employees. Section 24-51-201, C.R.S. (2004). Membership in PERA is a condition of employment. Section 24-51-301, C.R.S. (2004).

PERA's Board of Trustees is the fiduciary of the plan. The Board is required to carry out its functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. Section 24-51-207, C.R.S. (2004). Colorado's Treasurer is a statutorily appointed member of the PERA Board. Section 24-51-203, C.R.S. (2004).

Vested Nature of Pension Benefits

Rights that accrue under a pension plan can be contractual obligations protected under Colo. Const. Art. II, § 11 and the U.S. Const. Art. 1, § 10. *Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992); *Colorado Springs Fire Fighters Association v. City of Colorado Springs*, 784 P.2d 766, 770 (Colo. 1989). Vested contractual rights are constitutionally protected from statutory impairment. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287 (Colo. App. 1998).

PERA retirement benefits become a vested right when an employee has complied with the statutory conditions entitling the employee to the receipt of retirement benefits. *See Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992) (citing *Police Pension & Relief Board of City and County of Denver v. Bills*, 148 Colo. 383, 366 P.2d 581 (1961)).

Some vested pension rights cannot be eliminated. When a PERA member retires from active service and begins receiving a pension, the member's pension becomes a vested contractual obligation of the pension program that is not subject to unilateral change of any type by the General Assembly. *Police Pension & Relief Board of City and County of Denver v. Bills,* 148 Colo. 383, 366 P.2d 581, 584 (1961) (citing *Police Pension & Relief Board of the City and*

County of Denver v. McPhail, 139 Colo. 330, 338 P.2d 694, 700 (1959)). When an employee retires and begins receiving a pension, trustees may not adopt an amendment that reduces an employee's vested pension under the plan. *Walker v. Board of Trustees of Regional Transportation District Pension Plan*, 69 Fed. Appx. 953, 2003 WL 21690534 (10th Cir. Colo.) (impairment of vested pension rights is arbitrary and capricious, a breach of contract, and a breach of its fiduciary duties) (citing *Police Pension & Relief Board of City and County of Denver v. Bills)*, 148 Colo. 383, 366 P.2d 581 (1961) (unpublished opinion).

In appropriate circumstances, pension rights can vest to a limited degree prior to actual retirement, and also prior to eligibility to retire. *Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992). No bright line test exists to determine what constitutes a partially vested right or when that right accrues. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287 (Colo. App. 1998). The legal conclusion that a pension right has vested partially rests upon a case by case consideration of the facts and circumstances.

The establishment and modification of an employee benefit is traditionally within the scope of legislative discretion. *Colorado Springs Fire Fighters Association v. City of Colorado Springs,* 784 P.2d 766, 773 (Colo. 1989). Although statutes are not presumed to create private contractual rights, they may constitute a contract, protected by the Contract Clause of the constitution, if the statutory language and the surrounding circumstances manifest a legislative intent to create an enforceable contractual right. *Kilbourn v. Fire and Police Pension Association,* 971 P.2d 284, 287. The courts consider whether the existence of a contractual right is supported by the reasonable expectations of the affected person, or if the lack of a contractual right surprises persons who have long relied on a contrary state of the law. *Id* at 287.

Colorado's courts have not addressed whether public employees enrolled in PERA's program have a reasonable expectation of a contractual right to accrue a certain level and amount of future pension benefits. But Colorado courts have decided that certain pension benefits are not vested contractual rights. *Kilbourn v. Fire and Police Pension Association*, 971 P.2d 284, 287 (Colo. App. 1998) (no vested contractual right to an occupational disability pension where there was a reasonable expectation that benefits would cease upon returning to police employment); *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 352 (Colo. App. 1998) (no equal protection claim or unconstitutional impairment of an existing contract right for legislative change offsetting benefits by optional retirement plan benefits); *Colorado Springs Fire Fighters Association .v City of Colorado Springs,* 784 P. P.2d 766, 774 (Colo. 1989) (no contractual obligation was intended by offering retiree health coverage to a limited class of employees).

Even if certain pension benefits are contractual rights protected by the Colorado Constitution, and even if such pension rights are partially vested pension rights, the Colorado courts have consistently allowed changes under certain conditions. The test is that any adverse change must be balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan. *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 352 (Colo. App. 1998); *Knuckey v. Public Employees' Retirement Association*, 851 P.2d 178, 180 (Colo. App. 1992); *Peterson v. Fire and Police Pension Association*, 759 P.2d 720, 725 (Colo. 1988). Should a change to a partially vested pension right fail to satisfy at least one of these three criteria, it unconstitutionally impairs existing contract rights and is ineffective. *McInerney v. Public Employees' Retirement Association,* 976 P.2d 348, 352 (Colo. App. 1998).

In *Peterson v. Fire and Police Pension Association,* 759 P.2d 720 (Colo. 1988), the Colorado Supreme court found that a police officer had achieved a limited vesting of survivor pension benefits prior to his death. The Court held that those pension benefits could be changed, but that any adverse change must be balanced by a change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan. The Court concluded that, although survivor pension benefits were reduced under the statewide fire and police pension plan, the goal of ensuring that the statewide pension system is actuarially sound justifies any corresponding detriments to the group. *Id* at 726.

In *Peterson*, the record reflected that Denver's pay-as-you-go police pension plan was actuarially unsound and therefore reductions to partially vested pension benefits were justified. A pension fund is said to be actuarially sound if there are no unfunded accrued liabilities and the current cost of pension benefits attributable to active members is being paid on an annual basis. *Peterson v. Fire and Police Pension Association,* 759 P.2d 720, 726 (citing *City of Colorado Springs v. State*, 626 P.2d 1122 (Colo. 1981)). The *Peterson* case also reviewed the definition of "actuarially sound" in the statutes governing the Denver pension fund and found under either definition, the Denver pension fund was not actuarially sound, therefore, reductions to partially vested pension benefits were actuarially necessary and proper.

Applying the same test to different facts, another court found that an increase in the years of service for retirement eligibility was an adverse change to a partially vested pension benefit that was not offset by a corresponding beneficial change in a rank escalator clause that increased the rank and salary used to compute pension benefits. *City of Aurora v. Ackman*, 738 P.2d 796, 802 (Colo. App. 1987).

Employee Contributions

Eligible state employees and employers make periodic contributions to PERA as a term and condition of employment. *McInerney v. Public Employees' Retirement Association*, 976 P.2d 348, 350 (Colo. App. 1998). By making these contributions, employees obtain a limited vesting of pension rights that ripen into fully vested pension rights upon attainment of statutory eligibility requirements. *Colorado Springs Fire Fighters Association v. City of Colorado Springs,* 784 P.2d 766, 771 (Colo. 1989).

The employee contribution rate to PERA has been changed several times over the years. Employee contributions to PERA began in 1931 at the rate of 3.5% and were increased several times to the current 8% rate in 1982. Employee contribution rates were 3.5% from 1931 to 1949, 5% from 1949 to 1958, 6% from 1958 to 1969, 7% from 1969 to 1973, and 7.75% from 1973 to 1982. Colorado PERA, *Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2003,* page 84. Historical increases in employee contribution rates to PERA have been accompanied by corresponding improvements to PERA pension benefits. The General Assembly has expressly reserved the right to change the rate of employer and member contributions to PERA if indicated by actuarial experience. Section 24-51-211, C.R.S. (2004). Thus, employees contributing to PERA have some reasonable expectation that contribution rates to PERA may increase, because of historical increases and an express statute reserving the right to change employer and member contributions to PERA if indicated by actuarial experience. A legal conclusion whether the rate of employee contributions to PERA is or is not a protected contractual right would rest upon the specific facts of each proposed change.

Even if the rate of employee contributions to PERA is a protected contractual right, the General Assembly could increase the rate of employee contributions if the increase is balanced by a corresponding change of a beneficial nature, is a change that is actuarially necessary, or is a change that strengthens or improves the pension plan.

Conclusion

A reduction in future PERA benefit accruals may qualify as an adverse change to a partially vested protected contractual right. Adverse changes by the General Assembly to partially vested pension benefits are permissible provided that they are balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan.

Once a PERA member fulfills all the statutory requirements for a pension benefit and retires, the member's fully vested pension right cannot be reduced by the General Assembly.

The rate of employee contribution to PERA may qualify as a contractual right protected by the Constitution, but that legal conclusion is not certain. Employees have a reasonable expectation that contribution rates to PERA may increase from time to time, based upon historical increases and a statute reserving the ability of the General Assembly to change contributions. Nevertheless, if the rate of employee contributions is in fact a protected contractual right, any increase in the rate would be an adverse change that is permitted if the change is balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan.

Issued this 18th day of November, 2004.

____

KEN SALAZAR
Colorado Attorney General

ALAN J. GILBERT
Solicitor General

HEIDI J. DINEEN
Assistant Attorney General

App. A-6: Transcript Senate Finance Committee Hearing

REPORTER'S TRANSCRIPT

SENATE FINANCE COMMITTEE

SENATE BILL 10-001

JANUARY 26, 2010

CHAIRMAN: Senate Finance will come back to order. Thank you all so much for your wait. We're here to hear Senate Bill 001. We do apologize for the delay. We thought we would get a shorter bill out of the way before and it took a little longer than we thought it would, so thank you all so much for your patience.

We're here to discuss Senate Bill 001. Thank you President Shaffer and Senator Penry who are here to present. So we will turn it over to you all and let you present us Senate Bill 001.

MR. SHAFFER: Thank you, Mr. Chair, and thank you, Committee. I bring before you -- we bring before you Senate Bill 001 which is a bill concerning modifications to a Public Employees Retirement Association necessary to reach the 100 percent funded ratio within the next 30 years.

Before I dive in, I've always thought that the best way to do these hearings especially when you have a very complex piece of legislation in front of you is for the Senators to actually speak as little as possible. Let the testimony come out, so to the extent we can get to the people in the audience as quick as possible. That's my goal here.

I have asked representatives from PERA who

have helped with the drafting of this legislation to help us present the material, the bulk of the bill, to walk you through the components of Senate Bill 001. I'm not going to try to do that here for you. They're professionals and they'll be able to do that much better than I can.

I would like to do a couple of things. One is to extend my heartfelt thanks to several of the people who have been in this process to get to this point. It's been six months of negotiations and discussions of people who are either involved with state employment or retirees one way or another.

The first person I wanted to say thank you to is Senator Penry sitting to my left. Senator Penry sent me a letter in July of this Summer -- last Summer and said, hey, look, you know, we're not gonna agree upon everything that happens during the 2011, I'm sorry, 2010 legislative session, but we can agree that we have a problem with PERA. And we can agree that it's something that we have to tackle. We might as well do that in a bipartisan way. And he offered in that letter to work together. He deserves enormous credit for doing that. So Senator Penry, thank you for making that gesture. Thank you for following through and working together. I think we've gotten this to a

decent place.

With that being said, I don't think anybody would stand up and say this is a perfect bill. In fact, I don't think anybody would stand up and say that this is a bill that they really want to carry. We are here because of the economic circumstances struck our nation, our state, during 2008. The just brief overview of what this bill does and why we have come here I thought was articulated well on page four of the fiscal note for those who have a fiscal note in your packet. I'm just gonna read starting on the very bottom of the page.

It says, "As of December 31st, 2009, the PERA Trust Funds unfunded actuarial liability was approximately $22 billion. Current employer amortization equalization disbursement and supplemental amortization equalization disbursement contribution rates are not sufficient to amortize the unfunded liability within the next 30 years. Senate Bill 001 modifies employer and employee contributions, places a cap on cost of living adjustments for retirees, creates new contributions for working retirees, and increases the age and service requirement among specific groups of employees before they are eligible to receive retirement benefits. Taken together, actions are projected to reduce the amortization period to 30 years and improve PERA's funding ratio to 100 percent. In the event that the funding ratio in any division falls outside of certain guidelines, the AED and SAED payments will be increased or reduced accordingly."

That's a general overview of what the legislation does and why we are here. I'd also draw your attention to the binder that's in front of you as distributed by the PERA representatives who are here. I'd ask you to flip to Tab number three of that binder. What you'll see on top is a graph. It says "State Division Actuarial Projection" in front of you. If you flip through that, they actually have a similar graph for the "School division actuarial projection," "Local Government Division of PERA" and "Judicial Divisions of PERA.

If you follow the lines and follow the different colored-coded lines here, under a pessimistic return for the state division, this is the projections that come from the PERA actuary, the state division will be at zero percent funded within 26 years. Under the expected return, 8.5 percent return, in 29 years, the state division will be at zero percent funded.

And if you get an optimistic return, 10 percent return over this time period, given the new

economic realty we have, PERA would be at a zero percent funded within 34 years. If you flip forward, you'll see that each of the divisions -- they don't have the exact same story, but they have the similar stories in terms of actuary projections and their funding rate.

That's why we're here today. It's not because we enjoy doing what we're doing with this proposal. I suspect that most of the people in the audience are either retirees or people who are very close to retirement who have grave concerns about the provisions of this bill. And I empathize with them. I appreciate that they come out here to share their stories and their thoughts on the legislation.

That being said, we are sent down here by the People of Colorado to do the job. And I think we have a responsibility to make sure that the PERA Fund is secure, is financially safe for generations to come. And Senate Bill 001 will accomplish that.

Let me say a final word. And the final word is why I designated this bill, Senate Bill 001. Usually that's a ceremonial designation for a piece of legislation that you bring forward that's a cornerstone of an agenda. I designated this Senate Bill 001 because I think it's symbolic of some of the issues

that we're going to have to tackle over the course of the 2010 legislative session. They're difficult issues. There's no way that we can hide from these issues. There's things that we absolutely have to do.

Some of the changes that we're gonna have to make whether it's PERA, whether it's our budget or otherwise, are structural changes that incur real-life ramifications for the people of Colorado. I thought, you know, to the extent we're able to do this one in a bipartisan way, move it forward, sends a right message to the people of the State of Colorado that we are able to put partisan differences aside to come up with solutions to real problems that face the state.

So I'll stop right there and I look forward to hearing from the testimony. I would ask the Chair to allow the PERA representatives to present the details of the bill. I know you may limit the time within which people can testify. They may need more than the three minutes or whatever you're intending to do there to just walk through the details of the bill. With that I'll stop and listen to testimony.

CHAIRMAN: Thank you, Mr. President. Are there any questions from the committee for President Shaffer or Senator Penry before we bring up the PERA Board members to help support the explanation? Senator

Steadman.

MR. STEADMAN: Thank you, Mr. Chair. And before we start, and I know we'll be hearing a lot of testimony. And I know there's great public interest in this issue. I just want to acknowledge, Mr. President and Mr. Minority Leader, the amount of hard work you put into this. It's not, you know, any small feat that you've brought this bill to us. And I know the countless hours that have gone into this and the very careful negotiations that continued right up through last evening, in fact. And it's a credit to both of your leadership and, particularly, Mr. President, the fact that you've convinced all 21 members of your caucus to become co-sponsors.

As you know, I was not necessarily the first person to want to jump on board and had some reservations and have been watching your negotiations from afar. And I'm very pleased with the progress that you've made and look forward to making sure that this really is an appropriate bill that strikes the right balance. But I just wanted to start us off on a congratulatory note and acknowledge all the work you put into this.

CHAIRMAN: Thank you, Senator Steadman. Senator Penry, did you want --

MR. PENRY: Thank you, Mr. Chairman. Just a couple of points that I think are worth accentuating. First of all, I comment to president's leadership on this issue and willingness to work on a bipartisan way. When I sent him that letter last year, if you think through the politics of it, it's clear that a bill like this is incredibly difficult to pass without bipartisanship, as I've said many times, including to each of you.

What's happened in other states is important pension reforms that are desperately needed have been voted down by large majorities of republicans and democrats who vote against these reforms for different reason. And that same sort of that amicus is playing out here. A lot of republicans would like to shift away from a defined benefit system towards a defined contribution approach, arguments that I'm not -- that I'm not unsympathetic to, but are not practical given financial realities of this state.

Meanwhile, I know that -- and in other states -- democratic majorities have had a hard rolling back the benefit side of the equation. What this represents is, on the president's part and my part, an effort to tackle what is the single largest financial liability facing the state of Colorado. To give you a sense of

how large the problem has gotten and this fiscal note cites the number from the end of 2008 at $22 billion. It's not fast approaching a $30 billion unfunded liability, more than we collect in sales income and corporate taxes in four full years. So these are huge numbers.

And I think you have to approach the task with humility and some urgency. Humility, as the president said, because this affects real people's lives. I mean, as we talk about rolling back cost of living increases, folks have made plan for those. The sad realty, the plain realty of this new economic situation which we find ourselves, this pension fund can't afford that. The pension fund itself is in jeopardy unless we scale that back.

But urgency because we can't kick this can down the road. There is an actuarial emergency crisis that gives us an opportunity to make some important structural changes to increase the retirement age and to roll back, in part of those, automatic cost of living increases. Nobody likes it, but, again, it is part of a new economic realty that we face.

To my republican friends, you know, there's been a lot of discussion in the media, in particular, from some conservative commentators who are well-

intentioned and have legitimate concerns about this program. Ninety percent of the $30 billion short fall is erased through reductions in benefits or through additional contributions from state employees. And so this bill asks state employees to pick up their fair share.

To the state employees and the democrats who might have concerns of that, I think the important thing to remember is this program, this retirement system, is still hands down by far and away far more generous than anyone in the private sector is realizing in the here and now. And so what materializes is an imperfect plan that achieves an important outcome that is putting -- solving, essentially, over a span of 30 years, the largest fiscal liability facing the state of Colorado.

And so I would close just by telling the president I appreciate his leadership, also knowing that there are folks out here who don't like this plan at all and appreciate their participation in the legislative process and look forward to moving together. Thanks.

CHAIRMAN: Thank you, Senator Penry. So I would like to welcome the PERA Board Members to come up and help present jointly. I know that Madam Chairwoman

is finishing a presentation upstairs and she'll be down in a few minutes. But she does have a plan in order to make sure that we can hear from all the folks in the crowd who want to be able to give us their input. She does have a plan to limit testimony time. And so I would love to have the PERA Board come up and either present -- Mr. President, it's up to you whether you want them at that microphone or here. That microphone is fine. And we'll let you all present the plan as part of this original bill presentation, and then, we'll start hearing testimony.

MR. WILLIAMS: Thank you, Mr. Chairman. And thank you especially for the promotion. My name is Meredith Williams. I'm the executive director of Colorado PERA. I report to the PERA Board. With me today is Gregory Smith who is Colorado PERA's chief operating officer and general counsel. We have a brief presentation, as suggested by the Senate president. Two pieces I would direct your attention to. The first one is a three ring binder/notebook that each of you as a member of the general assembly received on October 30th. It's the Board's original proposal, coupled with a great deal of supporting documentation.

You also have a little handout, stapled handout. These are the materials generally out of the three ring binder that we wish to walk through very quickly to explain the bill, the reasons for the bill. This all started with the unprecedented downturn in the marketplace in 2008 stretching into 2009. Literally, every pension plan in the world woke up from that and discovered that the was world changed. PERA was no different.

The Board began its rather rigorous and disciplined journey late in 2008. In 2009, through your passage of the merger bill that brought Denver Public School Retirement System into PERA, you sanctioned the Board's efforts and mandated that the Board's results be reported to you, as the general assembly, by November 1st of 2009. We beat that deadline by a day or two. I think it was October 30th. It has been quite a ride.

In your handout and in your binder is a letter dated October 30th to you as members of the general assembly. It outlines many of the efforts the Board undertook. I would direct you to the bottom of page one. And it's actually the first page in the handout, as well. The Board's guiding principles in developing their proposal for your considerations. Number one was shared responsibility among members, retirees and employers. As the Senate Minority Leader

pointed out, there is shared pain here. It is a difficult bill.

The second one was intergenerational equity. We cannot expect our children and grandchildren to pay for the obligations that are incurred by members of the system today. Long term sustainability, as mentioned by both the Senate president and the Senate minority leader. We have to pay off these obligations during the working career of the people that are accruing benefits. We can't keep handing this out.

Preservation of the defined benefit plan was another guiding principle that was before the Board. And another, the final guiding principle was maintaining the same benefit structure across all PERA divisions.

As part of its efforts, the Board wanted to ensure that they're not be any short-term impact on member behaviors. They did not want to create a monster for those odd-intended consequences that would drive up costs.

Finally, the Board looked very carefully at the new economy that we're facing and decided that going forward at this point in time that a more reasonable rate of return was eight percent which was a reduction from their eight and a half percent rate of

return. They also, guiding all of this was their mandate to themselves that, again, we amortize all of these obligations over a 30-year period, which does hide a current Colorado law.

I'm going to quickly walk through a couple of the tabs in the three-ring binder. The first one is tab two. I call it the placement. It's actually page three in the handouts. This lays out the efforts of the Board over the last 15 months or so. They involved a number of experts from a number of fields. More importantly, they involved a number of citizens of Colorado. They had a listening tour that encompassed eight Board meetings around the state of Colorado that attracted over 2,500 participants and generated over 4,200 comments. All of those are available for inspection.

Additionally, once their proposal was developed, we went around and had 13 more meetings around the State of Colorado in the month of September and October. Those attract something around 1500 members. We engaged a number of interest groups representing employers, employees and our retired members, as well as the public. As already mentioned, page four of your handout, tab three in your three-ring binder, in the binder we have a projection for all four

of the existing PERA divisions, as well in the handout it just shows the school.

The school division just absolutely runs out of money in 2033. We look around at our retired members and our active members and even those members that are just starting. And how, in good conscious, do we collect contributions from them and from their employers when we've got evidence here and it's before you right here on this chart. But we run out of money before they're eligible to collect. That has to be addressed. We can't invest our way out of it. And, frankly, the hole gets deeper with each delay. If we wait a year to address these issues, the hole is at least a billion dollars deeper.

If you turn in the three-ring binder to tab four or in the handout to page five, the yellow line here reflects what we look like in 30 years with the Board's proposal. Then take you one more page in the handout, page six and it's tab six in the three-ring binder. It's a letter from the Board's actuary indicating that the Board's initial proposal that you received on October 30th will, in fact, take all of the divisions, the full funding within a 30-year period.

With that, Madam Chair, I'm going to step aside and ask Mr. Smith to continue and to walk you through Senate Bill 001.

CHAIRPERSON: Mr. Smith, welcome to Senate Finance.

MR. SMITH: Thank you, Madam Chair. I'm going to be referring to the multi-colored chart that is in back of the packets that we have available for people. And I don't believe it's in the book because what this chart does is it sets forth the provisions of the Board's original proposal and compares those to Senate Bill 001 as introduced. And I'm going to run through them as quickly as I can.

First of all, the increase in the AED -- the Board's proposal would increase the AED by .4 percent beginning in 2012 and continuing through 2017 for a top total AED of five percent. The Senate Bill 001 accomplishes the same thing and it has the same provisions with one exception. It eliminates a .4 percent increase in the statutory employer rate that was applicable to the school division and wants to kick in 2013 and would have resulted in a double hit, if you will, of .4 percent in 2013.

The second provision is the continuing increase in the SAED, the Supplemental Amortization Equalization Disbursement payment going up by .5 percent per year beginning in 2013, going through 2017

for a total of 5 percent. This remains unchanged in the Senate Bill 001, as introduced.

The reduction of the COLA and the cost of living increase and capping it at two percent. The Board's proposal would cap the COLA at two percent per year and index it, so that it would float between two percent and zero based on the CPIW.

The Senate Bill 001, as introduced, will do the same thing. It has an index COLA with a two percent cap, but it assures that the cap will be the amount paid unless PERA experiences a zero return or lower in a given calendar year. In the event PERA has a negative return in a given calendar year, we will kick into three years of truly index COLA where it will float between zero and whatever the existing cap is at that time based on the CPIW.

Second page of the chart gets into some of the other items. Established a five-year HAS with an eight percent spike cap with the Board's proposal. That has been modified by SB1 to return to our three-year highest average salary with a base year, as we call it, and an eight percent spike in cap.

Next is a established a five-year earn service credit vesting requirement for the 30/50 percent match. That remains unchanged in Senate Bill

001. That will require people to have five years in order to receive a 50 percent match on their member refunds. Add employee contributions of eight percent of salary for all retirees working after retirement requires employees of PERA employers that are retired from PERA and receiving a benefit to pay eight percent employee contribution like all of the other employees of PERA employers. That remains unchanged in Senate Bill 001.

Prevent recalculation of the original retirement benefits for retirees who've extended their benefit. This remains unchanged in Senate Bill 001 as well, and it modifies, to some degree, how retirees at PERA can suspend their benefits and then ultimately re-retire and the impact on them.

Change the COLA payment date from March to July of each year. Currently, implement our COLA is March of each year. This will move that to the July payments. And that remains unchanged in Senate Bill 001. Implement a one-year calendar delay in receiving COLA. The Board's proposal would have required people to wait an entire calendar year. Requires them to receive a benefit for a full calendar year before they're eligible for the benefit to increase in the following year.

Senate Bill 001 has modified the Board's proposal to some degree to require a 12-month wait, rather than a calendar-year wait. And it allows people to then receive that adjustment in the July following their 12-month adjustments.

The third page of the chart -- for everyone hired before January 1 of 2007, eliminate retroactive payment of benefits. This provision was eliminated by Senate Bill 001 with a very small handful of people that would have been impacted. And it really restores the existing law for purposes of those people hired before January 1 of 2007.

The next provision eliminates the accrual of a COLA where people prior to January 1st of 2007. And that remains in place in Senate Bill 001. So if you're not receiving the benefit, you're suspended or for some other reason you're not actually receiving a benefit, you don't re-COLA (ph).

Revise the existing reduction factor for early reduced retirements reflect an actuarial reduction. This requires people who retire early before their full service retirement to receive a benefit that is essentially the actuarial equivalent of the benefit they could have received had they waited for full service retirement.

Next, implement a modified Rule of 90 meaning with a minimum age of 60 for full service retirement. The Board's proposal would have increased to the Rule of 90 for everyone hired after January 1st of 2011. Senate Bill 001 has modified this provision and phased in the increase in the Board's proposal with regard to increase in the age. What it will do is take everybody with less than five years of service crediting the system as of January 1, 2011 to the Rule of 85 meaning that they have to have 30 years of service and be age 55 to be eligible to retire.

It also imposes yet a higher requirement for people hired after January 1 of 2011. It will take them immediately to the Rule of 88, meaning they have to be 58 years of age with 30 years of service to receive full service retirement benefits. And, ultimately, in 2017, beginning January 1 of 2017, any new hires will be under the Rule of 90. Now, this provision is, as we say, a phased-in implementation of that increase of retirement age.

Finally, to address what's called the corridor concept in the Board's proposal which remains essentially in the SD1. Corridor concept is a concept with the design to ensure the funding status of PERA in perpetuity. What it does is, in the AED and SAED

context, it looks at a division by division basis whether that division funded ratio is higher than 90 percent. If it's higher than 90 percent, we have done what's called entered the corridor. Once they've entered the corridor, the amount of the AED and the SAED would eventually be lowered, thereby, lowering the contribution burden on the employers and the employees. That occurs under Senate Bill 001 when that division reaches 103 percent funded. When it hits 103 percent funded, the AED and the SAED are reduced by one-half of one percent each. And for each year that it remains at 100 percent funded, it continues to ratchet down the AED and the SAED.

On the bottom side of the corridor, if after we've entered the corridor and the AED and the SAED are below their full five percent cap and that division of fund falls to a 90 percent funded level or lower, the AED and the SAED will automatically begin to rise to address that shortfall.

The other part of the corridor concept is the corridor concept that covers the entire system in aggregate. It relates to the COLA cap. As we've seen, the COLA cap is two percent. Under Senate Bill 001, it would rise by one quarter of one percent for each year that the aggregate funding ratio of the system exceeds

103 percent.

Similarly, once we're in the corridor, if the cap on the COLA has risen above two percent and we subsequently fall to a 90 percent funded ratio, the COLA cap would begin to be reduced back down to a minimum of two percent based on that funding to address that funding shortfall. Again, that's on the total fund to aggregate basis.

Finally, an item that was added in Senate Bill 001 that was not a part of the Board's proposal allows schools and higher ed employers to identify up to ten employees who are retirees of PERA who would be allowed to work up to 140 days without benefit offset in retirement. Our current limit is 110 days, which extends that limit to 140 days for a limit of 10 people per institution.

I believe that covers the entire bill.

CHAIRPERSON: Thank you, Mr. Smith. Let me ask the committee for questions for the response to Senator Shaffer and Penry or Mr. Smith or Mr. Williams. Senator King.

MR. KING: Thank you, Madam Chair. I've got quite a few questions, so probably Mr. Smith is the best to respond. On page four of the fiscal note, table two talks about for the state division by itself.

It just -- do you have a copy of that?

MR. SMITH: I do not have a copy of that. I can get my cheaters out, though.

MR. KING: As I understand, this is just the changes in the SAED portion and the employee portion. If you would be willing to comment on the fact that by the year 2016/2017, the difference that is made up here in the state division alone is $60 million. And I would like to know, in your calculations, what the similar number would be for the school divisions in the state of Colorado for SAED.

CHAIRPERSON: Mr. Smith, when you're ready.

MR. SMITH: Senator King and thank you, Madam Chair. I do not have at my fingertips the amount of the projected school payroll would be the same percentage of that payroll as it's reflected for the state. But I honestly don't know standing here what the projected amount of that payroll is in 2016.

MR. KING: If I could continue. Look back on table one where it's the AED payment. And it shows by the end of the financial period of time by the year of 2016/2017 it's 63 million for the AED side and it's 60 million for the SAED side from table two. It's my understanding that the way that this AED and the SAED has worked out that if there is not a pay raise for employees in current law, that the SAED portion becomes the obligation of the employer, not the employee. And it's my understanding that the state has picked up in the last couple of years a portion -- or not all -- the employee portion of the funding of that particular issue of the SAED. And so if this is comparable and if there are comparable numbers of employees in the school district division as there is in the state division and the current economic forecast is that school districts are not going to have any increase. In fact, we're cutting them and we cut them already this year, so employee's salaries will probably not be increased.

What is the possibility that the school districts will pick up both the AED and the SAED to the tune, if this plays out, it could be an increased obligation if there's the same number of employees in the school district division as there is a state division, almost $120 million per year by the time this comes into its fruition. And I'd like to have you comment on that particular issue.

CHAIRPERSON: Mr. Smith?

MR. SMITH: Thank you, Madam Chair. First of all, I have to say that we don't get access to the fiscal notes responses or at least I hadn't prior to this hearing, so I'm a little bit off the cuff in

responding to your questions, and I haven't had the opportunity to really run the numbers in school divisions. With that being said, with regard to your comments on how the SAED is funded and whether there is funding for the SAED where there are no employee increases.

It is accurate that the SAED and its escalation each year must be paid regardless of whether there are salary increases in that given year or not. However, in the event that a given year doesn't have an increase to the employees to fund that SAED and it does get paid by the employer, in subsequent years, the SAED would be ultimately funded by the employees when compensation increases do come to occur. So while they're might be a temporary period of time when the employer needs to meet that obligation without taking money out of the employee's salary, although I think they could reduce salaries and fund it that way, as well, they would ultimately be able to make up that differential when employee compensation does dry.

So with regard to the state division to the extent some of the agencies of the state government has not had increases in the past year or two years in compensation, that has impacted the funding of the SAED. To the extent of the dollars, again, for

purposes of the school division, I really can't comment on whether $120 million is the right number or not. That's a pretty complicated calculation, not one I'm prepared to do here.

CHAIRPERSON: Senator King.

MR. KING: Well, if I could follow up. What's the differential, then, between state employees and school district employees in the state of Colorado so that we have an idea of what the obligation is to school districts in the state of Colorado?

MR. SMITH: What's the differential? I'm sorry.

MR. KING: Between how many employees there are in the state division and employees that there are in the school division?

MR. SMITH: The school is larger, probably 15 to 20 percent larger than the state.

MR. KING: So it's inaccuracy to say accurately, then the school districts across the State of Colorado will even take a bigger hit than what the state is taking with these numbers. Is that not a fair assessment?

And then, if I could just follow up on the analysis of whether or not the SAED is picked up by employees ever in an economic downturn time if a

particular school district freezes its salary, that freeze, do they go back and pick up two years if the increases come back? It seems to me like SAED is prevented from being picked up in that year that there is an employee freeze? And do you differentiate between employees? In other words, if administrators got a pay raise and teachers did not get a pay raise, do you project, then, that different employees inside a school district will have different rates of SAED?

CHAIRPERSON: Mr. Smith.

MR. SMITH: I'll go backwards. I don't believe that different employees in a school district will have different SAEDs. There's a statutory rate of SAED that must be paid. It applies to everybody.

With regard to whether the employer could make up years where they had to deal with the funding of the SAED in a frozen salary year, I believe they can make up any number of years however long it's been frozen.

Finally, with regard to school districts, I would point out that most of our school districts have collective bargaining. And what's really going to happen is they're going to sit down and know what the total obligations to the pension plan is and what their pool of money is to negotiate over. And they're gonna arrive at an agreement that is gonna be the basis of their collective bargaining agreements with regard to where the dollars are coming for the various responsibilities for the pension.

CHAIRPERSON: Senator King, do you have more questions?

MR. KING: Yeah. I have two more questions.

CHAIRPERSON: Okay.

MR. KING: Can you tell me what the total level of the obligation of the employee is with the AED and the SAED combinations between employer and employee at the end of the total implementation of the bill counting the -- I think it will be at 28.5 percent. Would you tell us what portion of that will be picked up by employees in this totality and what portion will be picked up by the employer?

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you. In 2017, under SB1, if introduced, the employee contribution will be 13 percent and the employer contribution will be 15.15 percent.

MR. KING: Okay. And then, under the -- since I've been around here and I've voted with you on sometimes, I don't think I'm here today. And the reality under one of your other proposals, you allowed

the state employees to have a defined contribution plan which I guess of approximately 10 percent of the existing employees have optioned into that. And to find the solvency issue that is not being repealed. They're still allowing those to do a defined contribution plan. Why is that not being included for the other divisions to have that option also when it should help you with your unfunded mandate if you have a degree of some of your people going to a defined contribution plan as opposed to being in defined benefit plan?

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you, Madam Chair. Our analysis indicates that the defining contribution alternative as a choice to defined benefits actually costs the defined benefits a significant amount of money. It doesn't save the fund money. Although there are people that are coming into the system that are not earning service credit and will not ultimately draw a benefit from the defined benefit system. The contribution flow is a negative to the defined benefit plan. And the ability of people to leave and choose their way out costs the defined benefit plan money.

That was known at the time that the state division adopted choice or would statutory division

have put in allowing choice. And notably since then, that was in 2004, I believe, at that time, the .4 percent that we talked about for the school division -- it was an added employer statutory contribution rate that would implement in 2013 -- was added because the school division was more poorly funded than with the state division. The state division, at that time, took on choice as one of the alternatives for its employees. And since then, the roles have reversed.

Now, schools are better funded than the state division. The state division has fallen behind in its funding. And one of the factors of that is the ability of people to choose to go to defined contributions. So it wasn't included in the plan because it openly cost the defined benefits plan money and isn't a step towards solvency for the defined benefit plan.

CHAIRPERSON: Senator King.

MR. KING: I would just give a different analogy. I would say that people that are optioning into defined contribution plan understand that the defined benefit plan isn't working. And so that's why they want out. So that's why they want choice.

And just one final question and I'll be done at this time. On investment strategies, you've had a concept of eight percent rate of return. And I think

that that has unduly exposed you to the market fluctuations where most private pension plans are the six percent rate of return of investment. And it seems to me like the volatility of the stock market does not -- we're gonna be back looking at this issue again. I probably won't be here, but somebody will be looking at another five to ten years because unless the market produces at eight percent, you're not going to have an opportunity to get anywhere close to being solvent in 30 years.

CHAIRPERSON: Mr. Smith.

MR. SMITH: Our investments' program, I believe, has proven itself to be very effective, very efficient. We have a fully diversified portfolio on a global basis. We minimize the volatility to the extent possible in the marketplace 2008 with a very rare event in US history and in world history. We don't believe it's something that we should plan to have repeated in the state's pension system in a position where it's prepared for that to occur. The eight percent was arrived at after a very rigorous analysis, not just by our board members, some of whom have expertise in this arena, but by experts who were brought forth by the board and analyzed the issue.

We're essentially dead in the middle of the public plan median rate. And I would have to respectfully disagree with the submission that six percent is the average for private plans. In fact, when you look at partly plan and other defined benefit plans and their history of adopting a higher rate even in the public plan is a long standard.

CHAIRPERSON: Any other questions for the presenters of the bill. Senator Steadman. Oh, were you finished, Mr. Smith?

MR. SMITH: I'm finished.

CHAIRPERSON: Okay. Senator Steadman.

MR. STEADMAN: STEADMAN: Thank you, Madam Chair. I'd like to pull us back out of the weeds just a moment and ask what I consider to be a threshold question. And, I'm sorry, this was for you, Mr. Smith. While you're there at the microphone.

MR. SMITH: I was getting off that easy.

MR. STEADMAN: No, sir. One of the things I'd like you to speak to just because I feel it's very important for purposes of this hearing for us to make a record of the fact that the PERA Board has made a determination of actuarial necessity. There are some issues of constitutional law at stake here that are dependent upon there being actuarial necessity for us to go in and make some of the changes that we're

making. And I've heard you address this topic before. And I'm familiar with your responses to the question. But for the record, I think it's important that we have a brief discussion here about that topic. And, so, if you wouldn't mind please, if you could explain to the committee why the PERA Board believes we are in a situation of actuarial necessity.

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you very much, Senator Steadman, for the opportunity to address that issue. The PERA Board has long refused to take the position that PERA was in any kind of an actuarial necessity situation. When we did things in 2004 and 2006, we felt very strongly we were not an actuarial necessity. However, the statutory provision that we're subject to and really the case law defines what is actuarial necessity because it's a preacher of judicial decision, not a statutory enactment by the general assembly.

There are very little guidance. The one case in Colorado that recognized actuarial necessity was a plan that had run completely out of money and was on what you call a pay-as-go basis. So they had no reserve from which to pay benefits. And they were allocating revenues each year to pay benefits. It's called pay-as-you-go. And that was found by the

Colorado Court to constitute actuarial necessity. It's one of the very, very few cases in the country that have found actuarial necessity.

PERA finds itself in a situation -- and I think Meredith described it well in his testimony -- of believing that there is an actuarial necessity to address benefits because what we're seeing is that the PERA system runs out of money within the 30-year project period. Never before, at least in the period of time, many, many decades has PERA been in the situation where we can actually see the system running out of money in the projected future. And that's a big issue. We don't believe you have to run out of money before you can fix this. We don't think that that's a prudent approach to running a pension system.

There are systems in the country that will take that position. There are systems in the country that are currently taking that position. We don't believe that you have to actually run out of money. We believe that when we have people that are paying at eight percent toward their employee contribution that were hired yesterday or last week and our own projection show that we're gonna run out of money before that person could ever even be able to draw a benefit, we have to address that situation. We believe

that is the practical definition of actuarial necessity.

But it's an important concept also because it's not, we have actuarial necessity. Let's just throw the baby out with the bath water and start over. That's not what the constitution allows. It's not what the case law allows. The case law allows if we have actuarial necessity for benefit modifications to occur to the extent necessary to address that actuarial necessity.

You can't go beyond what you need to fix. You can't take more away from those beneficiaries than you have to address the actuarial necessity. And that's one of the things that makes the Board's rigorous process so important. We didn't just go down the path and say well, what benefits do you want to cut, what benefit do you want to cut? What's gonna hurt people the least or the most? It was a much more calculated process than that to arrive at a combination, a comprehensive package that addresses the necessity that fixes the problems. And our definition of fixing the problem is reaching a 30-year amortization, which is the statutory standard for us, as well as, the GASB, the Governmental Accounting Standard Board's standards. So we chose 30-year amortization as the appropriate measure how much we could fix in order to address that actuarial necessity.

And I appreciate the question because it gives me the opportunity to bring to your attention one of the documents that I should have brought to your attention already. And that's the last page of your packet. And it's a letter dated January 7th, 2010 from the Board's actuary, Cavanaugh McDonald, a very well respected national actuarial firm that, again, addressed what does this package SB1 accomplish. And what it concludes is SB1 meets the Board's criteria for a 30-year amortization in all divisions of PERA.

We believe that's the proper test of having fixed the actuarial necessity only to the extent that we had actuarial necessity and we were able to get that confirmation by the actuaries.

CHAIRPERSON: Senator Penry.

MR. PENRY: Thank you, Madam Chair. Greg, I wondered -- in some ways I think the run out of cash analysis understates the situation. Because as I understand it absent meaningful actions to address the shortfall, PERA would actually be forced to sell off long term investments to meet short-term obligations. In other words, cannibalize long-term investment opportunities to create sort of a death spiral. I

wonder if you would speak to that as well because I think the cash crunch is actually much closer than the 25-, 30-year conversion you've been talking about.

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you, Madam Chair and thank you, Senator Penry. That is certainly true. We, in our business, talk about the 40 percent funded line. And the 40 percent funded line when you reach a 40 percent funded ratio in the defined benefit plan reach a critical point in your investment strategy. If you're below 40 percent funded because of the cash flow going out that you have in the payment of benefits. You start having to modify your investment portfolio to be a portfolio that kicks off more cash that is more liquid than you would prefer in a fully diversified portfolio. You have to start leaning towards more fixed income instruments that you know you can turn into cash when you need the cash rather than being in real estate, alternative investments, and even some stock.

So it is certainly true that running out of money is not the only critical line we have to look at and not the only significant consideration. It's also the 40 percent funded line. We're at 51 percent funded at the end of 2008. And so we're too close to that

line now. One of the things the Board focused on and one of the things you can see from those charts that show you that funded ratio is the Board's solution, as well as, SB1's solution to keep that line well above the 40 percent funded ratio throughout the third year period until we reach that 100 percent funding line.

CHAIRPERSON: Senator Brophy.

MR. BROPHY: Thank you, Madam Chair. The rookie senator from Denver actually asked the same exact question I was going to ask.

CHAIRPERSON: Thank you. Any other questions for the presenter? Okay. I think we can move into public testimony. We actually have an access of 40 people signed up to testify. And so let me just give you a few ground rules. I'm going to allow three minutes per person. I'm going to respectfully request that you not repeat testimony from previous testifiers.

I did have a request from the bill sponsor to have the proponents go first. I did talk to a young woman who had a childcare problem and I believe she's probably gone, but let me ask if Kathy Strung is still here. I didn't think so. So let's go ahead and get into --

MALE: She's here.

CHAIRPERSON: Oh, she is. Thank you. I had

committed to her to let her testify due to childcare problems. But since she's left, let's go ahead and get into the list as proposed by the bill sponsor. And our first person up would be Connie Anderson. If you would come forward.

MALE: Take the mic to her?

CHAIRPERSON: Yes. I think it's a wireless. So let's do that, Ms. Anderson, and we'll get you to testify in place. And if you would introduce yourself, who you represent and begin your testimony, Ms. Anderson.

MS. ANDERSON: I am Constance Anderson. I'm a PERA retiree and that's who I'm representing, my own personal viewpoint.

I have to tell you that in my years of teaching, one of the things that I felt that I could depend upon was my retirement. I did not anticipate that I would be in a wheelchair. I didn't anticipate that I would have COPD, but I do. And I am in my 80s. I'm delighted that I'm still around to come down and testify. But I have to stand solidly in support of SB1.

And I know lots of testimony that I could repeat, but I have to tell you my own personal experience has shown me how valuable an asset every month my PERA check is put in my bank account. And I pray to God that it doesn't stop. So please find an answer to the problems that face SB1. And I understand, I'm willing to make my sacrifices, but I want SB1 to be a bill that is passed by this legislature.

And I do thank you for your time. I won't take anymore of your time. Thank you very much.

CHAIRPERSON: Thank you, Ms. Anderson. I might add that you're a very youthful 80. Any questions for the witness? Our next person on the list is Loni Westfall. If you would introduce yourself, state who you represent and begin your testimony.

MR. WESTFALL: Thank you, Madam Chair and members of the committee. My name is Lonnie Westfall. I'm actually a PERA retiree. I spent my career with the Colorado State Patrol and retired as Chief. Now, I'm executive director of the Association of Colorado State Patrol Professionals and I'm an active member of the coalition SecurePERA. And we've been working with Senator Shaffer, Senator Penry and Representative Kerr throughout this process and trying to come to some kind of an agreement that works for everybody. And we believe that we've reached an agreement and we'd come out in support of Senate Bill 001.

I want to thank all of you for all your work on this bill. We appreciate it very much. I must say that I represent both active and retired members and not just troopers. I also represent civilian members. And we have had many discussions at our Board of Directors about this particular proposal and what we need to do to make sure that PERA is secure in the future. And all of my people are very much in support of doing what they need to do to make this work and sacrificing what they need to sacrifice.

CHAIRPERSON: Thank you, Mr. Westfall. Any questions for the witness? Thank you for your testimony. The Honorable Nora Anderson. Would you please introduce yourself, who you represent, and begin your testimony.

MS. ANDERSON: Thank you, Madam Chair. I am Norma Anderson, retired legislature. I like to use the term, honorable. I've been known for history lessons. Senator Hillier used to accuse me, oh, here comes 2002. And I'm going to do a little bit of that today.

The retirement fund in the State of Colorado was started by the legislative body back in 1935. And that's when the commitment was made. Then following that, social security was adopted by the federal government. And they gave the state a choice: you

either join social security or fund and to have your own retirement fund. The State of Colorado, long before any of us thought of being here, the legislative body made that option. And that's what you're funding today is the option that was made many years ago. And it's a contract between the employees, federal government, and the public.

I work many years on legislation for PERA. There's been good years and bad years. '87 was my first year in the legislative body. And we reduced all of the state's contribution from 12.2 reduced by two percent. The school we only reduced by one percent. So they had an advantage even back then.

You have no choice but to pass this bill, as I see it. If I was here, I would be voting for the bill as it is. Are there a couple things I don't like? Of course. There's always a couple of things we don't like. We compromise. The art of compromise is accepting everybody's hurts on this one.

And I do have to have a disclaimer. I am a 20-year PERA retiree. And I will not have any COLA for a couple of years. That's okay because it helps solves the future problems. Over the years I supported education very much. And this is the wrong time for them to disagree with this bill. I've heard rumors

that they are. If we need more money for education, the education community and the business committee should put -- and nobody is gonna like to hear this, but you better go back to the '99 taxes that we decreased, the three percent sales tax and the five percent income tax rate, otherwise you're always going to have problems. But this one is PERA in solving that contract and keeping it the way it is. It's a fair plan.

As I've said, some things I would change, raise retirement age. And I've always had a hangup on early retirement. I'd get rid of it entirely. But I support the plan as it without amendments. Thank you very much.

CHAIRPERSON: Thank you, Senator Anderson. Any questions? Senator Steadman.

MR. STEADMAN: I just want to note for the record what a treat it is to have you here today, former Senator Anderson. And I hope you will always take the occasion to come back and offer a history lesson to whomever it may be sitting up here under whatever circumstances. It's very nice to see you.

MS. ANDERSON: Thank you very much. I want to add one thing. I said I'm a 20-year PERA retiree. If I had to live on that alone, I wouldn't make it.

So, I mean, it is important to salvage what your previous legislative bodies have done. So thank you. And I know that Bob Kirsht is going to (indiscernible) and testimony. And if you really want a history lesson, that's the one that can give you one.

CHAIRPERSON: Thank you, Senator Anderson. The Honorable Bob Kirsht (ph). If you would come forward, state your name again, who you represent and start your testimony. And then I might add. I do have another list that I'm going to be working from after this in order.

MR. KIRSHT: Thank you, Madam Chairman and members of the committee. For the record, my name is Bob Kirsht. I live in Englewood, Colorado. My claim to fame is I'm another ghost from the past coming back to haunt you just for a moment. I'm not going to give a history lesson, but I do want and I think first and foremost to say that I came into this body -- I was first elected in 1970. And I, on occasion, did see bipartisan efforts to accomplish major attempts here in Colorado.

I saw a lot of political attempts at major change failed. Almost everything major that happens in this state take bipartisan cooperation. Politically, I think there are times that gridlock works just fine.

This isn't one of those times. PERA needs your help. And I have to commend the two senators who are sponsoring this bill, Senator Shaffer and Senator Penry. It takes a lot of guts to do what they're doing. And many of you in this room have been out on the political stomp and you've had the holy living you know what kicked out of you for taking the wrong position on an issue.

There's no way that these two gentleman are going to be seen to be absolutely in the right by any of their constituencies. I think what they're doing is laudable and I want to say that publically right now.

Now, just very briefly on the history lesson. When I first came here in 1971 as Senator Anderson indicated, PERA's contribution rate was 12.2 percent. Before I left here, it got down as far as 9.9 percent. Because there were those years, like this year, where the state, this year, has a monumental problem of a billion dollar deficit that you've got to deal with. And there were times like that in the past, not quite as bad, but PERA was always the entity that was turned to for relief. And if you don't believe me, go back and look at the record.

There were time after time where we needed a few extra million here or there, and PERA was flush.

The investment department does one heck of a job. And if you've never been over there, the look at Jennifer Pecat's (ph) investment department at PERA, it would make you proud. They do one heck of a job and they work hard. But there are lean years. And PERA never had very many lean years. It was mostly good years. And in those good years, the legislature and the governors relied on PERA for a little extra cash here. Can we reduce the contribution rate this year a little bit in the school division and this division? And PERA always would work the best they could because in the business they're in, it's the art of the possible. It isn't what you ideally would want, it's what you're gonna get and what you can live with. And so the pension fund that's survived for 70 years in ths political process -- more than 70 years -- and will still be strong with your help on this bill.

And I know that there were some compromises made by many people. This isn't going to make or break me. I'll be able to continue to eat, but I'm a PERA retiree. The cost of living is going to affect me, but I'm one person whose willing to say if it will make this fund stronger, than let's do it. Everybody make that shared sacrifice.

And, in conclusion, there are those who would

like to see this plan be a defined-contribution plan. Some who are on this panel -- and I have upmost respect for their position -- but having worked with this plan over the years, I know that actuarially some things work and some don't just like in the insurance business. Sometimes the cooling of a defined benefits plan will get you through the difficult times.

In conclusion, let me say that even without my cost of living increase, I'll still be able to rely on that PERA check being there. I also had other sources of income in my years. I had 40 years of social security, for example. And it's no PERA, I'll tell you that. Medicare is even worse. But when you get to my 401K Plan and my defined-contribution plan, let's just say I'm not relying on those right now because they've gone the other direction. So PERA and that defined benefit plan is there for me. It's there long term. PERA looks, the Board looks to a broad, long-term horizon.

So thank you very much, Madam Chairman, members of the committee. I support this bill and I hope you will too. It's very important.

CHAIRPERSON: Questions? Thank you for your testimony.

MR. PENRY: Actually, before he goes.

CHAIRPERSON: We do have a question. Senator Penry.

MR. PENRY: With your indulgence, Madam Chair, Bob told me something in the hallway about reforms. There are some who don't think this proposal goes far enough in terms of scaling benefits. I wonder if you could provide some context. You made a comment to me about how benefits have changed in one direction and your time watching this, and you've never seen a reversal of that pattern.

MR. KIRSHT: Well, first of all, when times are good, there are people in lobbying you, the legislators, for all kinds of changes. Either it's to tell PERA where they ought to invest their money or how the next major change in benefits comes along. And those things do compound. And once you pass a major change to this plan, it has an affect 100 years down the road that you've got to look at. And so it's not an easy choice to make.

But I think what you're referring to, Senator Penry, is that a few years ago we made some decisions on a contribution rate. And even with the paper limits that are here, the entities, the employers that have those contribution rates declined, I should say reduced resulted in them now becoming very dependent on those

dollars. And that's where your difficulty in the school division is going to be. How do you get those dollars in there because they're relying on that? And, yet, when you look back in the history, PERA's rate has never really been a factor in whether they made it or not or whether they had to have tax increases or not. PERA always was the one to turn to. And I'm saying, now it's time that we have to work on PERA and get a fix for it.

CHAIRPERSON: Thank you. Let me call up next Dan Dailey and Dan Shaffer. I guess you're going to testify together. If you would reintroduce yourselves for the record, who you represent and start your testimony.

MR. DAILEY: Thank you, Madam Chair, committee members, President Shaffer and Minority Leader Henry. Both Don and I will be speaking for the Colorado Coalition for Retirement Securities. So we'll speak together and then be happy to answer any questions.

Again, my name is Dan Dailey. I'm actually employed by the Colorado Education Association. But as I said, I'm speaking today on behalf of the entire coalition. The over 200,000 individual members of the coalition come from CEA, Colorado Association of School

Executives, Colorado WINS, Friends of PERA, CAPE retirees, AFT Colorado, DPSRS retirees, the Association of Colorado State Patrol Professionals (ACSPP) and the Colorado School and Public Employees Retirement Association.

Let me begin by first thanking the sponsors of Senate Bill 001, Senator Shaffer and Senator Penry and also representative Andy Kerr on the House side. I want to thank them for the tremendous amount of work they have done in building a degree of consensus around Senate Bill 001. Also, the efforts of the PERA Board and staff and, quite frankly, the members of our coalition. Their efforts have been nothing short of monumental over the past six months.

Combined, we have all attended hundreds of meetings and literally heard from thousands perhaps tens of thousands. I quit counting, at some point, concerned active and retired PERA members. And so thanks to everyone whose helped to get us to this point.

Briefly, Madam Chair, I'd like permission to speak about some amendments that we have been working on negotiating and I expect to be forthcoming. And our support of the bill is really contingent upon those amendments. And with your permission, I'd like to

address them briefly.

CHAIRPERSON: I think that's appropriate. Go ahead.

MR. DAILEY: Thank you. Not surprisingly, everyone is not in agreement on the final product that you have before you today in Senate Bill 001. Everyone can find something in the bill to dislike. However, what we at the coalition agree on is that the status quo is not acceptable. Senate Bill 001 with the proposed amendments and I'm specifically speaking to what I believe with be Amendments 8, 11, and 12 offered by Senators Steadman, Scheffel, and Brophy. I'm not sure of the exact order. That the bill with those amendments is the best solution at this time. It's reflective of our goals as a coalition. Those goals include shared sacrifice resulting in the long-term fiscal stability of PERA which can then provide adequate predictable sustainable retirement benefits for public employees. Because it meets our goals with the amendments, we support the bill with those amendments, and we would ask you to support the bill with those amendments, as well.

Let me speak briefly to two key provisions of the amendments that ultimately allow the coalition to support this proposal. The first is a change in the

COLA provision which will allow retirees to receive a two percent COLA in 2011 after a zero percent COLA in 2010 unless PERA experiences a negative return on an investment in 2010. That COLA change is extremely helpful in providing some major inflation protection to current retirees. And, quite frankly, it's only possible because of the outstanding investment returns that PERA achieved in 2009.

The second key provision of the amendments that I want to talk about is the one that will cap the minimum retirement age for school and DPS Division employees at 58 instead of 60. You'll likely hear more testimony on this issue from others. But I want to make clear that the reason that we can cap the increase at 58 is because school employees will pay a greater portion of the combined AED and SAED increases than non-school employees. Specifically, as part of the forthcoming amendment, employees will pay an additional two and a half percent over time and school districts will pay one and a half percent more over time instead of the two and two which is in Senate Bill 001 as it's written.

This shift in the AED to the SAED is possible in the school DPS Division because of the way schools are funded and the way school employees receive salary

increases. Fundamentally, schools operate differently than other government entities in determining salary and wage increases. As stated in current statute and in districts and employees have recognized since the SAED came into being in 2006, the SAED contributions are, in fact, funded by and I quote "allocation of funds otherwise available for use as employee compensation increases."

So I'll conclude there and ask that you please vote yes on the bill and on the Amendments 8, 11 and 12. And I'm happy to answer any questions that you might have.

CHAIRPERSON: Okay. Senator Brophy.

MR. BROPHY: BROPHY: Thank you, Madam Chair. Mr. Dailey, I wanted to ask you a couple of questions. Number one -- and I want to pull up my list that I've been writing while you were talking -- does the Colorado Coalition for Retirement Securities and the other organizations that you represent agree with the statement made by Mr. Smith from PERA that we are in a period of actuarial necessity?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair. Let me answer this way, Senator. I don't want to give you a legal opinion on that issue because I haven't studied

the law. And I think actuarial necessity clearly is a legal term that the courts will have to reach agreement on. The coalition clearly believes we are in a position where change is necessary. And the changes in this package, again, for the most part for the amendments, are changes that we will support and think need to be made to make PERA fiscally sound. So I don't want to dodge your question completely, but I also don't want to give you a legal opinion.

CHAIRPERSON: Senator Brophy.

MR. BROPHY: Well, it was an artful dodge.

MR. DAILEY: Thank you.

MR. BROPHY: Will you commit that your organization will not suggest that at some point that we have not reached actuarial necessity?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair. I have not heard anybody in our coalition directly say that we believe we are not at a point where these changes need to be made with regard to PERA. Whether that equates to not being an actuarial necessity, again, I don't want to make a legal judgment, but I don't think that's where the coalition is. We believe these changes are necessary and that's why we support this broad shared responsibility approach.

CHAIRPERSON: Senator Scheffel.

MR. SCHEFFEL: Thank you, Madam Chair. Mr. Dailey, I heard in your testimony regarding the shift from AED to SAED and I think I understand that. But there are those that would say that the shift is meaningless. I don't know if you heard Senator King's dialog earlier on this topic. It's important for me to be assured that, in fact, a shift to SAED is meaningful and the fact that the burden has shifted to the employee and not on the district. Can you reassure me there and (indiscernible) on that point?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair. Yes, Senator, I believe it is a meaningful shift. There is a clear distinction in the statute currently and will continue in the statue after Senate Bill 001 passes between AED and SAED. One, is clearly categorized as an employer contribution. The other is clearly categorized as an employee contribution.

There is also language in the currently law that I believe remains after the passage of Senate Bill 001 that speaks to when AED and SAED begin to rachet down when we get to that 103 percent funding ratio. It specifically says as the SAED ratchets down, those dollars get refunded back to employee compensation to the extent that they came out of employee compensation when the SAED was paid. So I think the intent is clear. I think the law is clear. I think school districts in particular have understood that. As long as that's been in place since I believe is since 2006.

CHAIRPERSON: Senator King.

MR. KING: Thank you. I was curious since I haven't seen your amendment how it affects the funding of PERA over a 30 year period of time?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair. Senator King, my understanding is it doesn't change the 30-year funding ratio because, again, we're still getting four percent total AED and SAED contributions from the school and DPS division. It's just allocated differently from two and two to one and a half and two and a half. So the net effect on the bottom line is no difference in revenue coming into PERA.

CHAIRPERSON: Any other questions? Thank you, Mr. Dailey. Mr. Shaffer.

MR. DAILEY Thank you, members.

MR. SHAFFER: Thank you, Madam Chair. My name is Don Shaffer. I am a PERA retiree. I'm a volunteer member of the Board of Directors of the Friends of PERA which is an organization that had come

about in the last few years to advocate for making sure we have a well-funded defined benefit plan for all public employees. I'm speaking here today as part of the coalition to preserve the funding for PERA -- Coalition for Retirement Security.

From the e-mails and the discussions that I've had with members and retirees alike, I can safely say there's not one PERA member or retiree who wants to see the changes that are about to happen with Senate Bill 001. But I also know that they do not want to see the demise of PERA. For retirees, the change and the cost of living is difficult to swallow. It will be a hardship for most, if not all, of the retirees.

However, the alternative of doing nothing is unthinkable. If we delay taking action, the fund could be exhausted in a few decades. We agree that given today's economy, given the volatility of the markets, given PERA's funding level, especially when looking at the market level and the severe budget strain that the PERA employers are facing, that all of the stakeholders of PERA should share in the sacrifice and responsibility to ensure the long-term sustainability of the fund. We appreciate very much the work that the PERA Board of Trustees have done in resolving the funding crisis and for working with the coalition and

the sponsors to minimize the impact. We appreciate Senator Shaffer's and Senator Penry's support in amending the bill to provide COLA increase in 2011 should this pass this committee. And we are pleased that PERA has agreed to add a provision into the bill that requires a study every five years to compare the cost of living increase with the consumer price index increase and to see just how hard hit retirees have been.

We are hopeful if there is a big disparency that some remedy might be made if there is a drastic difference. The coalition wants to ensure that the PERA benefits are available to new C-DOT highway workers, to new corrections' officers, to new school teachers who begin work maybe this week or next week and will retire 30, 40 years down the road. Given the information that we have seen from PERA, this bill maps out how to ensure that this happens.

I know some people disagree with the increased contribution to the AED which, by the way, does not start for several more years down the road. However, and I don't mean to correct Mr. Kirsch, but I think at one point, the contribution rate for the school division was 12.5 about 25 years ago. It has reduced as Mr. Kirsch mentioned. And even today with

the contribution rate and the AED, the amount going into the pension plan is less than it was 25 years ago as far as a percent of salary is determined.

Likewise, the amount of contributions is below the national average for public employers. And if you look at the US Chamber of Commerce, it's below the national average of private employers. Use those numbers.

In closing the coalition and the Friends of PERA Board of Directors supports Senate Bill 001 with the proposed amendments that Mr. Dailey discussed. Thank you for your attention.

CHAIRPERSON: Thank you, Mr. Shaffer. Any questions? Okay. Let me -- oh, I'm sorry. Senator King.

MR. KING: Thank you. Maybe you don't know the answer to this, but the proposed COLA change for the year 2011 that is in one of the amendments that I asked Mr. Dailey about also, do you know what the dollar amount of that proposed change is?

MR. SHAFFER: I do not. I'm sorry, sir.

CHAIRPERSON: Mr. Dailey, do you know?

MR. DAILEY: I do not know off the top of my head.

MR. KING: If I can just continue. It must be significant enough that you're supporting it. So I would be interested in knowing if somebody could tell us what the dollar amount of that COLA change is and how that impacts the actuarially soundness of this proposal in relationship to it becoming 100 percent funded in 30 years.

CHAIRPERSON: If future witnesses know that, then we'll ask them to address that question. Let me call up Cindy Litch and Joanne Flanovitch. And let me just mention too that we do have a timer here. It's not audible. It's one of the old fashion ones. So when your time is up, if you would kind of keep your eye on the vice-chair, Senator Johnson. He will lift that up when your time is up and then you know to wrap up.

So if you would introduce yourself for the record and who you represent, and start your testimony.

MS. LITCH: Hi, my name is Cindy Litch. And I worked in the Douglas County School District as a teacher on special assignment for the Douglas County Federation Office. I also sit on the AFT Colorado Exec Board. I represent about 3,400 teachers and 2,400 classified employees in Douglass County School District. We are the biggest employer in Douglas County. I have been a member of the coalition for six

months. And on behalf of Douglas County School employees, I support Senate Bill 001 with the proposed amendment.

I would like to thank you for your collaborative efforts in finding a solution to the problems PERA faces. We feel these proposed amendments are a good compromise for all concerned. Many things have happened in Douglas County School District over the last two years that are contributing to the lowest moral of employees I have experienced in 25 years of teaching.

As you know or may you don't know, we failed to pass a bond and budget election that would help with our school finances. We took a pay freeze this year. Our health insurance benefits have changed due to deficits in our health insurance fund which cost their employees more in both premium and out-of-pocket expenses. We are currently in negotiations with what looks to be a pay freeze again next year and talk of furlough days on top of that.

It goes without saying that these freezes not only affect us now, but affect us financially for the rest of our lives. For the first time ever, teachers and classified employees in Douglas County are worried about losing their job due to downsizing that has to

take place as a direct result of state budget cuts. Don't be confused. We all understand that something needs to be done to make our retirement fund solvent.

As you can see from our compromise and the amendment, we are willing to share in this responsibility. Even with the proposed amendment, we, as employees, are looking at a future that is financially challenging. In our district alone, we are facing a future with 450 fewer employees while our school district continues to grow. More work for less pay, bigger class sizes, less time to get the work done. And we have heard that due to rising cost, there is a threat of privatization of certain job classifications, which would put many of our valued employees out of work and threaten the safety and quality of our students' education.

While we realize we are not painting a picture that has different landscape than any other Coloradans, it is important to remember that this is our only source of retirement funds. We do not have a choice, as we do not receive social security.

Twenty-five years ago I chose a career in teaching for many reasons. I have planned ahead for a retirement based on the facts I got at that time. At this time, more than ever, we need to have a retirement

plan that not only employees like myself who only have a few years left to work, but employees such as Andy, who came with me, who is young enough to be my son, and has about 25 years left in the system can have something to count on.

Thank you for your time and your thoughts in this matter.

CHAIRPERSON: Thank you, Ms. Litch. Any questions? Okay. Joanne Slanovitch (ph).

MS. SLANOVITCH: Good afternoon, Madam Chairman and Members of the Committee. My name is Joanne Slanovitch. I'm president of the Douglas County Federation of Retired Teachers and Educators, a member of the American Federation of Teachers of Colorado, and a member of the Coalition to Secure PERA, newly retired one year now after paying 36 years into PERA.

I am here to support Senate Bill 001 with the proposed Amendment 8, 11 and 12. As you know, cost for health insurance continues to rise. For those of us in PERA who are not eligible for Medicare, the cost of health care premiums rose $108 in January, reducing my retirement check and those people like me by that same amount. Co-pays rose for hospital stays and emergency room visits as well as doctor visits. But the retirees that I represent are willing to forgo the cost of living increase for the 16 months for March of this year until July of 2011, offsetting the rising cost of health insurance to help secure our retirement fund.

We are also willing to have our three and a half percent cost of living reduced to a fixed two percent in July of 2011 to maintain and strengthen PERA. We look forward to the legislative review to be held in five years to assess the progress of changes made to PERA this year and to continue to make sure that those single entities within PERA are not any more or less responsible for its solvency.

I'd like to thank the committee and the senators for this opportunity to support Senate Bill 001 with the proposed amendment. Thank you, Madam Chairwoman.

CHAIRPERSON: Thank you, Ms. Slamovitch. Any questions? Thank you for your testimony. Sean Hinga (ph), Kathy Desino (ph) Filisameripha (ph) are the next persons up.

MR. HINGA: Madam Chair, Sean Hinga with ASME from Denver, Colorado.

CHAIRPERSON: Go ahead.

MS. DESINO: I'm Cathy Desino. I'm with the Colorado ASME Retirees from Pueblo.

MS. SAMIRIVA: And I'm Phyllis Samiriva. I

am a PERA retiree. And I'm also the president of ASME Colorado Retirees.

CHAIRPERSON: Who would like to begin?

MS. SAMIRIVA: I will. Thank you. Thank you for this opportunity, Madam Chair, and the Members of the Committee for the opportunity to allow us to testify on this important issue to us.

ASME and ASME retirees were early and active participants in the Colorado Coalition for retirement security and shared their positions to remove our opposition pending future amendments.

In addition to some of the points that have been made already this afternoon or will be made by other coalition partners, we have serious concerns about our low income retirees who are most at risk to these proposed cuts and future fluctuations in inflation and medical costs. This medical cost is a real concern for them.

While we have removed our opposition to the legislation, we encourage you and other legislatures and leaders to work to devise a plan to protect our most vulnerable seniors who are living on the brink of poverty at this time. We think that looking at a progressive COLA plan that can protect those most in need would be the best way to address this issue.

While we don't want to focus on specific solutions at this time, there are many ways to approach this concept and we will welcome the opportunity to continue to work with you to find ways to address the concerns of our retirees.

Again, I want to thank you for the opportunity to address this committee and we appreciate the hard work that you have done. As I know that there are many hours that have gone into this getting us to who we are today. And I just wanted to make a note that we PERA retirees are tax payers, and we do spend our income here in Colorado. Because sometimes we get the feeling that people think that we're a separate group over here and we're not tax payers. So I want to thank you again for your time.

CHAIRPERSON: Thank you, Ms. Samiriva. Anybody have a question? Okay.

MS. DESINO: Madam Chairman, Senators, I just want to be a little more specific as I speak for or plead for a group of retirees, the widows, the widowers and the caregivers who have been out of the workforce for ten or 15 years like me who, if not sole income is the PERA check, it's certainly their primary income.

When you're tweaking the COLA, just remember anything even less than $100 for these people can

saddle them with some decisions or some choices that can be very, very devastating such as groceries, medicines, gasoline, utilities. The people I'm talking about don't make any way near the amount of money that the professionals made. These were the ones that took care of our patients, our clients. They did the laundry, they mopped the floors, they drove the truck, they took care of the yards. They're not making that kind of money and especially when they've been out of the workforce as long as I have.

Just remember, they are watching you very, very carefully and a little bit scared. Thank you.

CHAIRPERSON: Thank you, Ms. Desino. Did you have comments? Okay. Thank you for your testimony today. Next up we have Bruce Coy if I pronounced it right.

MR. COY: Chairman Sandoval and Members of the Committee, I just want to thank you for taking the time to address this important issue. My name is Bruce Coy and I'm the deputy executive director of CASE, the Colorado Association of School Executives. I'm here to testify in support of Senate Bill 001 with proposed Amendments 8, 11 and 12.

We just received the amendment language and we've been reviewing it, so this has been kind of a courtesy look at this point, but at this time we can support what they're saying. CASE has more than 2000 members who serve in administrative roles and school districts including superintendents, chief financial officer, personnel administrators and principals. By it's very nature, CASE is very interested in the future of PERA from both a management and an employee perspective. This has allowed CASE to play a unique role in the negotiations on this bill and for us to be a strong partner with the Colorado of Coalition for Retirement Securities since 2006.

On this bill and amendment, we've really supported the hard work on PERA staff and also the PERA Board of Trustees. We appreciated the efforts of bipartisan, cooperation by Senate president Shaffer and Josh Penry, but we also appreciate Representative Andy Kerr and the House leadership.

I've also spoken to Jane Urshall (ph), the deputy executive director of the Colorado Association of School Boards. And she asked me to share her board's support for Senate Bill 001 with the amendments that I mentioned earlier. Paula Stevenson had to leave earlier. She's the executive director for the Colorado Rural School Caucus, and she also wanted me to address their support to Senate Bill 001 with amendments,

particularly, with the work they've done with Senator Brophy on the amendment dealing with extending contracts to 140 days.

It hasn't been pleasant to discuss the hardships that PERA fix creates, at this time, a great economic distress, as you've heard. Without minimizing in any way the shared sacrifice of our active and retired employees, I want to stress today that school districts faced with drastic cuts in funding are not going to be faced with incremental increase in their contributions for the stability of PERA. The only way that we can get fully behind today's bill and the proposed amendments is to highlight the shift that impacts the school division.

First, keeping the retirement age at 58 will help districts who will not have to keep their most expensive employees longer. Second, keeping the age of 58 for employees hired after 2011, the employee's share or SAED will increase from two to 2.5 percent. CASE and CEA have agreed to recognize today that the governing the increase SAED is paid for by a fund that would otherwise go to employee raises. We recognize the distinction of SAED, the employer's share, and the AED, employer's share and also agree with the reduction of a half percent from the employer's share to help

them set this slightly lower retirement age.

Please support Senate Bill 001 with proposed amendments 8, 11 and 12. Thank you for taking my testimony today.

CHAIRPERSON: Thank you, Mr. Coy. Any questions for this witness? Thank you for your testimony today. Mark Bury (ph). Please introduce yourself, who you represent, and begin your testimony.

MR. BURY: Madam Chairman and committee, my name is Mark Bury. I'm a member of PERA. I've been retired from C-DOT for nine years. I was a heavy equipment mechanic and I put in 32 years service to the state of Colorado.

I have participated in the coalitions as a member of paid retirees since the summer. We recognize that PERA must be placed on sound financial footing. Consequently, we support Senate Bill (sic) as it will be amended today. Having said that, I want to raise several concerns.

While Senate Bill 001 makes an effort to spread as the sacrifices needed to stabilize PERA, the costs and risks impact retirees different while active employees will pay more to secure their retirement. The retiree COLA guarantees -- or the reduction in the retiree COLA guarantees that we will lose in the

inflation protection. Double digit inflation as you can remember from the early 80s could cut the purchasing power of PERA checks by 50 percent in just three years. Retirees and those about to retire will have to take this risk. And that risk is scary when you don't have social security. We only need to read the paper to know that inflation is hiding behind the federal budget deficits.

Although Senate Bill 001 requires a five-year review of its impact, we hope that you will pay attention to the PERA balances in the future. Most retirees can't go back to work even if there were jobs out there for them. Keeping the promise of the secured dignified retirement is more than a technical legal issue. Being in a western state like we are, it is a matter of keeping your word to the men and women you hired to do your work. That's a cowboy ethic that we embrace.

Aa retirees, we are ready to do our part. We have our fingers crossed that the legislature who is here sitting in your chairs five to ten years from now will do their part in looking at the PERA level. Thank you for your time.

CHAIRPERSON: Thank you, Mr. Bury. Any questions? Thank you for your testimony. Gary Hoy.

Please introduce yourself, who you represent and begin your testimony.

MR. HOY: Thank you, Madam Chair and members of the committee. I'm Gary Hoy, currently president of the Colorado School and Public Utilities Retirement Association representing some 40,000 retired educators in the state. I want to first of all thank PERA for their openness in discussing this issue with the citizens of the State of Colorado. And representing those 40,000 people, I decided it was necessary for me to hear what they had to say. So I trailed Meredith and his troop of advisors around the state. I attended the meetings in Fort Collins, Grand Junction, Durango, Aurora, Denver, Greeley, Sterling -- shortly after the meeting in Fort Collins and Greeley. I've been invited to serve on panels at town hall meetings to listen to input from PERA retirees and citizens. And as a result of that, if I'm going to represent people, I need to know how they're thinking.

With the proposed amendments, I can guarantee you that retirees in our organization will support the Senate Bill 001 with the proposed amendments and I hope you pass that legislation. Thank you.

CHAIRPERSON: Thank you, Mr. Hoy. Were there any questions for the witness? Thank you for your

testimony. Our next person up is Karen Wick. And if you would introduce yourself, who you represent, and begin your testimony.

MS. WICK: Good afternoon. Thank you, Madam Chair, committee members, Senator Shaffer and Senator Penry. I'm Karen Wick. I'm here on behalf of the Colorado Education Association. As you heard earlier, we are part of the Colorado Coalition for Retirement Security and we, too, support Senate Bill 001 with the forthcoming amendments.

Let me speak first to the issue of minimum retirement age for future school employees. Under the proposed amendment, the age and years of service ruled for all new PERA members hired after January 1 of next year will rise to 58 and a rule of 88. They will then remain at that level in the school and DPS divisions when the other divisions rise to the age of 60 and the rule of 90 in 2017. This is a very good thing for schools. And one of the most important reasons why CEA is supporting the opposed amendments.

In considering this change, it is important to understand the negative consequences and increase retirement age will have on the financial situation on Colorado School Districts. You've heard some of this from CASE earlier from Bruce Coy when he came to

testify. Because the way most of the teachers are paid using an escalating salary schedule, school districts are able to survive economically be continually replacing their most senior and most expensive teachers with new, less costly ones. And they typically do this through retirement at the end of a teacher's career.

By raising the retirement age to the new retirement age, we force school employees to work longer, costing districts more and we eliminate the district's ability to replace their highest cost employees. The net effect of this is a change in shifting the cost from PERA, a multi-billion dollar organization onto small local school districts, which have really limited ability to absorb and adjust their budgets to absorb these costs. You know, we've already have seen in the school district, looking into this next budget year going forward, early retirement plans being offered by at least two school districts both in Pueblo and Grand Junction. We've also heard of the city and county of Denver offering such to their highest paid employees with incentive packages for their most senior employees to retire early.

And anecdotally, we've also heard some small rural of districts that if one top teacher, one of their highest paid and eligible teachers were able to

retire, they would solve their pending budget crisis going forward. So as you can see, this ability to have the cycle happen is really critical for school districts and their budgets.

So while increasing the retirement age of public employees may sound really politically attractive, it does have a negative unintended consequences. But, nevertheless, given that the proposed amendments limits the increase for school employees, we are supporting Senate Bill 001 with the forthcoming amendments. We ask that you please also support the amendments as well as Senate Bill 001. Thank you.

CHAIRPERSON: Thank you, Ms. Wick. Any questions for Ms. Wick? Thank you for your testimony.

MS. WICK: Thank you.

CHAIRPERSON: John McPherson. And if you would introduce yourself and state who you represent and begin your testimony.

MR. MCPHERSON: Thank you, Madam Chair, members of the committee. My name is John McPherson. I'm a retiree of the Denver Public Schools, which effective January 1, 2010 thanks to the sustained efforts of Madam Chair and others makes me a PERA retiree. I'm also a former member of the Board of

Trustees of the Denver Public School's retirement system and currently an active member of the Colorado Coalition for Retirement Security.

I'm speaking today in support of Senate Bill 001 with the amendments that have been addressed earlier in testimony.

I'd like to give you just a short background on some of the studies that were conducted prior to the merger of the DPS retirement system into Colorado PERA. As the PERA Board of Trustees face their funding situation at late 2008, early 2009, Those of us in DPSRS knew that we were facing a similar situation because our losses were very similar to those incurred by Colorado PERA.

As the PERA Board conducted their study, they were unable to include us as the DPS Division at that time because when those studies began, number one, the legislation that eventually passed had not even been introduced. And later on as we proceeded, PERA was far enough down in the study that they couldn't go back and recreate exactly the study that they had done for the other divisions. So we formed our own funding study group, did studies that turned out to be parallel to those of Colorado PERA, totally independent of Colorado PERA, but we reached the same results. And that was

that what is now the DPS division of PERA, with no changes to the contribution schedules or the benefit levels, would run out of money in approximately 2027.

To that end, in November of 2009, the DPSRS Board of Trustees passed a resolution with a recommendation to the PERA Board and the Colorado General Assembly that whatever legislative changes may be proposed for the PERA school division, that they be equally applied to the DPS Division realizing that as of 1/1/2010, DPSRS would no longer exist.

The principles which guided the study by DPSRS were very similar to the principles which guided the study by the PERA Board of Trustees focusing on the long term sustainability of the defined benefit plan. I believe that Senate Bill 001 addresses this sustainability in a fair and responsible manner and looks at the changes necessary to ensure the sustainability of this plan for all members of all divisions for many generations to come.

I would only add, as President Shaffer said in his testimony earlier, that none of us wants to be here discussing these changes either in contributions or in benefits. But we also realize that -- if I may quote Senator Penry and Senator Brophy from an article in the paper the other day -- "we also realize that the

stakes are too high and the consequences are too lasting for us to allow the perfect to be the enemy of the gird." I urge your support of Senate Bill 001. I'd be happy to take any questions.

CHAIRPERSON: Thank you, Mr. McPherson. Any questions from the committee? Thank you for your testimony. Scott Wasserman and Mike Whirley (ph). Please introduce yourself, who you represent and begin your testimony.

MR. WASSERMAN: Thank you, Madam Chair, Members of the Committee. My name is Scott Wasserman. I'm the political director for Colorado WINS and this is Mike Whirley, a member of Colorado WINS (indiscernible).

I just would like to say I think from the outset, the goal for Colorado WINS has been to secure the defined benefit plans for current and future public employees. And I think this process for us has really been about striking the balance. Not only a balance between the needs of retirees and active members, but also a balance between the need to protect the solvency of the funds with the financial security of our current members. And, you know, I think it's really important to under the context that our members have been looking at this issue through. And, you know, I think for us,

the SAED is something that is worth noting, represents a tremendous sacrifice for our members.

When we talk about the two plus two plus two, sometimes we (indiscernible) about it. Two percent SAED means, you know, for the next several years, receiving additional salary surveys that would have ordinarily gone to our members on top of years where they have not received a raise. This year our members are facing a 2.5 percent pay cut. And in addition to that, they are looking at a six to eight percent increase in healthcare premiums.

So for us, we don't take the aspect of this proposal lightly. And I spoke earlier about balance. And I think with the amendments that have been discussed and probably will be fleshed out later, we come pretty much as close as we can to the balance that we need. And I think with those amendments, we will withdraw our opposition to Senate Bill 001. But I will say is that we are proponents at what I would describe as a progressive COLA. I think that you've heard this referred to earlier by other groups. I tink other groups who are opposing the bill, will also talk about this concept. And this is a concept we would really like to see fleshed out.

And I'm happy to take questions or talk to you individually about that concept. I'll turn over to Mike who can talk a little bit about the perspective of (indiscernible).

CHAIRPERSON: Mr. Whirley.

MR. WHIRLEY: Thank you, Madam Chair. I'm Mike Whirley and I'm an employee of the Colorado Department of Labor and Employment. I've worked in state service for 17 and a half years. And prior to that I've worked in the private sector for 22 years. I guess if you do the math, that makes me an old guy.

I would like, on behalf of state employees, to thank the committee for making PERA a priority in this session. I think PERA has been good for Colorado for about 80 years now. It's provided a stable retirement benefit for public employees at a contribution rate from employers that's pretty comparable to what private sector employees contribute in social security and other retirement benefits. It's also helped in state's service to maintain a stable workforce. And PERA records indicate that 90 percent of PERA retirees live in Colorado and spend their retirement benefits here.

I do have a few concerns. One is that the final product of your bill provides a solution that meets, but does not exceed the problems. As a state

employee, I think I can speak for pretty much all state employees in that we understand given the circumstances that we need to contribute more to our retirement and that we will have to work longer and receive less. However, I am concerned that this comes at a time when we are experiencing pay and benefit cuts. And it also comes at a time when the demand for services from the Citizens of Colorado are greater than ever.

I'm also concerned about some of the negative and misinformed press coverage from -- for state employees as a result of the proposed bill. And I hope that the committee will not ignore state employees commitment to quality public service on behalf of the citizens of Colorado.

Finally, I'm concerned that weakening benefits for PERA too much will make it difficult to attract and keep qualified employees and state service in the future. I believe that the members of the committee are good and just people. And I ask you to come to a good and just resolution for PERA not just for people like me who are current employees, but also for the retirees particularly the elderly retirees whose PERA paycheck is the only source of income they have. Thank you for your consideration.

CHAIRPERSON: Thank you, Mr. Whirley. Any

questions for either of these witnesses? Seeing none, thank you for your testimony. Bruce Hully. Please introduce yourself and who you represent, and then you may begin your testimony.

MR. Hully: Bruce Hully, the Adams County Democratic Party. I am a PERA retiree. I'm also a disabled veteran. And I feel that this system that we have in Colorado is good as compared to other states that have completely failed. The legislation being proposed with some changes may be the answer to the sustainability of the PERA that we are dependent upon. Thank you.

CHAIRPERSON: Thank you, Mr. Hoy. Any questions? Thank you for your testimony. Will Burt. That's two words, Will Burt. Please introduce yourself, who you represent, and begin your testimony, Mr. Burt.

MR. BURT: My name is Will Burt. That is two words. I live in Lakewood, and I am a PERA retiree. First I want to say I appreciate the willingness of the bill sponsors, the PERA Board and the general assembly to consider to solving this problem at this time.

As a retiree, I speak only for myself, but I'm, frankly, more than willing to contribute what is for me personally a modest financial impact. So as to

also contribute partially to solving the problem as a whole. I think that the PERA defined-benefit plan is, indeed, worth saving although other alternatives may be very worthwhile for consideration in the future. But those were not available to those that retired when I did or began service when I did, frankly.

Finally, this statement has no legal standing for anyone. But if I had a similar financial problem to deal with on a personal or family level, then it seems to me that I would consider it an actuarial necessity to begin solving it now and not put it off to the future.

I appreciate your support for Senate Bill 001 and your willingness to consider it now rather than in the future. Thank you.

CHAIRPERSON: Thank you, Mr. Burt. Any questions? Thank you for your testimony. Eileen Bond. Please introduce yourself, who you represent, and begin your testimony.

MS. BOND: My name is Eileen Bond and I'm gonna wear two hats today and one very briefly. I belong to the Colorado Senior Lobby. And a week ago Monday, the lobby voted to support this bill. So I'm speaking very briefly for that. And then, I'm gonna take that hat off and put my own on and speak for myself.

I am a retiree from Denver Public Schools, so I'm a very newbie to PERA. And I attended a lot of the DPS retirement board meetings because I could tell there were problems. And I saw those three lines, the one line going straight across, the one line going slowly out to 30 years, and another line going down to 20 years. And then I attended PERA's town meetings or whatever they were called. And doggonit, they were the same three lines. And the thing that I look at as a retired teacher is I care very much about those people coming along behind me. And for me to drain the system, have them pay into it to pay my pension, and then, when they get to be where I am to have nothing would be the most immoral thing I could imagine. So I really, really urge you to make sure that we stay on that straight line and don't go in any of the ones that go down.

The beginning salary for a teacher in DPS is $35,000 a year or thereabouts. That's not big bucks. And to have a comfortable retirement when they get to be my age is a very nice thing to have. I watched by 403(b) change with the markets. I mean, everybody in the country that had any money in anything watched it changed. And so, I mean, this is no different than the

rest of us.

And one of the things that I really want to say is the people that are complaining about losing their COLA, their three and a half COLA, you get two percent, it gets compounded. And compounded, I mean, I know it's not a whole lot, two percent. But if you compound that, it's still more and more each year because each year you get two percent of your two percent. And so it's not a fixed amount. It's not $30 a month more each year which would be much more with inflation.

Well, that's it. That's basically what I want to testify that I really support this bill and I hope this committee votes to pass it because we truly, truly need it. And we need it for the people that are coming along behind us as well as us. Thank you.

CHAIRPERSON: Thank you, Ms. Bond. Any questions for Ms. Bond? Senator Brophy.

MR. BROPHY: Madam Chair and Ms. Bond, I don't have a question for you. I just wanted to say thank you for coming to testify. You were so succinct when you said it would be immoral for us to drain this fund and leave future retirees high and dry. And that really struck me. Thank you.

CHAIRPERSON: Any other questions? Thank you

for your testimony. Those are all the proponents of the bill. Is there anyone else in the room who wishes to testify in favor of the bill? Okay. Now, we're going to move onto the opposition. And I'm just going to go in order as you signed up. Our first person up would be Gary Justice. And when you get up here, if you would introduce yourself, who you represent, and begin your testimony.

MR. JUSTICE: A packet is being handed out to each of you. The first two pages are my script. I'll try to go fast or if you would indulge me a little bit extra time, you'll be able to understand it. But I was a math teacher, so I can talk fast.

Good afternoon, I am Gary R. Justice of Evergreen, Colorado and a Denver Public School 2003 retiree, now a member of PERA. By way of background, I served on the Denver Classroom Teachers Association Negotiations Team for 22 years. I was co-chair of the designed task force of the Professional Compensation System for Teachers, or PROCOM.

My goal today is to inform you of the two thresholds. I believe you must meet before you vote to support recommendations of Senate Bill 001 to the Senate. I am adamantly opposed to any reduction in the contract of 3.5 percent cost of living assessment for

current and future retirees. My objections to it are both legal and actuarial. And let me say that I represent a very loose coalition called SAVE PERA COLA. And we have a website at SavePeraCola.com.

I'm sure you have heard of the arguments whether it's constitutional to cut partially or fully vested benefits, but perhaps not the argument themselves. Senators Brandon Shaffer and Josh Penry claim that actuarial necessity is a legal rationale for doing so based on the 2004 attorney general, Ken Salazar's formal opinion on the issue.

Salazar relied heavily on two Colorado Supreme Court decisions, which I have included in your packet. Colorado Springs Firefighters Association versus City of Colorado Springs and Police Pension and Relief Board of Denver versus Lawrence Phil, et al. Salazar was asked by then treasury Michael Caughlin about the legislator's ability to alter retirement benefits for public employees under PERA. Salazar's answered that among three possibilities for doing so, one is an adverse change to a partially-vested pension right is lawful only if it is actuarially necessary.

He next emphatically pointed out, "Once a PERA member fulfills all of the statuary requirements for a pension benefit, retires and begins receiving a pension, the member's fully-vested pension cannot be reduced by the General Assembly." In his discussion, Salazar, on page two, cites the Denver Police decision as basis for this (indiscernible).

Some vested pension rights cannot be eliminated. "When a PERA member retires from active service and begins receiving a pension, the member's pension becomes a vested contractual obligation of the pension program that is not subject to unilateral change of any type by the general assembly." He also cites the US and Colorado Constitution as basis for the statement, "Rights that accrue under a pension plan can be contracted obligations protected under Colorado Constitution, Article 2, question 11 and US Constitution, Article 1, question 10." A copy of those sections have been included in the packet.

It appears to me and many PERA members that Salazar has strongly stated that any reduction of the 3.5 percent COLA for current or future retirees will not pass mustard in a court of law. Given all of you have taken an oath of office to defend and support the Constitution, it is therefore incumbent upon each of you to, at a minimum, read each of these documents, ask for assistance from your legal team, demand a copy of the legal opinions of PERA and Senator Shaffer and

Penry claim to possess, and then, make an informed decision on whether you believe that reducing retirees' benefits is legal. It is not acceptable to take the attitude that we'll let the courts decide the issue that some have for justice. We cannot wait for two or more years for the court's final ruling may take to solve the PERA funding problem.

My second objection for the PERA 2-2-2 plus plan is actuarial. Unfortunately, all of us in this room who don't work for PERA are operating in an informational vacuum. The PERA Board trustees have not released the actuarial studies to the Commission to justify the proposal it has made. Instead, it has simply produced a summary of it. PERA has not yet answered any details about what amount of savings would be realized by each of the components. They say it has to be considered as a whole. I perceive that they don't want to. Because if they did, it would confirm what Senator Penry said January 22nd in the Denver Post as true. "Fully 90 percent of the PERA fix comes from benefit cuts to current and future retirees, not from school districts or the state's general fund."

In your packet is a quite revealing table that outlines what the average PERA retiree with a 2008 benefit of $2,772 will experience in reductions in

contracted COLA over a life time. For someone who lives 30 more years, that is $453,629 by the end of the year 2039. Multiply this by the current $81,2548 retirees and PERA has saved a conservative $36 million in today's dollars, not counting interest. I agree with Penry on this one. It is a huge hit on retirees.

The PERA 2-2-2 Plus Plan relies on old numbers, not reflecting current fund performance. Jennifer Pecat (ph), chief investment officer, reportedly stated November 20th, 2009 for the Board of Trustees that investments are up 20 percent for 2009. PERA has changed the investment assumption rate of return from 8.5 to 8.0, worth about $4 billion of that problem.

They have changed from a 40-year to a 30-year recovery plan, I might say, at the direction of the general assembly in 2004. They have targeted a 100 percent funding level rather than a 80 percent funding level, even though 80 percent is considered acceptable across the county. And PERA has never claimed a funding crisis in the many years since 1970 when it has been less than it is now. See the history of funding ratio sheets in your pack.

Ronald Snell (ph) who will speak to you tomorrow in the Joint Finance Committee -- he's from

National Conference for State Legislators -- should be asked about this 80 percent funding ratio. Is that a legitimate target?

All of this is to say to you I want you to perform the due diligence necessary to study the PERA actuarial study that claims there is a funding crisis. So far, PERA has not effectively made that case. And there are many serious questions asked as to whether actuarial necessity is real. More likely, it is in some measure a contrived crisis in order to effect major changes in benefits during what Senator Penry calls "this window of opportunity that may well be gone after the 2009 investment returns are released." To best perform due diligence, only a legislative study committee over the next year can complete such a task. Without a definitive and well-documented declaration of actuarially necessity by the General Assembly and any court challenge to Senate Bill 001 will certainly be upheld.

Two thresholds that must be satisfactorily met before you vote Senate Bill 001 out of this committee. This is your challenge which 400,000 PERA members will be watching. Thank you.

CHAIRPERSON: Thank you, Mr. Justice. Any questions? Senator King.

MR. KING: Thank you. Question for you. Could you tell me a section of PERA whether or not in the initial legislation the COLA was established at 3.5? And has it ever been adjusted up or down in the history of PERA ever?

CHAIRPERSON: Mr. Justice.

MR. JUSTICE: I know that it's been adjusted upward in about 2000 (indiscernible). I don't know if it's been adjusted down.

CHAIRPERSON: Senator King.

MR. KING: Was that an unconstitutional adjustment when they adjusted it up?

MR. JUSTICE: No. Because that's not prohibited by the Constitution. It's not a taking; it's a giving. And that was in the attorney general's report.

CHAIRPERSON: Senator King.

MR. KING: And so the people, your contention is once it's given at the day of retirement, whatever the conditions are for the COLA on the day that the person retires that they have no opportunity to adjust it. So it is your contention that it could be adjusted if an employee is going to retire after this bill passes or let's say they are going to retire, the COLA could be adjusted on somebody who has not, as of today,

retired because that has not been given to them as a vested right?

CHAIRPERSON: Mr. Justice.

MR. JUSTICE: No, sir. That would only apply to people hired after January 1 when the law was changed restricting their ability to have full COLA without conditions.

MR. KING: So your contention is you can increase, but you can never decrease. The legislature never has the prerogative ever to decrease a right given once it has been given regardless of what that right is because it becomes constitutional at that point?

MR. JUSTICE: I believe that's generally correct. I'm not a lawyer, obviously.

MR. KING: Well, I think the essence of your testimony is that once the legislature invests a right in an increase in a vested increase from two percent to 3.5 percent, that even though you have not retired and even though you're not getting a pension at the time that you are currently employed, that is the takings. I don't find that as a legitimate argument myself, but I am not upholding the Constitution if you have not retired, let alone retire because you have not had the right vested to you. You have not taken that right.

In other words, I guess I want further clarification from you on why that is a taking when if I am an employee of PERA and I have not retired and that right has not been vested to me how that right can be considered a takings when I have not retired?

CHAIRPERSON: Mr. Justice.

MR. JUSTICE: I'll refer you to the attorney general's answer on page one, the last sentence. "Once a PERA member fulfills all the statutory requirements for a pension benefit, retirees begin receiving a pension, the member's fully vested pension cannot be reduced by the general assembly." But in addition, elsewhere he talks about partially vested pension. And that part is at a lesser standard that may be subject to actuarial necessity according to -- well, under the law, it's January 1, I think it's 2005.

MR. KING: Were you quoting from this particular page? What was this? Where were you reporting from? Well, as we all know here, every one of us including the attorney general has a right and an opportunity to give an opinion. Whether or not that opinion is any more valid than my opinion is the judgment of all of us who sit here.

I come here seriously deciding whether or not today that the 3.5 percent COLA is a vested right under

the constitution of the State of Colorado. I uphold that. I don't know if I'm convinced, based upon this answer, that that is a constitutionally-invested right especially to somebody who has yet to retire because they have yet to have that right vested to them at this particular time. So I question the validity of the interpretation of the opinion.

CHAIRPERSON: Any other questions? Senator Johnson.

MR. JOHNSON: Thank you, Mr. Justice, for coming first of all and for your great presentation. I have another question which is on page one here of the attorney general's opinion, he talks about the three part tests for what would happen if, in fact, these are partially-invested rights protected by the contract clause of the Constitution. And it references McEnernie here which is one of the cases you gave us. And thank you for that. And in McEnernie there is three part test to when changes are acceptable. And it mentions the third part of the test which is the first part as you identified as actuarial necessity -- or I'm sorry the first part is actually if the change is balance by some corresponding changes that improved the outcome. So either any adverse change must be balanced by a beneficial change. The second one is actuarial necessity. The third one is any change that would strengthen or improve the pension plan. And I'm wondering if even if we left the actuarial necessity argument aside, wouldn't there be a strong argument to say that a change that will keep the pension plan solvent so that currently employed members will have a fund by 2029. Wouldn't that be a change that strengthens or improves the pension plan and qualify under problem three of your test?

CHAIRPERSON: Mr. Justice.

MR. JUSTICE: Thank you. It could, but think about the extreme that that could be taken to because under Senate Bill 001's definition of actuarial necessity, that kicks in at any time the funding is below 100 percent, which can be easily changed by the legislatures asking a lower contribution for employers, and suddenly you're down lower. So there are a lot of different ways to cause that to happen. And I hate this word, but it's a slippery slope sometimes to rely just on that.

CHAIRPERSON: Any other questions? Thank you for your testimony.

MR. JUSTICE: Thank you for your time.

CHAIRPERSON: Steven Smith. Please introduce yourself, who you represent, and start your testimony.

MR. SMITH: Good afternoon, Senator Sandoval (indiscernible). My name is Steven Smith. I'm the retired assistant attorney general of the state of Colorado. I'm going to speak on one specific issue relating to COLA. The issue is the purchase service credit. You heard the general argument and I'll speak specifically to that.

I'll start with an analogy. Imagine you went to Great West Life and paid $100,000 for an annuity that would pay you $5,000 a year for 30 years. And as part of that contract, you received a guaranteed 3.5 percent cost of living increase on that $5,000 ever year. Now, two years into your deal, Great West Life comes back and says, "You know what, we made a mistake. We undervalued the plan, we underpriced it, and our investments aren't performing as we hoped. So now we're not going to give you that 3.5 percent." Clearly, you're not getting the product you paid for.

Now, I ask you rhetorically -- I don't think you want to answer -- would you expect that Great West Life to keep the cost difference, the difference in value between what they sold you and what they're giving you? I would say the answer is no. You've been damaged for breach of contract.

Now, we move over to PERA and purchase

service contracts. PERA (indiscernible) member's service contract. This is a private transaction because I didn't get it for working for the state. I got it for the time that I worked for another employer. That was part of that law.

Now, I apologize, I did not bring my agreement with me. I couldn't find it. But I believe that the agreement says it is subject to service purchase laws in effect at the time of the purchase. Now, when I purchased my COLA here, there was a 3.5 percent service purchase, you know, cost of increase in that service purchase statute.

Now, PERA all of a sudden says there is no guarantee that we're going to give you any cost of living increase. My question is, why should PERA be allowed to keep the differences between what I paid for and what they're giving me with respect to the purchase (indiscernible). So here we have a clear breach immunity rule contract rights. They are giving members less than what they purchased.

Now, the calculations (inaudible) how you're gonna fix the problem is simple. I can't do it myself. I'm a lawyer; not a mathematician. But there is some guidance at lesser value that I should have paid for the contract here. Now, if I have time, I've got some

suggestions of how this should be addressed. Is that okay?

CHAIRMAN: You still got a little time.

MR. SMITH: I'll talk fast. One, you do nothing about the COLA, which is the general argument. Two, cash payout on the difference with PERA members. I paid -- I may have overpaid by say $15,000. I should get that money back. That's a breach of contract. If you don't want to pay money out, how many more service years could I have bought with that time? Say I had bought 12 and I paid X, but with X amount of money, if it was at the (indiscernible) value of 3.5 percent, I should get 13. You never get whole when you've been someone breaching their contract, so you try to make your whole as possible. And you try to make all the parties whole. Or you can consider a blended rate to continue the 3.5 percent on cost of living increase on the purchase years and all the other years of the people who be subject to the same requirements as people who didn't buy years, you're going to be adjusting those years.

I mean, I don't like any of that. But I think if you're looking for a way to remedy a clear breach of contract and clear damage between what I purchased and what I'm getting, those a few suggestions on how to do it.

One more question I would ask the sponsors to address the issue of the safety clause, which is a 30-year fix for PERA. They're well above the 40 percent minimum they talked about. I would be curious as to know under Colorado Constitution, Article 5, section one, subsection three, what the sponsors think that it is the immediate preservation of public (indiscernible) health and safety which allows them (indiscernible).

CHAIRMAN: Thank you, Mr. Smith. Senator Shaffer.

MR. SHAFFER: Thank you, Madam Chair. And I think it is an important note to put on the conversation that the first statutory COLA increase for 2010 would go into effect as of March 1st. It's part of the plan is to take effect as of 2010. I think it's important that this bill passes and is signed by the Governor before March 1st, so that those changes can take affect in this year. And that's one of the reasons why we are doing this early in the session and also one of the reasons why I think that it is important that it go into effect immediately upon the Governor's signature.

CHAIRPERSON: Thank you for that explanation as to why the safety clause is in the bill, Senator

Shaffer. Steve Johnson. If you would introduce yourself, who you represent and begin your testimony.

MR. JOHNSON: Thank you, Madam Chair. Steve Johnson, representing myself. And I just want to add a little more insight on the service purchase credit issue. I've been a PERA member since 1996. And my purpose here today is very specifically to talk about the purchase service credit issue and the consequence of Senate Bill 001.

As many of you are aware, in 2006, Senate Bill 235 changed the formula for calculating the cost of purchase service credit to full actuarial value. And that definition is important. Prior to that legislation, PERA members could purchase frankly large amounts of service credit at incredible discounts. After that legislation went into effect in 2007, that cost of service credit was it's full actuarial value. It was a good deal. It wasn't a great deal. It wasn't a bad deal It was a fair deal. And that's important to recognize. And it was a contract.

If this legislation passes passes, particularly the reduction of the COLA from three and a half to two percent, the present value of this pension will be reduced by approximately 15 to 20 percent and perhaps higher if you take PERA's eight percent, 15

percent if you take probably more reasonable six percent investment return, meaning that I was overcharged for that contractual voluntary purchase of service credit by 15 to 20 percent. Keep in mind that unlike a regular pension benefit that that purchase of service credit was a voluntary contract between PERA and me and it was contractually obligated. And I took that money out of my 401(k), out of my IRA only after I made an investment decision saying, if this is my return in my IRA and this is my return in the pension benefit, where am I better off?

And, frankly, after the Senate Bill 235 change, it wasn't a great deal. It wasn't a bad deal. It was a fair deal. And that was a decision that I could shift that investment risk to PERA instead of trying to do that myself.

Now, if I have overpaid for that service credit by 15 percent, that is no longer a fair deal. It's a bad deal. And if I had to do it again, I would have kept that in my IRA or my 401(k). So what I'm asking PERA to do and asking the legislature in looking for a sponsor to do this amendment is let's add an amendment to the legislation requiring exactly what the assistant attorney general talked about, which is give PERA the option: you refund the difference in cash and

refund the difference in additional service credit or you leave the COLA that was contractually in place at the time we purchased that service credit. And it's for only people who would have purchased the credit after the Senate Bill 235 legislation in 2006 which went into effect in sometime in 2007.

So I would respectfully ask for that amendment to the legislation. And I would love to have a sponsor, somebody who would like to take that on. And thank you, Madam Chair for being able to testify.

CHAIRPERSON: Thank you, Mr. Johnson. Any questions for Mr. Johnson? Thank you for your testimony. John Bolton.
Please introduce yourself, who you represent, and start your testimony.

MR. BOLTON: Hello, my name is John Bolton, and I represent myself. Madam Chair, members of the committee, I appreciate the opportunity to speak in front of you today. My intent is to bring up an issue that has been raised that I hopefully, in a succinct way, that will be of interest, frankly, to all members pro or con with respect to this particular Senate Bill in front of you. And that is the desire to ensure that the Senate Bill that is passed is actually legal. And in that sense, I am concerned myself, now that -- I should preface this and say that I'm now eligible to retire. But my primary concern is the reduction in the COLA for those members who are eligible to retire and retired.

Actually, to address a previous testimony, Senator King, in the bill's case, the bright line of vesting is actually the real critical issue. At what point can you change a benefit? The bill takes upon the changes as occurring only prior to one's eligibility to retire. So any member who is not yet currently eligible to retire, their benefits could, in fact, be changed if it strengthens the plan where it's actuarially necessary. Once you achieve the eligibility to retire or were retired with the Colorado Supreme Court did in fact rule that you could not change those benefits.

So my real question is we are all after a sustainable plan. It is absolutely my desire, as someone who can retire, to have a sustainable plan. The question is, I would hesitate and feel that it would be imprudent to enact changes to legislation that could be challenged in court with a weak chance of being upheld. I would respectfully request that the committee asks that the attorney general's office weigh in on this or that the Colorado Supreme Court weigh in

on this and just ensure that the things that are passed are actually legal and uphold each member's constitutional contractual right because that's really what this comes down to. These are contractual obligations that may really cannot be unilaterally be changed even though that's highly desirable from the (indiscernible) that we're all searching for. And that is really my initiative. I'm, frankly, not exempt to what the proposals are other than to ensure that they are legal. If they are legal, then the committee should do what is appropriate to ensure stability (indiscernible). Thank you.

CHAIRPERSON: Thank you, Mr. Bolton. Any questions for the witness? Senator King.

MR. KING: Thank you. I just want to clarify your position. Your position is that any time a PERA employee is eligible to retire, they have received a vested right whether they have taken advantage of that right or not; is that correct?

MR. BOLTON: That is correct. That was defined in the bill's case by the Colorado Supreme Courts, yes, sir.

MR. KING: And in your opinion, when is the first time anybody is eligible from PERA, of what time in their service?

CHAIRPERSON: Mr. Bolton?

MR. BOLTON: That's an interesting question. That was not clarified whether merely by being on the chart, meaning in the current case depending on when you were hired, age 60 would put you on the charts to retirement. Once you've achieved a certain level of service credits. That was the ill-defined.

However, those people who have fully, such as myself, who have fully achieved ability to take an unreduced retirement and further eligible to retire, but that is an open question.

MR. KING: If I can continue?

CHAIRPERSON: Go ahead, Senator King.

MR. KING: The crux of my question was whether a person takes an early retirement is considered to be a person who has the right to retire as opposed to fulfilling I think the current statute is what, 85 -- 80 or 85 or a combination whether anything less than that is investment right.

MR. BOLTON: Well, an individual who is subject to the current rule is that the Rule of 85 would not have enough years of service credit to be on the charts yet. But is an open question. The bill's case did not answer that question nor did any other legal -- no other cases actually definitively answered

that question. And I have consulted with a pension attorney. You know, these things are subject to interpretation, but in this case, there was a bright line in the bill's case to find eligible to retire and retired (indiscernible).

CHAIRPERSON: Any other questions? Thank you, Mr. Bolton. David Wemet (ph). I'm not sure if I pronounced that right. It sounds French. Could you tell me the correct pronunciation of your name when you introduce yourself, I guess.

MR. WEMET: My name is Dave Wemet, and you've got it right. That was very good. Thank you. I'm here representing myself. And when I walked into the room a while ago, I was asked if I was for or against the bill. And, clearly, I guess I am for the bill. We need a strong PERA without a doubt. But I am particularly concerned about the COLA provision, which have been discussed quite a bit this afternoon. So I'm going to reduce my testimony and try to put a finer point on the view about that COLA.

First of all, I went back and I took a look at the cost of living inflation over the last 30 years. And it has been 3.79 percent, a bit above the 3.5 percent COLA that exists in current law. With that as background, I took a little closer look and pushed a pencil around on the table of information provided by PERA concerning how retirees would be affected if COLA was reduced from three and a half to two percent.

This was alluded to earlier, but I wanted to give you a slightly different view on it. The amount of reduction is seriously significant. I think it's gonna cause some folks to have to chose among the basic necessities of life. You heard a little bit about that earlier. Especially for those who are getting perhaps the average benefit from PERA.

So five years out, retirees' benefits will have been reduced by seven percent. Ten years out, it goes to 13 percent. At year 15, retiree benefits will be reduced by some 19.6 percent. And you get out to 20 years, the benefit will have been reduced by 25 percent. And those are huge numbers. They are very, very big. And I think it's gonna cause, as I've said, a great deal of problems for those people who are already perhaps on the lower end of that PERA benefits.

And it was also mentioned earlier today that those people, such as myself, who don't have social security, don't get full Medicare benefits. And so we are going to have to pay additional costs for things such as health insurance. Health insurance is a big item for PERA retirees. Yes, PERA does offer a number

of plans, but they are very expensive. A couple may pay $900 a month for health insurance. And that's just for a middle-of-the-road plan. So when you consider that it's likely that inflation is going to continue on as it has in the past and when you consider the cost increases that that's going to bring such as for health insurance, I do think a large number of seniors, not this year, not next year, but five, 10, 15 years down the road are really gonna struggle to make ends meet.

And so because of that, I'm asking you to also go back and reconsider those COLA provisions and those changes. What I would prefer to see, because I understand retirees have to contribute to solving these problems, is that there be a COLA holiday, which means retirees would not get any COLA increase for a period of time. Maybe that's one, two, three years, I don't know what would work. But that would represent a significant thing that retirees would be giving up. And it would also provide a very large boost to the PERA fund.

But in exchange for that, I would ask that you consider keeping the COLA value at three and a half percent or as an alternative and this maybe had some appeal, you consider changing COLA to follow the social security model which is that as the consumer price

index dash W goes up, benefits would go up. If it stays zero as it was this last year, there would be no increase in benefits.

And this latter approach, to me, at least, my personal opinion to provide assurances to you as legislators and to the public at large that retirees are going to be no better off in the future than they are today and hopefully they'll be no worse off. So those are my comments. Happy to take questions. Thank you.

CHAIRPERSON: Thank you, Mr. Wemet. Any questions, Senator King.

MR. KING: Thank you. So it's your opinion that the 3.5 percent is not a vested right under the Constitution and is adjustable?

CHAIRPERSON: Mr. Wemet.

MR. WEMET: I'm not an attorney. I'm sorry. I can't give you comments intelligently on that. I don't know the answer to that.

MR. KING: Okay. But it's almost my understanding that if the COLA did not exist for a period of either seven or eight years, that there would be no necessary to increase any of the AED or the SAED. So I fundamentally agree with you that a holiday is sufficient and could solve the issue dramatically if we

just pick a holiday. So I appreciate that testimony.

CHAIRMAN: Mr. Wemet.

MR. WEMET: I clarify my position. I'm very sorry. I'm not suggesting that it be seven or eight years. I'm suggesting that it perhaps be one, two or three years or something that's modest. Because as you look down the road and when I look at those numbers, those percentage reductions sitting up there the 25 percent, and by year 30, a 35 percent reduction in benefits, it's kind of shocking to me. So I only want to see what is necessary to be done to make sure that the fund is solvent, keeping in mind that the retirees -- this is my personal opinion, again -- of bearing an awful big share in trying to solve this issue related to the funding, in PERA's funding.

CHAIRPERSON: Any further questions? Thank you for your testimony. Richard Allen. Please introduce yourself, who you represent and begin your testimony.

MR. ALLEN: I'm Richard Allen. I'm a PERA retiree. I've held a number of positions ending my career as assistant superintendent to budget finance of the schools. The PERA staff and really the sponsors of Senate Bill 001 have stated that the issue here is about actuarial necessity. So I'd like to talk a

little bit about the actuarial position of PERA.
If you look at their financial report, you will see that they -- and I'm talking here about just the pension plans and some other numbers cited, which I believe included the healthcare trust funds. They're slightly different. The PERA started the 2008 year with a unfronted actuarial accrued liability of about $13 billion. The (indiscernible) noted that they ended that period with an unfunded approved liability of almost $17 billion. So there was definitely an increase in that year. But I think, you know, there's an implicit assumption here that the unfunded liability problem is related solely to the 2008 market meltdown.
In fact, if you look at the their statements, about $2.6 billion of that increase in the unfunded liability was related to the market meltdown in that particular year. The rest of it was due to other factors, namely, pre-existing factors, the $13 billion worth of unfunded liability, they went into the year with.
Some people have mentioned some of those things before. I think certainly the less than actuarial value of some of the purchase service credits that were done prior to 2005. The 2006 law basically required that those purchase of service credits be

actuarially based, but I believe the PERA always had the authority to make them so. But the state essentially wished to have an early retirement plan during those years, and PERA cooperated with that wish. PERA did incur substantial costs and they can perhaps give you a precise number, but I think it's probably in the billions in terms of unfunded liability from that early retirement incentive that was offered. Since it was a state initiative, in theory, the state should have paid for that initial leave with increased contributions during those years which they did.
So there are other causes here of the meltdown. Now, PERA does have a investment problem that is not yet reflected in their actuarial statements. PERA, like, practically all retirement systems that I know about uses a process called smoothing where the gains and losses in investment are recognized over a period of four years. So we essentially got the order of the actual market losses in 2008 that are reflected in these actuarial numbers and the other three quarters will come on line more or less one quarter at a time over the next three years.
However, it's also true that none of the market gains of 2009 are reflected in these actuarial numbers either. And they will come on line gradually

over the next four years. Smoothing is designed to not create a situation where one very good or very bad year totally dominates your actuarial statements. And I personally think it's a good policy, but I think people need to be aware of what is happening.
Speaking to one of the amendments that was suggested earlier, I believe, by the coalition, as I read the bill, it's unclear whether the standard of whether PERA has a positive or negative investment return is related to market return or actuarial returns. If it is actuarial, you know, I can tell you right now that PERA will show an actuarial investment loss when the next actuarial statement comes out because the one quarter of the loss is coming online from 2008 will be larger than one quarter of the gains coming online for 2009. So that's kind of a known number. And essentially at that point, would make the amendment, if it is actuarial market performance, the amendment is actually no change from the current bill (indiscernible). If it is in fact market performance, well, who knows (indiscernible).
So I'd like to call attention there are other important factors imbedded in the PERA actuarial report that effect the unfunded liability numbers that they report. There's an assumption of 3.75 percent

inflation in the 2008 actuarial report. Well, okay. That kind of didn't happen, I guess, but is' there, but the actuarial is kind of looking long term trends.
There's also an assumption about state employee pay raises, which range between four and a half and I think 11.4 percent pending on the age of the individual. Is there any questions?
CHAIRPERSON: Any questions? Senator King.
MR. KING: So, basically what you're saying is that the crisis that supposedly exists is not real; it's contrived. And so if it is, what is your opinion as to what percent of PERA is unfunded at this particular time?
CHAIRPERSON: Mr. Allen.
MR. ALLEN: I do not believe that the crisis is contrived. I think, while previous speakers have noted that actuarial necessity is difficult to define, it has not been definitively defined in the courts. And then, I'll fall back on, you know, the Potter Stewart definition of I don't know how to define it, I really want to see it. So I don't think it is a contrived thing.
I didn't get a chance to mention that to the unfunded liabilities is added another 3.5 billion when PERA changed the investment assumption from eight and a

half to eight percent. I personally believe that that was a prudent action for PERA, given the more recent performance in the investment markets they operate in. But is an important factor in assessing the overall position of PERA as we go into the future.

I believe the actuarial funded ratio of PERA at the end of 2008 is somewhere in the high 60s. I don't have those numbers in front of me right now. It leaves market numbers lower -- in the low 50s, I believe. But if you're gonna use the market numbers, all of them from 2008, it would seem like there are to be some consideration to market performance of 2009 as well which is (indiscernible).

CHAIRMAN: Thank you, Mr. Allen. Any other questions? Senator Keagan.

MR. KEAGAN: Did you say you're currently a financial officer with the school district?

MR. ALLEN. No, I'm currently retired. I finished my career as assistant superintendent.

CHAIRPERSON: Okay. Thank you. Any other questions? Thank you, Mr. Allen. Tom Fiomeir (ph) (sic). Did I pronounce that correctly?

MR. TIELHOMIER: It's more than two words. It's Tielhomier (ph).

CHAIRPERSON: Oh, Tielhomier. You don't

pronounce the H I guess.

MR. TIELHOMIER. Thank you, Madam Chair. I had some comments and a lot of them have been talked about already, so I may sound disjointed, but I still think it's very important.

I pulled the history of Colorado PERA off the internet, and there are 12 pages of a bill since 1969 to 2009. And every one of these bills were passed to ensure, I think that the PERA was operating properly, at least I hope so.

I'm here representing myself and a number of people. I became very involved in November when I heard what may be coming down the line. What you heard today is that there are several people came for representing large organizations. I submit to you that those people in those organizations don't even know they're being properly represented. So I'm going to tell you I'm representing the silent majority.

There are many people I've talked to in Pueblo, Colorado that are amazed that this is being considered and are absolutely astounded. And they're not real happy about it. That shouldn't surprise you. I think most of you will probably be seeing comments to that effect. Mr. Williams earlier reported that these changes were necessary because of economic problems.

But some research found a letter of transmittal to the members of the Board of Trustees for PERA. And under major initiative in 2000. Major legislation supported by Colorado PERA Board of Trustees was passed by House Bill 1458 that lowered PERA's member of contribution rate while improving benefits for member and benefit recipients. It goes on to state that aware of the additional future liabilities created by the enactment of House Bill 1458 to a Board of Trustees did not pursue major changes to the PERA's program in the 2001 legislative session.

This is unacceptable for any board and, let alone, I think the general assembly passed the bill knowing full well that it's not on solid ground.

Again, I'm expressing my opposition. This bill proposes to retroactively reduce the annual benefit increase. You heard about COLA. Well, if you go back to the legal under Colorado revised statutes, and then, even with PERA, it's an annual benefit increase. This book is handed out to retirees. It was revised March of 2001. And as part of the benefits, it's identified as an annual benefit increase. Now, you can recognize it as that, but that is not the way it was granted to the retirees. It's a part of the benefit package.

Also, because I personally signed a retirement contract with PERA, going into it, I knew what the pluses and minuses were. Now, once side is coming back and saying, "Well, we misstated." There was no misstatement. When I talked to the counsel, I came up to PERA and I had to be sure this was a very important issue to me. And I was reassured. And you won't like this -- I was told the state backs it. The state backs it.

But most importantly because of what I have heard from these organizations today tell you that they feel comfortable to representing retirees, I represent myself. And if there's going to be a contract change, I feel I should have the authority to sit down with PERA and negotiate that on my own. Now, what you've heard is there's quite a few people that say that they agree with this. Well, perhaps if all of those organizations agree and come forward, we would not have this problem to deal with. But I, for one, have a contract, and I feel very strongly about that, as do many others.

I'd like you to refer to you what some other states have done in addressing the very same problems. And I'm sure you're aware of it, but it needs to be here too. Some states have provided smaller benefits for new hires. You've heard about that, but it's happening. Increased age and service requirements for future retirees, not minimal. All of these changes can be made right now without affecting the retirees.

Pay (indiscernible) -- we've heard about that, cut benefits for early retirees. Another one is social security and terminate schedule can and should be overlaid on PERA retirement schedule. Those of you that work in private industry, you know if you right now if you retire, you have to be age 66 to get full benefits. If you retire at 62, you get a proportional of benefits. That's not the way PERA works. And as a taxpayer, I think it may be time that you need to address that issue.

And, finally, I'd recommend that PERA increase the number of years when calculating the highest annual salary. There's almost a travesty there. You hear about people and they do. And, you know, as you work longer, hopefully you're more productive in your salary increases. But what happens is the way it was -- and I know this is being dressed small -- but in social security, you're social security is based on good number of years, not three years of average income. These are very reasonable standards. And this is social security for our PERA members, but

the tax payers are the one that's carrying the load. And I, for one, feel like you know there will be more consequences, not less by making these changes.

I don't want to see PERA go away. But the changes have to be made now. And we heard about partially-vested and fully-vested. And that is a bright line. Again, Senator King, you've asked some good questions. But once you're fully-vested and retired -- and I believe Attorney General Salazar in his research made that very, very clear. And people had made very serious decisions on the base of that. And to walk away and if we are not a body of (indiscernible), we have a different problem. And I think with that, I've said too much.

CHAIRMAN: Thank you, Mr. Tielhomier. Any questions? Thank you for your testimony. Myron Hullen. Okay. I think we have something to pass out. And Mr. Hullen, if you would reintroduce yourself and who you represent, and begin your testimony.

MR. HULLEN: Chair and members of the committee, I admire your patience for sitting all this. My name is Myron Hullen. I'm emeritus professor, retired out of the College of Business up at CSU, a member of PERA. And I'm representing a brand new group, Concerned PERA Employees and Retirees. Probably

I would feel more comfortable speaking in support of this bill. There are most provisions of it that our group is getting together support. There is one part of it that we have a problem with. And we have a suggestion on top of that.

Well, the problem that we have is with the COLAs. I think there's an unintended consequence of the two percent cap that may not have been recognized. There are several public assistance programs that have their upper income level at 185 percent of the federal poverty level or federal poverty guidelines, as it's technically know. The Colorado Leap Program has it's threshold subsidized meals, etcetera. The 185 percent of the federal poverty guidelines for a family of two currently $2,246 a month. The PERA average retiree gets $2,772 per month, or that's 19 percent above this public assistance threshold.

If the average crisis inflation rate becomes four percent, which is not an unreasonable assumption, many economists think it's gonna go much higher than that, if it becomes four percent in seven years with the two percent cap on the COLAs under this bill, the average PERA retiree will become eligible for public assistance.

If the inflation rate rises to five percent,

that will occur in less than five years. And I don't think this is what people want at the state level. We have a suggestion to get around this, that I think would answer most of the concerns that are being expressed about COLA, to go to a four-tiered COLA system, were successive tier one benefits would be at a low level at 185 percent max of federal poverty level and to let those benefits be indexed according to inflation without a cap. A second level would be double that, go to the average inflation rate as a cap over the last 83 years which is been 3.1 percent.

Go to a two percent for a third level which would be triple that base level, 185 percent of federal poverty guidelines. Put a two percent cap on that. And for the fourth level, any amount above that go to a one percent cap. This would cause upper level PERA retiree benefits to be reduced about what is in this bill.

We think there's some ways to pay for this extending the amortization period from 30 to 40 years. Thirty years, there's a good argument for it, but it's also an arbitrary period. Having watched Gasby announcements being made -- I was analogous to Gasby statements -- a bunch of people get together discuss it and take a vote. Typically it comes out 5/4, something like this. It's arbitrary.

Keep up with the target of full funding at 100 percent rather than 103 and 110 percent. Keep the CPIW for 2009 and 2010. Effectively, this would produce a two year COLA holiday because wages have gone done, prices have gone up during this time. The average we expect about 6 percent loss in purchasing power for PERA retirees of over this two year period by use of the CPIW.

We suggest a change to using the CPIU, which is slower. It will work in an actuary, I believe, in a positive way. That's all I have to say.

CHAIRPERSON: Thank you, Mr. Hullen. Any questions? Senator King.

MR. KING: I have a couple of questions. It's your feeling, then, there's not a vested right in the 3.5 percent COLA because you could adjust it from tier one to tier four, is that correct, and take it down to one percent for the higher income people?

CHAIRPERSON: Mr. Hullen.

MR. HULLEN: I'm not an attorney, so I'd like to side step that. I personally have read the attorney general's opinion. I think it's pretty clear. If given the choice to personally opt into a plan such as I proposed and give up 3.5 guarantee rise, I'd do it.

It's cheap insurance against inflation.

MR. KING: Would you also explain the difference between the CPIW and the CPIU?

MR. HULLEN: Yes. CPIW is placed on the inflation and wage rates. And except in periods of recession, a CPIW is going to historically been faster and increases faster than a CPIU. A CPIU is the price purchasing power index. But you're trying to protect your purchasing power of people's pensions.

MR. KING: Okay. And then, just one final question. If you extended the amortization from 30 to 40 years, to what extent would that have an impact on the insolvency of PERA?

MR. HULLEN: It would change -- you get your actuaries to project out where is the plan's insolvent. And it would help that projection. If you do it over a longer time period, it's gonna be easier to achieve. Obviously, under a plan like this, you'd spend more at the lower levels; you'd spend a little less at the highest level, but the difference would be made up by extending (indiscernible) period.

MR. KING: If I could just follow up. I just think the question becomes if you extend it from 30 to 40, do you alleviate the opportunity for a crisis and we come back eventually and have to raise that EAD

and SAED anyway because you have too rich of a benefit with the 3.5 percent COLA.

MR. HULLEN: Yes. You certainly would do that. And I would suggest -- my personal to that would be (indiscernible) this in three years instead of five.

CHAIRPERSON: Any other questions? Thank you Mr. Hullen.

MR. STEADMAN: Madam Chair.

CHAIRPERSON: Oh, I'm sorry, we do have one. Senator Steadman, I'm sorry.

MR. STEADMAN: Mr. Hullen, I'm intrigued by your suggestion about what you refer to as a progress four-tiered COLA. And we've actually heard other witnesses earlier this afternoon speak about a progressive COLA. And I'm wondering if you're talking about the same thing and if this is something you've all be working together on?

CHAIRPERSON: Mr. Hullen.

MR. HULLEN: Well, sir, I think this has originated independently. The progressive COLA would be actually reverse progression to where the highest levels would have the smallest level. And if it increases, you wouldn't have that first level where there would be no cap at all, present cap, I guess is the best way.

CHAIRPERSON: Representative Steadman.

MR. STEADMAN: Thank you, Madam Chair. No, I understand the concept of providing a greater degree of inflation protection for lower income folks. And as I said, I think it's rather intriguing. I'm wondering if it's coincidence that other witnesses have been talking about this concept, or is this something that you're all starting to get together and form a consensus around.

MR. HULLEN: I don't know. I shared this concept with some others a week or ten days ago, so who knows.

CHAIRPERSON: Any other questions? Thank you, Mr. Hullen. Craig Hilton.

MR. HILTON: Most of the points that I wanted to discuss have been talked about a lot. And I'm glad that Senator King actually referred to it has a benefit because that's exactly what my retirement brochure said to me. My increase in the benefit, not a COLA. A COLA would be attached to an inflation chart. But the benefit never went up and never went down over all the years I've been retired now. And I'm representing myself by the way.

I am a emeritus college professor. And some of my colleagues, actually, that are retired to also kind of feel this way -- that we are looking at a contract for the state and that we are not -- the state isn't living up to the contract. And as you know, community college teachers over the years were never paid very high within their peer groups in other states. So we always knew that we would have -- our retirement would be okay. And so we worked along for 30 years and all of a sudden it's going to be changed now.

I am for some parts of the bill. But other parts, I am not for it all and that's mainly around the COLA. Everybody keeps saying it's actuarial necessity. Here's the statue -- and I'm sure you're well aware of 24-51-211 statute. And it does say that you can increase contributions when there's a necessity for that. But it doesn't mention anywhere where you can reduce benefits for people that are already retired in that particular statue.

There's one other point I wanted to make today. It's come up in people who had bought service credits over the years that they had paid three and a half percent included in the actuarial calculation for their service credits. There was another one, I think -- and I've been told this -- that there's also a three and a half percent calculation involved in the options

that we chose when we retire. In other words, that would be an option one, you get 100 percent of your benefit; option two, it's 50 percent of your benefit goes to your spouse; or option three, where they continue to get the same amount of benefits. And if this is indeed the case, my base actually should be increased because I'm being overcharged for that option. And I would like you guys to probably look at that. I think that is probably something that we should look at and maybe a refund or increased in the benefit if this bill does go through like it is.

CHAIRPERSON: Thank you, Mr. Hilton. Any questions?

Senator King.

MR. KING: Not to belabor the issue on service credits, but do you feel that service credits purchased are a vested right based upon the fact that the people didn't actually work the time that they said that they were working when they purchased the service credit?

MR. HILTON: Well, I'm not a lawyer, so I couldn't comment on that. If I were to look at it, it was offered to me in my retirement program and it was a right for me to be able to purchase those.

MR. KING: It just seems to me it's a

different vested right. They're not equal. I'm not a lawyer either, but it doesn't seem that they're equal rights.

MR. HILTON: Right. I understand that. But I look at what everybody is calling a COLA as part of the benefit. And that's how I actually retired with the benefits and it was not tied to any inflation. So you'd go up and then go down.

CHAIRMAN: Thank you, Mr. Hilton. Jan Lanchburg (ph). Okay. She passes. William McClain.

MR. MCCLAIN: Madam Chairman, my name is William McClain. I am an attorney, and I won't repeat all of the arguments that have been made on the constitutional grounds. I agree that there is a vested right to people who have retired for the benefit increase of 3.5 percent. It seems to me that when March 1st, if it still attached the way it is, that there will be a suit filed and the courts will decide whether that's a best of right or not a best of right.

What I would suggest, for purposes of dealing with that, that a severability clause be added to this bill so that if the courts decide that the COLA provision is for retired people to not be changed and rule that bill is unconstitutional on that grounds, that provision of the unconstitution doesn't wipe out

the entire bill.

So with regard to Senator King's question earlier, the change in the statute that put the 3.5 percent increase in benefits is added and in House Bill 93-1323 in 1993. Prior to that there was a provision that required three percent for part of the years of service and those that have changed to make it three and a half percent. Thank you.

CHAIRPERSON: Thank you, Mr. McClain. Any questions? Senator Steadman. Mr. McClain.

MR. STEADMAN: It's just a comment for the record. Mr. McClain, I appreciate your suggestion about severability. And I just wanted to note that there is a existing provision in Title 2 of our statue that applies the general rule of severability to all statutes and to all enactments of the General Assembly. And so it's generally not considered necessary. And we're not advised by the attorneys that draft our bills that it's necessary to include such things. We have already provided for in our general statutes.

CHAIRPERSON: Senator King.

MR. KING: There's also a concept that could be done with this bill and that's interrogatories could be asked for before it's passed in the second house. Bill sponsors could ask for it to go and have an opinion of the Supreme Court to say whether the 3.5 percent is (indiscernible).

MR. MCCLAIN: I think that would be a wonderful idea.

CHAIRPERSON: Mr. Scheffel.

MR. SCHEFFEL: Thank you, Madam Chair. Mr. McClain, I just want to make sure I understand your testimony. You're currently retired; is that correct?

MR. MCCLAIN: I'm semi-retired. My wife is actually retired on a PERA pension.

MR. SCHEFFEL: Thank you. Could you just comment, I mean, I get the impression that regarding the 3.5 that you actually planned your retirement counting on that COLA?

MR. MCCLAIN: That's correct.

MR. SCHEFFEL: Can you just walk us through how that decision was made?

CHAIRPERSON: Mr. McClain. We're talking over each other.

MR. MCCLAIN: In addition to retiring, planning our retirement, we also purchased service credits. And, basically, that was based on what the term would be based on the investment that was made. And it was a combination of the years of service that she has plus purchase service credits that all went

into that decision. And it was certainly one of the parameters of that decision was this 3.5 percent annual increase.

CHAIRMAN: Senator Scheffel.

MR. SCHEFFEL: Just one follow up. And so if you knew then what you may be know now that this COLA could be effected by this legislation, would that have changed your decision and/or approached your retirement?

MR. MCCLAIN: I can't say that it would have changed because we would have to look at what the amount of money that we were investing towards service credits. Compare that to what the return was on the investments we had, we would use the money from the investments we already had to make that investment. We'd have to determine whether it makes sense.

CHAIRPERSON: Senator Penry.

MR. PENRY: And it's not actually to your comments. And I know that the objections from a number of the opponents are heartfelt. I mean, the terms have changed after the fact, but our economic realty has also changed. But there's been some comment will this change the one piece. It's a big bill, you know. Just change the COLA and, you know, the rest can stay in.

The realty is these numbers don't get

anywhere close to working unless you change the COLA, you know, the nearly $30 billion funding shortfall. I don't know what the exact number is -- two-thirds, three-quarters of the cost savings is the COLA. So if the COLA falls out, if the COLA pare back falls out, this reform it's not without meaning, but it doesn't do anything in the face of the unfunded liability. Your points are I know heartfelt, and I know that the terms have changed. But what I'd say is the economic circumstances in which we find ourselves with change and this bill doesn't work unless we peer back those automatic increases.

CHAIRPERSON: Mr. McClain.

MR. MCCLAIN: My point is that there are constitutional rights. Some people who are retired with vested a constitutional right that are being effected by this are in a different class than people who don't have a vested constitutional right. And when you start dealing with people and changing their constitutional rights, that would be retired folks, that's what I see is wrong.

CHAIRPERSON: Senator Johnson.

MR. JOHNSON: Actually, I have a question for Senator Penry. On that 30 billion, do you have any sense for what breakdown of the liability is for

currently vested that 3.5 versus perspective retirees? Is a big part of the load is the current retirees?

CHAIRPERSON: Senator Penry.

MR. PENRY: And this is a question better asked to PERA. But the near term cash crunch that PERA described in their opening comments has alleviated substantially almost entirely by the COLA provision. If you think about the retirement age or the changes in the highest average salary, those are sort of out your considerations. So they don't provide any sort of near term relief. So I don't know what the exact precise number is. I don't even know that PERA does, but it's the lion's share. Without the COLA fix, this fix doesn't have a lot of meaning.

CHAIRPERSON: Any other questions? Kate Cole. Please introduce yourself, who you represent, and begin your testimony.

MS. COLE: Most of what I wanted to say has been said. But now a few things that were brought up, so I'm not going to be quite smooth in what I'm saying. First, I am a retiree. I am speaking mainly for myself. I retired in 2003 after 35 years teaching at a community college. And I'd like not to make this personal to me exactly, but to point out an observation that many of the people who have spoken here today are either speaking for themselves or for groups. And the groups, predominately, at least it seemed to me, are groups where people have collective bargaining rights.

So I would at least point out to you some of the disparity of the folks who are effected by what you're doing. When I retired after 35 years teaching in Colorado Community College, having had the highest evaluations I could get every single year, highest (indiscernible), my salary was the same as I would have gotten if I had been in public schools in the area where I live. So when someone pointed out earlier the people who have been retired a long time or who are at the lower level jobs and so forth and college job is not low level job, but the disparity if your cap increases at two percent for people who are barely making it right now -- that's not me -- but if you cap theirs as opposed to at least letting them keep up with the cost of living, that would be helpful.

I emailed all of you on Sunday comments, two pages of comments, so I won't go into those now. Look it over. Hopefully, you can read it quickly if you haven't already. But when I retired -- in response to the question that was asked -- I got out a spreadsheet, did all kinds of calculations, estimates considering what would happen if I died before my husband, what

would happen if he died before me and all kinds of scenarios. And given the fact that for my last seven years at ACC, even though I had these great evaluations, I never once got a cost of living raise. It made no sense for me to keep working when PERA said I'll give you a 3.5 which at that point was pretty good.

So I'm just putting out a little few details here for you to all think about. But I am currently on Littleton City Council. And I appreciate the struggle that you all are dealing with in this dreadful financial economic climate that we find. And I want to thank each and every one of you no matter what decisions you take on this for all you're doing to try to weigh all that you're hearing and come to fair same conclusions.

I signed up on the opposing because I didn't know if I had any objection, I should be signing on the proponent. But I'm basically wanting us to do all we can to save PERA because if we don't -- and also if we don't try to keep the cost of living increase for people, we're going to have a very difficult time recruiting teachers in K-12 and in any other function that is covered by PERA. But anyway, thank you again.

CHAIRMAN: Thank you, Ms. Cole. Any

questions from the committee? Our next person is James T. Brickson or is it Erickson. Is it Erickson? Your handwriting.

MR. ERICKSON: I have terrible handwriting. I want to thank the Senate Committee for all you stand on (indiscernible). I do work for a state agency. I'm not eligible to retire at this particular time. I did, in fact, look at the PERA manual of benefits and saw the 3.5 percent increase. That, in fact, is what I would be receiving in the future.

I don't have problems with the SAED contributions. In fact, if they have to be more or I have to work longer to save the cost of living calculations to save the cost of living calculations, I think I would gladly do that and I think other state employees certainly would too. The reason for that is as it says here in our March, 2009 PERA report that this is a complete issue that deserves (indiscernible) today that we need to look into this more. I think setting an end of February time line for this would be not good because it needs more research.

Part of that research would be to take PERA's own funding (indiscernible)I'm very grateful to have the people behind me, too. But PERA's own funding -- I would like to have the Senate Finance Committee ask

PERA to take this chart and show us over the last 40 years where would we be in two percent increases. What would the increases be? What would this history be? Where is my future? Where is the future of this state? Where is that going? I don't think that would be that hard to do. We can take the proposal and apply it to the past.

In addition to that -- which I'll be glad to give you all this -- when you look at that chart, 80 percent funding levels existed for 21 of 36 years. This runs from 1970 to 2012. Ninety percent funding or greater was only seven years out of 36. Where's the cost of living? Are we going to get in seven years? Are we gonna see any of this?

Here, I have GAO report, GAO-08-983T and it says, I quote, "Many experts and officials to whom (indiscernible) consider a funded ratio of 80 percent insufficient to other plans (indiscernible). First it is unlikely that the public entity will go out of business and seek cooperation as can happen with private sector employees. The state local government will spread the cost onto the (indiscernible) over a period up to 30 years under current GASE standards. In addition, several commented that it could be politically (indiscernible) and over funded that it has a ratio over 100 percent. The contributions made for fund with excess assets to determine a target for (indiscernible)." I know we've contributed in the past and the state employees keeping fixed budgets don't, and we've testified to that.

And another point here, as an analogy which I really appreciate the form of (indiscernible) attorney general. I think everyone in here has a mortgage, well, almost everyone. And in that mortgage you said I will -- let's call them County Narrow. The mortgage company said to me and I signed up that I would have a 30-year mortgage, and it would be five percent, and it would be fixed. This bill says that the Country Narrow came back to me and said no, we're not doing so well today. And because of that, we picked you out to go for a 40-year mortgage. Okay. Fine. Well, maybe I can live with that. Oh, but now we're making it a seven percent interest rate. And, now, oh, yes, in addition to that, it is no longer a fixed interest rate; it's adjustable. We now have an ARM. I don't know how many of you have one of those, but I certainly had one. And everyone has been trying to get out of them forever. So I don't think I need to belabor that point. There's a lot more research that needs to go into this.

If you change anything to do with the cost of living, you're looking at effecting 431,000 people, the people at work now and everyone who has been retired. I can chose to continue in state services because I'm not (indiscernible). When we come back there's going to be altering repercussions because of this bill. People who are already retired are going to be out there in the job market competing for jobs in a pool that's pretty much gone and depleted at this point.

I think that's pretty much everything I had to say.

CHAIRPERSON: Thank you, Mr. Erickson.

MR. ERICKSON: Oh, could I add one more thing?

CHAIRPERSON: Sure.

MR. ERICKSON: Also, I work for an agency for the last 27 years who has a headquarters that there's a gravestone with the name of 58 employees who were killed in the line of duty. I have a lot of respect for those people because I went on a bunch of benefit rides for their widows, their wives. And why isn't that these people didn't have enough extra life insurance? Because they're some of our low paid employees in the whole state. They are not state troopers. They are maintenance workers for C-DOT.

They couldn't afford the extra insurance. If you cut their cost of living increases when they retire, they aren't going to be able to afford to see their children or live like they should be able to live.

The other thing is that I found out that, as I'm in an IT section, I happen to know that a certainly large defense contractor in the State of Colorado, I could make $30,000 more a year straight across to do the same job I do for the state now. How are you going to bring anyone into the state and retain them if you don't provide them something? And my retirement was everything that kept me here other than what I felt was a duty after all those years to all these people I've worked to build (indiscernible).

CHAIRMAN: Mr. Erickson, thank you for your comments. You know, I've heard that question raised before in terms of should we fund our pension plan 100 percent or something. I think you mentioned 80 percent is what we actually funded it at for a number of years. And I know when we did the DPS retirement system merger with PERA last year, DPS had actually refunded us 100 percent going in. And then, of course, with the downturn of the economy it went lower with that. And so I guess the only thing can see any sense of trying to achieve 100 percent is that -- or at 80 percent --

we're in another downturn and we're at something lower and then we really are in trouble. So I don't know if that's a good argument or not. But that's what strikes me because I know that the DPS retirement system was at one time funded at 100 percent when they were trying to merge with PERA.

Anyway, Senator King, did you have a comment?

MR. KING: Yes. Thank you. Did you get a salary increase this last year in your division?

MR. ERICKSON: No.

MR. KING: What was your understanding about how SAED was going to impact you as a state employee in current year? And then subsequent years if there was a salary survey that increase, how was that going to impact you? How was that communicated to you?

MR. ERICKSON: Basically, we're kind of working at it. We are furloughed right now. I'm taking a big hit every month for this. And it does make retirement look better to me because I have the option of not doing the furlough. If I were to leave state service, I would get a retirement where an increase in a SAED won't effect me. I'm not sure if I'm answering your question.

MR. KING: Well, is it your understanding that the SAED this year is being paid for you by the state?

MR. ERICKSON: I believe it is. Yes.

CHAIRPERSON: Any other questions? Okay. Thank you, Mr. Erickson. Next up we have Chris Debar. I may have pronounced it wrong, Gevar. Okay. Let's move on. Charles McClannahan. Mr. McClannahan passes. Eileen Robinson. Not in the room. Eileen Robinson. William Robinson. Thank you, Mr. Robinson. Maureen McClannahan. Maureen McClannahan passes. Carol Tates. Please introduce yourself, who you represent.

MS. TATES: I am Carol Tates and I am a PERA retiree. Much of what I also have wanted to say has been said. But I would like to focus just for a moment on the contractual obligation that I feel is owed to those who have retired whether it be me or someone else.

If this was not a contract, what is? If you break the contract, you will break the next contract. There will be a precedent set. I do not see an actuarial emergency either from anything I've heard in many, many meetings before this or from what I've hard today. I do hear an actuarial misprojection and perhaps a bad view of actuaries from henceforth because they seem to be targeted or appointed as the people who are taking responsibility for what we have gotten into.

We may not suffer quite this economic downturn, but we will surely suffer economic downturn. And I don't want to see this opened up another time.

I don't think you can fix this in one bill, nor should you be trying to. I think that the legal ramification should be fully explored, the interrogatories, the questions and everything related to those of us who believe we have a legal contact explored before you put us on the other side of having to hire a lawyer to take you to court and inquire as to whether you had properly exercised the law. And that would be the same about the definition of a actuarial emergency or necessity. Both those two things I think need to be explored.

I have two points. One is that this is public funds. Well, in my case, it was hardly public funds as my state agency per se did not use public funds to pay me over the 20 plus years. When I purchased the years of service, I exercised a PERA option, which I rolled in from my 15 years in the private sector my retirement into that purchase of service credit on a contractual basis, including the 3.5 percent increase. And, yes, I sat down with PERA counselors multiple times and made my life decisions based on what their modeling demonstrated were the

entire financial package of losing these retirement plans in the private sector and putting them into this benefit plan. So that is always considered.

If you are going to break my contract, I would question why don't you break it then and then offer me all the pieces back? I worked enough years in the private sector to have a fully-entitled social security benefit, fully-entitled, which I would be throwing into the till here on the PERA Plan. I want it back. They will have a cost of living index on that portion. And maybe I'll get my COLA back in that manner. Maybe I want my precious years back from my other retirement plan. If in fact my contract broken, have I no entitlement to the pieces of that contract would be a question that I have.

Finally, even the use of the term COLA is a misconception because, of course, it is not tied to any kind of increase. It was simply a part of the package as was the age on the chart that you could retire it as was the highest average salary. How many years that was taken over. The COLA, the 3.5 or the other percentages that were used for people in other years again were designed by the actuaries as a part of a package that they felt could be sustained based on the number of years that we lived. That's all that that

was. It didn't have anything else.

The 3.5 percent is a fixed figure. They knew what that was immediately based on a life expectancy, not on anything related to pricing. So I'm concerned with the contract and that you exercise all due duty in terms of examining the legal ramification. Pass anything else that has no law problems.

CHAIRPERSON: Thank you. Any questions to the witness? Thank you for your testimony. Daniel Bergman. Please introduce yourself.

MR. BERGMAN: Hi. My name is Dan Bergman. I am a citizen of the state of Colorado and a taxpayer. I am the one, the foundation that pays this great train. I mean, we all are suffering downturns. Welcome to reality. That's what life is, private sector or public sectors. There's up, there's sideways and there's down. That's life.

I think that the bill is a step in the right direction, but it doesn't go far enough. What we need to do is amend the bill to allow for those who wish to, to opt out. A couple of people have mentioned the point of contract. If I have a contract and it's broken -- if this is not a contract, what is it? As a taxpayer of Colorado, the foundation of PERA and other state programs of Colorado offer to its citizens, they say let's let individuals who are part of PERA who have been in PERA their entire working life or transferred to PERA from the private sector buy out of it. That will reduce the deficits, the liability that the state of Colorado has gotten itself into, and you'll have your retirement.

I, as a taxpayer, will have that much less to shoulder. Where's my bailout? Wall Street got theirs, GM, Chrysler got theirs. I didn't get mine. I'd love to be able to opt out of social security which I'm sure is why 1983, that one loophole was flowed. Apparently, until then you could actually opt out of social security. I didn't know that until about three years ago.

You know, Colorado led the Federal Government in 1935 in creating PERA, let's lead again and allow for people to opt out if they wish to. Not only will that bring some sanity to the bottom line financially, it's good politically and it's good for those of us who are taxpayers. It's a win-win-win situation for the taxpayer, for the State of Colorado as well as for employees of the state who put in the time. I understand that. Time does equal money. I understand that.

Thank you for your service teaching children.

Thank you for patrolling the roads. But that's what should be done with this bill. That's the conclusion of my testimony. If anyone has any questions.

CHAIRMAN: Thank you, Mr. Bergman. Any questions? Senator King.

MR. KING: Well, thank you, Daniel. I disagree with you. As the (indiscernible) plan and in options, we should not be forcing people into a retirement plan once they come into an employment situation. That's contractually obligating them to not have any option after that particular day for choice. And I think it's a mistake to just have a D plan. We have a DC plan in the state portion of PERA, we should allow the people to have that same option.

MR. BERGMAN: Can I just say one point?

CHAIRPERSON: Mr. Bergman, go ahead.

MR. BERGMAN: Thank you. I think we should send a little bit of money to the State to educate people who are maybe half way through their working life or just entering the field. This is where we are. This is what you're looking 30 to 40 years from now. But in any event, it gives employees to opt out. That would be a contract that would be drawn up. They would sign it. That would be irrevocable. You could not sign it and then come back 15 years later when you get

old and such and say to the people of Colorado, oh, but I want back in. No, no.

You are allowed to go out tax free, but it's irrevocable. You cannot come back in.

CHAIRMAN: Thank you, Mr. Bergman. That is everyone who signed up now. Is there anyone else in the room who wishes to speak in opposition to Senate Bill 001? Would you please come forward, introduce yourself, and who you representative, and you can start your testimony.

MR. ALEXANDER: Very quickly, I know it's late. I'm Jim Alexander, and I'm a retired PERA employee. And I just had a couple of questions in having listened to all of this. It sounds like the three and a half percent annual increase is debatable, it's whether or not that's part of the defined benefit. And I think that question could very well be answered by the court before the legislation is voted on. And I'm sure if it isn't answered before the legislation is passed, I think it will be answered by the courts after the legislation is passed.

But I had a question that has -- at least I haven't heard it addressed. And one of the things that I have heard about is the fact that the state for a number of years has underfunded the employer

contribution to PERA. I've heard that that underfunding is somewhere in the neighborhood of $5 to 7 billion dollars. Is there anyone on the committee who can tell us.

CHAIRPERSON: I'm sure the PERA staff could ask that. But why don't you finish asking your questions. Do you have any other questions besides that?

MR. ALEXANDER: Well, also, Senator Brophy talked about the actuarial necessity, and that's come up a number of times. And another question would be is this emergency based on numbers from 2008? And does it take into account whatever the figure is that the state of Colorado holds PERA, or are these numbers based on a wider number of years? And my point being I think if we are declaring an emergency based on the numbers from last year, then it's probably not very accurate. Does this really constitute an emergency and is this necessary?

So I would be curious if somebody has an answer to how much the state owes and if retirees are carrying two-thirds of the burden of this collection. And it was kind of presented of well, everybody has to share the pain and it's two percent, two percent, and two percent. I think that the sharing the pain isn't being a bit out of proportion when you consider that retirees are carrying maybe two-thirds of the burden. Anybody have a number on what the state owes that?

CHAIRPERSON: I'll let you finish your testimony and then we'll see if someone has an answer. Thank you, Mr. Alexander. Any questions? Senator Shaffer.

MR. SHAFFER: Thank you, Madam Chair. And I would ask, with your permission, if a representative from PERA could come forth to answer. I think there are three questions. Correct me if I'm wrong. One is what was the state's share that perhaps was not funded over the years. The second, I think the actuarial necessity question has come up again. And is there another one in there? That the expression is the balance question. So if I could ask either Mr. Smith or Meredith to come forward. I'd appreciate that.

CHAIRPERSON: It looks like Meredith Williams wants to answer that.

MR. WILLIAMS: Thank you, Madam Chair. This is very complex stuff. And we've certainly heard a lot of thoughts today. First, let me comment on the state and what the state put into PERA and didn't put into PERA. Every year, you as a General Assembly, established what the rate to be paid by employers,

whether it's school employers, local government employers, the judicial branch or those things are in the state's division. And every year, certainly in my ten years at PERA, every employer has paid in what you, as a General Assembly, mandate. And occasionally you change that mandate. You certainly did that in 2004 when we created the AED. We did it again in 2006 and there were other changes made.

However, if in fact you are to impose on all of that, a standard that we pay off all the unfunded liabilities over a 30 year period, everybody pays what the statue says they pay. But then if you delay that for a 30 year payoff, mortgage is 30 years. Over the last several years, the employer should have put in an additional about $2.5 billion in order to reach that 30 year mandate. But, in fact, every employer paid in everything they were legally obligated to pay.

So let me turn my attention real quickly to who in the world is paying for the six that is represented by Senate Bill 001. And when we went around the state, I would say 40 percent of the people said, "We've got a problem. We've got to fix that problem, and I'm willing to pay my share." About 40 percent of the people said, "My God, we've got a problem. We have to solve that problem. And I think

everybody but me should pay for that." And then, frankly, the other 20 percent said, "It's Meredith's fault and fire him and everything will be fine."

Realistically, the Board worked very, very hard to ensure that the sacrifices were, in fact, as equal as they could possibly make them. And as Senator Penry indicated at the beginning of this hearing, about 90 -- here's the deal. The whole is the equivalent of 21 percent contributions (indiscernible). That's the whole.

If you would raise contributions, I don't care, employees, employers 21 percent, all the problems go away. You don't have to touch the benefits at all. And as Senator Penry indicated, about 90 percent of this fix -- actually a bit more than 90 -- falls on members of PERA, whether they're retired, whether they're active, whether they're inactive or whether they're not even hired yet. Something less than two percent of that 21 percent comes from employers. And that's the AED. And, you know, characterize SAED anyway you want to do it. That's another two percent. Everything else without question falls on employees, members.

And, certainly, the immediate burden of cuts, significant cuts, falls on the 89,000, almost 90,000

people that live in Colorado that are receiving a monthly benefit from PERA. It hits them right now. Essentially it hits them in March, the end of March. And it's maybe up to zero percent COLA. They were planning on three and a half; they're gonna get a zero. And then in the future, they're gonna get two percent.

Now, for those who are currently working and will retire in the future, they're gonna pay more while they work, more than anybody else has ever paid before, more than those who are currently retired ever paid. So they will have a burden while they work to pay more. When they retire under the provisions of this bill, they have to wait 12 months before they get a COLA, so that's essentially their zero year. And then, they will see their COLA every year, paid it out under the provisions of Senate Bill 001 at a capped level of two percent.

So, yes, retirees over time pay a great deal. But it's a different group of retirees. Retirees change every year. We gain new retirees and, unfortunately, we lose some retirees.

You know, some of the costs are born by people that have not yet been hired. It will take us years before we receive any benefit, any cost reduction benefit from someone that's hired today or tomorrow.

It's 30 plus years in all likelihood before those start showing up on the PERA bottom line. We have to survive as an entity until we have that reduced cost structure that's represented by these tiers.

The only way we survive and, again, Senator Penry mentioned that it really can't drop below 40 percent or then the death spiral really does kick in. And the only way we stay above that 40 percent line is to impact some more immediate cash flows from PERA. I don't hear a lot of people standing up and saying, "I got a dump truck full of money and I'm willing to contribute it to PERA." I don't hear any employers coming forward. I certainly don't hear employees coming forward saying, "We'd like to contribute a lot more money."

So the other solution is you've got to look at the benefits side. You look at the benefits side, the only thing that gives you an immediate cognitive cash slow impact on the benefit side is COLA. It's an indisputable fact. As much as we all hate that, yep, in the early years, people that are retired right now pay a greater share of the load. You'll take a snapshot ten years from now, it's a very different picture. It's a very different group of retirees. It includes a huge portion of retirees that also

contributed more, also had to work longer, in all likelihood.

So it's a very complex costly equation. We've spent and the Board has spent literally months trying to figure out something. It is perfectly equitable? We'll know in 30 years, but I think it's darn close. And I think it's the very best job, number one, that the Board should do and that the senate president and the senator minority leader, I know they labored over this.

I wish I had all the answers, and I wish I had them down to a nth decimal. But, again, when you're taking target practice and the target is 30 years out, (indiscernible).

CHAIRPERSON: Thank you. Senator Shaffer.

MR. SHAFFER: Thank you, Madam Chair. Another question was the actuarial necessity that I don't know if either you, Mr. Williams, or Mr. Smith would like to try to address that.

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you, Madam Chair. Actuarial necessity is a concept, as I said earlier, that it's been recognized by the court and recognized in literally less cases across this county than you can count on your fingers. So to say what happens when you

have the actuarial necessity and what you (indiscernible) in the event actual necessity exists, is a very uncertain area.

When you look at the case law in this area, and I studied this case law extensively -- it's one of the jobs that I have at PERA -- when you look at it, there's a lot of cases that tell you what you can't do because you don't have actuarial necessity. There are literally count-them-on-your-fingers cases that tell you what you can cut if you do have actuarial necessity.

Mr. Allen raised some questions about whether PERA really has actuarial necessity. I think I put it pretty straightforwardly in my original testimony. We run out of money in 24 years. Even if we make ten percent a year for the next 24 years, we run out of money. And we're taking money from people that were hired yesterday who aren't gonna be eligible to draw a benefit for at least 30 years.

How can we continue to takes those contributions with the knowledge that we can't deliver a benefit to those people. I believe that's actuarial necessity if it's measured correctly. And I believe Mr. Allen pointed a good way. One of the games that's being played across this country in pension plans is

actuarial smoothing. Mr. Allen makes reference to the fact that PERA uses a four-year smoothing methodology -- common practice across the country. But when we analyze our actuarial necessity, our actuarial condition for this exercise and when we analyze what we can do and what we need to do to fix the system, we're using market values of assets, only markets values of assets. We're not smoothing those assets.

You can take California. Cal (indiscernible) took the approach recently that their board adopted a 30-year amortization of the losses in 2008. So rather than recognize the fact that they lost tens of billions of dollars in 2008, they're gonna take those loses and they're gonna recognize in 1/30th at a time for 30 years. They're gonna run out of money before the recognize that the money they lost.

That's what happens if you're not looking to market value of assets and you're trying to fix a problem that exists today. You can't pretend you have money you don't have. You can't pretend that you're gonna make money on money that you don't even have. So we use only the market value of assets and those market value of assets indicate to us that we run out of money well within the 30-year projection period.

So we believe that is grounds for action.

Call it whatever you like. It doesn't matter whether you call it actuarial necessity or not. The court, if someone challenges the statute, will decide whether that was the case. But right now we're in a circumstance where we're taking money from people who we know we can never deliver a benefit to. And I would suggest that we cannot continue down that course.

The solution is one that, again, we're measuring in terms of market values of assets, not projections that are unreasonable or that hide the situation that we're actually in. So we believe the actuarial necessity standard by the court will be met for the purpose of taking the action that's in SB1. And it's important to realize that nothing in SB1 reduces anyone's benefit. No retiree in the PERA system is going to have their benefit reduced from one month to the next. They are going to suffer a reduction in the inflation protection that is a part of their agreement. And we believe that that inflation protection, while a component of the contract, is not a fixed figure for life. It's a figure that is worth changing many, many times through PERA's history. And, unfortunately, at this time, it's a movement that needs to go in a downward direction. That's where we believe the actuarial necessity argument is (indiscernible).

CHAIRPERSON: Senator Penry.

MR. PENRY: If you would, Greg, speak to the issue that the Chair in response to another question about why 100 percent is necessary?

MR. WILLIAMS: A hundred percent funding standard is the standard in the industry. Are there people that would like to stop at 80? Certainly. People that don't want to fund it to 100 percent. Essentially, retiree members of the system take a rift if it's less than 100 percent funded because they're allowing their employer to essentially leverage their pension plans. Borrow 20 percent against it is essentially what's happening when it's 80 percent funded.

At a 100 percent funded, you actually have 85 percent of the dollars that we would send out of PERA in the form of benefits that come from the market place. The advantages of us having 100 percent funded plans either it lowers costs, it improves stability and it actually funds in the current generation, the benefits that are being earned by the people as they're working rather than shifting those obligations to the children and the grandchildren.

CHAIRPERSON: Senator Penry.

MR. PENRY: In the event that there is

somebody on this dias that is thinking about voting no, tell us what happens in the California scenario? If we don't pass this, you said that PERA goes bankrupt in 24 years even if you get a ten percent return investment. Just to sort of frame the choice. What happens with California? I mean, how does that entire story -- what are the scenarios for how that ends?

MR. WILLIAMS: Well, I use California as an example because of their approach to smoothing that they've recently undertaken. And it's really, I think, a refusal to recognize some of what the realities are of our economic situation. California has the most extreme law on Constitutional projections of the public pension plan of anywhere in the country. So whether or not they could cut benefits, no matter what their condition, is in question, not I believe the case in Colorado under our constitutional interpretation.

But, ultimately, if they run out of money, they don't pay benefits anymore. Or if they do still pay benefits, they're paying it from current revenues, meaning that they're having to tax revenue and pay it out in current pensions. You don't get out of paying the pension. It's not like everybody has to go without. They still have the right to receive their pension. Where the dollars come from is where the

problems starts.

CHAIRPERSON: Senator Penry.

MR. PENRY: So it's the general fund. I mean, haven't they borrowed money and done the sort of the equivalent of COPs just to throw money in there to prop it up? I mean, that's really what we're talking about is the general treasury bails out the operating expenses of the pension fund.

CHAIRPERSON: Mr. Smith.

MR. SMITH: I don't know where else it would go.

CHAIRPERSON: Senator Johnson was first, and then, we'll go back to you.

MR. JOHNSON: Thank you, Mr. Smith. My question is a legal one about the standard of (indiscernible). And so I'm certainly satisfied by your actuarial necessity point. Although as you mentioned the actuarial necessity only applies to current employees for which we were talking about partially invested rights under which you have that three-part test that gives you either actuarial necessity or a balancing of an adverse impact by beneficial impact or the possibility of some strengthening or important change of the program. So that makes sense.

For the current retirees, we have this threshold question you mentioned of whether or not an inflation protection in the form of a COLA is actually a benefit. And that is the single threshold question on whether or not we could actually adjust the COLA for current retirees under which we acknowledge the other benefits have certainly vested, so the question is only, is this COLA a benefit?

So as I look through the case law here under this Colorado Springs Firefighters Association case, the example we have to indicate that there maybe benefits that are not included in the benefit packages, the threshold they have is a health plan benefit where the court found that that health plan benefit was severable doesn't count as a regular part of the package and could be adjusted.

Some of the distinguishing factors of the health plan including that people have an option whether or not to pay into it; it's severable from the rest of the plan; it's not delivered as a guarantee benefit at the end of the package. So can you just tell me all about what the case law underpinning is or what your legal interpretation is and why you believe that we'll be able to uphold the notion that COLA for current retirees is not a part of the benefit package?

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you, Madam Chair. There are multiple factors that go into that. And I think you're reading it is pretty on point. A couple of factors I guess I would throw out there that I think are going to be important in that analysis. One is that the COLA has changed repeatedly. It has pretty much consistently gone up, although there was a period of time that there was a split COLA and part of it went down and part of it went up.

Another very important factor I think is the fact that when we've made changes to the COLA in PERA's history, we haven't applied that only to future retirees. We haven't said, "Okay, those of you who have already retired, you're locked in on this COLA and only people that retire in the future are gonna get this loophole." Every time you applied a new COLA, we've applied it to everybody in the system, retired and soon to be retired and new retirees. So to me, that weighs pretty heavily in favor of concluding that there's at least some knowledge within the membership. And even within the retiree membership that that number can conceivably go -- it has gone up during their retirement, reasonable to assume that it might also go down in the event the impact or we incur the economic

conditions that necessitate that change.

And, finally, the last very important point on why I think the retiree COLA will be subject to adjust and be held up by the court, is that our actuarial necessity is such a nature that if we can't impact the retiree COLA, we cannot address effectively our shortfall. When you run the numbers and all of it you can touch is the future COLA of existing members and you can't eliminate or reduce our existing cash flow right now, we cannot fix the problem.

CHAIRPERSON: Senator Johnson.

MR. JOHNSON: Thank you, sir. Just one clarifying question. You said that COLA has adjusted up in the past, but it never has adjusted down before.

MR. SMITH: I believe there's one time when there was a partial down. But most people would look at it as it's always gone up.

MR. JOHNSON: Thank you, sir.

CHAIRPERSON: Senator Brophy.

MR. BROPHY: Thank you, Madam Chair and Mr. Smith. I want to take you back to that line of questioning that Senator Penry was on a little bit ago about unpacking what happens at some point in the future. And when you look at the actuarial projection for the state division, this point in the future at a

seven percent return, is only 16 years out in 2016 and at a 8.5 percent return is 19 years out at 2029 where the fund for the state division goes to zero, no money left. And we have to then pay out of existing revenue streams these benefits to the retirees or they're going to get nothing.

Tell us in today's terms, I've seen this before, but remind me what you pay out to retirees right now on an annual basis an aggregate amount of money so we can compare that to the size of any other part of the state's budget.

MR. SMITH: So we paid out $238 million last month.

MR. BROPHY: Last month?

MR. SMITH: Last month. So we're just short of three billion a year right now.

MR. BROPHY: So we would be forced to pay about as much in retirement benefits as we currently fund in K-12 education out of the state budget.

CHAIRMAN: That would be yes. Senator Steadman.

MR. STEADMAN: Thank you. And actually the response to Mr. Alexander's question, but Mr. Smith you may want to stay at the microphone and help me. Sir, you asked a third question that I don't know if anybody answered. But it's the same question I asked last year, last fall as I was looking at the situation. And that was given that last year the legislature asked the PERA Board to formulate a plan, that request was made at a time when we were looking at your end figures for 2008, and all last summer and fall, that plan was put together -- they were working out those year-end figures from 2008 -- now, that we have 2009 on the books, has anything changed?

I asked that same question. And I had the opportunity to spend some time at PERA and look at the computer modeling of the actuaries have built for them. And we modeled a couple different of those things, lines on the graphs that we've all seen based upon some assumptions about, okay, let's say we end 2009 here or there. And I can tell you the lines barely moved. And the things that Mr. Smith and Mr. Williams are saying about, you know, the real solution is in terms of benefits being paid out right now in the short term really is what's creating the need to adopt some sort of fix like this. I asked that same question, and I was satisfied with the answer. And, Mr. Smith, if you'd like to embellish, I'd invite you to do that.

CHAIRPERSON: Go ahead, Mr. Smith.

MR. SMITH: Thank you, Madam Chair. I'll be

very brief because I appreciate the opportunity to address that because it is a misconception many people have that we came up with this two, two and two package and thought that we would forever be at eight percent and wouldn't realize what we actually earned in 2009. And, in fact, if you look at the charts, you'll see that none of those charts show the line going to 100 percent at the end of 30 years. That is the yellow line chart that shows what happens after the Board's package. And the reason for that is that the actuaries and the PERA Board were aware at the time we built that package that we were already over eight percent in 2009. We've already run the numbers assuming what we believe to be our return for 2009 to see whether it meaningfully moved the line. And we know exactly what those answers are. And those answers are that they don't even come close to addressing the economic crisis that we had.

We have taken those into consideration. We've given credit for every dollar we've earned in 2009 towards the fix. So we recognize those returns, but still the steps that are represented in SB1 are necessary to (indiscernible).

CHAIRPERSON: Thank you, Mr. Smith. Okay. Any other questions? We actually have finished all the

testimony. And we will have an amendment phase, but I think we're going to take a ten-minute break. Did you have a wrap up? Do you want to do that after the break or before the break?

MR. SMITH: Madam Chair, I'll do a very brief wrap up any time you want me to. If you'd like to take a ten-minute break now.

CHAIRPERSON: Why don't we do now and then we'll Senators Henry and Shaffer do whatever wrap up they want. So ten minutes and we'll be in recess for ten minutes.]

(Recess)

CHAIRPERSON: Okay. This is to give you an overview of the rest of the evening. We're going to start with a wrap up by the two senate sponsors, Senator Penry and Senator Shaffer. And then we'll move the bill and then we will get into the amendment phase. So who wants to go first? Senator Shaffer.

MR. SHAFFER: Thank you, Madam Chair. I wanted to sincerely thank all those people who showed up and stayed here late to testify. This has been a long committee hearing and it's indicative of the type of conversations and work that had gone into putting this bill together from the very first day. And these are not easy issues. And, certainly, they are issues

that have real impacts on everyday Coloradans' lives, something that we need to take very seriously.

And my role in this whole process from day one -- I've mentioned this to a number of people -- has been to mediate a deal, if you will, to try to bring as many people to the table as possible and try to craft a piece of legislation that is bipartisan and that addresses some of the concerns as many folks as I've been able to reach out to put together a piece of legislation that we can, at the end of the day, be proud of recognizing that it is a very difficult task that we have before us.

I think the case has been made well that we have to do something because to sit on our hands and push this off for another year is simply not an option. And the question before us is, what do we do? And I think that there has been very good, very robust debate over which approach is the right approach to take.

I think we should honor the fundamental work that's gone into Senate Bill 001. I think that there are a couple of amendments that I am open to during this hearing and would like to see go on this legislation. I think it will consummate many of the negotiations that have been ongoing. Those are Amendments 8, 11 and 12. I would ask the Committee then to first move the amendment bill with Amendments 8, 11 and 12 and pass the bill with no other amendments at that point.

That's my request of you today. I do appreciate all of the questions, the long hours that we've put in to this hearing. And, of course, if you have any questions of me, I'm happy to try to answer those.

CHAIRPERSON: Thank you, Senator Shaffer. Senator Penry.

MR. PENRY: Thank you, Madam Chair. A couple of points. First of all, I want to reiterate thanks to those in the eye. It's a tough issue with real life consequences to frankly both sides, proponents and opponents of this bill. I appreciate especially the exchange at the end of PERA's testimony, in particular, the comments from Greg and Meredith. It should be required listening to anyone who votes for this bill.

What they said to recap was if we do nothing and if you look at the numbers, in four years at the end of the first term of our next governor, the death spiral begins. That's where PERA begins selling off long-term assets to meet its short-term cash flow needs. And in 16 years, PERA literally goes bankrupt costing the general fund, the taxpayers the same amount

that we spend on K through 12 education each and every year.

In the face of that, two things become obvious. One, clearly, if ever there were anything such thing as an actuarial necessity, this is it. And the General Assembly does have the authority to go in and change the benefit structure in the way that Senate Bill 001 describes. And the second thing is it's the responsible thing to do. We cannot kick this can down the road in the way that Washington has ignored the ticking time bomb of Medicare which goes bankrupt in 2017. We can't ignore the unfunded liability, the impending crisis that is PERA. So the responsible vote is a yet vote. It's not a perfect plan. There are things I don't like about, but, frankly, we clearly should go farther than we have given what we heard. But this does put us on the path to solvency. It's a responsible vote, and I hope the committee will support it.

CHAIRMAN: Thank you, Senator Penry. Let's move the bill, Senator Steadman.

MR. STEADMAN: Thank you, Madam Chairman. I move the Senate Bill 001 to the committee on appropriations and I move amendment L011.

CHAIRMAN: Okay. And would you explain L011.

MR. STEADMAN: This is one of the amendments that has been the subject of intense negotiations over the past 24 or 48 hours or perhaps several weeks or months depending on new perspective. This amendment does a couple things. It addresses retirement age and it addresses the COLA. And on the age of retirement, this amendment proposes a Rule of 88 for the school divisions. And I use divisions in the plural referring to both the school division and the Denver Public School Division.

That Rule of 88 is subject to one proviso, however, and that is that the employee would have spent their last ten years as a member of one of those divisions. And the objective there is to prevent someone from one of the other divisions from choosing to get a job at the very end of their career working for a public school purely for the purpose of taking advantage of the earlier retirement provision. So it is a Rule of 88 that is restricted to folks that have really been working in a public school. This is something that's been worked out with a number of folks.

And, again, like so much of what we have here tonight, it's not perfect and we can all find plause, but I think this does move the bill in the direction

that makes me feel more comfortable and ensure that we do not kick the can down the road.

The second provision of amendment 011 deals with the cost of living increase. And essentially what this does is it takes away one of the years in which the COLA in short term with the index to inflation or essentially there's wouldn't be a COLA. And so this will provide that there will be a COLA index inflation for just this immediate year which, given the inflation rate is coming in negative, that means a zero percent increase. After which then the COLA will be a fixed two percent amount unless the rate of return -- and this provision is already in the bill I believe on page 34 -- if the rate of return on the PERA's investments comes in negative in any given year, then this provision on page 34 will still kick in where there will be a three-year period in which the COLA is indexed to the rate of inflation capped at two percent.

So this does provide some relief to our retirees who are looking at the changes that we're proposing and feeling rather pinched by what we're doing on the COLAs. It's unfortunate, but as I think we've discussed quite thoroughly tonight, these changes to the COLA really are what make an immediate improvement to PERA's cash position. It's the benefits being paid out instead of takes place right away.

I know there were witnesses here tonight that suggested doing things with future hires or new hires, things that wouldn't affect PERA's bottom line for 30 or 40 years down the road. And, frankly, I think as we've all heard, we need to do something before 30 or 40 years down the road. It's the COLA that we get an immediate bang for the buck and immediately start to turn around PERA's liability and assets' ratio.

It's unfortunate, but with this amendment, I think we're tempering that just a bit. And so, again, I would move amendment L011.

CHAIRPERSON: Discussions?

MR. KING: Question.

CHAIRPERSON: Question from Senator King.

MR. KING: Thank you. Senator Steadman, would you tell me where it is in this particular amendment that COLA is, what lines?

MR. STEADMAN: Yes. In the amendment, if you turn to page two after line 21, the first page. And I think I'm doing this right. We could get the drafter to make sure I'm doing this right. But all of page one and most of what you see on page two through line 21 is about the retirement age beginning on line 22 is where you get to that two percent on the COLA. And that goes

through page three I believe about to line five. And then the bulk of page three of the amendment I actually understand is actually a conforming amendment that was omitted from the bill that has to do with some other COLA changes. So I think this is a technical provision that's included here.

But the section you're asking about, Senator King, really is, you know, the middle of page two onto the top of page three.

CHAIRPERSON: Senator King.

MR. KING: Okay. Thank you. Well, I guess what we have heard today and maybe if we're going to do this with amendments, (indiscernible) bunch of amendments. So I guess this dramatically changes the actuarially soundness and aspect of the program because the two percent as I understand it is worth about $50 million a year. I think if that's not the case, PERA, I'd like them to ask if that's the case. And if you take that and you amortize that over a 30-year period of time, this is about a half of billion dollar change in the bill, as I understand it. And maybe that could be verified by the people of PERA so that I have my numbers right on this particular change, what this change costs.

CHAIRMAN: Senator Shaffer would like to

respond to that.

MR. SHAFFER: Thank you, Madam Chair. And I would invite the PERA representatives to address this issue as well. We have been working on this comprised amendment for several weeks now. And we have asked the PERA staff to run this amendment through their modeling to see if it still fits a criteria amortization of 30 years, 100 percent funding. And the answer is yes is what's come back to me. So I feel comfortable that this does fit the parameters that we've put in place for this bill. And in the spirit of compromise, I think it's a good amendment.

CHAIRMAN: Do you wish to have PERA come up?

MR. KING: If PERA could respond to my question what this two percent is the first year and then how that plays out over 30 years.

CHAIRMAN: Okay, Mr. Smith.

MR. SMITH: Thank you, Madam Chair. We have had preliminary work done by our actuaries that address the change of potentially one year of zero COLA as opposed to two years of zero COLA that are currently contained in SB1. The indications we have are that we would still meet a 30 year amortization with one year of a zero COLA.

We will be having that confirmed by our

actuaries. Our Board has not yet addressed these amendments. They will do so at a board meeting on Thursday, a special board meeting on Thursday, at which time we'll get that final confirmation from the actuaries. But their initial analysis was that we would still be looking at 30 year amortization.

CHAIRMAN: Senator King.

MR. KING: And can you tell us specifically what the two percent COLA is worth per year and then how it affects the amortization out over the 30 years.

CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Madam Chair. My recollection of the results was that it took us, in light of the return that we had in 2009, when you combine the returns we have with going to a one-year COLA, we were still within a 30-year amortization and moved by going from a two to a one, moved us about a two years of amortization. So we're still within the 30 year (indiscernible).

MR. KING: That's not the answer to my question I asked you. Let me ask it again. Well, how much does the two percent COLA cost per year if we went from a zero to a two percent COLA for that one year? What is the cost of that for the year?

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thank you, Madam Chair. I don't know the exact figure, round figures is 50 million.
MR. KING: And how much is that over a 30 year period of time amortized to?
MR. SMITH: Well, if we were trying to get the net present value of that $50 million for the next 30 years, it's in the $150,000 range, $140,000 range.
MR. KING: $140 million?
MR. SMITH: I'm sorry, million.
CHAIRPERSON: I was gonna say, it sounded a little low.
MR. SMITH: No, I take them off, I put them on in our business -- you know, zeros --
MR. KING: So could I ask one final question?
CHAIRPERSON: Sure. Senator.
MR. SMITH: Than so basically, you can change the amortization of PERA about a quarter of a billion a year and not affect the solvency on a 30-year basis is what you're saying? There's plus or minus a quarter of a billion here or there that you have an ability to change the amortization by -- what you're saying is you could take $50 million and you can change that over a period of time, depending upon what your rate of return is, that 50 million will, over a 30-year period of time be equal to somewhere between $150 and $250 million,

depended upon a rate of return, you can change that much of the PERA program and not affect the 30 year amortization solvency?
MR. SMITH: I'm sorry, Senator, I don't believe that's what I said. What I mean to say is that if you give us $50 million us cash today, the equivalent of us not paying out $50 million in COLA, that we will turn that $50 million into $140 million in our portfolio over the next 30 years.
CHAIRPERSON: Senator King.
MR. KING: Okay. So I think we're saying the same thing. If you increase the expenditure from the current bill by $50 million in one year over a 30 year amortization that will roughly mean that you are increasing the payout. You're increasing the cost of the bill roughly $150 or more million based upon the one change or the one year?
CHAIRPERSON: Mr. Smith.
MR. SMITH: I'm sorry, sir, I'm having trouble following the question. I apologize. I'm not trying to avoid this question.
CHAIRPERSON: Can we get this question answered offline, or do you want to have it on the record?
MR. KING: We have two years of zero COLA in

the bill. This amendment takes it to one; is that correct?
MR. SMITH: That's my understanding.
MR. KING: Okay. And that one year change of $50 million over a 30-year period of time equals roughly, based upon current value of assets that you get on a regular return about $150 million over a 30-year period of time?
MR. SMITH: Approximately.
MR. KING: Thank you.
CHAIRPERSON: All right. Any other questions on this amendment. Any other discussions? Any objections to this amendment? Okay. In that case, we can call the roll?
MR. KING: I'd like to sever the amendment --
CHAIRPERSON: Sure.
MR. KING: -- and vote on page one, lines one to line 21 if that's a correct place to sever the amendment and vote on that portion, the severed portion as one.
CHAIRPERSON: Could you repeat that? Is it page one to -- it's starting on page one and then going to page two to line 21. Is that what you mean?
MR. KING: Right. Starting on page one, line one. And I think what Senator Steadman said that the

age thing goes to page two, lines 21, if that's a correct place to sever the amendment.
CHAIRPERSON: All right. And the severed section two would be line 22, page two and it would go to line six on page three? You might want to help us out here Senator Steadman.
MR. STEADMAN: Thank you, Madam Chair. That is one place we could sever the amendment. There is the issue on the last page, page three and then it's section 30. It's really just a technical conforming amendment and I don't know which severed portion you'd like that in, Senator King.
CHAIRPERSON: Should we include that in subsection one?
MR. STEADMAN: Should the director help us out? Can Nicole help us out?
CHAIRPERSON: I'm sorry, what?
MR. STEADMAN: Should the director help us out?
CHAIRPERSON: Where's the director?
MR. STEADMAN: Nicole.
CHAIRPERSON: I don't have my glasses on. Would you introduce yourself and then we'll continue. I think you're right, though. I think we can make subsection one, page one, lines one through 23 and page

two, line one through 21 and page three, line seven through 30. And then just make subsection two that middle part. Is that what you would recommend? You want to go over that? Introduce yourself ,please.

MS. MEYERS: Nichole Meyers. I work for the legal services. Madam Chair, I think what you described would be fine. Have severed section two should be that section on page two starting on line (indiscernible), page three, line five.

CHAIRPERSON: Line five. That's right. Okay. So we have two sections. Let's vote first of severed section number one. And I'll repeat that. It starts on page one, lines one through 23, page two, lines one through 21. And then it continues on page three, lines six through 30. That is severed section one. That's what we're voting on right now. Any questions? You want to call the roll?

FEMALE: Senator Brophy?

MS. BROPHY: Aye.

FEMALE: Senator Hudak.

MS. HUDAK: Aye.

FEMALE: Senator King?

MR. KING: Yes.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: No.

FEMALE: Senator Steadman?

MR. STEADMAN: Aye.

FEMALE: Senator Johnson?

MR. JOHNSON: Aye.

FEMALE: Madam Chair.

CHAIRPERSON: Aye. That passes 6-1. Severed section two that we'll be voting on will be page two, lines 22 through 32, continuing on page three, lines one through five.

MALE: Senator King raises legitimate points and, obviously, I think there will be an answer to the question the amortization tonight, but hopefully before this bill makes it to appropriations for second reading, PERA will be answer more definitively how this change lives within the context of the 30 year amortization because your question was a fair one. I think we should understand the implications of that at some point down the road.

CHAIRPERSON: And I concur with that. That was why I asked if we can find that answer offline, so I think that maybe PERA can look on that. They know what the question is. Let's go ahead and vote on severed section two.

FEMALE: Senator Brophy?

MS. BROPHY: Aye.

FEMALE: Senator HUDAK?

MS. HUDAK: Aye.

FEMALE: Senator King?

MR. KING: No.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: Aye.

FEMALE: Senator Johnson?

MR. JOHNSON: Aye.

FEMALE: Madam Chair?

CHAIRPERSON: Aye. That passes 6/1. Let me go to Senator Brophy.

MR. BROPHY: Thank you, Madam Chair, I move amendment 12. And let me find amendment 12 in my stack here.

CHAIRPERSON: Let me find it also.

MR. BROPHY: If you look at your bill, this amendment 12 is pretty short. It won't take that long. It amends that part of the bill that starts on page 39 through 40 that grants some hiring flexibility for schools which, you know, when you recognize the fact that this is putting them in a bind as they have to contribute more money into the PERA Retirement Fund with the increased AED, I think it's important that we

can do something also that helps give them some more flexibility with regard to hiring people, which effectively part-time retired workers who when they hire them back, won't be accumulating any additional service credits, but they'll still be working.

And what amendment 12 does then is it fixes a part and then on page 40 where the hired worker would have to pay the employer's share of the contribution to PERA, eight percent, in addition to the eight percent that they're paying out of their own pockets. It makes them pay twice as much as they would pay under normal circumstances. So we just take that part out and then they're just treated like every other employee in the district where the employer is making the employer contribution, the employee is making the employee contribution. And the only difference is that they're not accumulating any additional service credit. They're just working another job. (Indiscernible)

CHAIRMAN: Discussion on amendment 12? Is there any objection to amendment 12? Okay. There's been no objection, so would you please call the role.

FEMALE: Senator Brophy?

MS. BROPHY: Aye.

FEMALE: Senator Hudak?

MS. HUDAK: Aye.

FEMALE: Senator King?
MR. KING: No.
FEMALE: Senator Scheffel?
MR. SCHEFFEL: No.
FEMALE: Senator Steadman?
MR. STEADMAN: Aye.
FEMALE: Vice Chair Johnson?
MR. JOHNSON: Aye.
FEMALE: Madam Chair.
CHAIRPERSON: Aye. That passes 5-2. Let me call in Senator Scheffel, and then we'll get in Senator King because he has a lot of them.
MR. SCHEFFEL: Thank you, Madam Chair. Amendment 8 is the shift that was discussed early from the AED to SAED, AED taking that from two percent to 1.5 and the SAED from two to 2.5 percent. The testimony has been lengthy and I won't dwell on it here, but there's much about this still in general, but I find it largely discomforting the fact our ability to ultimately support the bill. But I am concerned about the effects of the whole AED/SAED r on districts. And what brought this to my attention was my own school district, Douglas County, the largest district in the state was recently elected (indiscernible) and the level of the two percent-two percent has they indicated

to me would directly affect their ability to put forth their reform agenda and that resonates with me. And for that reason, I'm willing to sponsor this amendment that shifts, as I said from the AED to the SAED.
The savings to the district alone, I'm sure, would be similar with corresponding to all the districts throughout the state that their savings would be 15 million over five years. And, again, that certainly resonates with me. So, regardless of my ultimate support or lack thereof for the bill, I'd like to put forth amendment 8 and ask for your support on this.
CHAIRPERSON: Discussion on amendment 8? Any objection to amendment 8? Oh, I'm sorry, Senator Johnson.
MR. JOHNSON: Thank you, Madam Chair. I had a comment also related to that as I also share some of Senator Scheffel's concerns about the AED and SAED and particularly about the AED costs and the impact on districts. And, particularly, I represent Denver. And so I would just flag the fact that currently as you know, the DPS Division has a separate rate which is 17.45 percent, almost four percent higher than the PERA school division. With projected increases by the time this takes affect in 2017, then the public schools will

be at almost 25 percent of the total payroll that's going to pension payments.
That will be, as far as we can tell, the highest of any school district in the country, which I think has real concerns. Add to that the fact that Denver is the largest net contributor to the School Finance Fund in Colorado, contributing more than $300 million to School Finance, which with respect to Senator Scheffel, is almost three times the contribution of Douglas County, $400 million more than Jefferson County contributes even though they're much larger than Denver.
And so I would just flag for this committee that while now is not the time to resolve it, given how complicated this bill is, I would certainly like to see us return to the question of how we resolve Denver's disproportionally high payments before this three year freeze is over.
CHAIRPERSON: Thank you, Senator Johnson. Further discussion? Any objection to amendment 8? Seeing no objection, amendment 8 passed.
Senator King.
MR. KING: Thank you. Well, why don't I start in reverse order and start with I move, well, not quite move, number 14.

CHAIRPERSON: Okay. Go ahead and explain that.
MR. KING: Basically, what 14 does is it gives the employees of the State of Colorado that are not part of the state division the same opportunity as the state position employees have to chose on their own volition a DC Plan, the defined-contribution plan, as opposed to a defined benefit plan. I asked for some statistics on the state plan on how many have joined a defined contribution plan that are eligible employees. I think this helps (indiscernible) to retain as a result of a bill in 2004.
As of the end of November, 2009, there was approximately $34 million in the plan for 3,031 employees who had optioned into that plan and approximately 1,900 of them were active. So, frankly, this option, if the last amendment that we just had, that's why I want to make it absolutely clear what two percent COLA does in the one year that we just changed. It changes the plan by 50 million. It changes the actuarially soundness of the plan by 50 million. We said that it had no impact -- we just heard that -- it has no impact on the actuarially soundness of this proposal to do it.
Based upon the option in of the opportunity

if the school division plans are similar to the state division plans, how they will opt in, it will not change the actuarially soundness of the plan. It will give the employees the choice whether they want to belong to a defined-contribution plan or whether they want to belong to a defined benefit plan. And it will give that option available to all employees throughout the state of Colorado that already have it in their state division. So it asks for any aye vote.

CHAIRPERSON: Discussion on amendment 14, Senator Steadman.

MR. STEADMAN: Thank you, Madam Chair. Well, Senator King, given that you just said, if I understand this, this allows employees to make an election which we don't have any idea what they will choose. But you just said this has no impact upon the actuarial soundness of the plan. And so I'd like to understand why this fits within the title of the bill and I'd request a ruling the from the Chair or comments from the bill sponsors.

MR. KING: Well, I could respond?

CHAIRPERSON: Senator King.

MR. KING: We just made a decision to say that a $50 million change in one year has no impact on the title of this bill and the significance of whether

this bill is actuarially sound in 30 years. This amendment, based upon the employees that have optioned in to a defined-contribution plan have since 2004, the total investment has been $34 million. That's less than $5 million a year, I guess. It's about $5 million a year. It's not even a tenth of what the other one was.

So if the other one doesn't significantly change the actuarially soundness of this bill for 30 years, this amendment will not do it either because it's roughly one tenth of what the other one is. So if this one doesn't fit, then we better go back and have a title ruling on the one we just voted on. It definitely doesn't fit.

CHAIRPERSON: Any other comments? Senator Steadman.

MR. STEADMAN: Thank you. Senator, and to your point, the previous amendment made some fine tuning to the changes that were already in the bill about COLA adjustments. And as I understand it, based upon the information we have, those changes to the COLA adjustment do not make the bill miss the target in terms of bringing us to the point where the plan is properly funded to meet it's liability.

And so no effect on the actuarial soundness

on the previous amendment was that it didn't make us miss the mark. With your amendment, it has no affect on actuarial soundness whatsoever because this just opens up an election in the future that we have no idea that anyone will even choose. And so this doesn't have any bearing on the issue of actuarial soundness unlike the previous amendment.

CHAIRPERSON: Any other comment before I make a ruling? Senator Henry.

MR. HENRY: Well, I think the policy is a fair debate, but Senator King's amendment costs five million, the last one cost 50 million. I think his argument is to the point. So I think his argument is if 50 million isn't going to affect a 30-year amortization, how does five million? A lot of these amortization determinations, we're not gonna know the answer until PERA comes back with some findings. So I think we should make decisions based on policy. And it's hard to say that a $5 million change doesn't fit on the title when a $50 million one does.

CHAIRPERSON: When you look at it from that perspective, I would follow that rationale. But when I look at it from the perspective of the fact that this is changing the way employees -- giving them a choice between a defined benefit and defined-contribution

which has nothing to do with modifying the public employees retirement association necessary to reach a 100 percent funded ratio within the next 30 years, then I have to agree that it does not sit under the title.

One last time.

MR. KING: The title says concerning modifications to the public employees retirement association. The association already has a DB plan. It has a DB plan. It has both of them already. They're both in the state division. I think it's disingenuous to say this doesn't fit under the title when already there is a DC plan available for PERA retirees in the state division.

If you don't like the amendment, that's fine. I think it should have a vote up or down or I think this ruling is just not a fair way to go about doing this at all when we just passed a $50 million change and we won't allow a $5 million one.

CHAIRPERSON: Any other discussions? Senate Shaffer.

MR. SHAFFER: Thank you, Madam Chair. It's at your discretion, of course. I don't see the harm in taking a vote if that's the direction that you ultimately choose to go.

CHAIRPERSON: Well, this makes it very tough.

I still don't believe that it quite sits under the title, but I will give you the benefit of the doubt, Senator King, and I'll allow the vote.

MR. KING: I appreciate that. Thank you.

CHAIRPERSON: Please call the role.

FEMALE: Senator Brophy?

MR. BROPHY: (Inaudible)

FEMALE: Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Yes.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No. That fails on a vote of two to five. Senator King.

MR. KING: I'll move a similar one, but this actually limits a new 15. This is the same concept. It's a defined-contribution concept, but it limits the employee division to less than ten percent that could ever opt into it. So it absolutely probably less than

a $5 million hit. It's probably more like a $2 or $3 million hit per year. And it compares the comparable between what a DC Plan and the state employees would be compared to the school district's employees.

CHAIRPERSON: Discussion? Any objection to Amendment 15? Okay. Please call the role.

FEMALE: Senator Brophy?

MR. BROPHY: No.

FEMALE: Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Aye.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No. That fails on a two to five. Senator King.

MR. KING: Number 13, I move for 13.

CHAIRPERSON: Please explain it.

MR. KING: Let me get it. We've had some talk about the SAED. And what this particular

amendment does, if the salary increases are insufficient to cover the SAED, the SAED shall be suspended for the applicable year that it's not able to fund it, and the employer will not be responsible for delivering the SAED to PERA. So it gives an opportunity to say to the employer that you do not have to deliver the SAED for the employees.

CHAIRPERSON: Discussion? Senator Scheffel.

MR. SCHEFFEL: Thank you, Madam Chair. I would propose an aye vote on 13. If you remember, this was raised when the discussion first in early this afternoon, I raised the issue that in proposing the shift from AED to SAED that some were saying that that was a meaningless shift because of the very issue that Senator King is highlighting here. So I would encourage an aye vote in support of this amendment.

CHAIRPERSON: Further discussions? Objection to Amendment 13. Please call the role.

FEMALE: Senator Brophy?

MR. BROPHY: No.

FEMALE: Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Aye.

FEMALE: Senator Shaffer?

MR. SHAFFER: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No. That fails on a two to five vote. Senator King.

MR. KING: Well, I see how the trend is going, but I'm going to continue. I'll move 007.

CHAIRPERSON: Okay. 007 has been moved. Please explain.

MR. KING: This particular amendment prohibits PERA from being able to offer service credits. I think we've heard testimony, whether it was formally or informally, that the purchase service credits has caused roughly when it was the very lucrative way to buy service credits a billion dollars of insolvency in PERA. And then, the law was subsequently changed. And service credits have been a bad idea from the solvency standpoint of PERA. And people should have to stay and not be able to purchase service credits of because of what it takes to the solvency of PERA.

CHAIRPERSON: Discussion on amendment 7?

Objection to amendment 7? Please call the role. There is objection.

FEMALE: Senator Brophy?

MR. BROPHY: No.

FEMALE: Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Aye.

FEMALE: Senator Shaffer?

MR. SHAFFER: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No, that fails on a two to five vote. Senator King.

MR. KING: I move 005.

CHAIRPERSON: Okay. Please explain. We all need to find it first.

MR. KING: This particular amendment says that it's opposed to assuming a rate of investment that's six and eight percent, that the rate of return on all investments made with PERA will be based on an average of the previous three years. We've just gone

through a tremendous economic downturn and we've seen the inability for PERA to perform at a level so we could get a return at. And we're basing the amortization of PERA on false assumptions because we don't have a realistic way of going about creating a base for rate of return. So this would adjust that.

CHAIRPERSON: Any discussion on that. Senator Steadman.

MR. STEADMAN: Thank you. Senator King, why would we even have a PERA Board if we want to put all of these kinds of judiciary judgment responsibilities into some formula and statute? I just think this is really completely wrong and I oppose it.

MR. KING: Well, I would just respond.

CHAIRPERSON: Senator King.

MR. KING: Okay. Thank you, Madam Chair. I would just respond I served in this body in both the House and the Senate now for ten years. I'd seen four different proposals. I supported three of them I believe. And here we are again. And we're making adjustments again and we make adjustments.

This fix will last two or three years and it's too rich, it doesn't work. At least this puts some realty into the actualization of how we amortize the benefits.

CHAIRPERSON: Any other discussions on Amendment 5? Any objections to Amendment 5? Please call the role. There is objection.

FEMALE: Senator Brophy?

MR. BROPHY: No.

FEMALE: Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Aye.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No, that fails on a two to five vote. Senator King.

MR. KING: I move 004.

CHAIRPERSON: Please explain amendment 4.

MR. KING: Number 4 has actually been talked a lot about. And it's whether or not there's an actuarial emergency that exists, which I'm assuming that there is. I'm guessing the reason why we're doing this is because it does exist. There is a lawsuit that

says whether or not that emergency exists or whether it does not exist.

This amendment states that there is an actuarial emergency that does exist with the defining benefit plan. And it is not sound. And since it is a necessity to change it, we can modify the benefit. I think this is pretty plain language of what we've gone through tonight as to whether or not the COLA is protected or not. And this says the COLA is not protected. We have an actuarial emergency.

CHAIRPERSON: Discussion? Objections? Okay. Let's call the role.

FEMALE: Senator Brophy?

MR. BROPHY: Aye.

Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Aye.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No. That fails on a three to four vote.

MR. KING: Maybe I can wear you down on this one. I don't know how you vote against it. We just voted that we have an actuarial emergency, and now we just said we don't.

I move 003.

CHAIRPERSON: Okay. Would you please explain 003?

MR. KING: 003 says that we need another independent look at how PERA is operated and run. And this particular amendment requires the state treasure to submit a report to the General Assembly regarding the overall financial standing of PERA on an annual basis. And more frequently, if it seems that it's deemed to be unsound, it's obviously going to be unsound. It's unfunded. It's insolvent. And we've been relying on PERA to talk about PERA and speak to PERA itself.

We need an independent view of whether or not PERA is insolvent or whether it isn't. And we also need another look at it besides PERA coming in and running these bills at this legislature all the time and say whether they agree with their position or whether they don't based upon their board. So I would

ask for an aye vote.

CHAIRPERSON: Discussion? Well, before -- I think I would like to say something. Actually, the Finance Committee, as you all know, has oversight over PERA. And PERA reports to the Finance Committee in a special meeting every year. And I have actually found them to be pretty forthright in terms of admitting when they are in trouble in terms of their funded liability. So for that reason I don't feel that it's necessary to have the treasurer do an independent report.

And I think if I'm not mistaken, they hire independent auditors to come up -- they do an independent audit every year. So, anyway, Senator Steadman.

MR. STEADMAN: Thank you, Madam Chair. You largely made the point I was going to make. Senator King, unlike the previous amendments, I really don't think this is a bad idea, but I think it might possibly be duplicative of things that are already happening or drive a fiscal note in the treasurer's office, which also concerns me. We do have the oversight processes that go before the budget committee. And so, I don't support it, but I don't feel that strongly about it.

CHAIRPERSON: Any other discussions?

MR. BROPHY: Madam Chair.

CHAIRPERSON: Yes, Senator Brophy.

MR. BROPHY: Thank you. And to expand on what Senator Steadman said. The treasurer is actually on the PERA Board, so it's like an additional PERA report on top of the one that they're already doing.

CHAIRPERSON: So, it's two foxes guarding the henhouse. Anyway, any further discussion? Any objections? Okay. See objection. Let's call the role.

FEMALE: Senator Brophy?

MR. BROPHY: No.

FEMALE: Senator Hudak?

MS. HUDAK: No.

FEMALE: Senator King?

MR. KING: Aye.

FEMALE: Senator Scheffel?

MR. SCHEFFEL: Aye.

FEMALE: Senator Steadman?

MR. STEADMAN: No.

FEMALE: Vice chair Johnson?

MR. JOHNSON: No.

FEMALE: Madam Chair?

CHAIRPERSON: No. That fails on a two to five vote. Senator King.

MR. KING: I move number two.

CHAIRPERSON: Please explain amendment 2.

MR. KING: We've been concerned about the solvency of PERA. We've been concerned about people backloading the amount of increase that they can get based upon a eight percent inflation increase per year. This one is a five percent per year. It caps the salary at five percent, so that we don't have the high inclusion of last year's salaries being high where it becomes a funding difficult for PERA, and it limits to five percent.

CHAIRPERSON: Any discussion on amendment 2? Any objection to amendment 2? Oh, did you have a discussion Senator Steadman?

MR. STEADMAN: I just want to make sure I understand this correctly, Senator King, this is changing the spiking provision --

MR. KING: Right.

MR. STEADMAN: -- on the highest average salary calculation?

MR. KING: That's correct.

MR. STEADMAN: Thank you.

CHAIRPERSON: Any further questions or discussions on amendment 2? Senator Johnson.

MR. JOHNSON: Quick clarifying question. So, Senator King, it takes a six year average and then

takes the lowest average is the base and then indexes it at five percent per year every year of the highest three; is that right?
MR. KING: This amendment changes highest calculated salary to a five-year for the base year and imposes a five percent cap. I don't think it's a six percent.
MR. JOHNSON: I was thinking six years. It says six periods of 12 consecutive months? Lines seven and eight. It's okay. I was just curious.
MR. KING: I thought it was a five-year.
CHAIRPERSON: Nicole.
NICOLE: Thank you, Madam Chair. Nicole (indiscernible) of legal services. Senator King, it's a five-year of a salary, but if you use a six-year the first year so it's (indiscernible) five year.
CHAIRPERSON: Okay. Any other questions? Senator Johnson.
MR. JOHNSON: Just to clarify, there's a five percent tether within each of those six years, right? So you could never have more than a five percent increase among any of the six years?
FEMALE: Right.
CHAIRPERSON: Any other questions or discussion? Any objection to amendment 2? Seeing

objection, please call the role.
FEMALE: Senator Brophy?
MR. BROPHY: No.
FEMALE: Senator Hudak?
MS. HUDAK: No.
FEMALE: Senator King?
MR. KING: Aye.
FEMALE: Senator Scheffel?
MR. SCHEFFEL: Aye.
FEMALE: Senator Steadman?
MR. STEADMAN: No.
FEMALE: Vice chair Johnson?
MR. JOHNSON: After all that, still no, Senator King.
FEMALE: Madam Chair?
CHAIRPERSON: No. That fails on a two to five vote. Senator King.
MR. KING: I'm done.
CHAIRPERSON: Are there any more amendments from any of the members? Okay. The vote will now be Senate Bill 001, as amended. Discussion? Last chance. Please call the role.
FEMALE: Senator Brophy?
MR. BROPHY: Aye.
FEMALE: Senator Hudak?

MS. HUDAK: Aye.
FEMALE: Senator King?
MR. KING: No.
FEMALE: Senator Scheffel?
MR. SCHEFFEL: No.
FEMALE: Senator Steadman?
MR. STEADMAN: Aye.
FEMALE: Vice chair Johnson?
MR. JOHNSON: Aye.
FEMALE: Madam Chair?
CHAIRPERSON: Aye. That passes on a vote of 5 to 2. Congratulations Senator Shaffer.
MR. SHAFFER: Thank you, Madam Chair. Thank you, Committee.
CHAIRPERSON: Senate finance is adjourned.
(Meeting concluded)

STATE OF COLORADO)
) ss. CERTIFICATE
COUNTY OF DENVER)

I, Christopher Boone, Certified Electronic Court Reporter and Notary Public within and for the State of Colorado, certify that the foregoing is a correct transcription from the digital recording of the proceedings in the above-entitled matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially or otherwise interested in the outcome of the action.

In witness whereof, I have affixed my signature and seal this 21st day of June, 2010.

My commission expires August 16, 2010.

____
Christopher Boone,
AAERT Certified Electronic Court Reporter

App. A-12: Transcript House Finance Committee Hearing

REPORTER'S TRANSCRIPT

HOUSE FINANCE COMMITTEE

SENATE BILL 10-001

FEBRUARY 10, 2010

CHAIRPERSON: Our finance committee will come to order. We have Senate Bill 001 this afternoon. And we also have Andy Kerr who is going to talk all about it in just a moment. When we get to the phase of taking testimony, I'm going to start off I'd like to hear from some of the folks from PERA who can tell us why they're doing this or proposing this and what it is that they're proposing. Then I'm going to proceed on to others who will be testifying or who signed up to testify in favor of the bill. Then I'm going to go to the folks who have signed up to testify in opposition to the bill or who have questions about it. And then, at the end I'm gonna ask Meredith Williams and Greg Smith to come back and address questions that have been raised during the course of the afternoon and perhaps evenings' testimony.

So with that, Representative Kerr do you want to go ahead and tell us about Senate Bill number 001.

MR. KERR: Thank you, Mr. Chair and Finance Committee. I miss you guys and especially on days like today. If you saw what my committee was doing right now, you'd understand I'm actually telling the truth there.

Thank you for your consideration for Senate Bill 001 today. I don't think it's any exaggeration to

say that this is one of the most important pieces of legislation that we will look at this year and certainly in a year of much important legislation. And this bill had certainly been through -- this whole issue, even before there was a bill written, this whole issue had been through quite a bit of discussion. I know that PERA, the entity of PERA and the directors and employees of PERA have been working on this diligently for well over a year at this point to arrive where we have.

And this is a point that I'll probably come back to quite a bit today as we discuss the particulars of this. I do want to assure this body that many, many great minds have been working on this and all of the issues contained within this bill. I do not count mine as one of those great minds. I just want to say that up front here. But many people have been working on this.

Just over the past few weeks, many folks have brought forth ideas of what they thought maybe could make it just a little bit better. And I have yet to hear an idea that has not been brought up before and considered and run through models and had a lot of very smart people who understand what all these big numbers really mean, but also the importance of what a person's

retirement and a person's pension means to them and their family and their community and that we have done due diligence up to this point.

I'm, for the second time this section, going to say something complimentary about the Senate and I ask your forgiveness up front. But the Senate did make some modifications to the bill, as introduced, and I believe that the modifications were good. They strengthened the bill. And what we have today is a bill that will make sure that PERA, as an entity, and more importantly as the organization that guarantees a strong pension for hundreds of thousands of Coloradians and their families moving forward is sustainable and will be, instead of falling off a cliff like it has in the past, it will start marching in the right direction which will ensure a strong pension fund for the hard working people of Colorado.

You should have received a packet of information starting with -- that has a letter from Mark Anderson who's the chairman of the PERA Board. And basically runs through a little bit of the basic information about PERA and exactly where this time line has gone over the past year or so. And I believe also in that packet there is a natural time line showing when different decisions were considered. It shows the time line of the PERA folks going out and having conversations around the state with PERA members, both beneficiaries and current members, who are future beneficiaries. And I think if you take a look at that, you'll see what a solid time line that is to reach this point.

Additionally, in that packet, you will find some pretty scary looking school division actuarial projections. And that is actually what we are looking to fix in the projections that are in that school division projection sheet. That's exactly what we're looking to fix here.

One point I want to make on this projection sheet that you're looking at and a lot of folks had been talking about that maybe we're trying to fix too much too quickly. And just go back and remind everyone, in case they've forgotten, what kind of investment the year 2008 really was and what absolute aberration it was compared to previous years. But we are actually looking at perhaps years like 2008 being more the rule than the exception in the future. Not just from a negative standpoint of how much investments went down in 2008, but also possibly years where the markets might rebound quickly. And I think, actually, if you compare 2008 to 2009, that's a bit of that

comparison.

But I want you to think about going into the future here. It's very possible that that aberrations up and down will become the norm of such incredible levels that it is critically important that we have an absolutely solid conservative investment plan for PERA going into the future and not be looking at well, you know, in the past, we're okay if we did it this way. I think we need to really look at the idea that we might to be doing things a little bit differently in the future. And also that we need to prepare ourselves for worse case scenarios. And I truly believe that is what this bill does at this point.

As you can see on your projection sheet and I'd especially like to point your attention to the 40 percent funded ratio line because that is a very critical line at which point pension funds like PERA, if they reach a level of 40 percent, you know, and people are saying, well, you know, you can still recover from that, but the rules change. The laws and rules around investment change when a fund reaches 40 percent funded ratio. And they have to draw back, they have to become extremely conservative in their investments. And some of the investments they might otherwise have done which would help bring in higher

returns such as the 8 percent expected that we'll mostly be talking about today, but even higher than that, just those types of investments won't even be possible by rule and statute once a pension fund reaches 40 percent.

So that's a critical point of not just certainly we want to keep any pension fund from getting anywhere near zero, but 40 percent alone is a very critical point that we do not want to approach.

You should also have a beautiful foldout chart that shows the evolution of this bill, everything from the PERA Board's original recommended plan that I believe every member of the general assembly received a nice folder with lots of information in it. And hopefully we're able to go to one of the presentations that PERA did on the PERA Board's original plan. And then, it also compares the original plan to Senate Bill 001 is introduced. And you'll see that there were some changes there. And then, it also compares to Senate Bill 001 with amendments that the Senate did and also the effects of the changes all the way through the process. And we'll be referring to that throughout today's testimony, as well.

Also in the packet that you received and I believe the last item in those papers is a letter from

Thomas Cavanaugh from Cavanaugh McDonald Consulting. And you can read it for yourself. But for the record, I want you to know that this is addressed to Mark Anderson, the Board Chairman of Pera. And it says, "This is to certify that the comprehensive plan of benefits and contribution changes contained in Senate Bill 001, as amended, and after consideration by the PERA Board of Trustees at its January 28th, 2010 meeting, the sound actuarial response to PERA's current financial situation. It is a reasonable approach to ultimately achieving the goal of fully amortizing the unfunded actuarial accrued liability of PERA's division and thereby reaching a 100 percent funded ratio for each division within the next 30 years." And, again, that's Thomas Cavanaugh, chief executive officer of Cavanaugh McDonald.

So with that, I would like to throw myself on the mercy of the committee, see if there are any questions I can answer for you at this point and certainly welcome testimony moving forward. Thank you.

CHAIRMAN: Representative Gerou.

MS. GEROU: Thank you, Mr. Chair. Representative Kerr, thank you very much. I can't imagine what you've been going through trying to put this together and present this.

But just to step back, I had asked a question a year ago last January was the first time that we heard a report out from PERA regarding the financial difficulty. And then, they came back -- well, we've been hearing from several times a year. I was curious if you could just explain to us why we spent all the time last summer on the Pinnacle issue and because PERA impacts so many people across the state. It's such a huge population. I was wondering why we didn't have a similar opportunity at the state as far as an interim committee or something. I know that PERA went out and they were talking to their participants. But I was wondering why we didn't have a broader, longer interim, interchange between us and the PERA representatives over the summer?

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and Representative Gerou. First of all, I'd like to remind you that you were in my committee this morning and I was really nice to you. So I want just set that groundwork up right away.

But, beyond that, first of all, you mentioned Pinnacle and I'm not sure -- I don't think this has really anything to Pinnacle. And I'll just say that my attention has been focused on this bill and this issue.

So I can't respond to your question around Pinnacle.

But I do think that, and, again, going back to the time line that's in your packet here, I do think that the PERA Board, the PERA employees have in very good faith had an ongoing conversation with us as the finance committee, us as the legislature and actually us as the either beneficiaries or future beneficiaries of the PERA Pension Plan. So that's my impression of the process.

CHAIRMAN: Representative Gerou.

MS. GEROU: Thank you, Mr. Chair. And, Representative Kerr, I'm sorry, I didn't make myself clear that we went through a long process where basically when we went through the hearings with Pinnacle and I'm using that just as an example. All of us that were involved in that got to know the system very well. We got to under the Pinnacle, the workmen's comp system, and the state's involvement very well.

All I'm wondering when we've been involved with PERA it's been more of a reporting out, the interaction. And I know we've had separate meetings with them. It hasn't been approached the same way. I'm not trying to mean this adversarially, it's just I've gotten questions from constituents about it, and I just want to be able to come back with them. I'm sure

there's a logical reason why you've been doing it, but it's not making sense to some.

And the other part that's confusing is when I sat in the day, the JVC listened to the PERA proposal and the Board Members said, "Don't touch one thing. If you touch one thing on this PERA proposal, you will throw the whole thing out of kilter. Don't change one thing. And we have changed things." And so it's been a little bit confusing to me and to my constituents as to how we've approached this. And if you could just explain a little bit more, that's all I need.

And thank you for being so nice this morning. I appreciate that.

CHAIRMAN: Representative Kerr, if you want to defer the process question to some of the witnesses, that's fine too, but if you want to go ahead and answer it, please go ahead.

MR. KERR: Thank you, Mr. Chair, and Representative Gerou. And, absolutely, I understand like anything else, a process and you're gonna have different points of view or different perceptions of any process. I know from my perspective, I think back and I don't know the exact date, but when PERA was doing their listening tour and going out and talking to beneficiaries and current PERA impacted employees that

-- and I believe it was Representative Jim Kerr and Representative Ken Summers and myself were all at that meeting on the Holiday Inn at Hampton.

You know, to me, my perception is we were all there. I believe all three of us asked questions. We addressed the people who showed up at the meeting. So this is one example of what I think has been a very open engaging process that coming in and reporting the information that they need to, but also being out talking to the beneficiaries and employees as well.

Also, around the point of not changing a thing, again, from my perspective, kind of being on the inside as this information has been exchanged is I think it was back in early November/December when PERA invited all of the legislators to come in and look at their modeling that they had been doing and really when they had just released the report. And since that point in moving forward, as different groups or different people have come forth to say, well, how about trying this, PERA has been very responsive by taking that -- if it's information that can be plugged into their model, they've been doing that and that's pretty quick to do. But if it's anything that doesn't just plug into their model, they actually have to take back to their actuaries and have their actuary run the numbers through. And we are talking about tens of billions of dollars here in projections over 30 years.

So I think that was the standpoint of here's a model and it's balancing on the head of the pin. That was before really the politics got involved getting other groups to the table and making sure that it makes sense. And I think through the process, we found some other pieces that do make sense taking those back to PERA, PERA has taken those to their actuaries, have them run that. And that's where we are now.

CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair, Representative Kerr, thanks for bringing this bill again. I'm going to ask you a little bit about the impact on school districts. And maybe you can't answer, but, obviously, you do have good knowledge about schools. So I've heard that it's going to have a significant impact on schools. And I was just having a discussion at lunch today that said basically the schools have to begin kicking in I think it's two percent on the employer's side. And then the employee side I also believe is two percent, but really the schools are going to be funding that as well.

I mean, as you know, schools are already laying off people right now. So discuss that issue for

me, the impact on schools and how they're going to pull this thing off.

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and Representative Swalm. Thank you. And just for the record, I think I was nice to you in committee, too, today. But absolutely this bill, this issue, fits right in with the theme of this entire legislative session this year around everyone has got to take a little bit. And everyone has got to step forward to be part of the solution. And the school districts and school employees have been part of the process here of fine-tuning this bill.

When you talk about the hit and, first of all, I think the numbers are a little off there, but when we look at the school division, it's actually going to be -- the amendment that they put on in the Senate has pushed those numbers back a little bit that the hit won't be the four percent. And, certainly, not right away. This additional two percent and two percent actually works out to one and a half and two and a half, but then ends up as 4 percent total. But it's pushed out a little bit, that it won't be an impact in the next couple of years. The schools already have budgeted the AED and SAED that is

currently in law and will be paying until 2012. This bill will increase those two numbers starting in 2013. And so that will be the point at which school districts will be more heavily impacted.

Around the idea of laying off teachers -- and absolutely school districts are making cuts. The school district I work for is looking at $30 to $40 million in cuts this coming year. One of the key points and one of the reasons why PERA is so important and a strong pension fund like this is so important is for teacher recruitment and retention. And teachers, as a profession, and educators, as a profession, and I think everyone knows, are not highly paid at any point in their career. Certainly, a little bit more well paid later on in their careers which is a point that will come up later as well.

But one of the ways that public schools attract top notch employees is by being able to offer a strong quality pension to these teachers. And as education students coming into the market and really a national market, certainly a lot of our Colorado teachers and future teachers want to stay here in Colorado, but they're looking at this as the national market. And the school districts understand this. And that is why the school districts are supporting this

plan is that if we do not have a well-funded stable pension plan that we can offer potential employees at the table and at the beginning of their career, they'll go elsewhere. And that's one of the attractions of entering the teaching profession.

And so that's -- the school districts understand that. And the school districts that I've talked to have said that they're willing to make these sacrifices knowing that the long term good of our students is that we have well paid, well motivated teachers in the classroom who have a solid pension, guaranteed pension, at the end of their careers.

CHAIRMAN: Representative DelGrosso.

MR. DELGROSSO: Thank you, Mr. Chair. Referencing back to the amendment we said the change from two and two to two and a half and one and a half. The way I understand it, and maybe I'm off base is the SAED cannot come out of a teacher's salary, so it has to come out in the form of a raise. So wouldn't that in the end mean that the school district is footing the whole bill in the end anyway because they're gonna have to give a teacher a raise so they can kick in that extra SAED? So doesn't it pretty much all whether it's one and a half, two and a half or two and two, it just falls to four percent which is coming out of the district? Am I wrong in that?

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Madam Chair and Representative DelGrosso. You did not have a bill in my committee today, so I'm just going to ask you to be nice to me today.

MR. DELGROSSO: Well, I could have one in there sometime.

MR. KERR: Well, just keep that in mind. You did have some on the floor yesterday or today and I think I was nice to you then. Absolutely. I mean, when we talk about the four percent, certainly that comes out of whether it's an employee's salary or the money that an employer is paying an employee, absolutely, the money is all there. SAED has been specifically set up and it says and they use the word "shall" in there that this money shall or this increase shall come out of money that would otherwise be going to an employee's cost of living allowance that otherwise would be happening based on negotiations. Certainly, the state of Colorado, it's a little bit different. They have a different model around that than school districts do.

But, you know, for the legislative record here, and certainly I know the interpretation of

lawyers is that that's what it says in statute. And knowing for myself that typically at the negotiating table is that there is some cost of living increase that is negotiated. And so the SAED in the statute says that it will come out of money that would otherwise be going to that COLA.

CHAIRPERSON: Representative DelGrosso.

MR. DELGROSSO: Thank you, Madam Chair. So I guess for the teacher's portion of this or whatever, so it's going to be coming out of the form for future raises. So would they potentially be looking at not seeing any kind of a raise until 2017 to pretty much cover this? It seems to me that that's a pretty much unfair burden on them to go, you know, unless for some reason the school district fell into a bunch of money and then we can give out a bunch of raises. But they're gonna kind of almost forfeit a raise through 2017 to fund this as well. And to where I see it, they're not really getting any extra benefit out of it as far as we're gonna throw a lot of extra money in there and then we're not gonna get any extra out of it.

CHAIRMAN: Represent Kerr.

MR KERR: Thank you, Mr. Chair, Representative DelGrosso. The teachers that I talked to on a regular basis understand that the benefit that

we all get out of this is that the pension PERA will be there going into the future and that when I retire, when they retire, PERA will be there. And without doing this, without making the sacrifice that we're talking about across the board whether it's current retirees, current employees who are future retirees or future employees who might be in college, high school, elementary school or not even born yet, everyone is going to have to make some sacrifice here.

I don't know if we can kind of look that far into the future and predict inflation and raises and everything going that far into the future over the next seven years. But the folks I talked to certainly understand that we all will have to make some sacrifice now to make sure that PERA is stable and well funded going into the future.

CHAIRMAN: Represent DelGrosso, I suspect we'll hear some more on the question as the afternoon goes along. Representative Roberts.

MS. ROBERTS: Thank you, Mr. Chair. I have two questions. And it maybe you, Representative Kerr, and maybe somebody behind you, but I attended the meeting in August and then the one in October in Durango. And what I heard a lot from people and I'm trying to understand what happened perhaps to this in

the Senate is the COLA. And people were say that they wanted to be able to have time to, I think, leave before the changes get implemented on COLA. So if you can address it, it looks to me, in looking at the chart and the Senate situation, that is not going to be possible. So if you could let me know if I got that right. And, if so, I'm sure there's some thinking because I'm sure I wasn't the only one hearing that, but I heard it repeatedly about the unfairness to current retirees undergo that with their COLA. So if you could talk about that.

And then a second, I was just looking at my notes from when I formed a little kitchen cabinet back home after that which was bipartisan and just to try to get some feedback about coming into this. So one of the question that I think is a very good one to ask me which, in turn, I want to ask you is, what self-correcting mechanism might be in place? And I think when PERA has come to the finance committee, I think I've heard some things that are future-oriented. But, again, if could hear them again or expand on those so that retirees or active members at this point know -- I mean, the good news is this is a statute. If the things are different in a year or two or five than we thought, people can come back and we can change the statute. But I'm hoping that there might be something internal to PERA's operations that we can also say recognizing PERA had no idea -- none of us had any idea of what the economy was going to do. But now that we've been through that knowing that things may be more volatile over th next number of years, how are we coping with that?

CHAIRMAN: Represent Kerr.

MR. KERR: Thank you, Mr. Chair, and Representative Roberts who I don't think has any bills in any of my committees at this point.

MS. ROBERTS: But I'm on the floor tomorrow and Friday, so remember.

MR. KERR: Okay. I will. So thank you for your questions. Starting with the COLA question and absolutely I think, you know, it's a fair question. And that certainly is one thing that I've been hearing quite a bit are the current retirees and making the COLA adjustments that I think are necessary in this.

One piece of that is that originally from the PERA Board's original recommendation was to just index COLA moving forward with a two percent cap. And what that would have meant certainly for the first year in 2010, looking back to 2009, is that first year was going to be a zero COLA. And then, the next year was

going to probably be a pretty low COLA as well. That was one of the adjustments made in the Senate was they've actually taken that second year and put it at the two percent cap, so that will hopefully make up for some of that.

As far as the warning ahead of time, I guess you could call it, you know, like you said, being at meetings back in August where this was where many people first heard the proposal. And from the discussions I was at, the meetings I went to is with the understanding that that would be happening fairly quickly even though, obviously, there is no bill yet, there is nothing set in stone. We hadn't voted on anything at that point. But the discussion was at that point already how that first year of COLA would work for current retirees.

Some of the language I heard too, as well, current retirees are gonna end up taking a zero COLA for a year, a COLA holiday. But what about the future retirees. And also put forth in the bill here is that all future retirees will not be eligible for a COLA for 12 months. Once they retire, they're not eligible for COLA for 12 months. So, in effect, all future retirees will end up taking a one-year COLA holiday, as well. So I think that balances out a little bit there.

The second part of your question on the self-correcting piece, absolutely. There are several things in this bill. You probably heard by this point about the corridors that in the original proposal, I think it was if PERA was ever funded at 110 percent that would be the upper corridor. And then, whether it was 90 or 80 was the bottom. I think it was 90. The top corridor has been lowered down to 103 percent funding. At that point, what that means is should PERA hit 103 percent of funding, then automatically the AED and the SAED will start to decrease. But I think it's .4 percent a year as well as it's funded at that level. And also the COLA will automatically start increasing by a quarter percent a year. So that's an automatic trigger. And then those things will be undone should PERA fall to 90 percent or below.

In addition to the corridors, there's also and I believe this was put in one of the amendments in the Senate was the five-year look back window that every five years PERA is scheduled to come report to us, talk to the legislature, what the effects of this bill and the changes have been on the PERA beneficiaries. So I think those two things are both in the realm of the self-correcting pieces moving forward.

One other piece since we're talking about the

corridors, people have said to me, well, PERA will never be 100 percent funded. It will never hit 103 percent. Well, it was only about I think seven years ago that PERA was 102 percent. And it probably would have hit at least 103 percent, if not for some of the actions that our predecessors here in the legislature did to make corrections. What they thought at the time, I'm sure, were well meaning corrections, but I think some of those corrections they might have overreacted. And so having these corridors in place, I think, will help. I do think 103 percent funding is possible in the future. And I also think it's a good think to have those corridors in place.

CHAIRMAN: Mr. Frangas.

MR. FRANGAS: Thank you, Mr. Chair. Representative Kerr, if you could explain to me and you can defer if you'd like on this question. If you could explain to me how you see this bill in terms of actuarial necessity. And if you could explain your perception of the relationship there.

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair, and Representative Frangas. And again, I'll point you to the school division actuarial projection which you have in your packet and you should have received today.

Also, certainly all the legislatures have seen all of the projections on all of the divisions out there. This is one of those cases where it would be nice to have a projector to show the audience exactly what we're talking about.

But as you're looking at those projections and the red line being the pessimistic return, the blue line being the expected return and the green line being an optimistic return, you know, you even look at the green line there of an optimistic return of ten percent moving forward. And you still see that by 2039 the school division is in big trouble. And going back to that point I made earlier about the 40 percent funded ratio being a key level of hitting, once we hit that point, PERA's hands are really tied around what they can invest in and what they cannot. They really have to pull everything back in and be very, very conservative in their investments. And you see that point, even under an optimistic returns by 2028 we're hitting that 20 percent level.

And also having sat down with PERA -- and I believe you and I were at some of the same meetings over there with their model where they let us plug in numbers and say, well, you know, what if we have another great year like 2009 and investments do really

well, but still seeing that some of these basic adjustments that we're talking about whether it's the COLA, the AED, SAED, those adjustments up front are really going to make this fund actuarially sound going into the future. And some of the, you know, I don't think it's right for the 440,000 people in Colorado who depend on PERA either as their pension now or going into the future that we play guessing games and hope that there are good returns going into the future.

CHAIRMAN: Thank you. Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair and thank you Representative A. Kerr. Did PERA model the scenario whereby the COLA, the two percent cap on COLA would only apply prospectively, you know, for future retirees and not affect the folks that are currently retired? Because, I mean, we've obviously been hearing from a lot of people that they're concerned about the contract, the understanding the current retirees have. And I'm just wondering if they've modeled that. And, if so, how did that affect or did it affect the 30 year amortization period and, you know, the full funding within the 30 year amortization period?

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and

Representative Kefalas. Just remember, I was really, really nice to you on the floor this morning.

MR. KEFALAS: I wish to remind you, Representative Kerr that I'm always nice to you.

MR. KERR: That is very true. Thank you and thank you for your question. Just double checking that those numbers were run. The problem with doing that is, of course, the current retirees and the current COLA that is money that is happening today where as if we talk about future retirees and reducing their COLA, that does not have any impact until that person actually retires on the projections here. And even looking at that, it might have, if you're looking at the projections here, it might have put a little tail on the end. It might have extended it out a year or two.

But was it Albert Einstein who said that the most powerful force in nature is compound interest. That is especially true when we're talking about a dollar in 2009 versus a dollar in 2019. If we're just looking at future retirees, the impact on actually keeping the fund solvent just isn't there.

CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair. And I appreciate that answer. And I guess it reminds me of

some of the discussion I've heard. And that is it's really important in terms of the solvency of the fund to have an impact up front. And I think you're reinforcing that; is that correct?

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair, and Representative Kefalas, yes.

MR. CATHOLIS: Okay. Thank you.

CHAIRMAN: Representative Kefalas, I had breakfast this morning with a PERA retiree. And the way I put it to him is we're going to take away $1,000 of his COLA today, we're going to invest it so that we have money available in, you know, 2030 to 40 to pay his pension.

Representative Frangas.

MR. FRANGAS: Thank you, Mr. Chair. What would be the, at least based on your experiences with the bill, what would be the outcome of doing nothing at this time?

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and Representative Frangas. I was talking to somebody the other day who had looked at all of this and very interested in all and was not supported of this plan and said, well, worse case scenario is that it goes broke in a couple of decades which looking at these projections and the different divisions, yeah, okay, worst case scenario is it goes broke in a couple of decades. Again, that is based on doing nothing.

First of all, there are hundreds of thousands of people who aren't retired yet that are depending on this and also whether it's school districts or the state of Colorado needs to attract good employees and retain those employees over time. I don't know too many people that actually want to go get a job on the Titanic knowing full well where the Titanic is going. So the key point is, yeah, we absolutely need to fix it. And the sooner we do it, the easier it will be. If we wait one year, all of these decisions become much more difficult. If we wait two years, we're compounding interest the other way basically.

And also this idea that well, and I keep hearing this a lot, is well, you know, 2009 the investments were pretty good and really help. Again, I do not think -- our responsibility is to go off of the best projections, the best numbers that the actuaries have come up with. And the actuaries can't base it on, hey, we had a good year, maybe we'll have a good year next year. We have to base it on conservative estimates. And we need to move forward thinking what

is in the best plan for the entire pension fund to move forward.

CHAIRMAN: Representative Kagan.

MR. KAGAN: Thank you, Mr. Chairman. Representative Kerr, thank you for all the fantastic work you've done on this subject. I know it can't have been easy. I'd like to bring to your attention a concern that it's been repeatedly expressed to me by my constituents. And that is the question the assumptions in the model regarding inflation rates.

My understanding is that this rescue plan assumes that over the next 30 years or so, inflation will have reached about three percent. And I hope that that is not an underestimate of what inflation turns out to be. But many of my constituents are very worried that that could be and many of them believe there will be, quite likely, a period of very high inflation in the near future, given the amount of deficits that the government is running and other global factors in the economy over the world.

And my question, sir, is has the COLA caps distribute the burden in the particular way given three percent inflation and they're hard to bear, but not impossible to bear. But in a period of very high inflation, the COLA caps through the burden onto those

who have retired and are stuck in an inflation re- environment. Has any thought been given to how the COLA cap process intersects with a period of unexpectedly high inflation.

CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair. Mr. Kagan, thank you for your question. The simple answer is yes. Thought has been given to this. Again, as everyone understands, whether it's this projection or any other project we're looking at, the only numbers where we absolutely know are the ones right on the left side which are the numbers as of today. And everything starting tomorrow is just a projection. And, certainly, we can, you know, we can look at the global economy. We can look at government spending. We can look at all these different factors and make projections and predictions over what will happen whether it's with inflation, looking in the past for times where inflation was, obviously, much higher than three percent, but also I don't think even five years ago anyone predicted that inflation would basically be zero in 2009.

Again, you know, everything in here is based on best guess projection which is what actuaries do. And I know I'm not saying anything that everyone

doesn't already know. But within that, yes, that discussion has taken place. One of the protections there as I mentioned earlier to represent Robert's question is this five-year look back period. But I also heard discussions that that's probably not good enough. And so I think these discussions will be continuing.

I know the folks from PERA have told me and guaranteed to me that they are willing to look at language that we might be able to have and create that would help put some kind of protections like that in place. And as you have told me and explained to me before is that often times in periods of high inflation, it's typical that investments tend to be very high as well, investment returns. So within that, I think there is some language that we might be able to come up with.

I don't think that it would be something we might be able to do right away. But I have personal guarantees from the folks at PERA that they have been looking at this and they're willing to continue to discuss that. Thank you very much, Mr. Chairman.

CHAIRMAN: Mr. Williams, Mr. Smith, would you like to come up together?

MR. WILLIAMS: Mr. Chairman, members of the committee, my name is Meredith Williams. I'm the executive director of Colorado PERA. With me today is Gregory Smith who is the chief operating officer and general counsel of PERA. Given the outstanding job that Representative Kerr did, we're gonna be relatively brief. I'm gonna start out. And with the Chair's permission, Mr. Smith will follow.

I guess the first thing I would say is I really am appreciate of the opportunity to visit with you today. I really appreciate your taking on this bill that has something for everybody to dislike. It's very, very unpleasant. You were talking about raising contributions by public entities, whether they're schools, local units of government with the State of Colorado, agencies and functions. We're talking about asking public servants to pay more. You're asking 90,000 people who have devoted their careers to public service in Colorado to take a hit on their COLA on a rather immediate basis and to see it going forward at a reduced level.

You are looking at hundreds of thousands of people who are currently public servants who will be asked to pay more during their career, to work longer and to receive less. This is not pleasant stuff to deal with.

The whole thing is pretty complex. PERA right now has 470,000 people under its umbrella in one fashion or another. 90,000 of those people are retired. Our monthly payroll is now $258,000 million a month. A vast majority of that flows under the Colorado economy. And everybody got a wake up call.

You have the one chart in the package today that shows the school division running out of money in 2033. And that is certainly a wake up call. That means $258 million a month no longer flowing into the Colorado economy. It means 90,000 people not having that $258 million per month to spend on their needs. And how in the world can we in good faith take money from people that are working right now, eight percent plus the SAED when we have a chart that says we run out of money before you're even eligible to start drawing a benefit.

We've got to do something. And as Representative Kerr indicated, it's a billion dollars a year if we wait. And say, you know what, PERA has got $35 billion at market value today. They can pay benefits for years, but the hole gets at least a billion dollars deeper every year. And the solution becomes far more expensive and far more painful for everybody involved with every year that we delay.

I salute you for taking out this very difficult subject. You are the only legislative body in this country right now that is grappling with this issue. You will not be the last. You can take great pride that in Colorado we're not sweeping things under the rug. We're not sweeping things under the rug. We're not playing games. These are cold hard facts.

Many of our peers around the country are in a peers around the country are in a state of denial. They're playing all sorts of games. One of the games they play is smoothy. Gosh, we lost a lot of money in 2008 and we're gonna recognize that over a period of time. California is recognizing that over a 30-year period they're gonna run out of money before they recognize all of their losses.

Even more egregious in the last ten days one of the smaller northeast states went through a 50-year period. They're not gonna recognize what happened in 2008 for 50 years. Most of the people in the plan are gone, let alone all the money is gone. Everything that you see from PERA, everything that you see about the Board's proposal is based on market value of assets. And many of you heard from your constituents, "Gosh, why do we have to take these (indiscernible) steps when the markets had a great comeback.

Beginning in March of 2009, the market did pretty good. PERA did pretty good. We had some pretty good times. We're going to have -- I'll get in trouble with our chief investment officer, but I will say I'm quite comfortable in saying that the rate of return for 2009 for PERA will reach and perhaps exceed 15 percent with our diversified portfolio.

There was commentary earlier in your discussion today about one of the trustees saying for the joint budget committee you can't touch this bill. This is a carefully crafted balance sort of thing. And I think really what was intended to be said is this does the job. It ensures that over a 30 year period, all of the liabilities of PERA are fulfilled and that were 100 percent funded at the end of 30 years.

And if you take a piece out, you're gonna have piece to put another piece out or in because that equation only works if it's in balance.

The Senate took some pieces out. Actually some pieces disappeared between what you received on October 30th from the Board that summarized the Board's proposal. And I think we have extra copies for you today if you need another copy. So the Senate bill that you're looking today when first introduced did have some differences from the bill proposed by the

PERA Board. And then the Senate made some further amendments. And as indicated, every time you adjust that formula, there's a price tag attached to it. How did that price get paid over those several changes?

One of them certainly dealing with retirement ages, another dealing with AED and SAED, another one dealing with COLA, another dealing with the corridor concepts lowering it from 110 to 103. That, frankly, members of the committee, was paid for by investment returns in 2009. That was the bonus performance that frankly allowed those changes to be made by the Senate and still keep the whole package in balance with a 30-year amortization period. Representative Kerr mentioned the very last piece in your handout today, the letter from Cavanaugh McDonald that attest to that.

Having said that, it is very, very serious. We will run out of money. Representative Kerr pointed you out -- pointed that chart out that has the red, blue, and green, I think, lines. And they all go down to zero. I think something to appreciate about those -- those are all kind of a best case scenario. Nothing goes wrong. You've got a seven percent scenario, you've got an eight and a half scenario, and you've got a ten percent scenario. There's no 2008 in there. There's no scenario in there that says that we have

significant changes in member behavior. That's if everything goes according to plan.

So we do have to move forward. And the 40 percent line that Representative Kerr remarked on is absolutely essential. If we have another 2008 -- and heaven forbid that would occur -- we are in a very dangerous place, an incredibly dangerous place. We're totally in bonds in that point in time. We're totally in bonds which are, you know, a bit safer, less risky perhaps. But the return we might expect is significantly lower on those types of instruments. We would need them for liquidity purposes in order that we would meet that $258 million payroll per month. And it would speed up the move to running out of money.

Those lines that you see would all move to the left. And zero day would come much, much sooner. This plan and we tried everything. We took every suggestion. As some of you have remarked, the Board actually held meetings at eight locations around the state, attracted 2,500 people, over 2,500 people, 4,200 formal comments. And no one likes to cut the COLA in any fashion whatsoever for those 90,000 people that are retired right now. Many of them are at an age where they have no opportunity to go back into the work force. And this is pretty tough medicine.

But if we do not do something with the cash flow that is the COLA today, we do drop below that 40 percent line. Those are the dollars that we are paying out today. You know, many of the retirees have said to me, "Well, why don't we put the burden on those who are still employed and even better those who are yet to be hired?"

In fact, you've already done that to some significant extent in the legislation passed in 2004 and 2006. But when you do something for new hires, it's about 30 years out before we start to appreciate significant cost savings from those moves. We're out of money within 30 years if we don't do something that produces more immediate cost reductions for the pension fund.

Another thing I would quickly say about what you're grappling with today. Right now, the contribution rates for the state and schools are, under existing law, are scheduled to arise for the state division 13.15 percent of payroll in 2013. At the same time, the employees will be paying in 11 percent. That's current law. The school division is marginally greater, 13.55 percent in 2013. The school employees 11 percent.

If we were to just solve this sustainability

issue that PERA faces today as a result of the worldwide global downturn in the markets in 2008, it would take 21 percent of payroll. I don't care who pays it. It's 21 percent of payroll. That's the gap. How do you fill that gap?

The Board came up with a concept, a variety of concepts. But one of them was we've got to take care of this. It has to be sustainable. The mortgage has to be paid off in a 30-year period because that's what the standards are. That's the benchmark for virtually everybody anymore. They also said the pain of filling in that 21 percent gap has to be spread in an equitable fashion.

If you look at the PERA proposal and if you look at Senate Bill 001, there are additional contributions totally four percent that come in over time in future years. Two percent for most divisions is on the employer as the amortization equalization disbursement and from one and a half to two and a half percent is purportedly on the employee through the mechanism that already exist called the supplemental amortization equalization disbursement. That's four percent. That leaves us with 17 percent yet to fill. The rest of that gap is all on the shoulders of those 470,000 people current and former public servants.

Certainly, the earliest payment on that 17 percent comes from the existing retirees, but has indicated already all of the future retirees will have a one year hold before they start receiving COLA. The pain is widespread. The Board thinks that the pain is as equitable as they can make it, that they do not deny that there's great pain.

Mr. Chairman, with your permission, I would ask that you recognize Mr. Smith who will walk you through the multi-columned, multi-colored chart in your handout materials.

CHAIRMAN: Mr. Smith in technicolor.

MR. SMITH: That's not a pretty picture. Thank you. Mr. Chairman, I'm gonna do a pretty quick job of this. I'm feeling like I'm a broken record because I've done this so many times and I don't want to take people to places we don't need to go, so I'll go pretty quickly. And I'm starting on page one of the large foldout documents.

The first line talks about the increase in the AED going up .4 percent per year through 2013. And that will continue for additional period of time through 2018 or in the state division it to reach a total of five percent. In the school and DPS divisions will progress to 4.5 percent total. Now, in the local

government division and the judicial division, it's stopping, it's ratcheting up for its escalation in the year 2010. This is the mechanism that we're using to try and level the different divisions that have different funded ratios.

The next is the SAED and it also is ratcheting up. It will reach its maximum at 2018 at five percent for the state division. And it will go to five and a half percent in the school and DPS divisions. And I wanted to address really how that works because some people look at this and think, gosh, that's an additional, by 2018 five and a half percent that these employees are having to come up with each year and they'll never get a raise when they're giving up five and a half percent. It's important to realize that this is going up incrementally each year.

So as it goes up by .5 percent in one year, that's been funded and it is forever in that base. So as long as they get something more than a .5 percent increase in any given year, they're gonna at least see some increase in their pay as well. So all they have to do is fund that half a percent each year that it ratchets up, so you don't eat up an entire five percent increase over this process. You incrementally build it into the base over a multi year period to reach that

five or five and a half percent in the case of the school districts.

Next is the COLA cap at two percent. This, I think, has been covered pretty significantly. We will result in a zero. we don't have the final numbers for December from the CPIW yet, but all indications are we'll result in a zero. It would have to be a very large positive number to take the average of the months of 2009 to something above a zero. So I believe that will result in a zero to be awarded in March of this year in 2010 to the existing retirees.

CHAIRMAN: Representative Labuda.

MS. LABUDA: Thank you, Mr. Chair and thank you, Mr. Smith. Most of the inquiries I've gotten are a concern, of course, the 3.5 percent. And you know the arguments, it's unconstitutional, it's constitutional. Since you're talking about the COLA now, could you brief us again on that.

MR. SMITH: I can. Thank you for that opportunity. The concepts of constitutional protection of the public pension plan, I have testified before you on many occasions, have been well established by the Colorado Supreme Court. Clearly, the public pension plan in Colorado is a protected contract under the Constitution. But that protection has limitations.

And the court has significantly identified what those limitations are. One of them is in the event that the plan reaches actuarial necessity. Those plan terms can be modified.

Now, one of the disputes is whether they could be modified for just existing members who haven't yet retired or whether they can be modified for retirees. And the retirees -- and there's an AG's opinion -- certainly we're very familiar with it that indicates that once you've vested, meaning that you've retired and started to draw your benefit, you can no longer have your benefit reduced.

We agree with that analysis, but we believe that what Senate Bill 001 does is it doesn't reduce anybody's benefit from month to month. What it does it modify the inflation protection that is a part of that contract. And there was a very good question asked earlier by I believe Representative Frangas or maybe it was Representative Kefalas, I'm sorry, about whether or not we had run the numbers without impacting the retiree COLA. And that is a very important question and the answer is a very important one. And Representative Kerr was correct about that we have run those numbers, but we've done more than just look at well, what if we just took the existing numbers to two percent how much benefit do we get from that.

The answers to the question are if you take it from three and a half to two percent for the existing members, the line barely moves. If you take the parameters and take the existing members, so everybody after the effective date of the statute that retires in the future gets zero COLA, has zero COLA protection, no inflation protection ever for the rest of their lives, it still doesn't move the line.

The only way that line moves, the only way the gap gets filled other than 21 percent of new pay is to impact that COLA for the existing retirees. And as Mr. Williams said, it relates to the fact that we're saving dollars that would have been going out of the plan today. We can't wait 20 to 30 years that it takes to get an impact from a change in benefits because we've run out of money and we're long past the 40 percent line. So part of the analysis of the constitutionality of the modification of the retiree COLA relates to the fact that the actuarial necessity that we have is so significant that the only solution includes impacting that COLA.

We believe that the COLA has been identified in the contract as something that changes over time. We have changed the COLA many times in PERA's history.

And every time it's been change, that change is applied not only to the future retirees, not only to the people that will make that decision after that change, but has been awarded to the people who are already retired, I think, indicating that that number could have to change.

Now, I will acknowledge that essentially there's one time when there was a downward adjustment for a subset of our retirees. But basically the COLA has always gone up. But at this point in time with an economic event as severe any since the Great Depression, it forces us to reduce that COLA. The actuarial reality, the actuarially necessity is such that we can't impact that COLA, we can't fill the gap. And I believe that the courts will recognize that level of necessity.

What the case law is out there is very thin on what constitutes actuarial necessity. There's one case in Colorado that found actuarial necessity and was when the system had run out of money, had zero assets in retention. That's called a pay-as-you-go system. That was found by the court to be actuarial necessity and allowed a cutting in half of the existing benefits.

We believe that when you have projections that show you running out of money within the 30 year

projection period which is the actuarially standard and you're taking eight percent from people who you know will never receive a benefit, but your own projections show you or run out of money before they can be eligible to draw a benefit, that that constitutes actuarial need to take action. And that's what we've had to do. We believe that will be sustainable ultimately.

CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. Two things. Mr. Williams, first, thank you for your discussion about what's going on around the rest of the country especially in like California and stuff. Here's one concern I have. Let's say that we do the right thing and we go ahead and fix this thing and all the other states don't, the federal government steps in and bails them out. And at that point, are we going to look like suckers? I'm serious. Have you guys thought about that? And I would be adamantly opposed of the federal government stepping in and bailing this thing out. But, you know, if that's considered a likely event, you know, comment on that please.

CHAIRMAN: Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chairman and Mr. Swalm. I guess in this day and age, I'm not one to

bet on the federal government riding to the rescue. They seem to have their plate pretty full and taking on quite a bit of debt. But I do think you touch on something that there's a much bigger problem than PERA out there. And it is the retirement security for Americans. Americans are not prepared for retirement on average. I don't care if it's public or private. There will be a huge crisis in this country with people reaching not only retirement age, but just flat aren't able to work and significant numbers of them not having the resources to support themselves from that point forward. So I think it's a very, very serious problem.

You know, should the path you suggest come to pass, I think we would work pretty darn hard to ensure that that federal legislation applied to everybody. And those that had done the right thing would have an opportunity to share in that great federal wealth and we can, thus, reduce contribution rates by Colorado employers.

CHAIRPERSON: Representative Swalm.

MR. SWALM: Second question is this. As I got home last night about 9:00, I was in the garage, my cell phone rang. And I'm gonna mention this man's name because he's already a public figure, but also very smart, a guy named Jim Peters. He used to be the district attorney for the 18th judicial district. He is no longer the DISTRICT ATTORNEY, but he still works for the district I think being like a independent referee or something. He's a contract worker. And he said that they are requiring him to make a contribution that's going to go into the general pot, I think, if I understand it correctly. And he said are there Tabor implications because he said this sort of looks like a tax, quacks like a tax, and he thinks it is a tax. And is it something that should be subject to a vote of the people under the provisions of the tax payers bill of rights. So what do I say to Jim Peters?

CHAIRPERSON: Mr. Williams.

MR. WILLIAMS: Madam Chair, that question is so far over my head, I would like to pass it on to Mr. Smith with your permission.

CHAIRPERSON: Mr. Smith.

MR. SMITH: Thanks, Boss. The Tabor questions and I always try to hesitate on answering a Tabor question because I've read that amendment many, many times and I'm still not sure I know what it says. But there is a specific exemption under Tabor related to pension and the public pension plan. Whether or not that implies and what exactly it means, how it impacts changes in contributions, clearly any aspect of our

pension plan where you have a change in contribution, if that alone was an increase in taxes or under Tabor, we would have issues. And that's happened many times. I think it's clear that modifications in the contribution burden is not a violation of Tabor.

The question of whether applying contribution burdens to different groups of people which is really, I think, the nature of your question to Mr. Peters' question because his situation is he used to be in PERA, now he's no longer in PERA. He's working as an independent contractor who are a PERA-affiliated employer, I believe, in retirement. And, therefore, he is being subject to working after retirement contributions by his employer.

I think that the General Assembly has within its power still the ability to determine who's subject to membership in PERA and who's subject to the contributions in PERA without any impact on Tabor. It's not impacting any revenue to the employers. There's no new tax revenues being generated for the state or for the employer that I think would trigger Tabor.

CHAIRPERSON: Representative Swalm.

MR. SWALM: Thank you, Madam Chair. I guess his explanation was that he said that this additional

contribution that's being extracted from him is not gonna go to his own account, but is just gonna go into a kind of general well being of the entire plan. And so that's the distinction he made. So can you comment on that?

CHAIRMAN: Mr. Smith?

MR. SMITH: Thank you, Madam Chair. Yes, I can. And that reference I think is to the provision in this bill that imposes the eight percent employee contribution on people working after retirement. And that is certainly true the structure of the bill is that it requires that eight percent contribution by the employee and it does not go in the member account as would an active member's employee contribution.

The logic, if you will, behind that it is a revenue source. It is an aiding and paying off the unfunded liability of the system and it's really recognition that what's happening here is someone who is being allowed to draw their entire full benefit from PERA, from the DEBTOR system, yet work for an affiliated employer that would normally be hiring a new PERA employee that would be paying in that same contribution burden. And by imposing that same burden on the retirees, the system is frankly more than whole. I certainly, and we've been very open about this

through the process. We recognize that this eight percent is being paid by the employees and they're really getting nothing for it. And that is true. The justification, if you will, for it, the logic behind it is if we had a new employee that had been hired instead of a retiree who is drawing a benefit and drawing a salary, we would be receiving that full contribution burden on that position within that employer's ranks. And that's the basis for imposing that additional contribution of the retirees working after retirement.

CHAIRPERSON: Representative Gerou.

MS. GEROU: Thank you, Madam Chair. And this is basically for both of you. The last couple of years have been really hard. You know that. We're hearing from our constituents and the average property tax in my district -- I had some seniors saying that they were looking at a 37 percent property tax increase. And then, we got hit with the investments. And then, we've got people that were hit with PERA. And then we've got the employment issues that we're dealing with in the state. And a lot of these older retired members of Colorado are basically taking care of not only their own households, but they're also having to take care of their children in a way that we've never had to do before.

The jobs that you all serve and this is a question that's been in the back of my mind for a long time. And, actually, the only reason I'm asking it is because it's been asked of me. But the jobs that you two serve in, if you are in the private sector and you had a really bad year serving on a board, most private sectors would immediately eliminate the individuals that were in control. And I'm wondering if -- there are a lot of people that would really like to see you two lose your job over this. And I was wondering if You two would respond to that?

CHAIRMAN: Mr. Williams, how are the other pension systems responded to the markets' downturn?

MR. WILLIAMS: Well, Mr. Chairman, thank you for the opportunity to address that question. I guess, you know, if I were in the private sector, I would have gotten a multi-billion dollar bonus. You know, in fact, we like to think and I know the Board insists that in my role I'd be very accountable. I think that and it's just a natural reaction. These have been incredibly difficult times for everybody. I don't care where you are, age, demographic, whether you're working or not, whether you're aspiring the work, these are very, very, very difficult times.

We have worked very hard to establish

benchmarks. Here's what we hope to accomplish with respect to the investment portfolio. Here's where we're gonna put our money; here's why; Here are the risk factors associated with that -- to maximize the return for an established level of risk. We then compare our performance to what the markets, in fact, do. We have a pretty good track record over time at any given year. In some portfolios we do better than the market and in other portfolios we don't. When we don't, we ask why. We make changes. Sometimes those changes involve people. And this is just tough.

I don't know. You know, I take serving the 457,000 members of PERA pretty seriously. I give them everything I've got. I'm really sorry that we had the year we had. We had a lot of company. There's one pension plan, significant pension plan, I know that actually made money in 2008. It's a Texas plan about our size, maybe a little bit smaller, that had a statutory restriction. The only thing they could invest in were short-term securities, essentially bonds.

They were in the process, actually, of transitioning. They now have authority to invest in a wider market basket, but they hadn't completed that transition so they actually made money. Every other

pension fund that I'm aware of lost money. Most lost more money than we did as a percentage in terms of the downturn. So it's just a pretty darn grim year.

But to illustrate the frustration that's out there that, frankly, everybody has, when we did our listening tour, when the Board did its listening tour, and when we went around doing 13 share holder meetings after that, we analyzed all the comments that we got, over 4,200. And I would say about 40 percent of the people said, "You know what, we're in a really bad place. We've got to fix this thing. And let's fix it, but I don't want to bear any of the burden of fixing it." And then about 40 percent of the people said, "Yeah, we've got a problem and I'm willing to share in the solution even if it's painful." And you will appreciate the 20 percent said, "Fire Meredith," you know, and I recognize that.

And, You know, the Board can do that whenever it likes. You know, I report to the Board. They have oversight of what I do. I'm just sorry, this job used to have some pleasures associated with it like many jobs did. Now, there's not much pleasure in many jobs and many jobs have just flat disappeared. So these are very difficult times.

CHAIRMAN: Representative Frangas.

MR. FRANGAS: Thank you, Mr. Chair. I have a question for either of you and answer this. I'm not sure you can. I got a call today from a lady and she explained to me that she had Option 1, Option 2, Option 3 when she left her job and she could take one of these three options for benefits. And then, she apparently tried to call and change after she had taken Option 2 which apparently half of her benefits go to her child. She, after there's talk of COLA change, she wanted to change to Option 1 which is back to, I guess, her and husband. I'm not sure if I remember that right. But the point is that with those three options, number one, is there anything in this legislation or else where it that would help somebody in this situation specifically in relation to kind of outside factors. In this case, her child is disabled. And she feels that she won't have enough benefits or money to care for the child because of the change or that it will significantly impair her ability to care for the child even though that half of the money was going to the child before.

So what I'm asking is is there anything in the legislation or any sort of policy or process that deals with people in situations like this?

CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Mr. Chairman,

Representative Frangas. The situation You described our Option 1 is what's called a single life annuity so the retiree or the person that's a member retires and they would get paid a benefit for their lifetime. When they die, that's the end and nobody else gets anything. Option 2 is a joint life annuity where they can designate a beneficiary and the amount that they receive is a lower amount than Option 1, but they receive that amount for the member's lifetime and for the remainder of the co-beneficiaries lifetime. And then there's an Option 3 where there's a reduction of the amount of the death of the member, but the co-beneficiary continues to receive half of the benefit. And I might have two and three backwards. But, in any event, the issue of changing options after one has retired is governed by federal law. It has to be an irrevocable option in order for us to maintain our qualified status under the IRS code. We are not able to allow people to make multiple elections on their options under the IRS code.

In addition, it also is what we call adverse selection risk if we were to have that kind of rule which is really what underlies the IRS prohibition on it. So we don't have the ability to change that. There are some provisions in our statute where in the

event of a divorce and remarriage you can put different cobanes (ph) in. There are some changes you can make in the event of divorce. Those have been recognized in the federal law, as well, which allows us to open those doors, but that's the end of the flexibility in terms of re-electing options on what kind of benefit you're taking.

CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. A little quick question. As we all know, health care inflation far out paces regular inflation. Is the healthcare plan, I know that some retirees have health care benefits through PERA, is that part of this discussion or is that a totally separate funding arrangement?

CHAIRMAN: Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chair. Thank you for the excellent question, Representative Swalm. I neglected to make that point and it's a very important one. The PERA Care Program and the healthcare trust fund is totally outside of this discussion. PERA Care itself is a group of contracts that PERA negotiates with a variety of health care insurance providers basically. Retired members of PERA have the option, should they so chose, to sign up for coverage under those group programs and to be

responsible for the premiums.

Now, there's also something called the healthcare trust fund and the healthcare subsidy. Someone who works in public service under PERA for a requisite number of years can receive up to a $115 a month subsidy toward that premium if they're 65 or older. If they are retired and under age 65, they can receive a maximum subsidy toward that monthly premium of $230. Again, that subsidy payment is funded out of the Healthcare Trust Fund and varies individual by individual depending upon the length of their service.

CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. Is that a self-funded plan or who bears the risk on that?

CHAIRMAN: Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chairman. The plan, Representative Swalm, is funded by a 1.02 percent of payroll contribution or assessment against the employer. That's Colorado law.

MR. SMITH: And that's part of the existing contributions that you're seeing in front of You here. It's included in that number, the 1.02.

CHAIRMAN: Representative Swalm.

MR. SWALM: Well, I guess, really what I'm trying to get out is that the next train wreck coming

at us?

CHAIRMAN: Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chairman, Representative Swalm. Good question. No. The answer is no. And it's interesting as it relates to the complexities of this actuarial business that I think sometimes is more art than science. If you actually look at the Healthcare Trust Fund, it's funding ratio is lower. But the projected flow of liabilities related to that fund stretches out a long, long time and is very, very predictable. And the funding source that's a general assembly has designated is that 1.02 will ensure that that fund does remain healthy. So completely different issues when You get into the actuarially variables.

CHAIRMAN: Representative Roberts.

MS. ROBERTS: Thank you, Mr. Chair. Could we go -- I don't think I've heard discussion of it. I see on page three, the big chart, the new one, that what happens under Senate Bill 001 to those who work after retirement? I see the 30 days to the 110. But could you just give me a quick summary because that came up repeatedly with constituents about what was gonna happen to that.

CHAIRMAN: Mr. Smith, I interrupted as you were going through the chart, and it might make best sense to respond to Representative Roberts' question, but if you want to go back and do them all in order, that's fine too.

MR. SMITH: I'm happy to respond to the question. Thank you, Mr. Chair. The impacts on retirees from this bill who go back to work, one is they have to pay the .8 percent employee contribution referred to as a retiree contribution in their case. Two, for a limited group which consisted up to ten people per school district and per higher ed institution, the 110-day period of being able to work after retirement has been extended to 140 days. But that's only for 10 people per employer.

In addition, probably the biggest change for a retiree working after retirement other than the eight percent burden is our system used to allow someone who had worked for a full career in PERA and retired and then decided I want to go back to work allows them to suspend their retirement, and if they work more than an additional year when they re-retire, we would take their new salary and we would use it in the highest average salary calculation. And when we recalculate their entire careers' benefit so they could turn a 30-year career that they originally retired under that had

an HAS of $3,000 into a 30-year career that has a $4,000 highest average salary by working additional years and having a new highest average salary calculation and applying it to the whole career.

The new rule is that when they want to suspend their retirement and the reason a person suspends their retirement is so they can go to full time work and not be subject to the 110 day limit, so they suspend their retirement, go back to full time work, work more than a year. When they re-retire, we will reinitiate the benefit that they had when they suspended that will have been frozen. We will start paying that again and we will calculate a new benefit for the additional period of time they worked that relates just to that period of time and does not cause a recalculation of the previous benefit.

It's kind of a prevention of manipulation. It protects us from the actuarially impact associated with someone having had a lower paying career for 30 years and then in post-retirement work getting a substantially higher salary and boosting up the entire benefit for the whole career.

CHAIRMAN: Mr. Smith, do you want to go back where You left off on the chart?

MR. SMITH: Happy to do so, Mr. Chairman. I

think I left off at the COLA provision. And I think we pretty well covered that. The next line is the highest average salary calculation which is being changed for anyone who is not eligible to draw a benefit of any kind from PERA as of the effective date of the bill. And it takes the existing calculation which is a three-year highest average salary using a base year. And we currently have a 15 percent spike cap. It lowers the spike cap to eight percent.

The next line is establishing a five-year cliff vesting to receive the 50 percent match on your employee or your member account. This is for someone who leaves PERA affiliated employment, wants to withdraw their member account. When they do that and they're not yet eligible for retirement, they receive a 50 percent match of that balance from day one. This will impose a five-year earned service requirement before You can get that 50 percent match. And that will apply to all dollars contributed by employees after the effective date of the bill. Any dollars received prior to that will continue to receive the existing match rules.

And the next one on the top of page two, add employee contribution of eight percent of salary for all retirees working after retirement. That's the

eight percent burden I just referred to on retirees working after retirement.

The next line, prevent recalculation of the original retirement benefit. That's what I just talked through in terms of how we treat someone who's suspends and retirees.

Change the COLA payment month from March to July. That is another change. That's an important one from an administration perspective rather than pay each year's COLA adjustment with the March payment which goes out on March 31st. It moves it to the July payment. So we'll go with the July 31st payment.

Implement a one-year delay on the COLA after retirement before the COLA will be paid. And it's a 12-month delay before you start accruing COLA. So it really does parallel, as Representative Kerr said, it parallels that one year of zero that are retirees are going to experience in 2010. Every retiree that retirees after January 1 of 2011 will receive that zero COLA for a year, if You will, on that first 12 months.

For everybody hired before January 1 eliminate the retroactive payment. That was something that was eliminated from this bill. So the rules regarding when you begin to accrue and be entitled to a benefit remain unchange. We did, however, change an old rule where we would pay COLAs or allow people to accrue COLAs even when they had suspended their benefit and retirement and were not drawing the benefit. They could be suspended for five years and that benefit that they suspended would continue to grow while they were in suspended retirement. And when we started back up, the benefit it would be that higher benefit with the COLAs. No longer if you want to receive a COLA adjustment, You have to be receiving a benefit at that point in time.

Revised the existing reduction factors to be an actuarial equivalent. This is a provision related to early retirement. This indicates that anybody who decides to retire before their age and service requirements for full service retirement, they can do so. They can retire earlier. But the amount of money they will receive from their point of retirement to their life expectancy will be the equivalent of what they would have received if they waited until they were eligible for full service retirement. So it eliminates any negative actuarial impact on the system from people retiring early.

Next is the age and service modifications. This, again, does get a little bit complicated. What is happening is anyone with less than five years of

service credit in the PERA system on the effective date of the bill which means they are not yet vested in the system under the existing statutes will have their age and service requirement changed to the Rule of 85 meaning they have to be a minimum age of 55 and they have to have 30 years of service. Now, it's called the modified rule of 85 because you can also retire at any age with 35 years of service and you can get a formula benefit with five years of service credit as long as you're 65 or older. But we talk about the Rule of 85, Rule of 90, those kinds of things. That's what applies to the vast majority of people.

So after this bill passes, anybody with less than five years will be under the Rule of 85, 55 age minimum. For people hired after January of 2011, they will be under the Rule of 88. They will have to be age 58 with 30 years of service to receive a full service benefit.

And, finally, for the state division, the judicial division and the local government division, any hires after January 1 of 2017 will be under the Rule of 90, minimum age of 60 with 30 years of service credit to qualify for a full service retirement. The school division and the DPS division will not be subjected to the Rule of 90 provision. There are

people, even those hired after January 1 of 2017 will be subject to the Rule of 88.

The next provisions in the chart relate to the corridor concept, I think. Yes. The corridor concept, I think it was pretty well described by Representative Kerr. The parameters of the corridor are 103 percent funded and 90 percent funded. Once we hit the 103 mark, we start ratcheting down the AED and the SAED. That's done in a division by division basis.

In addition, when the aggregate of the entire fund hits 103, we start increasing the COLA cap from that two percent up by quarter percent increments for each year we remain at 103 percent funded in aggregate.

Finally, we have the five-year provision for the recording and we did have the amendment on the floor in the Senate that requires us to give notice to all existing retirees of PERA and future retirees as they retire that in the event of actuarial necessity they're benefit could be modified by a bill of the General Assembly.

I believe that covers the whole chart. Certainly happy to take any questions.

CHAIRMAN: Representative Summers.

MR. SUMMERS: Thank you, Mr. Chair. Under the current 110 days. And if they work more than 110

days, what happens is they just automatically lose their retirement and get suspended or how does that work?

CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Mr. Chair. The impact of that is if You work over 110 days, we start offsetting your benefit of five percent of your monthly benefit for each day you exceed 110 days. So if you add it up, if You worked the whole month, you got your 110 days and then you worked for a whole another month, you'd get zero, a little less than zero and we'd start reducing your next month's benefit. So it essentially offsets the entire benefit if you're working beyond the 100 days.

CHAIRMAN: Representative Summers.

MR. SUMMERS: Thank you, Mr. Chair. Just overall, you know, looking at PERA's retirement plan, could you give either Mr. Smith or Mr. Williams would care to comment. I'm just curious relative to areas that you looked at that the Board examined that they did not decide to implement. You know, for example, I think right now we have either the 2.5 in terms of you work 40 years, 2.5 you could retire at, you know, 100 percent of your highest average salary. Was it ever considered that the impact of, you know, you're tweaking that to 2.25 so that the most retirement benefit could be maybe 90 percent of your highest average salary and how that factors, you know, into the future.

And part of that is around this issue. You know, and PERA's is well established. But, you know, I think it's important to recognize that the PERA of the future and it's reflected in some exchanges already. It cannot be and, you know, the PERA of the past. You know, we have currently individual are living longer. And I'm sure that gives the actuarial people full time employment, you know, keeping on top of that. But, you know, as a result I think it's important to be looking at retirement ages. I think economics is important to be looking at the overall benefits. So I'm just wondering as this process as been going on for some time, what are some of those areas like that that perhaps and maybe some others You can mention that were on the table for discussion, were examined, and why maybe they weren't considered.

CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Mr. Chair, and thank you for the question Representative Summers. You know, when you go across the country and we spend a lot of time looking at these issues. And first of all, the

Board has spent a lot of time looking at those types of issues. We spend a lot of time looking at different multipliers is what we call that 2.5 percent factor. And a couple of different considerations come into play when you're looking at that number.

First of all, keep in mind that there's 100 percent maximum. Many systems across the country allow you to receive more than your full salary if you work enough years. Ours you can never get over 100 percent of the highest average salary that you had. But what's really important when You go across the country and You can see a tremendous spread of what the multiplier is.

I was with 100 of my peers last week, general counsels from across the country. This is one of the things we talked about was what's your multiplier. We've got a chart that shows this multiplier around the country. The first cut you have to make when you're looking at the multiplier is whether or not there's a social security safety net. And in systems where you have social security for those members as well and the DEBTOR plan is layered over social security. You'll see multipliers that are sometimes even below two, but usually in the two range. I've seen them as low as 1.8.

The other factor that you have to look at is

what the minimum is to be exempt from social security if you're in a state that isn't subject to the social security requirements. Clearly, not being in social security is an advantage for our employers because the benefits flowing out of social security are not commensurate with the contributions going in. So to be able to put those contributions into our system, it's far more advantageous. And as a result, though, the IRS doesn't just let you as a state government or anybody else just say, well, we don't want to participate in social security and now we're gonna go create our own system and we'll set benefits at whatever levels we want. The IRS has set minimum levels of what you have to have in that system in order to be what's called an adequate replacement plan for social security.

And when you look at what it takes to meet those minimums, the multipliers a very significant factor in that. It looks at what your definition of salary is, what's includable within the condensation as well as what the multiplier is, what the age and service requirements are, multiple facets to the examination. But that's a very important consideration as well.

The Board, after examining what we can do

with these different multipliers came to the 2.5 being the best solution for a non-social security participating state. Now, I will say that that benefit change is like all of the others. It's one of those things if we could have cut it to two percent let's say, what does it do to those lines. And you might remember for those that came and looked at the projections that we've been able to generate, we did that exercise. And we went through and said, okay, well, what if we made everybody's service from this point forward at a two percent multiplier instead of a two and a half? The line moved less than a year out before we're out of money.

And the reason for that is that's a classic benefit change that we don't see the benefit of until the people who are under that new rule are actually retiring. We start to see a little sooner in that kind of change because we'd apply to all future years, all years accrued after that change. So somebody would have 20 years at two and a half and ten years at ten. But it doesn't move the line because we don't see those savings. And the savings aren't substantial enough to really prolong our ability to pay benefits.

So at that point, it was similar to the highest average salary modifications in terms of the impact it had on the bottom line and the board migrated toward looking at highest average salary and extending that to five years highest average salary instead of the three because it felt like that was a better place to make the modification. Similar impacts economically. A lot of time spent on going through all those different permutations.

CHAIRMAN: Thank you. Representative Roberts.

MR. ROBERTS: Thank you, Mr. Chair. If we could talk about corridor a little bit and the Senate amendment to change it from the 110 down to the 103, so without those numbers, without the modeling in front of me, I don't know, but seven percent seems like a pretty big drop. So is it that you, I mean, earlier there was mention that seven years ago we hit 102 percent. So 103 percent is not that unrealistic. Is 110 percent -- did you drop it like that, squeeze it down because 110 percent we're not likely to hit in any of our lifetime and what did you have to give up to make the needle move the way it had to if that seemingly that would be a significant difference? So I'm wondering what did You have to change to deal with that Senate amendment?

MR. CHAIRMAN: Mr. Williams, with your answer, would you also comment, I think it's actually

2000 was the only year that we got over 100 percent. So that's actually ten years back, but please go ahead.

MR. WILLIAMS: Thank you, Mr. Chairman. Thank you for the question, Representative Roberts. First, we've twice been over 100 percent. I believe it was '99 and 2000 or 2000 and 2001. I believe one year it was 103 and one year it was 105 percent. What wonderful memories.

Relative to the Senate amendment to take it from 110 to 103 percent of the upper level, the target is 100 percent. It did not impact that target from a pricing vantage point. So all it said if it's impact is that when you start lowering contribution rates, AED and SAED and raising the COLA, You don't have as much as a cushion as you would at a 110 percent. That's the practical impact. But in terms of the cost implications of the bill, it has none. I hope that makes sense.

CHAIRMAN: Represent Gerou.

MS. GEROU: Thank you, Mr. Chair. And this is for either of You. So what would happen if Option 4 was taken the cash out? And then the second question I have is what impact does Senate Bill 001 have for people who are on defined-contributions -- and I know there are several sitting up here that are defined

contribution numbers -- considering the additional required contributions by the employee and the employer and the taxpayer?

CHAIRMAN: I'm sorry. I don't know what Option 4 is.

MR. SMITH: Option 4, being taking the refunds?

MS. JURELLE: Right.

MR. SMITH: Well, we save money every time somebody takes a refund actuarially. It's better for us if they take their money and go. It very rarely occurs with a long service person. So to the extent that if you're referring to the five year vesting requirement, what we found was that 87 percent of our refunds do, in fact, occur in the first five years of service credit. What was being looked at by the Board was doing away with the 50 percent match completely. And we found that rather than do that, we could more mirror a defying contribution environment where You do best over a period of time in the employer contribution frequently. And so we took the approach of doing a five year vesting requirement to get that 50 percent. And, essentially, we got 87 percent of the savings of having done away with it completely while continuing to hold that coretability feature for those people that

did get over five years.

As far as what it does to people who are in defined-contribution, if I understand your question correctly, I don't believe there's any impact on anybody who opts in to the state's defined-contribution alternative. You would continue to contribute your eight percent. Your employer would contribute their statutory contribution rate. And that would be in unifying contribution account.

MR. CHAIRMAN: Earlier today somebody posed another one of these what-if questions to me. We say that somebody can work for 110 days a year and still draw their PERA benefit. If we chose to drop that, what kind of an impact would that have? Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chairman. The reason that pension plans have working after retirement restrictions is because it's fairly expensive when someone retirees at an early age with the anticipated return to work. Why did You retire? Having the ability to work without restriction after retirement encourages to retire at a younger age, which means the pension system starts paying them sooner than they otherwise would have and will pay them over a longer period of time.

So pension plans in Colorado is very much like other places in having restrictions. You say, you know, the general assembly in this case said here's the restriction. If you want to go back to work, you can work this much and that's it. And after that, you're penalized. Really, the eight percent is of that kind of chilling affect, as well.

It's less expensive for the pension system. And someone who intends to work after retirement completes their working career and then retires. That's what it's all about. That's why you have those kinds of restrictions and pension plans all over the place.

MR. CHAIRMAN: So the pension plan would benefit by making work after retirement less available?

MR. WILLIAMS: Less attractive, Mr. Chairman.

MR. CHAIRMAN: And was that one of the things you modeled in the course of your search?

MR. WILLIAMS: Mr. Chairman, I don't think it was built in to the model, but it's something we watch very, very carefully. And that's the reason and I'm going to get the year wrong. Either in 2004 or 2006, you as a General Assembly actually made it more expensive for the employer to higher a retired PERA employer. And it had a very dramatic impact on the number of people going that route and did lower the

cost.

You know, some employers saw it as kind of, you know, from the employer perspective which is very different from the pension perspective. The employer perspective was, "Gee, you've been here for a while. You're kind of at the time of our salary schedule. Here's a check, why don't you quit and go home for a month and then come back." And, particularly in the school systems you could come back for a full school year because you'd come back in the fall and you'd approach that 110 days and then it was holiday time. And then, it was a new year and a new 110 days and you'd work into the Spring. So it was a pretty common practice for people in the schools to essentially retire a year earlier than they normally would. And that cost us a fair amount of money.

So it's really been confined, constrained may be a better word significantly with the additional burden on the employer. It's less attractive to the employer and it's not near the issue it once was. The bleeding has stopped.

CHAIRMAN: Gentleman, I'm going to ask you to stick around and we'll move on and hear some other voices for right now. Dan Dailey, no, not quite yet. Let's have You wait for just a moment Mr. Dailey.

Norma Anderson, please.

MS. ANDERSON: Good afternoon, Mr. Chairman. My name is Norma Anderson, retired legislator of 19 years. And I've been accused of giving history lessons and I shall do so again today. So you'll forgive me. I know Senator Taylor used to tell me, well, hear comes history lesson 2001 or so.

Let's talk about when did PERA start. It started back in 1935 before social security. And then the federal government came along and said, okay, we are creating social security and you have a choice. You can either put your employees in your own state pension plan or You can go into social security and subsidize. The state back then, the legislative body which by the way I didn't know any of them decided that they would have their own plan. And for years this has worked very well. And you need to know, it's been up and down over the years just like the economy in this state and in the country. I mean, investments are good, and sometimes they're bad. And I know there's a lot of people who would love to have you dump PERA. Trust me, you can't afford it. You cannot afford it.

This was a contract that was made way back then with the federal government, with state employees and with the public because, yes, it is taxpayer money,

but taxpayers fund the employees also as well as the employees helping to fund PERA. It hasn't been an easy path. In fact, '87 was the first year that I served. Guess what? We had a bad budget year.

The state was funding PERA at 12.2 and also it was called the school deficient back then. And we reduced the state's contribution to 10.2, but only reduced the school's contribution by one percent instead of the two percent like we did the state. And then following that, there were many -- and they survived. They did survive. They're still surviving. That's why You have legislation in front of you.

And then, over the years, there were many mandates from the federal government because we had choices whether to go into PERA or not at one time when you were hired. You didn't have to. Particularly, part time employees didn't have to be in PERA, but then they did. The federal government says you're gonna put everybody in, absolutely everybody.

Legislators -- we had an option whether to go into PERA or not when I was elected. It felt like a job. But the federal government come along and said, nope, everybody goes in. So all the legislators were in PERA, but most of them because we set up a DC program for legislators because they don't serve as long. And by the way, having served as long as I did, my disclaimer I am a PERA retiree. And I think it's a good plan. I will receive zero COLA under this bill. That's okay. We, the retirees, have to help with the recovery as much as anybody.

And by the way, everybody is talking about and not even my esteemed Meredith answered this correctly -- the year 2000 was 106 percent funded and the other year was I believe it was 98, Meredith, and it was 103 if I remember correctly. And the legislative, by it's tactic, I was sorry to see the Senate move that down to the 103. I thought it should have stayed at the 110, but that doesn't matter.

It is a good plan. And over the years you have -- don't forget, You have the ups and downs. But this is a contract that somebody long before you made, not you. Somebody else did it. And it's your job to save it, nobody else's.

Meredith and his crew gives you the ideas. And they have a board that runs actuarial test after actuarial test. You don't have the ability in this building to do it, quite frankly, the way they have. It is extremely important that you pass this bill. It is wrong if you don't because the consequences of bankrupting the system, you will not be able to live

with it. There isn't enough money. And you talk about lawsuits. Wow.

And I know the education community is concerned and Representative Swalm, I heard you ask a few questions about the impact. We understand the impact. And, sure, it's gonna hurt for a little while. But the way it's set up over the years, as I said, the economy comes back. It's going to come back hopefully. I would hate to see this last for ten years the way it is today. But it will come back. And that will help them fund that because there property taxes then are based on the assessed value, value of homes go up, etcetera, etcetera.

So with that, I just ask You to vote for it. My one hangup is early retirement. I don't like it. I've always been against that. And, you know, being able to buy in. A lot of us did when it was an option, but other than that I think it's a really good bill. And I would be voting for it as it stands.

CHAIRPERSON: Thank you, Senator. Representative Labuda.

MS. LABUDA: Thank you, Madam Chair and Senator Anderson. It's always a joy and delight to hear You. And I do always get a history lesson. Thank you very much for joining us today.

CHAIRMAN: Are there any further questions for Senator Anderson? Thank you, Senator. It looks like you're on the loose.

MS. ANDERSON: Oh, I have one thing. Representative Gerou, you asked the question about the salaries, the salaries for across the nation for hedge fund providers who are in the multi-million dollar. So I just wanted you to know that.

MALE: Representative Gerou.

MS. GEROU: Thank you, Mr. Chair. And I want to say thank You. I actually know what hedge funds are. My question was not that. My question is what do I tell my constituents when they're dealing with what they're dealing with. And quite honestly, they're not in sincere in their request, they're heartbroken. I know what private business does, but I also know that when systems fail and private business, there's a course of action. And I was just looking for their response on that which I didn't get, but it's a question that's asked of me a lot. And there's a lot of people here that see their retirement dissolved away; they see their life savings is all the way; they see their property tax increasing. I think You understand the concern.

CHAIRMAN: Senator Anderson.

MS. ANDERSON: Yes, I live in (indiscernible) County, too, and actually my property went down because of the assessments and the market. But the reason I said that is I've gone through a couple of executive directors. And Meredith has done a good job as I've watched over the years. And I have worked with him, and I've worked with others over there. And there isn't any better than Greg Smith when it comes to knowledge on pension funds.

I have had the privilege to sit on a national committee on pension funds. I had the privilege of going to the White House conference on Social Security. So I have a pretty strong background on this. And I just want to share with you for the money we're paying them, they're doing a pretty good job.

CHAIRMAN: Thank you very much. Connie Anderson.

MS. ANDERSON: Thank you, Mr. Chairman. Thank you, members of the Committee. Thank you Representative Kerr. It's my pleasure to be here as a PERA retiree.

CHAIRMAN: Ms. Anderson, would You start by introducing yourself.

MS. ANDERSON: Oh, I probably should, yes. My name is Connie Anderson. I retired from the Aurora

Public Schools and I've been a long time resident of Aurora. My native state was Kansas, but I came here in '48 and made Colorado my state. I have to tell you that the biggest blessing in my life is my PERA. I have to say that again. My PERA, something I can count on. I know every month it's going to be there and it's not something that's in doubt. And I have invested in some other things -- one of which was Pan America. But I have to tell you PERA is the one that I depend on. Anything else, I cannot rely on. And I have now been retired since 1991. And I certainly have enjoyed that retirement.

I suffer from COPD. I could get around in an automobile. We used to do that. But I cannot work a very far distance. And I think in hearing your questions from the various committee members, I've been very pleased because I've sat through many of these presentations myself wanting to put all the facts together. And certainly the questions you have asked as been very rarely representative of the work that's been done. And I thank you for that as a citizen and resident of Colorado, I thank you for that. Any questions?

CHAIRMAN: Ms. Anderson, thanks very much. Dan Dailey.

MR. DAILEY: Thank you, Mr. Chairman, members of the committee, Representative Kerr. My name is Dan Dailey. I'm with the Colorado Education Association, but I am speaking today specifically on behalf of the entire Colorado Coalition for Retirement Security. You've probably heard of our coalition. We've been working actively to help develop Senate Bill 001 to help put some amendments in place and some changes that we think have made it better. But I want you to know who the members of the coalition are.

We have over 200,000 individual members who belong to ten different member organizations. Those are both active and retired paramembers. They come from my organization, CEA, but also from the Colorado Association of School Executives, Colorado WINS, Friends of PERA, CASE retirees, AFT Colorado, Denver Public Schools retirees, the Association of Colorado State Patrol Professionals, ASME, and the Colorado School and Public Employees Retirement Association. So we're a pretty broad representative group.

Let me first thank Representative Kerr for the great work that he has done in building a degree of consensus around Senate Bill 001. Also, the efforts of the PERA Board and the PERA staff and the members of our coalition have been nothing short of monumental

over the last eight months of work on this problem. Combined, we have all attended hundreds of meetings and literally heard from thousands of concerned active and retired PERA members. So thanks to everyone who helped to get us to this point.

With that being said, and I'm sure you'll hear this from some of the other testimony today, not everyone is an agreement on the final product before You today as Senate Bill 001. As Meredith said earlier, everyone could find something to dislike in this bill. I'm sure all of You can. I'm sure all of the folks sitting behind me can.

However, what we in the coalition do agree on is the status quo is not acceptable. Senate Bill 001 as presented today is the best solution possible at this time. It's reflective of our goals, specifically, our goal of shared sacrifice meaning employers, employees, and retirees all have a financial stake in security this system under Senate Bill 001.

It's reflective of our goal of a long-term fiscal stability for PERA meaning the unfunded liability will be amortized in 30 years and the fund will be able to pay benefits and perpetuity. That's the ultimate goal here, retirement security for our retirees.

And, of course, it's reflective of our goal of having an adequate predictable sustainable retirement benefit for public employees through a defined benefit plan. Because Senate Bill 001, though admittedly not perfect, meets these goals, we support the bill and ask You to support it as well.

I want to speak briefly about two key provisions of Senate Bill 001 that ultimately allowed our coalition to come on board and support the proposal. The first is the change in the COLA provision which after a zero percent COLA in 2010 will allow retirees to receive a two percent COLA in 2011 and each year thereafter unless PERA experiences a negative return on investments. That's a substantial improvement from the original PERA proposal and Senate Bill 001 as it was introduced.

This COLA change from the original version of the bill is extremely helpful in providing some additional inflation protection to current retirees. And the only reason it's possible, quite frankly, is because of the outstanding investment return PERA achieved in 2009.

We hear a lot about the negative returns in 2008 when PERA lost somewhere in the neighborhood of $10 to $12 billion. What we don't hear about is the great job they did in 2009 when they earned back about $5 billion of those dollars. The original PERA Plan, the 2-2-2 Plus Plan was put together based on the 2008 numbers. We've been able to make these modifications and improvements in the bill because of the outstanding results in 2009 which, of course, we didn't know about last summer and fall when the original plan was put together. So this plan does, again, as Meredith commented earlier, recognize, to some extent, the good returns in 2009.

A second key change to Senate Bill 001 from our perspective is capping the minimum retirement age for school and DPS division employees at 58 instead of 60 years. You will likely hear more testimony on this issue from others, but I want to make clear that the reason that we can cap the increase at 58 is because school employees will pay a greater portion of the combined AED and SAED increases than non-school employees.

Specifically, employees in schools will pay two and a half percent more over time and school districts will pay one and a half percent more instead of the two and two for the other divisions. So that's an important piece to remember.

This shift from AED to SAED is possible in

the school and DPS divisions because of the way schools are funded and the way school employees receive salary increases. Fundamentally, schools operate differently than other government entities in Colorado in determining salary and wage increases.

As is stated in current statute and as district and school employees have recognized since the SAED came into being in 2006, SAED contributions are, in fact, funded by allocation of funds otherwise available for use as employee compensation increases. We get that. We understand that. We know how it works in the school system. And that's what allows us to make this particular change.

I do want to add to my prepared testimony by addressing something that Representative Swalm raised. And that's the future burden on school districts with these increased AED and SAED costs. We all recognize they're there. We all recognize they're coming. There are some in place from 2006. This legislation will increase those contributions.

But if you're really serious about the problems facing schools, what you really ought to be looking at is not these incremental increases coming from Senate Bill 001, but, in fact, you ought to be looking at the recent $130,000 recision from the

current year school Finance Act and the $250 to $400 million that's gonna be cut from what amendment 23 would require to be funded for schools next year. That's where the burden is going to come down and hurt schools. It's not from these incremental PERA increases. So I just wanted to put that on the record and try and keep our eye on the ball on that issue.

I'd be happy to answer any questions You might have about any of these issues. And I do appreciate your consideration.

CHAIRPERSON: Thank you, Mr. Dailey. Representative Swalm.

MR. SWALM: Thank you, Madam Chair. Thanks for your testimony. Well, speaking of the issue the discussion we've had here with schools, I mean, one thing that's concerned me about what's gone on in one of the districts that is part of my House District 37 is Littleton Public Schools. And they've had to lay teachers off, increase class size, cut programs because the contract that they have with the teacher's union won't allow them to reduce salaries. Rather than everybody taking a relatively small pay cut, they're having to put people on the street without any income, without health insurance in this kind of an economic environment. And I don't like that.

So, yeah, we need to come to the table here, but I think everyone needs to come to the table quickly. This is not a situation that -- this is affecting kids this year or in the very near future. And these contracts need to be looked at quickly. And some flexibility needs to be put in here. So it's not too much a question, but it certainly is a statement and that I believe firmly in.

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair. Representative Swalm, I have to correct one thing You said which is that their collective bargaining agreement won't prevent them to reduce salaries. That's absolutely wrong. They can go back to the table and they can negotiate as they do every year with their local employee groups and set salaries for the next year. Tabor prevents them from agreeing to multi-year contracts with salaries that are set that aren't funded in advance. So they, in fact, do negotiate those every year.

There's nothing to prevent them from going to the table and negotiating changes in that salary. That's not a legislative issue, that's a local school board issue.

CHAIRPERSON: Are there other questions?

Representative Kagan.

MR. KAGAN: Thank you, Madam Chair. Thank you for your testimony, Mr. Dailey and thank you for the work you've done on this. It's amazing to me that the amount of effort and cooperation that's gone into reaching this perspective compromise here. I'm very interested in the effects of the bill school costs. You eluded to the fact that in your view, the $130 million dollars -- I thought it was 110, the $130 million recision in current budget year and the upcoming $250 to $400 billion reductions in the school budgets in 2011 are more serious than any effect of Senate Bill 001 on school budgets.

My question is do You have a figure for how much the change in retirement age rules will affect schools? I'm told by constituents and people with concerns for the school budgets that the increase in the age of retirement will keep expensive teachers and cause an increase in the salaries. And my question is how do You know in millions of dollars how much that cost?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair. Representative Kagan, I can't give You a dollar figure, but I can talk in some general terms about the issues

that You raised. Let me correct, first of all, I said $130 million recision this year. Originally, it was $110 million based upon the School Finance Act of last year requiring that to be set aside. But in addition, what the legislature has done this year has chosen not to fund the additional enrollment increase and at risk student increases that made up another 20 million to get us to 130. So that's where my figure came from.

In terms of the question of these PERA increases that are being phased in and what those might cost in total. One of the very first conversations we had with PERA during the last legislative session in terms of talking about how to address the coming changes that we knew were coming was this question of is there someway to increase employer and employee contributions as part of a package. And I think the consensus was then and the consensus is now probably not if you're talking about something that gets applied immediately. In other words, if we're going to tack on additional increases in 2010, 2011, and 2012 on top of what's already scheduled from previous legislation, we don't think that's fair or doable in this environment which is specifically the reason that we've pushed out this SAED and AED increases to begin in 2013 and so on. It's simply not doable now. So that's lessened the

impact in the short term on school districts recognizing their problems.

In terms of the dollar amount of that, the numbers that I'm hearing from around the state, individual school districts, based on the school finance projections is our districts are looking at typically six to eight percent reductions next year and the actual money they get to run their system -- six to eight percent fewer dollars next year than this year.

If You look at that in terms of these SAED and AED increases which combine total four percent phased in over four or five years beginning in 2014, I think it's very safe to say that significant of these while not insignificant, is substantially less than the six to eight percent cuts we're going to see immediately next year. That was my point. Thank you, Madam Chair.

CHAIRPERSON: Representative Roberts.

MS. ROBERTS: Thank you, Madam Chair. Mr.Dailey, given the list of organizations that you mentioned that supports this, I, recognizing as a lawyer, anybody can sue whenever they want. But one of the sort of glaring discussion points back in August was the attorney general's letter and people saying somebody is going to sue. Do I understand you then to

be saying none of the groups are your own? I don't know if you're authorized to speak for the others as well, but are we not likely to see a lawsuit brought by any of your groups should this bill pass?

CHAIRMAN: Mr. Dailey. Thank you, Madam Chair. Representative Roberts, I think I can safely say that the coalition will not bring a lawsuit. What I can't say is whether any of the ten different organizations or the 200,000 individual members might chose to do that. So I want to be careful and not go down that route. But I think it's safe to say the coalition recognizes the need to make these changes so that we do have a fiscally stable system. And that's why we're supporting this bill.

CHAIRPERSON: Representative Swalm.

MR. SWALM: Thank you, Madam Chair. Something you said earlier, sir, gives me pause. You said that in the Senate they were able to tweak the bill and restore some of the benefits because this last year we had a good year in the stock market. What that kind of reminds me is the tendency of this legislature -- I was going to say the state, but it's really the legislature that used to always spend every penny that comes in as opposed to putting something aside. You know, we had a good year, great. Why do we have to spend it all? Why don't we say, yeah, we had a good year, but we still got a big problem here. What would you think about the idea of saying, okay, we had a good year, but let's save that, you know, let's be the ant rather than the grasshopper and just use it all up. So what do you say to that?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair, Representative Swalm. A couple of points. The target here is an important one to keep in mind. And the target is to amortize the unfunded liability over a 30-year period. That's the goal that I think is written in statute currently. It's the goal that the PERA Board set in developing their proposal. It's the standard of the industry as Meredith Williams expressed.

So could we do something to get us amortized in 25 years or 20 or 15 and will that be better? Certainly, we could. What we're trying to do, obviously, is balance the hardship on employees, employers, and retirees with shoring up the fiscal stability of the system and accepting the 30-year amortization fees. My point was simply when we built the original 2-2-2 Plus proposal based on 2008 numbers, it got us to 30 year amortization period. But with the

excellent returns well in excess of the eight percent expected in 2009 or the eight and a half percent expected in 2009, we can still meet the 30 year amortization without being quite as, my term, draconian on retirees, employers, and employees in terms of the hardship we're putting on it. That's the first piece.

I think there's an important second point here and it goes back to some of the conversation Mr. Smith had about actuarial necessity. One of the things that the court will look at when they do get sued by somebody is whether or not there was actuarial necessity to make these changes and did, in fact, PERA and/or the legislature overreach, overcorrect, and go farther than they really needed to go in terms of addressing the actuarial necessity question. And that's something that could cause this to be overturned if, in fact, we did go too far.

So it's a caution I guess in terms of responding to your question. Could we do more quicker? Yeah, we probably could. We could, You know, raise the contributions faster, higher. We could cut the COLAs lower. We could get the full funding sooner. Is it really justified based on what we're doing to employees and employers and retirees and do we put ourselves in danger of a losing a lawsuit based on actuarial

necessity because we've overreached. Those are the kinds of balancing questions that I think we've all been struggling with for the last eight months.

CHAIRPERSON: Representative Roberts.

MR. ROBERTS: Thank you, Madam Chair. And this was a question I should have asked earlier, but I suspect you'll know the answer. And it was one that was raised to me by a constituent teacher. The purchase under this proposal, what is happening to the purchase arrears? Because actually several constituents kind of confessed in too strong of words because it was legal and they were allowed to do it. But there was a sense that PERA was too generous in terms of purchase of years. So I'm not finding it as I quickly review the sheet. Is it in there? And then if You could speak about that?

CHAIRPERSON: Mr. Dailey.

MR. DAILEY: Thank you, Madam Chair.

CHAIRPERSON: Thank you, Madam Chair. Representative Roberts, that's a great question. And I think what you're referring to is there was a period of time after we were 102, or three or five percent funded at the turn of the century when people could purchase years of experience very cheaply. I don't know what the exact number is, but I used to tell people you can

buy years at 50 cents on the dollar. In fact, any time you try and sell something at 50 cents on the dollar, people are going to buy it. And people bought a lot of it. And that's one of the reasons we have so many people who retired early during that period of time. That combined with some other benefit enhancements and the downturn in the market really has put us in the circumstance we're in today in PERA. That's how you go from over 100 percent funded to under 70 percent funded in a few short years.

That problem was really addressed in previous legislation. And PERA no longer sells years at 50 cents on the dollar. In fact, you can still purchase years, although I think the number is capped. It may be capped at 10 years. I don't want to -- I'm not absolutely sure of that. But they actually sell years now at the true actuarial value of those years of experience. So there's nothing in this legislation around that particular issue which has been taken care of previously.

CHAIRMAN: Mr. Dailey, thanks very much. Don Shaffer.

MR. SHAFFER: Good afternoon. My name is Don Shaffer. And I am a PERA retiree. And I am representing the Coalition for Retirement Security and also Friends of PERA. Friends of PERA is a fairly new organization that started about three, four years ago to ensure that we have for state employees and school districts and all of the members a well-funded defined benefit plan for a long time into the future. We appreciate the work that Representative Kerr has done. And we especially appreciate all the work that the PERA board of trustees has done, most of whom are actually volunteers who are elected by the members and serve on that board at no compensation. So they spent lots of hours working on this issue.

The PERA members and retirees that I have talked to or communicated with via e-mails, via phone calls and at meetings and so forth. We're not happy about having to change the PERA Program. But we also do not want to see the demise of PERA's defined benefit plan. We know that changes need to be made and they need to be made this year. We don't want to delay the process any longer. For most of the 90,000 PERA members or PERA retirees, the COLA change will be a hardship. We're talking $100 a month approximately for the average retiree, $1,200 a year, not just this year, but every year into the future.

And then we're talking about a lower cost of living from three and a half down to two percent,

roughly $43. So that's another $500 a person a year for a retiree out into the future. So it is going to be difficult. And it will be difficult for the person who at the end of March was anticipating getting that hundred dollars and not receiving that, and who also had to pay it the first of January, a $100 increase in their health insurance program because there was no increase from PERA on the health care side of things.

So it will be difficult. But, again, we are willing to accept this so that we have a pension plan, so that we have income down the road. And it's not unlike what other states are doing. I just looked up Wyoming. Wyoming has a zero percent COLA for the year 2009 and they're going to have zero percent for 2010. They haven't decided about the years going forward yet.

So other states are taking some of the same reaction. Certainly, military retirees this year will get a zero increase. The social security retirees will get a zero increase. And we're all kind of in the same boat and we're willing to accept that.

If we delay taking action, the current fund as you have seen could be exhausted in a number of decades. And the coalition and the Friends of PERA Board of Directors agree that given the economy that we have, the volatility of the markets and PERA's market

funding level and the severe strain that's put on the employers this year and the years ahead, that all of the stake holders need to share in making sure that we have a long term sustainable PERA.

There are some people who have complained that the employer contribution rate will be increasing. But it will not be increasing according to this bill until the year 2000 and that's about .5 percent a year. The increase from now to 2000 is already in state law.

CHAIRMAN: I think you mean 2014.

MR. SHAFFER: Okay. Whatever the year is, it will start increasing at just .5 percent which for the total is about $35 million a year. The total reduction by retirees will be about $70 million a year. So retirees are taking a bigger grunt on this at least initially. But the contribution level by the state as Senator Anderson mentioned earlier, if you go back 25 years ago, the contribution made to the schools was 12.5 percent. The state contributed 12.2 percent to PERA. Over the years, that was reduced down to 9.9 percent. Yes, things have been bad the last few years, so that has had to increase.

But when you compare it to other pension plans across the country, and I've tried to do a lot of looking on the Web sites, and it's very difficult to

get the information. But a state like Florida puts in about 20 percent of pay right now compared to what's going into our pension plan which it would have the number of 12.5, I believe it is, 12.15 percent. But you have to really subtract that one percent that we were talking about earlier for the healthcare plan. So really what's going into the pension plan now is 11.3 percent this year 2010. Compare that to 1984, it was 12.5 or 12.2 percent. So we're a full percentage lower at this point. And we've been much lower.

If you go to a state like Alaska, they're putting in 22 percent of pay into their pension plan. If you go to Wyoming, it's about 16 percent into pension plans because they have social security plus a defined-benefit plan.

So I'm kind of finished with my testimony except to encourage you all to consider voting for this. If you go back into history again 30 years ago, PERA was supported by both republicans and democrats alike. It was not a partisan issue which seems to be the case today. The parties work together to ensure that the employees had a good pension plan and that the pension plan was there to attract and retain employees, retaining employees reduces the cost in human resources departments across the state. And so I would encourage you all to vote for Senate Bill 001. Any questions?

MR. CHAIRMAN: Thank you very much, Mr. Shaffer.

CHAIRPERSON: I was just going to say, if I may, it's very nice to see you again, Don.

MR. CHAIRMAN: Walt Cooper.

MR. COOPER: Thank you Chairman Judd and Members of the House Finance Committee. My name is Walt Cooper and I'm superintendent of the Shia Mountain School District in Colorado Springs. I'm here today representing the Colorado Association of School Executives. I am here to testify in support of Senate Bill 001. In CASE, there's more than 2,000 members who serve in administrative roles in school districts including superintendents, chief financial officers, personnel administrators and principals. So by its very nature, CASE is very interested in the future of PERA from both the management and an employee perspective. And this has allowed CASE to play a unique role in the negotiations on this bill and for us to be a strong partner in the coalition which Mr. Dailey previously referenced.

Our organization represented by Deputy Executive Director Bruce Coy has been working with the coalition since 2006 and for the past several months

specifically on this legislation. CASE very much appreciates the hard work by PERA staff and trustees, by Senate president Shaffer, Senate Minority Leader Penry, as well as Representative Kerr and house leadership to bring a bill and amendments that we can all get behind.

As I indicated previously, I'm here today primarily representing CASE. However, Jane Nershall (ph), the deputy executive director of the Colorado Association of School Boards have asked me to share her board's support for Senate Bill 001. CASE's support for stabilizing PERA is greatly appreciated. And also in addition, Paula Stevenson of the Colorado Rule of Schools Caucus asked me to indicate their support for Senate Bill 001 as well as an organization which I directly represent the Pikes Peak Alliance which is a group of ten school districts in Teller, El Paso, and Fremont County serving more than 77,000 students.

It's not been pleasant to discuss the hardships that the PERA fix creates at a time of great economic distress. And without minimizing in any way the shared sacrifice by active and retired employees. I want to stress today that school districts faced with drastic cuts and funding are now going to be faced with incremental increases in their contribution to the

stability of PERA as has been previously discussed this afternoon.

The only way that we fully got behind today's bill is to highlight the shift and components that impacts the school divisions specifically. First, keeping the retirement age at 58 will help districts who will not have to keep the most expensive employees longer.

Second, by keeping the age of 58 for employees hired after 2011, the SAED will shift upwards to 2.5 percent. CASE and CEA have agreed to recognize that the statute governing the increased SAED is paid for by funds that would otherwise go to employee raises. We recognize the distinction of the SAED, the employee's share and the AED which is the employer's share and also agree with the reduction of .5 percent from the employer's share to help the slightly lower retirement age also as Mr. Dailey referenced.

So with that I simply say thank you for taking my testimony today on behalf of the Colorado Association of School Executives and others. I urge you to please support Senate Bill 001 as it is in front of you today. And if I can answer any of your questions from a school district administrator's perspective, I would be happy to do so.

MR. CHAIRMAN: Representative DelGrosso.

MR. DELGROSSO: Thank you, Mr. Chair. The loudest burden is gonna get put on the school districts. Where are they thinking they're gonna get this money? Because the school districts are struggling now as it is and programs cutting teachers. And where do you guys think you're gonna come up with the extra money to pay that?

MR. CHAIRMAN: Mr. Cooper.

MR. COOPER: Thank you, Mr. Chairman. Representative DelGrosso, it's the cost of doing business. I'll specifically tell You about our situation. We knew that we were going to be faced with approximately $1.2 million in cuts to our budget as a result of recisions happening this year and the proposed reduction and funding next year, we simply added to that our increase that we know for PERA employer contribution next year of $200,000. It didn't make our job any easier, it made it a little more difficult. But we are sitting around the same table or the table with the same individuals, our teachers and our board of education making budget decisions around everything that we know is a cost of doing business.

Reduction in funding is a cost of doing business. Increased costs are a cost of doing business. And so I don't mean to minimize, but that is really a shared sacrifice, but it's a sacrifice that everyone recognizes. And from my perspective, nobody recognizes this more than our teachers and our employees.

MR. CHAIRMAN: Representative DelGrosso.

MR. DELGROSSO: Thank you, Mr. Chair. So you like the idea of keeping the retirement age for future hirees at 58. Why not 60? I mean, I guess that's the part that I'm kind of confused on as far as -- I understand people in the system now I don't agree with changing that for them now. But future employees, somebody who is not even hired yet, five years down the road, ten years down the road, why are we trying to keep them at 58 instead of maybe pushing them to 60 because in the normal world, if you're on social security it's 65. So 55 right now is a pretty sweet deal. Push it to 58, we're still well. Even if it was to 60, that's still a better deal than what you're gonna get out in the private sector. So I guess maybe I'm confused on how the whole thing works, why 58, not 60.

MR. CHAIRMAN: Mr. Cooper.

MR. COPPER: Thank you, Mr. Chairman. I won't try to speak to the impact from PERA's

perspective on that. But from my perspective, one of the things that we routinely count on in school district budgeting is what we call retirement differential. And that simply is the cost of an entry level employee, a new teacher. And, obviously, we have many more employees than teachers, but I'll use that as an example. To those veteran teachers who are approaching retirement and are at the top end of our salary schedule.

From our perspective, it is critical that we maintain that cycle and that we, in essence, regenerate revenue into the system by replacing our highest paid employees with lower paid employees with novice or entry level teachers. And I can't tell you what the direct impact of two additional years in that dynamic would be, but I know it would be more expensive than the dynamic that we anticipate now.

MR. CHAIRMAN: Representative Roberts.

MR. ROBERTS: Thank you, Mr. Chair. You mentioned that one of the groups that you are speaking for is Colorado Rural Schools Caucus, which I'm not exactly sure who that includes, but I'm imaging all rural schools or Western Slope or how is that defined?

MR. CHAIRMAN: Mr. Cooper.

MR. COOPER: Thank you, Mr. Chairman. The

Rural Schools Caucus is an organization of districts that are left to participate. And we are not a member of the rural school. I was in my previous district. But it is an organization and a collective voice for the smallest and rural district districts from all over the state. It is not defined by any geographic boundary.

MR. CHAIRMAN: Representative Roberts.

MS. ROBERTS: Thank you, Mr. Chair. So my question a little bit is knowing that rural schools don't have the same economies and scale that you might have in an urban area, what is the impact? And I don't know if you could speak for them, but coming from a rural remote area, I'd just like to know that if they're fully engaged in this as well in terms of the support.

MR. CHAIRMAN: Mr. Cooper.

MR. COOPER: Thank you, Mr. Chairman. I do believe they're full engaged in their support as evidenced by their executive director. And what I can tell You from my previous experience before coming to Shia Mountain I was superintendent of the Ellicot School District in Eastern El Paso County. It's one of the poorest school districts on a per people basis in terms of the valuation and the state has about 875

students. Proportionately, relative to the school finance act and relative to employee costs and the PERA contribution, it really does not have, I don't think, my opinion is that there is not an expedentially different impact regarding the size of the school district because of the relevant difference in the school finance act and the poor people funding that is driven by five, it is driven by other factors.

Certainly, there is an economy to scale in some districts. In Shia Mountain School District being about 4,500 students and dealing with evidently, we're assumed to have the (indiscernible) economy of scale because the factors in the act don't affect us at all. So I would think that perhaps the impact would be greatest to a district of 4,500 students that is at the funding of the school funding.

MR. CHAIRMAN: Mr. Cooper, thank you very much.

MR. COOPER: Thank you, Mr. Chairman and thank you for your time.

MR. CHAIRMAN: Karen Witts.

MS. WITTS: Good afternoon, Committee, I'm Karen Witts from the Colorado Education Association. Thank you, Mr. Chair, Committee Members, and Representative Kerr for allowing us to testify today.

Our organization, as you heard earlier from Dan Dailey, is part of the Colorado Coalition for Retirement Security. And we also at CEA support Senate Bill 001. Let me speak first to the issue of minimum retirement age which I think has been tee'd up pretty nicely, so thank you. For future school employees, under the bill, the age and years of service school for all PERA members hired after January 1 of next year will rise to 58 with a Rule of 88. They will then remain at that level for the school and DPS positions when other divisions rise to 60 and rule of 90 in 2017. This is a very good thing for schools. And it's one of the most important reasons why we at CEA support the bill.

It is important to understand the negative consequences an increased retirement age will have on the financial situation of Colorado school districts. Walt Cooper just referenced this a moment ago, because of the way most teachers are paid using an escalating salary schedule, school districts can survive economically by continually replacing their most senior and most expensive teachers with new, less costly ones. And they typically do this through retirement at the end of a teacher's career.

By raising the minimum retirement age, we are

forcing school employees to work longer, costing districts more, and eliminating the district's ability to replace their highest cost employee. The net of this change is shifting the cost away from PERA, a multi-billion dollar organization onto school districts which have a very limited ability to adjust their budgets in order to observe increased costs. And you've heard Walt reference this well as what their district of Shia Mountain is looking at.

We've also recently seen two school districts, Pueblo and Grand Junction as well as the City and County of Denver offer early retirement incentive packages to their more senior employees to get them to retire. And this is as a result of really trying to make some room within their budgets as they're looking at these cuts coming down. And I've also heard of one rural superintendent reportedly say that his currently budget crisis would be solved if a single veteran teacher would retire.

So while increasing a retirement age of public employees sounds politically attractive, it does have negative and unintended consequences. Nevertheless, given that the bill limits the increase for school employees, we support Senate Bill 001 and we encourage You to do as well. So thank you for your

consideration. I'll be happy to take any questions.

MR. CHAIRMAN: Ms. Witt, thank you very much. Miller Hudson.

MR. HUDSON: Mr. Chairman, members of the Committee, I'm Miller Hudson from Denver. From 2003 to 2009 I served as executive director of Colorado Association of Public Employees. And for the last eight months I worked with the coalition representing CAPE retirees in the negotiations that have brought you this bill. And I'm here to express our support for this legislation, not our enthusiasm, but our acceptance of what is necessary.

I think one of the unique things about Colorado certainly is the fact that we were able to reach this kind of a compromise. And there is a shared sacrifice here. Whatever legal grounds may be for challenging this legislation, I ask you to consider the consequences of doing nothing.

We have employees on the payroll who are paying into PERA now who if we do nothing will never receive a dime because we will run out of money. So something has to be done. If that's not necessity, I don't know what is.

The only other issue I'd like to raise with you is that in this proposition that you have, there's

really only two things we can do, put more money in or distribute less money out. The cost side on active state employees, they will be putting in more money, employers will be putting in more money, but that comes down the road a little ways because there already scheduled to put more money to solve previous problems.

So we're gonna reduce the money that's going out and that's gonna happen starting March 1st. And that's gonna happen to your retirees. And I want You know that while retirees are acceptant of this because they want to still see that check showing up in their mailbox, they have the concern that all of us have. Is there runaway inflation lurking behind the federal deficits that we have?

Now, I'm old enough and our retirees are old enough to remember the 1980s when we had double digit inflation for almost six consecutive years. It only takes three years of double digit inflation to cut the purchasing power of these pensions in half. If we face that -- so I think you should accept the fact that it's not just the retirees that are taking the risk, you're taking a risk, you're taking a risk as well because I can tell you we'll be back here if we have that kind of a set of circumstances. These are people who have dedicated their lives to providing public service to protecting our health and welfare. And it's only fair that they have a dignified retirement.

So we roll the dice. We hope that it works well. We urge your support for the bill, but let's not kid ourselves that we have a perfect solution. Thank you.

MR. CHAIRMAN: Representative Frangas.

MR. FRANGAS: Thank you, Mr. Chair. Mr. Hudson, you said that three years ago double digit inflation would cut purchasing power of the pensions in half or did you say three or six years?

MR. HUDSON: No. In three years you could cut it in half.

MR. FRANGAS: In that regard, do you consider this a benefit for the retirees if there is a presumption that we might have that level of inflation like we had in the 80s, the current retirees because one of the things I'm struggling with on the bill is I see the need for it for longer term retirees, but I'm trying to reconcile that with current retirees. And if they're going to lose half of their purchasing power, then it's a no brainer at that point. Is that a good assumption?

MR. CHAIRMAN: Mr. Hudson.

MR. HUDSON: Mr. Chairman, I don't know

whether it's a good assumption or not. It's a possibility. And all I'm trying to communicate is that the retirees that I represent that were involved in this process, they're worried. They're scared. They know that there's a big risk here. They are supportive of the legislation. They're supportive of the work that's been done. We're all crossing our fingers. I hope we never see double digit inflation again. I remember a house mortgage that was 14.5 percent. Well, You can't buy much house when you're paying 14.5 percent interest.

MR. CHAIRMAN: Representative Frangas.

MR. FRANGAS: Thank you, Mr. Chair. So, Mr. Hudson, You see this as reducing the risk for current retirees if we adopt this bill?

MR. HUDSON: No, it's putting them at greater risk. And that's the point that I'm trying to make. I think it's something we have to do, however.

MR. FRANGAS: Putting them at greater risk to adopt this bill or it's putting them at less risk?

MR. HUDSON: No, it puts in a greater risk because there's less inflation protection in the new plan.

MR. FRANGAS: In Senate Bill 001 there's less inflation protection for current retirees?

MR. HUDSON: That is correct.

MR. CHAIRMAN: So, basically, Mr. Hudson, what Senate Bill 001 does for the current retirees is it reduces their immediate inflation protection and increases the chances that they'll actually be available say 20 years out?

MR. HUDSON: That would be my conclusion, Mr. Chairman.

MR. CHAIRMAN: Representative Kagan.

MR. KaGAN: Thank you, Mr. Chairman. Mr. Hudson, you said in your testimony that if we do get double digit inflation, we'll be back here. What makes you confident that we will all be back here? To be serious though, I mean, my concern is that we have double digit inflation and because we have double digit inflation, we have better yields on the PERA Fund. And the incentive is for us not to come back here because we know what we'll be facing, the demands we'll be facing if we do come back. So what gives you that confidence that we will be back here?

MR. HUDSON: Well, because there's tens of thousands of retirees who will be knocking on your door asking what kind of an adjustment are you going to make to restore their purchasing power. I think that needs to be on the table and all of us need to understand I'm

here in support of the bill. My members are in support of the solution, but we should not kid ourselves that this locks all the doors.

MR. CHAIRMAN: I agree with you, sir. Thank you. Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. Nice to see you, Mr. Hudson. Well, if we get back into double digit inflation, even if we had a three and a half percent COLA, they're still going to be pounding on our doors, aren't they?

MR. HUDSON: I suspect so.

MR. SWALM: Thank you.

MR. CHAIRMAN: Thanks very much, Mr. Hudson.

MR. HUDSON: Thank you.

MR. CHAIRMAN: Kathleen Zambrini (ph) and Scott Wasserman.

MS. ZAMBRINI: Mr. Chairman and Members of the Committee, my name is Cathy Zambrini. I'm a labor and employment specialist with the Department of Labor and Employment. I've been with the Department of Labor for eight years.

MR. WASSERMAN: I'm Scott Wasserman. I'm political director with Colorado WINS.

MS. ZAMBRINI: The members of Colorado WINS have been deeply involved in this issue since summer.

We represent both active and retired employees of the State of Colorado are both, throughout this discussion, had been to preserve defined benefits for our current and future employees as well as to strike the right balance between the need to bring PERA back to projected solvency and the consequences of putting too much of the solution on the backs of active and retired statement employees.

Among all of the components of a state employees's total compensation package, PERA has always been the most attractive for those seeking employment with the state. Precisely at a time when the demands for our service is increasing this package is taking a hit. This year in particular, all three of the components of total compensation are threatened with further erosion. At the end of this week, the legislature will consider a 2.5 percent pay cut. Healthcare premiums are projected to rise as much as seven percent. The escalation of the SAED in this legislation further compounds the negative effects of our total compensation package in future years.

As all of these things deteriorate, so too does the ability to attract quality candidates. And we need quality candidates to provide public services. At the same time, some of the provisions may actually

cause state employees with valuable experience to leave service sooner than they would have before the changes.

This legislation is a tough pill to swallow, but we appreciate the progress that has been made since PERA's November proposal. While we did believe that this bill could be better, Colorado WINS has withdrawn their opposition to the legislation as written.

I will now turn my testimony over to Scott Wasserman who will describe some of our remaining concerns around this legislation.

MR. CHAIRMAN: Mr. Wasserman.

MR. WASSERMAN: Thank you, Mr. Chair, Members of the Committee and Representative Kerr. I think first and foremost, I do appreciate all the hard work that's been done on this bill. And I think as Kathy said, this has all been about striking a balance between I think a lot of competing needs. And even in our organization, the needs between retirees and actives, those are hard to balance. And I think maybe a little bit different than some of the other members of the coalition and maybe more similar to what Miller Hudson had just said, you know, we've withdrawn our opposition. We're certainly not enthusiastic about the proposal, but I think it light of some of the changes that were made in the Senate, like Kathy said, it is a

tough bill to swallow, we'll swallow it.

I do think that there are some concerns that I did want to highlight that we have. And I understand there's a reluctance to make changes to the bill. But I did think for the record it would be important to share those with you. And I think the most notable thing is and perhaps we came up with this idea sort of late in the process even at the 11th hour, maybe the 10th hour. But this idea of a progressive or a graduated COLA. And this is an idea that came to us from some of our analysts at our national who had talked about the idea that you could take a base component of a member's monthly annuity and that you could subject that to full CTI. And the rest of your annuity, say, the next $2,000 would be subjected to the two percent cap.

And I think the premise behind that was that we can protect low-income retirees. So the folks who need it most in the situation where you do have hyper inflation or double digit inflation, at the very least, you have a basic component of your COLA that's protected and that is, you know, going to be fully inflated. This is an idea that I think we had talked to PERA about. I think it's gonna take them some time to crunch those numbers. It would be our preference to

have the language in this bill. But I did want to sort of voice, you know, our concern around this issue and advocate that, you know, PERA in the future look at it and that the legislature maybe come back in the future and look at implementing a progressive or graduated COLA moving forward. So that was one thing I wanted to communicate.

I think the other thing and this hasn't been mentioned, but I would say for the record that we are a little concerned about some language that entered into the bill in the Senate through an amendment that refers to actuarial necessity. Nowhere in the state statute does that phrase appear. And I think from our concern, it's simply that once we start putting that language in state statute, future legislatures may come try to define, interpret that language. And, you know, to us, this is a legal concept that, you know, may or may not be tested in the future. But for us it becomes a slippery slope once these words enter the state's statute.

So I did want to register, you know, that concern as well. But on the whole, we've withdrawn our opposition. I'd be happy to take questions about our position.

MR. CHAIRMAN: Representative DelGrosso.

MR. DELGROSSO: Thank you, Mr. Chairman. What changed your mind as far as you were opposed to it, now, obviously, you're not saying you loved the bill, but what made you guys change?

MR. WASSERMAN: I want to talk about the sausage making process, but that's become cliche. So, I mean, what I would simply say is, I mean, I think our effort here has been trying to strike the best deal possible. I think we share the same view that doing nothing is not the solution. I think what we differed is how we get there. And I could give you a laundry list of differences we had over philosophy and what the right approach is. But at the end of the day, I think it would be irresponsible of us to sit here and actively oppose a solution that's moving forward.

Now what happens after this legislative session? What happens, you know, in the legal realm is unknown. But I think it would be irresponsible of us to not at a certain point withdraw our opposition and let some kind of feasible solution move forward.

MR. CHAIRMAN: Representative DelGrosso.

MR. DELGROSSO: Thank you, Mr. Chairman. So there wasn't just like one -- they made a tweak here and that made it more palatable?

MR. WASSERMAN: Mr. Chair, we'll I think as

was referred to by Mr. Daley, there were amendments that were brought in the Senate. I think we were opposed to the bill prior to those amendments. And I think specifically we knew and felt that we could do better on the COLA. So the idea that now retirees in that second year are going to get a two percent COLA, I think that's very important to us. And we're very concern about what's gonna happen to retirees once these changes take effect. So there were some tweaks that did get us over the finish line.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair and thank you both for your testimony. Mr. Wasserman, do you believe that this bill before us would be improved if we defined in this legislation what we mean by actuarial necessity?

MR. WASSERMAN: Mr. Chair. No. I would actually prefer that that term not be defined. I think that's part of my problem is once you put these words in statute and you have this amorphous phrase out there, there is a tendency to want to define it. I think this is something the courts need to define that we can only try to, you know, figure out. But that's where my hesitation comes from.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair, I appreciate that. But I may have misunderstood, but did you not mention that there was an amendment in the Senate that put this particular phrase into the bill?

MR. WASSERMAN: There was. I think it referred to PERA's obligation to provide notice to members about changes once actuarial necessity was approved and/or occurred. I don't have the language in front of me, I apologize.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Perhaps if you allow the sponsor to respond. I'm just curious if it's in the bill now and there's concern about that and we rather see the courts perhaps interrupt that phrase. I'm a little bit confused what is the best course of action here?

MR. CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and Representative Kefalas. In your reengrossed bill, section four which is on page ten and that amendment there, I did say in my opening statement that I thought and, again, asking forgiveness of the House here that I did think that the Senate did some good work over there. I didn't say I thought that everything they did was perfect. I'm not thrilled with that particular

part of this.

There's another piece which I don't think anyone really objects to starting on line 19 that PERA will provide written notice to DPS members and inactive members. The piece is actually notifying other than the actual cost of doing that sending out a mailing to 444,000 people is a large cost. But I don't think that that piece -- it was putting the words actuarial necessity in. However, knowing that that is in their esteemed wisdom, that's what the Senate decided would fix with this amendment.

Again, just going back as everyone up here has said, nobody loves every part of this bill. Everyone just likes some part of it. That's the part I'm willing to live with to keep the folks in the Senate who have voted on the bill this way happy, I'm willing to go with that.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair, and thank you, Representative Kerr. So I think what I'm getting from that in your response is that certainly with all due respect to the esteemed witness of the other chamber, there have been occasions when we have to fix things in our particular chamber. But I'm understanding from your response especially in light of disability pledge that we signed off on a couple of days ago in order to do Kumbaya, we don't necessarily want to take those two words out of the bill. Is that fair?

MR. CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and Representative Kefalas. I would remind you that the amendment that actually put Kumbaya into the disability pledge was withdrawn and/or defeated. So we don't actually have to do the Kumbaya. But what you're getting at, yes.

MR. CHAIRMAN: Thank you for now, Representative Kerr. Thank you. Representative Kagan.

MR. KAGAN: Thank you, Mr. Chairman. You mentioned it was a cliche to talk about the sausage making process. And I must take exception to another point you made. You said this would be going down a slippery slope. I think it will be more like leaving the camel's nose under the tent. I just want that to be on the record.

MR. CHAIRMAN: Thank you very much both of you. Lonnie Lustfall.

MR. LUSTFALL: Good afternoon, Mr. Chairman, Members of the Committee. My name is Lonnie Lustfall. I am a PERA retiree. I retired -- spent my entire

career in the Colorado State Patrol. I retired as a chief of the state patrol in 2003. I am now the executive director of the Association of Colorado State Patrol Professionals and the Colorado State Patrol Family Foundation. And as Dan Dailey mentioned, we are a member of the coalition. Like everybody else, our members either this is a tough bill to swallow, they have to pay more, stay longer, get less. The retirees, it's very difficult for them.

I personally am a retiree so I will get a zero COLA. My wife is a retiree from Douglas County Schools, so we get a double whammy. But it's very strongly believed within our association that we need to do this bill, so that there will be PERA in the future for the people we are hiring today. We could be selfish and say we want to keep our money. I want mine, forget everybody else. It's the wrong thing to do.

So I along with everybody in our association, all the members of the Colorado State Patrol, we strongly support Senate Bill 001. I think it's the right thing to do to make sure PERA is there for our future employees. And I'd be glad to answer any questions.

MR. CHAIRMAN: Mr. Lustfall, thank you very

much. West Cormey. Gary Justice.

MR. JUSTICE: Good afternoon or evening. I didn't realize there was just a long sausage that we had to make.

MR. CHAIRMAN: Mr. Justice, would you introduce yourself please.

MR. JUSTICE: I'm trying. I've got some stuff here. I'm Gary R. Justice of Evergreen, Colorado. And I'm a Denver Public Schools 2003 retiree, now a member of PERA.

By way of background, I've served on the Denver Classroom Teachers Association Negotiations Team for 22 years. That is a voluntary position by the way. And I was co-chair of the designed task force of the Professional Compensation System for Teachers in DPS know known as (indiscernible). And though I am a member of CEA retired, I can assure you that there is not a monolist of opinion on Senate Bill 001 within the membership of CEA, especially the retirees.

I represent a newly formed organization called SAVE PERA COLA. We hope you've heard of us. We're a fast growing group of PERA retirees and active employees who are adamantly opposed to proposed cuts in the annual benefit increases which is set by law in 2000 at 3.5 percent. All of us across the state and

even the nation communicate actively by e-mail. We research the facts and we share them.

Each of us speaks as an individual who voices his or her own thoughts and you will hear from several today. You have received many letters from us to inform you on our issue and we appreciate your replies. Most notably of those, the February 4th e-mail that each of you received from Vince Princhard (ph) that precisely lays out the legal arguments against Senate Bill 001 that you cannot afford to ignore. I urge you to study it.

And to clear up the numbers question before I proceed, over the next 30 years, the average PERA benefit retiree based on the 2008 benefit of 2772 per month will forgo an increase in inflation adjustment of about $400,000. So when I heard the gentleman talk about a 1,000 a year and then a 1,000 next year, it's commutative and it's compounded. And we have a spreadsheet that we can show you about that. And I can e-mail that to you.

I want you to be aware of a huge magnitude. When you multiply it by the 88,000 retirees, you're talking a whole lot of money approaching $40 billion over the next 30 years. So don't think this is small decision. It's a huge decision.

When I address the Senate Finance Committee, I challenge the senators to ask PERA and Senator Shaffer and Senator Penry how they could use actuarial necessity as a rationale for making these contractual benefit cuts. Attorney General Ken Salazar has already reached a formal opinion. I'm sure you're aware of it, 04-4 in 2000 where that it clearly excludes any cuts to retirees' benefits.

Salazar wrote, "Some vested pension rights cannot be eliminated. When a PERA member retires from active service and begins receiving a pension, the members' pension becomes a vested contractual obligation of the pension program. It is not subject to unilateral change of any type by the General Assembly."

He also cites our constitution is the basis for this statement. Right (indiscernible) under a pension plan can be contractual obligation protected under Colorado constitution Article 2, number 11, and the US Constitution Article 1 and number 10. Salazar's opinion was based on case law decided by the Colorado Supreme Court.

But let's not just take his opinion on it. Here's another in concern with Salazar. This person said that the attorney general's opinion states that

when a PERA member retires and begins receiving pension benefits, such members' pension rights have fully invested in such pension benefits may not be reduced. That was executive director Meredith Wilson who agreed in 2005, but that was an informal opinion. Here she has another.

In any event, members and retirees with fully vested rights and entitlements divided by the PERA statute will not suffer any impairment of those rights. And the Board of Trustees will continue to fight to protect the PERA membership. That's from a PERA Board of Trustees' report, October 23, '03 on legislative actions being planned to ensure funding status.

Now, PERA has publicly claimed that they have a legal opinion that says the general senate can change vested benefits due to actuarial necessity. Well, which is it? What they said then or what they say now?

There is a remarkably quick evolution of legal opinions going on right now. The new information today that was not expressed to the Senate Finance Committee by Mr. Smith is that since Senate Bill 001 would not reduce the retiree's monthly benefit, it's legal. Of course it ignores that it was placed into the state law in 2000 and PERA termed it then as an "automatic 3.5 percent increase." That makes it part

of the contracted benefits.

So now the question has become apparently is the annual 3.5 percent a contracted obligation? And if so, is actuarial necessity does it apply here? Case law cited by Attorney General Salazar seems quite sufficient to me and apparently to him to answer those questions, no. But let's defer to an expert.

In November, 2008, Mr. Smith was reported by the Denver Post that the attorney general's opinion seems clear to fully vested employees, those retired with enough years of service to retire cannot see any benefits reduced including cost of living adjustments.

Nonetheless, you are the body ultimately responsible for making this momentous decision. So you have a right to demand that they produce that legal opinion. You equally have a responsibility to verify it with the Colorado Supreme Court to an interrogatory after second reading. It is not acceptable to take the attitude that we'll let the Court defy the issue after it's passage and some in the Senate have suggested.

We can't afford to waste two or more years in litigation to learn that the PERA funding problem remains unsolved. So what is the alternative? I'm sure I'm gonna get that question, so let me start with that. Ronald Snell of the National Conference of State

Legislature addressed the Joint Finance Committee in late January about the many pension reform legislative actions across the nation. He noted that Colorado was the only state attempting to cut retirees contractual benefits.

In his August, 2009 report titled State Pensions and Retirement Legislation 2009, he summarizes a plethora of ways that states are achieving meaningful reforms that are legal. Each of you has a copy of that report from me in your e-mail this morning.

PERA has produced an actuarial summary report that said just one way to improve the trust funds' funding level, but not the only way. Even though it's called the 2-2-2 Plus Plan, it was hardly balanced equally among the stake holders. There are many other ways to hit a home run in this game, so please, don't swing at that first pitch. Go Rockies. Thanks for your time and consideration.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chairman and thank you, Mr. Justice for your testimony. I certainly appreciate your comments. I think if you'd been following the legislature this session, we've been faced with a variety of not very good choices on a variety of issues. And I hope you can appreciate that.

My question to you, sir, is given the concerns about, you know, former attorney general's Salazar's legal deliberations on this matter in terms about breach of contract, I understand all that. And I'm not sure where that's gonna take us. But in terms of the actuarial projections that have been put out by PERA that show the funds could be insolvent by 2033 or whatever the date is, is that not a concern to you, sir? And if ultimately we can't pay any benefits out to folks, would that not be a breach of contract?

MR. CHAIRMAN: Mr. Justice.

MR. JUSTICE: Thank you, Mr. Chairman. Of course it's a concern. The question is the measure or the degree of that concern. And we have serious questions in a number of areas. And my compatriot, Rich Allen, who's our finance man on that and is scheduled to speak later has some very good answers. I would remind you that we heard earlier today that the stock market drop was responsible for only about $7 billion of the problem. So then we think, well, where else did it come from. And you've heard reference to that sale of service credits, state employees early retirement incentives and several other things.

So what we're being asked to do is balance all of that problem including an underfunding by the

state of a state division liabilities upon the backs, according to Senator Penry, 90 percent on the backs of retirees. That's not two plus two plus two. I was a math teacher. That's 90/10. And I'll defer later on to Rich either now or later.

MR. CHAIRMAN: Thank you, sir. Mr. Justice, to the point you just gave us about how the burden is distributed. Most of the folks that are currently working employees are going to end up retiring. And they're gonna have the same challenge that you just referred to in terms of a COLA. They're gonna have their first year retirement. They're not gonna have any COLA. And then after that, it's gonna be the new version. So when you talk about how the burden is distributed, now there's a lot that's going on retirees that, in essence, we're all gonna be retirees. So it's a little broader, I think than you may have indicated. I don't know if you have a response to that. You're welcome to respond if you want to.

MR. JUSTICE: I would like to. I want to remind you that the source document for everything that you're voting on here today has not been released publically to you or anyone outside of PERA. And that's the actual actuarial study. We've gotten a summary. We're all going on trust here and operating in

an informational vacuum. My proposal is simple. We need to kick this down a road a year and do as Representative Rowe suggested, give due diligence through a year's study as much as we've done with Pinnacle. It's too early to make a decision of a magnitude of over $50 billion dollars over the next 30 years. And if we don't perform that, yeah, we'll be in court. Yeah, we think we have a pretty good chance of winning. And, ultimately, you will have helped provide a bigger problem for the state then exists today. It's not a threat, it's just the realty of what's going to be going on here.

MR. CHAIRMAN: Mr. Justice, thank you very much. Before I go to the next witness committee, there's somebody here that apparently was not able to appear today that ask that we distribute the testimony that he would have given. Maybe you received by e-mail, but I will hand this out by a fellow named Glenn Shift. Richard Blank.

MR. BLANK: Thank you all for inviting me. My name is Richard Blank and I'm an emeritus professor of the philosophy and ethics at the University of Northern Colorado. I'm also presently a part-time consultant in medical ethics to health care institutions in Northern Colorado.

I and Dr. Myron Hughlin (ph) who is here today, who is an emeritus professor in accounting at CSU, would like to submit a proposal to you for your consideration. The proposal does not argue against the two percent COLA because we believe that we are -- I am a retiree and he is -- we have a moral obligation to make sacrifices too with the liability of PERA. Nor are we arguing that the retirees are being treated unfairly relative to those others in PERA who are not retired.

We would like you, however, that the consequence of the 2 percent COLA -- I want to say there's an unethical consequence in some who are retired. The elimination of the three and a half percent COLA obviously requires a hit be taken by all retirees. The problem is that hit is going to be felt more acutely and those retirees whose benefits are lowest. That creates an inequitable distribution of burdens. That inequity is unjust and we believe wrong for that reason.

Our proposal simply offers a remedy to deal with that inequity and the remedy has, in fact, initiated by someone who preceded me, mainly that the two percent be distributed in a progressive fashion. And my role here is just to provide sort of an ethical justification for that proposal. Professor Hughlin, being an accountant, is much more equipped to more fully explain the details of that. And, Mr. Chairman, I would urge you if you don't mind to call upon him following me so he could do that.

MR. CHAIRMAN: Dr. Blank, before you go I'm gonna pose a question to you. There are people that are receiving a relatively large amount from PERA, and there's some that are receiving a relatively small amount. And you've expressed your concern for those that are receiving a relatively small amount. Amongst those receiving the smaller amounts, some of them are low income, that is living off of that very small pension from PERA and that's it, that's all they've got.

For some of them, they've had other careers and the few years they spent working for the State of Colorado represents a relatively small part of their (indiscernible) I think.

MR. BLANK: Well, and by the way, the issue that you're bringing to our attention is not only relevant, it applies to faculty and higher education who many years ago given the option of staying in PERA are going to TIAA-CREF. And so they are in that position when they retire, they will get a small PERA

benefit and an additional benefit, yes. So should you go with the progressive distribution of the two percent, those kinds of factors and considerations have to be built in otherwise you wind up, I mean, it's counterproductive the whole spirit of what we're recommending here. So your point is well taken, sir.

MR. CHAIRMAN: Thank you very much, sir. Mr. Hughlin.

MR. HILL: Thank you, Mr. Chairman. I'm Myron Hughlin, emeritus professor out of CSU's business school and a PERA retiree. First I'd like to say I appreciate your patience in sitting through these hearings. I hope your seat cushions up there are a lot softer than the ones out behind me.

This bill that's come over to the House here is a vast improvement, I think, over what was originally introduced into the Senate. The only part of it that I have a hesitation to say we're for is the two percent cap on COLA as it impacts the lower retiree benefits. According to the Senate bill sponsors, approximately 90 percent of the fix for getting PERA back on its feet comes only -- financially will come through the burden born by retirees, both current retirees and future retirees with this 2 percent cap. And as was testified earlier, this transfers the risk

of inflation onto these retirees.

To put the inflation figures into perspective, over the last 83 years, the average inflation rate has been 3.1 percent. The highest inflation in any one year was 18 percent. From a period of 1969 through 1991 there was cumulatively over 90 percent inflation. Had this two percent cap been in place during that period, it would have reduced the purchasing power of the PERA pensions by 64 percent. That's huge.

Many economists, most economists expect inflation to rise substantially above two percent. I don't think it will ever hit the 90 percent figures again in that period. A retiree only will be heavily impacted and those on the lower end of drawing smaller PERA pensions, you're gonna be severely impacted. We believe it's possible to craft the bill. It's not as burdensome especially to those that received the lowest level of benefits.

We suggest a four tiered progressive plan with progressive COLA caps. Under the plan as we envisioned it, each PERA's retiree's pension would be divided essentially in the four levels or potentially four levels or brackets. Benefits that fall into the lowest bracket would be index for inflation without any

cap. And though benefit is received by a person in excess of that basic tier or bracket would get an average inflation cap of 3.1 percent.

If the benefit was more generous than that or higher levels would have a progressively lower cap, maybe two percent, maybe one percent on the top level, something like that. This is plan. It's not a specific proposal. But it would protect those who are most vulnerable financially.

How do you pay for something like this? Well, it's not all that hard I don't think. And, again, conjectural with that actuarial figures to back it up, I don't know. Senate Bill 001 places overly constricted parameters on the actuarial model that's used to valuate financial viability. By adopting more reasonable parameters, a sizable amount of money would be freed up, but could be used to construct a plan that's far less punitive to retirees. For example, extend the amortization period from 30 to 40 years. Thirty years is the goal industrial standard, no question. But it's a standard, you don't have to hit it. So this agreement on adoption and the Gasby (ph) Board on the adoption of 30 years with the time.

Colorado moved from 40 years down to 30 years in the moderately recent past. Go back to a 40 year funding (indiscernible) on this. It doesn't hurt anything. The only place it's really important is if Colorado were to borrow large sums of money to finance it's program. And that's not the case in this state.

Another example, keep the return investment assumption at eight and a half or maybe eight and a quarter percent. Tweak that a little bit. For the last 25 years, PERA's average returns have been over nine percent and that includes the downturn of 2008. This year, it's reported that PERA's investment return is something on the order of 18 percent. And going from eight and a half to eight and a quarter or even eight percent return on investment assumption doesn't seem outlandish. It seems possible.

Another couple of ways to pay for something like this gets fairly technical. I'll try to explain it briefly. Two indexes to measure inflation. The one that's being used is the so-called CPIW or the wage inflation index. It reflects wage inflation and deflation. The other index is the CPIU, consumer price index or urban purchasers. It's a price index.

In general, except in times of recession, CPIU is lower and doesn't increase as fast as the CPIW. Currently we're in a recession. CPIW is negative at this point and we'll resolve in the COLA holiday. By

adopting the CPIU and replacing it in a couple of years, you protect retirees' purchasing power, but you also don't inflate the COLA quite as fast under the scenario. It's something you ought to look at.

To summarize, it would be fairly easy to construct the plan that makes PERA solvent, but doesn't require the really heavy risk assumption by retirees, risk of inflation and those sacrifices that Senate Bill 001 requires you have a year's window to really study this and come up with a particular plan, a concrete plan. And we urge you to do that. It was hard to decide whether to check off the box that said we support or we are against this plan. Most features, though, we support it, we support it heartily. Everybody's got to bear some of the burden on this thing. But there are some tweaks that you can do to make it a lot less onerous. And we would urge you to follow that path. That's all that I have to say. I'll take questions if you have them.

MR. CHAIRMAN: Thank you very much. Craig Hilton.

MR. HILTON: My name is Craig Hilton and I am a PERA retiree. And I am representing myself and I loosely with the SAVE PERA COLA. And I'd like to talk today a little bit about why just in the beginning and

this isn't part of my written testimony that I actually put together, but I was thinking about this on my way over here today. I remember in 2005 when PERA had its issues with the money it was spending on employees, itself, the cars. I don't know if many of you remember all of that. The Rocky Mountain News did a series of that exploiting that until the state auditor stepped in and stopped a lot of the spending that was going unnecessarily. And that's I think part of the reason why PERA retirees don't trust some of the members from PERA.

One of the quotes from Mr. Williams during that time period was "The data has been sensationalized." Well, I'm wondering if it hasn't been sensationalized now. So I'm just setting the stage here.

The other thing is before the bill came out and it was amended in the Senate, there was the 2-11 which was I think tied to the CPIW. And I'm not sure if it is anymore because I just read something that it may not be. But if it is still the hike to the CPIW, the congressional research arm of Congress has said that there won't be a social security raise for them in 2011 at this point. That's what they're projecting right now. So if this bill is still tied, in 2011 to

the CPIW, PERA members' retirees will not get a raise in that year. So it's kind of confusing and I'm not sure myself at this point.

That means that PERA retirees, if they aren't getting a raise in 2010 and 2011 will go a little over 1200 days without any raise to their benefit which would mean that they would really start falling behind in a lot of their health care costs. Personally, my healthcare costs are gonna go up at least $100 a month plus this year because of the fact that I'm going to actually going on Medicare. So it's like, okay, you're at that age where you're gonna be able to join it, but it's gonna cost more money. And I'm not the only one in that position.

Now, I'd like to get to my actual written testimony. And I approach this a little bit differently than a lot of the people that are suggesting the law because you're gonna get a lot of that today, I'm sure, still. And I appreciate the opportunity to speak to the committee today. And also want to acknowledge a lot of the retirees who could not make it down here who are listening on the Internet audio stream that is being produced this year which is really nice for a lot of people that can't get around this bill. And I know several of them that really were appreciative that they could have that opportunity to hear what's going within an issue that really concerns them.

My first one is the moral question. Should a state legislative body intentionally vote in favor of a bill that would result in driving segments of our elderly population of PERA retirees into poverty. Knowing that the state has a contractual agreement and obligation to these retirees. According to PERA's Web site as of 208, the average age of a current retiree is 69 years old. And a monthly benefit is $2,700. And there's just over 81,000 recipients. That means that 40,000 of those recipients are 69 years of age or older which really puts some of those people at risk.

The bill is putting, I think a lot of the percentage of those people at risk because of their health risk, due to their lack of funds for medication, food, heat, and shelter and etcetera. Colorado is the only state that is trying to legally seize an annual benefit increase from the elderly citizens who belong to the PERA system. And this 3.5 percent increase is a contractual benefit for all vested retirees.

Mr. Ronald Smell (ph), one of the most prominent experts in the nation on state defined benefit pension systems testified before a house and

senate finance committee of the legislature recently. He told them that Colorado was the only state in the nation attempting to break pension contracts by altering benefits retroactively.

MR. CHAIRMAN: Mr. Hilton, I was here when he gave that testimony and didn't say anything about breaking pension contracts, so I don't think that's an accurate summary.

MR. HILTON: I'm taking it from the newspaper.

MR. CHAIRMAN: Well, why don't you tell us what you had to tell us rather than trying to read from a newspaper.

MR. HILTON: Well, this is personal. They give you personal examples of the problems that you create for all the problems in our state. My mother is 86 years old. She's receiving approximately $1,800 a month from PERA under survivor benefits. She can hardly keep up with her expenses now. Yet, if this bill is passed as it's currently written, my family is going to have to help her financially if she'll let us.

I hope as you know -- now, I'm trying to get my thoughts here. I hope as today you may vote as people and not legislators on some level because I think that this annual benefit and I really appreciate

the last testimony on people who are going to be impacted much more severely with this than others.

In conclusion, I think that I would like to know why the PERA Board, Mr. Smith, Mr. Williams are trying to actually limit these benefits if they know are probably going to go to court eventually. And then we'll be in big trouble down the line if the court rules in the retirees' favor, then the PERA system will be even in more trouble. And you'll have to end up paying those benefits that weren't paid plus interest to all the retirees and their estates. And I just think it's a folly in a way that we're not really taking more time to actually examine this from all the different view points.

Some of the people are with me today are not represent by lobby organizations, they come up here and talked. We are individuals, loosely knit group of retirees that have a lot of concern about this. And we wish that at least the COLA portion of the bill would be relooked at by this committee. We are experts in everything, but we know that there are experts out there that could look at it besides PERA that could give us some ideas. There were 12 states in the country that recently convened commissions and I know we've had one before in this state. But I think if

it's a non-political commission, I would be very happy if somebody were to suggest that. I think that would be a really good way of looking at all the issues and all the different directions we could take. Thank you.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair, and thank you, Mr. Hilton for your testimony. Sir, respectfully, would you please explain what you mean by the statement that you hope we will vote on this as people and not as legislators?

MR. HILTON: I'm looking at it from a moral standpoint on the people that you will probably drive into the poverty level in just a few years. And I would like you to understand that I'm talking from a personal level from another actually that I know that she is struggling now with her medicines and shelters. And that's where I'm trying to get to.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair. And I certainly appreciate that. And I am grateful that you're able to support your mother and so forth. I hope you understand that nobody up here intentionally wants to drive people into poverty. And I can't speak for the others, but I think I can -- I have some sense that we do this as people. We can't separate being a legislator and being a person. And that's why a lot of times these decisions are very difficult. So I just want you to keep that in mind.

And, quite frankly, you know, when we talk about -- some of us, this is our income, and I don't know if you know, but our income stays the same no matter how long we're in this job. And we've noticed prices going up as well, but we have to deal with that as best as we can because we made the choice to serve the people this way. Please understand that we're not some kind of high pollutant body here that doesn't connect with real people on the ground. I think we all do. We're business people. We're all walks of life, but we are fundamentally people. We are not some kind of alien legislator or politician. So I just want to put that out there.

MR. CHAIRMAN: Mr. Hilton.

MR. HILTON: Sir, I'm not saying that you guys are (indiscernible) anything, but I'm just wanting you to actually take the more human side of this issue too. And that's where I'm going with this. Thank you.

MR. CHAIRMAN: Thank you very much. Barry Paulson, why don't you come on back.

MR. PAULSON: Thank you, Mr. Chairman, for inviting me to speak here today. I'm a fellow aliens

on this committee. I appreciate the opportunity. I'm Barry Paulson. I am senior fellow of the Independent's Institute. I should point out I'm the first person to testify today who is not representing a PERA beneficiary.

I gave you a study that we just completed looking at what's happening to pension funds across the country including PERA. And the title is very appropriate. "These Pension Funds have Fallen Off of a Cliff." I know you've heard lots of horror stories and how bad this pension system is. Let me tell you that it's much worse than you have been led to believe.

And we compared PERA with a number of other state pension plans where we had recent data, 2008 data, which, by the way, is not a large sample. And PERA is the worst. PERA has more unfunded liabilities per capita than any other state pension fund in this country. Thirty-six hundred dollars per person in Colorado is what we owe in unfunded liabilities to PERA. That's almost nine percent of our personal income. There's no other state in this country that comes even close in terms of the magnitude of unfunded liabilities that this pension fund has accumulated.

Every measure that we come up with shows that this PERA has underperformed compared to every other

pension fund that we looked at, whether you're looking at the funded ratio of 51 percent amortization periods that are infinite in time, every measure that we have indicates that this is a failed system.

There are many factors that are contributed to this failure from PERA. But there is one that has not been discussed at all. And this is the fatal flaw that I see in PERA's defined-benefit system. And that is to assume an eight and a half percent rate of return on their assets. I defy you to find actuaries today in this economy who will defend an eight and a half percent return on any pension fund. If you look at the guidelines and recommended assumptions for rates of return on private pension funds, they're well below this, four, five, six percent. And many economists would argue that you should be looking at returns closer to the bond rates of four percent, five percent.

Let me tell you that if you use realistic returns to estimate to project the future of returns to this defined benefit plan and if you use a lower discount rate to calculate the present value of those liabilities, this pension fund is in much worse problems than you've been led to believe.

Now, the problem with this fatal flaw is that in order to generate a eight and a half percent return,

you have to engage in risky investments. And believe me, PERA is one of the riskiest. More than 75 percent of assets invested in securities rather than fixed assets. I defy you to find any actuary today who will defend an investment portfolio that risky for a pension fund. Economists now, they're really good rigorous analysis showing that if you have a defined benefit plan that makes this kind of risky investment assuming a eight and a half percent return, there is a very, very high probability. And what you're gonna see in future years is continued volatility, continued crisis and, indeed, a deterioration in the funding status.

So what's the result? Well, the problem is there's nothing in the Senate Bill 001 to address this. There is nothing in the Senate Bill that will change the way in which PERA operates, the way in which it invests, the kind of portfolio that it invests in. It's unrealistic assumptions about rates of return, unrealistic rates in which they discount the liability.

Until you address that problem, you will not solve this funding crisis. Well, I think that the crunch is going to come as we go forward. The best projections are that what you're going to see is that state and local governments will have to start allocating 20 percent, 30 percent of salary base to begin paying off this unfunded liability. And that's where you're going to find the push back.

Citizens, municipal governments, school boards are not going to be willing to put more and more tax dollars into a failed pension system. Citizens in this state are asking the obvious question. Why should more of my tax dollars be used to bail out a failed pension system? We simply are unwilling to do any more of that.

Now, the people who testified so far have basically given you two choices. They say we can either do nothing or we can enact this Senate Bill 001. Those are the only choices. That's nonsense. What you need to consider is a very fundamental reform of the PERA system that would, in fact, address the problem and, in fact, solve the funding crisis in this pension plan.

This is a reform that has been enacted by now a half a dozen states including Alaska, Michigan, Oregon, Indiana, hundreds of local jurisdictions across this country of an act of this reform and virtually every private employer has enacted this reform. And this is the replacement of a defined-benefit plan with a defined-contribution plan.

Now what PERA has told you is that if you do

this, the funding crisis in PERA will deteriorate. The problem will be exaggerated. That is nonsense. I've actually looked at the funding ratios and the half dozen states that have enacted this reform. In every single case, they have made progress in reducing unfunded liabilities. At the same time that PERA's funding ratio is falling to 51 percent. Let me use Alaska for example. In Alaska which, by the way, has enacted the most replacement with defined contributions, the funding ratio in Alaska has gone in their defined-contribution plan went from 75.2 percent in 2002 to 78.8 percent in 2008. Over that same period of time, the funding ratio in PERA fell to 51 percent.

So how did they do this? What did these states do that enable them to improve their funding ration with a defined contribution plan? Basically, what each state has done is to require that employees, employers matching contributions contribute to a fine contribution plan, a 401K type plan. For example, eight percent by the employee, eight percent by the employer. That frees up a substantial amount of funding that can actually be used to solve the funding crisis. Set aside to repay unfunded liabilities in a separate trust fund. That's exactly what these states have done in every single case.

Most importantly, they have not continued to muddle along with a failed define benefit plan that involves making risky investments based on unrealistic assumption. In every single case what these states have done in their defined contribution plans, you will find that they will not investment in risky asset. In fact, the share of their portfolio in stocks in every single case is 50 percent or less. That's what should happen in a pension plan.

If you pass this Senate Bill 001, you will see PERA continue to make these risky investments. I have served on a commission to write a reform PERA back in 2005. They came up with a band aid similar to Senate Bill 001. PERA said at that time we've learned our lesson. We know that we had too high a share of our portfolio in securities. And when the stock market hit in 2001, we took a bath. We know that's a mistake and we know that we need to put more money into fixed assets. And we promise you that we will reform. That has not happened. Their ratio is more than 75 percent is their target ratio for securities. They continue to make the same mistakes that they have for decades. That will not be solved by Senate Bill 001.

So what would happen? Well, what did Alaska do? They basically replaced their pension board with a

new board which actually was composed of people with some financial expertise. They brought their pension system as a defined contribution plan into the executive branch, onto the oversight of the executive branch of government and they actually enacted significant reforms and very successfully. Well, this is what we're proposing and, in fact, has been incorporated in House Bill 1207 sponsored by Senator King and Representative Lambert. The House will be hearing this bill on the 23rd. I urge you to defer decision until you've had a chance to actually explore a third alternative, not doing nothing, not accepting this package that's been sold to you by PERA, but actually looking at an alternative, a defined contribution plan that will actually solve the funding crisis in PERA. Thank you.

CHAIRPERSON: Do we have any questions? Representative Swalm.

MR. SWALM: Thank you, Madam Chair. Dr. Paulson, your testimony kind of reminds me I think of something that President Truman said one time. He said he wished he could get a good one handed economist. What you've done is I think so far we've pretty much had one-handed economist. Now, I think we're at least getting the other hand a little bit. So

I appreciate the thought because, frankly, up to now, this has been sort of a one-sided discussion. And we did have the presentation from a presentation from a gentleman at the NCSL recently at a joint hearing on this bill. And the subject of Alaska came up. And I asked him and he was a pension guy. I don't remember his name, but I asked him what happened in Alaska when they closed -- I think they closed the DD point in the entrance and then directed all new entrance into the defined contribution plan? And he said, "Well, it created liabilities. It was problem." So discuss that a little bit more what happened.

MR. PAULSON: Well, I have looked at the data. Their funding ratio improved from 75 percent to 78 percent in their defined contribution plan. I don't know what data he's referring to. And I also looked at how Alaska has changed. As I say, they replaced the whole administrator structure of their pension plan. And to be honest, the background of this is their pension people, their old defined-benefit people would not work with the Senate to reform the plan, so basically what the Alaska Senate did was to enact a legislation to replace that whole pension plan with a defined contribution plan, with a new board, and bring it within the framework, within the supervision and

oversight of the governor's office. And then the proceeded to, in fact, change the whole plan and to require that new employees contribute a matching fund to a 401(k) type plan.

They changed many of the benefits involved in the defined benefit plan, those who were still vested. They put everything on the table. And I think that's what you need to do. I think you need to go back and put everything on the table and consider a much more fundamental reform than the band-aid that you've been given.

MR. CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. You know, as I heard the discussion about that, I said, well, to myself, well maybe Alaska was able to solve this problem because they're swimming in oil money and had enough money to pull this off. But we've got an incorrect assumption. That's really not why they were able to do this?

MR. PAULSON: No. I don't think so because I think I've looked at the half dozen states. We have an activist reform. Michigan under Governor Engler enacted this more than a decade ago. And, basically, what Michigan has done in the same thing that Alaska did, new employees go into the defined contribution

plan, they make a matching contribution. Employees, employers put the same amount into the 401K type plan. What Michigan was able to do is to lock in a substantial amount of the funds that would have gone to the old defined benefit plan if those same employees were in a defined benefit plan, they earmark that to pay off unfunded liabilities and they have made significant progress.

CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair and thank you, Dr. Paulson. I'm wondering in those states that went to defined contribution plans. I mean, I'll admit, I don't understand this I'm sure as fully as you do. But can you speak to what happened to the value of those retirement plans because I know that I have this little baby 401(k). You know, that was from when I worked for the county years ago. And it took a big hit. And so I'm curious what happened to the value of these individual retirement plans when we know that the stock market, you know, declined so traumatically in 2008 which is a contributing factor to why we're here this evening. Could you comment, sir?

CHAIRMAN: Dr. Paulson.

MR. PAULSON: Thank you, Chair. Let me speak personally because I've been a member of a defined-

contribution plan, TIAA-CREF Kraft for 45 years. And there was one time when professors were able to chose between PARAGRAPH and a defined contribution plan. And I've compared the two and I can tell you that the defined contribution plan has worked out much better than a PERA type pension plan for university professors. And that's why I think university professors across the county are members of a defined contribution plan.

In my case, when I was younger, I allocated a very high percentage, more than 75 percent of my portfolio into equities and a small percent into annuities and to fixed assets. As I approached retirement, I shifted that. I changed that ratio. So now, my equities are about a third and annuities and fixed assets are two-thirds. Now, that's much easier to do then when I made these decisions because now you find that the defining contribution plans offer employees target funds where this is not automatically. In fact, that's often the fail-safe fund if you'd like. If employees don't chose the amount they put in a target rate in a defined contribution plan, that over their lifetime shifts more assets from equities into fixed assets.

So it accomplishes the same thing in a much easier way. So, essentially, you would never -- I don't know anybody approaching retirement who should be investing more than 75 percent of their portfolio in equities. That's a risky investment that should not be made by anybody, certainly not in a pension fund.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair and thank you, Dr. Paulson. Do you have any data that can speak to what happened to the value of some of these retirement plans in the past, in 2008 in particular?

MR. PAULSON: Well, I can tell you my defined contribution plan it's taken me 45 years to accumulate $1.5 million. And I ask you to -- and I'm an underpaid college professor. So over these years I have not earned a huge salary. That is, I think, a result of a defined-contribution plan with dollar cost averaging. And I thank my stars that I had an option for defined-contribution plan. I wish that all state employees had had that option over these many years where PERA has basically bankrupted their pension.

MR. KEFALAS: Thank you, sir.

MR. CHAIRMAN: Mr. Paulson, thank you very much. Thomas Telomier? Mr. Telomier, start by introducing yourself, please.

MR. TELOMIER: My name is Tom Telomier. I'm

a PERA retiree. I do have a few comments to make, and then, I want to make a few observations on a report that I put together. This is basically the research that we could get together. I want you to know I feel like I represent a majority of the 82,000 retirees. I talked to a lot. I started a group in Pueblo not too long ago, and this thing is snowballing. So you're hearing from a group of organizations that you could feel very comfortable in recognizing that they're talking for everyone. And obviously, this is not the case.

I'd like to start by stating that it is the retiree's opinion that PERA is in peril because of General Assembly actions, not actuarial necessities. And these actions were initiated by CEA, CASE, WINS, ASME, and others in the alphabet soup over the years. And then, a stamp of approval by the General Assembly. Now, I'm going back to 2000, and this is very important. PERA's public presentations in 2009 focused on its forecast of insolvency, hence actuarial necessity. This, in turn, caused PERA to seek legislation to stop the estimated $80 million in annual benefit increases. And that's a very important clause -- annual benefit increases. That was granted to PERA retirees by the General Assembly in 2000. And this is

the year that COLA was struck in the Colorado revised statutes, and it was eliminated by the General Assembly.

And basically, you've been led to believe that we're talking about COLA. We are not talking about COLA. We're talking about a benefit that was given to us by PERA and stamp of approval by the General Assembly by 2000. Now, that did change recently. I recognize they came back to COLA. But then, the issue comes back to, once granted, can you take it back? And I'm of the opinion that you can't.

However, based on the title of Senate Bill 10-001, which is eliminate PERA unfunded liability, PERA is trying to achieve fully-funded status within 30 years. These two situations are mutually exclusive because PERA has been fully funded only two years since its founding. Now, retirees and the public are told that for the past 75 years, PERA has been insolvent. Where is the logic?

Perhaps, more importantly than funding status, Senate Bill 09282, enacted in May of 2009, required the takeover of the Denver Public School Retirement System on January 1 of 2010. Because of a merger provision in this legislation, at least 474 million dollars will not be paid by DPS to PERA for

years to come. We'll go into that in a little more detail shortly.

With the exception of a few well-connected individuals, Pueblo's retirees did not learn of PERA's claim of actuarial necessity until October of 2009. And I believe that explains why you haven't quite heard from the retirees yet. This has been closely-held until the meeting started. And our happened in occurred in Pueblo.

When we were told that we would be expected to give up $80 million in annual benefit increases -- again, it was referred to as COLA. But the actual term -- and it needs to be emphasized again -- is annual benefit increases to keep the pension fund at a stable level. More importantly, retirees were told that they had money that PERA needed today. And we do. We have the money.

Since PERA has been adamant about saving $80 million at the expense of its retirees, it is reasonable that everyone should to know why Denver Public Schools is granted approximately $74 million in annual offsets of its pension liability to pay off $775 million in pension certificates of participation called Peacock, so I'll refer to that shortly.

These millions of dollars were borrowed by

DPS to bring its unfunded pension liability up to a necessary level in order to join PERA. However, this leaves PERA with an annual $74 million cash flow shortage. So today, it appears that you, our legislators, will make a decision between the retirement income of 82,000 PERA retirees or helping the Denver Public Schools pay off its previously unfunded pension liability. An interesting choice you have.

If the General Assembly should pass Senate Bill 10-001, retirees and every community in Colorado, except those represented by DPS, loses. This is because PERA retirees live in all communities statewide. Consequently, if the annual benefit increase is eliminated for retirees, these dollars will stop flowing into our communities, but instead will be used to allowed DPS to meet its pension debt obligation. A simple solution to stop the elimination of the annual benefit increase is to revise the merger language found in the 2009 Senate bill by requiring DPS to fund PERA each year for its ongoing pension liabilities, or perhaps, reverse the entire merger.

Other simple solutions are needed to solve PERA's future liabilities. But upon retirement, PERA retiree benefits are firmly set, and as stated in a

2004 formal opinion by the attorney general, these benefits cannot be reduced by the General Assembly.

Regarding a progressive COLA that came up in a statement, I do want to make a note that it is my firm opinion that PERA is not a welfare system. These benefits were earned. And the benefits that were allowed at that time should be paid. If you want to change it for future and you can get your future people involved, that's just fine. But this is not a welfare system.

I would ask that you would turn to page one in my presentation. And I have to apologize. I don't recognize a lot of you. But if you could, for my benefit, on page two and three, this is the latest PERA report I pulled off the computer yesterday. And I'd like to sort of know which county, real quick -- and if you can tell me --

MR. CHAIRMAN: Mr. Telomier, tell you what, we're at 6:00 right now. And I'm going to try and get us wrapped up by about 8:00. So I'm going to ask you to bring your testimony to a conclusion. We've got quite a number of other witnesses who would like to testify tonight.

MR. TELOMIER: I understand. And I really respect your comments. I hope that you give me at

least as much time as you gave the individuals that were for this proposal. I've been tracking your time here.

MR. CHAIRMAN: Well, Mr. Telomier, I expect to have another couple of hours of opposition testimony.

MR. TELOMIER: Okay. Well, then, I'm talking about my own personal --

MR. CHAIRMAN: Well, I don't expect you to testify for the next couple of hours.

MR. TELOMIER: Well, I will, then, pick a couple of the bigger counties and indicate in El Paso County, currently $308 million is paid in PERA benefits to that county in one year. Jefferson County gets $354 million. Pueblo County gets $177 million.

The reason that's important is because I don't think people fully understand the impact of this three and a half percent, particularly on the retirees, on the counties involved. And on page four, I basically outlined it. And most of you may know this formula. But PERA benefits paid at 3.5 percent will double the amount paid to retirees in each county in 20 years. That's a fact. Right now, you've got $177 million in that county in 20 years. Now, this is a snapshot. Things change. A payout will be twice as

much. Your vote to eliminate the annual benefit increase for retirees in Senate Bill 10-001 will result in the loss of income equal to the annual PERA benefits paid today in the counties identified. It's your pleasure. You can check those counties if you choose.

The snapshot -- right now, I just heard in previous testimony it was $3 billion, but on the list I took off from PERA, today's payout that I had off of the computer this morning was $2.5 billion. So in 20 years, that would be a $5 billion payout. Denver Public Schools, again, I don't have enough information -- but Denver Public School retirees will see an additional increase. If they're currently receiving $200 million in the Denver County, that will go to $400 million. And the balance of the state will see an increase from $2.3 billion to $4.6 billion in 20 years. So again, these are very significant numbers.

The balance of my testimony is presented by a gentleman by the name of Jim Prentice. And he had nine pages. He can't speak. He can speak, but he has a problem. He's retired from Colorado Springs School District. And he's done an excellent job of researching some information that we want to bring to your attention that we haven't heard about yet. And I shout out to Jim because I believe he's listening to us today.

This date of Sunday, December the 20th of 2009 states that this entire proposal was emailed to the entire General Assembly and the governor. And I would hope that you may have pulled it down. We're finding that our representatives in Pueblo may not check their emails as quickly as they could, and quite frankly, I think you all are quite busy. But it's not that we want to surprise you with this.

The highlights of this report are that Colorado PERA has proposed legislation that will significantly reduce the benefits that a larger percentage of its members and retirees expect to receive in the future. This analysis raises serious doubt about the validity of PERA's assertion that drastic changes are needed in the statewide retirement program, and it brings to light what we believe is the real agenda behind PERA's proposal. Something that results from the required merger with the Denver Public School Retirement System on January 1 of 2010. Justification does not exist for PERA to breach its contracts with tens or hundreds of thousands of members and retirees regarding fully-vested, guaranteed benefits and benefits promised for both earned and purchased credit.

And then, if you turn to page eight -- and I'll got through this very quickly. At the bottom of page eight, it says, the following -- and I'm referencing the merger agreement to make this short at the top of page 62 on the PERA 2008 Comprehensive Financial Report -- states it allows the DPS, or Denver Public Schools, to subtract the amount -- this is important -- subtract the amount of principle and interest payments on its pension certificates of participation notes from the employer contributions owed in any year except to the extent necessary to pay contributions to the healthcare trust fund and annual reserve fund until the DPS divisions ratio of unfunded actual liabilities to payroll equals the school's division. And there's a very interesting concept that will come out of that.

And then, on --

MR. CHAIRMAN: Mr. Telomier, five minutes ago at 6:00, I asked if you could sort of get into a wrap up mode.

MR. TELOMIER: Okay. I will. The issue that we have is that the Denver Public School systems had to go out and borrow three-quarters of a billion dollars in pension certificates. Okay? And now, PERA is under PERA's control. And every year, the Denver Public

School systems contribution to the pension is being withheld from PERA to pay off the cost of their certificates.

Now, we have a cash flow problem. And there's one county that did not step up to its pension's liability over many years. And they have taken care of that. But at what cost? Are you going to require the retirees to say, "Well, we'll just take that $80 million from you and not worry about the $74" -- and it's probably quite a bit more than $74 million that the Denver Public School system should be putting into this system every year.

Now, that's the issue, and I'll leave you with that. Obviously, I can't go any further at this time. And I want to thank you. You've been very kind. But would you take time? And we will be happy to respond. But this annual benefit increase -- if you take anything from this, I think that from a legal standpoint, it's quite significant because it's not a COLA. And people have been kicking that term around for quite a long time. So thank you.

MR. CHAIRMAN: Mr. Telomier, thank you very much. Committee, are there any questions? Thank you very much sir. We have nine more folks who have signed up in opposition, and there may be a few

people in the audience who have not signed up. And if so, I would encourage you to go over and do so.

Up until now, I have given witnesses quite a lot of latitude in their testimony. But I'm going to ask people to focus on this bill. I'm going to remind you the title of this bill is concerning modification to the Public Employees Retirement Association necessary to reach a 100 percent funded ratio within the next 30 years. That's the subject, and I'm going to ask everybody to confine their comments to that subject.

Lou Ahring (ph).

MALE: (Indiscernible)

MR. CHAIRMAN: All right. Lois Vanderpool?

MS. VANDERPOOL: No comments.

MR. CHAIRMAN: Okay. Patricia Hallis (ph)?

MS. HALLIS: (Indiscernible)

MR. CHAIRMAN: Okay.

MR. TELOMIER: (Indiscernible)

MR. CHAIRMAN: Well, let's see what happens with the rest of these witnesses, Mr. Telomier. Brian Fitzpatrick?

MALE: He had to go home.

MR. CHAIRMAN: Okay. Richard Allen. Mr. Allen, tell us your name and if you represent a group, tell us that.

MR. ALLEN: Thank you. I'm Richard Allen. I'm a PERA retiree holding a number of positions ending my career as assistant superintendent for budget finances for Denver Public Schools. I am representing SAVE PERA COLA tonight.

Most of what I had planned to say had been covered by other people, so I'll spare you the repetition. I do, however, have a couple of points I think that haven't been adequately covered and I'd like to make those.

First of all, without endorsing anything else he said, I do believe that Dr. Paulson was right that there are other financial options available here. When I came to DPS in 2001, I walked into a billion dollar unfunded liability most of which had the word "retirement" attached to it. So we had to do quite a bit of working our way out of that problem. I guess they're back into now, but for a period of time there we did work our way out of that problem. And so there are a variety of options that can be pursued to do get yourself out of an unfunded liability problem.

The other thing that I will note is Representative Frangas before cited a constituent concern about the options. And that was probably the

most egregious case of somebody getting caught in one of those option deals that I've heard. But it is a realty, I think, for anybody who chose an option based on one set of assumptions. And then to have the options changed effectively after the fact. And because it's federal law, then it can't be reversed. It's also true of people who purchase service credit under a particular set of assumptions. Now, that apparently can't be reversed either.

My advise to the committee would be take a deep breath, go to an interim committee where this can be studied at length, both through a financial and a legal standpoint. Yeah, it's going to be harder to deal with the financial problems if you wait a year, but it's going to be harder yet to deal with the problems if you do the wrong thing.

PERA has done a great deal of good work on this, but they came out it from the perspective of a retirement system rather than the perspective of a state, which is your responsibility. That completes my testimony. I can take any questions.

MR. CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you for your testimony. Interesting. Now, what do you mean by looking at this from the perspective of a retirement system as opposed

to looking at it from the perspective of a state? Elaborate on that.

MR. CHAIRMAN: Mr. Allen?

MR. ALLEN: Yes. I think when I was at DPS, I mean, I carried the responsibility as assistant superintendent for not only, you know, dealing with funding problems of the retirement system who had their own opinions about things. And that was a separate organization from DPS at that point in time. But I also had to balance the budget and work with the collective bargaining units. And I did the compensation bargaining for all the -- I kind of lost track of how many unions we had DPS, but it was a lot. And so I carried those responsibilities, as well.

Those kinds of responsibilities are responsibilities that you as the general assembly carry, but that PERA doesn't. PERA is concerned really -- and they need to be, appropriately so -- you know, concerned with the fiduciary responsibilities for the soundness of PERA. But you have additional responsibilities.

MR. CHAIRMAN: Mr. Allen, thank you very much. Doctor John and I can't read the last name. So come testify or play the piano.

MR. HAUS: Thank you, Mr. Chair and Committee

Members. And I am Dr. John D. Haus. And I'm a retiree for PERA. I'm not a hired gun for anybody. I'm speaking for myself as a retiree. I came to Colorado in 1969 as an English instructor at El Paso Community College. And I retired in 1999 as the vice president for the administrative and the student services after serving for 30 years. During all of that period of time, I really had a good time. I enjoyed work at the college and in the state of Colorado. And every month I very faithfully put in my PERA contribution and my retirement contribution.

And there was some tough years back then. I think I began at a salary that was about $7,500 way back then. And then, of course, progressed along with the rest of our folks. But never during that period of time did I claim an actuarial necessity in my own personal situation and refused to pay my PERA contributions. They came in very faithfully and with my expectation that I would one day retire.

And, therefore, my question, of course, and I'm really just giving you an attitude. I'm not gonna give you more figures. You've had plenty of those today or proposals, but this is simply an attitude. You know, after I can do this for 30 years and then why now is PERA and the state legislature considering a hit against the COLA? And I'm speaking to take this COLA out of this consideration of a proposal to make PERA well. In fact, Executive Director Meredith Williams, in one of his earlier reports this year to all of us, said, We don't want to overreact this short-term economic turmoil. Our goal is to keep a steady hand in rough waters, so that we can protect our promise to you." In fact, I don't consider that a promise. I consider that a contract as many folks have expressed today also.

And I think that two plus two plus two plus proposal has done exactly that. It's broken that promise contract. And it's a funny thing. None of you have retired yet I don't think. But as an active employee in the state, I was always treated with respect and righteousness by PERA as an active employee. But all of a sudden, something changed when I retired. Now, I hate to say this, but it did happen. All of a sudden, it seemed that I was treated with a bit of condensation and disrespect.

In fact, if it seems that there was an attitude of, "Geez, why don't you die so you're no longer a liability to PERA and then, we can quit paying you your pension?" In fact, it's sort of like that infamous statement that came from this capital some

years ago. "You all have a duty to just die and get out of the way" if you folks are old enough to remember that comment. Well, I am old, but I'm part of the ADY group and that's the Ain't Dead Yet group. And we're not going to go away quietly very frankly. We believe that what is proposed before you in SB1, it's a violation of our contractual rights. And should this go past, we'll simply, you know, recourse in the courts. That's simply going to happen.

You've been sent all these other arguments by other retirees, so I won't belabor this point as to whether or not there's a real actuarial necessity. But a 3.5 COLA loss really means real dollars. It's not a $100 a bucks; 1,200 a year. This thing multiplies throughout the years. And it becomes big dollars if you live that long.

And also the issue of the change in the system, that of a defined benefit to a defined contribution system and the need for an interrogatory from the Supreme Court before taking action. It would certainly help us. It would save money for all of us.

But I will let you know that we do believe in these issues. And from what I'm picking up, especially in Colorado Springs from staff and classified staff, faculty, administrators is an undercurrent of anger.

And, of course, much of this comes from, as you know, what's happening on the national level, the state level, local level with governments and politicians. There's not much trust, but they're from the common person. And, frankly, I'm just urging you to defeat this bill. Send Meredith Williams and his staff back to create a more equitable proposal that does not include this burden of taking the COLA away from the retirees. And if they can't do it, as others have suggested, here get in a group who can. There are other options. There are other approaches. There are other issues that certainly need to be considered. Thank you for your time.

MR. CHAIRMAN: Representative Benefield.

MS. BENEFIELD: Thank you, Mr. Chair. Over the course of your career, did you ever have a pay freeze for a year?

MR. HAUS: Thank you, Representative. We worked very hard, again, as a faculty association president. And we worked very hard not to see those occur. We didn't have any solid pay freezes that I can recall within 30 years. We did other things like during the summer things like during the summer times, not pay faculty, you know, a full pro-rata amount. But I can't remember at all a pay freeze.

MR. CHAIRMAN: Doctor, thank you very much.

MR. HAUS: Thank you very much.

MR. CHAIRMAN: Steven Smith.

MR. S. SMITH: Chairman Judd, thank you for having me allow me to testify. My name is Steven Smith. I'm a retired assistant attorney general from the State of Colorado. I won't go through the details of the legal arguments you've heard, but I just like to make a few points quickly.

The annual benefit increase, and it is a not a cost of living allowance, tied to any X factor that has to be determined at a later date. It is an annual benefit increase. It is an intrical and inseparable part of the basic retirement plan. You can't purchase that separately. It is a benefit of the basic retirement plan.

Unlike Representative Swalm was speaking about the health and disability and other plans that you can buy, those are separate options. This benefit increase is there's only place you can get it, two ways you can get it, earn it or purchase it. And it's part of your basic retirement.

Greg Smith said that he felt that that part of the benefit could be changed because it hadn't been calculated yet. Well, that is clearly incorrect. It's

3.5 percent annual increase from the day you retire. I don't know if it's still on PERA's website, but you used to be able to go in and just say here's my retirement benefit, what will it be 20 years from now. It was calculated. There's no calculation that has to be done based on any outside factor. It is a fixed payment.

If a bank gives you a loan and you have an introductory rate of payment of $100 a month, and your contract says it goes up to $200 a month after the end of the year, well, clearly the bank doesn't get the right to that $200 only at the end of the year. It's in the contract from day one. There's just no sense to the argument that this isn't part of the benefit and that they can change it because it's a cost of living increase. It isn't and it's calculated and it's part of the basic benefit.

On the other part I'd like to comment on Greg's testimony. He says, well, in the past, we have given when we raised the annual benefit increase for some members, you've done it for all. Well, the response to that is thank you very much. But those of us say I only had a two percent and you later raised it to 3.5 percent, could I force you to give me that 3.5 percent? And I think the answer is no. What you chose

to do unilaterally to benefit me and part of my contract, that's your choice, but you don't get to reduce my contract unilaterally. And I couldn't have forced you to give me more money. It's just not how contracts work.

I think it was Representative Roberts who was asking and kind of raised the issue of purchase service credits. Well, I purchased quite a bit. And I think I have two perfections, not just the general vesting and contractual and constitutional. I have a private contract with PERA for those years. I paid X dollars for a certain product. That product had a built in 3.5 percent annual benefit increase. Now, you're gonna say, no, you're not gonna get that. You're gonna get a zero guarantee. And I think it's zero; it's not 2 percent by the way. Because if you can change it once, you can change it again.

Now, I paid more for that product than I should have because I'm not getting the product that I purchased. If Great West Life told me that you get $100,000, we'll pay you $3,000 a year for life plus that goes up every year. And Great West Life comes back and says, "Oh, we must calculated. We didn't charge enough. Actuarial necessity makes us not give you that annual increase. Would you stand for that?

Great West Life had a contract with you. They have to honor it or they have to pay you damages. That's all there is to it.

Now, quickly, despite what I think is clear to the law, PERA is telling you to jump off this bridge with that because there's a safety net at the bottom, something will catch you. But I haven't heard anything yet that really has convinced me that the law has anything but what it clearly states it is. Now, if they have some sort of from Justice Debosti (ph) or some other attorney that really knows this stuff, he says, no, no, no, this is the law. They ought to give you and us the comfort that they know what they're talking about and that we don't have to go to Court and we don't have to litigate this.

And I think they're saying, well, what can we do, what can we do. I'm sure PERA has a plan B. They must have at least speculated that this body may not go along with the part of changing the annual benefit increase or they may contemplate that there's a significant risk of losing this in the court. So I would be shocked if they don't have a plan B right now that goes forward without using that part of the bill. Ask them about it. I bet they have it.

A couple of quick points. Representative

Frangas was it? Yes, you raised the issue about the option one, option two. Well, when you think about it, the people who chose option two they've got a certain amount of benefits paid to them because I was also under the assumption that while they're spouse or whoever would live longer and collect that 3.5 percent longer. So they got less than they would have if there was no 3.5 percent increase. Now, you slam these people on both ends. They didn't get enough as they should have up here. And you're taking it away from their survivors out here. I mean, you're giving them a double whammy as far as I could tell.

A couple other points quickly. Oh, Representative Swalm, I've been beating up on Greg, but he was right on paper. This isn't a Tabor issue. I worked on Tabor since the conception. I drafted a lot of the original former attorney general opinions. I worked on a lot of the litigation. I drafted the first annual report from the AG's office to the legislator litigation. And maybe that's why I had to retire early.

Quickly, a couple other points. Representative Kefalas, I don't think the actuarial necessity language I don't think affects vested rights either way from a retiree's point of view, leave it in, take it out, it doesn't matter. Either it's a vested right or it isn't.

And Representative Frangas and Kagan, you're saying, well, what about the inflation and how this, you know, well, geez, we have to go up to 13 percent one year. Well, really, what this 3.5 percent annual increase does is give you a response to that. You know, I've been hearing 3.1 percent over the last 20 years. Well, if it all of a sudden goes up to 13 percent, your response is no, we're not giving you 13 percent. We've been given you this fixed benefit. It smooths out those curves. It makes it reliable and gives you the way not to have to come back in here and go up 13, down 12, sideways two. You've got a fixed return that generally mirrors inflation. And so I think that actually maybe a benefit for the play in the ball room. And that's it. Any questions?

I know I'm the last one, so you're all --

CHAIRMAN: No, no, you're not the last one. Representative Kagan.

MR. KAGAN: Thank you, Mr. Chairman. Mr. Smith, if a bank promises or an annuity promises you a certain amount of money at certain times or if an airline promises to take you from Detroit to Dallas on a particular day or any promises made, if the person

who makes the promise finds when the time to fulfill it comes that they cannot do it, the fact remains that they cannot do it. And if I borrowed money from you and on the day when I'm suppose to pay it back, I don't have the money. Then what happens, I suppose, is that you can sue me. I can be in bankruptcy and you will have to settle for pennies on the dollar.

Now, it may be that you can criticize us and the legislature or PERA for being over optimistic about what the fund would be able to do. But if the fact is that the fund cannot pay the amounts that it hoped or promised or whatever it is in law, in morality, it was certainly a declared intention to pay it at a certain rate. If the fund cannot do it, it cannot do it. And that's something we have to accept as a legislature and as a body of retirees and a body of people paying into a plan. The plan cannot pay this COLA and keep paying this 3.5 percent increase each year. It cannot do it and remain solvent over the long period of time. So somebody is going to be disappointed.

The only question is not whether somebody is disappointed, but who is disappointed and how that disappointment is shared. So that was my thought on that, sir.

MR. CHAIRMAN: Mr. Smith.

MR. S. SMITH: Representative Kagan, I agree with you completely.

MR. CHAIRMAN: Grab that mic a little closer to you please.

MR. S. SMITH: I agree with you completely in your statements. You know, it has to be fixed. My only comment is it has to be fixed in a legal way because fixing it in a way that will be overturned by the courts makes the problem worse. So like I said, if Justice Suvoski (ph) has written PERA the definitive option as to why they can do this, it should be shared. And if they don't have that opinion or they won't share it, I think you should conclude that, no, maybe they're not so sure that they can do this and maybe you shouldn't jump off this cliff with them.

MR. CHAIRMAN: Representative Gerou.

MS. GEROU: Thank you, Mr. Chair. Sir, I'm wondering and you make very good points. And I'm wondering if you think that if we waited a little bit, didn't pass this bill and sat down with the type of input that we've had here tonight. And quite honestly, this has been excellent input from everybody, that we might be able to craft a better solution that would be legal?

MR. CHAIRMAN: Mr. Smith.

MR. S. SMITH: The non-retirees, except for in my personal opinion, everything in the bill is probably legal and constitutional except for the change in the vested benefit. That one vested benefit. So you're saying can people work together and make this work? Probably. It's going to be tougher if you just PERA's real argument is we need a big chunk of money right up front. So that's where we're gonna grab it. And that's the only place we can grab it. It just happens to probably be illegal. So they grab that money. They don't pay for the next year while this goes to the courts. All of sudden, they're paying damages, they're paying in interest. If they do it to me, I have two plans, one for the time I earned and one is the time I paid for, a separate contract.

So I think they're really setting themselves up and you up for failure if they don't think this is a slam dunk. And I don't think it is and I don't think they think it is. That's just my personal opinion. That's not the law by any means. It just has to make sense to fall off this cliff.

MR. CHAIRMAN: Mr. Smith, thanks very much.

MR. SMITH: Thank you very much. Glen Wilkins. Carol Pace. Ms. Pace, tell us your name and if you represent a group, tell us that.

MS. PACE: I am Carol Pace. I'm a PERA retiree and I'm just representing myself as an individual. Much of my thinking has been expressed. I am opposed to the bill for very similar to the position that was just stated. I just want to share with you exactly how a retiree gets to be a retiree in PERA, so that you will witness that contract which I perceived to have been made. One makes one's mind up that one is going to retire and goes in for counseling at which point they tell you all of the factors that are part of your retirement package. So they guess certain things about you like when you're going to die, how old you are, what your highest average salary is. And then they calculate in this increment. For some of us, it was not calculated in for all PERA retirees at all times.

And then, they put it into the computer and they punch go. And they tell you what the value of that contract is. And you go, "Wow. Now, I know when I can make the decision to retire. I know what plans I can make for my family. I know what plans I can make from my other investments." I can make decisions about whether to roll my private money into PERA which I did also as Steve Smith did. I can decide that, in fact, you know, continue to work and earn some more money or

I can pull the trigger and go ahead and retire at which point if that's not a contract, I don't know what is.

If a retirement plan doesn't offer a contract, a legally binding contract, what does a retirement plan offer at all. So I think the pace that has been breached here is the faith that there is something at the other end that we are not going to now set a precedent and change this based on any number of things, any number of times over the next number of years. There have been many changes to PERA over the last decade. And I think there will be over the next decade. But at the same time, some place in there, the individual has to have something that they can say they have. They have the contract for that.

I know we went into one PERA meeting and someone said if this turns out to not be legally defensible, what is your plan B. I think I must have been in the same meeting as Steve. And the PERA individual said there is no plan B. That to me, again, is not really responsible. So I asked the question about the contract and the legality. I also would suggest that this idea that there are certain ways to funding a retirement plan is simply erroneous. There are many ways. You can simply Google and find out what other states are doing. You can find out something

very interesting which is that some public funds have said that it is in poor judgment to be fully-funded.

Now, why would that be? Well, because maybe the tax payer thinks there's too much money sitting there, funding a liability that doesn't actually exist at 100 percent. Eighty percent used to be just fine. Smoothing is the standard of the industry and is considered a sound accounting practice.

There are many things here that are not being taken into account which would say that the end result, which you brought up yourself, Representative Kagan, is that there this not just one path to a successful entity of PERA throughout our lifetimes. And I think that needs to be taken under consideration.

MR. CHAIRMAN: Ms. Pace, thank you very much. Charles Barrett.

MR. BARRETT: I put in 60 ball games a year, and I don't even stay five hours for a ball game, much less this. My son and I seek some home base seats for the August 24 Ryan Spielberg's grandslam and we were right there. The highlight of my year.

MR. CHAIRMAN: Tell us your name.

MR. BARRETT: You can call me Charlie Barrett. I started with the state compensation insurance fund in 1973. And over the next 31 years I

worked at five different entities in workers' comp, and I never worked for Pinnacle. There's a lot of reasons why.

In any event, I'm going to be a simple single one issue guy with two simple solutions. The only thing I'm concerned about is next month. I'm not worried about 30 years from now because if you look at the PERA COLA calculator, in 30 years we will lose 1/3 of our benefits. That's scary and frightening. But I'm worried about next month.

In October we got a notice from PERA Care that our premiums would be going up $101. And, you know, and I wrote to my trustee friends from the Department of Labor and Employment. I said, "Gee, this is 23 percent. I think this is atrocious." And she sent it on to PERA and they answered me back. And, actually, they were really quite smart. They said, "Actually, the premium really only went up 14 percent in the aggregate. It's my share that went up 23 percent. So this raises the issue that Representative Swalm approached earlier, the concept that PERA really isn't on the hook for these increased premium costs each and every year or whatever even though, you know, kind of we're on the three-year cycle.

So my simple solution is that we either raise the contribution towards employee retiree healthcare by $100 a month or amend Senate Bill 001 to delete I think it's section 35 and then section 36 the safety clause. And one last shot to get COLA in March just to cover this health insurance. It's not a 30 year problem, it's a one-month problem and one-year problem.

MR. CHAIRMAN: Thank you very much.

MR. BARRETT: Thank you, sir.

MR. CHAIRMAN: Guy Santo.

MR. SANTO: Seriously, thank you very much for staying so long, and I'll try to make this quick.

MR. CHAIRMAN: Mr. Santo, tell us your name.

MR. SANTO: Guy Santo. And I'm from Evergreen, Colorado. So far, these hearings -- I really don't mean tonight's hearing because tonight's hearing I think has been one of the better ones. But so far these hearing coming up on the other side kind of remind me of the Paul Harvey line, the punch line, "Where's the rest of the story?" I mean, here's the rest of the story. There is no rest of the story here. It's really disturbing and grating to me because I really don't think we've examined what's going on here.

Now, I made some notes, so let me stick to them and make this quick. Why does PERA Board and staff continue to show you a chart that shows what will

happen to the funds if we do nothing? We know that. So the question, is what are we going to do? How about examining how different time periods and different funding levels might relate to different contribution rates. That starts to border on solutions.

Where's the rest of the story? Where are the public numbers? Ask PERA Board and staff to provide a set of scenarios other than 100 percent funding in 30 years. Can everyone hear me? Additionally, where's the other side of this draconian sessionary solution. Why are they taking away this annual increase? I don't see the word COLA in the law either. Well, the point is where's the inflation protection? Maybe people would be more willing to give something if they saw a little inflation protection in return for losing their annual increase.

In closing, see that was quick. In closing, I want the general assembly to address two issues. One, public disclosure of a set of scenarios for various time horizons and funding levels. And, two, where's the shared responsibility of retirees giving up their annual increase, but without any future inflation protection except that we could come back and complain later?

Now, not to be flippant. I need to be very

respectful here. Thank you, again, for taking the time this evening to even listen to people who stayed around long enough to try to bring forward the real concerns. I think I've been concise. I don't even need you to ask me any questions. I'm done. Thank you very much.

MR. CHAIRMAN: Well, we do actually have a question. Represent Kagan.

MR. KAGAN: Thank you, Mr. Chairman. Mr., sorry, I forgot --

MR. SANTO: Santo, S-A-N-T-O, Santo.

MR. KAGAN: Mr. Santo, you didn't say in your testimony why is it that we haven't been offered the opportunity to try out different scenarios, go to different what if questions and try out different routines? And I just wanted to comment, to tell you the people of Colorado through their representatives, I have been given the opportunity to go to PERA, to plug different scenarios into the model, PERA has been very accommodating in my interest and desire on behalf of the people I represent to plug in different scenarios and say what if we did not reduce the annual benefit increase from 3.5 percent and did not reduce it down to two, but only reduced it to three and plugged it in and changed the assumptions, changed the values.

The people of Colorado, through their

representatives have been afforded the opportunity to do that by PERA. And I just wanted you to know that, sir.

MR. CHAIRMAN: Represent Gerou.

MS. GEROU: Thank you, Mr. Chair. And, Mr. Santo, just so you know, part of the reason that I'm here feeling as negative as I am about this bill is because I was given that opportunity to. And I agree with you, I think we could have done this better.

MR. CHAIRMAN: Thank you very much. Kathy -- thank you.

MS. LAKES: I'm too gonna be very brief. I'm just gonna --

MR. CHAIRMAN: Tell your name first of all.

MS. LAKES: My name is Kathy Lakes. I'm from Golden, Colorado. I'm a 31-year veteran teacher from Brighton, Colorado. Fully invested in PERA and a fairly new retiree. I retired in 2006.

I'm a war baby and so I'm ahead of all the baby boomers. My schools were under construction getting ready for the baby boomers. And so that's just the way my life has been because of when I was born. And so when I went into retirement, you know, I'm the type I stopped teaching and I have not gone back. And have devoted my free time now to some volunteer work.

But now all of a sudden, that retirement that I so counted on is in jeopardy. I feel PERA is a wonderful organization and I'm fortunate to be a retiree under that umbrella. But I am very worried about not being able to get a COLA increase in case we have inflation. I'm willing to do my part, however, if that's what it takes.

However, where is the protection for me? That's what I couldn't find. I couldn't find any protection. I saw a tunnel or a corridor that seemed like it might be impossible for PERA to reach those standards in order to give us relief. And if they go to the year 2039, ladies and gentleman, I will be 94 years old in 2039. That means I could spend my whole retirement, you know, really struggling. And that was the only message I wanted to leave you.

And I want to thank you so much for listening to all of us today. Thank you.

MR. CHAIRMAN: Thank you for coming in. Tim Hansford.

MR. HANSFORD: I'm Tim Hansford. I will also be brief. I think a lot of my comments have been summarized better than I could by Mr. Haus and Ms. Pace and others before me.

I guess the basic thing that I wanted to get

across was that you've heard a lot earlier today about the rules of different things that PERA employees have had to follow. We've had to, you know, put in a certain percentage of our income for PERA. There was a certain amount of money that we would have to pay for buying previous years of service, length of time that we would have to work, the age that we would have to be when we retired. All of those things were requirements. I mean, they were not negotiable and we did those. My point is that we followed all those rules and we did all those things. And now that we have fulfilled our end of the agreement and now that it's time for us to realize the benefit from PERA, we're seeing that it's being changed unilaterally on their side.

And I can't believe that that's fair and I can't believe that that is right.

MR. CHAIRMAN: Mr. Hansford, thanks very much.

MR. HANSFORD: Thank you for the opportunity. Thank you.

MR. CHAIRMAN: Is there anybody else who would like to testify in opposition to Senate Bill 001. Mr. Telomier, I know you're still here. Sir, come on up and I'll ask you to fill out one of these forms

after you finish your testimony.

MR ALEXANDER: Actually, I did fill one out.

MR. CHAIRMAN: And I have missed our name on here. Sit down and introduce yourself to us.

MR. ALEXANDER: And you have my handout that I prepared. My name is Jim Alexander and I am a PERA retiree and I will try to keep my remarks very brief. I think with much of the ground has been covered, that is in my handout, it looks like from all the handouts that you've gotten, you've got a bunch of retired teachers here I think. I have started with the Department of Public Safety, and for the last 12 years I was in higher ed.

Just a couple of things though that I have some questions. And I think that everybody is thinking, okay, look, if things are in such dire straights that we just have absolutely have to do these things or the whole thing is going to go off the cliff, I don't think anybody would argue that that's not a good idea.

Some of the questions I have and someone mentioned earlier, a fellow named Jim Prentice whose done a great deal of research on this legislation and posted it on the internet. And Mr. Prentice, unfortunately, has a medical condition that prevents

him from testifying. And I know what they say about hearsay testimony, but it's the best we've got. We've tried to check out a lot of his sources. And it appears to be very accurate.

The question for me is that it seems like PERA is going along and things were not too bad and then 2008 was a very bad year in the market. And the thing that I have to wonder about is how much of this actuarial necessity and the question whether or not that will apply to vested employees when partially vested employees will have, I think, the court decision. And also the three and a half percent annual benefit increase group is a closed group because there was a change in 2006 and people hired after 2006 are no longer in that group. They changed things for them.

And I heard testimony that, well, yeah, that doesn't kick in until down the road and it isn't going to help us right now, but we're talking about trying to get things corrected 30 years from now and we've changed actuarial period as we said from 40 years to 30 years. We changed the projections and so on.

But it appears to me that 2008 was a very bad year. And much of this is based on that. And we're hearing that 2009 was a much better year. We've heard some different numbers this evening. The information I have says that Jennifer Pequet (ph), I believe her name is, PERA's chief investment officer reported at the Board of Trustee's meeting on November 20th, 2009 that PERA's investments were up about 20 percent for the year.

Now, people have been saying, well, you know, 2008 was a terrible year and how do we know in the next 30 years that we aren't going to have other years like that and things are, you know, the world economy looks bad and many of us here are old enough to have been through a number of recessions and so on, maybe not as bad as this one. And we've seen things go up and down. I think it's pretty difficult to say that things are going to necessarily be this bad for 30 years.

And the other thing that I kind of question is when it was brought up that, well, you know 2009 was really a good year, the answer to that was, "Well, we can't base these projections on a good year." But it seems to me that we're basing then for the most part on a bad year.

And there's a question I have in PARA's comprehensive annual financial report for fiscal year ended December 31st, 2008. There's a table on page 29 that says the amortization periods for the AED and the SAED do not include the full effect of the 2006 of the

2006 legislation. Now, this annual report was prepared by Cavanaugh MacDonald. It was the pension and health care program actuarial for PERA. And I think that there's a discrepancy between PERA's information package that was presented and the table prepared by PERA's actuarial. I think this discrepancy really needs to be reconciled because I'm not 100 percent convinced -- well, one thing, I called PERA and asked what is the funding level at the end of 2009. And I was told that that information would be released mid-year.

At the PARAGRAPH board meeting on December 18th, 2009, a board member asked if updated charts were available from Cavanaugh MacDonald. The chief operating officer replied that new ones are available and would be distributed to the Board during closed executive session. I guess they're saying, well, you know, we lost $9 billion in 2008 and we got $5 billion back in 2009 and they lost $4 billion, would that be an actuarial emergency.

And a question that I would like to see the members of this committee ask the PERA representatives would be, what is the funding level of PERA right now or what was the funding level at the end of 2009? As I said, the three and a half percent group is a closed

group. We're dying off among other things. And that group also the three and a half percent annual increase is a statutory increase. It's in title -- quickly here -- Title 24, article 51, is the statutory reference. And the US Supreme Court has held that a statute in general is it's all treated as a contract when language and circumstances, events legislative to create private rights of a contractual nature enforceable against this state.

So I'm kind of raising the issue again about okay, this is a fairly small group. It's already been said that it appears that the being given by that group is disappropriate if you look at retirees, employees, employers. And I'm going to model Representative Kagan's term. I was thinking about using it earlier and you reminded me, the camel's nose metaphor. It just seems to me that if we take aware this vested contractual obligation made to retirees, if the legislature were able to ste the legal president of reducing vested retirees benefits, then any time they wish, they could lower the employee contribution because that's set by the legislature, declare an actuarial necessity and reduce our benefits again.

I think this is one of the reasons that the courts have held a full vested retirement benefit under

the contract clause of the state Constitution and the US Constitution. And the courts and the attorney general have recognized the contractual obligation incurred by the state.

I just think that if that precedent were set, not only do we not have inflation protection and those sort of things that have been mentioned, but that there would be no guarantee at all that the legislature couldn't, by lowering the employer contribution, create an actuarial necessity any time they wanted to and then turn around and take away retiree benefits.

So it occurred to me also in my little handout that I didn't include in any way to contact me if you had any questions. Maybe I just figured it was so good there wouldn't be any questions. Either that or nobody would read it anyway and didn't care. But what I will do since you are all on the state website, I promise when I get home, I will email each of you so that you'll have my email address. And if you do look through this and you do have a question, you can contact me that way.

MR. CHAIRMAN: Mr. Alexander, thank you very much.

MR. ALEXANDER: One other thing, I meant to say when I first sat down. I attended the Senate

Finance Committee Hearing as well and I'm not trying to, you know, not trying to garner favor here or anything, but this one is much better.

MR. CHAIRMAN: We accept all flattery. Is there anybody else who would like to testify on Senate Bill 001. Keep in mind, Mr. Telomier is still sitting there. All right, Mr. Telomier, come on down. What I'm going to ask you to do is to take five minutes.

MR. TELOMIER: Thank you very much and I really appreciate this. Pat was kind enough to yield her time. Very quick, I don't know that I was able to make the connection between the Denver Public School pension participation certificates because what's happened is that PERA will be paying out these funds. They will not be receiving the employer's part of the pension because I believe it's 80, I'm not sure. But they will use that money to pay off those certificates instead of sending it to CERA on an annual basis.

And, Representative Kagan, that would be a very important issue to ask and run the numbers on because the retirees did not have anything to do with Denver Public Schools not meeting its funding responsibility. And over the years, they had to borrow $775 million. And, not PERA is taking a hit. And it was a Senate Bill that apparently told them to do it.

But there's a great cost to PERA, and it's effecting the retirees. This is cash that can offset what we're discussing here today with these benefits. And it's coming from an organization that chose not to step up to its benefits.

So that's pretty much all I needed to clarify. I just wanted to be sure. And I would like to let you know in that packet that there's about four pages of questions that I would really think that we would be comfortable with if you could get PERA to address those. And, hopefully, you can get them out to us because there's a big group of people. It's page 14 through 18. And we don't know the answers. And it may be questions that you might like to have the answers to before you make your decision.

And, again, I thank you. You've been very kind. Thank you all.

MR. CHAIRMAN: Mr. Telomier, thank you very much. Mr. Smith and Mr. Williams. There's been a few issues raised. And please address those for us. Thank you.

MR. WILLIAMS: Mr. Chairman, with your permission I would like to start out with Mr. Smith addressing the questions.

MR. CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Mr. Chairman. It's a challenge to know where to begin. And I think I'll begin with the freshest and work backwards somewhat. First of all, (indiscernible) CIO, Jennifer Perquet, I want to make very clear that at no time did Jennifer Perquet represent to the PERA Board that there was a 20 percent return in 2009. That doesn't appear in our minutes, that doesn't appear anywhere. It didn't happen. That's not what our return is.

We have addressed what our return is in 2009. We've projected the current funded ratios and the current projections of what the impact of SB1 will be based on a 15 percent return in 2009. We don't know exactly what our return will be in 2009 until our audited financials come in mid-2010.

I want to also address the very detailed references. And I think it's Mr. Prichard, is it that provided I think the nine-page analysis. And it identifies the concerns about the Denver Public School's merger.

The difference between the charts that he makes reference to and the numbers that we're working with in this matter is that difference between smoothing and market value of assets and some of the limitations that are put on actuaries by their

standards of practice. In doing an actuarial valuation, this is not a projection, this is an annual valuation. The annual valuation is a different function than the projection process. And the annual valuation requires by actuarial standards, the actuaries and Gazby standards for the reporting of it require that they only take a snapshot of what's in place at the time that they're doing the valuation.

They're not allowed to consider future contributions that are called for by statute, but not yet being received. And, therefore, the numbers and particularly the amortization periods are different in valuation than they are in a projection. Because in a projection, the actuaries are permitted to look forward for the 30-year period and take into consideration any additional changes in benefits that occur in the future; new people that will be coming into the system in the future and the lower benefit structure such as in PERA's tier two; and the concept of the increasing AED and SAED being able to be recognized in that additional revenue recognized.

So the differences between the chart in the actuarial valuation and the projections are based on the way that the actuaries are required to do those different functions.

And that leaves me to the concern that's been expressed about whether or not there's been an open enough process or whether enough people have been involved in this process. As Mr. Williams commented earlier and I think Representative Kerr commented, as well, we've had thousands of people participate in this process. We've presented this plan beginning several months ago to thousands of people.

But more importantly than that, no one has ever been turned away from participating in this process. Anyone and everyone that came forward wanting to participate in this process has been welcomed into the process. We have an amazing number of unions involved in this process and I would respectfully suggest that if anyone is equipped to conduct competing or double-check or challenge the actuarial work that our professionals have done, it would be the actuaries of the unions.

These unions have national offices. They have their own actuaries. And, in fact, those actuaries have been on the phone with us during meetings with the coalition. And they've seen the projections. They've seen the data. They've seen the materials. And none of them have stepped up and said, "Hey, they're not telling you the facts about the

numbers. They're shading the presumptions. They're misleading you about where we really are."

If anybody was going to step forward and say wait a minute, you're mistreating the workers or you're mistreating the retirees, it would be those equipped with the tools to do that challenge. Well, the people that have those tools were a part of this process. And those tools were brought to the table. They were used by those people at the table and here we are with no alterative solutions to our problems and an endorsement of the work that the PERA Board has done with its actuaries. I think that speaks volumes about the process.

The reference to charts that were going to be distributed in executive session -- this is a great example of how difficult it is to work in an open environment and have materials. It's sort of like the parlor game where you think somebody said something and by the time it's five people down, it's a completely different story.

What happened at the board meeting was I made the statement that the new charts are available that set forth the new reduction factors. You'll recall that in the bill there's a provision the new early retirement provision will be such that the person who

retires early will get the actuarial equivalent of what they would have received if they had waited until full service retirement.

We have charts in our booklets that set forth every year of service credit you can have and your age down the other side. And you look through this chart, you look at what parts are shaded, what parts are unshaded, what parts have numbers in them. And that sets forth what benefit percentage you would be entitled to, given that year and aged combination.

Those charts are changing because we have this new provision potentially in this bill that makes those an actuarial equivalent rather that the set number they were previously. It's those charts that we were talking about. And, in fact, they weren't handed out in the executive session because we didn't get to that issue. But that's not the issue. They'll be distributed and they'll be posted on the website this week.

But it had nothing to do with our returns for 2009, our actuarial funded status after 2009. That material is not available, cannot be generated until we have actuarial experience studies conducted where we look at what actually happened. Did people retire earlier than we expected? Did they die earlier than we

expected? Did they live longer than we expected? All those component parts go into that annual valuation. And that will incur in the June time frame in connection with our comprehensive annual financial statement.

So that information does not exist, will not exist for some period of time. But it really doesn't matter because what we've done is we've assumed what those returns are going to be. We've projected, we've looked at what dollars are in the door in all of our public markets, what we've made in fixed income, what we've made on the stock market. We don't know exactly what we've made in the illiquid asset classes of real estate and alternative investments, but we've made some assumptions and projections and guesses as to what the sensitivity of those two categories is and what impact it could have on our return. And we believe that we'll return 15 percent and even slightly north of 15 percent.

So we don't need the additional projections. We don't need the additional charts that tell us what our funded ratio is after 2009 because we're already considering what the return is at the end of 2009 in our projections.

I want to talk a little bit more about the

DPS issue because much is discussed in paper that you've received about that. And there's very few things I've been involved in more than I've been involved in the DPS mergers. I've negotiated that deal three times since I started as general counsel. And it's fallen apart three times after the deal was signed. And then, last year we came back and got a statutory mandate to merge those systems.

The charts, first of all, the funded ratio charts and so forth that you see in your book don't even include DPS. They don't even include DPS. They don't even assume that we have DPS in the system in any way, shape or form because we didn't at the time that we're doing those projections. At the point in time we're generating those charts. DPS was not a part of PERA and it would have been totally inappropriate for us to include their financials as a part of that.

More importantly, DPS is a separate division of PERA. And by statute it is -- by being a separate division, it is a separate trust. And by law, we cannot let dollars flow from one division to another division. So to the extent that the DPS division is being underfunded by hits employer because it's employer is taking what would have been its normal contributions to the pension system and paying it's

peak ops. That has an impact on the DPS division of PERA only exclusively. It lands only in the DPS division. It does not impact the state division, the school division, the local government division or the judicial division. It just doesn't.

And to the extent that they're not contributing $74 million or whatever the figure is believed to be, that is deteriorating the funded status of that division. And the statute, when you all pass the merger legislation contemplated that concept. And, therefore, there's a five-year true up in that statute. And every five years, the actuaries will revising where's the DPS division and how's the peak op offset impacting the funded status of that division. And does it need to be adjusted to where more money is coming into the DEBTOR system instead of going to pay the peak ops.

DPS's argument on this issue is the peak opts which is where they went out and borrowed 400 million new dollars in 2008 was a pre-payment. The took all $400 million or after fees a sum of money, poured it all into the pension system. At the point in time they did that, they made their pension system 100 percent funded when the PERA school division was 78 percent funded.

So the concept in the statutory scheme was to try and bring those to be equal over a 30-year period which meant that the DPS division could be deteriorated in its funded status, so that it will be at the same place as the school division. We objected to the principle. We objected to the whole approach for the DPS division, our PERA Board did. But it doesn't impact the rest of the division of PERA in any way, shape or form.

So the speculation and the conjecture that somehow this merger has driven us to this point is just unfounded. There is nothing there. It didn't have any effect on where we are today with this repair. In fact, you heard some testimony or there's been testimony, I guess, in the previous hearing that DPS was going to make the same cuts on its own.

We have included DPS in this bill. And the reason that that was done and was suggested by the PERA Board was because DPS and the DPS retirement system board, completely separate bodies form the district, completely separate body from PERA, undertook it's own study about the funded status of the DPS retirement system and concluded they had to take the same action that the PERA Board is now taking.

Now, did they look at other options. Did

they come up with other ways of doing it. They looked at the multiplier. They looked at HAS. They looked at their COLA. They did all kinds of analysis with a completely different natural actuarial firm called Aon. And after all that analysis, they came to the exact same conclusion that the PERA Board has come to. You have to cut the retiree COLA in order to address the necessity and the level of necessity that you have in these systems.

Separate and apart completely independently from the PERA Board's activity. They then brought that to us. THE DPS retirement system board then passed a resolution asking the PERA Board to consider their study, to consider the recommendations of their actuarial and to include the retirement system of DPS when it becomes a division of PERA in our reform bill. That's how this has happened. It had nothing to do. One was not driving the other. In fact, what it does is support the conclusions that the PERA Board has reached as to the appropriateness of this fix and the necessity for these changes was a completely separate process and reached the same conclusions.

MR. CHAIRMAN: Mr. Smith, I'm going to ask the committee -- I think we'll go this route. Committee, do you have particular issues that you would

like Mr. Smith or Mr. Williams to address?
Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair. I guess I would appreciate you gentlemen speaking to the issue that's been raised if this bill passed into law and the potential for ensuing litigation that could hold things up and how that would affect, you know, the goal of trying to have an impact up front. You know what my question is, I guess.

MR. CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Chairman Judd. The legal issues, you know, when you hear them framed by retirees who believe and rightfully so that they entered into a contract, they made decisions based on what they believed the situation was. We have to take, I think, a bigger view. And again, I want to go back to the fact that we're taking eight percent from every new member of the PERA system, people that have been working a week, and people who have been working five years and ten years. And we're taking eight percent from their checks. And we have every reason to believe based on appropriate assumptions that we will run out of money before they're eligible to draw a benefit.

And we can demonstrate and have demonstrated to many of you in this room through our projection

software that we cannot fill that gap. We cannot maintain our ability and perpetuity to pay benefits without adjusting that retiree COLA. We cannot do it.

I believe that the law is uncertain in this area. If I had a slam dunk for Mr. Smith on the lawsuit, I'd certainly present it to him. And if I thought I had a slam dunk against me, I'd certainly be telling my board, wait a minute, we can't suggest something that's unconstitutional.

As to our legal opinion, we have worked extensively with legislative legal services as to our view of the law governing this issue. We've shared with them our analysis of that. They have also conducted an analysis of that. There are no clear unequivocal black and white answers in this arena. We will be making law in this process.

I'm not looking forward to it. I don't think our PERA Board is looking forward to it. But I would urge people to look carefully at the fact that we can't fix it without reaching that step, without taking that step to impact the retiree COLA. And after having the most significant economic event since the Great Depression, to think that a member of a defined benefit plan is not going to have any impact. They're going to continue to receive the exact same benefit forever with

no ramifications from the most significant economic event since the Great Depression, I don't think is a reasonable expectation.

And while the law is somewhat uncertain, we believe that the law does support our conclusion. And I believe that the litigation will lead to that ultimate conclusion. We have spoken in the past and I have certainly spoken extensively about the interrogatory process. I think that the presumption of constitionality by a passed bill is a very significant consideration. And I believe that the appropriate course of action is to pass the bill and try and reach an appropriate resolution through the courts.

MR. CHAIRMAN: Representative Gerou.

MS. GEROU: Thank you, Mr. Chair. What a lot of us are facing is we have constituents that are angry that they have to bail out a group of people and they are not being bailed out because they're doing with the losses. And then, we've got a group of people that spoke tonight that are angry because they thought they had a contract with the state that they could count on. And now, they're being told that actually that's not the way the state looks at it. And this is not a happy situation. Can you give us some idea if you know what the amount would be if we were to convert all of these

retirement accounts to define-contribution instead of defined-benefits?

MR. CHAIRMAN: Mr. Smith.

MR. SMITH: Thank you, Mr. Chair. Clearly, it would be a violation of the constitution. I don't think there's any way in any way, shape or form that that could be done. As to the way it could be done -- it just doesn't work. Once we start paying benefits in a defining benefits system, people have expended all the money that they contributed into the system in the first five to eight years. And we're at that point working from the general pool of dollars, employer's contributions, and the earnings on those to pay those benefits.

So we don't have an individual account for each person. If we were to try and give an estimate or a value of their benefit stream into the future, the funding of that is really what we're looking at. We're looking at the aggregate of all the values of all those income streams over their expected life times brought down to a present value. That's how we calculate a $20 billion shortfall or a $30 billion dollar shortfall, a 20 percent of pay shortfall.

So I can't really give you an answer as to where would people stand if they were converted to a DC

Plan. I don't have that ability.

MR. CHAIRMAN: Representative Gerou.

MS. GEROU: I apologize. I didn't make myself -- thank you, Mr. Chair. I didn't make myself clear. And you all haven't looked at the possibility of doing defined-contributions, right now what that would cost if you were to convert the whole system. That's really what I was after. I understand what you just said.

MR. SMITH: I'm sorry. I did misunderstand your question.

MR. CHAIRMAN: Mr. Smith.

MR. SMITH: If I could pass to Mr. Williams.

MR. CHAIRMAN: Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chairman. Representative Gerou, I believe what you are asking is going forward, if all future service or all new hires or some combination of those two concepts were to be put under a defined-contribution approach. What would the financial implications of that be? Yes, we've looked at that, certainly. We run, frankly, one of the largest defining-contribution plans in the country with over $1.7 billion of assets. We do that very, very successfully for a number of Colorado public servants including a number of legislators.

To begin with, if one is going to do a defined-contribution approach for new hires or for current hires going forward, you're gonna have to make a decision if we do social security or not. That's then going to dictate at what level you do a defined-contribution. There is some requirements that's put on you as an employer that you will contribute certain amounts towards pensions.

You get credit for doing social security. If you don't do social security, you've got to do something else. And you've got to more of it than you would have to do if you piggyback it on top of social security. So it is possible to do social security or to do the piggy back approach or to do totally a defined-contribution plan with no social security. And you could put the minium amount in. And comparing that to what's currently being contributed to PERA, yeah, there's a savings. It doesn't tell you what you get out of it at the back end in terms of benefits, you know. I'll stay away from that complication for a minute.

But what you need to realize is that the unfunded liability of PERA doesn't go away. It exists today. We're not talking about future accruals. What we're talking about here today are unfunded liabilities

that exist today. And they need to be covered in some fashion or another.

If you instead divert money over here and you do the fine contribution plan, you still got to come up with a way to pay off those unfunded liabilities. If you really drilled down into the proposal that the PERA Board has put together that's largely reflected in Senate Bill 001, you will see that, in fact, new hires through their contributions, just the employee contributions, is largely paying for the cost of their benefits.

Virtually everything else that is scheduled to go into PERA from the employer, almost every nickel from the employer on behalf of new hires, those exclusively to retire that debt. Somehow you've got to find a way to pay that. Ultimately, and I don't know how many decades out it is, but it certainly measured in decades. You can go with a low ball -- and I don't mean that disrespectfully -- you can go with a low ball defined contribution program the minimum required by the feds and at some point in time you will, in fact, pay off that unfunded liability. And at that point in time they're going forward from that point in time. There would be a net reduction in cost to the public employer's of Colorado by that approach. No doubt

about it.

MR. CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. This has been a very helpful session for me. And I kind of thinking sort of along the same lines that Representative Gerou brought here. I mean, I appreciate the difficult position you guys are being the first in the nation to suggest that we cut an invested benefit like this. And, obviously, that's a pretty radical approach here.

But as you guys well know, in the private sector the defined benefit plan -- they're almost extinct. I mean, they're going away quickly. And those companies that still have them, you know, General Motors and United Airlines, I mean, they crushed them. And the only way these defined benefit plans work is if you got a lot more people paying into them and take out benefits. And the reason why that works for state plans is that you got all the tax payers out there paying in. They're not taking any direct benefits themselves.

You know, I don't claim to be an expert on this. This is a very complex area as you very well know. But you guys have a fiduciary obligation to protect PERA beneficiaries. You do. It's simply a fact. And as one witness said, we have a broader obligation to protect everyone in this state. I'm not sure that's really a question. Address the issues I've raised there.

MR. CHAIRMAN: Mr. Williams, before I let you do that, I do want to, Representative Swalm, quivel just a little bit with characterizing the increase in benefits as a vested benefit. I suspect ultimately it will be the Supreme Court that resolves that question. We, here as the legislature, if we chose to pass Senate Bill 001 and it gets enacted into law, we'll have taken the position which I think we are justified in taking that an increase in benefits is not in fact itself a benefit.

I look at the statute 24-51-101 where it actually says -- it talks about increases in benefits. And to me in my mind, there is a difference between a benefit and an increase in benefits. So I understand quiveling over those two words that you used in a long statement. And I apologize for doing that. But I just wanted to lay that out.

Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. I agree. You know, I agree. I retract that portion of my statement.

MR. CHAIRMAN: Mr. Williams.

MR. WILLIAMS: Thank you, Mr. Chairman. As I promised as you began this afternoon, Representative Swalm, this is extraordinarily difficulty, it's extraordinarily complete. There are no easy pleasant answers. A public plan lives in a very different arena than does a private plan. A private plan, a GENTLEMAN, a United Airlines has to abide by federal law to (indiscernible) called ARISA.

United Airlines has a little different way to go though. They can say, "I'm sorry, I give up. I'm bankrupt. I can't go forward. Federal government, here's my pension plan." It's called a Pension Benefit Guarantee Corporation which is close to broke as well. PERA and the Colorado General Assembly don't have that walk away, here federal government, do it. So we've got to deal with this issue.

The federal government, through their onerous rules and regulations and requirements has made it almost impossible particularly for small business and private sectors to have a defined benefit plan. It's all defined contributions because it's cheaper. It's a heck of a lot cheaper, particularly from a risk damage point.

Frankly, if you have a critical mass -- and I

will abide by this statement until my dying day -- a well run defined benefit plan that's well funded is a low cost producer of retirement benefit dollars for a retiree. I will debate that with anyone at any time.

We really don't have a choice to say let's throw the baby with the bath water, let's start something new because we've got 470,000 people in this plan right now with more coming in every day. We lose a few every day too. But, you know, this issue is just flat not going to go away. And that's really the difference. And, again, there are places and that's why we run significant defined contribution plans. There are people that it's more appropriate for. It's situations it's more appropriate. But we can't just wipe the slate clean. We've got 470,000 people. We have liabilities that relate to the service they have provided. And, frankly, there's not enough money to cover all of that now.

After 2004 and 2006 when we didn't have actuarial necessity, you did not have the opportunity to make the kinds of changes that are included in Senate Bill 001. So we could just talk about new hires. And, frankly, we're still not seeing the benefits from those changes. Those are years out where we start realizing a pool of members that are of a

lower cost nature than what our pool looks like currently.

So those fixes in '04 and '06 put us on the razor's edge. Yep, we don't have actuarial necessity, but we're just barely getting by. And we're talking about a 60 year period to pay off the unfunded liability. That was the political deal. That was the money that was available. That's what could legally be done in the absence of actuarial necessity.

And then 2008 came along and all of a sudden, we got knocked off that razor's edge. We went from being roughly 70 percent funded, a little better than that overnight to 50 percent funded, a little better than that overnight on a market value basis. All of a sudden, we're getting real close to the danger zone and to the zone where if another bad experience happens today and then no one has doubts. And that's really the struggle that we're dumping on you. We've given you evidence and it's indisputable evidence that have significant change is not made and it's every aspect of the benefit system under the PERA defined benefit plan.

We just flat run out of money. And that's the best case scenario. And we run out of money not just for those new hires. I love those 90,000 retired people and it hurt me so much here tonight to sit here and feel their pain. You know, one's my dad, another one is my brother. My sister was here, my aunt. I'm going to be here pretty darn quick. It's painful. They made plans, they made decisions and we're pulling the rug out. We're saying, you've got to give something up. And that's the price really to be paid to ensure the security of your pension plan so you will be getting the benefit through the rest of your life.

Many of my retired members plan on living beyond the next 20, 23, 25, 27 years. I want to be there for them. It's not just those actives, it's everyone of them. And I'm saying that the price that the retired people have to pay, you've got to give up a little bit. You've got to give up one year of COLA and I know it's painful, particularly from the older ones that have no options. And particularly for the older ones that have significant healthcare costs that they're having trouble contending with anyway.

And then, I'm saying going forward, you know, in this country no one is going to have a three and a half percent COLA. And if you think the social security COLA is going to remain, forget it. There's no way that's sustainable. No one is going to have a COLA. We're still going to be the best thing going for a retiree. It just doesn't feel like -- it just didn't

feel very good right now. And I feel that pain.

And we can delay it. We pay benefits for a number of years with no changes. But, boy, is that landing gonna be tough. Again, the most cost effective time to do it is now.

I will tell you and I have worked with a number of you over the years, some longer than others. I will never mislead you. We have looked at every possible option that's out there. There's not an option that we ignored, that we shut the door on. We looked at every single one. I will tell you at the same time that we've had an option that's come to our attention quite recently and that is the so-called progressive or means test for COLA. We just did not have the wherewithal to get our arms around that and get the facts and figures together on that so we could speak authoritatively here today.

But this is serious stuff. You've got a tough job. I'm not happy to hand it off to you, but it's your decision and it's an important one. And it affects a lot of people. And I much appreciate the time you've given us.

MR. CHAIRMAN: Representative Swalm.

MR. SWALM: I'll pass.

MR. CHAIRMAN: Representative Summers.

MR. SUMMERS: Thank you, Mr. Chair and thank you to the PERA administers for their response in discussion. You know, if I may take liberty, Mr. Chairman, to my count I have like 12 amendments there before us? I'm not sure if we will hear anything we haven't heard at this point. I appreciate everybody who is bidding here and has testified. And it's been very helpful and stimulating and thought provoking. You know, I would just think any new issues may arise as we move to the amendments. And I would suggest we tackle future discussion through that process.

MR. CHAIRMAN: Representative Summers, that's a point very well taken. But before I let Mr. Williams and Mr. Smith go, members, this is your last chance if there's any question that you cannot refrain from asking. Not that I'm asking for any questions. Representative Labuda.

MS. LABUDA: Thank you, Mr. Chair, just a comment. I've had friends over the past 15 years who were in pension plans that suddenly disappeared. And I know what they went through. And for that reason, I'm not willing to take a chance that the PERA pension fund will simply disappear. It's unbearable for a family especially with disabled children. We just can't do that. Thank you very much for all you've done.

MR. CHAIRMAN: Thank you. With that, I am closing the public testimony and we are to the amendment stage. Representative Kerr, do you have any amendments that you would like for us to consider?

MR. KERR: Thank you, Mr. Chair, and Committee for your patience and listening to all the testimony. I do not have any amendments to put forth at this point.

MR. CHAIRMAN: Committee? Again, I'm not inviting them. Representative Kagan.

MR. KAGAN: Mr. Chair, I move amendment 55. Is there a second?

MS. KEFALAS: Second.

MR. CHAIRMAN: Second by Representative Kefalas. Representative Kagan, you made this one. Representative Kagan, Kefalas, amendment 55.

MR. KAGAN: Thank you, Mr. Chairman. Amendment 55 is a response to the concerns of those people who have said that if inflation kicks off to a high level, they believe that we should reconsider the COLA cut and consider whether, if inflation kicks up to a high level, the yield on the PERA Fund would increase and, therefore, make it possible to alleviate the effects of inflation on retirees by looking at the COLA limit. And the answer has been inflation kicks up to a high level, we'll all be back here anyway.

What this amendment does is it says if inflation kicks up to a high level, we must be back here. And the purpose of that is to give assurance to people who depend on PERA benefits that we really will get back and look at the situation and that a joint committee, Senate and the House Finance Committee will assess the effects of the inflation rate on the projected actuarial funded ratio of each division of the association and shall determine whether the inflation rate warrants a change in the annual increase amounts specified in part ten of this bill.

And this is to be triggered if inflation goes to eight percent. And it requires the finance committees to meet at the earliest practicable time.

MR. CHAIRMAN: Representative Kerr.

MR. KERR: Thank you, Mr. Chair and thank you Representative Kagan for bringing this amendment forward. Representative Kagan and I have spoken about this issue. And about this amendment. I was aware of this amendment, which I'll point out is the only amendment that was brought to my attention before about 20 minutes ago.

So I certainly appreciate this particular issue. I think that it is important. I know that we

have had testimony from the folks at PERA that they are willing to look at this issue as well as some other issues dealing with perhaps the means testing or however else you want to look at a graduated COLA idea.

Without speaking directly to any other legislation, I do know that there is a resolution being drafted that will direct PERA to study these ideas over, I believe, over the next year and to report back to this body.

So with that, I would, and of course not being on the committee anymore, I don't have a vote on this, but I would ask that you not adopt this amendment at this time. Again, going back to the idea that so much negotiation has gone into the bill as it's written right now, I'm afraid at this point if we were to change a piece like this that we don't know what unattended consequences it could have. And I am comfortable with what's been stated on the record about PERA about agreeing to look at these issues. So with that, I would ask that you not adopt this amendment.

Just one other thing I can say and certainly we've heard of the folks listening at home to this debate. Part of the legislative process is that while we've been sitting here debating this bill for the last six hours, a committee that I sit on has been debating

one other bill as well back across the street. And they are requiring my presence to come vote on that. So I'm leaving momentarily, not because I'm trying to escape early, but because I have duties across the street. So I will be back.

MR. CHAIRMAN: Representative Kerr, why you're gone, we're going to take up some of the other amendments. Would you like to state your position or are you able to state a position as to the other amendments? Well, let me put it this way. Are there any that you support?

MR. KERR: No.

MR. CHAIRMAN: Thank you. Come back soon. Representative Kagan, what's your position on amendments at this time?

MR. KAGAN: Well, I think and I'm somewhat taken back by the -- I withdraw the amendment, Mr. Chairman. I withdraw the amendment.

MR. CHAIRMAN: And the second, Representative Kefalas. Do you withdraw your second?

MR. KEFALAS: Yes.

MR. CHAIRMAN: Amendment 55 is withdrawn. Representative Summers, I think you were next up.

MR. SUMMERS: I want to vote for (indiscernible). Thank you, Mr. Chair. And let me

say, what should I do. Hey, let's grab a number here. Hey, about 43. Oh, there's a 43. I would like to move L43.

MS. GEROU: Second.

MR. CHAIRMAN: Second by Representative Gerou.

MR. SUMMERS: Mr. Chair, just very quickly. Amendment 43 is one that doesn't address the issue around the defined contribution plan. And it would eventually provide all employees at least the option that a legislative branch enjoys of choosing between the defined-contribution, defined benefit plan. But what it would do with a consideration of some of the issues we are facing, it would -- it states that not more than 10 percent of employees in any division of the association would be allowed to make that selection. And so it does provide an opportunity to begin moving this, you know, in somewhat a small way towards at least presenting an option for new hirees to define contribution plan opposed to the defined benefit plan. And maybe they'll chose to define benefit, but at least would provide that option and support of some divisions.

MR. CHAIRMAN: Representative Summers, I'm looking at the title of the bill concerning modification and public employees retirement association necessary to reach 100 percent point of ratio within the next 30 years. And I don't see amendment 43 moves us towards that. So my ruling is that it does not fit within the title. Is there another amendment to be moved?

MR. SUMMERS: Yes. Let me move L046.

MR. SWALM: Second by Representative Swalm and Representative Summers.

MR. SUMMERS: And very simply, you know, 46 what it would basically do for it addresses the issue with working retirees and the ability to make -- either withdrawn. Basically, it just would require them like a beginning employee to work five years to have the fifth service credit that would normally be afforded a new hiree after working for five years they would withdraw their funds.

MR. CHAIRMAN: Representative Summers, I almost followed that and I apologize. It's my failing. Are you saying with Amendment 46 that a new hire -- you want to change what the bill does in terms of the ability of a new hire to withdraw their contribution. Is that --

MR. SUMMERS: Mr. Chair, I'm sorry for the confusion. No, this is not new hires. You know,

currently, you know, new hires -- the bill, which I support, you know, certainly has new hires required them to be vested for five years. In the bill, it talks about working retirees. They would be able -- it exempts them -- if you retire and at some later time reenter the system for a PERA employer that the current language exempts them in terms of the five years to receive a 50 percent match.

And so, essentially, you could be, if I understand this right, you know, you could retire, you know, rejoin, work for, you know for two years and then take out your contribution plus a 50 percent match. And this would say that you have to work at least additional the five years like you were a new hire.

MR. CHAIRMAN: So the effector of Amendment 46 would be to reduce the ability of people to withdraw their contribution. Have I got that part right?

MR. SUMMERS: They would be able to withdraw their contribution, but it wouldn't be matched unless they worked five years. So, basically, what it's saying is that the working retirees would be under the same system as a new retiree in regards to that withdrawal.

MR. CHAIRMAN: Thank you. I appreciate that. Any discussion? Okay. The question is did Amendment

46 and, Mr. Kerr, would you take the vote please.

MR. KERR: Representative DelGrosso?

MR. DELGROSSO: Yes.

MR. KERR: Frangas? Frangas, no. Gerou?

MS. GEROU: Yes.

MR. KERR: Kagan?

MR. KAGAN: No.

MR. KERR: Kefalas?

MR. KEFALAS: No.

MR. KERR: Labuda?

MS. LABUDA: No.

MR. KERR: Roberts?

MS. ROBERTS: No.

MR. KERR: Representative Roberts, no. Summers?

MR. SIMMERS: Yes.

MR. KERR: Swalm?

MR. SWALM: Yes.

MR. KERR: Benefield?

MS. BENEFIELD: No.

MR. KERR: Mr. Chairman?

MR. CHAIRMAN: No. That motion fails on a vote of four yes and seven nos.

Committee Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. I move

amendment 47.

MR. SUMMERS: Second.

MR. CHAIRMAN: Second by Representative Summers. Representative Swalm.

MR. SWALM: Thank you, Mr. Chair, members. And, Nicole, I hope that if I make a mistake here in explaining what this does, you'll help us. But I believe basically this allows PERA to take advantage of the good year of returns that we've had during '09. And rather than increasing benefits to spend all the money that was generated by the good year that we had last year, we simply will keep that rather than allowing the COLA to stay at a higher level than what was done by the Senate.

MR. CHAIRMAN: Represent Swalm, would you like Ms. Meyers to come down?

MR. SWALM: That be great. I think that's what it does.

MS. MEYERS: Mr. Chairman, members of the committee, Nicole Meyers, representative of legal services. Mr. Chair, Represent Swalm, what the amendment does is affects the COLA provision of the bill. It modifies it -- it actually keeps the first year at zero percent as in the current bill. For the 2010 year, at zero percent, for 2011 it would be the lesser of one percent or inflation. And thereafter it would be the same as in the bill that you're (indiscernible).

MR. CHAIRMAN: Does Committee have any comments? Mr. Kerr, would you take the vote, please?

MR. KERR: Representative DelGrosso?

MR. DELGROSSO: Yes.

MR. KERR: Frangas?

MR. FRANGAS: No.

MR. KERR: Gerou?

MS. GEROU: Yes.

MR. KERR: Kagan?

MR. KAGAN: No.

MR. KERR: Kefalas?

MR. KEFALAS: No.

MR. KERR: Labuda?

MS. LABUDA: No.

MR. KERR: Roberts?

MS. ROBERTS: No.

MR. KERR: Summers?

MR. SUMMERS: Yes.

MR. KERR: Swalm.

MR. SWALM: Yes.

MR. KERR: Benefield?

MS. BENEFIELD: No.

MR. KERR: Mr. Chairman?

MR. CHAIRMAN: No. That motion fails on a vote of four yes, seven no. Representative Gerou.

MS. GEROU: Thank you, Mr. Chair. I move L049.

MR. SUMMERS: Second.

MR. CHAIRMAN: Second by Represent Summers. Representative Gerou.

MS. JURELLE: Thank you, Mr. Chair. This amendment just says that the notice to the members about potential plan changes, it requires that that notice be given annually. The hope is that it would give them more control in their lives.

MR. CHAIRMAN: Committee, any comments? Mr. Kerr.

MR. KERR: Representative DelGrosso?

MR. DELGROSSO: Yes.

MR. KERR: Frangas?

MR. FRANGAS: No.

MR. KERR: Gerou?

MS. GEROU: Yes.

MR. KERR: Kagan?

MR. KAGAN: I pass.

MR. KERR: Kefalas?

MR. KEFALAS: No.

MR. KERR: Labuda?

MS. LABUDA: No.

MR. KERR: Roberts?

MS. ROBERTS: Yes.

MR. KERR: Summers?

MR. SIMMERS: Yes.

MR. KERR: Swalm?

MR. SWALM: Yes.

MR. KERR: Kagan?

MR. KAGAN: No.

MR. KERR: Benefield?

MS. BENEFIELD: No.

MR. KERR: Mr. Chairman?

MR. CHAIRMAN: No. That motion fails on a vote of five yes, six no.

Representative DelGrosso.

MR. DELGROSSO: Yes, thank you, Mr. Chair. I actually move amendment 051.

MR. SUMMERS: Second.

MR. CHAIRMAN: Second by Representative Summers. Representative DelGrosso.

MR. DELGROSSO: Thank you, Mr. Chair. We heard some testimony out there from the school districts, in particular, you know, talking about a lot of the burden was going to be put on their shoulders.

And some of the testimony we heard was, "Well, I guess, that's just kind of the cost of business," but I didn't really hear talk on how exactly they were going to come up with that extra money. I mean, I understands it's the cost of doing business, but the money has to come from somewhere. And this is pretty hard for the school districts to bear a big brunt of this. And if we have downturns, they're obviously going to be struggling more than different years.

So this amendment pretty much says if the salary raises aren't enough to cover the SAED, then the SAED will be suspended for that year, so that won't be paid. So if the school district or the entity doesn't have enough to cover those raises, they can't put enough money in to cover those raises, then the SAED would be suspended for that year. So that just allows them a little bit of leeway. And this is a long-term bill. And so if there's a downturn for a year or whatever as far as revenue, then they're kind of off the hook for a year.

MR. CHAIRMAN: Mr. Kerr.

MR. KERR: Representative DelGrosso?

MR. DELGROSSO: Yes.

MR. KERR: Frangas?

MR. FRANGAS: No.

249

MR. KERR: Gerou?
MS. GEROU: Yes.
MR. KERR: Kagan?
MR. KEAGAN: No.
MR. KERR: Kefalas?
MR. KEFALAS: No.
MR. KERR: Labuda?
MS. LABUDA: No.
MR. KERR: Roberts?
MS. ROBERTS: No.
MR. KERR: Summers?
MR. SUMMERS: Yes.
MR. KERR: Swalm?
MR. SWALM: Yes.
MR. KERR: Benefield?
MS. BENEFIELD: No.
MR. KERR: Mr. Chairman?
MR. CHAIRMAN: No. That motion fails on a vote of four yes and seven nos.
Representative Swalm.
MR. SWALM: Thank you, Mr. Chair. I move 48.
MR. CHAIR: Second.
MR. SWALM: This simply says if a PERA retiree comes back into the plan and they're subject to the rules that apply to new hires.

250

MR. CHAIRMAN: I'm sorry, Representative Swalm. Number 48 is --
MR. SWALM: I believe that's what it does.
MR. CHAIRMAN: Ms. Hoffman?
MS. HOFFMAN: Thank you, Mr. Chair. Representative Swalm, what you said it not incorrect. And just to elaborate a little bit. This is regarding retirees who suspend their benefit and then return to work. Currently the bill specifies that their retirement or reduce their retirement will be calculated pursuant to the benefit structure that was in existence when they retired. This specifies that their new benefit will be calculated based on the benefit structure that's in existence for people that are newly hired when they retire.
MR. CHAIRMAN: Mr. Kerr.
MR. KERR: Representative DelGrosso?
MR. DELGROSSO: Yes.
MR. KERR: Frangas?
MR. FRANGAS: No.
MR. KERR: Gerou?
MS. GEROU: Yes.
MR. KERR: Kagan?
MR. KAGAN: No.
MR. KERR: Kefalas?

251

MR. KEFALAS: No.
MR. KERR: Labuda?
MS. LABUDA: No.
MR. KERR: Roberts?
MS. ROBERTS: No.
MR. KERR: Summers?
MR. SUMMERS: Yes.
MR. KERR: Swalm?
MR. SWALM: Yes.
MR. KERR: Benefield?
MS. BENEFIELD: No.
MR. KERR: Mr. Chairman?
MR. CHAIRMAN: No. That motion fails on a vote of four yes and seven nos.
Representative Swalm.
MR. SWALM: Thank you, Mr. Chair. I move Amendment 53.
MR. SUMMERS: Second.
MR. CHAIRMAN: Second by Representative Summers. Represent Swalm.
MR. SWALM: Thank you, Mr. Chair. Basically, this is an amendment that reflects the fact that we're all living longer. I understand it kind of changed the -- this would simply say that new hires with less than five years of service as of the date that the bill

252

comes into effect would be subject to the Rule of 90.
MR. CHAIRMAN: Mr. Kerr.
MR. KERR: Representative DelGrosso?
MR. DELGROSSO: No.
MR. KERR: Frangas?
MR. FRANGAS: No.
MR. KERR: Gerou?
MS. GEROU: Yes.
MR. KERR: Kagan?
MR. KAGAN: No.
MR. KERR: Kefalas?
MR. KEFALAS: No.
MR. KERR: Labuda?
MS. LABUDA: No.
MR. KERR: Roberts?
MS. ROBERTS: No.
MR. KERR: Summers?
MR. SUMMERS: Yes.
MR. KERR: Swalm?
MR. SWALM: Yes.
MR. KERR: Benefield?
MS. BENEFIELD: No.
MR. KERR: Mr. Chairman?
MR. CHAIRMAN: No. That motion fails on a vote of three yes and eight nos.

Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. Members, I move amendment 56.

MR. SUMMERS: Second.

MR. CHAIRMAN: Second by Representative Summers. Represent Swalm.

MR. SWALM: Members, this is actually an amendment that I can give my heart into because I think I understand it. It's simply an amendment that says if somebody joins the legislature, they can't become a member of the defined-benefit plan in that capacity. Because I believe that members of the legislature have a conflict of interest and how they go about making decisions without the defined-benefit plan. So I believe this one makes a lot of good sense. And I urge a yes vote.

MR. KERR: Representative DelGrosso?

MR. DELGROSSO: Yes.

MR. KERR: Frangas?

MR. FRANGAS: No.

MS. KERR: Gerou?

MS. GEROU: Absolutely, yes.

MR. KERR: Kagan?

MR. KAGAN: No.

MR. KERR: Kefalas?

MR. KEFALAS: No.

MR. KERR: Labuda?

MS. LABUDA: No.

MR. KERR: Roberts?

MS. ROBERTS: Yes.

MR. KERR: Summers?

MR. SUMMERS: Yes.

MR. KERR: Swalm?

MR. SWALM: Yes.

MR. KERR: Benefield?

MS. BENEFIELD: No.

MR. KERR: Mr. Chairman?

MR. CHAIRMAN: No. That motion fails on a vote of five yes and six nos.

The amendment phase is closed. The bill is on the table for action and the appropriate motion will be to the appropriations. Represent Benefield.

MS. BENEFIELD: Thank you, Mr. Chair. I move Senate Bill 001 come to the committee on appropriation with the favor of all recommendation.

MS. LABUDA: Second.

MR. CHAIRMAN: Second by Representative Labuda. Perhaps Representative Kerr will get back in time to give us a closing statement. But in the meantime, Committee, any comments? Representative

Frangas.

MR. FRANGAS: Thank you, Mr. Chair. I didn't know I was going to vote for this bill as it was moving forward. I became very, very inclined to vote for it and eventually felt like voting for it. One of the things that confirmed my choice tonight was Mr. Williams' statement -- basically, and I'm going to kind of consolidate it. But 2008 we're 50 percent funded, there was potential for no benefits and subsequently this equals actuarial necessity. So my vote yes in this regard is for this bill based on that assumption that we are in a point of actuarial necessary. So I'm there, and I'm a yes.

MR. CHAIRMAN: Representative Swalm.

MR. SWALM: Thank you, Mr. Chair. As I said earlier, this is a very complex issues. And even though I have some background in it, kind of a very rudimentary frankly, defined benefit plans are kind of a unique species out there. There's so few of them left.

I'm impressed by the fact that the PERA Board is willing to basically blaze new ground here and attempt to do something to cut -- I want to use the right term -- current benefits the COLA. I'm afraid we're getting ready for litigation here. And I want to

use the right language. So I'm impressed by that. I really am. Here's my concern. The old statement trial attorneys make, there's nothing so convincing as the opening argument and nothing so enlightening as the closing argument. And my concern is we had, I thought, very good testimony from the expert at the NCSL recently in this very room who came and talked about the situation in Alaska. And that caused a problem by shutting down the DEBTOR Plan and trying to switch over to a defined contribution plan.

And, yet, I respect Dr. Paulson. He's sort of like closing argument. And I don't feel like I've seen a sufficiently thorough explanation of is that a legitimate option? Has Alaska, in fact, been able to do that and actually flitter away at their unfunded liability by doing so. Well, I see heads out there shaking, but, again, I believe Dr. Paulson is a knowledgeable guy in this field as well. So that's my struggle here. So I've said enough.

MR. CHAIRMAN: Representative Roberts.

MS. ROBERTS: Thank you, Mr. Chair. I think this is such a big deal. And I know from the public meetings that we had down in the southwest corner of the state that people traveled a long way to come to those meetings. And we spent quite a bit of time listening to people go to the microphone. I remember the mood in August which was not jovial, but it was certainly not as somber as the meeting in October. And I will give Meredith Williams a lot of credit for when he came in August he had his flank of people, and then, in October it was Meredith and one other. And it was much more somber. And people were angry.

But at the same time, the magnitude of the problem that we face reminds me of a phrase that I've heard a lot in the past year or two that I personally reject which is things that are too big to fail. And to me, this is not something that we can allow to become too big to fail. And for that reason, I will be a yes vote.

MR. CHAIRMAN: Representative Kefalas.

MR. KEFALAS: Thank you, Mr. Chair. First of all, I just like to express my appreciation to my colleagues and to the staff and, of course, to the citizens who have spent the last six or seven hours with us. We're almost like family at this point.

But I don't mean to diminish that or make light of that. I think I am very appreciative of the folks being here and testifying and waiting and people traveling from Pueblo and Colorado Springs and Fort Collins and Greeley for that matter. We mustn't leave

out the folks from Greeley. So thank you for your participation in this.

I think what's become more clear to me once again, you know, we have no good choices, but these are very extraordinary times. And, you know, we have a fundamental responsibility as elected officials to take actions to make the best informed decisions that we know how. And that's what we need to do. That's part of our job description. So thank you all and I will be supporting this bill this evening.

MR. CHAIRMAN: Represent Gerou.

MS. GEROU: Thank you, Mr. Chair. Representative Kerr, thank you for sloughing through this and your slough is not over yet. I had a problem with the system and the process that we were going through from the very beginning. A year ago last January when PERA came and addressed the Joint Finance Committee and I kept looking for the dialogue. And I know that PERA feels like they were able to produce that. But I think this problem was so huge, I think that there should have been more dialogue. And the conversations that I had, although I did have a conversation with an individual and there was dialog, but I think there was a whole lot of opportunity to take the public through. I think buy-in was not

achieved. And if you don't achieve buy-in, if you don't get a group of people to understand what needs to be done, I think the process has failed in that respect.

It is a problem. It's a terrible problem and I'm not diminishing that. I think we're doing everyone a disservice by rushing something through if we think it's going to be going to litigation which the fact that it -- the conversation has been so clear tonight that everybody is assuming it's going to litigation. That, in itself, I can't support because I can't put the state of Colorado into that situation. That's very regrettable.

The people that sat here since, well, we're almost on seven hours that should be enjoying their retirement, but decided to come here and spend as much time because they are so very, very worried about what's happen to them -- I think they deserve better than this. When I was making the comment about Pinnacle versus this, there was so much more dialog during the Pinnacle process than there was during PERA. We had days and days and days of testimony. And so I think we've shut the voice of the people out.

In all due respect to our Chair, number one, I appreciate the fact that this is a far more civil

exchange than what we had a few weeks ago. I can't tell you I have any less strong feelings about tonight. I did not challenge the Chair on Representative Summers' amendment. I believe it does fit under the bill title because I think it does create a solution. And I think defined-contributions are a valuable tool. And we'll save that fight for another day.

But I've served on boards before and I felt that the board was doing something that was ethically wrong. I think what we're doing to the retirees in the State of Colorado is wrong. I think what we're doing to the taxpayers in the State of Colorado is wrong. If you have something that's broken, I don't think you put a broken solution on top of it. That's what I see this as being.

I can't vote for anything that I think is going to end up in litigation. It's just going to cost all of us a whole lot more headache and a whole lot more money. So I will be a no.

MR. CHAIRMAN: Representative Labuda.

MR. LABUDA: Thank you, Mr. Chair. And I want to thank everybody who came here and testified tonight. When I first got briefed on PERA by this last year, I think I saw immediately the problem even though I may not have understood all the ins and outs of it.

And since then, I've attended many homeowners association meetings in my district and my House District 1 meeting. And I'd ask each time how many of you are involved with PERA. And over half the people would usually raise their hands. And I would give a brief description of what I had learned about PERA and the distinct possibility of running out of money.

And I never got a second question from any of my constituents. They all sat there somberly. Some of them came and talked with me afterwards and they all understood. Based on that, I know I'm representing my constituents when I say I'm going to vote for this bill because I don't see any other way out of the problem that we're facing now.

MR. CHAIRMAN: Representative Kagan.

MR. KAGAN: Thank you, Mr. Chairman. I'd like to thank everybody who has devoted time and effort and energy to solving this problem. Those who opposed this solution and those who support it, I give my respect to all of you.

I think the easiest thing to do when there is a financial problem approaching is to ignore it, pretend it's not there, bury your head in the sand and let future legislators or future retirees or future PERA active employees deal with it. That's the easier

thing to do. Just let people worry about it five years from now because we could limp through for another five, ten, -- who knows how long -- without doing anything. That would be the easiest thing to do. That's what I think other states have been doing.

What is much harder to do is to say to recognize the problem and deal with it. That takes, in my opinion, courage. It takes foresight, and it takes sacrifice. Now, I don't mean to disparage those who think this is not necessary, particularly with regard to the increase in benefits is not going to occur if this goes thorough and process a legislative challenge, legal challenge in the courts. But I think this is an act of courage and foresight and wisdom. And I think future retirees, future generations of retirees will look back on 2010 and be glad of the efforts that have been undertaken here today. And so I'm going to vote yes for the bill.

MR. CHAIRMAN: Representative Kerr, was there another comment? Represent DelGrosso?

MR. DELGROSSO: Thank you, Mr. Chair. I also want to thank everybody that come here tonight. I know it's a hot issue with folks on both sides. And it's great to see everybody come down here. I want to thank Representative Kerr. I think you did a great job

tonight, and I saw you were very cordial to folks on both sides of aisle there as far as supporting it or not supporting it. I think you did a great job on that. So I want to applaud you that tonight as well.

My problems with the bill is I think -- we've been hearing this last couple weeks battling through a bunch of other bills. You know, schools need money, schools are hurting. We're losing teachers. We're having to lay off teachers, whatever it is. And I think this does put a huge burden on the school districts. And as I said a couple of minutes ago, well, it's the cost of doing business. We'll figure it out. Well, to me that's a tough thing to do. We'll just figure it out. Well, to me, I don't see how they're gonna get the money. I don't see where they're gonna come up with the money.

Potentially, we don't know what the economy is going to do. It can get worse. And if it gets worse and then surprise your funding is lower and on top of your funding being lower, you're gonna have to come up with another .4 percent and so on and so forth. And then, it's just going to be a bigger mess than where it's out. Is PERA in bad shape> Absolutely. I mean, these guys have a tough job. I mean, they've laid out a big case. I mean, there's no argument on

whether or not that it's in bad shape. But I think putting a huge burden on the school districts is pretty tough for me to support.

The COLA thing, I also have a problem with that as well. Whether you like the high COLA or not, quite frankly I feel that some folks out there they entered into a contract with PERA that said, look, we played by the rules. We invested our money, we paid our time. When we were retire, we kind of expect to get back out of it what we put into it as far as honoring that contract. And that's tough for me to look at them and say, all right, we're gonna break that contract. So because of those couple of issues, I'll be a no.

MR. CHAIRMAN: Representative Kerr, you were out of the room when I would normally ask the sponsor to offer any closing words if you have any. So if you would like to do that.

MR. KERR: Thank you, Mr. Chair, I would. And if I could indulge the committee for a brief wrap up. Ninety percent of the time I was across the street, I was listening to someone else's wrap up, so I'll try to be briefer than that.

I would like to touch on a couple of points and certainly thank each and every one of the members on the committee. I know, not just from today, but this committee has been through a lot the last few weeks. And I really appreciate your patience. And I'd also like to thank the folks who came in and testified, whether they were testifying on behalf of themselves or behalf of somebody else who couldn't be here, especially the people who were testifying on behalf of large groups of people that could not all be here. But I'm sure some are still listening at home.

Representative DelGrosso, you said that you wanted to thank both sides of this complex issue. I'd just like to point out there really aren't two sides to this. There are maybe four or five different perspectives. And, you know, it is very complex. And this is one of those cases where it doesn't simply fall down. It's not a black or white issue. I think we certainly heard that from the testimony today. And I'd also really like to point out that I don't believe that this is a partisan issue and that there might be some issues within the broader issue that could possible break down along partisan lines. But I think the idea that we need to fix this and fix this soon. It's certainly not a partisan issue.

Looking at this question of legality, of will this be taken to court, I don't think that's a

question. I think we heard loud and clear that somebody will take this to court. I'd like to point out that there are many people who believe that if PERA and the legislature don't act to fix the problem right now, that PERA and the legislature should be taken to court, as well, for not fixing the problem. So I don't think that's necessarily a black or white issue.

The PERA board and the people who work for PERA do have a sworn fiduciary duty as do we of oversight of that. And being the legislature, people cannot tell us what is legal or not on the basis that we're the legislature, we do make the laws.

Every law that we make is subject to court challenges. And, in fact, many of the laws that we have all made have almost immediately gone to court challenge. We do have three branches of government and we're the branch that makes the laws. And that's what our job is at this time.

Along the issue of whether or not this process had been as open and complete as it could be, I'd just like to remind everybody about the Board of Trustees. The PERA Board, that includes by law 11 members elected by the respected divisions that serve four-year terms. There are three members appointed by the governor, approved by the State Senate. The State

Treasure serves as an ex-officio member.

These board members are elected by us when we receive our mail ballots in the mail as a PERA employee. We vote for these board members. These board members represent the different divisions. They also represent retired members who are receiving benefits. Obviously, the state treasurer is a member of the board, as well. This board has a wealth of experience and this board has the duty to guide the PERA system in being the strongest pension plan that it possibly can be.

So along with that -- and I look back at the time line of the development for this legislative proposal. And I look back starting in April 16th and 17th board meeting, May 29th board meeting, June 18th and 19th board meeting, July 23rd and 24th board meeting, September 16th, 17th, 18th board meeting, board meeting October 15th, 16th, but beyond all of those dates of board meetings and knowing that much other conversation is going on as well, I just point out what the very first thing on the agenda of each of those board meetings is. Public comment. Public comment, etcetera.

This has been an open conversation throughout this entire process with full public comment. We've

heard from a number of people tonight along those lines. Is this ethically wrong? I stipulate that I certainly know for myself that I wouldn't be carrying a bill that I had any ethical or moral problems with thinking that it was right to do. I think that there's some of the comments, I think, from Representative Kagan about the courage it's going to take this body to actually step forward and take a risk. Are we taking a risk? Absolutely. But to do nothing, I believe, is a greater risk.

We talk about being faced with a challenge, that deer that's in the middle of the highway and we've all heard the saying about with headlights in deer's eyes. But what happens to that deer if it doesn't move and do something.

With that, I would ask for your favorable recommendation of Senate Bill 001.

MR. CHAIRMAN: Represent Kerr, thank you for bringing Senate Bill 001. To the PERA Board, I want to thank you for putting in the great effort as a volunteer board to deal with an extremely difficult situation. Ms. Hoffman, I can see there's -- and Ms, Meyers -- a great deal of drafting down here. Thank you for that.

For all of you who have come in tonight and I think on many other occasions when PERA has asked you to come in and comment, I want to thank you for your participation as well.

This is a complex bill, but, ultimately, I think the bill stands as something pretty straight forward. I think most of the people who have come here tonight were here because of the change in the COLA. There's many other complex parts to the bill, but that's moneywise the biggest part of the bill and I think that's the main reason that the people wanted to comment on this.

Fundamentally, we have two choices. We can let PERA wither away and the rejections are pretty straight forward that we've got 24, 25, 26 years before PERA runs out of money or we can take action. And really COLA is the really big money option that we have that actually changes the outcome down the road. It doesn't make it any easier for anybody in the room to except that and I don't expect you to be happy about that. But that's where the money is. So that's what we've got to deal with.

Ten years ago when legislation and the governor created a three and a half percent increase in benefits, you know, it seemed like a good idea at the moment. Since then we've gone through two recessions,

the most recent one being basically the worst one we've seen since the Great Depression. We had a tremendous collapse in the stock market. And we certainly don't have the capacity to sustain that increase in benefits any further.

We're looking at March 1 date and that's the next date to be paid out an increase in benefits. And that's the reason we're acting -- why we're here at 8:30 at night the way we are. We said we have to stop some of the bleeding. We have to put some of that money to work. And that's the only way we could change that outcome and chose the ability to pay out benefits, like they say, 25, 26 years in the future. So I'm voting yes. Mr. Kerr.

MR. KERR: Representative DelGrosso?
MR. DELGROSSO: No.
MR. FRANGAS: Yes.
MR. KERR: Gerou?
MS. GEROU: No.
MR. KERR: Kagan?
MR. KEAGAN: Yes.
MR. KERR: Kefalas?
MR. KEFALAS: Yes.
MR. KERR: Labuda?
MS. LEBUTA: Yes.

MR. KERR: Roberts?
MS. ROBERTS: Yes.
MR. KERR: Summers?
MR. SIMMERS: Yes.
MR. KERR: Swalm?
MR. SWALM: For now, no.
MR. KERR: Benefield?
MS. BENEFIELD: Yes.
MR. KERR: Mr. Chairman?
MR. CHAIRMAN: Yes. That motion passes eight to three. We are adjourned.

(Meeting concluded)

STATE OF COLORADO)
) ss. CERTIFICATE
COUNTY OF DENVER)

I, Christopher Boone, Certified Electronic Court Reporter and Notary Public within and for the State of Colorado, certify that the foregoing is a correct transcription from the digital recording of the proceedings in the above-entitled matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially or otherwise interested in the outcome of the action.

In witness whereof, I have affixed my signature and seal this 21st day of June, 2010.

My commission expires August 16, 2010.

____

Christopher Boone,
AAERT Certified Electronic Court Reporter