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Nebraska Retirement Systems Committee
February 13, 2017

[LB532]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Monday, February 13, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB532. Senators present: Mark Kolterman, Chairperson; Brett Lindstrom, Vice Chairperson; Kate Bolz; and Rick Kolowski. Senators absent: Mike Groene and John Stinner.

SENATOR KOLTERMAN: We do have a quorum walking into the room. We're going to get started. My name is Mark Kolterman. I represent Seward in the 24th District, York and Polk Counties. My committee members are from my left:

SENATOR LINDSTROM: Senator Brett Lindstrom, District 18, northwest Omaha.

SENATOR KOLTERMAN: And my far right:

SENATOR BOLZ: (Laugh) Senator Kate Bolz, District 29, south-central Lincoln.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31, southwest Omaha.

SENATOR KOLTERMAN: Senator Stinner I think went to Exec, probably be here in a little bit. And Senator Groene indicated he was coming so he might be walking in. We have Kate Allen, legislative counsel; and Katie Quintero is our clerk; and Bobby is back. He's a stalwart. We're here today for LB532. If you would, please turn off your cell phones. Those wishing to testify, please come to the front, have your sheets ready to go and hand them to the clerk. If you want to just leave a letter of support or opposition or neutral, you can do that by filling out the white copy. I'm not going to Chair the meeting because it's my bill. Senator Lindstrom, you're going to think that you're chairing this committee (laugh).

SENATOR LINDSTROM: All right. We'll now open the hearing on LB532. Chairman Kolterman, whenever you're ready. [LB532]

SENATOR KOLTERMAN: Thank you very much. LB532, beginning on the effective date of the act, the state is liable for funding any obligation of the judges and patrol retirement plans for a judge or patrol plan member who is reemployed pursuant to the Uniformed Services Employment and Reemployment Rights Act, otherwise known as USERRA. The bill requires the state, as the employer, to pay the retirement system the sum of the member and employer contributions that would have been paid during such period of military service and any actuarial

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February 13, 2017

costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. The funds will be deposited in the plan assets and accounts in a manner consistent with state law, USERRA, and the federal Internal Revenue Code. Beginning on the effective date of the act, the school district is liable for funding in any obligation to the School Employees Retirement Plan for a member who is reemployed pursuant to USERRA. The bill requires that the school districts, as member employers, to pay to the retirement system the sum of the member and employer contributions that would have been paid during such period of military service and any actuarial costs necessary to fund the obligation of the plan, to provide benefits based upon such period of military service. The funds will be deposited in the plan assets and accounts in a manner consistent with state law, USERRA, and the federal Internal Revenue Code. Beginning January 1, 2018, the state is liable for funding any obligation to the State Employees Retirement Plan for a member who was reemployed pursuant to USERRA. The bill requires the state, as the employer, to pay to the retirement system the sum of the member and employer contributions that would have been paid during such a period of military service and any actuarial costs necessary to fund the obligation of the plan, to provide benefits based upon such period of military service. The funds will be deposited in the plan assets and accounts in a manner consistent with state law, USERRA, and the federal Internal Revenue Code. And beginning January 1, 2018, the county is liable for funding any obligation of the County Employees Retirement Plan for a member who was reemployed pursuant to USERRA in order to provide benefits based upon the period of military service provided under such act. The bill requires the county, as the employer, to pay the Retirement System the sum of the member and employer contributions that would have been paid during such period of military service and any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. The funds will be deposited in the plan assets and accounts in a manner consistent with state law, USERRA, and the federal Internal Revenue Code. The Public Employees Retirement Board may promulgate regulations which include notification requirements for the employee and employer regarding the period of military service provided, acceptable methods of payment to the retirement plan, amount of the contributions based on determination of compensation, and documentation required to establish reemployment under USERRA. Under LB532, the employer funding liability applies only to military service that falls under the definition of uniformed service under USERRA and does not apply to service provided pursuant to the military code codified at Chapter 55-101 through 55-181. I have an amendment, AM252, which is in your notebook that simply clarifies that the military code is a code that appears at 55-101 to 55-181 in Nebraska statutes. This amendment does not change the intent. It is there for clarification purposes only. This is a bill we were going to bring originally last year, in fact, I think it was in part of the negotiations that were going on between some of the plans. We decided we needed to get this clarified and get this cleaned up so when somebody gets called up for military duty with our National Guard, this really just gives them the protection to know that we're going to continue to make their payments when they get deployed. What we're talking about with the amendment is we are not intending to cover them while they are called to duty in

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February 13, 2017

the state of Nebraska for things like floods or fires and things of that nature. So this is a clarification. It's something that needs to be spelled out in statute, and we've done it for all five of the plans. I would entertain any questions you might have. [LB532]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Any questions from the committee? Senator Kolowski. [LB532]

SENATOR KOLOWSKI: Just...thank you, Mr. Chairman. Just for clarification, Senator, the impact is upon county workers, judges, school employees, State Patrol, and the state plan is what, that last? [LB532]

SENATOR KOLTERMAN: It's all of them. It's all five of them, Senator. [LB532]

SENATOR KOLOWSKI: All taken together. [LB532]

SENATOR KOLTERMAN: Yes. One of the reasons we're cleaning this up is because there's been so much dysfunction. Some of the organizations were doing this, some were not. Some school districts were doing it, some were not. We're just trying to get clarification according to the law. And I think there will be some people that can answer that for you. We're trying to put this into place to make sure that those that are serving us while deployed get the protections they need to help them continue to fund their retirement plans. [LB532]

SENATOR KOLOWSKI: Okay, thank you. [LB532]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you, Senator Kolterman. We will now entertain proponents. [LB532]

JASON HAYES: Good afternoon, Vice Chairman Lindstrom and members of the Retirement Committee. My name is Jason Hayes, J-a-s-o-n H-a-y-e-s. I represent the Nebraska State Education Association. The association supports LB532 and thanks Senator Kolterman for introducing the bill. The bill helps ensure that those teachers who are called up for military service leave are not further burdened when it comes to their retirement contributions upon their return. We would appreciate your consideration of the bill, and I thank you for your time. [LB532]

SENATOR LINDSTROM: Thank you, Mr. Hayes. Any questions from the committee? Seeing none, thank you very much. [LB532]

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Nebraska Retirement Systems Committee
February 13, 2017

JASON HAYES: Thank you. [LB532]

SENATOR LINDSTROM: Other proponents. Seeing none, we'll now move to opponents. Seeing none, we will now move to neutral testimony. [LB532]

ORRON HILL: (Exhibit 1) Good afternoon, Chairperson Kolterman, Vice Chairperson Lindstrom, the Retirement System Committee members. My name is Orron Hill, O-r-r-o-n H-i-l-l. I'm the legal counsel for the Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems. I'm here under the direction of the PERB to testify on LB532 in a neutral capacity. The bill clarifies the language of the military service provisions of the five retirement plans managed by the PERB and NPERS. The PERB and NPERS thank you for taking on this task to ensure that the provisions of the law are clearly articulated and drafted. This bill also addresses a significant public policy question. As a board and state agency, we defer to state policymakers on setting the policy for the state. Finally, we received several phone calls questioning what was meant by the term "Military Code." As Senator Kolterman has explained, we understand the term to mean Nebraska Revised Statute Sections 55-101 to 55-181 as outlined in that provision. Subject to your questions, that will conclude my testimony. [LB532]

SENATOR LINDSTROM: Thank you, Mr. Hill. Any questions from the committee? Senator Bolz. [LB532]

SENATOR BOLZ: Thank you. Forgive me if I just haven't had time to observe it yet, but does the employee have to state their intent for reemployment after their military service in order for the pieces to fall into place? [LB532]

ORRON HILL: Under the federal USERRA act, a person actually has to fully reemploy. It's not a matter of just stating their intent. They actually have to reemploy to be guaranteed these protections under USERRA. The state law mirrors that language and requires them to reemploy in order to receive this compensation. [LB532]

SENATOR BOLZ: So from a...I guess from a cash flow perspective would this result in unplanned for expenses if you don't know whether or not a number of employees are going to become reemployed after military service? [LB532]

ORRON HILL: That's an excellent question, Senator. It's hard to predict when military service is going to happen and so that is one of the things that will be a factor that all of the employers covered by our plans will need to pay attention to. One thing to keep in mind is that had the

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Transcriber's Office

Nebraska Retirement Systems Committee
February 13, 2017

person not deployed the employer still would have had to have paid all the employer contributions as that money had come in normally under the normal protocol. So the only thing that would be different under this bill is that they're making the employee match. Under USERRA, it requires the employers to fund any obligation of the plan to provide the benefits; and that's been the law since 1994 at the federal level. And then when they amended our plans in 1996, that's also been the standard to which we have held is that that obligation has to be funded. So in a certain extent it's one that everybody knows is out there but has a hard time predicting because we just don't know when our men and women are going to be called up to serve under our nation's authority. As an example, you know, over the last 15 years the deployments were significantly increased and significantly different than the prior 20 years to that. It just depends on what's going on in our world affairs. [LB532]

SENATOR BOLZ: Okay. Thank you. [LB532]

SENATOR LINDSTROM: Thank you. Senator Kolowski. [LB532]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Orron, just to...have there ever been any kind of reverse discrimination kind of cases where a young person would be maybe serving in the Guard or the Reserves or something of that nature, and have any cases ever come to you or that you know about that someone would say we're not going to hire you because we may be missing you? You may be pulled up into call up. Would you speak to that just a little? I'm just curious. [LB532]

ORRON HILL: Certainly, Senator. Before I came to work for the PERB and NPERS, I was one of the two full-time attorneys for the Nebraska National Guard. Under USERRA's protocols, it actually prohibits that sort of discrimination under the federal law. [LB532]

SENATOR KOLOWSKI: Sure. [LB532]

ORRON HILL: Individuals cannot take military service as a detrimental factor when deciding whether or not to hire an individual. Also an individual can't be fired. They're actually protected from discharge under certain protocols, generally all but for cause separations upon their return so an employer can't underhandedly fire somebody because of their military service. So if that's kind of what you're asking about, there have been cases. One specific case which I'm very aware of is one of my judge advocate general military lawyer classmates was at JAG school with me. When he returned, his employer decided that they weren't going to bring him back because of his military service. He ended up litigating that case and winning and the court awarded him triple damages for his lost salary during that period of time as well as attorney's fees to cover his costs for having to litigate the matter. So there are cases out there where that has been looked at

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Transcriber's Office

Nebraska Retirement Systems Committee
February 13, 2017

specifically by various courts. That was not in the Nebraska courts. It was out East, but as an example, Senator. [LB532]

SENATOR KOLOWSKI: Thank you. I just wondered what the climate is like out there when you have people that are serving our country but also having difficulty with their jobs when they come back. Thank you. [LB532]

ORRON HILL: You're welcome. [LB532]

SENATOR LINDSTROM: Any final questions? Seeing none, thank you, Mr. Hill. [LB532]

ORRON HILL: Thank you. [LB532]

SENATOR LINDSTROM: (Exhibit 2) Other neutral testifiers? Seeing none, I do have a letter of support from Mr. Jeff Baker with Nebraska Veterans Council, letter of support there. And, Senator Kolterman, whenever you're ready to close. [LB532]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. So why are we here today? What prompted all this? As you know, over the years as Orron had indicated, if you go back 20 years we didn't have a problem with military leave. In recent years, it's gotten...our weekend warriors, our Reservists have gotten more involved. Several years ago the state appropriated half a million dollars to help fund this plan through the appropriation process. It just showed us that there potentially is a need right now. And if we're going to have to deal with it, let's make sure we're dealing with it on an equal footing for all five of our plans. So that's why it's here today. I don't believe from a fiscal perspective we can guess because we don't know. I mean, there's some estimates on a fiscal note. But by the same token, if we get out of some of these skirmishes and wars and things like that, maybe we won't need this or the cost will go down significantly. Let's hope that that's the case. But if we do need it, we need to budget for it. We need to include it and that's why we're here. So with that, I would again try to answer any questions you might have. [LB532]

SENATOR LINDSTROM: Thank you, Senator Kolterman. Senator Kolowski. [LB532]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Do you know if the numbers are, Senator, as far as how many involved in our state in all five of the plans total? [LB532]

SENATOR KOLTERMAN: Not total numbers. I know that the largest has been the State Patrol and I believe 24, somewhere in that neighborhood comes to mind, over the last...they're the

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Transcriber's Office

Nebraska Retirement Systems Committee
February 13, 2017

biggest utilizers. I think the reason we don't have the cities and the counties and the state here in opposition is because it's pretty minimal on their part. And the teachers obviously support it. It's mostly the State Patrol. And I believe as we've looked through this over the last couple of years there's 24 that were in question. And I think most of that's been funded, might be a few more than that. We're not talking huge numbers, Senator. [LB532]

SENATOR KOLOWSKI: Thank you, just curious. [LB532]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you, Senator Kolterman. [LB532]

SENATOR KOLTERMAN: Thank you. [LB532]

SENATOR LINDSTROM: And that will close the hearing on LB532. [LB532]