

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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EXECUTIVE BOARD
February 10, 2006
LB 1141, 939, 956

The Executive Board met at 12:00 noon on Friday, February 10, 2006, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1141, LB 939, and LB 956. Senators present: Pat Engel, Chairperson; Jim Cudaback, Vice Chairperson; Chris Beutler; Kermit Brashear; Ernie Chambers; Philip Erdman; Vickie McDonald; Arnie Stuthman; Nancy Thompson; and Don Pederson. Senators absent: None. Also present: Senator Stuhr, Senator Foley, Senator Schimek, Carol Kontor, Janice Satra.

SENATOR ENGEL: (Recorder malfunction) ...isn't here yet, but I think we'll go ahead and start. So good afternoon, ladies and gentlemen, and welcome to the public hearing of the Executive Board of the Legislative Council. First I'd like to introduce the members and staff. On my right is legal counsel, Janice Satra; then we have Senator Jim Cudaback from...he's Vice Chair from Riverdale; and Senator Chambers isn't here yet; and we have our Speaker, Senator Kermit Brashear, from Omaha; and Senator Phil Erdman from Bayard; on my left is...who? Beth Otto, been with me for ten years (laughter), and she's our committee clerk; I do this to her every time, just got to get her attention; and next we have Vickie McDonald from St. Paul; Senator Arnie Stuthman from Platte Center; and Senator Nancy Thompson from La Vista. And since these proceedings are recorded, we ask if you have your cell phones on, please turn them off. And first we'll hear testimony from the introducer, followed by those in favor of the bill considered, and testimony in opposition, and then neutral testimony. I'd like to limit the introducer to five minutes, if we could, and all the rest to three minutes. Of course we can vary that if necessary. We welcome anyone to testify if you have something to add. Appreciate you not repeating what's already been said, because we're good listeners and I think we all can digest what we've already heard. So if you would...I'd appreciate that. There are sign-in sheets available at the testifier table, so if you fill that out completely before you come up and...because they'll need that for when they transcribe the session here. And if you have printed materials, please pass those out. We'll need 15 copies. If you don't have the 15 copies with you, we can have those made by our worthy page over here. So the first

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bill today is LB 1141. It will be presented by Senator Stuhr. You may proceed.

LB 1141

SENATOR STUHR: Good afternoon, Senator Engel and members of the Executive Committee. For the record, my name is Elaine Stuhr, S-t-u-h-r, and I represent the 24th Legislative District. And as Chair of the Nebraska Retirement Systems, I am here to introduce LB 1141. This bill would rename and change the membership and duties of the Retirement Committee. First, the bill proposes to change the name of the committee from the current Nebraska Retirement Systems Committee to the Public Retirement and Investment Committee. The bill also includes language stating that the committee shall study any legislative proposal, bill or amendment affecting public investments authorized by the Nebraska Investment Council. The reason for these changes is to more accurately reflect the present duties of the committee. Bills concerning the Nebraska Investment Council are currently referenced to the Retirement Committee. The committee holds confirmation hearings for the members of the Investment Council and the council is required by statute 72-1243 (3) to submit to the committee an annual report of the committee...of the council's investment strategies and the composition of its portfolio. Since the Retirement Committee reviews the manner in which retirement funds are invested, it makes logical sense for such bills to go to the same committee that has some expertise on the subjects concerning investment and portfolio strategies. For example, it's my understanding, and I have served on the Education Committee, that the College Savings Plan and the investment of the plans assets have been previously referred to the Education Committee. I believe it would be more appropriate to have bills involving the investment of public funds directed to a single committee such as the Retirement and Investment Committee. And I believe there are also some bills that are previously...or that are presently referred to the Banking Committee that have to do with investment. LB 1141 would also eliminate a specific reference to the committee having a set number of members in statute. Because the legislators...Legislature's rules were changed at the beginning of this session, and that change expanded the committee's membership from six to eight, the bill

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removes any reference to a specific number of members in order to harmonize with the rule change. Finally, the bill permits the chair of the Appropriations Committee to designate a senator to sit on the committee in his or her place, if the Appropriations Committee's chair so desires. This change provides additional flexibility, particularly if it is problematic for the Appropriations chair to sit on the Retirement Committee given that committee chair's scheduling. The issue as to whether the Appropriations chair should sit on the Retirement Committee was one that was discussed in much detail in the Rules Committee. One of the reasons why the Appropriations chair was put on the committee is because Senator Warner believed it was crucial to have someone on the Retirement Committee who had a long-term vision of how state funds were to be spent and believed that the chair of the Appropriations Committee was the proper person to provide this insight. I do appreciate your time in reviewing these issues affecting the Retirement Committee. I believe that the proposed changes are appropriate given the current duties of the committee. And I just want to leave with you one final thought. In 1989, the Legislature voted to put the Retirement Committee structure and duties into statute as a standing committee. And we were just quoting from Senator Warner who stated on the floor at that time that retirement is unique, it affects a whole host of people and is an obligation which extends far beyond any other entitlement program. I believe it is important that this committee language remain in statute in order to safeguard the current process of handling retirement issues. So I ask for your support for the changes that have been proposed. Thank you.

SENATOR ENGEL: Thank you, Senator Stuhr. Are there any questions? Senator Pederson.

SENATOR D. PEDERSON: The reference to the chair of the Appropriations Committee having the opportunity or the privilege of designating, I think it's very important because my experience has been that it's tough to be the chair of the Appropriations Committee and try and be on the...on this, and specifically if it's given a day to do these things, it's very difficult for the chair to not be in the Appropriations Committee. So I think the designation is okay for the chair to be able to cause a designee. But I think there's appropriate concern about the Appropriations

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Committee per se having an interest in what goes on in the Retirement, because it's probably dealing with the most amount of money of any entity within our state government. So I would suggest that in order to retain the tie-in that that be modified by an amendment the essence of which would be that the designee of the chair...by the chair of the Appropriations Committee be, not just a senator, but another member of the Appropriations Committee, and that would give a continued tie-in to where the Appropriations Committee, through that designee, could stay tuned in and keep the chair informed. So I would suggest that. I don't think I have the authority.

SENATOR ENGEL: Thank you.

SENATOR D. PEDERSON: I'm supposed to be a listening bird in here, so...I'm just...

SENATOR ENGEL: Pardon?

SENATOR D. PEDERSON: I'm supposed to be a listening bird in here...

SENATOR ENGEL: No, no, you're...you're...

SENATOR D. PEDERSON: ...so I'm just expressing what I've seen is a concern.

SENATOR ENGEL: ...that's your...yeah, right. Well, we can certainly... Any other questions of Senator Stuhr? Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Engel. The one concern that I have, and I've discussed this with Senator Stuhr, is the name change, you know the Public Retirement and Investment Committee. Investment Committee, to me, the perception is that committee is the one that's doing the investment. I think this committee would be the investment oversight, the oversight of the investments; but maybe it should be a financial committee. I don't...I don't like the word "investment" in the name of the committee, because I don't...unless I'm totally wrong, this committee does not invest the money, does it?

SENATOR STUHR: No, no.

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SENATOR STUTHMAN: Okay, so you know that...that's the concern that I have.

SENATOR ENGEL: Would you like to respond to that, Senator Stuhr?

SENATOR STUHR: Well, you know, if you can think of another term that might be more appropriate, working with the Investment Council, I mean, you're correct in that's what we're doing. If they have legislation that needs to be addressed, we address it in our committee. You know, if you can think of a term that is more appropriate I believe we just...we do serve as an oversight committee for retirement and then it would also be just, you know, for investment in that regard.

SENATOR STUTHMAN: It's just a concern that I had, you know, perception is it's the investment committee, you know, Retirement and Investment Committee. And in my belief it would be...that committee would be the one that would be doing the investment. Realistically, it's investment oversight. Maybe it should be the Financial Committee, or if there's another word. There are members on this committee that are far more intelligent than I am that could come up with something.

SENATOR ENGEL: I don't know where you'd find anybody like that, but.... Senator McDonald.

SENATOR McDONALD: When Elaine came to me this morning I also had that same connotation of the committee change of name, that investment to me meant that they invested the retirement dollars. And because that is not the focus of the committee, I'm not sure that investment is the right word. I also mentioned to you (inaudible) and maybe financial. But I think a name change is a good idea, and I think everything else in the bill is correct, except maybe we need to fine-tune that name change. But I think it's very important we look at that.

SENATOR STUHR: And I would certainly be open to any suggestions you might have. As you understand just...I'm bringing the issue because I believe that is the area that we have been working with, the Investment Council. So...and

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if I could respond to Senator Pederson. It certainly was our intention that there always...that that designee would probably be someone from the Appropriations Committee. So if you feel that language needs to be clarified, I would certainly be open to that.

SENATOR THOMPSON: Could you tell me how you think that would work? I mean if, for example, I'm one the Appropriations Committee, I'm designated, would I skip the Appropriations Committee hearings to go to your hearings? I mean I don't...

SENATOR STUHR: I...

SENATOR THOMPSON: Is that what you're thinking?

SENATOR STUHR: May I respond?

SENATOR THOMPSON: Yeah.

SENATOR STUHR: I believe that that would probably for the one afternoon, you know, that the committee meets, and whether it would be for the entire, I don't know how long the Appropriations Committee, you know, generally meets, if it's 1:30 to 5. I would not assume that...

SENATOR D. PEDERSON: Or later.

SENATOR STUHR: ...on those days, you know,...but that's why we felt it was important. Right now in statute it does say the Appropriations chair, but we feel there should be that connection, and however that might be addressed. I know that the hearing schedules do not last as long as probably the Appropriations Committee continues to meet, I assume, after the hearing session ends. So that person would still be able to continue, you know, their work on the Appropriations Committee.

SENATOR THOMPSON: Do you agree at all that there's a fairness to, you know, we miss certain periods because we have bills up in other committees and other things that come up, but that one member of the committee wouldn't have the information that the rest of Appropriations...I mean, I think it's a balancing of whether that's fair to that committee member or fair to the people who are coming

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(inaudible) and have to miss every one day a week of their hearings.

SENATOR STUHR: I'm hoping that it could be worked out, because I just think it's still very important and I think the past legislators have felt it was important that that connection somehow be there. Right now we do have three members of the Appropriations Committee serving on the Retirement Committee. So we, you know, we do have more than the one member that, you know, would be required.

SENATOR ENGEL: Senator Pederson, would you like to respond to that?

SENATOR D. PEDERSON: Well I think that there needs to be the tie-in, as I said, and it wouldn't necessarily have to be the same person each time that's sentenced to serving on the Retirement Committee for that day. (Laughter)

SENATOR STUHR: Could I respond to that?

SENATOR ENGEL: Um-hum.

SENATOR STUHR: I...personally, I think it would be important to have the same member just for that continuity and because of the depth of, you know, the issues that we get into it would be difficult.

SENATOR D. PEDERSON: But there are times, frankly, within the Appropriations Committee that there are...there would be need for that particular person to be at the Appropriations Committee. And so I think if you just said a member of the Appropriations Committee, be one of those people, I think that could be worked out in detail. But it's important to have a continued...just a continuity of knowledge or awareness of what goes on in the retirement.

SENATOR STUHR: Okay. Right.

SENATOR ENGEL: Are there any other questions of Senator Stuhr? If not, thank you very much. And you going to stick around for closing then?

SENATOR STUHR: Thank you. I can, yes.

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SENATOR ENGEL: Okay, fine. Thank you. Are there any other proponents? If you'd identify yourself and spell your name for us, too please. Thank you.

CAROL KONTOR: Senator Engel and members of the Executive Board, my name is Carol Kontor, C-a-r-o-l K-o-n-t-o-r, and I'm State Investment Officer and here on behalf of the Nebraska Investment Council. The Nebraska Investment Council is responsible for the investments of currently approximately \$11 billion, two-thirds of which are assets for the retirement plans--the schools, judges, State Patrol, state and county employees. The remaining one-third of the assets are as follows--there's about \$2 billion in what we call the Operating Investment Pool, that's the assets for the state agencies and General Fund; there's a little over a billion dollars in college savings plan; and there's about .7 billion in various endowments and trusts. Clearly, the Nebraska Retirement Systems Committee provides oversight for the investments of the retirement assets and any related legislation. It has been less clear as to which legislative committee provides oversight for that other one-third. The Nebraska Investment Council, we had a meeting on February 6; we discussed LB 1141, think that it is good law and therefore support its passage. And with that, I'd be happy to answer any questions.

SENATOR ENGEL: Any questions? Senator Chambers.

SENATOR CHAMBERS: Who actually handles the investing of Nebraska funds?

CAROL KONTOR: Which funds do you mean?

SENATOR CHAMBERS: Any of them. Do you have investment managers, or companies, or hire somebody to do the investing?

CAROL KONTOR: Yes, yes. We...there are different portfolios because of different investment objectives.

SENATOR CHAMBERS: Sure.

CAROL KONTOR: The retirement...the defined benefit plans, the school, the judges, the State Patrol...

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SENATOR CHAMBERS: But regardless of what it is, what the fund is or which agency, entity or group is affected, you enter a contract with whoever is going to do the investing?

CAROL KONTOR: Many contracts.

SENATOR CHAMBERS: Many contracts?

CAROL KONTOR: Yes.

SENATOR CHAMBERS: Okay. And in those contracts, do you make it clear that they have to comply with Nebraska law...

CAROL KONTOR: Oh yes.

SENATOR CHAMBERS: ...as...so why are they not complying with the law that relates to the MacBride Principles, where if they're not accepted, then investments are not to be made in those companies? Why don't you have in your contract that they should comply, or is that in the contract and they choose not to?

CAROL KONTOR: The State Funds Investment Act has some apparent inconsistencies, and we are looking into the interpretation of those inconsistencies. And frankly, that's why we were a part of the bill, LB 1022, so that it could be cleared up. Because at all times we want the investments of the state to be in accordance with statutes, clearly.

SENATOR CHAMBERS: And you were going to clear it up by how? How...how...what was your proposal for clearing it up?

CAROL KONTOR: Probably we'll do an Attorney General's Opinion. We're looking into how best to clear that up. We want it cleared up as well.

SENATOR CHAMBERS: If the law says something, it doesn't matter what the Attorney General says; the law is what prevails. So let's say that the Attorney General says the law says one plus one are two and tells you that; are you going to accept that?

CAROL KONTOR: Certainly if the law says one plus one are two, yes.

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SENATOR CHAMBERS: Okay, and if he says the MacBride Principles are in the law and the law must be complied with, are you going to comply with the law?

CAROL KONTOR: If the Attorney General says that?

SENATOR CHAMBERS: Um-hum.

CAROL KONTOR: Of course.

SENATOR CHAMBERS: So the Attorney General's Opinion means more to you than the language of the law?

CAROL KONTOR: No, no. We believe that there are inconsistencies. If I could explain that part.

SENATOR CHAMBERS: Sure, I don't want to cut you off.

CAROL KONTOR: There are...there's a couple of sections in the State Funds Investment Act talks about the State Investment Officer investing in companies that encourage the MacBride Principles. There are other parts of the State Funds Investment Act that talk about, with regard to the retirement assets, its exclusive benefits statute...standard, and with regard to state assets it talks about solely in accordance with the...something of the citizens of the state. So that's how we see there is... that inconsistency needs to be cleared up so that we are in full compliance with the statutes at all times.

SENATOR CHAMBERS: How long have you held the position you're holding now?

CAROL KONTOR: Four years.

SENATOR CHAMBERS: So this so-called inconsistency existed at the time you took the job. Who discovered this inconsistency and when?

CAROL KONTOR: Probably last year in consultation with the Retirement Committee, legislation...

SENATOR CHAMBERS: Did you ask for the Attorney General's Opinion at that time?

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CAROL KONTOR: No.

SENATOR CHAMBERS: Well why are you asking for one now? I'm just curious.

CAROL KONTOR: The issue came up as a part of the bill. We are 100 percent interested in understanding fully what we are instructed to do, and that's what we will do. So it's...it appears...

SENATOR CHAMBERS: Do you have a legal...

CAROL KONTOR: ...that that's the best way to...

SENATOR CHAMBERS: Do you have a legal counsel advisor, and I'm not going to take more than one minute, because I haven't asked any questions before this.

CAROL KONTOR: Sure.

SENATOR CHAMBERS: Do you have a legal counsel over there where you work, wherever that is?

CAROL KONTOR: No, we do not have a lawyer on staff, no.

SENATOR CHAMBERS: Who drafts these contracts that you enter?

CAROL KONTOR: The...we have outside legal counsel.

SENATOR CHAMBERS: And those people are not required to know what the law is that would have a bearing on the contracts they draft for you to sign?

CAROL KONTOR: No, I disagree with that; they do have a responsibility for that.

SENATOR CHAMBERS: Well why didn't they notify you of this provision in the law about the MacBride Principles?

CAROL KONTOR: They also believe...the attorney also sees it as inconsistency in the State Funds Investment Act.

SENATOR CHAMBERS: And you felt the private attorney should

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be followed rather than the Attorney General who is the lawyer for the state when it involves a statute, its interpretation? And you're entering a contract with a private entity to invest state money, you felt that the private lawyer who is being paid to do what he does should be followed rather than having these issues clarified by the Attorney General's Office? That must be the conclusion, because that's what was done, isn't that correct?

CAROL KONTOR: I would disagree with that, Senator Chambers.

SENATOR CHAMBERS: Well is that what was done though? You entered these contracts without resolving the matter of the MacBride Principles. Well if the issue was resolved, there's nothing to ask the Attorney General.

CAROL KONTOR: Well, as I say, these are these inconsistencies. Our full intent is to satisfy the statutes totally, and we will...we look forward to the resolution of this issue and will act accordingly.

SENATOR CHAMBERS: Do you know about the MacBride Principles enacted into law in this state?

CAROL KONTOR: Who did?

SENATOR CHAMBERS: Do you know?

CAROL KONTOR: No.

SENATOR CHAMBERS: You're looking at him. See, I have some Catholic friends who weren't able to pull it off, but I agreed with it. My colleagues had worked with me on the issue of apartheid in South Africa. And without going into all the ins and outs of Northern Ireland and Britain, on that score, do you know why the sun never sets on the British empire? Because God doesn't trust the British in the dark. (Laughter) But just to lighten the mood a little bit. But I do have an interest in it, and at some other point maybe I'll have a chance to talk to you. But I wouldn't want you to be blindsided. Now you at least are aware of some of the issues that I would discuss with you, and when I get in touch with you then you'll know what it is about, you won't be alarmed or anything.

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CAROL KONTOR: That's fine. As I said, our full intention is to be in accordance with state statutes.

SENATOR CHAMBERS: Okay, thank you.

SENATOR ENGEL: Any other questions of Miss Kontor? If not, thank you very much for your testimony. Next proponent? I see none. Are there any opponents? Anyone testifying in a neutral capacity? Senator Stuhr, would you like to close?

SENATOR STUHR: Thank you, Senator Engel, and members of the committee. I certainly will be happy to work with you in any of these areas, if you feel that amendments are needed in relationship to the bill.

SENATOR ENGEL: Thank you very much.

SENATOR STUHR: Thank you.

SENATOR ENGEL: That will close the hearing on LB 1141, and we'll proceed to LB 939 with Senator Schimek. I see you brought your sidekick with you today, your bodyguard.

LB 939

SENATOR SCHIMEK: Yes, I did. Senator, I hope you remember how nicely we treated you yesterday.

SENATOR ENGEL: Oh, I am. I'm looking forward to this.

SENATOR SCHIMEK: Okay. Thank you. Mr. Chairman and members of the Exec Board, for the record, my name is DiAnna Schimek and I'm here to introduce LB 939, which is a bill about redistricting. I've given some thought to this. And the fact of the matter is that in 2011 there will not be a single senator in this body who has ever been through redistricting, if indeed the term limits provision of our constitution is not overturned. Because redistricting is one of the most important functions of the Legislature, I introduced this to create the Redistricting Act. The purpose of the bill is to provide a fair, open, nonpartisan and permanent process by which redistricting will be accomplished. I based LB 939 on Iowa's redistricting law and LR 494, which was the basis for Nebraska's process in

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LB 939

2001. For those of you who served on the committee, you will remember it very well. My intent is to place the task for redrawing boundaries for congressional and other districts with a neutral, nonpartisan entity; under the proposal, the Director of Legislative Research will be that entity. And I might add for those who don't know that they generally have been the ones who have helped with the redistricting process. Although the director will create the plans and the maps, the Director of Legislative Research, the Legislature would have final approval. The bill also creates a Redistricting Committee; it will be composed of nine members of the Legislature, three from each congressional district. And this is really based on the way we did it last year. No more than five members will be of the same political party, the committee will be responsible for administering the act and preparing substantive and procedural guidelines. For me, another aspect of the redistricting process is public involvement. So under LB 939, the Redistricting Committee would be required to schedule and conduct at least one public hearing in each congressional district after the plans are given to them. After the hearings then the committee would prepare and submit to the Legislature a report summarizing the information received by the committee at these hearings. The bill also outlines criteria for the new districts which include, among other things, relative deviation standards, following county lines whenever practicable, and the prohibition of drawing the districts to favor a political party or incumbent. These are all procedures that we have adopted as part of our redistricting process in the past. Finally, I would also suggest an amendment to the bill to make clear that redistricting is only to occur every ten years, unless of course it's court ordered to do so. And I think that we might want to at least consider something like that based on the experiences in some other states. I certainly would not like to see redistricting bills introduced every year into our Legislature; I think it could cause extreme chaos. I do believe that it is implied in the bill, but the committee might want to consider an amendment to make it specific. I'd just like to say that I could easily stand behind this plan. I think it's a very reasonable, tested plan that could work for us. I don't know if...how the committee members would feel; there might be other approaches that the committee would wish to take; but I think it's absolutely critical that we be thinking

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about it and thinking how we really want...what kind of shape we want to leave the redistricting process in when we leave this body. Because, like I say, in 2011 there won't be one senator left who has ever been through redistricting, it's problematic. Thank you for your attention.

SENATOR ENGEL: Thank you, Senator Schimek. Any questions of Senator Schimek? Senator Thompson.

SENATOR THOMPSON: How would this work if there weren't any independents in the Legislature? Do...you have a nine member committee that's (inaudible)?

SENATOR SCHIMEK: Well, it could be four, four, one; it could be based any way you wanted to, but it couldn't be...have more than five of one political party.

SENATOR THOMPSON: Oh, I mean (inaudible).

SENATOR SCHIMEK: And that's the way we did it last time, Senator Thompson.

SENATOR THOMPSON: Yeah.

SENATOR SCHIMEK: So it could be...it could be put together any way you wanted to, but just no more than five of one political party.

SENATOR ENGEL: Senator Erdman.

SENATOR ERDMAN: Senator Schimek, Section 7 of your bill, on page 5, talks about the process that the bill would proceed through the Legislature. There's language on the end of line 13, beginning of line 14, that says that essentially only amendments that are purely corrective would be allowed. Is that...

SENATOR SCHIMEK: I think you missed part of it, or amendments introduced by the committee, which would be the Redistricting Committee.

SENATOR ERDMAN: Right, I skipped over that part. Right, I skipped that part because I'm focusing on the corrective...

SENATOR SCHIMEK: Yes, yes.

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LB 939

SENATOR ERDMAN: What would be an amendment that would be purely corrective?

SENATOR SCHIMEK: Oh, I don't know. Sort of like our Revisor bills right now, it's something that needs to be done that has no controversy to it; it's a correction. You know when you're doing the redistricting, we have to have language in the bill that reflects those lines that are drawn. And it would be...it would be, not easy to make one of those mistakes, but it's happened, so that would be corrective.

SENATOR ERDMAN: And I know when we went...when we did the redistricting process the last time, we actually did have an error like that, that had to be corrected in an E & R amendment that was at some point in my responsibilities to try to introduce. But there was some concern that it become bigger than that. My concern with Section 7, and specifically sub 1, is that essentially you would not be allowed to amend the plan in any way unless the committee introduced it or the bill failed to advance.

SENATOR SCHIMEK: Correct.

SENATOR ERDMAN: And then you'd have to go through the elaborate process,...

SENATOR SCHIMEK: Correct.

SENATOR ERDMAN: ...and speaking from experience I know when the previous proposal came to the floor it was not reflective of the wishes of all the members, especially in western Nebraska. We actually had to work to try to amend the bill on the floor to accomplish that. My concern is that there may be too restrictive of language in here that we don't do anywhere else for any other bill that's introduced; and there may be good reason for that, but I just have some concern about maybe how that prohibition is written.

SENATOR SCHIMEK: And I understand your concern, and I base this on the way Iowa does their plan. That's exactly what they do over there. And they have their...I don't know...I think it's their Legislative Research Division that does

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this. And it's worked over there for a number of years quite well. As you know, they have a partisan Legislature, and yet it's been acceptable and it's pretty well accepted by the public, too. There are other states that have different ways of doing redistricting. So it would always be possible to look at what some of those other states are doing. But I chose Iowa because I think they've got a history and they were one of the earliest states, I believe, to do redistricting in this fashion.

SENATOR ENGEL: Any other questions? Senator Beutler.

SENATOR BEUTLER: Just one, Senator Schimek, with regard to deviations with respect to congressional districts, you put in the exact deviation of one-half percent. With regard to other districts there is no deviation identified in the bill, and apparently leaves it to guidelines to be determined by the Redistricting Committee?

SENATOR SCHIMEK: That's correct.

SENATOR BEUTLER: That's a significant choice. Could you just talk a little bit about why you made that choice.

SENATOR SCHIMEK: Yes, thank you, Senator Beutler. As you probably recall, the courts have had something to say about deviations, as I recall. And so it became obvious in 2001 that we probably needed to set the congressional one at that percentage, or we could be subject to court challenge. That's just for congressional districts. The courts over the years, I believe, have given a little bit more flexibility and leeway when you're talking about legislative districts or some of the other districts. I mean I think the idea is to get as close to that one-half percent for all of the districts as you can. But because, when because when you get down to that more minute level of drawing lines, it becomes a little bit harder sometimes to draw them at that one-half percent. So the goal might be one-half percent for legislative districts, but the guidelines might give a little bit more flexibility.

SENATOR BEUTLER: I guess the thing we always balance in those situations is practicality that you just identified on the one hand; on the other hand, the larger the deviation that the guidelines allow, the more the affected parties

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will manipulate the prospect.

SENATOR SCHIMEK: Exactly. And if it were up to me I'd say, one-half percent for everything. But that's probably not practical. So the Legislature did choose for itself last time, and I actually don't remember, I didn't go back and look, what we chose as that guideline. But...

SENATOR ERDMAN: Five percent.

SENATOR SCHIMEK: Five percent was our guideline last time? So the courts have gotten, I think, more concerned about very wide deviations over the years.

SENATOR ENGEL: Any other questions? If not, thank you very, very, very much, Senator Schimek. And you got stick around for closing then?

SENATOR SCHIMEK: You're very, very, very, very welcome, Senator Engel. Thank you.

SENATOR ENGEL: Any other proponents? Are there any opponents? Anyone testifying in a neutral capacity? If not, that will close the hearing on LB 939. Thank you, Senator Schimek. Now we'll bring up LB 956, Senator Beutler.

LB 956

SENATOR BEUTLER: Senator Engel, members of the committee, this particular bill would make additional changes with respect to the performance audit function of the Legislature. It...we have done...and we include several members of this committee, have done a number of things in the last, 3 or 4 years to enhance the function of the performance audit section, including adding people, including moving towards through training and other methodologies, certification of the performance audit unit by nationally recognized organizations, and have endeavored in every way to enhance the performance audit function. So it was somewhat discouraging to me, as I guess it might have been to other members of the committee as they observed the comments of political candidates at the gubernatorial level with regard to the performance audit debate. And it seemed

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as if nobody was cognizant that performance audits are done only by the Legislature or with the agreement of the Legislature, that the function resided in the legislative branch. And so it seemed to me, or that really provoked me to do a little more work on the issue than I probably intended to do this last year of my career. And so this bill is before you today. And the basic thrust of the bill, this is the logical next step in enhancing the performance audit function, it does two things basically, but I'm going to take you through some of the details. It creates a more independent performance auditor in accordance with the movement towards professionalism and independence that is viewed as a good thing, of course, by most of the certifying institutions, and it also elevates the profile of the performance auditor or the performance audit section by identifying by name the person who runs that section as the performance auditor, the Legislative Auditor. Let me take you through then quickly what the different things that the bill does to try to move towards those two goals. First of all it takes the name of the current office, Legislative Research Division and changes it to the Office of Legislative Audit and Research so that legislative audit becomes more prominent in the description of the offices of the Legislature. The office currently provides nonpartisan legal and public policy research, performance audits, and reference libraries. Those functions would all be continued under this bill. Currently the Director of Research is officially responsible for managing all office staff since December of 2004, however the Audit Manager has been responsible for the day-to-day management of the audit section. Under LB 956 it would make that distinction official by giving the Legislative Auditor the responsibility for hiring, firing and supervising the audit section staff. Those decisions are currently made collaboratively by the Director of Research and the Audit Manager, and that collaboration is envisioned to continue, but legally there would be a separation of powers. The Director of Research would remain responsible for the research library and administrative staff. Currently the Director of Research is responsible for developing the office budget, and that would not change under LB 956. The director would consult with the Legislative Auditor in developing the audit sections portion of the budget. Under the existing Performance Audit Act, the audit section is managed by the section director who is chosen by the

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Executive Board from either the Director of Research or a staff person recommended by the director. The Director of Research has served as the section chief since the audit function was created in 1991. Under LB 956 the title, Section Director, would be changed to Legislative Auditor, and the position would be filled by the Exec Board, based upon a recommendation from the entire Legislative Performance Audit Committee. Currently, the Audit Manager consults with the Director of Research as needed in conducting audit work, and the Director of Research conducts the final edit of all written audit products. Under LB 956 the Director of Research would continue...could continue to perform those functions, but otherwise the process would remain unchanged. So those, Mr. Chairman, are the items that are...the changes that are recommended to the committee under this bill.

SENATOR ENGEL: Thank you, Senator Beutler. The way I read it, it looked like you'd be creating the position...level...division director. Is that correct?

SENATOR BEUTLER: Pardon me?

SENATOR ENGEL: You'd be creating the position at the level of a division director?

SENATOR BEUTLER: Well, I don't know that I want to get trapped in any box of division director or not division director. This is a process, a change that doesn't, in a sense, go all the way to division director because, obviously, the Legislative Auditor is not a separate division; they're not doing their separate budgeting. Administratively they're still part of the Research Division, but it's carving out an independent section that is independent to the extent of controlling the audit processes and the audit function and the hiring and firing of the audit staff. So it's neither fish nor fowl, it's something in between, but I think it's a very workable in between. At some future point in time, I think the performance audit staff, it's very small, compared to other states, notwithstanding that we've added a couple of people. With term limits, I think it's going to be needed more than ever since senators are going to have even less time to look at the efficiencies in government. I would envision in the future it will be larger, and it should include an IT

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person, and it should include an accountant, in my opinion. Those changes are yet to come, but I'm sure they will come. At that point in time perhaps then it becomes a separate division, that would be logical, or the Legislature might want to keep it all under one...all in one office, if they so chose.

SENATOR ENGEL: I guess the only question is, will they be sharing space and budget in one house, so to speak?

SENATOR BEUTLER: Pardon me?

SENATOR ENGEL: Where they're sharing the space and the budget, right, in the one area again, and having two people in charge of this one, I don't...one house, so to speak. Right now everything works out perfectly, I think, because they get along so well. But in the future, do you have any concerns about in the future as far as how these people would cooperate or...

SENATOR BEUTLER: No, maybe at that point in time in the future, when those personnel changes occur, that would be a good time to make that change, Senator.

SENATOR ENGEL: (Inaudible). Any other questions? If not, I guess not. Thank you, Senator Beutler. Are there any other proponents? Are there any opponents? Is there anyone that would like to testify in a neutral capacity? Would you please identify yourself and spell your name for the record.

SENATOR FOLEY: Thank you, Chairman Engel, members of the committee. For the record, my name is Mike Foley, represent District 29. I wanted to take just a couple of minutes of your time to inform you that Senator Beutler and I have had some conversations that are ongoing regarding whether or not this piece of legislation might be the right opportunity to in some ways refine and update the role of the Auditor of Public Accounts, generally referred to as the State Auditor. There is a wide continuum of functions that the Legislature might assign to our State Auditor. It might be at one extreme financial auditing only, nothing beyond that. At the other end of the extreme it might be financial auditing and full performance auditing without any legislative coordination. We're a long way from that, and that's not what I'm...that's not what we're talking about in our

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conversations. Somewhere in between those two extremes we might think about the way that existing statute reads with respect to questions of performance and efficiency in state government. Right now under state statute if the State Auditor, when conducting a financial audit, discovers areas of inefficiency, or effectiveness, or performance, then the State Auditor is obliged by state statute to report that immediately to the Legislative Performance Audit Committee. But what about those instances where the auditor might become aware of something outside of the scope or at some other time other than when he or she is doing the financial audit? It seems to me, and I know that these situations do arise where someone picks up the phone and calls the auditors office and says, you wouldn't believe what's going on in my agency. And as these issues come up it seems to me that the State Auditor should not have to wait for the next financial audit before casting some light on this area. So what Senator Beutler and I have been talking about is whether or not we shouldn't empower the State Auditor to take some action on those issues immediately rather than waiting for the next financial audit. And also to perhaps perform some preliminary analysis of that problem, and then report that analysis in writing again to the Legislature's Performance Auditing Committee so that they in turn can take the issue from there and go forward with it. There is also a question of access to books and records. I'm hearing from people who work in the auditors office that on occasion they will start to probe into certain questions and the state personnel will kind of put up their hands and say, your questions kind of sound like performance auditing questions, and we'd prefer not to answer them. If you want to stick to financial questions, we're happy to respond, but if you get beyond that, we're going to have to ask you to go to the Attorney General's and maybe get an opinion, a letter or something, and I think that's an intolerable situation. I think the State Auditor ought to have full access to all books and records, even outside of the course of a financial audit. So that's broadly what Senator Beutler and I have been talking about. I did have an amendment prepared, I think it's way too premature to present that amendment. I think Senator Beutler and I need to talk further about that, and he's...and we're doing that, and you'll hear more from either he or I or both.

SENATOR ENGEL: Thank you.

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SENATOR FOLEY: Thank you.

SENATOR ENGEL: Any questions of Senator Foley? If not, thank you very much.

SENATOR FOLEY: Thank you, senators.

SENATOR ENGEL: Are there any other persons that want to testify in a neutral capacity? If not, would you like to close, Senator Beutler? If not, that will end the hearing on LB 956, and thank you very much. I think...would you like to go into Executive Session and discuss these now, or do you want to...

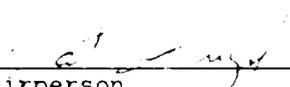
SENATOR BRASHEAR: Motion.

SENATOR ERDMAN: Second.

SENATOR ENGEL: Moved by Senator...the Speaker...Senator Speaker, by Senator Brashear and seconded by Senator Erdman.

Disposition of Bills:

LB 1141 - Held in committee.
LB 939 - Held in committee.
LB 956 - Advanced to General File, as amended.



Chairperson



Committee Clerk