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COMMITTEE ON NEBRASKA RETIREMENT SYSTEMS  
February 16, 2005  
LB 366, 367

The Committee on Nebraska Retirement Systems met at 12:15 p.m. on Wednesday, February 16, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 366 and LB 367. Senators present: Elaine Stuhr, Chairperson; John Synowiecki, Vice Chairperson; Philip Erdman; and Marian Price. Absent: Patrick Bourne and Don Pederson.

SENATOR STUHR: Good afternoon, ladies and gentlemen. We're ready to begin our hearing for this afternoon of the Nebraska Retirement Systems Committee. I am Elaine Stuhr from District 24 and I serve as Chair of the committee. And to my far right is Don Jones, our committee actuary; followed by Senator Marian Price from Lincoln and Jason Hayes who is our legal counsel; and to my immediate left is Senator John Synowiecki, and he serves as Vice Chair of the committee. And I believe Senator Erdman will be joining us and we'll try and indicate that when he does. And Kathy Baugh is serving as our committee clerk. So with that, just...oh, and Matt Rathje is our page. So if you have any handouts or anything, he'll be glad to assist us. Just a few reminders, please turn off your cell phones or pagers that you might have. If you are wishing to testify, you can kind of come towards the front and that will speed up the process. Please remember to sign in and with all of the information that is asked. And when you come to testify, please spell your name and that is important for those that have to transcribe the proceedings. I believe that is it. Today's bills that we will be hearing, the first one will be LB 366. And first we will have the introducer and then proponent testimony, opponent testimony, and those wishing to testify in a neutral capacity. So welcome.

LB 366

JASON HAYES: (Exhibits 1, 2) Good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 366. This proposal was originally submitted by the Public Employees Retirement Board and would amend the County Employees Retirement System and the State Employees Retirement System to require

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immediate participation in each retirement plan upon the hiring of a state or county employee. Currently, permanent full-time and part-time public employees participate in these retirement plans only after the employee has been employed for 12 months with either a county or state employer. LB 366 would give a state or county employee an additional year to save money for his or her retirement, but would also require the state and county employers to match an additional year of contributions. In addition, LB 366 would increase the amount a state employee would contribute to his or her employee retirement account. Under this proposal, an employee would contribute 4.8 percent of his or her monthly compensation to an employee retirement account throughout the full year. Now this rate is the rate proposed in the benefit review study of 2000. I have passed out a copy of that in front of you. On page 60 of the study, one of the recommendations reads for the state and county systems, I'll give you just a second to get to page 60: "Increase contribution rates to meet adequacy. A total contribution rate of 12 percent to 13 percent would be sufficient to meet benefit adequacy targets for the average career employee. An employee contribution rate of 4.8 percent of pay and a 156 percent matching employer contribution would meet this objective." Now currently, a state employee is only permitted to contribute 4.33 percent of his or her monthly compensation until such time as he or she has paid during any calendar year a total of \$864, which is equivalent to receiving compensation of \$19,954. Thereafter, an employee is permitted to contribute 4.8 percent of his or her monthly compensation to an employee retirement account. Now LB 366 would also increase the total annual amount contributed by the state of Nebraska because under current law, the state employer matches employee retirement contributions in an amount equal to 156 percent of the employee contribution. This matching retirement contribution is paid by the state into an employer retirement account for the benefit of the state employee. In summary, LB 366 is an attempt to address issues that benefit adequacy for employees within the state and the county defined contribution plans. A representative from the Public Employees Retirement Board is here to address additional issues regarding LB 366. And are there any questions that I may address?

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SENATOR STUHR: Are there any questions for the committee of Jason? Jason, just looking at the fiscal note, it appears that it's around \$3 million. Is that right? And then there's a second one for \$2 million.

JASON HAYES: Yeah, reading the fiscal note, it looks for the going to an immediate participation, the General Fund revenue source would be about \$1.6 million and then out of other sources, depending on which agency the employee is from, it would be a total of about \$3 million and that's just for the state. The county employee retirement plan doesn't show the amount that would be asked for from the counties. And then, with regard to going to an even 4.8 percent rate, again, from the General Fund source, that would be about \$1.1 million and then from the other sources about \$2.1 million.

SENATOR STUHR: Okay. All right, thank you. Welcome, Senator Erdman.

SENATOR ERDMAN: Thank you.

SENATOR STUHR: Okay. Proponents of the bill. Welcome.

ANNA SULLIVAN: (Exhibit 3) Good afternoon, Senator Stuhr and members of the Retirement Committee. My name is Anna Sullivan, that's S-u-l-l-i-v-a-n. I'm Director of the Nebraska Public Employees Retirement Systems. I do have a handout today, which I'm sure you will appreciate, since sometimes I do not have a handout. This will give you some detail that I will try to refer to. We are in support of LB 366. We actually thank the committee for introducing the bill. The immediate participation issue for new state and county employees we believe helps to address some equity issues. If you recall, the school, judges, and patrol plans members enroll in the plans immediately upon hire. I do not know exactly why state and county plan members have been forced to wait to enroll, but this would, I believe, address a serious disadvantage to state and county members. It also, coincidentally, would help us administratively because what we have to do in following up with all the employers is make sure that 12 months after an employee is hired that they're properly enrolled and timely enrolled. And so we do dedicate some staff time tracking participation with the

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state employees and all the agencies that report to us, as well as the 91 counties that are participating in the plan. We want to make sure that they're properly enrolled. So we appreciate immediate participation. We believe it's a fairness issue. And from an agency's viewpoint, we actually budget for retirement match contributions for all of our employees. If we happen to have turnover, basically we have a savings. So I cannot comment with regard to other agencies, if other agencies handle it that way, but I know that I do. I plan on retirement matching contributions for everyone on my staff. Okay. Number two item in the bill that is very important is the changing of the member contribution rate. And as Jason mentioned, the Buck study that was done in 2000 was discussed in 2002. And I have some notes from a committee discussion that 4.8 percent was introduced at that time but then withdrawn. And the comment was made, we'll take this up again in 2005, so here we are. I do hope that you'll consider in the Legislature, the full Legislature will consider the step up to the full 4.8 percent rate. The history of the step up rate goes back many years, and it was tied to Social Security and the fact that the higher paid employee was capped on their Social Security contribution based on their wages. We believe that that reason for that step up is really no longer valid and has outlived its original purpose. The use of the step up has, in effect, caused higher paid employees to be treated more favorably by the state than lower paid employees. And so what I have on page 2 of my handout is an example of four different salaries. And if you bear with me, you can see how the higher paid employee is more highly favored. The \$20,000 annual salary for someone who is working for the state, that person would contribute their 4.33 percent and the state match of 156 percent would be equal to about 6.75 percent, for a total contribution going in on behalf of the employee of 11.08 percent. Look at the \$40,000 person. They would have then the step up kick in, 4.33 on their first \$864 and then 4.8 percent...of the first \$19,900-and-some equates to \$864 contribution. And then 4.8 on the excess. Their average contribution then is 4.56 percent, making the employer match 7.12 as compared to the employer match for the lower salaried employee of 6.75. Look with me then to the \$60,000 salary. You'll see the same thing. You'll see that the employer match actually keeps increasing as the percentage of the employee match to

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7.24. If you look with me to page 3, the \$80,000 employee, their employer match is equivalent to 7.3. And finally when you get to the \$100,000 employee, then you see 7.34 is the employer match because the employee's rate, the majority of their contribution is probably at the 4.8 rate, it averages at 4.7. But then you see where they've broken through the 12 percent adequacy number that was recommended in the study. I think that it is really significant to point out that the employer rate changes based on...and there's a fairness issue, I believe, that the higher paid person has more contributed as a percentage of pay. I think that demonstrates it quite well in my opinion. I do have...I took a look at the personnel almanac which is produced by the State Personnel division, and the average state employee makes \$33,877 a year. And the largest percentage of state employees makes somewhere between \$25,000 and \$30,000 a year. I think it's also important to note that we're an aging group. Our average age is 44. And some of these employees are coming up on retirement rather quickly. You'll notice, though, that you have out of the 14,414 state employees that were in the almanac there's only 60 employees that make more than \$100,000, and they are the only ones that are actually getting an adequate contribution because of the match. And if this bill were to pass, the new rate, if you went to a flat 4.88, every employee would receive a total of 12.28 percent of pay. Their 4.8 and the match of 156 would make the employer match 7.48, bringing the total to 12.28 and be within that adequacy rate. And I think that's really important. I also noted when I calculated then what this would cost, the difference between the 4.33 and the 4.8, it is per person it would increase their annual contribution \$96; and for the state, per person, the 156 percent of that would be \$150. And that doesn't seem to be too much to me. I realize as a total when you look at the fiscal impact statement it was over \$2 million, but spread amongst 71 agencies. I would hope that the state would be willing to consider this increase. I'd be happy to answer any questions if you have any.

SENATOR STUHR: Okay. Are there questions for Ms. Sullivan? I just had one. Anna, those last figures that you gave us, did you say that was \$150 increase then?

ANNA SULLIVAN: The state match...

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SENATOR STUHR: Uh-huh.

ANNA SULLIVAN: ...per employee...

SENATOR STUHR: Okay.

ANNA SULLIVAN: ...would go...

SENATOR STUHR: An increase.

ANNA SULLIVAN: ...would increase \$150 per employee...

SENATOR STUHR: Okay.

ANNA SULLIVAN: ...if...with the employee going up \$96.

SENATOR STUHR: Yes.

ANNA SULLIVAN: It's just that difference between the 4.33 and the 4.8 on the \$19,964 or whatever that...you see that salary is right at \$20,000.

SENATOR STUHR: Right.

ANNA SULLIVAN: It's that step up right there is where everything would be going to 4.8. That would give you the \$96 and then 156 percent of that would give you the \$150.

SENATOR STUHR: Okay. All right, thank you.

ANNA SULLIVAN: Okay.

SENATOR STUHR: Any other questions? Thank you very much for the information.

ANNA SULLIVAN: Thanks for your time.

SENATOR STUHR: Next proponent. Welcome.

ROBERT CORNER: Senator Stuhr and members of the Retirement Committee, my name is Robert Corner, that's C-o-r-n-e-r. I am a state employee. I am vested in the State Retirement System, and I'm here representing not only myself but

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NAPE/AFSCME, which is Nebraska Association of Public Employees. A couple of things about this bill, number one, as you probably well know under the Collective Bargaining Act, we cannot bargain anything to do with retirement. The only way we can change retirement is through a format of this sort and has to go through, of course, the State Legislature. Nebraska Association of Public Employees strongly endorses this bill. I don't want to repeat a lot of the things that Anna said. Just for some background information and some brief history, there was a determination of benefit adequacy study done in 1993 by Buck Consultants. In 1996 when Senator Wickersham chaired this committee, there was a Legislators Guide to the Nebraska Public Retirement Systems, that was in December of '96. And then you talked a little bit about the study again done by Buck as results of benefit review study for the Nebraska Public Employees Retirement System, which was done in 2000. Those two studies and that Legislators Guide, as Anna pointed out, all of them said that if you want to have a standard of living when you retire as a state employee to match that while you are a state employee, you need somewhere between 12 and 14 percent of your salary going into retirement account. Well, I've been a state employee since 1977. Back in...prior to 1981, I was putting 3 percent of my retirement into the account and the state was matching that at 3.12. So we were putting in 6.12 percent on the first \$4,800 at that time into retirement. In October of 1981, that changed. We went to 3.6. At that time, the state started matching it at 156 percent. So at that match the state was putting in 5.616, so together we were putting in 9.2. That was in 1981. Come along finally in August of 1998 the 3.6 got changed to 4.33, again with the state match at 6.75 now we're at a little over 11 percent going in. So from 19...when I was hired in 1977 to 2005, in those 28 years, I, by all studies, have never, never put in adequate monies into my retirement account as a state employee. As Anna pointed out, if we go to the 4.8 that the state employee puts in, at that 156 match that the state would match it with, it would go to 12.2. So for the first time ever, based on all the studies that have ever been done, as far as I know for this committee, we have reached at least the lower of that threshold, the 12 percent. As Anna also pointed out, a lot of those early costs we understood was

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based on Social Security and you couldn't go over a certain amount. Of course, the cap has been raised on Social Security, but the retirement never kept up with that. So with that Buck study also said, those two Buck studies also said that the State Employees Retirement plan or the contribution plan or defined contribution plan, was the most efficient of the five state retirement plans. The majority of that is because of the inadequate money going into it. With our plan, unless you went to the cash balance, but the majority of people who are still in the defined contribution plan state employees, there's not a chance at a COLA; we still bear all the risk for the investments; and initially I would have to say not only was the investments of that money when we had no choice not only conservative, but I would say ultraconservative. Back in the seventies when inflation was at 15, 18 percent, we were getting paid 4 and 5 percent on that money the way it was invested. So with inadequate dollars going into that account, the paltry earnings at that time that were going into investments put a double whammy on state employees. I hear from time to time from a lot of state employees. They leave the state, but unfortunately they are coming back. They cannot...the money they put out they thought was enough they found out isn't. We all know the double digit inflation with medical costs. A lot of them are facing that and it's really eaten up that retirement money. So I urge you to pass this bill out of committee, to get it on the floor, and do everything you can to get the rest of the body to get your 25 votes to move it along. It's been a long time coming. It's something that needs to be done. Every study says it should be done, and we'd hope that you can do it this year. And we appreciate you making this a retirement bill out of your committee. Thank you very much. I'd be happy to answer any questions.

SENATOR STUHR: Okay. Thank you, Mr. Corner. Are there questions to be addressed? Thank you for sharing some of that history, appreciate that. Other proponents to the bill? Are there opponents to the bill? Those wishing to testify in a neutral capacity? Okay, that closes the hearing on LB 366. We will open, Jason will open on LB 367.

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JASON HAYES: (Exhibit 4) Again, good afternoon, Senator Stuhr, members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 367. This is an additional proposal that was submitted by the Public Employees Retirement Board. LB 367 would permit the Public Employees Retirement Board or PERB, to charge counties a late fee in an amount equal to the costs incurred by a county employee plan member due to the untimely or late receipt of retirement contributions being transferred by a county employer to the board. A representative from NPERS or PERB is here to discuss what these costs could entail. Additionally, this late fee would be assessed, unless the amount of such cost is less than the existing statutory late fee of thirty-eight thousandths of one percent of the amount for each day the funds have not been received by the board. And again, that's under existing statute...that's the existing statutory late fee. In addition, LB 367 would permit the board to charge a late fee upon both district and county courts of up to \$25 if information of funds required to be transferred under Section 24-703 are either delinquent or are not timely received by the board. This proposal would further permit the board to charge district and county courts a late fee of thirty-eight thousandths of one percent of the amount for each day such amount has not been received by the board. This equates to an annual rate of about 13.9 percent. In summary, it should be noted that the late fees proposed in this bill are substantially similar to the school district late fees currently permitted under the School Employees Retirement System. What LB 367 proposes is to do...or proposes to do is to implement similar processing and late fees under both the Judges Retirement System and the County Employees Retirement System. And are there any questions that I may address? Yes, Senator.

SENATOR STUHR: Okay. Are there questions for Jason?  
Senator Erdman.

SENATOR ERDMAN: Jason, the second part of that, I believe it's on page 5 about the timely...let's see, "if the information and money required by this subsection are delinquent or are not timely received" just so I'm clear, the timely portion is defined how?

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JASON HAYES: I don't know if I can answer that. Maybe I would leave that up to the administrator or the director of NPERS to answer that.

SENATOR ERDMAN: Because I can understand delinquent. There's definitely a deadline.

JASON HAYES: Well, and it would be helpful to have timely defined so that district courts and county courts would know exactly what the delay would be or at least when that fee would be imposed.

SENATOR ERDMAN: Okay. Thank you.

SENATOR STUHR: Jason, is that true that whatever that administrative processing fee, it cannot exceed \$25? Is that how I'm reading that?

JASON HAYES: Yes, so it would be...

SENATOR STUHR: I mean it could be up to...

JASON HAYES: ...they may charge, yes.

SENATOR STUHR: Um-hum.

JASON HAYES: So it wouldn't be required that they do it. It really would be up to the discretion of the board.

SENATOR STUHR: Okay. All right, thank you. Those wishing to testify as proponents of the bill please come forward. Welcome.

ANNA SULLIVAN: (Exhibit 5) Senator Stuhr and members of the Retirement Committee, my name is Anna Sullivan, that's S-u-l-l-i-v-a-n, Director of the Public Employees Retirement Systems. LB 367 has been introduced at our request. I'll try to answer some of your questions. The primary concern we have found in both the county and the judges plan is to have the ability if there is, in a rare case, and I have to say rare, where someone or some county may be extremely late in reporting contributions. The county plan it has a detriment to the member if their employee contributions are not timely reported and added to their account. They miss

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out on investment return. They miss out on many things. And so what we had asked is additional language be added to the county plan that if the cost...if the member's cost by not having the money invested to allow it to exceed that thirty-eight one-thousandths of one percent so that the member can be made whole, if the contribution is late. And right now what we ask is that the contribution come in for county and state employees that it be remitted...for state employees it's remitted the day you get your paycheck. But, see, we have one unified payroll system in the state, so it's much simpler. County employees we've got 91 different systems or different payroll systems. But they're generally very good. We just have a few, and I'd say a very small number, that occasionally are late. And we don't want the employee to miss out. We believe the employer should make up the difference if the employee's account is harmed, or they lose earnings. In the judges plan, which is the second provision, this deals with court fees. And we do not have a good idea of when a fee is incurred. That is based on filings when cases are brought to the court. So establishing a deadline is pretty difficult to do because it's a user fee that occurs whenever there's use. But to have some mechanism where we can communicate to the clerks of the court that timely filing, if there's not...if they have a pattern of not submitting fees as they should, that we could invoke, you know, the \$25 fee if we needed to in order to get their attention and file those court fees in a timely manner. So that's really what our goal is here is to have a little bit of leverage, if you will, to make sure that contributions and fees are filed timely. I'd be happy to try to answer any questions.

SENATOR STUHR: Okay. Are there questions for Ms. Sullivan? Yes, Senator Erdman.

SENATOR ERDMAN: Anna, in the second part, which is what I asked committee counsel about on page 5, where it allows the board to charge a late administrative processing fee, if the information and money required by this subsection are delinquent and not timely received, your testimony said that there's not a guaranteed time line because it depends on the collection of fees and...

ANNA SULLIVAN: They're user fees. So...

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SENATOR ERDMAN: Right. So how do you know if they're delinquent?

ANNA SULLIVAN: Well, what we have found is we would inquire. There is some regularity with courts that they will be filing their fees, you know, on a regular basis, say, on a monthly basis. We don't know how much it is going to be on a monthly basis. But we have found some where they just haven't gotten around to filing them at all, I mean over a period of several months.

SENATOR ERDMAN: So then they would be delinquent.

ANNA SULLIVAN: We would...it's going to be hard for us to define it because some counties probably have very few, their county courthouse and we have very few filing fees. But I don't know a better way to answer it, Senator Erdman. If you'd like me to be more specific, I would...

SENATOR ERDMAN: Well, I'm trying to differentiate between delinquent and timely.

ANNA SULLIVAN: Right.

SENATOR ERDMAN: So timely is within a certain time period, is it a judgment call? Is it a month for some counties and three months for others?

ANNA SULLIVAN: Well, timely should be, to me...I don't know that we've scheduled it, if we've set a date, but at least within 30 days of the date that the fee is paid by the user. But I don't know that we've set a date.

SENATOR ERDMAN: So essentially from the time that the fee is paid they have 30 days...within that 30 days would be timely. Then why wouldn't that be delinquent after that 30 days?

ANNA SULLIVAN: Can I ask a question?

SENATOR ERDMAN: You do whatever you want.

ANNA SULLIVAN: Okay, thank you, Joe. On line 9 on page 5,

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right above that, Senator Erdman.

SENATOR ERDMAN: Line 9, page 5, okay.

ANNA SULLIVAN: You and I both missed it. It's in the existing language: When collected by the clerk, line 9 says the board within ten days after the close of each calendar quarter.

SENATOR ERDMAN: Okay, so then...

ANNA SULLIVAN: So it's defined.

SENATOR ERDMAN: ...after ten days you're delinquent?

ANNA SULLIVAN: After the close of each calendar quarter is when they're supposed to be reporting.

SENATOR ERDMAN: Okay. So then, all right, okay.

ANNA SULLIVAN: So they have basically three months. I missed that.

SENATOR ERDMAN: Okay.

ANNA SULLIVAN: Does that help, Senator Erdman?

SENATOR ERDMAN: Absolutely. Thank you.

ANNA SULLIVAN: Thank you.

SENATOR STUHR: Okay. Are there any other questions? All right, thank you. Other proponents of the bill? Are there those wishing to testify in opposition to the bill? Those wishing to testify in a neutral capacity? If not, that closes the hearing on LB 367.