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COMMITTEE ON NEBRASKA RETIREMENT SYSTEMS  
February 8, 2006  
LB 1022, 1023

The Committee on Nebraska Retirement Systems met at 12:15 p.m. on Wednesday, February 8, 2006, in Room 1525 of the State Capitol Building, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1022 and LB 1023. Senators present: Elaine Stuhr, Chairperson; John Synowiecki, Vice Chairperson; Patrick Bourne; Philip Erdman; and Marian Price. Senators absent: Don Pederson.

SENATOR STUHR: Good afternoon, ladies and gentlemen. We are ready to begin the hearings for today for the Retirement Systems Committee. I am Elaine Stuhr and I serve as Chair, and I'd like to introduce the rest of the committee members: Senator Price to my far right from Lincoln; Senator Phil Erdman from Bayard; Jason Hayes from Lincoln, who is serving as our legal counsel; to my left, Senator John Synowiecki, who has not joined us at this time. He also serves as Vice Chair. Okay, welcome. Senator Synowiecki has just...

SENATOR SYNOWIECKI: Reporting to duty.

SENATOR STUHR: ...just joined us now; and Senator Patrick Bourne from Omaha; and our committee clerk, Kathy Baugh. Also, serving as our page today will be Jake Wawrzynkiewicz and, Jake, I forget, where did you say you were from?

JAKE WAWRZYNKIEWICZ: Papillion.

SENATOR STUHR: Papillion. Thank you for being with us. And just a couple rules: Please turn off your cell phones or pagers, if you have those with you. Those wishing to testify, it always helps if you're sitting towards the front of the room. That helps speed up the process. Remember to print your name on the sign-up sheet and include all of the information requested. As you begin your testimony, state your first name and your last name, and please spell those. That helps very much for the transcribers. And if you have handouts, I know that the page will assist you. I believe that is it. Today's bills that we will be hearing are LB 1022 and LB 1023, and we will take proponents, opponents, and neutral testimony. Opening on the bill today, LB 1022, will be our first hearing, Jason Hayes.

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JASON HAYES: (Exhibit 1) Good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, spelled H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 1022 on behalf of the committee. This bill proposes to repeal sections limiting investments made by the Nebraska Investment Council in Northern Ireland and the related provisions referred to as the MacBride Principles found in Section 72-1246.06. The best way to describe these principles is that they are affirmative action measures to benefit individuals who are members of a religious minority in Northern Ireland. The provisions require the Nebraska Investment Council to invest in corporate stocks or obligations of corporations that pursue a policy of affirmative action in Northern Ireland. Also proposed to be repealed is Section 72-1246.07 that requires the Investment Council to sponsor, cosponsor or support whenever possible shareholder resolutions designed to encourage corporations to pursue a policy of affirmative action in Northern Ireland. These two sections mentioned contradict other language found in 72-1239.01, which reads, "No assets of the retirement systems or the Nebraska Educational Savings Plan Trust shall be invested if the sole or primary investment objective is for economic development, or social purposes or objectives." Finally, this proposal was brought to the committee by Carol Kontor, the State Investment Officer, and she will be here to testify on the bill.

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

SENATOR BOURNE: Thank you. Jason, the idea started with who?

JASON HAYES: With the Investment Council, or it was first mentioned to me by Carol Kontor and then it was also mentioned during the interim hearing on December 1 of 2005 with LR 177.

SENATOR STUHR: Are there any other questions? If not, thank you. Those wishing to testify as a proponent. Welcome.

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CAROL KONTOR: (Exhibit 2) Thank you. My name is Carol Kontor, C-a-r-o-l K-o-n-t-o-r, and I am State Investment Officer, and I want to speak here on behalf of this in support of LB 1022. Jason went through some of the provisions that would be repealed with the passage of LB 1022, so I won't repeat that, but the...my first reason on this is that it would remove this apparent inconsistency in different sections in the State Investment Act. The second reason that I would support the passage of LB 1022 is that if the Legislature does want to use state assets for social objectives, and I want to be very clear that I'm not recommending that, but if the Legislature would want to do that, you may want to do it in a more meaningful way. Because what we have here with these Northern Ireland sections, they were passed in 1994, when a portion of the equities were managed internally, and now we don't manage any stocks internally. Also at that time in 1994, 96 percent of the equities were actively managed, that is, not being in index funds, and currently we only have 35 percent actively managed, because we believe in...that the U.S. equity market is highly efficient and so we have two-thirds of the stock investments in index funds. The council has adopted a policy of not being lead plaintiff in any class-action lawsuits, and the second provision in Section 72-1246.07 does say that the council should sponsor, cosponsor or support shareholder resolutions. And on a relative basis, Nebraska's state funds are relatively small compared to some of the other states in the country, and to support or sponsor a shareholder resolution is very costly, both in times of just the legal...in terms of the legal fees, staff time, all of the costs involved with that. And so the council has a policy of not being lead plaintiff. Now, we will support class-action lawsuits when we think that's appropriate, but generally it's done by the larger states. What we're doing now, to be in compliance with the statute, is we spend \$8,000 a year to have IRRC, which stands for Investor Responsibility Research Center, to give our investment managers, our external investment managers, the list of corporations that are doing business in Northern Ireland, and then they send us back which ones of those corporations they are invested in, and we file...and then I file a report to the Clerk of the Legislature, and we're doing this annually. So there would be some savings with

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the adoption of this bill. And then finally, if the Legislature does want to use state assets for social objectives, there may be other causes that you want to consider, because this Northern Ireland, just being done in 1994. So in conclusion then, we support the adoption of this bill, and if you would want to be using state assets for other things, we may want to find a more meaningful way to do that. And with that, I would answer any questions.

SENATOR STUHR: Okay. Thank you. Are there questions for Ms. Kontor?

SENATOR BOURNE: Of course.

SENATOR STUHR: Senator Bourne.

SENATOR BOURNE: Ms. Kontor, this is probably the first thing that I can think of that you and I have disagreed on,...

CAROL KONTOR: Ah! Okay.

SENATOR BOURNE: ...so here it is. And that's all right.

CAROL KONTOR: Sure.

SENATOR BOURNE: Now, as I understand it, though, you said we're using state assets. Do you mean the \$8,000? Because, as I understand the MacBride Principles, there are 60-70 United States companies that are doing business in Northern Ireland and the principles say, and correct me if I'm wrong, that unless those corporations adopt the nine principles that states or whoever makes this decision to adopt the MacBride Principles, doesn't invest in that company. That's how I understand the MacBride Principles.

CAROL KONTOR: Yes. Yes. Yes.

SENATOR BOURNE: So how are we using state assets then? Is it the \$8,000 in reporting?

CAROL KONTOR: No, no, it is the...let's take the pension plans,...

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SENATOR BOURNE: Okay.

CAROL KONTOR: ...so that when, back in 1994, we were managing internally some of the equities in 1994.

SENATOR BOURNE: Right.

CAROL KONTOR: And so then if a company that was doing business in Northern Ireland had not adopted the MacBride Principles, this would say you couldn't...

SENATOR BOURNE: Invest in that company.

CAROL KONTOR: ...invest in that company.

SENATOR BOURNE: Right.

CAROL KONTOR: Because another section says, you know, you don't have to dispose of existing ones, but with the passage of this you couldn't go forward with any.

SENATOR BOURNE: Do new ones, right. So I guess...

CAROL KONTOR: And so it's the investments of the...it's the \$12 billion worth of investments that we would be talking about, state assets.

SENATOR BOURNE: So maybe a more accurate way to state it is that there might be an investment opportunity, or two, or three, that we might, we as a state, might be able to invest in that we can't because those companies, those investment opportunities, haven't adopted the MacBride Principles.

CAROL KONTOR: That's correct. And the way this is, is that the State Investment Officer shall not select stocks, so I...and I don't select stocks because we're not doing it internally. So what's happening now then is our managers just tell us which ones they've invested in and whether or not those investments have adopted the MacBride Principles or not. We don't tell them that then they have to sell those stocks.

SENATOR BOURNE: How many states have adopted the principles?

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CAROL KONTOR: I don't know. I would have to get back to you on that, because those...the states that I'm familiar with just, you know, with my association, National Association of State Investment Officers, generally then they have broader social objectives, and so they would support perhaps Northern Ireland. You know, the Sudan is a major issue currently.

SENATOR BOURNE: Do you know of any states that have repealed those previously adopted principles like we're...or you're advocating here?

CAROL KONTOR: I don't. I could probably find that out, but I don't know that.

SENATOR BOURNE: Okay. Thank you.

SENATOR STUHR: Are there any other questions? Carol, are there any other similar social or political issues that limit investments that...?

CAROL KONTOR: That we're involved with.

SENATOR STUHR: Uh-huh.

CAROL KONTOR: No, there are...there are no other social or political issues, because our guideline is the exclusive benefit. It's the part that Jason talked about that's at the end of that one section...

SENATOR STUHR: Okay.

CAROL KONTOR: ...that is the end of 1239.01, so where it says no assets of the retirement systems and the Nebraska Educational Savings Plan shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes. So that when we are approached on some of these other issues, for example, terror...you know, the antiterrorism that came up...

SENATOR STUHR: Yes.

CAROL KONTOR: ...maybe a year or 18 months ago.

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SENATOR STUHR: Right.

CAROL KONTOR: And we respond that our statutes say, except for the Northern Ireland, that our investments are for the exclusive benefit of the planned participants.

SENATOR STUHR: Okay.

CAROL KONTOR: I guess the only other thing I can think of, you know, is the TDOA program which is the Timed Deposit Open Account program that's in the Nebraska Capital Expansion Act. That's the one that says that the state will make available to Nebraska banks up to \$1 million cash if they can secure it. We make cash available to them. That's the only thing that has some other aspect to the investment.

SENATOR STUHR: Okay. All right. Any other questions?

SENATOR BOURNE: I have.

SENATOR STUHR: Okay, Senator Bourne.

SENATOR BOURNE: You prompted me to ask another one. What was our rate of return last year on our investments for the retire...in total, the retirement investments?

CAROL KONTOR: We don't have the final numbers yet for 12-31. They're coming this week, actually. As of 9-30, I'm going to say it was maybe 13 percent.

SENATOR BOURNE: What do you suppose the rate of return would have been if we didn't have the MacBride Principles here?

CAROL KONTOR: It would be no different. Well, the MacBride Principles, as they're currently stated, because the way it's stated is the State Investment Officer cannot...

SENATOR BOURNE: Right.

CAROL KONTOR: ...make an investment. It doesn't say managers cannot.

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SENATOR BOURNE: Right.

CAROL KONTOR: So we report what the managers have done, but we don't require them to sell those that don't have MacBride. So there is no difference in the investments.

SENATOR BOURNE: Okay.

CAROL KONTOR: Once we eliminated the internally managed, then we eliminated any difference that might exist.

SENATOR BOURNE: So really what you're saying is the law is basically a nullity.

CAROL KONTOR: Right. Yes, that's why I say that if the Legislature wants to use...wants to use state assets for social objectives, we should examine more meaningful ways to do it.

SENATOR BOURNE: What if the...what if the bill was changed and said no Nebraska retirement dollars could be invested in...invested by you or your money manager in a corporation that hasn't complied with the MacBride Principles. What do you think would happen to our rate of return then?

CAROL KONTOR: I was just pulling out, because I have the report that we did, I was just going to kind of, you know, and I could show it to you afterward because it shows the companies that we have investments in. For those companies that employ more than...domestic companies that employ more than 10 employees, and 9 U.S. companies that employ more than 30, I think the way it is, and I was just going...kind of...you know, many of them have...well, here's...let's see, here's some, some of them that do not have current MacBride Principles: Berkshire Hathaway, Claire's Stores, Crane, Dollar, Domino's Pizza, Raytheon. These are ones that have not adopted MacBride Principles. Now, back to the question of whether...what that would do to returns, you know, one follows that because there are many socially conscious investors. There are funds that only invest in certain acceptable investments. You know, there's the issues of tobacco and gambling and abortion and, you know, I look at those numbers and it goes back and forth whether...sometimes there's no difference. Sometimes they outperform.

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SENATOR BOURNE: Uh-huh. So...

CAROL KONTOR: So what we...what would happen is if we would say that the managers can't, then we would say to the managers, you can't own these stocks.

SENATOR BOURNE: Right. So then you'd be limited and you would be limited to those funds that are social whatever, you know, social conscious funds or whatever.

CAROL KONTOR: Correct.

SENATOR BOURNE: Okay, so the 18 states that have adopted the MacBride Principles, and the 4 states that have passed resolutions that endorse the MacBride Principles, is it similarly worded that it's up to the State Investment Officer, or do they limit it to...or do they say not even through a third party money manager can you invest in those corporations?

CAROL KONTOR: I don't know that.

SENATOR BOURNE: Okay.

CAROL KONTOR: We could find that out, I'm sure, but...

SENATOR BOURNE: Yeah. Interesting. Thank you.

CAROL KONTOR: Uh-huh. Yeah, because my...and my thought on this was that if you want to do it, then we should probably do it in something that is more...

SENATOR BOURNE: That really matters.

CAROL KONTOR: ...that really matters.

SENATOR BOURNE: Yeah.

CAROL KONTOR: Yeah, that's right.

SENATOR BOURNE: Good point. Thank you.

CAROL KONTOR: That's right.

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SENATOR STUHR: All right. Any other questions?

CAROL KONTOR: And if you want to see any of the reports or whatever, just, you know...

SENATOR BOURNE: I would like to see them.

CAROL KONTOR: Okay.

SENATOR STUHR: Thank you very much...

CAROL KONTOR: Thank you.

SENATOR STUHR: ...for coming today.

CAROL KONTOR: Uh-huh.

SENATOR STUHR: Are there other proponents? Those wishing to testify in a...in opposition? Welcome.

JAMES CAVANAUGH: Thank you, Senator Stuhr. Members of the Retirement Committee, my name is James Cavanaugh, and I appear today as a private citizen in opposition to LB 1022. It's interesting how time flies, because I was involved in the 1994, '93 and '94, in working to have, again as a private citizen, the MacBride Principles, as contained in statute enacted. And I'm sure that you have or your committee counsel can make available to you the record of the fairly extensive and in-depth debate that went into the question at that time. Essentially, I think that if you read through that history, what you'll find is that the decision taken by overwhelming majority of the Legislature at that time and endorsed by the Governor that called for these restrictions has not significantly changed. I can tell you firsthand, having traveled to Ireland once or twice a year during this entire period from 1994 till now, that although there's been progress towards democracy, which is essentially why this was put on the books in the first place, that the progress is nowhere complete, and as a matter of fact has gone backwards in the last year or so, with the suspension of self-government in Northern Ireland. We're kind of back to where we were in 1994. As I think Senator Bourne indicated, there's about 18 states, and all

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of the major population states in the United States, that have enacted the MacBride Principles. None, none, zero have repealed them, and for good cause. If you're paying attention at all to the legislative history involved in any statute that the Legislature passes, but in this case in this incident...instance, I think that you have to respect the precedent of law that presumably the Legislature, for good cause, does things in a deliberative fashion and tries to seek certain outcomes through statutory change. That's what the Legislature did when they enacted these provisions, and they've had some good effect, with all the other states involved, but they have not achieved the goal for which they were enacted, which is basically in a free society, based on democratic principles that we as Americans cherish and are trying to foster around the world, and in light of our current situation, I think more than ever we shouldn't take a step back from the principles of democracy, that we're trying to foster in the Mideast, in our own backyard, in western civilization, in western Europe. I guess I was confused a little bit by the fiscal note, which indicates there's \$7,838 a year that's paid out for a subscription to tell us what we can invest in and what we can't. Presumably, those other 17-18 states, that have the same provisions on the book and deal with a lot of the same money managers, have access to this same information as well. And I guess I can't understand why you'd have to buy 18 of them rather than say to your money manager, you've got to comply with this; whatever you've got to do is cost of your doing business, not our doing business with you, and so if you want to pay \$8,000 for a subscription, knock yourself out, but the law is the law and if you want to do business with the state of Nebraska you've got to comply with it. I guess I'm also a little concerned that, if I heard the director correctly, this is being circumvented by the current money manager. If I heard correctly, the state has to comply with this, but if we hire somebody to manage our money, they don't have to comply with this. And if that is correct, that's plain wrong. If you are going to act as the authority on retirement matters and law in Nebraska, I don't think that it goes very far if whatever you say can be ignored by an independent money manager managing the money over which this committee has oversight. And, like I said, I may have misunderstood that, but my presumption, and I think the majority of the people who worked on this over the

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years and the overwhelming majority of the senators who voted for it, was that this is to apply to Nebraska's retirement funds in an investment fashion, and there's precedence for this in South Africa and elsewhere, not only in Nebraska's acts but in the acts of scores of states across the country. I think that what we've got here is a situation where maybe the investment director and others who weren't around in 1994 and were familiar with the debate that went on, and I strongly urge you to read it because it was extensive, are not familiar with the rationale behind the enactment of the act and, consequently, it looks like, well, it's in conflict with another provision and so we should eliminate it. But I can assure you the circumstances that called for it, and as a member of the Irish-American Community in Nebraska, the reason that we feel so passionately about this have not changed significantly. And we're talking major things, like in 1994, 40 percent of the population, a minority, was Catholic and 60 percent were not. Today, that percentage is almost equal. And yet, in 1994, 2 percent of the security forces, the police forces of Northern Ireland, were Catholic, and the other 98 percent were not. Today, 2.5 percent of the police forces in Northern Ireland are Catholic, and the others are not. This is one example. Housing is another. Employment is another where, although we've made progress with the Good Friday Agreement and it's a road map to peace, you know, we're not there yet. And so the purpose that this was set into place, that we don't want to invest in undemocratic discriminatory policies anywhere in the world, we don't want to use our public money to undermine the spread of democracy anywhere in the world, are as valid today as they were in 1994. And as somebody who goes over there quite a bit and has family in the country, I can assure you that the MacBride Principles are cited constantly by the peacemakers in Ireland, who've been basically led by Americans' efforts to bring peace to that troubled corner of the island as a shining example of America's commitment to democracy. And I don't know about you, but it seems to me that that's the image that we want to have and that we need all the friends that we can get in this day and age. This would be a slap in the face to Irish Americans, be a slap in the face to Irish-American relations. And parenthetically, we've, for the first time in history, have the ambassador of the Republic of Ireland visiting Nebraska next month, and it

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would be an embarrassment, I think to all, from the Governor on down, who are going to have to meet this fellow and say, welcome to Nebraska, by the way we're in the process of taking a giant step backwards in Irish-American relations in repealing the MacBride Principles. There's no good reason. It apparently doesn't affect the return on our investment. There's no fiscal reason. I can assure you there's no social reason. And I think that we would do harm rather than good by enacting LB 1022. I'd be happy to answer any questions you might have.

SENATOR STUHR: Thank you, Mr. Cavanaugh. Are there questions? Yes, John Synowiecki, Senator.

SENATOR SYNOWIECKI: Thank you, Madam Chair.

SENATOR STUHR: (Laugh) Sorry.

SENATOR SYNOWIECKI: Yeah, I think that the intent was that we not invest in corporations that do not adopt the principles. I think it's pretty clear.

JAMES CAVANAUGH: Correct.

SENATOR SYNOWIECKI: I don't...I haven't had access to the legislative record and so forth, but the fact is we are, aren't we?

JAMES CAVANAUGH: Yeah, it seems that there was like a grandfather clause. If we were, in 1994...prior to 1994, you can hang on to them.

SENATOR SYNOWIECKI: But it reads the State Investment Officer shall invest in corporations and it goes on.

JAMES CAVANAUGH: Right.

SENATOR SYNOWIECKI: Just because we indirectly...I think the State Investment Officer still invests, although we do it, if you will, through a management firm now. We somehow have a loophole where I think the intent of this legislation is not being carried through now. Would you agree with that assessment?

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JAMES CAVANAUGH: If I heard correctly, you know, the director's testimony, I would, and it's kind of troubling because essentially that manager is an agent. They're just hired to do the investment things. And I don't know, I mean I'm not on the Retirement Committee, but presumably you had good reasons to do that, that we'd outsource our investment decisions, and if you're getting 13 percent on your money, you know, maybe that's not a bad decision to make. But I don't think that absolves that agent of complying with all Nebraska law when they're handling Nebraska investments.

SENATOR SYNOWIECKI: I think what we're doing now is getting...is expending \$8,000 to get a report on the companies that we are investing in, albeit indirectly, in violation of the intent of the statute.

JAMES CAVANAUGH: Well, that very well may be the case. And even the report itself, if there are 18 other states that do this, they're all presumably in the same box. I mean, why don't we go together with them and say, you know, give us one big report that all 18 states can share? I mean, I'm feeling staggered, I guess that each and every state would have to pay \$18,000...or \$8,000 or whatever they have to pay for essentially the same information, and why that would be, you know, our expense rather than the manager's expense. If we're hiring them for their expertise in investing, part of their expertise should be here are Nebraska statutes, make that comply to your purchasing policy. And if that doesn't happen, or if we have to pay to help them do that, I mean, I guess I'd question the manager about that. I'd think it would be part of their job.

SENATOR SYNOWIECKI: Yeah, and then to think that we pay for that report, to give us a report of the violation of the intent of the statute.

JAMES CAVANAUGH: Exactly. (Laugh) I mean, it's kind of oxymoronic. But I mean, when I call up my stockbroker, I usually am not dubbed by him to get him some financial report or a subscription to The Wall Street Journal so he can advise me on what stocks to buy, you know? That's kind of part of his job.

SENATOR SYNOWIECKI: Thank you.

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SENATOR STUHR: Any other questions? Mr. Cavanaugh, you probably bring out a good point in the fact that I have not looked at the past transcription. I was not in the Legislature. In fact, I don't believe any of us were in the Legislature at the time this legislation was passed, so we don't have that historic perspective, and I think we're probably going to see a lot more of that in the coming years.

JAMES CAVANAUGH: Well, and, Senator Stuhr, I mean I'm happy to come and share my limited knowledge on this, but, you know, having been there and, you know, intimately involved with this issue, you know, in the passage of the bill from committee, across the floor and to the Governor's Office, I can tell you that this wasn't put on just kind of haphazardly. But I hope that we don't make the mistake of repealing it, but I hope that some day we can repeal it. I mean, the goal here is to spread democracy to another part of the world and, you know, maybe that's a social policy or something, but I think it's kind of one of the prime directives of the United States, is work for the spread of democracy.

SENATOR STUHR: But I do know personally, I believe conditions have changed there since 1994.

JAMES CAVANAUGH: I'd be happy to talk to you about that.

SENATOR STUHR: Uh-huh.

JAMES CAVANAUGH: What we've got in place is what is called the Good Friday Agreement, which basically gives a time line for integration of their society. I mean, their society is very, very evenly split now. It's almost fifty-fifty on sectarian lines. And what the Good Friday Agreement says then, those people should participate in the jobs; the housing; the police force; the judiciary; you know, education; all of those things. Very little change has been made. They adopted the principles, but currently, due to some recalcitrant elements there, they've actually gone backwards and the government is suspended. The duly elected government that the people of that part of Ireland elected is not in power. They're being run as they had been when

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this law was passed by London, by the central government. And it would be like in our country, you know, after the Civil War, where we tried to reconstruct some of the states and then they, you know, they slipped back into rebellion and Washington had to come in and say, no, you got to get back on the track here. So the goal that we're trying to achieve with this, which is I think a laudable goal--the spread of democracy--one of the highest things that we can do, isn't there yet. I hope that I sit before this committee some day calling for the repeal of this because we've, you know, we've made it, but we're not there yet and it's regressed a little bit. I'm still optimistic and I think people of good faith can get through this, but I think we'd make a mistake and it would be premature to repeal the MacBride Principles at this time.

SENATOR STUHR: Senator Bourne, did you have a question?

SENATOR BOURNE: Well, yeah. I mean, there's...I've got a copy of the original amendment that was put in back in '94, and there's some reporting requirements of the Investment Officer, but I think the real gist of it is, is Section 145. That was in the amendment, so I don't know what it went over to being in the bill. But with respect to corporations doing business in Northern Ireland, the State Investment Officer shall, consistent with Section 72-1246, invest in corporate stocks or obligations in a manner to encourage corporations...and basically it talks about the MacBride Principles. So I'm kind of, you know, I'm kind of at a loss, too, as to...just because you use a third-party money manager, I'm struggling as to how there's a disconnect there then. I think we need to, you know, dig away a little bit more and find out exactly what's happening, because...

JAMES CAVANAUGH: That's a very good point.

SENATOR BOURNE: Yeah. Thank you.

SENATOR STUHR: Okay. Thank you, if there aren't any more questions.

JAMES CAVANAUGH: Thank you very much.

SENATOR STUHR: Are there others wishing to testify in

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opposition? Those wishing to testify in a neutral capacity? If not, that closes the hearing on LB 1022. We'll now open the hearing on LB 1023. Welcome. Go ahead, Jason.

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JASON HAYES: Again good afternoon, Senator Stuhr and members of the Nebraska Retirement Systems Committee. My name is Jason Hayes, spelled H-a-y-e-s, counsel for the committee, and I'm here to introduce LB 1023 on behalf of the committee. (Exhibit 3) This bill proposes to make changes to the retirement of district health department employees and would permit such public employees to be eligible for participation in the County Employees Retirement System. Currently the County Retirement Plan covers all permanent county employees, including county elected officials. The plan does not include however Lancaster County, Douglas County employees, county judges, employees of city/county health departments who have elected to participate in their own plan, county extension agents, and employees of health districts. This bill would allow the employees from 18 or so district health departments across the state to be eligible to join the County Retirement Plan, if they so choose. There is a proposed amendment, AM2148, which is in your binders, and it would provide additional flexibility to the bill by permitting district health departments to opt out of the County Retirement Plan if the district health department establishes an independent pension plan or retirement plan for its officers or employees, as is currently permitted for other city/county health departments. NPERS, Nebraska Public Employees Retirement Systems, the agency administering the county plan, requested that the committee introduce this proposal, and Joe Schaefer is here from NPERS to testify on the bill.

SENATOR STUHR: Okay. Are there any questions for Jason? So, Jason, just for some clarification, we're permitting the public employees of these health districts to be eligible in the County Employees Retirement System.

JASON HAYES: That's correct, if the health department chose to go with the plan they would be eligible, they wouldn't

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necessarily be required to join.

SENATOR STUHR: Right. And then our amendment deals with if they are already enrolled in a plan.

JASON HAYES: I think the amendment just clarifies, to make sure that everybody knows that if there is an existing independent retirement plan or pension plan then that would, in essence, allow the district health department not to have to be part of the county.

SENATOR STUHR: Okay, all right. Any questions? Yes, Senator Bourne.

SENATOR BOURNE: Just a real quick one, Jason.

JASON HAYES: Sure.

SENATOR BOURNE: There's a letter in our binders here that's dated January 30 of '06, no letterhead, and it talks about the bill. Then it says, Rebecca Rayman, ECDHD Exec Director, and GNCHC Executive Director. Do you know who that is...

JASON HAYES: I believe...

SENATOR BOURNE: ...or what organizations are those?

JASON HAYES: I believe the name was...

SENATOR BOURNE: Okay, I see somebody in the audience raising their hand.

JASON HAYES: The name was Becky Rayman? East District Health Department,...

SENATOR BOURNE: Okay.

JASON HAYES: ...ECDHD.

SENATOR BOURNE: Okay, East Central...okay. I just didn't know what group it was. Okay well somebody is making a motion in the audience, so I'm sure we'll hear from them.

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JASON HAYES: Okay.

SENATOR BOURNE: Okay, thanks.

SENATOR STUHR: Okay, thank you. Those wishing to testify in support? Welcome.

JOE SCHAEFER: Good afternoon, Senator Stuhr and members of the Retirement Committee. My name is Joe Schaefer; J-o-e S-c-h-a-e-f-e-r, and I'm Legal Counsel and Legislative Liaison for the Public Employees Retirement Systems. LB 1023 is intended to correct an omission or an ambiguity in statutes regarding retirement plans for officers and employees of city/county district and county health districts. The language of the bill, and in the amendment that I understand is prepared, merely attempt to insure that employees of county health departments, which reformed in conjunction with other counties to become district health departments, will still have the benefits of retirement savings just as do employees of city/county and county health departments. In many other cases the Legislature has seen fit to enact special provisions to insure that employees do not lose coverage when entities or agencies change their structure. I would just ask that the opportunity to participate in a quality retirement plan be given to all local health department officers and employees. I would also note that I've spoken with a couple of people that apparently there were some counties that asked questions about reporting the retirement contributions. And I know that we have, about two years ago, I believe, made some arrangements with some local health departments to facilitate the reporting, other than reporting with the other county contributions. So I know we can do that, I know we have done that. And I just want it on the record that we're perfectly willing and in the past have worked with health departments to facilitate that, and the offer still stands. So if there are any questions, I'd be happy to respond.

SENATOR STUHR: Okay. Are there any questions for Mr. Schaefer? Senator Bourne.

SENATOR BOURNE: Are these county employees now?

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JOE SCHAEFER: When they formed, some of these were county employees that, when there were some changes, and I think Senator Byars might have brought the bill,...

SENATOR BOURNE: From...it was probably from LB 692, yeah.

JOE SCHAEFER: ...they moved from being a county employee to becoming an employee of a local health district, which is sort of an interlocal...

SENATOR BOURNE: Like it could be two or three counties together.

JOE SCHAEFER: Right.

SENATOR BOURNE: So then they were just kicked out of their retirement programs?

JOE SCHAEFER: Well I've had contact with a couple people that said they didn't have opportunity. But I think many cases there was either a retirement system started, I mean a plan started, or one available. And in some cases, the employees right now are participating in the county. But I'd just as soon that any confusion or ambiguity about that be taken care of, and it be clear that they are eligible to participate and that you are concerned about them having retirement opportunities.

SENATOR BOURNE: Okay, thank you.

SENATOR STUHR: And, Joe, we know that there are 18 districts. And we really don't know how many people this might apply to, do we, at this time?

JOE SCHAEFER: Well one district just told me they employ as many as about 50 people, I think. So I think there are some large ones and some that are quite...

SENATOR STUHR: Very small.

JOE SCHAEFER: ...quite small.

SENATOR STUHR: Yes, right. Any other questions? If not, thank you...

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JOE SCHAEFER: Thank you.

SENATOR STUHR: ...very much. Are there other proponents for the bill, LB 1023? Are there those wishing to testify in opposition? Welcome.

REBECCA RAYMAN: My name is Rebecca Rayman, R-a-y-m-a-n, and I am the Executive Director of East Central District Health Department. And I do have the same letter on letterhead. I had e-mailed it to Jason, (Exhibit 4) so...and I do have a change within the letter. One thing I would like to say is the reason that I oppose this bill is because in the past the retirement system, in 2003, encouraged us, strongly encouraged us, told us it was mandatory for us to join. And all of the district health departments that I know of in Nebraska are already members, except for two, East Central District Health Department and Central District Health Department. At the time that this came up, in 2003-2004, we had been in existence since 1998, and we were told at that time that we would need to go back and make back payments to the retirement system, which would have placed an extreme hardship on our agency. None of our employees had ever been county employees. Our district health department, like many of the district health departments, was a recent start, so there was not a county system in place. So we had not been able to take advantage of our county retirement system. And actually we started with an independent retirement system, which we carry on to today. And I did bring you some information. Last year we paid \$19,269 out in retirement. It's a voluntary retirement system, and our match is only 3 percent. If this bill passed and it was mandatory for us to join, as long as there is language in the bill that says it's not mandatory for us to join, I really don't have a problem. But if it was mandatory for us to join, then in that same period of time at 6.75 percent, and the e-mail that you have I figured on 6 percent, it would be \$93,593.92. We employ 47 employees. We have a couple of openings right now, which brings us right up to around 51. That would be a significant budgetary change for us and it would take time for us to adapt to that change. We...you know, we can't change over night. That's my opposition to the bill. I'm all for retirement. Our current match is only 3 percent. It's kind

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of odd to have somebody come and say don't give me more benefits, but don't give me more benefits if it will hurt my agency and it will hurt my counties and we'll lose services because of it. So I would certainly welcome any questions.

SENATOR STUHR: Are there any questions for Rebecca? Senator Erdman.

SENATOR ERDMAN: Rebecca, I'm trying to remember, we have 91 counties listed on this handout. I know that Scotts Bluff County is not a qualified health district...department at this time. Do you remember the other county that is not qualified under LB 962?

REBECCA RAYMAN: I believe that's Dakota.

SENATOR ERDMAN: Okay. I was just looking at the numbers, and I didn't see Scotts Bluff County, and I knew there was one other from my involvement on the Health Committee. But I couldn't remember the name. Thank you

SENATOR STUHR: Rebecca, when you say East Central, exactly what area are you...

REBECCA RAYMAN: What counties does that cover? Sure.

SENATOR STUHR: Pardon?

REBECCA RAYMAN: It's Platte, Colfax, Boone and Nance Counties.

SENATOR STUHR: Okay. And then you also stated there was a central district?

REBECCA RAYMAN: Central District Health Department, and that director is here as well.

SENATOR STUHR: Oh okay, all right. I do believe the amendment is probably going to address your concerns.

REBECCA RAYMAN: Yes, and that's...I'm...as I said, I'm all for retirement. I have nothing against the retirement system, I just prefer it to be a choice.

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SENATOR STUHR: Right. Okay, thank you very much for testifying. Are there others in opposition who might wish to testify? Are there those wishing to testify in a neutral capacity? Welcome.

BETH BAZYN-FERRELL: Good afternoon, Senator Stuhr, members of the committee. For the record, my name Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l I'm assistant legal counsel for the Nebraska Association of County Officials. We're appearing here neutral today because we have no problem. We support the idea of making retirement benefits available and participation available to the employees and officers of county health departments. We had just had two concerns, one of them was addressed by the amendment; the other was a concern about possibly clarifying who would be responsible, the county or the health department, for making the matching contributions. That is something that we understand that PERB has dealt with internally and worked with either the county or the health department, whoever has chosen to do that. And that may address our concerns.

SENATOR STUHR: All right. So you would prefer some clarification in that area as far as who is responsible for the payment.

REBECCA RAYMAN: Yes.

SENATOR STUHR: Okay, all right. Are there any other questions? If not, thank you very much for coming. Any others wishing to testify in a neutral capacity? If not, that closes the hearing on LB 1023 and we do want to go into a very quick exec session. So if we could clear the room, that would be appreciated and thank you all for coming.