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Nebraska Retirement Systems Committee  
February 19, 2008

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[LB967 LB992 LB1143]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Tuesday, February 19, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB992, LB967, and LB1143. Senators present: John Synowiecki, Chairperson; Philip Erdman; Lavon Heidemann; Russ Karpisek; and LeRoy Louden. Senators absent: Tom White, Vice Chairperson. []

SENATOR SYNOWIECKI: (Recorder malfunction)...I want to welcome you to the Nebraska Retirement Systems Committee. We will have hearings today on three bills. There is, incidentally, a change in the agenda to accommodate Senator Bill Avery. LB992 will be first; LB967 will be heard second; and LB1143 will be heard by the committee as the last bill of the day. This is the Retirement Committee. We meet during the lunch hour. There will be members coming in as the hearings progress. Those that are present now to my immediate right is Jeremy Nordquist, he's a research analyst for the committee. To my immediate left is Senator Phil Erdman from Bayard; and to my far left is Laurie Vollertsen, she works as the committee clerk for the Nebraska Retirement Systems Committee. With that, we will begin the testimony with Senator Bill Avery's bill, LB992. Welcome, Senator. []

SENATOR AVERY: (Exhibits 3, 4) Thank you, Mr. Chair. I have a couple of handouts here for the page. For the record, my name is Bill Avery, spelled A-v-e-r-y. I represent District 28, and I'm here to introduce LB992. This bill calls for the Nebraska Investment Council to divest of Nebraska's holdings in Sudanese companies and companies doing substantial business in Sudan. The objective of such divestment is to apply pressure to the Sudanese government to end its genocidal policies toward the people residing in the western region of Sudan known as Darfur. The conflict in Darfur has killed up to 400,000 people and displaced as many as 2.5 million. The Sudanese government is backing a militia group known as the Janjaweed, which is trying to kill and/or expel all the non-Muslim people from Darfur. Among the atrocities that have been documented: Systematic rape of thousands of women and children; abduction of women and children; destruction of hundreds of villages; poisoning of village wells; plundering of crops and cattle that the people in the villages depend upon. Twenty-two states, including Iowa, Kansas and Colorado, already have adopted similar legislation, and 15 other states are currently considering such legislation. Fifty-eight universities have adopted divestment policies, 47 others are considering doing so; 15 cities have adopted these policies. Last year, President Bush signed into law the Sudan Accountability and Divestment Act, which was approved unanimously by the U.S. Congress. This law allows state and local governments to divest, and prohibits the federal government from entering into contracts in companies that are operating in Sudan. The United States government also has declared the Sudanese activities in Darfur to be genocide--and I might add that this is a term never before used by foreign policy officials in Washington, D.C., to describe the actions of another country. So it's quite unique in that respect. This

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bill is based on model legislation, drafted by the Sudan Divestment Task Force based in Washington, D.C., and it has been prepared with very meticulous care. There is a representative of that organization here today and he will testify. We have made one adjustment to this model legislation. In our bill, divestment is not required in investment accounts that are employee directed or participant directed. Let me address a question that is often raised along with legislation of this sort, and that is how effective is this likely to be? The Sudanese government has revealed the sting of divestment already by purchasing expensive advertising in the New York Times in an effort to blunt the effects of divestment. And I should tell you too that this bill very carefully targets companies that do business directly with the government and thereby enables the government to finance the genocide. It also targets companies that provide very little benefit to the disadvantaged, that is people at the bottom, the underclass in Sudan. And thirdly, it targets those companies that have not developed policies to prevent their business activity from contributing to the government's genocidal capabilities. The bill targets the worst offending companies in an effort to construct a Sudan-free investment portfolio. And there are companies that provide service to states and universities and other governmental entities that seek to create these Sudan-free investment portfolios, and of course, they charge a contracting fee for that. The goal here is to deny the Sudan government the financial means to continue the genocide. It is specifically designed to protect the people of Sudan while punishing the government. The bill is consistent with U.S. foreign policy. The threshold for divestment has been set very high. President Bush and Congress had defined that threshold as genocide. The bill lays out a judicious and prudent approach to divestment, and the representative of the Washington task force will appear later to provide more detail to that. It is, I think, a fundamental responsibility of the state of Nebraska to decide where, how, and by whom financial resources under our control should be invested. And we ought not to participate in ownership or a capital-providing capacity with entities that provides significant practical support for genocide. You have a fiscal note in your binders that estimates the worst possible consequences if this legislation becomes law. I have looked carefully at that, and it does not appear to me to be realistic as evidenced by the appended comments by the Department of Administrative Services, which disagrees with much of the estimates provided by the Nebraska Investment Council. I mean no disrespect for the fiscal office. There have been times when they've produced notes that I've liked, but not frequently. But I do suspect that they were at the mercy of the Nebraska Investment Council in drafting this note, and it appears that it is unreasonably high, and that is confirmed by the comment on the second page of the note from the DAS. We currently do have some divestment or some limited sanctions against northern Ireland that are carried out with a modest fee, probably could do the same thing with this legislation. No doubt we can all agree that divestment would not be cost-free. I'm realistic enough to recognize that. But the key question for us to consider is whether this is how Nebraska wants to earn income on its investments. Doing the right thing is not always cost-free. I believe this is the right thing to do, and I urge you to advance this to General File. Mr. Chair, I have an executive committee meeting of the Education Committee going on

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right now, so I will not be able to stay for closing. [LB992]

SENATOR SYNOWIECKI: Thank you, Senator Avery. Before moving to questions from the committee, I'd like to announce that: Senator Lavon Heidemann from Elk Creek has joined us; as well as Senator Russ Karpisek from Wilber; and just taking his seat at the committee chair is Senator LeRoy Louden. Welcome. Any questions from the committee? Senator Erdman. [LB992]

SENATOR ERDMAN: Senator Avery, I'm going to presuppose the answer, but I'm going to ask it anyways. How much do we currently invest of our state's assets in Sudanese-related entities? [LB992]

SENATOR AVERY: You know, I'm passing out right here--please distribute copies--a pie chart that shows the NIC's current investments. Here is also a set of numbers that will put numbers to those percentages in the pie chart. [LB992]

SENATOR ERDMAN: I think we have those. [LB992]

SENATOR AVERY: Oh, you already have them? [LB992]

SENATOR ERDMAN: We actually have it in color. [LB992]

SENATOR AVERY: Okay. In color? [LB992]

SENATOR ERDMAN: Yeah. Do you know how much of our assets... [LB992]

SENATOR AVERY: I don't. I know there are 28 companies that would be targeted by this legislation. How much actual dollars would be involved, you may have to ask other testifiers. [LB992]

SENATOR ERDMAN: So a follow up, it seems interesting that it took the State Department this long to use the word "genocide" when you had the holocaust and other things going on during their same time. So I don't know if that's a reflection of the uniqueness of the Sudanese or more of the backbone of the State Department. [LB992]

SENATOR AVERY: The latter. [LB992]

SENATOR ERDMAN: I was not aware of that. [LB992]

SENATOR AVERY: Yeah. If I may respond, the State Department has always been very, very careful about their choice of words in describing the behavior of foreign governments. And often you will see in news stories about diplomatic discussion, and sometimes they used the word "frank discussion." Well, a "frank discussion" in reality

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means there was a lot of shouting and pounding the table. We are very, very reluctant to use the word "genocide." It certainly would have been an appropriate time to use it during the holocaust. [LB992]

SENATOR SYNOWIECKI: Any additional questions from the committee? Seeing none, thank you, Senator. [LB992]

SENATOR AVERY: Thank you, Mr. Chair. [LB992]

SENATOR SYNOWIECKI: Okay. The committee will now entertain proponent testimony for LB992. Proponent testimony? Welcome. [LB992]

SARAH BERINGER: Thank you. Senators of the Retirement Systems Committee, it is an honor to testify before you today in support of LB992. My name is Sarah Beringer. I am from Bellwood, Nebraska. I am currently a senior at the University of Nebraska-Lincoln, and cochair of Divest Nebraska, the leading advocacy group in Nebraska advocating targeted divestment as a strategy to end the genocide in Darfur, Sudan. [LB992]

SENATOR SYNOWIECKI: Sarah, I don't mean to interrupt, but can we get the spelling of your name? [LB992]

SARAH BERINGER: Yes. [LB992]

SENATOR SYNOWIECKI: I think we need it for...we're developing a record here. [LB992]

SARAH BERINGER: Sure. Sarah, S-a-r-a-h Beringer, B-e-r-i-n-g-e-r. [LB992]

SENATOR SYNOWIECKI: Okay. Thank you. [LB992]

SARAH BERINGER: (Exhibit 5) You're welcome. First, I would like to provide a brief background of the genocide in Sudan, which has taken the lives of 200,000 innocent civilians and has led to the displacement of 2,500,000 people. Next, I would like to discuss how targeted Sudan divestment came about as a strategy to help end the genocide. I will speak on a few specific details of LB992. Daniel Millenson, advocacy director of the Sudan Divestment Task Force, will provide a deeper analysis of LB992 in his testimony this afternoon. In February of 2003, rebel groups in Sudan launched an uprising against the Sudanese government. They felt that the Arab-dominated government was discriminating and neglecting non-Arab black Africans in Sudan, denying them land resources and an active role in the political process. The Sudanese government responded to the uprising by arming mostly Arab militiamen known as the Janjaweed who began a campaign of genocide, killing, raping, and robbing black

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Africans in the Darfur region of western Sudan. The offenses in Sudan were not aimed at squelching rebel groups as the government of Sudan had claimed nor were they simply the work of the Janjaweed as the government of Sudan had also claimed. The Janjaweed and the government of Sudan were actively targeting innocent black Africans based on their ethnicity. Today, the genocidal campaign continues, fueled by companies operating in Sudan who provide the government with the money they need to fund the genocide. Over 70 percent of revenue from oil goes to the military budget in Sudan. Economic gains brought on by foreign direct investment have disproportionately benefited Khartoum's elite and the Sudanese military. U.S. states and institutions have realized the connection between money and the government's ability to carry out the genocide. An international movement has emerged which supports removing investments from companies whose revenues are funding the genocide. Fifteen states have passed legislation similar to LB992. It is important to note that the passage of such legislation will not have a negative impact on the citizens of Sudan. Companies that provide benefit to the citizens of Sudan, such as agricultural and health-related companies, are excluded from divestment. Nebraska's investments in offending companies will most likely follow that of the 22 other states. They will most likely be less than .3 percent of our investment portfolio. The Sudan Divestment Task Force, an international organization based in D.C. with support from Calvert, has devised a list of about two dozen offending companies in Sudan. The task force is in continual contact with these companies, encouraging them to adopt a corporate governance policy regarding the situation in Darfur. In conclusion, I would like to remind you that Nebraska was the first state to pass divestment legislation from South Africa during the apartheid era. Our efforts helped bring an end to the brutal rights repressive regime of South Africa. Nebraska has a similar opportunity to use its economic influence and to make a difference in Darfur with the passage of LB992. Thank you. [LB992]

SENATOR SYNOWIECKI: Thank you, Sarah. Any questions from the committee? Seeing none, thank you. Thanks for your testimony. Additional proponent testimony, LB992? [LB992]

STEPHANIE SUTTON: (Exhibit 9) Good afternoon members of the Retirement Systems Committee. My name is Stephanie Sutton, S-u-t-t-o-n. I am a citizen of Lincoln, Nebraska, a student at the University of Nebraska, and a cochair of Divest Nebraska. Through my travels to Africa on four occasions to seven different countries, I have realized that our world is very interconnected. The genocidal Darfur, Sudan, is occurring over 7,000 miles away, but this does not exempt us from playing a significant role in helping to end this genocide, for not only are we citizens of the state of Nebraska, but we hold global citizenship in this world. As Senator Avery stated, the United States Congress passed unanimously the Sudan Accountability and Divestment Act, which authorizes state and local governments to divest assets from foreign companies operating in Sudan. The United States government feels strongly about Sudan divestment and so should we. This past week, ASUN, the governing student body of the

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University of Nebraska, passed resolution 19 in support of LB992. Twenty-two states today have adopted divestment policies. This includes our neighbors, Iowa, Colorado, and Kansas, who have passed the Sudan model similar to what Senator Avery has proposed. Twenty-three additional states have legislation in pending this session. Together through the combined efforts of numerous state's divesting, we can put an economic pressure on the government of Sudan, a government which has shown a propensity in the past to bending to economic pressures. Since the divestment movement has began, nine companies have ceased their operations in Sudan or significantly changed their policies. We are making a tangible difference. The genocide of Sudan has been going on since 2003. It is now 2008. That's five years, five years too many. An atrocity that occurs in Africa is no less heinous or significant than one that occurs in Europe. If it were Nazi Germany committing genocide, we would not stand by and state that world political issues should not interfere with Nebraska Investment Council policies. The U.S. government has made it illegal for U.S. companies to operate in Sudan. Therefore, if we invest in foreign companies that profit from and help perpetrate the genocide of Darfur, we are utilizing an economic loophole for our benefit at the expense of others. The expense of others in this case consists of rape, violence, burning of villages, and mass killings. The philosopher Edmund Burke once said: All that is necessary for the triumph of evil is for good men to do nothing. Let the good men of Nebraska do something and help those who are unable to help themselves. And that's why I support LB992. Thank you. [LB992]

SENATOR SYNOWIECKI: Thank you for your testimony. Questions from the committee? Senator Louden. [LB992]

SENATOR LOUDEN: Yes. Thank you for your testimony. What is the United States...what kind of business do they do in the Sudan? What do they import from there? [LB992]

STEPHANIE SUTTON: The United States, it is illegal for our companies to work in Sudan. So the only thing that this would be affecting would be our investments in foreign companies, such as Chinese, Asian, Chinese oil companies, etcetera. [LB992]

SENATOR LOUDEN: In order to invest in Sudan, then, you have to do a back door work, you have to go out onto the global marketplace, global stocks or something like that. [LB992]

STEPHANIE SUTTON: Correct, and that's what we're doing. [LB992]

SENATOR LOUDEN: And how much of that is going on with Nebraska money? Do you have any idea how much money is being invested that way? [LB992]

STEPHANIE SUTTON: In the 22 states that have done Sudan divestment, it has been

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less than .03 percent of their portfolios. So it would be a small number, but with all the states combined, it is a significant number. So therefore I feel like it would not hurt our pension returns, but yet it's still important that we must do this. [LB992]

SENATOR LOUDEN: Do you know how much Nebraska investment has in any of those Sudan companies? [LB992]

STEPHANIE SUTTON: No. That would be a question I'd have to refer to Dave Bomberger of the Nebraska Investment Council who has those numbers, I would assume. [LB992]

SENATOR LOUDEN: Okay. Thank you. [LB992]

STEPHANIE SUTTON: Yes. [LB992]

SENATOR SYNOWIECKI: Okay. Thank you. Any additional questions? Seeing none, thank you for your testimony today. Additional proponent testimony? [LB992]

STEPHANIE SUTTON: And these can be distributed. [LB992]

SENATOR SYNOWIECKI: Thank you. Welcome. [LB992]

ADAM OMER: Thank you. My name is Adam Omer. I am from Darfur, Sudan. I was born in Darfur and raised there my whole life, was there up to high school. Then I finished my bachelor degree in University of Khartoum, Sudan. My family still lives there. [LB992]

SENATOR SYNOWIECKI: I don't mean to interrupt, but can we get the spelling of your name for the record, please? Thank you. [LB992]

ADAM OMER: Yeah. Adam, A-d-a-m, last name Omer, O-m-e-r. [LB992]

SENATOR SYNOWIECKI: Okay. Thank you. [LB992]

ADAM OMER: Yes. Yeah, my family still lives there in Sudan, as many of (inaudible), like I lost some of my friends and mates there. My aunt was died like one year ago as a result of attacking of her village by Janjaweed backed by Sudanese government. Recently in April of 2008, still exists new waves of attacks in western part of Sudan, and a new mass of killing and slaughter that's still in there. Actually, that's in Fasul (phonetic) almost 20,000 new displaced or been refuged in the neighboring country, Chad. And the country like Chad, like say I, will not accept more refugees here because the international committee has not put enough pressure on the Sudanese government to prevent new attacks. Also, what we believe here is the international committee is not

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doing enough to stop the genocide in Darfur. I know there is some kind of (inaudible) now like sending international troops to Darfur. But it's still didn't work yet and the Sudanese government put a lot of (inaudible) to prevent the deployment, and also like preventing like indictments of the perpetrators for the last five years. So we still need like the Sudanese international committee to put more pressure on Sudan's government and its allies, like China, to prevent this genocide. Also, we think that ending of genocide in Darfur will lead to end of genocide in the future other part of the globe because as they put real ending of this genocide and they put the perpetrators to the court of indictment, international communal court. What we're seeing there is in the future, nobody would think about committing new crimes such in other part of the world. So I see among the international committee is a big, big responsibility to end the genocide. One of the...divestment is one of the tools to put some kind of pressure on Sudanese government, not only divestment along with ending all genocide. But like it's one of the tools what I think to prevent the genocide there because what we're seeing most of, almost 70 percent of the oil revenue go to the war effort and for killing civilians and for building the Sudanese war machine. So divestment is one of the important tools too (inaudible). That's a brief to (inaudible) my testimony today. [LB992]

SENATOR SYNOWIECKI: Thank you, Mr. Omer. Any questions from the committee?  
Senator Erdman. [LB992]

SENATOR ERDMAN: And thanks for being here. Let me ask you about what your country is experiencing now that you have these other states that have done this. Has there been any recognition by the Sudanese government that the states are taking this action against these companies as far as the investments? We're going to be the 25th state or something like that should this become law, in addition to what the federal government is doing. Are you seeing improvements there by using these mechanisms or what can we learn from what other states have been able to do as far as these types of restrictions on their investments? [LB992]

ADAM OMER: Yeah. What we think here, yeah, there is the divestment of other statements in Sudan, it sends some kind of message to Sudanese government that things will be in the future, like there would be things would be worse for (inaudible). There will be stoppage of this, but still doesn't make big affect in Sudan because like divestment is just only a part because it's still like the Sudanese government, it still have some ways to go around these things because it doesn't affect directly in the Sudanese government. But in the future on when we put this divestment large scale exactly, buying from China inside because the oil company's still working there (inaudible). The revenues maybe come back from China, not from the United States or from Europe or from this country put that effort. But by enlarging it and widening it, we expect like to make a big affect in the future. [LB992]

SENATOR ERDMAN: Is the largest export of the largest resources that the county of

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Sudan has, is it oil? What is the major exports of the... [LB992]

ADAM OMER: Oh, before like say...before we have Khartoum and (inaudible). (inaudible) is used like to be an animal wealth. You know, in Sudan they use it for (inaudible) foreign currency for the government. But now they put a large effort would be for oil because like that's a quick, you know, revenue for...in oil. And now we see the price of oil jump up to \$100 a barrel. So that will be very, very effective. And some people like expected like in last December almost \$425 million. That was the income of the Sudanese government from oil. That's a huge like revenue for a small country like Sudan (inaudible). [LB992]

SENATOR ERDMAN: Okay. Thanks, sir. [LB992]

SENATOR SYNOWIECKI: Any additional questions? Thanks for your testimony today. [LB992]

ADAM OMER: Okay. Thank you. [LB992]

SENATOR SYNOWIECKI: Additional proponent testimony? [LB992]

HERB SCHIMEK: Mr. Chair, members of the committee, my name is Herb Schimek, S-c-h-i-m-e-k, in favor of the bill. We've lived through the South African divestment, the North Ireland divestment, and I think we can live through this one. It's a very small amount of our portfolio, and we certainly want to do anything we can to help these people that are being victimized in north Africa. That's my testimony. [LB992]

SENATOR SYNOWIECKI: Any questions from the committee? Seeing none, thanks, Mr. Schimek. [LB992]

HERB SCHIMEK: Thank you, sir. [LB992]

SENATOR SYNOWIECKI: Additional proponent testimony? [LB992]

DANIEL MILLENSON: (Exhibit 10) Hi. Mr. Chairman, members of the committee, my name is Daniel Millenson, M-i-l-l-e-n-s-o-n, and I am with the Sudan Divestment Task Force. As mentioned before, we're an organization that works primarily on this issue, and we're based in Washington, D.C. I had the opportunity to help provide model legislation that's been adopted by 15 other states to Senator Avery. And I guess what I wanted to do is talk a little bit about: the character of the regime, just adding to some of the background that others have given and why divestment would be appropriate in this case, in this very limited case; why it's financially prudent; how the bill works and works to protect the investment council's returns; about effectiveness; why we think this will work and is working; and how it can be easily implemented. So I know that others have

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talked a little bit about this before, but the Sudanese regime, as many of you may know, is a state sponsor of terrorism. They master minded the U.S.S. Cole Bombing in 2000. They have sheltered Osama bin Laden in their country throughout the 1990s. They've been subject to U.S. sanctions for over ten years. Additionally, they also prosecuted a separate civil war with southern Sudan that killed 2 million Christians, and the United States helped to end that civil war in 2005. Unfortunately, they were getting underway in Darfur at the same time. And I guess there was a question before, oil makes up 90 percent of their export revenue. And up to 70 percent of those profits that they get from oil go towards their military expenditures, go towards perpetrating genocide in Darfur. So while U.S. companies can't operate in Sudan unless it's in a humanitarian capacity, foreign companies that Nebraska invests in can. And in every state that we've worked in thus far, not just the states that have divestment, even the additional 15 or so states that have legislation pending this session, every single one of them has found that it affects .3 percent of their investments or less. Now, you might be thinking that's a small amount of money. It's not just the United States that has these campaigns. It's 14 other countries and many states have, in the aggregate states, have trillions of dollars in pension fund assets. Because it affects a small percentage of total investments in each individual state, that means it's easy to divest those assets without harming returns. To call it...divestment is a little bit misleading. What this is actually about is a program of engagement, followed by divestment from unresponsive companies. So under this bill, companies that meet three basic criteria, that they have a business relationship with a government or a government created project, like an oil consortium, they do not benefit civilians outside of the government. And third, they have refused to take any--what we term--substantial action. That could mean humanitarian aid. That could mean using economic leverage to pressure the government to allow in U.S. peacekeepers unimpeded access to the region. If they meet all three of those criterion, and they fail to respond to the investment council's three month period of shareholder engagement, in other words using shareholder leverage to try and change the company's behavior, then they would subject to divestment and there would be 15 month period where they could sell those investments. As a result, nine major companies of other states doing this previously, nine major companies have already responded by either changing problematic operations or actually leaving the country. One recent example is a Canadian mining firm, La Mancha Resources. They decided to, even though they operate on the opposite side of the country, they decided to launch a substantial humanitarian program in Darfur, as well as where they operate. And they also met with the energy minister in the Sudanese government pressuring him to allow U.N. peacekeepers access. But perhaps most importantly, they are planning on making a multimillion dollar expansion to their gold mine, which would have netted the Sudanese government millions of dollars in additional revenues and we know where that's going. And they decided to forego that investment until the genocide ends. So this is the type of behavior we're looking for from companies. Additionally, since a lot of these companies are state owned--mostly Chinese, Malaysian, and Indian oil companies--and many of them are partially state owned, when you pressure these companies, what

you're actually doing is pressuring the governments themselves. And many of these companies do far more than just provide financial support for the regime. Some of them, especially, Chinese, facilitate weapons transfers. The Malaysians refuel military aircraft. And all three often help facilitate subsidized loans, and especially, in the case of the Chinese, use their veto in the U.N. Security Council to prevent stronger action against the government of Sudan. So when you're pressuring these companies, you're actually pressuring their home governments as well. And so this is already prodded China to shift its position from saying absolutely nothing about Darfur two years ago before divestment really got underway, to actually pressuring the Sudanese government to accept the U.N. resolution last summer that authorized peacekeepers, which was a huge shift for them. And I think a lot of it has to do with their newfound sense of sensitivity to their image with the upcoming Olympics. I guess I would like to address what's termed the "slippery slope argument." If you divest in the case of Sudan, why not some other country? Why not anyone who doesn't allow workers to unionize, etcetera? I guess I would start off by saying that despite the name of our organization, we hold a strong presumption against divestment. We believe it's just not the appropriate solution 99 percent of the time, even in the case of human rights abuses. It's a really unique combination of factors here that makes divestment appropriate and effective. And those are the following. One is, the uniqueness of the fact that we've never declared genocide, while atrocities are actually occurring, which you brought up earlier, Senator. And second is, this is the first time in history that the U.S. government has actually authorized and encouraged states to do this. And third is that we know that Sudan is a country that's responsive to economic pressure, and they have a history of responding to it. And so they have a foreign debt that's larger than their GDP. This is a place where they're vulnerable. And they've actually already responded with press releases from their embassy here in Washington condemning the movement, and so we know that this is on their radar screen. So it's something, for a very unique set of reasons, is appropriate in this instance, and it's something that, again, we know is effective. Let me briefly speak about the fiscal note. I guess I would like to address this. Our organization feels that the costs are, I guess...estimated costs here are far larger than what we've encountered in other states implementing this, including Iowa, Kansas, and Colorado. It lists here as services to screen portfolios as costing \$145,000 this fiscal year, and then another, the same amount next fiscal year. All the information needed to actually identify companies...and then there's more money allocated for legal work. No legal work in any other state that's implemented this has needed to be undertaken. I'll just quote the...nor have the services to screen portfolios are available publicly and free of charge from reputable nonprofits, such as our own or you can buy it for about \$5,000 or \$10,000, not \$145,000, from third party research firms. Additionally, no pension fund has found the need to hire additional staff to actually implement this. In Texas, the teachers retirement system, which is about \$100 billion fund, they found that it actually affected .05 percent of their total assets. And they said that it had no material impact on the fund. No material impact on the fund is something that we've been hearing over and over from state after state. So it's something that we know that while there are securities

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that will need to be divested and replaced, the transaction costs are fairly minimal. Additionally, because this bill differs from a bill that was introduced last year here and also bills that were passed in Illinois and New Jersey initially, the way this would affect the state's index funds is a lot different. We found that the tracking error that it would affect is in the neighborhood...first of all, it doesn't even affect many indices, like the S&P 500 and the Russel 3000, that most states hold. But for now that some of the other states are doing this, investment managers are starting to come out with Sudan-free versions of the various funds, which are viable and track the same indices in about the same way. I guess lastly I would say that this bill targets different types of assets in different ways based on the actual feasibility of divestments. So if there's a...right now, for example, there aren't Sudan-free mutual funds available from mainstream asset managers, what that means is that Nebraska would only have to divest from those if financial equivalent alternatives became available. We definitely don't want to have states sell something when they can't buy a Sudan-free alternative. That would just really harm returns and harm retirees. And I guess as a final note just with regard to fiduciary duty, we recognize that the Nebraska Investment Council has a fiduciary duty, a duty of loyalty where it has to invest exclusively in the interest of its retirees and beneficiaries. What we would argue is that given that there are financially equivalent alternatives...and in fact, our organization has done a statistical analysis that shows highest offenders have actually underperformed peer companies--companies of a similar size, business operations, and location--by 50 percent over 1 year, 40 percent over 3 years, and 5 percent over 5 years. These investments are actually poor investments from both a financial perspective, as well as a moral one. And I believe that the statistical analysis, a summary of that is available in the packets that were distributed. So that should be in there. I'd be happy to take any questions from the committee, and thank you again. [LB992]

SENATOR SYNOWIECKI: Any questions from the committee? Senator Heidemann. [LB992]

SENATOR HEIDEMANN: Just out of curiosity, you're opinion about the ability to get a Chinese, say, oil company to stop doing business in Sudan. Just knowing what I know about the Chinese government and the private bill or businesses in China, they're going to do anything that they can do to make a profit. But just because we disinvest from them, I can't see them backing up from doing business in Sudan. [LB992]

DANIEL MILLENSON: Senator, you're absolutely right. You know, there's no way that the Chinese are going to leave Sudan. Sudan is their fourth largest provider of oil, and it really is the same way for the Indians and the Malaysians as well. What we're really looking for here is to shift company behavior in a way so that instead of, you know, giving the government weapons or providing them a total blank check to do whatever they want, they start to say: Look, you know, what you're doing in Darfur is actually making things bad for business for us. It's scaring away investors. It's limiting our

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access to western capital, which these Chinese companies definitely need. And you know, honestly if the Chinese government said stop the genocide tomorrow, the Sudanese government would stop the genocide tomorrow. They're simply too reliant on China for all their weapons, all their diplomatic protection, all their loans, and this...not all their loans, but many of their loans. And the Chinese are someone they can't afford to say "no" to. So the degree to which we've been successful is indicated by how the Chinese have started to shift their policy and take those baby steps. What we're looking for is to expand this by getting more states to get on board, like Nebraska, and more countries, especially the Europeans, to make this pressure work. They're not going to pull out. What we want them to do is pressure the government to stop doing this. [LB992]

SENATOR HEIDEMANN: Yeah. I think the Chinese have so much invested in Sudan that I think it would be hard for them to pull out or hold too big a stick over them. They rely on the oil from Sudan. [LB992]

DANIEL MILLENSON: Yeah. You know, you're right. They're definitely not going to pull out. It's still, though, a relationship where the Sudanese...just because of their position of relative weakness. I mean, they're very isolated regime. There aren't too many other people they can turn to. And the Chinese do have, you know, substantial, you know, get their oil from other places as well. Sudan gives them about 7 percent to 10 percent. The power dynamic is such where the Sudanese are just much more reliant on the Chinese, especially because China is really the only thing that's holding the U.N. back from declaring Iraq-style sanctions that would just totally cripple the regime. [LB992]

SENATOR HEIDEMANN: Thank you. [LB992]

DANIEL MILLENSON: Yeah. [LB992]

SENATOR SYNOWIECKI: Senator Erdman. [LB992]

SENATOR ERDMAN: Daniel, help me understand your position or potential position of your group and others that may testify. What if we simply said that we won't invest in any Sudanese-related businesses or businesses that do that? That's substantially different than the way the bill is written. For example, the investment officer shall notify each company. You go through that process. [LB992]

DANIEL MILLENSON: Sure. [LB992]

SENATOR ERDMAN: And it asks you questions about from within 90 days after they've...90 days after the state investment are first engaged the company. Is that when they receive the letter? Is that when they've sent the letter? I'm just thinking practically. [LB992]

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DANIEL MILLENSON: Yeah. [LB992]

SENATOR ERDMAN: If the goal is that we don't invest in them, why do we make the Nebraska Investment Council an arm of the State Department? Why don't we just simply say that it's the policy of the Legislature in the state of Nebraska to not invest in those companies and to direct the Investment Council under the statute to do that? I think if you're going to do it, that at least would make more sense to me than what's proposed here. I'm not saying that what's proposed here isn't logical and well thought through. You know, candidly, the folks that serve on the Investment Council... [LB992]

DANIEL MILLENSON: Sure. Yeah. [LB992]

SENATOR ERDMAN: The responsibilities are somewhat different. [LB992]

DANIEL MILLENSON: Right. [LB992]

SENATOR ERDMAN: And again, they're going to probably tell us--and I'm just reading through the information--it's not their job to make this decision, which has always been the Legislature's job to say, in areas outside of their fiduciary responsibility, when they should deviate from the best return. Couldn't we just say that we won't invest in companies that do business with the Sudanese government and move on and direct them accordingly instead of all the hoops that have to be jumped through? [LB992]

DANIEL MILLENSON: Yeah. Yeah. That's a great question. I guess I would take a step back by saying that our goal is not just to sell the shares in these companies, you know, wipe our hands and go home. The goal is to force these companies to change their behavior. A lot of companies will change their behavior and get the government to change its behavior. A lot of companies will do that on their own with just engagement, you know, just with having shareholders approach them saying, do this. What we found, though, is that many of these highest offending companies only respond when there's a threat of divestment. And so it's not really about, you know, the Nebraska Investment Council flying to Beijing and meeting with PetroChina. It's about Nebraska doing the same thing as all these other states and that sort of cumulative impact. Our organization actually negotiates with many of these companies directly. And just with your question about implementation, the bill does not make the Nebraska Investment Council have to make all these decisions. It allows them to put that on. It allows them to get the lists of companies and make those determinations on a third party research firm or a nonprofit organization. So they would not have to go day-to-day and be Sudan experts. That's certainly something they shouldn't--you're right--they should not be expected to do. The reason you do engagement is because that's the area where you actually make the changes happen, and use the threat of divestment or sometimes a period of actual divestment where you impose "reputational" costs, where you hit their share price that

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makes them more responsive during the engagement phase. So you know, again, they should not have to be Sudan experts, but this is sort of where it all happens in the engagement phase. [LB992]

SENATOR SYNOWIECKI: Any additional questions from the committee? Senator Louden. [LB992]

SENATOR LOUDEN: Yeah. Well, for one thing, I agree with you that I don't think we should do business with these SOBs that cut people up in little bitty pieces like they've been doing over there. What I'm concerned about is will we be able to do any good because do you have a list of the companies that are doing a significant amount of business that Nebraska has invested in because that was part of the deal with the fiscal note? And of course, at the present time the federal government has already put some controls on it and we have a fiscal note that's all the way from three quarters of a million to \$15 million here on what it's going to cost. [LB992]

DANIEL MILLENSON: Sure. [LB992]

SENATOR LOUDEN: So I'm wondering if perhaps, like Senator Erdman says, we just put a resolution that we don't do business with them and get on with it if that would work just as well as going through this whole process here. [LB992]

DANIEL MILLENSON: Yeah. Well, either way there would need to be...it's a good question. Either way I think there would need to be a list of companies that the state Investment Council says, no, we're not going to do business with. But the federal government in the Sudan Accountability and Divestment Act, that was the bill where they authorized and encourage states to do this, our organization wrote that bill. We initially had in it that the federal government would just make a list and then states could just use that list. It would be really simple. The federal government came back and said we're not going to do it and they took that out of the bill. So you know, unfortunately it's not as simple as we would have liked. What the bill did do though is when it authorized and encouraged states to do this, they authorized them to do it along the lines of this targeted model that's being introduced here in the form of LB992. So all the Nebraska Investment Council would need to do was get the list. They can get it from us for free. They can get it from a third party research firm for \$5,000, give it to their manager, say what do we own on here? That doesn't cost them anything. Their managers will just do that for them if they're like every other state. And then say, okay, well, we've got...I mean, every single step of the way there are free materials that are available. [LB992]

SENATOR LOUDEN: Yeah. Of course if we put this in statute, then they have to do something and that's what brings this fiscal note up. Did I understand you, there was a Canadian company in it? Is that what you said? [LB992]

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DANIEL MILLENSON: Yeah. It subsequently took some...it's no longer on the list.  
[LB992]

SENATOR LOUDEN: What's Canada doing about the Sudan? Are they investing in stuff or what? [LB992]

DANIEL MILLENSON: Yeah. I'm actually going to be testifying in Parliament at the end of the month, so we're working on that too. But you know, the couple of Canadian companies that were on our list have both either taken substantial action and gotten off the list or actually left the country as a result... [LB992]

SENATOR LOUDEN: And they're investing in some gold mining operations in there?  
[LB992]

DANIEL MILLENSON: Yes. But they're doing so now in a way that is pushing the government to allow in peacekeepers and stop the genocide, as opposed to just sort of handing over a carte blanche and saying, do whatever. So you know, we've worked to make this bill as simple as possible to implement. The reason it's a long bill and the reason it's a little complicated is because if we made it real simple, it would have hurt the state. [LB992]

SENATOR LOUDEN: Then the key to this Sudan situation is probably the Chinese oil business and the Canadian gold business then. Is that correct? [LB992]

DANIEL MILLENSON: Yeah. I mean, again, this Canadian gold mine company in question has done things that make it really no longer a highest offender, but you're right. I mean, the Chinese oil companies--same with the Malaysians and Indians--are really the primary focus of this, and this is the type of pressure that's going to work with them. [LB992]

SENATOR LOUDEN: Okay. Thank you. [LB992]

DANIEL MILLENSON: Thank you. [LB992]

SENATOR SYNOWIECKI: Any additional questions? Thanks for your testimony.  
[LB992]

DANIEL MILLENSON: Thank you. [LB992]

SENATOR SYNOWIECKI: Is there any additional proponent testimony for the bill LB992? Seeing none, the committee will now entertain opponent testimony. Is there any opponent testimony for LB992? Seeing none, any neutral testifiers of the bill? [LB992]

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DAVID BOMBERGER: (Exhibits 1, 2) Good afternoon, Chairman Synowiecki, and members of the Retirement Committee. My name is David Bomberger, B-o-m-b-e-r-g-e-r. I've been the state investment officer since July 1, 2006, and I appreciate the opportunity to testify before you on this matter. My testimony this afternoon is intended to be neutral. My intention is to provide you with some issues to consider as you contemplate this bill, and provide you with some information that, I think, will help you make an informed decision. As Senator Erdman noted, we do, as our grounding point, view our fiduciary responsibility to the members and the beneficiaries of the plans we manage as our first and foremost responsibility. And as fiduciaries, we feel obliged to respond when issues come up that may impact our ability to carry out that responsibility. And we believe that mandatory divestment is in conflict with the council and the state investment officer's fiduciary duty. We believe that that can be resolved with language that carves out divestment activity from this bill to provide the protection that both the council members and the state investment officer might need from litigation that could arise if this bill is passed. And I would also make the point that in the 20 months that I've been state investment officer, we have been active in the Sudan divestment issue. I acknowledge and agree that what's happening in Sudan is terrible, and so don't interpret any of my comments and issues considering facts this afternoon as in any way supportive of what's going on there. We think it is a very bad situation. I did meet several times with the members of the Sudan Divestment Task Force during the second half of 2006. As a result of those meetings, several things have occurred. One, the council--the chair and I and our attorney--considered introducing a resolution that the council might consider adopting that would take a position against what was going on in Sudan. We concluded that after reviewing the statutory authorities, both the fiduciary responsibility and the statute that prohibits us from making investments that have a social objective, we felt that it was inappropriate for us to take unilateral action on that matter. During the course of the conversations with the Sudan Divestment Task Force, I suggested that my role was not to make the law or to change the law, simply to follow the law; and that if they wanted to accomplish a change in the law, they should contact state senators. And they did contact senators, included among that group, Senator Chambers. I communicated with Senator Chambers a number of times late in 2006 during the session last year, and went through a number of issues, and many of the same issues that I'm going to describe to you, with Senator Chambers. And the result of those discussions was LB468, which Senator Erdman really headed down the path that you suggested, simply divesting. Senator Chambers didn't believe that the engagement would be effective. And so we have been involved. And again, we don't take a position in favor or against divestment. Simply try to provide you all with information to help you make the decisions. We also met with the Lieutenant Governor last summer on the subject of divestment, as well as I had a meeting with Senator Avery just before Thanksgiving last year and provided a letter to him identifying some of the issues that we thought were important for you all to consider. And we believe the current statutes are clear that we are not to make any investment that social objective is the primary objective for making the investment. A number of issues for you to consider

as you think about this bill, we've talked about the fiduciary responsibility. But again, the duty of the council and the SIOs act solely in the interest of the beneficiaries, of the assets in consistent definition. While there are lists out there of offending companies, we think that the definition is less than definitive, and that creates some challenges and some expenses in implementing. Additionally, we believe that a fairly well accepted investment theory is that any time you limit the Universe of investments that you can invest, it both increases risks and has a potential to decrease return or both. And lower returns on the portfolio certainly has an adverse impact both on participants, as well as the state. Another issue that we discussed with Senator Chambers last year was the nature of the investments that the investment council makes. About two-thirds of our investments are in passive index portfolios. These are portfolios that we simply invest in companies that are included in an index. We're not endorsing their business strategies. We're simply investing in them in the weights that the index providers have prescribed. Another matter that we discussed with Senator Chambers was the nature of the commingled investments that we invest in. A majority of the assets that we invest in are in commingled funds, funds where we own less than 100 percent of the fund. And these are funds where we're not able to simply divest individual securities; we would be required to divest an entire position and reinvest in a new screened portfolio. We've also identified for Senator Chambers that a number of the funds that were invested in may not have Sudan-free alternatives available through managers that are approved by the council or by our investment consultant. Additionally, we are increasingly investing in private investments, private equity, private real estate, and generally these are blind pools. We don't know what investments these funds are going to make until they're made. And we have found that in some cases where there are social objectives adopted by states, the general partners have excluded public plans from investing in those funds because it constrains their ability to produce returns for their investors. The participant directed funds have been excluded from this bill. And the other pool of assets that we are responsible for is the operating investment pool, which is invested in a portfolio of high quality fixed income securities. Now, I know a number of folks that have testified today have questioned the estimates that I put in fiscal note on this bill. I tried to read the bill in great detail. I asked our investment consultant to read the bill in great detail to understand the time that would be involved to comply with the bill. The engagement process, I believe, is very time consuming, and I think Senators Synowiecki and Senator Heidemann, you know the concerns that I have about staffing levels at the council today anyway. And I don't think I could afford or the state could afford for me to divert current staff, current resources to comply with this bill. I did get estimates from screening services that were as high as \$3,000 per portfolio. The \$150,000 contemplates as many as 50 portfolios that would need to be screened. So these aren't numbers that were just pulled out of the air for shock value. These were factually-based estimates. The staff impact we looked at, tried to understand exactly what all of the steps involved in Sections 19 through 21 of the bill would require of us. We really believe that it would require close to a full time staff person for the first 15 months, and thereafter substantially less. So we estimated what the resources necessary to provide one

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individual might be. And knowing that there is a reluctance to add staff around state government these days, we also went to our consultant and asked them what they would charge us to provide the same service on an outsource basis. We asked our outside legal counsel what his best estimate was in terms of legal fees that he would need to...the time he would need to spend to help us ensure that we're in compliance. And finally, I asked our index fund providers what would it cost for us to transition from the current index portfolios to Sudan-free screened portfolios. And their estimate in aggregate was about \$2 million. And I chose the middle of the ranges of any of their...if they gave me ranges on basis points, I chose the middle of the range. I didn't want to be accused of overstating the cost. I didn't want to be accused of understating the cost. I wanted to give as fair and accurate an assessment as I could. Next, I think I would draw your attention to Section 24 of LB992. And it's a section that provides that the state investment officer can cease divestment if the value of the divested portfolio is more than 50 basis points, .5 percent less than what the value would have been if the portfolio had not been divested. Applying 50 basis points to the portfolios that we understand would be included in the mandatory divestment is about \$60 million. We also provided you with an estimate of the increased risk. And again, this was information provided to us by our index fund provider. And again, I picked the middle of the ranges so as to not understate or overstate the increased tracking error. Tracking error is an investment concept that attempts to measure risk. You should know that the investment council has a risk budget. We do monitor risk very carefully. By increasing risk in the passive portfolios, it could cause us to have to dial back the active risks that we're taking in other parts of the portfolio and could have an impact on performance. Finally, the two areas of statute that I think are effected by this are: First, we believe that mandatory divestment violates the current state law that prohibits investments made for social objectives. And secondly, we believe that mandatory divestment may violate the council and the state investment officer's fiduciary duty. We believe that if LB992 is adopted, several provisions would need to be reworded to conform with the Nebraska State Funds Investment Act to avoid conflict. And we believe that the fiduciary section would need to be amended to carve out protection for the council and for the SIO for divestment decisions made because of this legislation. And we're prepared to work with the committee to accomplish those objectives. And with that, I'd be happy to try to address any questions that senators might have. [LB992]

SENATOR SYNOWIECKI: Thank you for your testimony. Any questions from the committee? Seeing none, thank you for your testimony. Any additional neutral testimony on LB992? Seeing none, that closes the hearing for Legislative Bill 992. The remaining two bills on the committee agenda are bills that I have introduced in the Legislature. Therefore, given the absence of Senator White, Senator Erdman will be the acting chairperson for the committee for LB967 and LB1143. [LB992]

SENATOR ERDMAN: Can I see a show of hands of those who wish to testify in support of LB967? Anyone in opposition? Anyone neutral? I have one testifier, Senator

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Synowiecki, on LB967. You're recognized to open. [LB967]

SENATOR SYNOWIECKI: Good afternoon, members. I am John Synowiecki. I'm from District 7 in Omaha. Today I bring you LB967, a bill to change annual audit provisions of the School Employees Retirement Act. LB967 will strike the provision requiring the school employee retirement plan to pay the cost of the plan's annual audit through its expense fund. The school employee retirement plan is the only plan that pays its own audit. Other plans are included in the budget of the Auditor of Public Accounts. According to the general principles of sound retirement planning adopted as a guide by this committee, we should pursue pension policy that provides for uniformity among the plans. When possible, retirement provisions should be added, amended or deleted uniformly or consistently among the various public retirement systems covering different groups of public employees. LB967 will create uniformity among our retirement plans by having all audits included in the budget of the Auditor of Public Accounts. I want to thank you for your consideration. I might note that I did talk to Mr. Foley, the State Auditor. He does have some problems with the bill. Not my intention at all to not leave the Auditor's Office whole. There would be an appropriation to help satisfy the Auditor's Office here relative to the provisions of the bill. [LB967]

SENATOR ERDMAN: Senator Synowiecki. Senator Heidemann. [LB967]

SENATOR HEIDEMANN: So you agree that it will cost General Funds about \$45,000-50,000? And you're okay with that? [LB967]

SENATOR SYNOWIECKI: Yeah. The Auditor would...in my brief discussions with Mr. Foley, he gave me a number and of course that were to go through the appropriations process. It's not my intent to not make Mr. Foley's office whole. [LB967]

SENATOR HEIDEMANN: Okay. Thank you. [LB967]

SENATOR ERDMAN: Thank you, Senator Heidemann. Other questions? Don't see any. Call for proponents? I don't see any. Auditor Foley as an opponent. [LB967]

MIKE FOLEY: (Exhibit 6) Thank you, senators and members of the committee. For the record, my name is Mike Foley, Nebraska State Auditor, here today in opposition to LB967. I realize that you've got one more bill yet to here today, so I'll be very brief and respectful of your time. The State Auditor's Office is staffed with 45 dedicated personnel who are responsible for auditing about \$8 billion in annual state government expenditures. And over the years, the annual budget of my office expressed as a percentage of the total state government budget has declined significantly. In short, I'm being asked to do more with less and I accept that challenge. Currently, my annual budget runs about \$3.5 million over which about \$2.5 million comes from appropriations from the General Fund. And about \$1 million or so comes from audit fees paid by

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various units of government that are subject to audit. For example, when my staff and I audit the Nebraska Department of Roads, the cost of that audit is paid for with General Funds. When we audit the Nebraska State Lottery, as we do every year, the lottery pays for the cost of the audit. These audit fees arrangements are specified in state statute and they work very well. In the case of the retirement plan as the subject of this bill, the state Legislature some 30 or so years ago specified that the cost of the audit would be charged off as an expense of the retirement program, and that expense now runs about \$48,000 per year. In view of the \$8 billion in assets in this particular retirement plan, a \$48,000 audit fee is well justified and prudent. LB967 changes all of that by providing that the cost of the annual audit will no longer be paid for by the retirement plan, and the bill in its current form provides that there's no alternative mechanism for paying for the audit. The practical effect of the bill is to deplete the limited resources of my office by requiring the performance of an annual audit, but stripping the law of the long-standing mechanism that's been used for 30 or so years for paying for that audit. It's important to bear in mind that the bill provides no benefit for the public school, judges or state patrol personnel who will eventually retire under this plan. That's because this plan is a defined benefit plan and the retiree benefits are determined according to income and years of services. For these reasons, I oppose LB967 and ask you to do the same. And let me just add one final word here. And I do appreciate Senator Synowiecki's meeting with me and discussing the provisions of the bill. He's assured me he does not want to do damage to the office. He wants to make sure that my office remains whole and I just appreciate his spirit on that point. Thank you, Mr. Chairman. [LB967]

SENATOR ERDMAN: Thank you, Auditor Foley. Any questions? Thank you, sir. Anyone wishing to testify in neutral? I see none. Senator Synowiecki, you're recognized to close. [LB967]

SENATOR SYNOWIECKI: I waive closing. [LB967]

SENATOR ERDMAN: Senator Synowiecki waives closing of LB967. That will close the hearing. We will now proceed to LB1143. [LB967]

SENATOR SYNOWIECKI: Thank you, Senator Erdman, members of the Retirement Committee. I am John Synowiecki. I'm from District 7 in Omaha. I bring LB1143 for your consideration today. This bill would require a review of the current statutory, regulatory, and organizational situations of the Nebraska Investment Council and the best practices of some of our state investment offices. A qualified independent organization will be hired to conduct a review and make recommendations to the Investment Council, the Governor, and the Legislature. I would like to defer any questions regarding the purposes embedded in LB1143 to a representative of the Investment Council. I want to thank you for your consideration. [LB1143]

SENATOR ERDMAN: Thank you, Senator Synowiecki. Any questions, even though he

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doesn't want any? I don't see any. Those who wish to testify in support, please? I got one. Anyone else? Two, three. Anyone opposition? Anyone neutral? It's 1:18. The next hearing will start at 1:30 whether we're done or not. So we need to be done by 1:30. So... [LB1143]

DAVID BOMBERGER: (Exhibit 7) We'll make this quick, Senator. Senator Erdman, members of the Retirement Committee, my name is David Bomberger, B-o-m-b-e-r-g-e-r. I've served as the state investment officer since July 1, 2006, and I'd also like to thank Senator Synowiecki and his staff for introducing this bill, and for you taking time to hear testimony on it. LB1143 is intended to provide funding from the earnings of the plans that the Nebraska Investment Council manages were studied to determine what, if any, changes should be made to ensure that the Nebraska Investment Council, its appointed members, and the State Investment Officer and his/her staff have sufficient authority and resources to fulfil their obligations to the members and beneficiaries of the various plans that it oversees. Again, our grounding point is our fiduciary responsibility. And the second slide are excerpt from the Nebraska State Funds Investment Act. And again, by statute the appointed members of the Council and State Investment Officer are deemed to be fiduciaries are directed to act solely in the interests of the beneficiaries and members of the plans. A number of observations about the current structure as noted in the bill, the Council was created over 40 years ago. The Council is now one of the largest investment organizations in the state of Nebraska with \$15.3 billion. The only three other organizations that come to my mind that are larger are Berkshire Hathaway, Mutual of Omaha, and Ameritas--Ameritas investment operations in Lincoln. The investments that the Council are responsible for have grown rapidly, and the complexity of strategy is required to meet the state's objectives have increased. But the structure of governance, staff size, resource allocation process, and statutory regime have not kept pace. And as a result, I believe that the Council members and the SIO have the fiduciary responsibility laid out in the statutes, but don't have the full authority to carry out those responsibilities. The current structure, I believe, has forced the Council from time to time to make less than the best decision simply for political expediency. The current process has led the Council to use alternative sources of funds, like commission recapture dollars, to pay operating expenses, again, for political expediency. I would also note that most of the state's investment activities are outsourced with large payments that go to firms outside Nebraska. The size and the compensation of the Nebraska Investment Council staff has not kept pace with the asset growth or the increased complexity. Lower future returns will require that the NIC look beyond traditional asset classes to succeed for the state. Page 5 provides a table with some historic returns for the defined benefit plan for the year most recently ended December 31, 2007. The assets produced a return of about 7.8 percent. Over the past 24.5 years, those assets have produced a return of about 10.5 percent, well in excess of the required rate of return to keep the funded status of the defined benefit plans solid. But you'll note from the excess return line on this table that these returns have simply mirrored the returns available from traditional liquid asset

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class portfolios. Page 6 provides a table with our consultant's expectations for returns in the future, and they're substantially lower than the returns that we've achieved over the last nearly 25 years. In an asset allocation comprised of these traditional asset classes simply won't produce the levels of returns necessary to keep the defined benefit plans adequately funded. The defined benefit plans are long-term funds and long-term plans that require a long-term investment strategy. And to accomplish the required returns, the Nebraska Investment Council will have to look well beyond traditional strategies to achieve the returns that are necessary. To achieve those required returns, the Nebraska Investment Council will need to look at new and more complex investment strategies, invest in more nontraditional investment classes like private equity, private real estate, infrastructure, commodities, and so forth. And aggressively manage the risk of that new investment style by diversifying its exposure across a large number of investments. I believe that the Nebraska Investment Council, both the governing board and the staff, will need to look and act more like an asset management firm in the future and a lot less like a government agency. The size, experience, and compensation the Nebraska Investment Council will need to grow to reflect that new reality. The slide on page 8 shows the growth of assets under management over the last 12 years. Assets have quadrupled while the staff has increased by one half full time equivalent. The graph on page 9 projects what the assets under management may look like in ten years. I've used assumptions of 8 percent growth, 10 percent growth, 11.5 percent growth, and 12 percent growth. I slipped 11.5 percent in there only because that's the rate of growth that we've experienced over the last 12 years. And you can see that assets will again double or triple over the next ten years and could be as large as \$50 billion in fiscal 2017. To accomplish the new investment objectives, we've already increased our activity in private real estate and private equity, projecting that growth over the next 10 years would result in nearly 150 private equity and private real estate funds. These are very complicated, very time consuming assets and investments to make and require a good deal of time, energy, and expertise. The pie chart on page 11 shows a break out of the approximately \$20 million that was spent on managing the state's investments in 2006. We haven't completed 2007 results yet and I certainly will provide that to you as soon as they are available. [LB1143]

SENATOR ERDMAN: David, I don't want to interrupt you here. [LB1143]

DAVID BOMBERGER: Sure. [LB1143]

SENATOR ERDMAN: But let me ask you to skip ahead to pages 17 and 18. [LB1143]

DAVID BOMBERGER: Sure. [LB1143]

SENATOR ERDMAN: That appears to be the focus of the study. Are these generally the topics that will be considered among other things under a consultant to analyze a lot of the issues that you're already pointing out as far as the history and the projections?

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And if you could summarize those, it's already 1:25. [LB1143]

DAVID BOMBERGER: Sure. [LB1143]

SENATOR ERDMAN: And we still have 2 more people to testify. [LB1143]

DAVID BOMBERGER: Certainly, and thank you, Senator. The areas for study are the composition of the council and we've laid out a number of ideas there. The budget process, is the current budget process appropriate? Could it be changed? Should it be changed? We would want to examine what are the best practices of other successful public investment organizations? Look at a variety of staffing considerations. There may be opportunities to insource some investment activities and have a favorable impact on the state's economy. And finally, a statutory review that could in part capture some of the issues that were contemplated by LR127 in the last legislative session. [LB1143]

SENATOR ERDMAN: Okay. Thank you, David. Any questions? Senator Heidemann. [LB1143]

SENATOR HEIDEMANN: Just real briefly, are we expecting too much? [LB1143]

DAVID BOMBERGER: Do you mean is 8 percent too much? [LB1143]

SENATOR HEIDEMANN: Yes. [LB1143]

DAVID BOMBERGER: I think there are combinations of investment strategies, Senator, that we can achieve 8 percent. I feel that that's our objective and what we're charged with and the cost to the state if we don't achieve 8 percent is very significant. I had hoped to have a statistic from the state's actuary today to provide you what the impact would be if we only earn 5 percent, and I think it would be significant additional contributions. But I think 8 percent is achievable. It has been historically. These statistics that I shared with you today on future returns are index, they're fairly simplistic investment strategies. I think if we undertake a more rigorous approach to managing the state's assets, 8 percent is not unachievable. [LB1143]

SENATOR HEIDEMANN: Thank you. [LB1143]

SENATOR ERDMAN: Thank you, Senator Heidemann. Thank you, David. Next testifier, please. And again, we'd rather you not be redundant, but we do want to give you the opportunity to testify. [LB1143]

JOHN DINKEL: John M. Dinkel, Norfolk, Nebraska. I'm a member of the Investment Council and thank you for... [LB1143]

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SENATOR ERDMAN: Spell your name, Mr. Dinkel. [LB1143]

JOHN DINKEL: (Exhibit 8) D-i-n-k-e-l, from Norfolk, Nebraska, and thank you for confirming my serving here about a year ago. Just a couple of quick points so Gail can also testify. Really the dollars are staggering, \$15 billion. I don't think very few people have how many dollars we're talking about. It's really a drop in the bucket compared to the potential dividends we can reap from its content. One of the passions I have is to take a very hard look at managing more dollars internally with Nebraskans instead of spending approximately \$20 million a year with managers from New York or Boston. As you know, there's very successful investors in Nebraska. The state of South Dakota has proven that this can work. They have over 20 very highly paid investment personnel who contribute to the South Dakota economy. And there's a handout that the senators have that talks about the comparing Nebraska and South Dakota. To do this would be a gradual process, take some political courage. As you know, markets go up and down and these local people, if we went to that, would be highly compensated people, so it would be a political issue. And then also I want to touch real briefly on statutes refer to what is a prudent person would do. Surely a prudent person watching over \$15 billion would invest a very, very tiny fraction of the current annual expenses for a study to see how we are doing. And I would ask for your strong support of this bill. Thank you for your time and I would ask that the rest of my testimony be added to for the record, please. [LB1143]

SENATOR ERDMAN: We'll make copies of that. Thank you, Mr. Dinkel. [LB1143]

JOHN DINKEL: Okay. Thank you. [LB1143]

SENATOR ERDMAN: Gail, I believe you're last. We saved the best for last. [LB1143]

GAIL WERNER-ROBERTSON: Best for last, absolutely. Thank you very much, senators, for allowing me to testify. My name is Gail Werner-Robertson, G-a-i-l W-e-r-n-e-r-R-o-b-e-r-t-s-o-n. I'm the chairman of the Nebraska Investment Council and have been a member for the past six years. And in that short tenure, I have been amazed at the change and the complexity of our investments and the size of the investments as they continue to grow and evolve. And I believe this will just continue at a magnified level as market returns will, I think, come to a lower amount than what we've seen in the last ten years over the next ten years. And as our funds grow and we are expected to keep up with the changes in the environment. So while we at NIC operate a modern complex investment world, the current statutes that NIC operates under are 40 years old. And there's been no significant update to the NIC structure since its origination. As a large investment organization, I believe, it's prudent to look at best practices around the country, and have an open discussion as to how we should be looking at our processes and updating them and improving them. It may be surprising to you to hear that the average tenure for SIOs across the country is only four

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years. And I believe one of the reasons that is the case is because of the structure of most of these organizations, which makes it very difficult in order to do your job when you're trying to get money appropriated for your budgets and you can't get staff additions and you can't bonus to your staff in order to get talent. I would really love to see that changed. I would love to see us to have the ability to attract and retain talented staff to help us meet our obligations to the state, not only for the best possible investment returns, but with reasonable levels of risk. Our current structure really constrains our ability to do this. So in closing, I appreciate your consideration of this bill, and I hope you will approve its funding. Thank you very much. [LB1143]

SENATOR ERDMAN: Thank you, Gail. Appreciate your testimony and your service. We have one more, it appears, so we'll let you sneak in. [LB1143]

MICHAEL JUSTUS: Members of the committee, my name is Michael Justus, J-u-s-t-u-s. I am the Assistant Vice President and Director of Internal Audit for the University. I'm here to testify in favor of the bill. I'll skip to the end. We see this as an opportunity to support the Investment Officer and the Nebraska Investment Council in their efforts to continue to improve their processes and return on investment. And we hope the committee will support the bill. [LB1143]

SENATOR ERDMAN: Mr. Justus, you read that as fast as I talk. (Laugh) Thank you. Anyone in opposition to LB1143? Anyone neutral? Senator Synowiecki to close. Senator Synowiecki waives closing. That will close the hearing on LB1143 and that will close the hearings for today. And the Education Committee will be thrilled to have the room. Thanks for being here. [LB1143]

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Disposition of Bills:

LB967 - Indefinitely postponed.

LB992 - Held in committee.

LB1143 - Advanced to General File.

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Chairperson

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Committee Clerk