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Nebraska Retirement Systems Committee
February 01, 2011

[LB382 LB510 LB532]

The Committee on Nebraska Retirement Systems met at 12:10 p.m. on Tuesday, February 1, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB382, LB510, and LB532. Senators present: Jeremy Nordquist, Chairperson; LeRoy Louden, Vice Chairperson; Lavon Heidemann; Russ Karpisek; Heath Mello; and Dave Pankonin. Senators absent: None.

SENATOR NORDQUIST: (Recorder malfunction)...Retirement Systems Committee. My name is Jeremy Nordquist. I'm the Chair of the committee. I represent downtown and south Omaha in District 7. Our committee staff is Kate Allen is the legal counsel; Trisha Clark is our committee clerk. I will let senators introduce themselves, the members of the committee. Just a reminder if you have cell phones, please silence them. There are sign-in sheets for testifiers, and you can drop those in the box next to our committee clerk. We'll start with Senator Mello. He can go ahead and introduce himself.

SENATOR MELLO: Heath Mello, District 5, south Omaha and Bellevue.

SENATOR LOUDEN: LeRoy Louden, District 49.

SENATOR PANKONIN: Dave Pankonin, District 2.

SENATOR NORDQUIST: Great. And I believe the other members of the committee will join us. I'll turn it over to Senator Louden at this point, as Vice Chair of the committee, to oversee the first bill hearing. [LB382]

SENATOR LOUDEN: Okay. Then we will open on LB382. Senator Nordquist will do the presentation. [LB382]

SENATOR NORDQUIST: Thank you, committee members. Again, my name is Jeremy Nordquist, N-o-r-d-q-u-i-s-t. I represent District 7 in downtown and south Omaha. I introduced LB382 at the request of the Governor. The bill increases the retirement contribution rates for the School Employee and Nebraska State Patrol Retirement Systems over the next biennium. Specifically as proposed in LB382, the school employees contribution rate would increase on September 1, 2011, by 1 percent to 9.28 percent. September 1, 2013, the rate would decrease by that percent down to the current rate of 8.28 percent. And then on September 1, 2014, the rate would decrease by an additional 1 percent to 7.28 percent. The employee contribution rate is matched by the school districts at 101 percent of the employee contribution. The State Patrol member contribution rate would increase on July 1, 2011, by 3 percent to 19 percent of the employee's monthly compensation. The state's contribution rate as the employer would also increase by 3 percent to 19 percent. On July 1, 2013, the contribution rate for Patrol members and the state would decrease by 3 percent to the current rate of 16

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percent of monthly compensation. LB382 has an emergency clause and if enacted would take effect on July 1, 2011. Gerry Oligmueller from the Governor's DAS Budget Office will follow to testify on behalf of this bill from the administration. I'd welcome any questions. [LB382]

SENATOR LOUDEN: Any questions for Senator Nordquist? Seeing none, thank you, Senator. [LB382]

SENATOR NORDQUIST: Thank you. [LB382]

SENATOR LOUDEN: First proponent for LB382. [LB382]

GERRY OLIGMUELLER: (Exhibit 1) Senator Louden and members of the Retirement Systems Committee, for the record my name is Gerry Oligmueller. My name is spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I'm the state budget administrator and the administrator of the Department of Administrative Services State Budget Division. I'm appearing here today on behalf of Governor Heineman in support of LB382, one of several legislative bills which comprise the Governor's 2011-2013 biennial budget recommendations. Thank you, Senator Nordquist, for introducing LB382 at the request of the Governor. As members of the committee are aware, the three defined benefit plans administered by the Nebraska Public Employees Retirement Systems for school employees, State Patrol officers, and judges sustained a significant decrease in value in 2008 due to the losses in the stock market. As a consequence, this committee advanced and the 101st Legislature enacted LB187 and LB188 in 2009 to begin the process of addressing the projected shortfall in these retirement plans. LB187 set the contribution rate for school employees at 8.28 percent for five years from September 1, 2009, to August 31, 2014. The employer school district contribution is set at 101 percent of the employee contribution. LB188 set the contribution rate for the State Patrol members and the State Patrol as employer at 16 percent on July 1, 2010. The actuarial presentation to the Retirement Systems Committee in November 2010 by Buck Consultants revised projections for additional contributions necessary to maintain these plans. The consultants projected the need for additional contributions to the School Employee Retirement Plan of \$18 million for fiscal year 2012 and \$48.5 million for fiscal year 2013. The projection for additional contributions for the State Patrol is \$2.7 million for FY 2012 and \$4.1 million for FY 2013. The Governor recommends that the employee and employer share these additional contributions. LB382 contains contribution increases for both plans that will meet the level projected by Buck Consultants for the 2011-2013 budget biennium. LB382 will increase the employee contribution rate for the school plan by 1 percent to 9.28 percent for two years, beginning September 1, 2011. The school district contribution will increase by approximately the same amount because school districts match the school employee contribution at 101 percent. LB382 will also increase both the employee and employer contribution rate for the State Patrol plan by 3 percent to 19 percent for two years beginning July 1, 2011. I urge you to advance

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LB382. Thank you. [LB382]

SENATOR LOUDEN: And for the record I will note that Senator Heidemann has joined us and Senator Karpisek has joined us. Are there questions for Gerry? Well, I have a question, Gerry. [LB382]

GERRY OLIGMUELLER: Okay, sure. [LB382]

SENATOR LOUDEN: Are you in agreement with the Governor over this bill and plan? [LB382]

GERRY OLIGMUELLER: Sure. (Laughter) [LB382]

SENATOR LOUDEN: Okay. I see you have your arm in a sling so I thought that I would ask, you know, just what your status was at the present time. [LB382]

GERRY OLIGMUELLER: Actually, we're in perfect agreement on it. (Laughter) There are others who probably are not in agreement with me. I'm not sure but... [LB382]

SENATOR LOUDEN: Will their arm be in a... [LB382]

GERRY OLIGMUELLER: The explanation for my arm is, you know, I've been actually looking for an explanation that maybe sounded somewhat, you know, heroic or something of that nature. But I slipped on the ice this morning is the truth. But it's a fracture I'm told by the physician this morning, that is commonly experienced by athletics or athletes so I was trying to think of some sort of athletic story to tell to explain it. But, no, I slipped on the ice so. [LB382]

SENATOR LOUDEN: Okay. We'll note that in the record that Gerry slipped and fell and it wasn't because of the Governor that he's wearing a sling. [LB382]

GERRY OLIGMUELLER: Absolutely. [LB382]

SENATOR LOUDEN: Okay. Thank you, Gerry, for your testimony. [LB382]

GERRY OLIGMUELLER: Thank you very much, Senator. [LB382]

SENATOR LOUDEN: Next proponent. Are there any...are you a proponent? [LB382]

KAREN KILGARIN: Is this LB382? [LB382]

SENATOR LOUDEN: Yes. [LB382]

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KAREN KILGARIN: Sorry, (inaudible) slid in. [LB382]

GERRY OLIGMUELLER: Just don't slip. [LB382]

KAREN KILGARIN: (Exhibit 2) Good afternoon, committee members. I'm Karen Kilgarin. I'm here representing the 28,000 members of the Nebraska State Education Association and appearing in support of LB382. I would like to suggest to Gerry that he could say that he was attempting a triple Salchow and fell, sounds a little better, right, Gerr? So Karen Kilgarin, K-a-r-e-n K-i-l-g-a-r-i-n, sorry about that. Plan solvency is the number one priority of our teachers, both OSERS and NPERS, our Omaha Public School teachers and our statewide teachers in the Nebraska system. We've always stepped to the plate when there's been a solvency issue when we've had to, and we remain committed to working with the committee to address the solvency issue. In conversations and research with your legal counsel as well as your chairman and the actuary, we understand that we may not...it may not behoove us to go with the full 1 percent in the first year; that we might be better looking at a little lower rate. There's some options that I know the committee will explore. We want to work with you on that. I've submitted written testimony. I won't read it to you, but I will tell you that we believe this retirement system is absolutely essential to maintain, to protect, and we will work with you in whatever way we can to do that. I'd be happy to entertain any questions you might have. [LB382]

SENATOR LOUDEN: Any questions for Karen? Senator Karpisek. [LB382]

SENATOR KARPISEK: Thank you, Senator Louden. Ms. Kilgarin, thank you for being here. And I just want to say thank you to the school teachers for agreeing. I get quite a bit of heat about the teachers retirement benefits. But, you know, anyone could have been a teacher too. But I do want to commend them for stepping up to the plate and making sure that the plan does stay solvent. And it puts us in a good position with other members of the retirement too. So I know that you work very hard on doing that. Thank you. [LB382]

KAREN KILGARIN: Thank you, Senator. We've done a great deal of research. I've kind of had to jump into the pool--my arm is okay, though--on this issue, and I've done a lot of research. Kate has been incredibly helpful, as has the actuary, whose name I'm not going to even attempt, as far as researching defined benefit versus defined contribution. And Senator Louden has been a teacher frankly and kind of helping us as well understand some of the concerns, as well as some of the benefits. Research and the studies that I've read and discussed with many of you show that defined benefit plans in the long run are less expensive to operate. They get better returns. They help us in the long term with regard to Medicaid costs, poverty. And I know there's research on both sides. I understand that. But I do think the fact that we have this plan is a recruitment and a retention tool for our teachers. I think it's really important that we do all we can to

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try to preserve it. Thank you, Senator. [LB382]

SENATOR KARPISEK: Thank you. Thank you, Senator Louden. [LB382]

SENATOR LOUDEN: Okay. Other questions? Senator Pankonin. [LB382]

SENATOR PANKONIN: Karen, I'm going to correct the record that where we're at now it may be cheaper to preserve the plan. If you were going to start new, you would never do it. It's more expensive. Defined benefits are more expensive than defined contribution starting out. That's why private business and that's why they've gone away from them. Now in the situation we're in, that's a debatable thing that you may be correct on because you have the requirement to pay down the road. But starting out new, not true. Would you agree? [LB382]

KAREN KILGARIN: Senator, I have to be honest with you. I don't know the answer to that. I appreciate you sharing with me and I look forward to more... [LB382]

SENATOR PANKONIN: Well, I think it is. The other thing we got to remember, and I do as well appreciate, as you know, two years ago we talked about going 2 percent then and we compromised down to the 1. And obviously we've had to go this extra 1. I think Senator Heidemann would agree with me we might have had a head start if we would have done that. But I think it's interesting to note, assuming a rate of return of 13.5 percent in fiscal year '11; 10 percent in fiscal year '12; and 8 percent thereafter. That's still a big part of the trick to try to do that. [LB382]

KAREN KILGARIN: That's still...I'm sorry. [LB382]

SENATOR PANKONIN: That's still a big part of making this work... [LB382]

KAREN KILGARIN: Oh, clearly. [LB382]

SENATOR PANKONIN: ...besides the...and I'm appreciative of the NSEA agreeing to contribute more. That is, as Senator Karpisek said, that's where it starts. But...and the school districts obviously match. But these rate of returns are still very optimistic. I hope it happens for a lot of reasons, but it's still problematical. [LB382]

KAREN KILGARIN: Thank you, Senator, and we appreciate...you know, we did a lot of work with you as well, as you know, over the years. And we appreciate your help and your support, and I'd be happy to talk with you afterwards with regards to your statement about defined benefit and starting new. I'm sure you're probably correct and know a lot more about this than I do so thank you. [LB382]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony.

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[LB382]

KAREN KILGARIN: Thank you, Senator Louden. [LB382]

SENATOR LOUDEN: Next testifier. Next proponent testifier. Are there any more proponents? Now we'll go to opponents. First opponent testifier. Any opponents? Then we will go to neutral testimony. [LB382]

KORBY GILBERTSON: Good afternoon, Vice Chairman Louden, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the State Troopers Association of Nebraska. They have a neutral position on this legislation obviously because no one ever likes to see their contribution rates get increased. But they agreed to this. We were lucky enough to be able to meet with the administration literally the week after the actuary, Dave Slishinsky, was in town. Or I guess Dave wasn't here this year, but Buck was in, doing the presentation and we immediately made an appointment to discuss the alternatives with the administration and obviously offered to pay our fair share, as we have done for years. And so with that, I'd try to answer any questions if there are. [LB382]

SENATOR LOUDEN: Questions for Ms. Gilbertson? Seeing none, thank you for your testimony. [LB382]

KORBY GILBERTSON: Thank you. [LB382]

JOHN BONAIUTO: Senator Louden, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director Nebraska Association of School Boards. And in past years, I have been a proponent of these necessary increases. And this year when I visited with my members, they were not as excited to embrace the situation as in a proponent capacity. They did not ask me to come and oppose the measure, but they did want me to convey that it does make them a little more than nervous in this situation where we did add a percent. Now we're talking about adding another percent. And I know that some folks talk about, well, if we could get up to a point and then take the sunsets off that maybe that will help keep the system on track and straighten things out. Frankly, I have to tell you when I visited with my legislation committee, the first thing out of a couple of their mouths were, what about those sunsets? You made us a promise that eventually that would come off. And so when we talk about sunsets, there are people that actually remember that and think that having that there is not all that bad. Just so we know that if there is an end in sight we could peel that off, not to continue that if the market straightens out. That would be a wonderful thing to have happen. For school boards, they understand the importance of a retirement system. They want to be as supportive as possible. But I do want to emphasize this money has to come from somewhere. And I don't have to tell you how difficult state aid and the limited amount of

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money that we're going to be talking about this year. And so this really is money that would be put into salaries or instruction. When boards look at compensation, they take a look at how much money is going to be on the table for salaries, insurance, retirement. And if it's not coming from that area, it's coming directly out of a classroom. I talked to the folks here in Lincoln, and you know, when you talk about 1 percent, it doesn't sound like that much. But for a district like Lincoln, it's \$2 million. You know, it may be 40 teachers. I mean that's real money. And so I come and deliver the message that boards want to be part of the solution, but it's becoming more difficult. So with that, I will conclude my testimony. [LB382]

SENATOR LOUDEN: Questions? Senator Pankonin. [LB382]

SENATOR PANKONIN: John, thanks for coming today, and I just want to be on the record that you'll never see the sunsets. [LB382]

JOHN BONAIUTO: (Laugh) Oh, I understand. [LB382]

SENATOR PANKONIN: No, I'm serious. You're not going to see them because we've got a billion dollars of losses we got to make up from this last period. And as this committee knows and we studied the decade of the nineties where eight out of the ten years were double-digit returns is where we put in this 8 percent, you know, the mark that we're going to consistently hit. And then we had the worst decade next to the thirties that followed. And I'm just being...I want to be on the record because it's realistic you'll never see the end of these sunsets. [LB382]

JOHN BONAIUTO: I appreciate that, Senator. [LB382]

SENATOR PANKONIN: I mean I think it's for your group you need to know because then that leads to another policy decision of benefits and what's going to happen down the road. [LB382]

JOHN BONAIUTO: Yeah. [LB382]

SENATOR PANKONIN: So I just want to be realistic. I'm on the record. I guess if investment returns get dramatically better I'll be wrong. But I don't see it so. [LB382]

JOHN BONAIUTO: I appreciate. You know, we try to be optimists, but as a realist, what you're saying I believe is where we're headed so I tend to agree. [LB382]

SENATOR PANKONIN: Okay. [LB382]

SENATOR LOUDEN: Senator Heidemann. [LB382]

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SENATOR HEIDEMANN: Thank you, Senator Pankonin. Reality kind of is tough at times, isn't it? My question, looking at I think it's LB235 and LB236, which is the state aid formula bills inside of Education, if you look at those things and then seeing this extra burden that is going to be placed upon you, is it workable? [LB382]

JOHN BONAIUTO: Well, I...it is going to be very, very difficult. I mean I know that Senator Adams talks about the two bills as bookends. And you know, LB236 it would not be workable. LB235 is a stretch. And Senator Adams thinks that if we're lucky we're going to be somewhere in-between, which is going to be very difficult for boards. And we have not talked about what's going to happen with staffing and all of the other things because you hate to make predictions in the dark. But obviously that is going to be the relief valve that in some districts, you know, they will be able to deal with this through attrition and retirements and people leaving. But in other districts, they're going to be hard pressed to keep all of their staff and make ends meet and then do what they have to do to fund the instructional side and then everything that will be required on the salary and benefits side. So I think it's going to be...this is going to be a very difficult year. And what I really cringe to hear is when we're told, well, this year is not going to be as bad as next year. And that really worries me. [LB382]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony.
[LB382]

JOHN BONAIUTO: Thank you, Senator. [LB382]

SENATOR LOUDEN: Anyone else testifying neutral? [LB382]

JASON HAYES: (Exhibit 3) Good afternoon, members of the Retirement Committee. My name is Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, and I serve as legal counsel to the Nebraska Public Employees Retirement Systems. As you are aware, the agency oversees and administers the defined benefit plans referenced in LB382. Last November 16, 2010, the state's actuary, Dave Slishinsky, of Buck Consultants, informed the Retirement Committee that the state was required to make actuarial contributions this year in order to keep the defined benefit plans funded for both the School Employees Retirement System and the State Patrol Retirement System. According to the 2010 actuarial reports for the school plan, an actuarial contribution is required for fiscal year 2011-2012 in the amount of \$18.9 million and an estimated \$48.5 million for fiscal years 2012-2013. As mentioned earlier, LB382 would increase the school contribution rate by 1 percent of compensation for school employees and 1.01 for school employer match. Over the next two years, it is estimated that this will increase contributions into the school plan by about \$31.5 million in each fiscal year. It should be noted, though, that although this amount will cover the shortfall in the next fiscal year, it will not be sufficient to cover the estimated shortfall or the actuarial requirement in fiscal years 2012 through 2013. Either the contribution rate will need to be increased an

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additional one-tenth of one percent or the state will need to make an additional contribution in the second year of the biennial budget. The state is required by statutory Section 79-966.01 to cover the actuarial required contribution amount in the school plan unless some other funding source is found. This next November 2011, the state's actuary will provide us with updated numbers regarding the anticipated actuarial contribution requirement for fiscal year 2012-13 so that can be restated at that time. With regard to the State Patrol Retirement Plan shortfall, according to their 2010 actuarial report, an actuarial contribution is required for fiscal year 2011-12 in the amount of \$2.8 million and an estimated \$4.1 million for fiscal year 2012-13. LB382, as mentioned, would increase the State Patrol contribution rate for two years by 3 percent of compensation by State Patrol members from 16 to 19 and correspondingly for the employer match. It is estimated that this will increase contributions into the State Patrol plan by \$1.7 million during each of the next two fiscal years. Even with this contribution rate increase, the actuarially required contribution will remain unmet this year by about \$1.2 million for fiscal year 2011-12. Again, either the contribution rates will need to be increased this year by an additional estimated 2 percent for both the employee and employer or the state will need to make an additional contribution this next fiscal year to cover the requirement. The state is required by statutory Section 81-2017 in the State Patrol plan to cover the actuarially required contribution rate unless some other funding source is found. And this concludes my testimony for LB382. [LB382]

SENATOR LOUDEN: Questions? Seeing none, thank you for your testimony. [LB382]

JASON HAYES: Okay, thank you. [LB382]

SENATOR LOUDEN: Anyone else wishing to testify neutral? Seeing none, then we'll... Senator Jeremy Nordquist waives closing so I guess that will close the hearing on LB382. And with that, I'll turn the chairmanship back over to Senator Nordquist. [LB382]

SENATOR NORDQUIST: Thank you, Senator Louden. I did neglect to introduce our page Ann today. We will have Kate Allen, legal counsel for the committee, open up on LB510. [LB510]

KATE ALLEN: Good afternoon, Chairman Nordquist and members of the committee. My name is Kate Allen. That's K-a-t-e A-l-l-e-n. I'm legal counsel for the committee and I'm here to introduce LB510 on behalf of the committee. LB510 was introduced as a placeholder bill at the request of the Class V school employee system, which are the Omaha school employees. As introduced, it has an unspecified contribution rate. After discussions with them, an amendment has been drafted. It's in your notebook. It's AM54 and it sets the contribution rate at 9.3 percent, which is again met by the school districts at 101 percent. There is no sunset. The amendment also has some technical changes in it as well. Be glad to answer any questions. [LB510]

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SENATOR NORDQUIST: All right. Any questions from the committee? Seeing none at this time, thank you. I'll take proponent testimony on LB510. [LB510]

JOHN LINDSAY: Senator Nordquist, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of Omaha Public Schools. The position of OPS is that we would ask that when you're looking at rate increases that you treat OSERS the same as you treat NPERS; that if whatever number you come up with for that rate of increase, we would just ask that that be applied to OSERS as well. The rate specified in the...if the...the numbers that have been bandied about it appears would bring OSERS into equilibrium within the GASB standards. With that rate increase that we would...that we would be at, I think, about a 26-year amortization period and I think GASB requires 30, so we would be below and within that. With that, I'd be happy to answer any questions you might have. [LB510]

SENATOR NORDQUIST: Any questions for Mr. Lindsay? Seeing none, thank you. Any additional proponent testimony? Thank you. [LB510]

KAREN KILGARIN: (Exhibit 4) Good afternoon again. I'm Karen Kilgarin representing the Nebraska State Education Association and our affiliate, the Omaha Education Association, testifying in support. K-a-r-e-n K-i-l-g-a-r-i-n. And I appreciate your work on these issues and again we pledge to work with you to find the solution to this problem. [LB510]

SENATOR NORDQUIST: Thank you. [LB510]

KAREN KILGARIN: Thanks. [LB510]

SENATOR NORDQUIST: Thank you, Karen. Any questions for Ms. Kilgarin? Seeing none, thank you. Any additional proponent testimony? Seeing none, any opponent testimony? Seeing none, any neutral testimony? Seeing none. And that will conclude the hearing on LB510. We will turn it over to Senator Karpisek for LB532. [LB510]

SENATOR KARPISEK: Thank you, Senator Nordquist, members of the Retirement Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB532 is introduced at the request of the Nebraska Department of Labor. In 1961, the Legislature authorized the Commissioner of Labor to establish an independent retirement plan for employees of the Department of Labor employed in the Unemployment Insurance and Job Service Program. By statute, those employees were prohibited from becoming members of the state retirement system. In 1984, the Legislature closed off the independent retirement plan to new membership. The number of active participants in the independent retirement plan still employed by the Department of Labor has declined to 49 employees. The intent of LB532 is that if the independent retirement plan is terminated, any active

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participants employed by the department at that time will immediately become members of the state employees retirement system and will continue to accrue retirement benefits while employed by the state. This bill does not provide for a transfer of the employee's retirement account in the independent retirement plan to the state system or transfer the administration or management of the independent retirement plan to the state retirement plan. Retirement benefit rights accrued under the independent retirement plan would continue to be governed by the terms of that plan. Basically, this just says if the independent plan is terminated that then they would automatically go into the state retirement plan. With that, I would take any questions. [LB532]

SENATOR NORDQUIST: Great. Thank you, Senator. Any questions for Senator Karpisek? Seeing none, thank you. [LB532]

SENATOR KARPISEK: Thank you. [LB532]

SENATOR NORDQUIST: And we'll take proponent testimony at this time. Thank you. [LB532]

CATHERINE LANG: (Exhibit 5) Good afternoon, Chairman Nordquist and members of the Nebraska Retirement Systems Committee. My name is Catherine Lang, Catherine, C-a-t-h-e-r-i-n-e, Lang, L-a-n-g, and I'm the Commissioner of Labor for the state of Nebraska. I appear before you today in support of LB532 and I want to thank Senator Karpisek for introducing this bill on behalf of the Nebraska Department of Labor. Beginning in the 1950s, the United States Department of Labor encouraged states without retirement plans to create a retirement plan for certain workers paid with federal funds, and these workers are employees who were engaged in the Unemployment Insurance and Job Service Programs. In 1961, the Nebraska Legislature authorized the Commissioner of Labor to establish an independent retirement plan for employees of the Nebraska Department of Labor employed in these programs. This plan is commonly referred to as the IRP. When the state retirement system was created in 1963, the Nebraska Department of Labor employees participating in the IRP were statutorily prohibited from becoming members of the state retirement system. In 1984, the Legislature closed the IRP to new membership and since then the number of active participants in the IRP who are still employed by the department has declined to approximately 49 employees. As mentioned in my letter to Senator Nordquist summarizing the pending litigation, and I believe that a copy of this letter has been provided to each member of the committee, last fall the department filed an action in Lancaster County District Court asking the court to determine two things: one, whether the clause in the IRP providing for termination of the IRP was enforceable; and two, the extent, if any, of the financial liability of the Commissioner and the Department of Labor under the plan in the event of termination. While that case was dismissed, pending litigation in federal court, the department and Commissioner will continue to pursue a judicial ruling on their authority and liability under the IRP. Given the financial condition

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of the plan, as reflected in two different studies, one, a 2009 report conducted by Milliman and Associate, and two, a 2010 report prepared by EnissKnupp, and the declining active membership in the IRP, it is likely that this plan will be terminated. The litigation will help define the rights and liabilities in the event that the termination is initiated. The department retained EnnisKnupp, a consulting firm which specializes in analyzing retirement plans and which advised the Nebraska State Investment Officer to review the department's independent retirement plan. LB532 is an updated version of LB979 introduced and heard by this committee last year. The intent of LB532 is to assure that if the IRP is terminated, any active participants employed by the department on the date of termination will immediately become members of the state Employees Retirement System and will accrue retirement benefits under that system while employed with the state. Specifically, LB532 amends the provisions of Nebraska Statutes 84-1301 and 84-1307 in the following respects: It amends 84-1301 to make existing IRP employees members of the state retirement system in the event of termination of the IRP; and two, amends 84-1307 to provide that any employees of the IRP who become members of the state retirement system in the event of the termination of the IRP will become immediately vested. LB532 does not provide for a transfer of the employee's retirement account in the IRP to the state system. Retirement benefit rights accrued under the IRP would continue to be governed by the terms of the IRP. Upon termination of the IRP, the participants would generally receive an annuity, paying the participant his or her share of the IRP assets, as determined under the IRP. And I would be happy to answer any questions. [LB532]

SENATOR NORDQUIST: Thank you, Commissioner. Thank you for being here. Any questions for Commissioner Lang? Senator Louden. [LB532]

SENATOR LOUDEN: Yes, thank you, Senator Nordquist. Ms. Lang, on...right now there's...would you say there's 49 employees involved is what would be involved in this LB532? I mean those are the ones that are still in... [LB532]

CATHERINE LANG: The number of employees that are currently still employed by the Nebraska Department of Labor, we call them the active participants, numbers approximately 49. So the bill, if it were to become law today and if a termination were to happen, we would be talking about those 49 employees. [LB532]

SENATOR LOUDEN: Yeah. Now the other, what would you say, the retirees, the ones that retired before that, this bill doesn't have anything to do with them? [LB532]

CATHERINE LANG: It has nothing to do with anyone who is retired prior to the termination of the plan, IRP. [LB532]

SENATOR LOUDEN: Oh, okay. Yeah. [LB532]

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CATHERINE LANG: Right. [LB532]

SENATOR LOUDEN: And that's still out there being discussed through the courts or whatever, those issues with those retirees when they file that? [LB532]

CATHERINE LANG: Yes, sir, that's correct. [LB532]

SENATOR LOUDEN: Okay. And then there's the current employees filed a lawsuit also? [LB532]

CATHERINE LANG: That is correct. [LB532]

SENATOR LOUDEN: Okay. Now will that...if this bill passes then, will that lawsuit go away or do they still have a vested interest in...I guess they still have some problems out there. [LB532]

CATHERINE LANG: Yes, the issues involved in the litigation relate to modifications made to the plan in the last year or more and so they still, I believe, would probably pursue those issues that are...regarding the modifications that were made to the plan. And again, this bill would not have anything to do with those issues. [LB532]

SENATOR LOUDEN: Okay. Just a question I guess. Some of those issues, was the other independent plan, did they guarantee a certain percent COLA every year? Was that what was in that plan? [LB532]

CATHERINE LANG: The plan provided for...most recently, the plan provided for an unlimited COLA and I made a modification to that COLA provision. [LB532]

SENATOR LOUDEN: Okay. And that's mostly the gist of the lawsuits, was the question of the COLAs? [LB532]

CATHERINE LANG: Primarily, yes. [LB532]

SENATOR LOUDEN: Okay. And if that's resolved then, then that's where it goes. I just...I have a constituent out there that's involved in this, and you probably have heard from him also. (Laugh) So, okay, well, thank you for your testimony. [LB532]

CATHERINE LANG: You're very welcome. Thank you. [LB532]

SENATOR NORDQUIST: Thank you, Senator Louden. Any additional questions for Commissioner Lang? Seeing none, thank you. [LB532]

CATHERINE LANG: Thank you. [LB532]

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SENATOR NORDQUIST: (Exhibit 6) At this time I will note that we do have a letter of support from Julie Dake-Abel on behalf of NAPE/AFSCME in support of LB532. Any additional testimony in support of LB532? Seeing none, any in opposition to LB532? Thank you for being here. [LB532]

WALTER MALSON: (Exhibit 7) Thank you. I better do this first, a copy of my testimony. Good afternoon. My name is Walter Malson, the last name is M-a-l-s-o-n, and I am an employee of the Nebraska Department of Labor and I'm here to testify on my own behalf as well as other employees of the Department of Labor that presently participate in the state of Nebraska, Department of Labor retirement plan, to which I will refer for the purposes of my testimony as the independent retirement plan. I'm here to testify against LB532. Since 1961, the Department of Labor has sponsored an independent plan for its employees who work in the state employment security agency programs. The independent plan has not allowed no employees to participate since 1984. Thus, all of the active participants in the plan have been faithfully serving the Department of Labor for more than 25 years. Presently, there are approximately 50 actively employed individuals that are participants in the independent retirement plan. Our benefits under the independent retirement plan are calculated based upon a different formula than the benefits provided by the Nebraska Public Employees Retirement System. My colleagues and I relied upon the promise made by the Department of Labor through the independent retirement plan. Each actively employed participant has continued his or her employment with the Department of Labor, in part because of the benefits promised under the independent retirement plan. I believe my colleagues and I have established a distinguished record of service. Recently, the Department of Labor has attempted to decrease the benefits of the plan and has indicated they will attempt to terminate the plan. We believe that the Department of Labor's action do, in fact, violate Article I, Section 16 of the Constitution of the United States, and Article I, Section 10, Clause 2 of the Constitution of the United States. Each provision is commonly known as contracts clause of the respective constitution. The Nebraska Supreme Court has held on multiple occasions that the constitution protects retirement benefits provided to employees of governmental agencies. This includes a 1995 decision entitled Calabro v. City of Omaha, 247 Neb. 955 (1995), regarding a plan that provided benefits similar to the independent retirement plan. We view the state's efforts to terminate the independent retirement plan as a waste of its effort and money. Further, my colleagues and I have been forced to use our own money to bring a lawsuit against the Department of Labor to protect our rights. A group of retired participants who receive benefits from the independent retirement plan also have brought suit against the Department of Labor for its unconstitutional actions. We oppose LB532 because it directly contemplates the termination of the independent retirement plan. We believe that LB532 sanctions the unconstitutional actions of the Department of Labor to terminate the independent retirement plan. We've been told that Department of Labor wants to terminate the independent retirement plan because of projected funding issues. We believe that the

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state has other options for funding of the independent retirement plan that it has not investigated or has neglected to pursue. These options include a merger of the assets of the independent retirement plan with the Nebraska Public Employees Retirement System in order to spread the funding of both plans over a longer period of time and over a broader base of employees. This would also shift the investment responsibility for the assets of the independent retirement plan to the Nebraska Investment Council. One of the problems with funding of the independent retirement plan is the lack of professional management of the investment assets. We believe a merger with the Nebraska Public Employees Retirement System could solve both the funding and the investment problems. The Department of Labor has promised the benefits of the independent retirement plan to me and my colleagues. We strongly urge the members of the committee to vote no on the advancement of LB532. If you have any additional questions regarding potential solutions, we and our legal counsel would be happy to discuss them with you. And thank you for listening to me. [LB532]

SENATOR NORDQUIST: Thank you. Thank you for being here. Any questions for Mr. Malson? Senator Pankonin. [LB532]

SENATOR PANKONIN: Thank you, Senator Nordquist. Sir, thanks for coming today and your testimony. Just to clarify a couple things, knowing a little bit about this situation, obviously it's a legal matter about...of which, you know, we don't know that will rule, right? [LB532]

WALTER MALSON: True. [LB532]

SENATOR PANKONIN: Correct. If in fact the plans are terminated, it's not a situation where you will get nothing. There would be like a lump sum payout or what...do you know what happens if they do get terminated? [LB532]

WALTER MALSON: Well, it would only be a guess, and again this is only a guess based upon...after...with the action of this particular bill, for example, and its approval by the Legislature, then that means that even though I would basically be...I would be covered under a new program, the past 38 years of my service would not be included in that retirement project. So that means if I'm ready to retire in two years, then I would only have two years of coverage under the Nebraska retirement plan. If, again, another guesstimate here is that if the plan does in fact...is terminated, my defined benefit would be in jeopardy because defined benefit meaning hypothetically if I'm entitled to, based upon defined benefit calculations, if I'm entitled to \$3,000 a month for the remainder of my life, if that's what I choose to do, that could be jeopardized because the funding itself could be in jeopardy. So sometime in the future, if I retire today, 5, 10, 12 years out, my retirement could be cut in half or, in fact, could even cease. And remember, this is a guesstimate on my part, but this is exactly since there is underfunding. [LB532]

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SENATOR PANKONIN: Okay. But if we don't move this bill ahead and it's terminated, their people would have no place to go, as I understand it. [LB532]

WALTER MALSON: The answer would, right, if it's terminated, we have other legal obligations I guess to go forward. But, yes, we as 49 employees, 50, we would not have any state retirement plan whatsoever. That's correct. [LB532]

SENATOR PANKONIN: That's why I think this bill still has some merit. I understand your position. I understand the process that's going... [LB532]

WALTER MALSON: Right. But this gives an open book to allow the termination and allows me to be under the Nebraska employment retirement system but with...but there's no advantage to being under the retirement system since I've been there 38 years. I don't have 38 more years to be under the Nebraska retirement system. [LB532]

SENATOR PANKONIN: Okay. Thank you. [LB532]

WALTER MALSON: Okay. [LB532]

SENATOR NORDQUIST: Any additional questions? Seeing none, thank you. [LB532]

WALTER MALSON: Okay. Thank you. [LB532]

SENATOR NORDQUIST: Any additional testimony in opposition to LB532? Seeing none, any neutral testimony? Seeing none, Senator Karpisek. [LB532]

SENATOR KARPISEK: Thank you, Senator Nordquist and members of the committee. I think Senator Pankonin hit exactly why I brought this bill. I'm not interested, I'm not trying to get into the lawsuit of terminating the retirement plan or not. My reason for bringing it is so there would be something to go into rather than just having nothing. So that's exactly why I brought it. Senator Pankonin, you understand it much better than I do, but that is my drive in this. I'd be glad to take any questions. [LB532]

SENATOR NORDQUIST: Great. Any final questions? Seeing none, thank you. [LB532]

SENATOR KARPISEK: Thank you. [LB532]

SENATOR NORDQUIST: That concludes the hearing on LB532 and will conclude our hearing for the Retirement Committee today. Thank you. [LB532]