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Nebraska Retirement Systems Committee
January 31, 2012

[LB973 LB1022]

The Committee on Nebraska Retirement Systems met at 12:10 p.m. on Tuesday, January 31, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB973 and LB1022. Senators present: Jeremy Nordquist, Chairperson; LeRoy Louden, Vice Chairperson; Lavon Heidemann; Russ Karpisek; R. Paul Lambert; and Heath Mello. Senators absent: None.

SENATOR NORDQUIST: Good afternoon, everyone. Welcome to the Nebraska Retirement Systems Committee. I'm Jeremy Nordquist, state senator for District 7, which is downtown and south Omaha, and Chair of the committee. We will start with introductions. To my far right, our committee clerk is Laurie Vollertsen, our page is Alex; to my left is our legal counsel, Kate Allen. And we'll start down here with senator introductions.

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

SENATOR KARPISEK: Russ Karpisek from Wilber.

SENATOR LAMBERT: Paul Lambert, District 2.

SENATOR HEIDEMANN: Lavon Heidemann, District 1, southeast Nebraska, Elk Creek.

SENATOR NORDQUIST: And I believe Senator Louden, our committee Vice Chair, will be joining us in a minute. Just a few reminders: to silence your cell phones; if you're testifying there are testifier sheets in the back corners, please fill those out and bring it to the committee clerk; state and spell your name when testifying; if you don't want to testify but would like to have your position recorded, there are sheets in the back to do that as well. With that, we will start on our first bill today and that is Senator Coash's LB973. Welcome.

SENATOR COASH: Thank you. My first time in front of the Retirement Committee.
[LB973]

SENATOR NORDQUIST: It's a great place to be. [LB973]

SENATOR COASH: (Exhibit 1) Okay. I wanted to start my introduction today by just telling you a little bit about why I agreed to tackle this weighty issue. If you go to our legislative Web site and you look at and you click the button that says among the senators, you get a list of duties that we are all called to do. One of those duties that we are called to do is to right injustices involving the public, and I take that pretty seriously and that's why I am here today. So good afternoon, Chairman Nordquist, members of the Retirement Committee. For the record, I'm Colby Coash. I represent District 27 right

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here in Lincoln and I'm going to introduce LB973. This is a bill to provide justice by way of restitution to victims of heinous crimes, specifically to victims who have been denied payment from their aggressors because his or her assets are sheltered in their public employee retirement pensions and/or benefits, even after such pensions or benefits have been distributed from the retirement plan to employees. I am going to focus my comments on a white copy of an amendment that I just have to give Kate a lot of gratitude for helping us with that. I'm going to pass these out to the committee because this...my comments will reflect these changes. The other thing I've learned, and I sit on the Judiciary Committee, is we get Supreme Court rulings as a matter of course, because if you read, and I've been reading them as they've been coming down, if you read the end of the Supreme Court's rulings, sometimes they give you a little bit of direction or some things to think about. And it was one of these cases that spurred me to take a closer look at the statutory boundaries Nebraska has placed on its public retirement plans. Pretty soon you're going to hear from a victim in this case and I will let her and/or her father explain this case in more detail if they choose to do so, but, in summary, my constituent was denied restitution for a heinous crime committed against her by a public employee of high stature. He was convicted of the crime and will likely be in prison for the rest of his life. In civil court, he was ordered to pay his victim \$325,000. By the time that order was handed down, he claimed his pension as his only asset. Current law forbids the attachment of his pension even after it is paid out to him. So despite the fact that he will be in prison for the next 25 to 30 years, he collects \$3,700 per month from his pension and his victim is yet to receive a dime. My constituent's attorney appealed this case all the way to the Nebraska Supreme Court in pursuit of restitution for his client. In the court's reading of Nebraska state statute, they ruled that public benefits and pensions could not be attached even after the distribution to the employee. However, they noted in their ruling that if an exception to 81-2032 is to be created for circumstances such as these, it is a matter for the Legislature to undertake. And LB973 is that undertaking. Under LB973, as amended by AM1794, here's what this does. If a public employee is convicted of or pleads no contest to a felony assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages for such a felony, then that judge may order the payment of the public employee's or appointee's retirement plan once the benefits have been distributed out of the plan and to the beneficiary. However, the judge must exempt from the attachment such benefits or annuities that are reasonably necessary for the support of the employee or appointee or any of his or her beneficiaries. Furthermore, the federal Spousal Pension Rights Act supersedes the language in this bill. I want to highlight for you some very narrow specifications in LB973. Again, the judge may order payment if the following are...if the following criteria is met. The public employee has been convicted of or pleads no contest in criminal court to an egregious felony. And you'll note that these crimes listed, such as assault, kidnapping and theft, leave behind a living, aggrieved victim. These exceptions cannot be employed, by example, for those grieving for a murder victim. Second criteria, the employee is found liable in a civil court following the conviction. So for example, this is

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the example that we hear frequently, let's pretend that Nicole Brown Simpson has survived her attack from O.J. and O.J.'s assault trial played out the same as his murder trial. Since O.J. was not convicted in criminal court but was only found liable in civil court, he would not have fit in this exemption. A judge cannot order restitution from O.J.'s pension from the assault since he was not convicted of the crime in the criminal court. We purposely set the bar for this very high. You've got to get through criminal court and been convicted by a jury of your peers in this very narrow...in these very narrow crimes. Then it goes to civil court and you have to win your case in civil court. And so we feel that this puts the necessary protections in place and it really is a narrow exemption that we're going after. So in conclusion, I understand that the state continues to have very valid reasons to protect pensions, which I fully support. I want to ensure that this policy change truly protects both the vulnerable victims of serious crime and the innocent family members of those that are convicted, and I have purposely set that threshold high so as to ensure restitution for the most aggrieved victims whose well-being is forever affected by the crime and who may have the greatest need for that financial restitution. Thank you very much. [LB973]

SENATOR NORDQUIST: Thank you, Senator Coash. One of the issues that was raised early on, and I think the amendment addresses it, is the issue of when the funds are eligible for I guess this provision. [LB973]

SENATOR COASH: That's right. [LB973]

SENATOR NORDQUIST: It's only after the distribution has started or they are essentially deemed to be retired. [LB973]

SENATOR COASH: That's right. [LB973]

SENATOR NORDQUIST: Yeah. [LB973]

SENATOR COASH: There's a wall around these funds. [LB973]

SENATOR NORDQUIST: Uh-huh. Yeah. [LB973]

SENATOR COASH: And the court has indicated that there's also a wall around then that follows once they're distributed. And what this amendment does, which is a little different than the green copy, is it tears down that wall once that they're distributed. And so the integrity of those pensions remains, but we still have an access to those funds for the victim in certain cases. [LB973]

SENATOR NORDQUIST: Sure. Sure. Great. Any additional questions from the committee? Senator Loudon. [LB973]

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SENATOR LOUDEN: Yes, thank you, Senator Nordquist. Well, Senator Coash, as I look at this bill, when you talk about retirement plans and stuff, now does this include an annuity in a life insurance policy? [LB973]

SENATOR COASH: No. [LB973]

SENATOR LOUDEN: Okay. And isn't there ways now that that...that those funds could be accessed if someone was...did all these deprecations that's listed here by when the judge ruled that they got to make restitution and some things like that, that the only difference is you can't... [LB973]

SENATOR COASH: Senator Louden, this... [LB973]

SENATOR LOUDEN: ...go out and garnishee this particular retirement plan? But if the judge orders it to be done, they either do that or go back to jail, so it would be up to those people to come up with the money, wouldn't it? [LB973]

SENATOR COASH: Well, this...the judge looked at the statute and said, I'm prohibited from issuing the victim funds out of here because of the current statute. So that's the reason for this bill, is to allow a judge to say, these funds are accessible because the law allows me to, as a judge, to access those funds. [LB973]

SENATOR LOUDEN: Okay. Thank you. [LB973]

SENATOR NORDQUIST: Great. Senator Lambert, did you have a question? [LB973]

SENATOR LAMBERT: Yes. Just, Senator, so I can understand it, if I'm 40 years old and I commit a crime and I'm convicted, the victim has to wait the, say, 25 years till I'm 65 to be able to get this money. Is that correct? [LB973]

SENATOR COASH: No, Senator Lambert. If you're convicted...I mean there's a criminal court proceeding, which is the first threshold actually in this bill, and in the example that I gave that went through and there was a man who was convicted in a criminal court. He was also ordered to pay a judgment to his victim, and that went through criminal court. However, in this example the assets were tied up in the pension and statutorily the judge could not let the victim access those funds regardless of when it was. So even if it was 30 years later, doesn't matter. [LB973]

SENATOR LAMBERT: Okay. Under your bill now though. [LB973]

SENATOR COASH: Under my bill now, if we could put this into law, then the judge can order, once those funds are distributed from the pension to the perpetrator, the judge can then order payment to the victim from those funds. [LB973]

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SENATOR LAMBERT: Okay. But the victim would have to wait till I turn 65 or I was eligible to draw that. [LB973]

SENATOR COASH: No. No, those pensions are there and they...I believe... [LB973]

SENATOR LAMBERT: But not till distribution though, till I...till... [LB973]

SENATOR COASH: I don't...no, I believe so, Senator Lambert. I'll clarify that and maybe the legal counsel behind me can clarify that, but my understanding is... [LB973]

SENATOR LAMBERT: Okay. Okay. I'm just trying to get it straight in my head, but from...till distribution, I assumed it was when I was eligible to draw it, say 65 or 62 or whatever. [LB973]

SENATOR COASH: Right. We'll get that clarified for you. [LB973]

SENATOR LAMBERT: Okay. Thank you. [LB973]

SENATOR NORDQUIST: Okay. Thank you. Additional questions? Senator Karpisek. [LB973]

SENATOR KARPISEK: Thank you, Senator Nordquist. Thank you, Senator Coash. Going back to Senator Louden's question about annuities, I just see on page 5 it says, "or appointee's benefits or annuities from the retirement plan," line 1. [LB973]

SENATOR COASH: I may stand corrected on that. [LB973]

SENATOR KARPISEK: I just wanted to make the record show that. [LB973]

SENATOR COASH: Thank you. [LB973]

SENATOR KARPISEK: My real question is, okay, why not, if a murder, or to go to the family? [LB973]

SENATOR COASH: Well, we discussed that quite a bit but in the case of a murder there is no living victim that needs the funds and, you know, if...we discussed that quite a bit in the drafting and with Bill Drafters and with legal counsel that we really wanted to...this is in cases where there's a victim that needs the funds. Presumably, yes, you can...families can proceed in civil court on behalf of their loved ones, but we wanted to keep this narrow. We wanted to make sure that these funds were accessed for the actual victim, not the victim's family. So we made a conscious decision to leave those out. [LB973]

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SENATOR KARPISEK: Okay. And I appreciate that. I think I would support going further. Thank you. Thank you, Senator Nordquist. [LB973]

SENATOR NORDQUIST: All right. Yep. Any additional questions from the committee? Seeing none, thank you. [LB973]

SENATOR COASH: Thank you. [LB973]

SENATOR NORDQUIST: All right. We will begin with proponent testimony, so our first proponent testifier. Thank you. Welcome. [LB973]

JOHN BALLEW: Good afternoon. My name is John Ballew. I'm a lawyer in Lincoln. I'm appearing on behalf of Cassey Mockenhaupt and her father, John Mockenhaupt, who I have represented through at least a half a dozen different legal proceedings, all of which are kind of a tragedy in their own ways. And if you want to put a face on this legislation today, call it Cassey's bill because this is what it's for. Cassey is here with her father and I'm sure they're going to want to give you maybe just a little insight, but I want to perhaps give you a little background as to what led me to approach Senator Coash and why we're here today. When Cassey Mockenhaupt was approximately 12 years old, she was living with her mother and her stepfather, Billy Hobbs, who was with the Nebraska State Patrol. Starting when she was 12 years of age, Mr. Hobbs began sexually assaulting her over a period of almost two years, sometimes three or four times a week. Ultimately, she went to the authorities and there was some recordings made of some conversations between she and Mr. Hobbs. He was subsequently arrested and charged with first-degree sexual assault and some other charges relating to child pornography. Ultimately, he was convicted of first-degree sexual assault and was sentenced to 25 to 30 years in the Nebraska penal complex. He's eligible for parole in 2018. While Mr. Hobbs was awaiting trial, he got divorced from his wife at that time, Christine, who's Cassey's mother, and as part of the divorce he assigned 50 percent of his pension with the Nebraska State Patrol to his wife for a period of seven years, which I thought was more than what would have happened in a court but I was powerless to do anything about it. I tried and was not allowed to intervene in the divorce proceeding. Once the conviction took place and Mr. Hobbs was in jail, myself and another attorney from Omaha, Terry Salerno, filed a civil action against Mr. Hobbs. The civil action resulted in a money judgment payable to Cassey, actually to her father because she was a minor at the time, of \$325,000. At the last minute, Mr. Hobbs waived his right to a trial by jury and we did as well, largely because I thought it would save Cassey from going in front of 12 people and relating some of the horrible things that took place. The judgment was then rendered. The judgment now is almost two years old. Mr. Hobbs has not paid a dime. I then decided that the only way to try to get any money for this was to conduct a debtor's examination under certain Nebraska statutes to allow me to find out what Mr. Hobbs actually had, and we did so and Mr. Hobbs told me that he was

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receiving his net of the pension, after giving half of it to his ex-wife, was still \$1,853 a month. He told me that...I think in his words, he says he's free to use it to pay his attorney or his investments and he wanted to invest it wisely. He has absolutely no intention of paying this young woman a dime for what he's done. We asked Judge Merritt to order him to apply a portion of his pension with the Nebraska State Patrol to this judgment and Judge Merritt determined in his decision that this pension, unlike other types of pensions in Nebraska, has very strict prohibitions against any sort of execution, attachment, garnishment, levy, or any process whatsoever to get at the funds. We then appealed that to the Nebraska Supreme Court and our position before the court was we felt like the statute that prohibited the garnishment of these funds was designed to keep creditors out of the hair of the Nebraska State Patrol or other entities who have pensioners. We understand that. They don't want to be bothered with garnishments and so forth. Our position was though that the statute didn't apply after the funds left the State Patrol, and that once they hit his account he wasn't just free anymore to invest them wisely or pay his attorney for the last six or seven years of ongoing litigation, as we chase him around. The Nebraska Supreme Court disagreed. I think that their reasons for doing so are logical. I think they are probably well-founded in laws in other jurisdictions, but it left us at the point where we were before we came to Senator Coash and before you people today and that is we have a \$325,000 judgment that doesn't even come near to compensating this young woman for what happened to her, and we have absolutely no way of collecting it. But there's 3,600 bucks with the State Patrol and when the former Mrs. Hobbs gets through with her payments under the qualified domestic relations order in the divorce case, that money could be available for Cassey Mockenhaupt if we can convince all of you that this amendment to the existing statutes is passed. I just find...this whole case has taken our law firm, and there's been four lawyers involved on behalf of this, and I got to tell you Cassey Mockenhaupt, as Judge Merritt said, he said the scars created by the sex assaults will remain with her for the remainder of her life, based upon the testimony of the psychologist at time of trial. And I'm just here hoping that all of you will take a long look at this. And I'd be happy to answer any questions. [LB973]

SENATOR NORDQUIST: Thank you, Mr. Ballew. Any questions from the committee? Senator Karpisek. [LB973]

SENATOR KARPISEK: Thank you, Senator Nordquist. Thank you, Mr. Ballew. So being no attorney, you think you'll be able to go back, if this is changed, and go after that money? [LB973]

JOHN BALLEW: I do, and that's a real good question because, as I have worked with Senator Coash, I wanted to make sure that this applied to this particular judgment. I was concerned about that. I believe that it would only because the judgment isn't going to go away and the pension money is going to keep coming out every month anyway. And I think we could, now that the law...exemption statutes change all the time in Nebraska,

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as you may or may not be aware. We change garnishment statutes, we change what property is exempt for purposes of bankruptcy and other things like that. I think it would be, but Senator Coash has also added something to the language here and it says that, on all the different versions of it, "The changes made to this section by this legislative bill shall apply to persons convicted of such a felony and found liable for civil damages as a result of such felony prior to, on, or after the effective date of this act." And I think that kind of ties it up. I think I would also say, in support of what Senator Coash said, that this is a pretty narrow window. I mean it was designed to be narrow. It's not my intent to make this any more encompassing than absolutely necessary to get this young woman some compensation out of this fund and...but I think it will apply going forward. [LB973]

SENATOR KARPISEK: And whether it does or not, to me, doesn't matter if it should be done or not, but I would hope that it would. And again, I would support being a wider window on this. Thank you, Senator Nordquist. [LB973]

JOHN BALLEW: Okay. Thank you very much. [LB973]

SENATOR NORDQUIST: Thank you, Senator. Any additional questions? Senator Louden. [LB973]

SENATOR LOUDEN: Yes, thank you, Senator Nordquist. When you mentioned that he has investments, what are you talking about? I mean what's he doing with his money that he's receiving? [LB973]

JOHN BALLEW: Well, the debtor's examination that took place up in Omaha at the Omaha correctional facility was done by another lawyer and he didn't ask quite as many questions as I would have. I don't know yet and we won't know until we go back and take another run at this again. There is a specific statute in Nebraska that allows us to have a debtor's examination and I cannot tell you, Senator, exactly what investments he's putting in it. I used the word "investment" because that's what he said he was doing. And I know he's paid tens of thousands of dollars to his lawyer to fight us every step of the way on this, but I don't know what the investments are. They could be a savings account, they could be in mutual funds. I don't know yet. [LB973]

SENATOR LOUDEN: But if he's got that... [LB973]

JOHN BALLEW: I intend to find out though. [LB973]

SENATOR LOUDEN: ...if he's got that out there, then that account would be...can be accessed by your judgment, couldn't it? [LB973]

JOHN BALLEW: We don't know that yet, and the Supreme Court, in their decision, said,

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we make no judgment as to whether or not the funds that represent the investments that Mr. Hobbs has may be subject to garnishment execution, levy or attachment under Nebraska law. There is some body of law...and the Nebraska Supreme Court wouldn't go any further than that. They did ask a lot of questions about that at oral argument, but that is an unknown at this point because there is some law out there that says that once they're deemed to be exempt they never lose that status, or they only lose it at some point. I think the more permutations the money goes through, if it ends up in an automobile and it's entitled in his name and so forth, then perhaps it loses its identity, but we don't really know right now; open question in Nebraska I think. [LB973]

SENATOR LOUDEN: Okay. Thank you. [LB973]

SENATOR NORDQUIST: Any additional questions from the committee? Seeing none, thank you. [LB973]

JOHN BALLEW: Thank you for your time. I appreciate it very much. [LB973]

SENATOR NORDQUIST: Yes. Next proponent. Any additional proponent testifiers? Welcome. Thank you for being here. [LB973]

CASSEY MOCKENHAUPT: Welcome. Thank you. I'm Cassey Mockenhaupt. I'm just here today basically to get some help, see if I can get something done. Basically, like Ballew was saying, Billy Hobbs actually assaulted me for two and a half years. They ordered him to pay me to help me maybe try and cope. Obviously, I'm still dealing with this every day. I suffer a lot of depression. It's something that I'm going to have to live with every day for the rest of my life. You try to forget; you can't. You know, you try and just move on as much as you can and move forward and make the best of what you can. Basically, we're here to try and get this done for the...to help other people, I mean, granted, not just for me. I mean, sad to say, there's other victims, there is. I mean it's going to happen, you know. It's not just for me but going forward for other people too. I mean I feel sorry for the same people, I mean I feel bad for the same people that are going through what I had to. Sorry. [LB973]

SENATOR NORDQUIST: No, that's okay. [LB973]

CASSEY MOCKENHAUPT: It's very hard to move forward, like I stated. Just trying to get anything, I mean he's done nothing but try and push us around, so we're here to try and help me as well as help other people. I think with this bill it will also help me in general also, but also going forward with other people. I think that will definitely benefit a lot of people (inaudible) too. [LB973]

SENATOR NORDQUIST: Thank you. Thank you for being here and bringing this forward. [LB973]

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CASSEY MOCKENHAUPT: Thanks. [LB973]

SENATOR NORDQUIST: Are there any questions from the committee? Seeing none, thank you. [LB973]

CASSEY MOCKENHAUPT: Thank you. [LB973]

SENATOR NORDQUIST: Any additional proponent testifiers? Welcome. [LB973]

JOHN MOCKENHAUPT: Good afternoon to you all. I am John Mockenhaupt. She kind of touched me (inaudible). I'm sorry. [LB973]

SENATOR NORDQUIST: It's okay. [LB973]

JOHN MOCKENHAUPT: She's right about being through a lot; we all have. I'll never forget the day that came down that the problems that's been on the road, the courts, everything we've been to, the therapies, the doctors. The sex therapist didn't know how to deal with her. I know her having to have locks on her bedroom doors at night. She has a terrible dream of him getting out of prison, coming after her. I fought for custody of my daughter after this came forth and it is a long road. On date it happened she lived with me, still does. I see things that ordinarily people, you know, wouldn't see, the aftermath that he's kind of left behind for her and family members. I did whatever I had to do for her. I went to work at 1:00 in the morning, midnight, whatever, if she had a doctor appointment. I made sure I got there, got my job done, got her to where she had to go. It's been an unending road. And as John Ballew and his attorneys and different things and all the tasks and roads and courts and stuff we've been through, I'm only trying to do what's right for her. I've been there for her; I'll continue to be there for her. I've gone in debt for the medical expenses. I spent...I'm a single dad, one household, you know, income. It takes everything I got to give her a decent place to live and to cover all her expenses and stuff, and like I say I've even gone in debt. I'm still in debt. But we came for help. We were suggested to talk to Senator Coash. We went in and we met with him and we told him, you know, we didn't know. I've never been here, faced with this at all. I do know that we were awarded \$325,000, which was my lawsuit, but last September Cassey became of age and so now it is her lawsuit. We know everything we've been through. We just can't imagine that Billy Hobbs doesn't have a checking account, a car or anything that you can seize. There's nothing there. It's like I know they did a quit deed on a house. We haven't been able to do anything. As far as this bill is concerned that I have...that I understand is that anybody, there should not be anybody be against this bill because, number one, if you're a good person you never have to worry. This bill would be like for bad people, in my opinion, that I just...I just know this bill would do good for society, not to mention for the victims. As of now, him being in prison, the way it's set up, we cannot touch a dime from him. He can sit there in

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prison drawing this money. Even when he gets out of prison that still puts the tag on it that it's pension money and she will never, ever be able to ever touch that money, and he'll be living high on the hog and we can't do nothing about it. So I appreciate Senator Coash trying to come forth to come up with something to help us out. I think that a person should be accountable for the troubles and things they've done to their victims and stuff. They should have to pay their way no matter what. Everybody should have to stand up and take what's coming to them, and this man deserves to pay his price. So I hope today that everybody here could put yourself in my position to understand all the devastation and stuff he's done to our lives and my daughter's life. She is faced with two medicines she has to take every day. One is a sleeping pill, the other one is for anxiety. On the anxiety side of it, it states right on there it increases suicidal. So she can never ever quit it. So she needs the help that I can't give her everything that she really probably needs. She needs access to some of that money to get the help that she does need. And I want to thank you for your time. [LB973]

SENATOR NORDQUIST: Thank you. Thank you for sharing your story. Any questions from the committee? Seeing none, thank you. Any additional proponent testifiers? Seeing none, any opponent testifiers? Seeing none, any neutral testifiers? Welcome. [LB973]

JASON HAYES: (Exhibit 2) Hello. Good afternoon, Senator Nordquist and 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. I'm here today to testify on technical issues regarding LB973. If the bill is adopted in its current form without any amendment, the bill would create certain tax and payment complexities for the agency. The tax issues concern when taxes will be owed and by whom the taxes will be paid. Since amounts deposited in pension plans are deferred income, then if there is a preretirement disbursement of an amount it would create an additional tax penalty for the member, as well as a triggering of regular income taxes owed. This would create an issue if a member had, let's say, a \$200,000 pension account that was garnished in the amount of \$200,000. The member would need to come up with additional funds to pay any penalties, as well as income taxes that were owed on that amount. And this could be resolved with additional language to specify when taxes would be paid by a member prior to disbursement of the garnishment amount. Another complexity occurs in the recalculation of a defined benefit plan annuity. If an amount is garnished from a pension account preretirement, then actuarially recalculation of the final retirement benefit will be needed because money removed from the pension plan will have to be offset by a reduction in the service years received by the defined benefit plan member. Service years represent a key part of the defined benefit plan formula and the agency will need to contract with the state's actuary in order to make such a calculation. This complexity only arises in a defined benefit plan and does not involve defined contribution or cash balance plans where the member's account balance is established through regular contributions from a member's

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paycheck. Another issue involves garnishment of vested and nonvested pension dollars. Using the school retirement plan as an example, a member is not vested or entitled to receive their employer's match contribution amount unless there is a disability, death, or retirement. If a member takes an early disbursement outside of one of those items mentioned, then the member is only vested or is able to receive the dollars he or she has contributed. There is no provision in the bill for discerning between vested and nonvested amounts in the plan, so there may be fewer dollars available for garnishment because a member is only entitled to receive the vested portion of their retirement account. We believe with the adoption of the proposed amendment, which provides that garnishment may occur only once retirement pension benefits are...or contributions have been disbursed to a member, that it will alleviate the issues and concerns I have presented here today. With the amendment, taxes and penalties would be paid by the member prior to any disbursement being made. The defined benefit calculation would occur in a routine manner, as it is done prior to the member's retirement, and vesting of the member's account would be clearly established at the time a disbursement is made, as is currently the practice. Finally, if the amendment is adopted by the committee, the agency will be able to revise its fiscal note to one of no fiscal impact because no additional computer programming or special actuarial calculations will be necessary. And that concludes my testimony and I do represent that we're talking about future retirements, not necessarily the Hobbs case in this matter. [LB973]

SENATOR NORDQUIST: Okay. Okay. Thank you, Jason. Any questions from the committee? Seeing none, thank you. [LB973]

JASON HAYES: Okay. Thank you. [LB973]

SENATOR NORDQUIST: Any additional neutral testimony? Welcome. [LB973]

MICHAEL SMITH: Good afternoon, Senator Nordquist, members of the committee. My name is Michael Smith, M-i-c-h-a-e-l S-m-i-t-h. I'm the executive director of the Omaha School Employees' Retirement System. I won't repeat what Mr. Hayes just indicated but those would be the impacts as well on our retirement system. A couple of more items that would be of concern to us, one of them is the notion that if in fact the bill were to be passed in its original state, the concern about an in-service distribution would be very real. The Internal Revenue Service does not permit us to distribute funds to someone who is still an active member of the plan. That then disqualifies the tax-deferred status of a retirement plan. So the amendment solves that, because it now is a distribution to the member, no problem whatsoever. So we would recommend the amendment because it resolves a lot of the issues that have been quite concerning to us and would be able to, as Mr. Hayes indicated, remove the reservations we have in terms of our fiscal note just by that simple amendment. [LB973]

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SENATOR NORDQUIST: Uh-huh. Great. Thank you, Mr. Smith. Any questions from the committee? Seeing none, thank you. Any additional neutral testimony? Seeing none, Senator Coash, you're welcome to close. [LB973]

SENATOR COASH: Well, thank you, members of the committee. And I do want to just make sure the committee understands that we need to move forward with the amended version of this, this bill, as Mr. Hayes and the last testifier indicated. And I do want to thank a lot of folks who came together. This retirement is not the world I live in and so we've had a lot of people come to the table and the result is the amendment that you have and I think it takes care of the concerns. And I'd like to see this move forward. The amendment also takes care of the fiscal note, Senator Heidemann. [LB973]

SENATOR HEIDEMANN: I already picked up on that. [LB973]

SENATOR COASH: Good. Good. In closing, I want to thank Cassey and her father for testifying today. That's a...it's not an easy thing to do, and a very brave and resilient family, and I'm happy to work with them and I'm happy that they were here to share their story with you. My intent isn't to poke holes into the integrity of retirement. I still want to protect dependants. But at the end of the day it just...after the Supreme Court came down and I think even the judge in his ruling said this just doesn't pass the sniff test of what's right for our state. I don't think it was intentional when this law was originally put in place, but we can clearly see it has consequences. For me this is about doing right by victims. It's about justice. And I appreciate your consideration of this bill. Thank you. [LB973]

SENATOR NORDQUIST: Thank you, Senator Coash. Any final questions? Seeing none, thank you. That concludes the hearing on LB973. I will turn it over to Senator Louden so I can open on LB1022. [LB973]

SENATOR LOUDEN: Okay. We'll start the hearing on LB1022 and Senator Nordquist will open on the bill. [LB1022]

SENATOR NORDQUIST: Thank you, Senator Louden and members of the committee. I will keep this brief. LB1022 was introduced as a placeholder for employee and employer contribution rates in the Nebraska State Patrol system. Currently, the employee and employer contribution rates are 19 percent through June 30, 2013, and are set to return to 16 percent on July 1, 2013. The rate was increased to 19 percent during the 2011 Session. Under LB1022, the 19 percent employee and employer contribution rates are replaced with unspecified rates beginning July 1, 2012, through June 30, 2013. And then it also strikes the 16 percent employee and employer contribution rates that were scheduled to begin on July 1, 2013, and inserts unspecified rates. That's all. [LB1022]

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

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[LB1022]

SENATOR NORDQUIST: Thank you. [LB1022]

SENATOR LOUDEN: The first proponent for LB1022? And then opponents for LB1022? Anyone in the neutral capacity? Seeing none, Senator Nordquist you're able to close. Senator Nordquist waives closing and that concludes our hearing today on LB1022 and concludes the hearing for the Retirement Committee. [LB1022]

SENATOR NORDQUIST: Great job, Mr. Chair.