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Appropriations Committee
February 19, 2014

[AGENCY 23]

The Committee on Appropriations met at 1:30 p.m. on Wednesday, February 19, 2014, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1023, LB1047, LB1114, and LB1019, and agency budgets.

Senators present: Heath Mello, Chairperson; John Harms, Vice Chairperson; Kate Bolz; Danielle Conrad; Bill Kintner; Tyson Larson; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: None.

SENATOR MELLO: Good afternoon and welcome to the Appropriations Committee. My name is Heath Mello. I'm from south Omaha, representing the 5th Legislative District, and serve as Chair of the Appropriations Committee. I'd like to start off today by having members do self-introductions, first starting down at the end of the table with Senator Bill Kintner. Senator Kintner represents the 2nd Legislative District that incorporates Sarpy County, Cass County, and parts of Otoe County. Sitting next to Senator Kintner is Senator Jeremy Nordquist, who represents the 7th Legislative District in downtown and south Omaha. John.

SENATOR NELSON: Oh sorry. Senator John Nelson, District 6, central Omaha.

SENATOR HARMS: John Harms, 48th District, Scotts Bluff County.

SENATOR WIGHTMAN: John Wightman, District 36, Dawson and Custer County and a small part of Buffalo County.

SENATOR MELLO: Sitting next to Senator Wightman is Senator Danielle Conrad, who represents the 46th Legislative District and incorporates north Lincoln.

SENATOR BOLZ: Senator Kate Bolz, representing District 29, south-central Lincoln.

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SENATOR LARSON: Tyson Larson, District 40, Dixon, Cedar, Knox, Holt, Boyd, and Rock Counties.

SENATOR MELLO: Assisting the committee today is Anthony Circo, our committee clerk; and Matthew Ruiz, who is a senior, studying international business at the University of Nebraska-Lincoln and is our committee page. Sitting to my immediate left is Doug Gibbs, who is one of the fiscal analysts who will assist us throughout today's public hearings. On the cabinet to your right you will find some yellow testifier sheets. If you're planning on testifying today, please fill out a sheet and hand it to Matthew, our page, when you come up to testify. It helps us keep an accurate record for today's public hearing. There is also a white sheet on the cabinet if you do not wish to testify but would like to record your position on a specific bill or agency request. When we hear testimony regarding state agencies, we will first hear from a representative of the agency. We will then hear testimony from anyone who wishes to speak on the agency's specific budget request. We will then hear bill testimony in the following order. First will be the introducer of the legislation. We will then hear those in support, followed by those in opposition, then those testifying in neutral capacity, and we will end with a closing statement by the bill introducer. If you have any handouts, please bring up at least 11 copies and give them to Matthew, our page. If you do not have enough copies, please inform him and he will make additional copies for the committee. We ask that you begin your testimony today by giving us your full first and last name, and spelling it for the public record. The committee will be using a five-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up with your final thoughts. At this time, I would ask all of us, including Senators, to look at our cell phones and be sure that they are on silent or vibrate mode at this time. And with that, we will begin today's public hearing with Agency 23, the Nebraska Department of Labor.

CATHERINE LANG: (Exhibit 1) Chairman Mello and members of the Appropriations

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Committee, my name is Catherine Lang, C-a-t-h-e-r-i-n-e, Lang, L-a-n-g, appearing before you today as the Commissioner of Labor in support of the deficit appropriation request of the Nebraska Department of Labor. On February 7, 2014, I provided a letter to Senator Mello summarizing the progress made regarding the settlement of the litigation of the independent retirement plan administered by the Nebraska Department of Labor. I believe you have been provided a copy of the letter. The letter provides a brief overview of the matter and outlines the deficit appropriation request of the department related to the potential settlement. The department, by and through its attorneys, was preparing for the litigation of this matter. However, beginning in December, consideration was given by all parties to mediation. The mediation occurred on January 10, 2014. The results of the mediation were provided to the Nebraska Attorney General, as his review and consent are necessary to any settlement by the department. The deficit appropriation request provides spending authority to the department for the sole purpose of termination and settlement, not to exceed \$25 million in federal funds and \$2,773,000 in cash funds. The deficit appropriation is necessary during this legislative session in order to finalize the mediated settlement and to terminate the plan. The following processes are anticipated to occur during or after this legislative session. The members of the respective classes will be notified of the tentative settlement, and the Lancaster County District Court judge must approve the settlement. An initial hearing on the tentative settlement is scheduled for tomorrow and final approval is expected to occur at the end of the March of 2014. After court approval, the department will give official notice to the Principal Financial Group to begin the analysis of termination. This process will take up to six months, as Principal performs the actuarial valuation for the purchase of annuities for all retirees and active participants in the independent retirement plan. Upon the notice of termination, the department will have 48 hours to make payment for the purchase of the annuities. During this time period, the analysis of the lump-sum settlement distribution will also be made. The attorney fees to be paid to plaintiffs' counsels are still in negotiation and will be paid only after court approval and termination of the plan has occurred. I request your support of the deficit appropriation request. Thank you for your consideration of

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this matter, and I would be happy to answer any questions. [AGENCY 23]

SENATOR MELLO: Thank you for your testimony, Commissioner. Are there any questions from the committee? Commissioner, just as a...I know this has been an ongoing issue since I've been a member of this committee since 2009, but in respects to the Reed Act dollars, as well as the cash fund authority from the Unemployment Insurance Trust Fund, what could those Reed Act dollars be used for besides what's being asked for, to cover the proposed settlement? [AGENCY 23]

CATHERINE LANG: Generally speaking, Reed Act distributions can be used for the payment of benefits and for the administration of the Unemployment Insurance Program. [AGENCY 23]

SENATOR MELLO: And the same thing would be from the cash funds from the Unemployment Insurance Trust Fund? [AGENCY 23]

CATHERINE LANG: The cash funds that we are requesting are actually state cash funds and they're being paid out of the Contingent Fund. Those Contingent Fund...the authorization for the use of Contingent Fund is for the administration of the Department of Labor's cash management of its grant process, so they really are more administrative funds. [AGENCY 23]

SENATOR MELLO: Okay. And where would that leave us just in respects to the amount of Reed Act funds that we will be...roughly, the roughly \$25 million in requested authority as well as the reappropriated Reed Act funds? Where will we be at after, if the committee moved forward on this? [AGENCY 23]

CATHERINE LANG: Well, the total amount that is currently available in the state's account at the U.S. Treasury is approximately \$354 million. Now of that, the amount that has been paid in from unemployment insurance taxes, which can be used exclusively

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for the payment of benefits, is \$285 million. The other remaining amounts are about \$67 million or so, and so that \$25 million would come out of that \$67 million. [AGENCY 23]

SENATOR MELLO: \$67 million. [AGENCY 23]

CATHERINE LANG: Uh-huh. [AGENCY 23]

SENATOR MELLO: Okay. All right. Thank you. Senator Harms. [AGENCY 23]

SENATOR HARMS: Thank you, Senator Mello. Commissioner Lang, thank you very much for coming and testifying. I remember when you discovered this and appreciate everything you've done to try to get this thing resolved. How did something like this actually get established and then go unnoticed? And then didn't it just get lost in the shuffle until you came aboard and actually got on top of all this? [AGENCY 23]

CATHERINE LANG: Well, the plan began back in the early '60s as a result of federal requirements that for employees of these programs, the state unemployment insurance programs, that they would be provided with retirement plan. And then once the state established its own retirement system, it would have been possible and many states did terminate or end the plan that was available under the federal plan and move everybody over. We did not do that. And then a number of things happened along the way. The class became closed. No new employees would become part of this plan. Eventually, at some...along the way the contributions to the plan, both by the employees and the agency, ceased. That ended the federal contribution to the plan. They had been willing to help support and maintain these plans for states that did continue to have contributions, but once we ceased our contributions then the federal government, except through the Reed Act distributions, no longer made a contribution to the plan. And then there were some other things that happened along the way that started to create financial hardship for the plan. And then, as we entered the Recession, we had to take some very specific action to try and at least maintain the plan through the

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Recession. [AGENCY 23]

SENATOR HARMS: Well, thank you very much for your testimony. [AGENCY 23]

CATHERINE LANG: Thank you. [AGENCY 23]

SENATOR MELLO: Are there any other questions from the committee? Senator Nelson. [AGENCY 23]

SENATOR NELSON: Thank you, Commissioner Lang. I'm just reading through your letter of February 7. You said, as part of the settlement, the plan will be terminated. What's taking its place? Anything? [AGENCY 23]

CATHERINE LANG: Well, what will happen is there are about two major classes involved. There are individuals who at the time of the class action lawsuit--and I'm going to be...I'm going to reference that point in time--that were retired at that time. And what will happen for them is that the plan itself as an independent retirement plan will cease and Principal, through their actuarial process, will purchase, through the settlement, the settlement negotiation, will purchase annuities and guarantee a 1.5 percent COLA for those individuals. There are individuals who are in the active class but then there are two parts of that: those that have retired since the establishment of the class and those that are still active employees with the state of Nebraska. To preserve their...the active employees' benefit, they will have annuities purchased for the value that their plan would have on that day, with the idea that there will be 1.5 percent COLAs going forward in the future, and then that very next moment after termination of the plan they will become part of the Nebraska State Employees Retirement System. And then they will participate in that to the same degree that every employee participates in that program. [AGENCY 23]

SENATOR NELSON: So they were on their own plan and now they're going to be part

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of the Nebraska state employees. [AGENCY 23]

CATHERINE LANG: So as an active employee, I will end up with two pieces. I will have my retirement plan, the independent retirement plan that's being terminated and the annuity purchased and the COLA guaranteed, and then I will have a state retirement plan like any other state employee going forward. [AGENCY 23]

SENATOR NELSON: Okay. All right. Thank you. [AGENCY 23]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you, Commissioner. [AGENCY 23]

CATHERINE LANG: Thank you. [AGENCY 23]

SENATOR MELLO: Other testifiers on behalf of Agency 23, the Nebraska Department of Labor? Seeing none, that will close today's public hearing on Agency 23 and lead us to our first bill of the afternoon, LB1023. [AGENCY 23]