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Nebraska Retirement Systems Committee  
January 27, 2015

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[LB40 LB236]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Tuesday, January 27, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB236 and LB40. Senators present: Jeremy Nordquist, Chairperson; Al Davis, Vice Chairperson; Mike Groene; Rick Kolowski; Mark Kolterman; and Heath Mello. Senators absent: None.

SENATOR NORDQUIST: Good afternoon, everyone. I'm State Senator Jeremy Nordquist from District 7, which is downtown and south Omaha, and I represent the...I am the Chair of the Retirement Systems Committee. Today we will be hearing two bills: LB236 from Senator Coash and then I have a bill, LB40. Just a couple housekeeping items. Please silence your cell phones so they don't distract the recording. We have testifier sheets in the back. Please complete those and submit them to the committee clerk. Please state and spell your name for the record. There also sheets, I believe, if you want to...don't want to testify but would like to indicate your support or opposition to a bill. We'll start with the introducer, proponent testimony, opponent testimony, and then neutral testimony. I'd like to introduce the...actually I'll have the members of the committee introduce themselves, starting to my right.

SENATOR GROENE: Senator Groene from Lincoln County, District 42.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31, Omaha.

SENATOR DAVIS: Senator Al Davis, District 43, western and north-central Nebraska.

KATE ALLEN: Do I have to?

SENATOR NORDQUIST: I'll do it after you. No, I'll...go ahead, Senator Mello.

SENATOR MELLO: Senator Heath Mello, District 5, south Omaha.

SENATOR KOLTERMAN: Mark Kolterman, District 24.

SENATOR NORDQUIST: Great. And our committee staff: to my left is Kate Allen, our legal counsel; and Laurie Vollertsen to my far right, our committee clerk. We have a page today for any handouts or any assistance you may need with that. And we'll start with LB236. Senator Coash, welcome. [LB236]

SENATOR COASH: (Exhibit 1) Thank you, Chairman Nordquist, members of the Retirement Committee. My name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent the 27th District right here in Lincoln. The page is handing out a written copy of my opening statement today because I want you...this bill is fairly technical and in my

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opening statement, it will help you kind of follow along. So I'm here today to introduce LB236. This is a bill to change and eliminate provisions relating to the collection of judgments and public retirement plans. LB236 is a solution to a loophole in Nebraska law that will provide justice by way of restitution to victims of 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 benefits or...pensions or benefits have been distributed from the retirement plan to that employee. In 2011, the Nebraska Supreme Court held that statute 81-2032 and other antiattachment statutes for some retirement plans provided absolute protection from garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other protections. In 2012, the Nebraska State Legislature, this committee, responded by enacting LB916 which amended that statute and other antiattachment statutes. For those plans affected by the amendment, a limited attachment remedy was created against the retirement assets of public employees or officers who were convicted of or pleaded no contest to one of six crimes and, number two, found liable for civil damages. So that was the bill that we passed--some of you were here--in 2012. That particular bill was taken to the Supreme Court and the Supreme Court held that the amendment, which was the bill that we introduced, was unconstitutional special legislation because the law's limitation to the six enumerated felonies was an unreasonable and arbitrary method of classification. So in other words, what we did is we--and I negotiated with this committee at the time--and we put some very specific crimes that would only...that would have to be committed, found guilty of to make this work. Well, the Supreme Court said that those were...might as well have picked them out of a hat. Despite our legislative history, that's what the Supreme Court said. They said that the Nebraska Constitution prohibits the Legislature from making arbitrary classifications that favor select persons or objects while excluding others that are not different in circumstances in relation to the act's purpose. The Supreme Court's special legislation analysis has three parts: the purpose of the legislation; whether it creates an arbitrary or unreasonable method of classification; and whether there is a substantial difference of circumstances between the defined class and those that are similarly situated so as to justify treating one differently than the other in light of the purpose of the bill. The court determined that victims of other nonenumerated felonies, such as murder and incest, were similarly situated but that was not a substantial enough difference to justify the classification. So a broader classification of all felonies would seem to solve the problem, so we thought, well, we'll just make it all felonies. The key will be whether that line in the sand is clear enough between those that fall within that statute or not. Trying to define the class by any other grouping of crimes would likely also result in unconstitutional special legislation, because if you start to pick and choose individual crimes, there's always going to be an argument for the inclusion of some other closely related crime. Instead, the bill should use an already well-organized demarcation between the types of crimes. The legislative purpose will be the lens through which the court would analyze any special legislation challenge to the new bill. The court relied on my testimony that the bill's purpose was to provide justice by way of

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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 plan or benefit. This tied into the prior bill's egregious/heinous classification, which should be avoided this time around. The purpose should remain the same, but a broader class definition of all felonies would encompass this purpose more effectively. In applying the legislative purpose, the court found, and I'm quoting the court here, "it is clear that the Legislature's desire both to provide relief for victims like C.M. and to protect the retirement assets of public employees in most circumstances explains its favored treatment of select victims, and its consequential favored treatment of public employees who have committed other serious crimes." The court further explained that the distinction of crimes was not sufficient, as well as referencing the problems of prosecutorial discretion. Defining the class as victims of all felonies eliminates all the major arguments by the court. The method of classification is based on a real and substantial difference of circumstances from victims of nonfelony crimes. Rather than picking and choosing individual crimes, the differences between victims of felonies and victims of nonfelonies is about as clear a distinction as can be made. The classification is proper if the class has some reasonable distinction from other subjects of a like general character, and the distinction must be of some...bear some reasonable relation to the legitimate objectives and purposes of this legislative act. By drawing the line in the sand...by drawing the line at victims of all felonies, the focus is on availability of restitution to the victims. Individuals who are facing a lengthy prison sentence are less likely to generate assets or income sufficient to satisfy a judgment that the victim needs and deserves. While it is certainly very broad, the court's special legislation analysis suggests no other way to parse individual crimes. Furthermore, the legislative purpose would only bolster the reasonableness of this classification. The question is whether the things or persons classified by the act form by themselves a proper and legitimate class. If the purpose is to provide justice by way of restitution where there is no other avenues available to the victim, certainly it would appear more difficult to secure restitution from a felon than from somebody convicted of a misdemeanor. Such classification also defeats the prosecutorial discretion argument when considering the severity of the crime. While there may be some resistance to such a broadly defined class, this law would still only apply in rare circumstances. And this is the point I want the committee to understand where the meat of this bill is. To break open someone's pension, there are two things that have to occur here, and both have protections for the person's pension. First thing that has to happen is there's got to be a crime that you've been convicted of. So you sat in front of a judge, a jury of your peers, and the judge has convicted...your jury and the judge has convicted you of a crime. Following that, you must be held civilly liable for that crime. You cannot have just a civil lawsuit and break open a pension and you can't by, in and of itself, have a criminal case and break it open. Both of those have to be met. The perpetrator would still have to commit a serious enough offense, not only to be held civilly liable but must be criminally convicted as well. The application would still be relatively narrow since any crimes bordering on misdemeanor or felony likely wouldn't result in a civil judgment of the size or nature where this remedy would be required.

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Thus, any instance where prosecutorial discretion leads to a misdemeanor instead of a felony would likely not be severe enough to merit the law's application in the first place. Finally, the public employee pension's immunity to attach itself is as a benefit afforded to public servants and not to the private sector. Instances where this bill would apply would clearly be those where the perpetrator betrayed that public trust. Likewise, the bill limits application to distributed funds, so there shouldn't be any consequences to the state. The only person that should be affected by this statute are innocent victims deserving of the compensation that they have been awarded and the criminals who perpetrated that conduct. In summation, defining the class as victims of all felonies forms by itself a proper and legitimate class concerning the purpose of the act. Likewise, this method of classification is based on a real and substantial difference of circumstances from victims of nonfelonies. The distinction between victims of felonies and those nonfelonies is reasonable and not arbitrary, and that any other classification of specific crimes would not pass the Supreme Court's special legislation test in light of the court's two most recent special legislation cases. In conclusion, I understand the state has...continues to have a very valid reason to protect pensions, and I support that. I want to assure that this policy change truly protects both the...protects both vulnerable victims of serious crimes and innocent family members of those convicted. Remember, someone must be convicted of a crime and a civil liability in order for his or her pension to be held liable for this restitution. This threshold ensures restitution for the most aggrieved victims whose well-being is forever affected by the crime and may have the greatest need for financial restitution. In closing, I want to add this. We have a law on the books right now that the court has found unconstitutional. We have to remedy that. I'm bringing you the mechanism to do that. It's broader than the bill I brought three years ago, but the court said if you narrow it, it's special legislation so we have to figure this out. And with that, I'll close and see if the committee has any questions. [LB236]

SENATOR NORDQUIST: Thank you, Senator Coash. Walk me through it just again why you don't think drawing a line at felonies is sufficient. [LB236]

SENATOR COASH: Well, if we don't...there's an idea of prosecutorial discretion here as well where we know a lot of times a person will commit a crime, be charged with a felony, plea to a misdemeanor, and the crime didn't change, just the charge. [LB236]

SENATOR NORDQUIST: Right. Right. [LB236]

SENATOR COASH: Right? And so by keeping it broad, we're able to say, look, let the court in the criminal case play out as it needs to. But if this were applied only to felonies and somebody pled down to a misdemeanor, I think...I think the same argument would be made, which is, hey, just because a person pled down doesn't mean that they don't deserve this restitution as well. [LB236]

SENATOR NORDQUIST: Okay. And then my second question is just philosophically my

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understanding is ERISA for...which governs private pensions, doesn't allow attachment like this; that, you know, if I'm...say I cause a bad car accident and I'm found both criminally and civilly liable. If I'm a private employee, can't have that attachment. If I'm a state worker with a defined contribution plan or a defined benefit plan, a teacher, under this bill we would allow that attachment. Is that... [LB236]

SENATOR COASH: I can only speak... [LB236]

SENATOR NORDQUIST: ...can you explain? Yeah. [LB236]

SENATOR COASH: Well, I can only speak to what this bill does. I'm not versed enough in what... [LB236]

SENATOR NORDQUIST: Okay. [LB236]

SENATOR COASH: ...how the private plans can be attached. [LB236]

SENATOR NORDQUIST: Uh-huh. [LB236]

SENATOR COASH: But as I said in my testimony, these are public employees, right, that hold the public trust. And when they violate that public trust and there's restitution needed to make their victims whole, I think the public has an interest in that. And so that would be my argument as to why we're going to... [LB236]

SENATOR NORDQUIST: All right. [LB236]

SENATOR COASH: ...we need to make this apply to these pensions. [LB236]

SENATOR NORDQUIST: Other questions? Senator Groene. [LB236]

SENATOR GROENE: Thank you, Chairman. Are we talking assets here or does a person have to be retired and collecting a check? How do you define assets in a defined benefit program? [LB236]

SENATOR COASH: Well, I'll let the committee help educate on this. I'll give you my understanding of it, okay? The assets are the funds in that pension program, right? That's...and if you look at it this way, Senator Groene, those assets are placed in a pension. Some are portions of the earner's wages; some are put in by the political subdivision. And so you get a whole pile there, and those assets, under the current law, have a pretty strong border around them, right? Well, what my bill is saying is, if you commit a crime and there is a civil judgment against you, to pay that civil judgment you can get into those assets, okay? Right now, as the law stands, if there's a crime committed and a civil judgment, let's say the judge says you owe this victim, because of

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the crime that you committed, a million dollars. And presumably that person may be in prison because the crime has already...you know, that process has taken place. Under the current law, there may be a million and a half dollars sitting in that pension but that victim cannot have it, even though the judge says you owe it to them. There's a wall around it. [LB236]

SENATOR GROENE: Right. I understand what you're doing. [LB236]

SENATOR COASH: Okay. [LB236]

SENATOR GROENE: I support it. But on the state employees that are in the 401(k) type,... [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR GROENE: ...I can put a number on that. How do I do it in a defined benefit package, where all the money goes together, and the day you retire, how many years of service, how do...? And their payments are done by a formula. [LB236]

SENATOR COASH: Right. [LB236]

SENATOR GROENE: There's no really money...that they have a private account, do they? [LB236]

SENATOR COASH: Well, I think it is pooled. And legal counsel, I'm sure, will help us understand that. But each earner, there's a number assigned to them. So there might be dozens and dozens of people putting money into that, but it's all a formula: how long you've been putting in, under what contract you put it in. And you know, obviously, two workers doing the same job: the worker who's been in there 10 years is going to have less attached to them than the worker who's been in there 30 years. [LB236]

SENATOR GROENE: I don't know how it works on the defined benefit, with the teachers and the State Patrol on that. I agree with your idea. [LB236]

SENATOR COASH: Yeah, and I hope I didn't... [LB236]

SENATOR GROENE: I think the victim should be... [LB236]

SENATOR COASH: ...I hope I'm answering your question. [LB236]

SENATOR GROENE: And I'm just confused what the judges are going to say or how that's calculated by the court... [LB236]

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SENATOR COASH: I would say in the... [LB236]

SENATOR GROENE: ...what the value is for that defined benefit package. [LB236]

SENATOR COASH: Oh, I think...I think defining that value per earner is obviously out there and they've figured out how to do it. Otherwise, they wouldn't know how much to give you, so. [LB236]

SENATOR GROENE: But it's been done in other states? [LB236]

SENATOR COASH: I don't know. I couldn't tell you... [LB236]

SENATOR GROENE: All right. [LB236]

SENATOR COASH: ...how other states deal with this. [LB236]

SENATOR NORDQUIST: Yeah. I think there's...I think there's maybe a chart in your book. [LB236]

KATE ALLEN: But I don't know (inaudible). [LB236]

SENATOR NORDQUIST: Okay. [LB236]

SENATOR COASH: I would also point out in the packet the last page. I didn't give you the whole court decision but I did give you the last, kind of the conclusion of the court so you could see what the court said. And if you've been here as long as I have and especially sitting on the Judiciary, you pay attention to court Opinions. And you go to the last page and say...because sometimes the court will say, and if the Legislature wants to do something because we found this unconstitutional, here's kind of your road map. That's about the best they're going to do because they're not going to help you with it. (Laugh) They're not going to help you draft a bill. They're just going to give you some direction and send you on your way. [LB236]

SENATOR NORDQUIST: Right. Senator Davis. [LB236]

SENATOR DAVIS: Thank you, Senator Nordquist. A couple questions, Senator Coash. You talked, and I'm just trying to clarify, so you talked about somebody that pleads down to a misdemeanor. So are you saying that when that plea takes place, a person would still be...this is still attachable? [LB236]

SENATOR COASH: Under my bill it would be because my bill has all crimes. [LB236]

SENATOR DAVIS: And why do you think that makes sense, because sometimes

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prosecutors will charge people with a felony in order to get a conviction... [LB236]

SENATOR COASH: Right. [LB236]

SENATOR DAVIS: ...down the road? [LB236]

SENATOR COASH: Yeah. [LB236]

SENATOR DAVIS: Does that really seem like a fair way to do something? [LB236]

SENATOR COASH: In a practical sense, I think it will work. And this is why. If the crime, whether it started there or ended there, ends up in a misdemeanor, okay, whether it was pled down or just started there, it's not going to happen that that crime is going to attach a judgment that the person can't pay. The higher the crime, the more likely is the victim is going to want restitution. Make sense? So if it's a very egregious sex crime, high up on a felony level, then that's going to indicate that that victim has a lot of restitution, potentially, due to them, which the civil court will flesh out. If the crime is a low-level misdemeanor, then restitution through a civil judgment is not going to happen. [LB236]

SENATOR DAVIS: And I understand that. You know, I would say this, though. Some parts of the state, counties really don't have the resources to handle some of these cases. [LB236]

SENATOR COASH: Right. [LB236]

SENATOR DAVIS: So I've got some...and then a couple other questions. So this is only for public pensions. This is not for private pensions because that's not permissible. Is that correct? [LB236]

SENATOR COASH: I can't answer that. I can just tell you what my bill does. [LB236]

SENATOR DAVIS: So now let's say this case happens before the person retires and that attachment takes place. So is that an attachment of future revenue that goes into that retirement plan? [LB236]

SENATOR COASH: Well, if the person retires, there's no more money going in. [LB236]

SENATOR DAVIS: But I mean the person is still working. The charge takes place today. [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR DAVIS: The person is still working and those assets are attached. So are we

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attaching the assets that are there at that time? Are we attaching future earnings?  
[LB236]

SENATOR COASH: Well, the...I guess the answer to your question is it depends. If the amount of money in there is sufficient enough to pay the civil judgment, then it doesn't matter if they're still working or not. And back to your other question about why, you know, this felony versus misdemeanor, look, when I brought this bill three years ago I wanted to be very specific about the crimes. And all the crimes I put in the bill were all felonies. And the court said, you can't do that because you're treating one, in this case, it's kind of special legislation for the criminal. (Laugh) You're treating one criminal different than the other criminal. And the court is saying, look, you can't, because of the movement between felony and misdemeanor, which happens all the time, you can't say one crime is...if I get convicted of a crime in Lancaster County, it could be a felony. I could do the same thing in Rock County and it might be a misdemeanor, right, because of that prosecutorial discretion. [LB236]

SENATOR DAVIS: Right. The arbitrariness of it is what I'm talking about. [LB236]

SENATOR COASH: The arbitrariness of it. And so for that reason we have to go to the lowest common denominator, which is a crime. If you commit a crime, you have a victim and that victim wants restitution and gets that restitution through the civil process, then you ought to be able to use that, those funds, to make that victim whole. [LB236]

SENATOR DAVIS: Thank you. [LB236]

SENATOR NORDQUIST: Senator Kolterman. [LB236]

SENATOR KOLTERMAN: Yeah, Senator, I understand what you're trying to do, but there's a huge distinction or a difference between a defined benefit plan that many of the state employees or county employees have versus a defined contribution plan that others have in the private sector and some even in the public sector. The challenge that I see with a defined benefit plan is those are typically paid out as an annuity payment. And granted, there's a lump sum of money sitting there to fund that annuity, but if, well, let's say they choose the life of them and their spouse. [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR KOLTERMAN: They both die in a car accident the second year that they're collecting, typically that's gone. [LB236]

SENATOR COASH: Right. [LB236]

SENATOR KOLTERMAN: And so how would you figure, in a defined benefit plan, that

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there's enough money? I mean we don't know, first of all, when somebody is going to start collecting, and when somebody is going to quit collecting. [LB236]

SENATOR COASH: Yep. I'm glad you brought that up, Senator Kolterman, because in the bill we did...and I got to find that provision. But in the bill it's important that the court have the ability to say, look, we're putting...we're letting you in, "you" as in the victim, right, in to get some of this money because the civil judge has said it, right? But we put a provision in here that says you got to have enough to take care of the beneficiaries of the plan as well. So if the pension holder has half a million dollars in there, right, and the victim, the judge says, you're owed half a million dollars, let's just say it was equal, right? The court is going to have to say, well, I know that there's a half a million in here and I know that the victim is entitled to a half a million, but there are other beneficiaries here and so we have to carve out what's reasonable for them. So that's in the bill. [LB236]

SENATOR KOLTERMAN: Can I? [LB236]

SENATOR NORDQUIST: Yeah, please. [LB236]

SENATOR KOLTERMAN: But my question...but there's really not a half a million there. [LB236]

SENATOR DAVIS: Right. [LB236]

SENATOR KOLTERMAN: I mean that changes by actuarial studies, and their actuaries are assuming some people are going to die and not collect it all. And so just to say that there's a half million sitting there in a defined benefit plan isn't necessarily an accurate statement, the way I understand it. And so as we try and tie up assets of a defined benefit plan through a court proceeding, I think we're opening up a real can of worms, Senator. I might be wrong, but I think that in itself might test the ability of this to be able to do that. [LB236]

SENATOR COASH: Okay. [LB236]

SENATOR NORDQUIST: Senator Kolowski. [LB236]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Coash, thank you for bringing this forward. It's...got a lot of questions on this. And the one system I understand and am part of with the state retirement fund for teachers, and my wife and I are both in that as far as educators are concerned. If I did something that would injure someone and a case was brought against me and that retirement fund, I want to ask you a question. Like this law enforcement officer that we have a case in here that was in your write-up that had sexual relations with his stepdaughter and he was in jail. And he

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had X number of years with the State Patrol. That would be like the retirement system, I'm sure, I'm in. [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR KOLOWSKI: But when I retired, I had a choice of like six or seven different ways I would be able to receive that money over time. [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR KOLOWSKI: If I am hit then with...if my retirement fund is hit with that court decision, what about the impact upon my family, who had nothing to do with my crime,... [LB236]

SENATOR COASH: Uh-huh. Right. [LB236]

SENATOR KOLOWSKI: ...and the impact on their life and their standard of living? I'm in jail,... [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR KOLOWSKI: ...but there's something that's really going to be impacting them. [LB236]

SENATOR COASH: Right. When an earner, as you did, earns, it's not just for you. It's for your family as well. [LB236]

SENATOR KOLOWSKI: Sure. [LB236]

SENATOR COASH: And this is what I was explaining to Senator Kolterman. In the bill there's provision for the court to carve out what's necessary and reasonable for your beneficiaries--wife, children--however you left it, and...because you don't want to leave them in the cold either. I mean you have a, in your example, Senator, you have a responsibility that the court has said to the victim of your crime, but you also have responsibility to the, you know, to the beneficiaries, you may have earned it. This bill gives discretion to be able...and directs the court, you've got to carve this out for your beneficiaries. [LB236]

SENATOR KOLOWSKI: But if my money was all in a personal 401(k) or something like that, whatever we had put money into ourselves and didn't have a state...you couldn't touch that money. Is that correct from this bill because you're talking about public retirees? [LB236]

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SENATOR COASH: Outside of the...outside of the public pensions, my bill doesn't...only touches those public pension dollars, yes. [LB236]

SENATOR KOLOWSKI: Let me ask another question then. If I had an early retirement benefit from the school district that I'm leaving, is that accessible as well? That could be a six-figure chunk of change... [LB236]

SENATOR COASH: Uh-huh. Right. [LB236]

SENATOR KOLOWSKI: ...if I so desired to take that. Is that looked at as something else you could attach to? [LB236]

SENATOR COASH: I believe so. But I want to...want to make clear on the record, this doesn't come into play unless you have a victim out there... [LB236]

SENATOR KOLOWSKI: I understand. Understand. [LB236]

SENATOR COASH: ...that not only of a crime but a judge has said to the perpetrator of that victim, you have to help make them whole. And if it's retirement benefits that does that, so be it. [LB236]

SENATOR NORDQUIST: Senator Davis. [LB236]

SENATOR DAVIS: Senator, thank you, Senator Nordquist. Senator Coash, do you have any idea how many of these cases surface every year? Is this a very special circumstance that you're trying to fix? [LB236]

SENATOR COASH: I would think, Senator Davis, the utilization of this would be relatively small, because I don't think we have public employees out there committing heinous crimes that are causing victims out there. There was one, Senator Kolowski mentioned. That was what brought the bill to my attention a few years ago. And frankly, you know, hindsight is 20/20. You never know what the court is going to do with stuff we do in this branch of government. But bringing this bill isn't as much about those...it's about those victims out there--past, present, and future--and we don't know who's going to take advantage of this in the future. I do think it's relatively small so I don't...I'm not...if you're worried about public pensions getting raided, I don't think this bill...I know this bill doesn't open up Pandora's box where people's pensions are just going to start emptying because of these two-tier tests that we've put in the bill. So I'm not worried about that. But more than anything what...the reason that I'm bringing this bill is we have an unconstitutional law on the books. I helped put it there. This committee helped put it there. We have to find a way, through this committee, to fix the statutes in our books because the court has said we're...you guys got it wrong. Disagree them or not, that's where we sit, so. [LB236]

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SENATOR NORDQUIST: Okay. Senator Kolterman and then Senator Groene. [LB236]

SENATOR KOLTERMAN: Thank you, Senator Nordquist. If we have a...if we have a law on the books, couldn't we just repeal the law that's there and go down the road? [LB236]

SENATOR COASH: We can. And a bunch of the language in here, all this stuff that's crossed out in this bill, is repealing those sections. [LB236]

SENATOR KOLTERMAN: Well,... [LB236]

SENATOR COASH: Okay? [LB236]

SENATOR KOLTERMAN: ...the other thing, a concern that I have, Senator, is if we have...if we do approve this and it gets to the floor and gets passed into legislation, we're kind of setting the precedent that we're pitting one class of citizens against another because we're creating a situation where somebody that worked for the public and is in a public retirement could have their money attacked, while somebody that works for a private corporation through ERISA can't. [LB236]

SENATOR COASH: Uh-huh. [LB236]

SENATOR KOLTERMAN: I don't know if... [LB236]

SENATOR COASH: Well,... [LB236]

SENATOR KOLTERMAN: ...I don't know if that's good policy either. [LB236]

SENATOR COASH: Well, let... [LB236]

SENATOR KOLTERMAN: I understand what you're trying to do. I just don't know if this is the way to do it. [LB236]

SENATOR COASH: We can only affect what we can affect here, right? [LB236]

SENATOR KOLTERMAN: I know. I know. [LB236]

SENATOR COASH: I've dealt with that with insurance my whole...in my career here, right? But as I said in my testimony, these are public employees who hold the public trust, so I think it is incumbent on us to take a look at that. [LB236]

SENATOR KOLTERMAN: Thank you. [LB236]

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SENATOR NORDQUIST: Okay. Yes, Senator Groene. [LB236]

SENATOR GROENE: Could, Chairman, could I ask you a question... [LB236]

SENATOR NORDQUIST: Yeah. Yeah. [LB236]

SENATOR GROENE: ...to clarify what you had asked? Is there a difference here between a pension, the definition of pension, and retirement plan? Because I know in the public, in divorce cases, retirement plans have to be sold off and the money split, a child. You know, my 401(k), does that follow different rules than the old-fashioned pension? [LB236]

SENATOR NORDQUIST: Right. [LB236]

SENATOR GROENE: Very few companies have pensions anymore. They have retirement plans. [LB236]

SENATOR NORDQUIST: Right. Right. Right. [LB236]

SENATOR GROENE: But my concern here is we're treating two people differently, but I consider my 401(k) the same thing as this public retirement plan. So if they can take mine, they ought to be able to take theirs. [LB236]

SENATOR NORDQUIST: Right. [LB236]

SENATOR GROENE: But if there's a difference here,... [LB236]

SENATOR NORDQUIST: Right. [LB236]

SENATOR GROENE: ...what's your definition of pension versus 401(k) retirement plan? [LB236]

SENATOR NORDQUIST: I don't know if ERISA. [LB236]

KATE ALLEN: The public (inaudible). [LB236]

SENATOR NORDQUIST: Will you speak into the mike so it goes on to the record, Kate Allen. [LB236]

KATE ALLEN: ERISA just covers private plans, the 401(k)s, your...those kinds of things, your ROTHs, things like that. This only deals with a government, public pension. [LB236]

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SENATOR GROENE: But earlier it was said that, by Senator Nordquist, that this can't be done to my 401(k). [LB236]

KATE ALLEN: Correct. [LB236]

SENATOR GROENE: It can't. [LB236]

KATE ALLEN: Right. Right. Any of your private retirement funds, your IRAs, those. [LB236]

SENATOR GROENE: Can't take my assets. Can they garnish my... [LB236]

KATE ALLEN: They cannot. It cannot be attached to that. [LB236]

SENATOR GROENE: ...my benefits if I'm retired? [LB236]

KATE ALLEN: No, not in the private... [LB236]

SENATOR KOLTERMAN: I think they... [LB236]

KATE ALLEN: ...not in private. [LB236]

SENATOR NORDQUIST: Go ahead, Senator Kolterman. [LB236]

SENATOR KOLTERMAN: I think they can for IRAs. We're talking qualified retirement plans that a corporation might have. [LB236]

SENATOR NORDQUIST: Right. Right. [LB236]

SENATOR KOLTERMAN: That's where we get into the ERISA rules and regulations. [LB236]

SENATOR NORDQUIST: Right. Right. [LB236]

SENATOR KOLTERMAN: But in either case, if you go through a divorce, there's qualified domestic relations orders. Then they can be attached, but that's a whole different can of worms. [LB236]

SENATOR NORDQUIST: Right. And just on the question that was going back and forth earlier, so the bill that we passed last time allowed for attachment not...only after distribution of the defined benefit. So you weren't going into the trust fund. You were waiting till it came out and then you attached. The court said the problem with that is

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you're essentially creating an unfair balance between people who are closer to retirement and those who are younger. If I'm a young person and I know my...in 20 years my pension is going to be attached, I'm going to leave that job and go work in the private sector where they can't do that. So that was the issue of not allowing the attachment after distribution and that's why the bill now has to do before that, so. Any other questions? Thank you, Senator Coash. [LB236]

SENATOR COASH: All right. Thank you. [LB236]

SENATOR NORDQUIST: Proponent testimony on LB236. Any proponent testimony? Seeing none, any opponent testimony on LB236? Welcome, and please state and spell your name. [LB236]

MIKE MARVIN: (Exhibit 2) Good afternoon, Chairman Nordquist, members of the committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees/AFSCME, the local representing the vast majority of state employees in the state of Nebraska. We are opposed to this bill today because of several reasons that you will find in my submitted testimony to you. I'm not going to actually read that testimony to you but you have it there. We have concerns about the broad nature, though. Expanding it out to misdemeanors we believe just broadens it too far. I understand the argument of prosecutorial pleading things down, but we do believe that as you go out to a misdemeanor you're expanding the law too far. I enumerate my objections in my testimony, but I want to talk about a couple things that have occurred to me as I've been sitting here listening that may happen. At our correctional facilities, at the Beatrice State Developmental Center, at the regional centers, and at our veterans' homes we have a shortage of help. People are working a lot of long, hard hours. People make mistakes. People probably could have some things that fall to the area of abuse which were not intentional but because of being so tired, being so wore out. If you look around, you will see that there's an enormous amount of overtime being used at these places. We have concerns that somebody may, without intention, commit a misdemeanor and be subject to this law. I can give you an example that really concerned me as I looked at this. About six years ago we had a lady who worked at Beatrice State Developmental Center who was very, very close to a patient. She would take him places, do things with him on her own time, do a lot of things. That patient had an issue one night and Beatrice had just changed their protocols. This was a 30-year employee. The lady panicked when this gentleman had his issues. She was then charged with abuse by Beatrice State Developmental Center and...because she made a mistake in making a phone call. They changed the protocol to call out, and she made a mistake. She was discharged from Beatrice. We...I'm not sure if that could have risen to the level of being charged with a misdemeanor but there was no...absolutely no criminal intent on that person's part. They did make a mistake. They paid the price. I ended up getting her a job back in the laundry room but she couldn't have any patient contact any longer. But there is fear that if you get a prosecutor out there in a situation

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like that, that a person could be charged with a misdemeanor and then be found in court civilly responsible and have their pension attached when there was no intent to commit a crime. So with that, I hope you would give consideration to the rest of my testimony that I submitted you. We would ask that based just solely on the broad nature of this piece of legislation that you not move it out of committee. If you believe you need to do something to fix the law, strike the language that's being stricken and don't add the language that is being added. [LB236]

SENATOR NORDQUIST: Thank you, Mr. Marvin. Any questions from the committee? Senator Davis. [LB236]

SENATOR DAVIS: Well, your statement just made me think this here, and I'm just going to ask as a hypothetical, mainly just to get it into the record. But you really could see something happening where the state could actually sue to seize the assets to pay for medical expenses that are associated with something that might happen like that. I mean that's a possibility,... [LB236]

MIKE MARVIN: It is a possibility. [LB236]

SENATOR DAVIS: ...wouldn't you say so? Thank you. [LB236]

SENATOR NORDQUIST: Thank you, Senator Davis. Any other questions? Seeing none, thank you, Mr. Marvin. [LB236]

MIKE MARVIN: Thank you very much for your time. [LB236]

SENATOR NORDQUIST: The next opponent. Welcome. [LB236]

KIM QUICK: Thank you. Good afternoon, Senator Nordquist and other Senators here of the committee. My name is Kim Quick. I am president of Teamsters Local 554 in Omaha. We represent approximately 3,000 employees here in the state of Nebraska, public sector employees who are involved in public pension plans, and then also we represent employees who are in private sector plans which are covered under ERISA, and which you've heard different testimony here today talking about ERISA. One of the things, this is a bad piece of legislation, we feel in our respect, because this strips away the rights of employees in public sector who are protected under ERISA in the private sector. Such as I've heard testimony here today about 401(k)s, which that is a qualified plan also under ERISA, which is protected, and these rights are protected for employees that have 401(k)s just like a defined contribution plan. I also serve as a trustee of a multiemployer plan for just approximately 18 years, just short of 20, in which we work with qualified plans which are also protected under ERISA. One of the things that I really feel that this thing will cause is further litigation, would cause a lot of litigations. I could see that coming down the road with a lot of attorneys just seeing all

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kinds of opportunities there. One of the other issues that came up during testimony was talking about the lump sum payments, such as going in and being able to get \$500,000. In a qualified plan, and it talks about actuaries, because what you're going to do now is create further problems for pension funds. Because if you think that we can go in, just all of a sudden pull \$500,000 out of a pension fund, that's wrong, because pension funds are set up based upon contributions and investment return. And to be able to just go in and get lump sum payments is absolutely wrong because that's not how pension funds are operated. And I think that creates another bigger problem for pension funds and would create, like I say, further litigation. It would cause problems actuarially. The actuaries would be having all kinds of problems trying to figure out how to fund the pension funds where we take...all of a sudden have to start figuring for lump sum payments where they're starting to be paid out over a period of years. Those are a few of the things that I have, but we are in opposition to this bill. And I would take any questions. [LB236]

SENATOR NORDQUIST: Thank you, Mr. Quick. Any questions from the committee? [LB236]

SENATOR GROENE: Just one. [LB236]

SENATOR NORDQUIST: Senator Groene. [LB236]

SENATOR GROENE: But an actuary can also pinpoint the value of that asset today and that wouldn't affect the rest of the people's pensions because you would have that value today. I mean they can back it up, too, so I'm not too worried about that as far as that person is removed from that pension plan. The value of that has been placed today by the actuary without any harm to the rest of the returns. [LB236]

KIM QUICK: Actually, myself as a, like I say, as a trustee but we work with actuaries regularly, a question...I know if you ask that question of an actuary, he would say that that's an unknown because there's no way to figure how many cases that you may have that somebody is going to want to take and have lump sum payments paid out of there. And they've figured this based upon, like I say, payments out over a period of years. There's no way for them to figure and, like I say, they wouldn't be able to give you a definite answer. I'm not an actuary but, like I say, I do regularly work with one. So I guess I can't give you a definite answer. [LB236]

SENATOR NORDQUIST: Thank you. Any other questions? Seeing none, thank you. Oh, did you have a question, Senator Kolterman? [LB236]

SENATOR KOLTERMAN: I just have a question. Wouldn't it...if I'm correct, if you pay out a lump sum actuarially,... [LB236]

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KIM QUICK: Right. [LB236]

SENATOR KOLTERMAN: ...that would dilute the value of the other assets and it would weaken the potential. It could cost us to put more money into a plan simply because we've taken so much out,... [LB236]

KIM QUICK: You're absolutely... [LB236]

SENATOR KOLTERMAN: ...kind of like the market going up and down. [LB236]

KIM QUICK: Yeah. You're absolutely right. That would create problems for the funding level of a pension fund because, like I say, how many lump sum payments you're going to pay out... [LB236]

SENATOR KOLTERMAN: Right. [LB236]

KIM QUICK: ...and how are you going to fund that. And you're going to end up having to pay in more, larger contributions, you know, both the employer and the employee. There are going to be increased contributions and that's where we are at today with funding of pensions. We're in, you know, havoc publicly, we are, in funding them. It is going to create further problems. [LB236]

SENATOR KOLTERMAN: And while we can...can I? [LB236]

SENATOR NORDQUIST: Please. [LB236]

SENATOR KOLTERMAN: While we can pinpoint the actual actuarial value of the total of that amount, that doesn't necessarily mean we're going to use all of that. [LB236]

KIM QUICK: Correct. [LB236]

SENATOR KOLTERMAN: Is that correct? [LB236]

SENATOR NORDQUIST: Any other questions? Seeing none, thank you, Mr. Quick. [LB236]

KIM QUICK: Thank you. [LB236]

SENATOR NORDQUIST: Next opponent. Welcome. [LB236]

RODNEY VLCEK: Thank you, Chairman Nordquist, members of the Retirement Committee. My name is Rodney D. Vlcek, spelled R-o-d-n-e-y D. V-l-c-e-k, and I am president, secretary/treasurer of the Nebraska State AFL-CIO, and we oppose LB236. I

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think Senator Kolterman described it very well. It's opening up a can of worms that we may not want to go down to. I understand where Senator Coash is coming with this. We agree with him. We just think going too far down to misdemeanors because when a judge and/or jury determines what the settlement could be, it could have a different bearing from Burt County to Lancaster County to Douglas County to Sarpy County. And also one thing we want to remember is that the beneficiaries, who is going to determine what is a fair amount besides a judge or jury, and is that a fair amount? So we feel that the beneficiaries shouldn't be penalized for something that an individual had done and was convicted in court. And with that, again, we are opposed to LB236. [LB236]

SENATOR NORDQUIST: All right. Thank you, Mr. Vlcek. Any questions from the committee? Seeing none, thank you. [LB236]

RODNEY VLCEK: Thank you very much. [LB236]

SENATOR NORDQUIST: Any additional opponent testimony? Welcome. [LB236]

ORRON HILL: (Exhibit 3) Thank you, Chairman Nordquist, Retirement Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I'm legal counsel for the Public Employees Retirement Board, hereinafter referred to as the board, and the Nebraska Public Employees Retirement System, hereinafter referred to as NPERS, spelled N-P-E-R-S. I'm here to testify against LB236 as written. First, I'd like to say that the board is sympathetic to the struggles faced by victims of crimes and has been supportive of similar legislation in the past. However, the board is concerned about LB236 as written and the impact it could have on Nebraska's public employees retirement plans. As you know, the board is responsible for ensuring that the contributions and distributions made from the various retirement plans are managed in accordance with Nebraska law, the Internal Revenue Code, or IRC, and the board's policies and rules and regulations. You've all had the chance to review LB236 so I won't go into detail regarding its specific nature or our understanding of Senator Coash's intent, but you can read that in our written testimony. While we agree that the intent of LB236 is noble and we're sympathetic to those the bill would benefit, there are two primary concerns that we would like to bring to the committee's attention. The first concern is that the plan...the bill, as written, could cause the plans to be questioned under the Internal Revenue Code. And the second is a concern with how the bill will be implemented if passed. The Internal Revenue Code places strict requirements on what may be designed a qualified plan under Internal Revenue Code Section 401(a), and the bill as written appears to conflict with several of those sections which I've identified for you in my written testimony, as well as how it may interplay with plans that are governed by ERISA. If LB236 is passed and if the IRS determines that the retirement plans do not comply with these provisions, then the retirement plan's qualified status under the code could be in jeopardy, which could put risk upon both our members and the state. Two specific provisions: Internal Revenue Code Section 401(a), first, that's referred to as the

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exclusive benefit rule. It contains two provisions. First, the qualified plan must be maintained for the exclusive benefit of employees or their beneficiaries; and two, under the plan's trust instrument, it must be impossible for any part of the principal or income of the trust to be diverted for any other purpose prior to satisfaction of the plan's liabilities. You can also refer to Internal Revenue Code Section 401(a)(13), which is referred to the assignment and alienation clause. It requires plans to prohibit assignment and alienation unless it fits within one of three special exceptions: qualified domestic relations orders, or QDROs, federal tax levies and judgments, and criminal or civil convictions limited to fiduciary violations or crimes against the retirement plan. In 2012, the IRS published a memorandum outlining how the IRS reviews how the minimum vesting standards of the other sections that I've listed apply to governmental plans, and I've provided the committee a copy of that memorandum as part of my testimony and would refer you to it. There are three potential issues. First, LB236 as written allows courts to order the board and NPERS to distribute assets to someone other than a member or a member's beneficiary, in the case...in this case, the victim. That seems contrary to the first provision of the exclusive benefit rule. LB236 as written also allows courts to order the board and NPERS to divert plan principal or income to a purpose other than the satisfaction of the plan's benefits and liabilities. This appears contrary to the second provision of the exclusive benefit rule. And the third issue, LB236, what it is proposing, does not seem to fit neatly into any of the exceptions listed under the alienation and assignment clause, such as QDROs, federal tax levies, or those criminal or civil judgments limited to fiduciary violations or crimes against the plan. That is the risk that we see. The second issue is regarding implementation of the bill. There are at least two areas that could be difficult to implement: first, complying with the court orders to distribute assets regardless of whether the member is vested and regardless of whether the member is still working or retired; and two, recovery of the assets upon reversal of the conviction. The Nebraska retirement plans are not currently designed to distribute assets prior to a member's vesting or retirement. Also, unlike QDROs, which have specific Internal Revenue Code and statutory provisions that direct what courts may and may not order, LB236 does not contain any specific direction to the courts regarding what the courts may or may not include in their orders. Thus, each order would need to be unique and would require the board and NPERS to respond to each order individually. This could significantly increase the level of work. And also, unlike QDROs, which don't take effect until the retirement is distributed, this bill indicates that it could be attached prior to that point. In many cases, the board and NPERS will struggle to recover plan assets under the bill as written. LB236 specifically states that victims will forfeit their right to annuities or benefits paid under civil damages if the conviction is overturned. However, it directs that the victims will return the asset to the member. It is reasonable to assume that given the potential length of the appellate process, that the victims may use distributed assets before the conviction is overturned. Thus, the victim will not be in a position to return the assets to the members at the time the conviction is overturned. Further, even if the members are able to recover the assets, the members may not return the assets to the plans. In either case, the

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retirement plans have lost assets that they should be using to satisfy the plans' liabilities. Functionally, to respond to these concerns, the board and NPERS would need to draft new policies, rules and regulations, and practices to respond to this bill if it were passed. And it would be wise for the board and NPERS to obtain a private letter ruling from the IRS before adopting these to ensure that the plan would not fall out of compliance with 401(a). Both of these tasks would be time-consuming and could contain a fiscal impact. The risks associated with the aforementioned concerns could be mitigated if LB236 were amended so that judgments were to attach to proceeds after NPERS distributed the assets to members. We understand that this is a concern that the courts had and that Senator Coash has tried to address that concern in the course of this bill. However, it is still a functional concern for the board and NPERS. I would note that the last board meeting was held before a thorough analysis of LB236 could be completed and considered by the board. However, the legislation was discussed with the chairman, Denis Blank, and Elaine Stuhr, the legislative chair. And I am able to state with confidence that there is a general consensus the board is against the legislation as written. I'll take any questions the board may have. [LB236]

SENATOR NORDQUIST: Great. Thank you, Mr. Hill. Any questions from the committee? Senator Groene. [LB236]

SENATOR GROENE: You said the prior bill you supported, were in support. [LB236]

ORRON HILL: Yes, Senator. [LB236]

SENATOR GROENE: Why? What's the difference here? Is it just the misdemeanor? [LB236]

ORRON HILL: The misdemeanor as well as when the judgment is to attach, Senator. The prior bill didn't attach until after distribution. This bill attaches prior to. [LB236]

SENATOR GROENE: So the Supreme Court threw it out on two issues... [LB236]

ORRON HILL: That is our understanding, yes, Senator. [LB236]

SENATOR GROENE: ...under one ruling. Thank you. [LB236]

SENATOR NORDQUIST: Thank you. Any additional questions? Seeing none, thank you, Mr. Hill. [LB236]

ORRON HILL: Thank you, Senator. [LB236]

SENATOR NORDQUIST: (See also Exhibit 4) Any additional opponent testimony? Seeing none, any neutral testimony? Seeing none, Senator Coash, like to close?

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[LB236]

SENATOR COASH: Thank you, Senator Nordquist. Thanks to the committee. I'll start my closing and I'll end it the same way. I want to work with this committee to figure this out. Okay? Here's the challenge we have. I could live with the bill that we passed. It was my bill. (Laugh) Right? It was the court that said they can't live with that. I listened carefully to the opponents' testimony. I have to tell you this, in a practical sense, I'm still confused on what they're worried about. Logistical things aside, the things that they could live with, and what I mean by what the opponents could live with--cutting it off here, attaching it here rather than here--those are the things the court said is unconstitutional, okay? We went down this path three years ago and we ended up with a bill that I was fine with but the court wasn't. I will tell you this. I trust our due process, right? I do have confidence in our judiciary. I trust that people who are convicted of crimes were given a fair process to contest that, okay? And I trust that our civil procedures...in that due process. I'm here for the victims here, okay? This is what this bill is about. This is about making victims whole when they've had a crime committed against them and their only way of restitution is by way of these plans. This isn't picking on these plans. This is about making victims whole. And we have a choice through this bill whether we're going to focus on pensions or the victims. Okay? What are we going to protect more? What are we going to give our deference to: victims of crimes or the people who commit them? And that's a tough situation that this committee is going to have to deal with but that's the choice we have. We going to focus on the victims of these crimes or the perpetrator of these crimes and protecting them? They both have due process. They both have the opportunity to look at each other in a courtroom, face their accuser, and see what the outcome can be with a jury of their peers. But at the end of the day, when that jury says, you've committed this crime and you have a victim here, and then a different judge through a different process says, and because of what you've done you owe this victim, we have to keep in mind who we're talking about here. And I would just ask that you remember the victims as we talk about this. And I started it with this and I'll end it with this: I will work with the committee in any way I can to meet those two ends. [LB236]

SENATOR NORDQUIST: Okay. [LB236]

SENATOR COASH: Thank you. [LB236]

SENATOR NORDQUIST: Thank you, Senator Coash. Any final questions? Senator Groene. [LB236]

SENATOR GROENE: I know we all want to eat, but reading the Supreme Court's summary, they seem to be just telling you to put the word "felons" in there. I mean isn't, in our laws, there's a lot of laws that says if you're a felon you can't do this, you can't do that... [LB236]

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SENATOR COASH: Right. [LB236]

SENATOR GROENE: ...if the word "felon" is used. You can't vote for a certain period of time. That's in law. But they're telling...what I think what they told you is you can't pick one felon over another. [LB236]

SENATOR COASH: Right, and...and... [LB236]

SENATOR GROENE: Why not just go back to...why not go back to the word "felon" and not the misdemeanor? [LB236]

SENATOR COASH: We may go that route. [LB236]

SENATOR GROENE: I could support that. [LB236]

SENATOR COASH: I wanted to go to the lowest level, which is a crime. [LB236]

SENATOR GROENE: Because I can see that. I'm not going to editorialize. I'm not supposed to. [LB236]

SENATOR COASH: Yeah, I understand what you're saying, Senator. [LB236]

SENATOR NORDQUIST: That's okay. It's all right. Senator Kolterman. [LB236]

SENATOR KOLTERMAN: Senator Coash, I couldn't agree with you more about the issue here. The challenge that I have in the whole situation is we can't put at risk the pension plan of several thousand people because we want to attack money because of one crime. And that was...that's where my concern comes in. [LB236]

SENATOR COASH: I understand that, Senator, and this is the... [LB236]

SENATOR KOLTERMAN: And if I can help in any way figure out a solution, I'd be glad to try and help. [LB236]

SENATOR COASH: Well, this committee is...that's the reputation of this committee,... [LB236]

SENATOR KOLTERMAN: Right. [LB236]

SENATOR COASH: ...so I'll take you all up on that. [LB236]

SENATOR NORDQUIST: Right. Great. [LB236]

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SENATOR COASH: Thank you. [LB236]

SENATOR NORDQUIST: Thank you. Thank you, Senator Coash. All right, I will turn the Chair over to Senator Davis for LB40. [LB40]

SENATOR DAVIS: Welcome. [LB40]

SENATOR NORDQUIST: Thank you, Senator Davis, members of the Retirement Committee. I'm State Senator Jeremy Nordquist from District 7 in downtown and south Omaha, here to introduce LB40. This bill is introduced at the request of the Nebraska Public Employees Retirement System, NPERS. LB40 grants NPERS, the Public Employees Retirement Board, the authority to issue subpoenas when NPERS determines there is a need to investigate any overpayment of a benefit after the death of a beneficiary or member. Pension benefit payments to retirees and beneficiaries are required to be direct deposited into a bank account. Circumstances have arisen when checks have been deposited into joint bank accounts and other account holders continue to cash the retirement checks after the death of a retiree or beneficiary. NPERS needs the authority to issue a subpoena to a bank in situations like this in order to gain the identity and contact information for the joint account holder and to recover these overpayments. Just for the record, several other state agencies have subpoena power, including Accountability and Disclosure, Department of Administrative Services, Departments of Aeronautics, Agriculture, Banking and Finance, Corrections, Environmental Quality, Health and Human Services, Insurance, Labor, Motor Vehicles, Natural Resources, Roads, State Fire Marshal, Game and Parks Commission, Ombudsman, Public Service Commission, State Board of Education, Equal Opportunity Commission, and the Power Review Board, as well as numerous boards and other entities of the state. So it certainly isn't out of line for NPERS to have this power and I think this is a tangible need for them to be able to have this ability when situations like this arise. And I'm sure representatives of NPERS will be behind me to testify. Thank you. [LB40]

SENATOR DAVIS: Thank you, Senator Coash (sic). Any questions of Senator Coash? [LB40]

SENATOR NORDQUIST: Nordquist. [LB40]

SENATOR DAVIS: I'm sorry. (Laughter) [LB40]

SENATOR NORDQUIST: That's all right. [LB40]

SENATOR GROENE: Kind of look alike. [LB40]

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SENATOR NORDQUIST: All right. [LB40]

SENATOR DAVIS: Proponents. [LB40]

ORRON HILL: (Exhibit 1) Thank you, Chairman Nordquist, acting Chairman Davis, and Retirement Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-i-l. I am legal counsel for the Public Employees Retirement Board, hereinafter referred to as the board, and the Nebraska Public Employees Retirement System, hereinafter referred to as NPERS, N-P-E-R-S. I am here under the direction of the board and NPERS to testify in support of LB40. The Public Employees Retirement Board is responsible for ensuring the contributions and distributions made from the various retirement plans are managed in accordance with Nebraska law, the Internal Revenue Code, the board's policies and rules and regulations. The board, as part of its fiduciary duties, must conduct an investigation into any apparent irregularities. Examples of irregularities include, but are not limited to, a plan receiving excess or insufficient contributions from a member or employer, or a member or beneficiary receiving underpayment or overpayment of benefits. If after investigation the board determines that an irregularity occurs, the board must take corrective action. In the past, the board has met resistance when attempting to gather evidence. Individuals and entities refused to comply with the board's requests. Currently the board lacks the ability to compel evidence production. Therefore, the board has been reliant upon other state agencies, such as the Nebraska State Patrol or Attorney General's Office, to gather evidence. This not only added to the other agencies' workloads but also caused investigatory delays. These delays increased the likelihood that evidence or otherwise recoverable plan assets could be lost. LB40 gives the board the power to compel the production of evidence during investigations. If passed, it will reduce the board's reliance upon other agencies and streamline the board's investigation. The investigatory powers, as stated by Chairman Nordquist, are similar to others held by other state agencies here in Nebraska. For all the foregoing reasons, the Public Employees Retirement Board and NPERS supports LB40. And I will take any questions you may have. [LB40]

SENATOR DAVIS: Thank you, Mr. Hill. Any questions? Just a couple questions, Mr. Hill. Can you elaborate? You said, I'm trying to find the words here, reluctance or refusal to cooperate. You're talking on banks? Is that specifically who we're talking about? [LB40]

ORRON HILL: Banks are one of those parties that would be most likely to withhold information, Senator, such as account information, the names of the individuals on those banks, and they're doing so in accordance with their rules and regulations... [LB40]

SENATOR DAVIS: Right. [LB40]

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ORRON HILL: ...in statutory provisions. [LB40]

SENATOR DAVIS: Right, so we're not going to cause them any hardship by putting this in place. In fact, we'll open a door for them to be, I guess we'll say, more honest. Honest is not the right word, but compliant I guess. [LB40]

ORRON HILL: You are correct, Senator. There's actually a statute that allows for subpoenas to be introduced during the investigatory process, which will allow the banks to divulge that information. [LB40]

SENATOR DAVIS: Thank you. Any other questions? [LB40]

SENATOR GROENE: Just a quick one. [LB40]

SENATOR DAVIS: Senator Groene. [LB40]

SENATOR GROENE: Do you have to go through a judge to get a subpoena, or do you just walk in there, to the bank, and say I represent the Retirement and I want to see these records? [LB40]

ORRON HILL: The intent is that a subpoena will be issued like other state agency, administrative agencies and function... [LB40]

SENATOR GROENE: Through a judge. [LB40]

ORRON HILL: ...under those provisions, Senator. Yes. [LB40]

SENATOR GROENE: All right. So there's oversight. [LB40]

ORRON HILL: Well, within the agency, yes, sir, that is correct. [LB40]

SENATOR DAVIS: Questions? Thank you, Mr. Hill. [LB40]

ORRON HILL: Thank you. [LB40]

SENATOR DAVIS: Any other proponents? Opponents? Any neutral testimony? [LB40]

ROBERT HALLSTROM: Senator Davis, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB40. Prior to the session, the Retirement Board was gracious enough to share their plans for legislation with us. We reviewed those drafts and have indicated that we have no objections to the proposal. For the committee's benefit, I think just real briefly, Section 8-1401 of Nebraska statutes

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provides the circumstances under which banks and other corporations are allowed or authorized to release what is otherwise confidential customer information, so as the former or the prior witness indicated, we take that obligation very seriously to guard our customers' confidential information. And this provision will allow the authority for the banks to release that information. That statute talks about consent from the customer, a court order, a subpoena issued by a regulatory agency, and so forth. (Section) 8-1402 also provides for the mechanism by which banks and other corporations can be reimbursed for the time and expense involved in compiling and disclosing that information. So we think this fits within that statutory framework and would have no objections. Be happy to address any questions of the committee. [LB40]

SENATOR DAVIS: Thank you, Bob. Any questions? [LB40]

ROBERT HALLSTROM: Thank you, Senator. [LB40]

SENATOR DAVIS: Thank you. Senator "Coash," would you like to close? [LB40]

SENATOR NORDQUIST: (Laugh) You're really going to mess up the transcribers, huh? [LB40]

SENATOR DAVIS: Senator Nordquist waives closing. (Laughter) I guess that concludes the hearing for today. [LB40]