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Nebraska Retirement Systems Committee
February 06, 2008

[LB968 LB1146 LB1147]

The Committee on Nebraska Retirement Systems met at 12:00 noon on Wednesday, February 6, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1147, LB1146, and LB968. Senators present: John Synowiecki, Chairperson; Tom White, Vice Chairperson; Philip Erdman; Russ Karpisek; and LeRoy Louden. Senators absent: Lavon Heidemann. []

SENATOR SYNOWIECKI: Good afternoon everyone and welcome to the Retirement Systems Committee. We'll get rolling here through the lunch hour on three bills. There's three bills on the Retirement Systems Committee agenda today: LB1147, LB1146, and LB968. We'd invite testimony on these bills today. If you do provide testimony, please fill out the information sheets and provide them for the record. Do we have those, Laurie? Oh, excuse me, they're in the back of the room. If you could fill out the testimony sheet and put it in the box here on the testimony table, we'd be very appreciative of that as we're developing a record here with the hearings. We'll have additional committee members arrive during the course of the hearings, but I'd like to go ahead and introduce those that are present right now. To my far right, Senator LeRoy Louden of Ellsworth; to my far left, Senator Russ Karpisek of Wilber. Jeremy Nordquist is the research analyst for the committee and he'll be introducing the first bill on behalf of the committee; and Laurie Vollertsen is the committee clerk. With that, we will proceed to LB1147, Mr. Jeremy Nordquist. []

JEREMY NORDQUIST: Good afternoon, Senator Synowiecki, members of the committee. I am Jeremy Nordquist, N-o-r-d-q-u-i-s-t, and I'm the research analyst for the Retirement Systems Committee. Today I'm introducing LB1147, a bill to change cost-of-living adjustment provisions to the state defined benefit plans. The committee was asked to introduce this bill on behalf of the Nebraska Public Employees Retirement Systems. LB1147 makes a technical change to the way cost-of-living adjustments are calculated. In the past, the State Auditor of Public Accounts has had concerns about the current COLA calculations. LB1147 is an attempt to resolve these issues with a more understandable statute which accomplishes the same thing. LB1147 was developed by NPERS in consultation with the State Auditor's Office. And Joe Schaefer, from NPERS, will be testifying after me regarding the specifics of this proposal. Thank you very much. [LB1147]

SENATOR SYNOWIECKI: Thank you, Mr. Nordquist. Any questions from the committee? Seeing none, thank you. The committee would now entertain proponent testimony for LB1147. Mr. Schaefer, good afternoon. [LB1147]

JOE SCHAEFER: Good afternoon, Senator Synowiecki and members of the Retirement Committee. My name is Joe Schaefer, S-c-h-a-e-f-e-r, and I'm here to testify today in support of LB1147. I'm counsel to the Public Employees Retirement Board and I'm

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testifying in that capacity. LB1147 is the result of a point in the audit of the school employees, judges, and patrol retirement systems by the Auditor of Public Accounts. The bill makes technical changes to the language of a similar statute in each of the three systems in how annual cost-of-living adjustments are made to retirement benefits. In each system, a COLA is provided, the lesser of CPIW or 2.5 percent. NPERS calculates the percentage change in the Bureau of Labor statistics CPIW factor and applies the change unless, as it was this year, the percentage change exceeds 2.5 percent, in which case the COLA is 2.5 percent. As you well know, the CPI sometimes exceeds the cap, which results in erosion of the benefit by the amount that's excluded by the cap. Over the years that erosion will increase each time the actual CPI is greater than the cap. Eventually, the erosion will reach the minimum benefit amount under the purchasing power floor. For school employees and judges that percent is 75 percent, for patrol members it is 60 percent. When the benefit gets to that floor the statute protects the benefit from going any lower. Instead of the cap percentage, the actual CPI is applied, thus leaving the benefit at the same percentage of the initial benefit as it was the prior year. It will never erode beyond the floor percentage amount. The language in the statute as it currently exists is difficult to understand and follow. Together with representatives of the Auditors Office, we have developed the language you see before you to clarify the process. The language does not change the benefit, but we are hopeful that it will result in a resolution of the audit point. I would like to thank Cindy Janssen and Lance Lambdin of the Auditor's staff particularly, as well as others who have assisted in this effort. I do want to mention two things that we have discussed with the Auditor. The first is that where we use the word "year", for example in the judges plan, lines 13, 14, 17, 19, etcetera, we're talking about plan year, for our systems is July 1 through June 30. The second thing is that the change in the Bureau of Labor Statistics CPI factor from one year to the other is not a percentage change. It's a change in the factor and then the one factor is divided into the other to find the percentage change. So an illustration, if a factor goes from 100 to 105, that would be the same percentage change as a factor going from 200 to 210, 5 percent in both cases. And I just wanted to make it clear I promised the Auditor's Office that I would mention those two things, where we talk about percentage change, that's what we mean. I realize the COLAs are fairly complicated, but we're trying to make that process more approachable and resolve an audit point as well. I'd be happy to try to respond to your questions, with the understanding, of course, that I'm not really mathematically or actuarially inclined. [LB1147]

SENATOR SYNOWIECKI: Thank you, Mr. Schaefer. Before we get to questions, I want to announce that Senator Tom White has arrived, the Vice Chair of the committee, and Senator Phil Erdman, from Bayard, to my immediate left. Any questions from the committee? Seeing none, thank you. Additional proponent testimony for LB1147? Welcome. [LB1147]

LANCE LAMBDIN: Thank you. Good afternoon, Senator Synowiecki and members of

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the committee. My name is Lance Lambdin, and for the record that's spelled L-a-m-b-d-i-n, and I'm appearing on behalf of the Auditor of Public Accountants in support of LB1147. And I'll keep my comments very brief, basically say that I just want to reiterate what Joe had mentioned just a moment ago, and that namely the APA agrees that the language in the bill is drafted with the understanding that the percent is changed and the CPI is calculated by subtracting the prior year CPI from the current year CPI, and then dividing that number by the prior year's CPI. This is the way...we agreed on this because this is the way that the Department of Labor, the Bureau of Labor statistics does it. And it allows us all to kind of be working on the same page. And also as he had mentioned, in the method 1 and throughout, the calculations are based upon the plan year as opposed to a calendar year. With these points in mind the Auditor's Office believes that LB1147 effectively addresses concerns that have been raised in past audits regarding the interpretation of the specific statutory provisions that are addressed in this bill. And so with that, I'll thank you for this opportunity to testify. [LB1147]

SENATOR SYNOWIECKI: Thanks for your testimony, Lance. So this change reflects best practice in term... [LB1147]

LANCE LAMBDIN: Yes, we believe it does. [LB1147]

SENATOR SYNOWIECKI: ...in terms of calculating this percentage then? [LB1147]

LANCE LAMBDIN: Exactly, and makes sure that everybody is in agreement with exactly how it's done. [LB1147]

SENATOR SYNOWIECKI: Okay. Any additional questions from the committee? LeRoy. [LB1147]

SENATOR LOUDEN: Yeah, thank you, Senator Synowiecki. Okay, this has to do with the cost-of-living adjustment every year, the COLA? [LB1147]

LANCE LAMBDIN: Yes, it does. [LB1147]

SENATOR LOUDEN: How come they don't use the same COLA that Social Security or the federal government uses? [LB1147]

LANCE LAMBDIN: Yeah. I'm sorry, I don't know if I can answer that. I wish I could, but I'm not really sure, to be honest with you. [LB1147]

SENATOR LOUDEN: Now do I understand this right? You're using 66 percent of that COLA? [LB1147]

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LANCE LAMBDIN: We're using the...depends on...is it 75 percent? It depends on who it's going...for the State Patrol it's 75 percent; for education, I believe, it's 66. [LB1147]

SENATOR LOUDEN: Okay, thank you. [LB1147]

LANCE LAMBDIN: Okay. [LB1147]

SENATOR SYNOWIECKI: Thank you, Senator. Any additional questions? Seeing none, thanks for your testimony today. [LB1147]

LANCE LAMBDIN: Thank you. [LB1147]

SENATOR SYNOWIECKI: Additional proponent testimony? [LB1147]

VIRGIL HORNE: Mr. Chairman, members of the committee, Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools. We support the bill. [LB1147]

SENATOR SYNOWIECKI: Thank you for your testimony. Seeing no questions from the committee, any additional proponent testimony? Seeing none, is there any opponent testimony? Neutral testimony? Seeing none, that will close the hearing on LB1147. The committee will now move to LB1146, which will be (laugh) introduced by the research analyst...the researcher for the committee (laugh), Mr. Nordquist. [LB1147]

JEREMY NORDQUIST: Good afternoon again, Senator Synowiecki, members of the committee. I am Jeremy Nordquist, N-o-r-d-q-u-i-s-t, and I'm the research analyst for the Retirement Systems Committee. Today I'm introducing committee bill, LB1146, a bill to redefine compensation in the School Employees Retirement Act. The purpose of LB1146 is to clarify that both employer and employee contributions to IRS tax deferred retirement and healthcare plans are considered compensation in the School Employees Retirement Act. Amounts contributed to these tax deferred plans by employees are specifically included in the definition of compensation under current statute. However, there has been confusion by several employers about this provision. There will be individuals testifying after me that can provide greater detail about the application of this statute. Thank you. [LB1146]

SENATOR SYNOWIECKI: Thank you. Questions on behalf of the committee members? Seeing none, thanks, Jeremy. Proponent testimony for LB1146? Welcome. [LB1146]

SCOTT NORBY: Mr. Chairman and members of the committee, my name is Scott Norby, N-o-r-b-y. I appear today on behalf of the Nebraska State Education Association, which is in support of LB1146. There is right now a confusion among both employers and employees as to when certain contributions to Section 125 plans are to be treated as compensation for retirement purposes. This bill resolves that confusion by providing

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that all contributions to 125 plans is to be treated as retirement compensation, which resolves the problematic element of the current definition. The real confusion, I think, arises out of what are generally characterized as flat dollar 125 plans. Those are plans which are negotiated by employers and employees in Nebraska school districts. And there are approximately 250 local affiliates of the NSEA that negotiate independently for economic terms and conditions of employment that provide that each employee on a salary schedule will have a certain flat dollar amount which can be then funneled through or contributed to the 125 plan to purchase benefits. So in an example where an agreement provides that each employee shall have \$12,000, for example, annually to purchase benefits in the 125 plan, that means that each employee would have, essentially, \$1,000 a month to purchase those benefits. Under the current definition, the definition provides that contributions by a member shall be considered compensation for retirement purposes. So in my example the question becomes, is that \$1,000 that is earned by that employee and contributed to the 125 plan compensation for retirement purposes? Is that to be included within their annual compensation within the retirement formula, and is that \$1,000 a month an amount to which both the employer and employee are to be contributing their appropriate statutory percentage each month to fund the system? Right now there are a lot of those flat dollar amount plans that are very difficult to distinguish one from the other. But some of them are being treated as compensation for purposes of retirement and others are not. And I can give you specific examples of specific school districts. I can simply tell you that it's very difficult to distinguish one from the other. Sometimes it seems to me that the only distinguishing feature is how you label that flat dollar amount. If you label it as flat salary, then it's more likely to be treated as compensation for retirement purposes. If you call it a cash benefit, then it's more likely to be treated as a fringe benefit, and therefore outside the definition. So you may very well have...actually you do have certain teachers out there that, simply because of where they are, are having substantially more money contributed towards retirement than other identically situated teachers on the other half of the state under arguably an exact similar...exactly similar 125 plan. That creates a lot of confusion for employers as to when these contributions are to be included in retirement. It creates, obviously, confusion for employees. It creates problems in negotiations, because obviously whether these amounts are to be contributed to retirement or not on behalf of both the employee and the employer is a significant economic term and condition of employment. And it just creates a problem. There are situations that I'm familiar with where arrangements have been negotiated where both the employer and employee intended the contributions to be made, and intended the amount to be considered as compensation. The system is disagreed, and frankly I'm involved in one situation now where we're trying to get the money back out of the system because, obviously, neither the employer or the employee is getting the benefit of the contribution because it's not being treated as compensation by the system. So there is confusion all around. This bill addresses that by simply saying that it doesn't matter where the contribution comes from. If it goes into a 125 plan, it's compensation for retirement purposes. [LB1146]

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SENATOR SYNOWIECKI: Thank you. Any questions from the committee? Senator Erdman. [LB1146]

SENATOR ERDMAN: I think you've explained it well. When we're talking about then the salary, the districts that would consider that to be part of their salary, it's not an issue. The districts that consider it, as you've explained, a 125, so when they talk about the salary for those employees, are they being paid what the salary says, or is there...that's what we're trying to debate here is how to determine what's compensation, right? [LB1146]

SCOTT NORBY: Right. You know in the flat dollar situation, Senator, I think it's...and let's just take my example, let's say each employee gets \$1,000 a month to purchase benefits in that school district's 125 cafeteria plan. Is that \$1,000 included within that specific employee's compensation for retirement purposes? And so, you know, that's a \$12,000 number annually. And obviously the three highest years of compensation for that employee is part of the ultimate retirement formula. Well, that \$12,000 annually can generate a significantly different amount for their retirement, when they're prepared to retire. And so it's a big dollar issue for both the employer and employee. And what we're...I think what this bill seeks to do is treat similarly situated employees the same, because right now there can be a significant disparity in terms of how that's treated by the system. And I think it's confusing. [LB1146]

SENATOR ERDMAN: Approximately how many of the 250 districts have similar provisions to their 125 plans or other... [LB1146]

SCOTT NORBY: I hesitate to say a percentage. I...of the 250, I couldn't even tell you how many have 125 plans. I will tell you that larger school districts, you know, I would say Gering, Scottsbluff, Mitchell, Morrill, you know, they are flat dollar amount plans. Fremont, Norfolk, and Columbus, they all have flat dollar amount plans. Gering, Scottsbluff, Mitchell, and Morrill treat it as compensation, contributions are made, Fremont, Norfolk, and Columbus do not. [LB1146]

SENATOR ERDMAN: Okay. Thank you, sir. [LB1146]

SENATOR SYNOWIECKI: When you say contribution, are you talking about from the employees contribution? [LB1146]

SCOTT NORBY: And the employer, the statute requires that both the...the employee contribute 8 percent... [LB1146]

SENATOR SYNOWIECKI: Right. [LB1146]

SCOTT NORBY: ...from their paycheck, and that the employer has to match that. So it's

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a contribution on both sides of the table. [LB1146]

SENATOR SYNOWIECKI: Okay, thank you. Any other questions? Senator Louden. [LB1146]

SENATOR LOUDEN: Is Social Security paid on any of these that the employer contributes? [LB1146]

SCOTT NORBY: I am not sure if FICA is paid or not. Certainly, if the amount is taken as cash, any portion of that flat dollar amount is taken as cash, it's obviously subject to state and federal income tax for the employee, so... [LB1146]

SENATOR LOUDEN: I was asking about Social Security. [LB1146]

SCOTT NORBY: You know I can't speak to that specifically. I don't know. [LB1146]

SENATOR LOUDEN: Okay, thank you. [LB1146]

SENATOR SYNOWIECKI: So the issue is some districts are treating that as compensation for purposes of the retirement benefit and some are not? Okay, thank you. Any additional proponent testimony for LB1146? Seeing none, is there any opponent testimony, LB1146? [LB1146]

VIRGIL HORNE: Mr. Chairman, members of the committee, my name is Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools. This is a neutral opponent (laugh) because we think this affects us in a different fashion. [LB1146]

SENATOR SYNOWIECKI: Okay. [LB1146]

VIRGIL HORNE: As we interpret the bill, and that "we" is very loosely interpreted, somebody in our districts' interpretation of this bill, would say that it's any amounts contributed to the Section 125, a 403(b), or a 457 plan, which we have the 403(b) and the 457 plan. The other issue that comes to us is our plans are nonelective. When you separate from the school district, there is...it's defined where that money is going to go for some benefits. And we see that as somewhat different in what this bill is addressing. And we want to make sure we don't fall under that, because you have no choice. When you retire from the Lincoln Public Schools, that money goes to a set situation. The other...the proposed change leaves a possible grey area concerning the nonelective 403(b). On one hand, this is counted as compensation on page 10, line 14. But then it's listed as an exclusion as severance pay on page 10, line 24. So as I say, we don't have strong opposition. We have concerns that it would impact us incidentally, and consequently we would just like to get that clarified before the bill is advanced, if possible. [LB1146]

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SENATOR SYNOWIECKI: I appreciate you bringing that to our attention. Is there any questions from the committee? Seeing none,... [LB1146]

VIRGIL HORNE: Thank you. [LB1146]

SENATOR SYNOWIECKI: ...thanks a lot. Any additional opponent testimony for LB1146? Seeing none, neutral testimony, LB1146? Seeing none, that will then close the hearing for LB1146. And now, Senator White, we'll move to LB968. (Laugh) Senator White, to introduce LB968. [LB1146]

SENATOR WHITE: (Exhibits 1 and 2) Thank you, Senator Synowiecki. Thomas White, T-h-o-m-a-s W-h-i-t-e. I represent District 8 in Omaha, Nebraska. I'm here to introduce this bill. LB968 clarifies that the 1996 changes in the service annuity benefit payment applies only to those school employees who were hired after the effective date of the 1996 changes. School employees who are employed prior to the 1996 changes will receive the service annuity in accordance with the provisions of 79-933 that were in effect at the time that they were hired. This bill is an important bill because what it does is ensures that the laws as they are being interpreted are in compliance with constitutional and Supreme Court decisions already in place. The Nebraska Supreme Court has held repeatedly that when somebody takes public employment the terms and conditions then existing in their retirement package become part of the contract that they have with the state of Nebraska, and those benefits cannot be reduced without their consent or unless, collectively, they consent if there is an additional benefit that has been provided in lieu of the one that they gave up. This is part of one of the state's obligations to keep it word, quite simply, but also part of our fundamental deal that we ask people to take on public service, generally at a salary far less than they could obtain in the private sector. And the constitution and the courts have said we have to keep that promise. Our bill, unfortunately, and I believe unforeseeably, violated that promise. There are people whose pensions were actually reduced in the amount that they would receive. This bill simply heads off what I believe to be an inevitable lawsuit that will force us to keep our promise, if we don't do it on our own. I understand there is concern that as a fiscal note, and I've not seen it, but I am told it could be as much as \$1 million. That worries me if it were new money. And I know that some from the Fiscal Office have indicated they see it that way, but it is not. If, for example, this year we unconstitutionally passed a law getting rid of all retirement benefits, and then the next year said, we can't do that, we have to reinstate them, I'm sure somebody would come forward with a fiscal note indicating that, gee, we have a huge new expenditure of money. Well, it's not. The promise and the commitment to spend this money has already been made. This simply technically corrects a problem in the language so we honor what we've already committed to spend. Thank you for the opportunity to introduce this. I'll try to answer any questions, though I will say technically, especially in light of the historic background of some of these laws, there will be those who follow me who probably will be more able to

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accurately answer questions. [LB968]

SENATOR SYNOWIECKI: (Exhibit 3) Thank you, Senator White. Any questions from the committee? Seeing none, thank you for the introduction. [LB968]

SENATOR WHITE: Thank you. [LB968]

SENATOR SYNOWIECKI: We'll now move to proponent testimony for LB968. [LB968]

HERB SCHIMEK: (Exhibit 4) Mr. Chairman, members of the committee, my name is Herb Schimek. I represent the Nebraska State Education Association, here to testify in favor of LB968. I'm going to read my testimony because I want to make sure it's in the record. The service annuity is a benefit provided to all school employees in Nebraska for over 60 years. LB968 is important legislation that will determine whether this benefit will be reduced for those who are expecting to receive it, and for some who have already begun to receive it. In 1945, the state established a statewide retirement plan for school employees. The Legislature determined that the service annuity portion of that plan, funded by the state General Fund revenues, would be universally provided to all school employees in the state, including those employed by the Omaha Public Schools. Until 1966...excuse me, 1996, state law specifically said that the members of the Omaha School Employees' Retirement System, OSERS, retiring with 35 years or more of service and members retiring as a result of disability would be paid a service annuity without an actuarial reduction due to age. The December 1996 amendment to 79-933 changed these benefits by specifying that all members retiring younger than the age 65 would receive a reduced service annuity. The '96 amendment has given rise to the question of whether this change should apply to all members retiring following the enactment of this amendment or to employees hired following the enactment of this amendment. For the first year following the enactment of 79-933, the Nebraska Public Employees Retirement Systems continued to provide unreduced service annuity benefits to the Omaha members who retired with 35 years or more of service and members who retired as a result of disability, regardless of age. Then, without explanation, in the 1997-98 school year, OSERS began to receive a reduced payment for those two classes of members. The staff at OSERS raised the issue with the staff at NPERS, and in March of '99 the Public Employees Retirement Board acknowledged that the payment of unreduced benefits for members prior to the amendment of 79-933 was the correct application of the contract law. I have included a copy of the minutes of the March 15, 1999 PERB Board meeting as part of the testimony. The relevant portions begin on page 6 of the minutes. I must say at this time, since my secretary was gone this morning, I have to bring that across, it's not attached. OSERS thought that the issue had been clarified, but apparently it was not resolved. At a PERB meeting held January 23, 2008, the board refers to that decision of March 15, 1999, and refused to provide unreduced service annuity benefits to members hired prior to July 19, 1996 and who retired with 35 years or more of service or who retired as a result of disability. As a

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result, OSERS has been required to communicate this decision to the 146 members who have already begun to receive their service annuity benefits and whose benefits now must be reduced to comply with the PERB action. LB968 will clarify that the 1996 change in benefit payments is applicable only to those who are hired following the enactment date of July 19, 1996, not for those who retired following that date. Passage of LB968 will bring the application of the 1996 changes into harmony with the Nebraska case law, such as Halprin v. Nebraska State Patrolmen's Retirement System. It does not change the service annuity, but merely gives clarity to the application of the changes passed in 1996. We urge your support for this clarifying language and ask that you advance this bill out of committee. Thank you. I stand ready for questions. I also want to say in the materials that I handed you is the testimony of the president of the Omaha Education Association, who couldn't be here today, and also a copy of the letter presented to Senator White and Senator Synowiecki from Mr. Smith. I'm very sorry that the director of the Omaha Retirement System is not here today. They have a board meeting that had been scheduled previously. If you have questions, I'm sure we can bring him down to answer those specific questions for you. Mike Smith does an excellent job with that system and will stand ready to answer any of your questions. [LB968]

SENATOR SYNOWIECKI: And thanks for noting for the record, so we don't have to do that. Herb, thanks. And Mr. Smith does have quite the historical background on these issues and so forth. [LB968]

HERB SCHIMEK: He does. [LB968]

SENATOR SYNOWIECKI: Any questions for the committee? Thank you for your testimony. [LB968]

HERB SCHIMEK: Thank you very much. [LB968]

SENATOR SYNOWIECKI: Additional proponent testimony for LB968? Seeing no additional proponent testimony for LB968, is there any opponent testimony, LB968? Seeing no opponent testimony, the committee will now entertain neutral testimony relative to LB968. Seeing none, Senator White. [LB968]

SENATOR WHITE: Thank you, Senator Synowiecki. I'll be brief. I just would point out this is litigation prevention law, and the bar association probably has my name and number because I'm denying full employment from attorneys. (Laughter) So anyway, I appreciate your consideration and thank you. [LB968]

SENATOR SYNOWIECKI: Thank you. Seeing no questions of Senator White, that now concludes the hearing for LB968 and will conclude the hearings for the Retirement Systems Committee for today. Thank you. [LB968]

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Disposition of Bills:

LB968 - Advanced to General File, as amended.

LB1146 - Held in committee.

LB1147 - Advanced to General File, as amended.

Chairperson

Committee Clerk