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Nebraska Retirement Systems Committee
March 04, 2009

[LB140 LB187 LB449]

The Committee on Nebraska Retirement Systems met at 12:10 p.m. on Wednesday, March 4, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB187, LB449, and LB140. Senators present: Dave Pankonin, Chairperson; Jeremy Nordquist, Vice Chairperson; Lavon Heidemann; Russ Karpisek; LeRoy Louden; and Heath Mello. Senators absent: None. []

SENATOR PANKONIN: I would like to welcome you all to the Nebraska Retirement Systems Committee hearing today. Just a few announcements. We will proceed with the bills as they're listed. Some of the members are here. Some may be joining us as soon as they're available. Our Vice Chairman, Senator Nordquist, is here; Senator Karpisek from Wilber; Senator Louden is here. I'm Senator Pankonin. We also have our page, Mike Hartquist, who is maybe just out of the room right now, probably getting something. And our committee counsel, Kate Allen, is going to be presenting the first bill. And Denise Leonard is our committee clerk. As with other committees you're familiar with, please either turn off your cell phone or mute it. Also, when you come to testify, if you do so today, please spell your first and last name, so that it can be transcribed properly. And the forms that you need to fill out are in the corners. They need to be turned in, in the box by the committee clerk's station there. With that, we will begin with LB187. []

KATE ALLEN: Good afternoon, Chairman Pankonin, and members of the Nebraska Retirement Systems Committee. My name is Kate Allen. That's spelled K-a-t-e A-l-l-e-n. I'm committee legal counsel, and I'm here to introduce LB187 on behalf of the committee. This bill is being introduced as a placeholder in the event a contribution adjustment is necessary to the School Employees Retirement System Plan in the next year. It would remain current. It would maintain current contribution rates for school employees at 7.28 percent for 2009 with the possibility of raising the rate to an unspecified amount beginning September 1, 2010, through August 31, 2011. As currently drafted on September 1, 2011, the rate would return to 7.28 percent. [LB187]

SENATOR PANKONIN: Thank you, Ms. Allen. Is there any questions? Seeing none, are there any other testifiers, proponent testifiers on LB187? Any opponent testifiers? Anyone in the neutral position? Seeing no one come forward, that will conclude the testimony of this placeholder bill, LB187. We will now proceed to LB449. Senator Campbell. Welcome. [LB187]

SENATOR CAMPBELL: (Exhibit 1) Good afternoon, Senator Pankonin and members of the Retirement Committee. I am Kathy Campbell, and I represent the 25th Legislative District, and it is a pleasure to appear before the committee. I've never been before the Retirement Committee before. I do have a handout for the page, an amendment. Thank you. I am pleased to introduce LB449 for your consideration. As you will note on the

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introducer's statement of intent, LB449 is intended to allow a person who is receiving a disability benefit from the Nebraska School Employees Retirement System to work on a limited basis as a school employee without losing his or her disability benefit. The Commission on the Blind and Visually Impaired requested this bill in response to a person who has a disability retirement benefit from the School Employees Retirement System. She lives in Senator Louden's district. She had been asked by a school district to come back to work, but cannot accept the employment without giving up her benefit. Ms. Kate Allen, legal counsel to the committee, found a couple of technical problems with the bill and, therefore, AM515 is the result of Ms. Allen's advice. And I very much appreciate her coming down to the office and talking to me about it. The amendment removes reference to the Social Security Administration's substantial gainful amount as a guideline for income a person could earn and still retain the disability benefit. The amendment replaces this by providing that a person could work fewer than 15 hours per week and still retain his or her disability benefit. Today we have some proponents to the bill who will explain why they brought this to our attention, and I believe the person who originally requested it is also here. So with that, I'd just as soon that you hear their comments, and then if you have any questions, I'll be here at the end, and I will stay through the testimony. [LB449]

SENATOR PANKONIN: Thank you, Senator Campbell. We will now have...unless there's any questions right now, we'll have proponent testimony. [LB449]

PEARL VAN ZANDT: Morning, Senators. [LB449]

SENATOR PANKONIN: Welcome. [LB449]

PEARL VAN ZANDT: I'm Pearl Van Zandt. My legal name is Peggy, but I go by Pearl, so (laugh) anyway, I live at 1800 South 58th Street here in Lincoln. [LB449]

SENATOR PANKONIN: We're going to have you spell out how you want it in transcript. [LB449]

PEARL VAN ZANDT: (Exhibit 2) Yes, sir. All right, P-e-a-r-l and Van Zandt is V-a-n Z-a-n-d-t. [LB449]

SENATOR PANKONIN: Thank you. [LB449]

PEARL VAN ZANDT: So thank you very much for having us here today. I'm here as executive director of the Nebraska Commission for the Blind and Visually Impaired. Every year I go around the state and hold public forums, meet with consumers and members of the public to see what they're thinking. In October of '07, a blind woman spoke up at one of those meetings and said, I'm a retired teacher; I taught graphic arts, but I had to retire due to losing vision. And so we met with her that year, had

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discussions, you know, thinking to work with this on kind of an individual level for her situation. The following year, she came...or I was at the same group and she spoke up again. And so we began to really look at what was allowed under the law. As Senator Campbell explained, the way it currently reads, an individual that's on teacher retirement for disability can't work any hours. And yet, you know, although this lady couldn't be the graphic arts...in the graphic arts field, she definitely could serve as a substitute. There's a great need for substitutes I think statewide but especially in western Nebraska. So that really is what brought to our attention that this is a problem, of course, for this lady, and I'm sure many others, and not just blindness--all disabilities where an individual was in the teaching field here in Nebraska. So basically, I do think the amendment that changes it to be...that allow the person to work less than 15 hours a week makes a lot of sense. It would let the person do their job and yet not add the complications that were raised as technical issues. That's basically what I want to say to you. I hope you'll consider passing this bill as amended, and I'd be very happy to answer any questions. [LB449]

SENATOR PANKONIN: Thank you. Are there any questions? Senator Louden. [LB449]

PEARL VAN ZANDT: Yes. [LB449]

SENATOR LOUDEN: Yes. Thank you, Senator Pankonin, and thank you for your testimony. Is 15 hours a week enough? Should it be more than 15 hours a week? [LB449]

PEARL VAN ZANDT: Well, it...whatever, you know, in terms of technical requirements so that it doesn't complicate the way the Retirement System works, for an individual, I think that less than 15 hours is fine because it lets them keep their teaching skills current. Perhaps they'll be working on say, for example, this lady, if she needed to go back to school to get recertification in some other teaching area. [LB449]

SENATOR LOUDEN: Okay. Now if she went into some other field, could she work full time then and still get her retirement? [LB449]

PEARL VAN ZANDT: She's here, and you can ask her, but my belief is that she would go off of the teacher retirement because she'd be working full time if she were able to do that. [LB449]

SENATOR LOUDEN: Because it's a disability. [LB449]

PEARL VAN ZANDT: Right. But I don't know for sure. [LB449]

SENATOR LOUDEN: Now, I guess the problem I have with it is, we have these superintendents and people that retire at a young age and then go get another job,...

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[LB449]

PEARL VAN ZANDT: Uh-huh. [LB449]

SENATOR LOUDEN: Or if they wait 180 days, they can go right back into teaching and then start another retirement system. [LB449]

PEARL VAN ZANDT: Okay. [LB449]

SENATOR LOUDEN: Why can't you do that with someone that's disabled if it's for sure they're not going to be teaching the same thing they taught before, because as the letter states, it's visually...? [LB449]

PEARL VAN ZANDT: Right. I'm not an expert on the teacher retirement setup, and so I can't really answer that. But my understanding is that if you're on disability retirement in the education system, that that is different from just retirement. [LB449]

SENATOR LOUDEN: Yeah, I understand. Thank you. [LB449]

PEARL VAN ZANDT: So, yeah. Sorry. [LB449]

SENATOR PANKONIN: Any other questions? Seeing none, thank you for your testimony. [LB449]

PEARL VAN ZANDT: Okay. Thank you very much. [LB449]

SENATOR PANKONIN: Next proponent testifier. Welcome. [LB449]

KAREN LEMMON: Thank you. My name is Karen Lemmon, K-a-r-e-n L-e-m-m-o-n. I live at 104 Lemmon Road spelled the same, Whitney, Nebraska (laugh) which, if you don't know, that's right between Crawford and Chadron. I'm the one (laugh). I'm the one that asked about this. I taught for 18 years, and I loved my job when I was teaching, but it got to where I wasn't doing the kind of work that I wanted to within that job. But now, even though I have had calls from Chadron and Crawford mostly about substitute teaching, I haven't been able to because I would lose all my disability benefits, and I'm afraid out in our area I wouldn't be able to teach...substitute teach enough to make up for that disability. As far as people say, well, how can you teach when you can't see, I have worked the last nine years...I've been legally blind for about nine years. I have worked to try to adapt my skills, and I think I've been very successful. I have a computer with...if you're familiar, a JAWS program. It's an excellent screen reading program, so that as far as doing lesson plans and that sort of thing, other teachers would be able to e-mail me or put on disc their lesson plans for the day. And I have my little tricks in working things as far as working on boards and that sort of thing. So the actual physical

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part of going back into the classroom doesn't scare me, and I think I would be very...still effective in the classroom. So I'm asking that, you know, Senator Louden, you asked if 15 hours was enough. As far as me personally, I would teach...the beauty of substituting, I guess, is that you can say yea or nay on the day you're called. I would teach when I was needed as long as I could and as long as I had a ride to town. We live eight miles out in the country. I have a friend, and she said to go ahead and throw her name out. Her name is Linda Fisher. She's not blind, but she is disabled. She has a respiratory problem, and she doesn't have the stamina to work probably two days in a row. So I would say in her case, you know, 15 hours a week would probably be enough. I also know there are many other people in the field that are in the same boat, but have kind of thrown up their arms and said, you know, I have to sit at home and do what I do, because I can't work or I can't afford to work, and I don't like that. I just want to be able to go out and make my own...not be on welfare (laugh), and it's very tight in our area right now. So I am also studying to be a medical transcriptionist and, hopefully, between those things I will be back in track on being a productive person again. [LB449]

SENATOR PANKONIN: Thank you. Thanks for coming, and what's your dog companion's name? [LB449]

KAREN LEMMON: Oh, this is Isaac, yeah. [LB449]

SENATOR PANKONIN: All right. [LB449]

KAREN LEMMON: And if I have discipline problems, I'll put him in the attack mode, you know (laughter). No, not really, that doesn't happen (laughter). [LB449]

SENATOR PANKONIN: We'll be careful (laughter). Any questions? And first of all, let me mention that Senator Mello from Omaha and Senator Heidemann from District 1, southeast Nebraska, have joined us today. Any questions? Senator Louden. [LB449]

SENATOR LOUDEN: Yeah, thank you, Senator Pankonin. Well, thank you for making that trip to be here today to testify on that. And I think I visited with you last summer. [LB449]

KAREN LEMMON: Yes, sir. I called you. [LB449]

SENATOR LOUDEN: And then I thought, Senator Campbell would probably have more knowledge on how to go about this thing. So, anyway, I agree that she's doing a very good job with this. I guess, as I said, 15 hours, you know part time, should it be 20 or someplace like that? And, of course, wherever you set it, it depends on what you want to be part time. When we have these issues like this, I'm a firm believer in that if someone wants to help the situation, we should give them all the benefits that's possible. And, of course, I admire anyone that's got a handicap and goes ahead and

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does something like that. My dad was a mail carrier, had one arm and one leg, and he carried mail for 35 years out through the Sandhills with a '42 Chevy during World War II, so I've seen it all. So I always think that that's, you know, something great if people are willing to do it, and it takes a lot of stamina to go ahead and do something like this. You could very well throw up your hands and decide, no, they can do the food stamps and whatever, and I'm done with it. But I admire you and applaud you for going ahead with this and trying to find ways to help your situation and to help it for other people. So I thank you for coming and testifying today. [LB449]

KAREN LEMMON: Thank you, Senator. And I'd like to say, too, that I don't consider it a handicap. It's a definite inconvenience, but (laugh). [LB449]

SENATOR PANKONIN: Any other questions? Senator Karpisek. [LB449]

SENATOR KARPISEK: Thank you, Senator Pankonin. Ms. Lemmon, thank you for being here and whatever thing Senator Louden said, goes for all of us, I'm sure. [LB449]

KAREN LEMMON: Thank you. [LB449]

SENATOR KARPISEK: The 15 hours, is that two days...is that what your...? [LB449]

KAREN LEMMON: Well, actually, I don't know where the 15 hours came up because if you sub, you would be putting in an eight-hour day, so, you know, that would be 16 hours for two days (laugh). I don't know how really that's...how you can do that. [LB449]

SENATOR KARPISEK: Okay. My wife has been subbing, too, and that's why I brought that up. [LB449]

KAREN LEMMON: Yes. Yeah. I would say 16, if you're going to limit it, would probably be a little bit more reasonable, because you'd hate to say, yes, I'll take the job, but after the seventh hour, I have to leave (laughter). That might not... [LB449]

SENATOR KARPISEK: (Laugh) Well, that might be a good excuse. Can we do that here for me (laughter)? They'd like me to leave anyway. Well, I think it's a great idea. And I applaud you also. It's great, and I think we need to do something to...if you want to go back to help, I think it'd be great for the kids, too, to see that sort of thing and the work ethic that's involved. So thank you, and we'll talk about the hours. [LB449]

KAREN LEMMON: All right, thank you. [LB449]

SENATOR KARPISEK: Thank you, Senator Pankonin. [LB449]

SENATOR PANKONIN: Thank you. I've got a question, Ms. Lemmon, and one of it's

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kind of a comment, but it is going to lead into a question. I think one of the reasons for the 15 hours is that school employees who work more than 15 hours per week are required to become contributing members to the Retirement System, and there's always some issues about, you know, starting over and you're already receiving benefits and so you would be starting over. And my question is, do you also receive federal Social Security Administration funds as well? [LB449]

KAREN LEMMON: Yes. [LB449]

SENATOR PANKONIN: And wouldn't there be limits on...is there limits between the retirement incomes, you know? I know there's limits on Social Security, so do your school retirement funds count towards those limits, do you know? [LB449]

KAREN LEMMON: No. [LB449]

SENATOR PANKONIN: They don't in your... [LB449]

KAREN LEMMON: No, I don't know. I'm sorry. [LB449]

SENATOR PANKONIN: You don't know. Okay. [LB449]

KAREN LEMMON: No. I knew that with Social Security, Carlos might be able to tell you. [LB449]

SENATOR PANKONIN: All right. [LB449]

KAREN LEMMON: With Social Security, I have no limits except that I can't make more than, I think it's \$1,640 a month. [LB449]

SENATOR PANKONIN: I think that is correct. You're right on that, \$1,640, yes. [LB449]

KAREN LEMMON: Um-hum. [LB449]

SENATOR PANKONIN: Okay, any other questions? Seeing none, thank you. [LB449]

KAREN LEMMON: Thank you. [LB449]

SENATOR PANKONIN: Welcome. [LB449]

CARLOS SERVAN: (Exhibit 3) Good afternoon, Senators. My name is Carlos Servan, C-a-r-l-o-s, last name S-e-r-v-a-n. You didn't call for the next proponent, but I am a proponent. I'm blind myself. I'm the deputy director of the Nebraska Commission for the Blind as well as the second vice president of the Nebraska National Federation of the

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Blind. I have some copies of my testimonies here. As a deputy director, at least four people who work in the public school system approached the commission in the last eight years, and were not able to work anymore in their jobs. And after they came to us, we trained them; we talked to them about how they can be productive members of society and teaching them the techniques and we know how to use. And of course, they got excited and they wanted to go back to work. In one occasion, one individual was a math teacher. When he wanted to go back, his position wasn't available anymore, but he was encouraged to be a substitute teacher. He got kind of excited about it, but also learned at the same time that he couldn't, because if he worked at least one hour, he will lose his benefits. The other three situations were very similar, one from Omaha and the other two from the Kearney and Hastings area. I just mentioned, as well as Dr. Van Zandt, blind individuals who approach us, and I'm certain that there are more people who didn't come to us who are blind but even more who are not blind in the state. By supporting this legislation, not only blind people but people with other disabilities will go back to work, help to be contributing members of society. And their confidence will continue to build and also society will be seeing us working harder. You made some comments about the limitations of working less than 15 hours. In the beginning, when we introduced this bill, the language was equated to the same language from the Social Security Administration, not limited to the number of hours but limited to substantial gainful activity, in other words, this year no more than \$1,640 per year. The legal advisor of your committee contacted us, saying that there were a couple of technical contradictions there. One was that we couldn't allow the federal government to put a limit in the state laws, in that kind of situation. In other words, we couldn't use a substantial gainful activity of the Social Security Administration. That was one. The other issue was the one that you mentioned, Senator, which is that anybody who works 15 hours or more has to pay back to the system and would be able to maybe collect twice. So in light of that, we agree to have that amendment, AM515. But if you find ways to get it out and increase it to 20 or 25 hours, that would be better for everybody, I think. But that would be up to the committee and the legal advisor. With that, I would like to answer any other questions if you have any. [LB449]

SENATOR PANKONIN: Thank you. Are there questions? Seeing no questions, we appreciate your testimony today. Thank you. [LB449]

CARLOS SERVAN: Okay. Thank you. [LB449]

SENATOR PANKONIN: Are there any other proponent testifiers? Seeing none, are there any testifiers in the opposition today, opponent testimony? Welcome. [LB449]

JOE SCHAEFER: Thank you. Good afternoon, Senator Pankonin and members of the Retirement Committee. My name is Joe Schaefer. That's spelled J-o-e S-c-h-a-e-f-e-r, and I'm legal counsel to the Public Employees Retirement Board, and I am testifying today on their behalf. The board opposes LB449 because to have members who have

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been given a retirement benefit based on disability and their inability to continue to accrue service credit, and then to allow them to continue work while receiving that disability benefit is contrary to retirement principles. "Pensions are authorized in federal law primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement." That's a direct quote from 26 Code of Federal Regulations 401.1(b)1(i). That section then goes on to say that a pension plan may provide for the payment of a pension due to disability and may also provide for the payment of incidental death benefits. But its disability benefits are secondary to regular retirement benefits and are offered when achieving regular retirement isn't possible due to the disability. The School Employees Retirement System does provide disability retirement benefits to those members who, by reason of their ongoing or long-term physical or mental disability, are unable to continue to work and to accrue service credit in the system. Those disability benefits are subsidized by the other contributors to the system. While the disability retirement benefit is based upon the service the member has previously rendered, it commences payment before payments would otherwise begin, in some cases many years sooner. In other words, the person doesn't have to wait until they're of retirement age to begin receiving the benefit, and the benefit is not actuarially reduced to account for the member's age and the greater length of time the benefit will be paid. In some cases, the benefit may be paid out for 10, 20, or even 30 years longer than a regular retirement benefit would be paid. The cost of those extra months or years of payments is borne by others...other members, employers, and the state. Disability benefits are subsidized benefits. First, LB449 as was introduced presented a couple of problems unrelated to the philosophy of paying disability benefits to someone who continues to work. Those problems included the delegation of authority problem that arises by granting the Social Security Administration the authority to decide whether someone is qualified to receive a disability benefit, and by providing two different standards for allowing disability payments to continue, depending on whether the disabled individual is a blind one or a nonblind individual. Secondly, the proposed amendment to LB449 remains problematic despite the fact that it addresses the two issues mentioned above. By allowing the member to work up to 15 hours per week, the member could total more than three-quarters of a year of service credit without participating in the system. In the school system, a service year is equal to 1,000 hours of personal service; 15 hours per week equates to 780 hours in a year. That's well over three-quarters of a year in service credit. Many of our school plan members provide fewer than 780 hours of personal service in a plan year yet still participate in the system. To allow a member to continue to work more than three-quarters of each service year and yet continue to receive a disability retirement benefit, ostensibly granted because they're unable to work and enter in service credit, stands the whole concept of disability retirement on its head. I ask that you not advance LB449 either as introduced or as amended by the proposed language mentioned earlier. Thank you. And with that, I'll try to answer your questions. [LB449]

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SENATOR PANKONIN: Thank you, Mr. Schaefer. Are there questions? Senator Louden. [LB449]

SENATOR LOUDEN: Yes. How come you don't do like Social Security and they can make up to \$1,640 or whatever it is and still draw their disability? [LB449]

JOE SCHAEFER: There is not an income limit on people who are taking a school disability retirement. There is a limit on service they can provide to schools that are members of our system. [LB449]

SENATOR LOUDEN: In other words, you narrow it down, you don't want them to be teaching school again. Is that what you're telling me? [LB449]

JOE SCHAEFER: The system provides that if you're retired based on disability from the system, you cannot then be working in that system, because you were retired because you couldn't work in the system. [LB449]

SENATOR LOUDEN: You retired or your disability? [LB449]

JOE SCHAEFER: Disability is a kind of retirement. [LB449]

SENATOR LOUDEN: Okay. Then how do you justify if a school superintendent retires when he gets his, what, 80 or 85 number, magic number, and then if he waits 180 days, he can turn around and take a job again as a school superintendent and start up a whole new retirement system and still receive his retirement income? How do you justify that against these people that are disabled and want to do something that's similar and it isn't even that price? I mean, are you just that mean, or do you have a reason for it? (Laughter) [LB449]

JOE SCHAEFER: Well, I used to be a law enforcement officer, and I had some people that thought I was mean (laugh). [LB449]

SENATOR LOUDEN: Okay, there now that helps me. [LB449]

JOE SCHAEFER: (Laugh) And then I decided to go to law school to move up a level and be even meaner (laugh). [LB449]

SENATOR LOUDEN: That didn't help. That didn't change anything. [LB449]

JOE SCHAEFER: No, what...the difference between a disability retirement and a normal retirement is that a normal retirement is an earned benefit. In other words, if you retire at age 65 with 30 years of service, you have earned the benefit; nobody is subsidizing that benefit for you. That's the benefit that you've earned. That's the one that you've been

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promised. It's based on the service that you earned and your years of service and your age, whereas a disability retirement benefit is a benefit that's offered in lieu of a normal retirement benefit because you're not able to continue to work and continue to accrue service credit and get to that point where you would qualify for a normal retirement benefit. [LB449]

SENATOR LOUDEN: Yeah, but that's all part of the package when you bring people into your retirement system. When they have that...when they take their disability, they don't get as much as if they waited until they were ready to retire at a certain age, do they? [LB449]

JOE SCHAEFER: Well, for example, if you retired with a disability with 15 years of service, your benefit would be based on 15 years of service, whereas if you continue to work for 20 more years, it would be based on 35 years of service. You're correct. [LB449]

SENATOR LOUDEN: Right, because I mean, you're not...you're not giving that much away because they've contributed that much to the retirement system. [LB449]

JOE SCHAEFER: Except in that case you would be receiving that benefit from a considerably sooner period of time. You would have 20 more years of receiving that benefit, and that would be something that the other person wouldn't be able to... [LB449]

SENATOR LOUDEN: Now one other question then as I'm a little bit familiar with that retirement system. But over this period of, say, they've worked for 15 years and they've contributed a certain amount of money. And is that money, that contribution amount divided up over a certain number of years and then that's how that's given back to them... [LB449]

JOE SCHAEFER: No, this is... [LB449]

SENATOR LOUDEN: ...or is it a flat fee because they've been there, because they're disabled? [LB449]

JOE SCHAEFER: The benefit that's available to the school employees and also judges and patrol members is a formula annuity. The amount of money in the contributions that they've made is not indicative...I mean it to some wild extent might be. It might indicate that if it's bigger, they've been there longer or they made more money. But the benefit isn't tied to the amount in the contributions as a purchase annuity would be. It's based on, in the school system, a 2 percent multiplier, the factor, for each year of service. Each year of service represents at least 1,000 hours of service, and then it takes that number, say 35 years of service times 2 is 70, 70 percent of their final average compensation. And final average compensation would be their three highest years of

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compensation divided by 36. So 70 percent of that benefit would be what they would receive on a monthly basis for the rest of their life or possibly for a survivor's life. [LB449]

SENATOR LOUDEN: Okay, but if we were to advance this, that...they shouldn't be treated any different than the way you would treat some of the people that retire with that 30 years of service or whatever it is at age 55 or whatever that they can now. Because I mean you have a system now where people can double dip in it, and now you're worrying about these people that double dip. Is that the problem? [LB449]

JOE SCHAEFER: Well, the difference between a disability retirement and normal retirement is this is subsidized. [LB449]

SENATOR LOUDEN: Okay. Thank you. [LB449]

SENATOR PANKONIN: Any other questions for Mr. Schaefer? Seeing no other questions, thank you. [LB449]

JOE SCHAEFER: Thank you. [LB449]

SENATOR PANKONIN: Any other opponent testimony? Anyone testifying in the neutral position on LB449? Senator Campbell, would you like to close? [LB449]

SENATOR CAMPBELL: I think I'd be very smart if I asked Senator Louden to close for me (laugh), but no, I'll waive closing (laugh). [LB449]

SENATOR PANKONIN: All right. Well, thank you. That ends the hearing on LB449. We will now move to LB140. Senator Avery, welcome. [LB449]

SENATOR AVERY: Thank you, Mr. Chair. My name is Bill Avery, spelled A-v-e-r-y. I am pleased to be here, again, to...for the second year to introduce a bill that would demonstrate Nebraska's intent to condemn Sudan for its genocide in Darfur. This is LB140. This bill instructs the Nebraska Investment Council to divest of all Nebraska funds from Sudanese companies or companies doing substantial material business in Sudan. Divestment requirements will not apply to investment accounts that are employee-directed. Probably most of you are aware of the conditions in Darfur. They have deteriorated rather significantly since the conflict began in 2003. It's a situation of Sudanese fighting each other. The Sudanese government is determined to suppress a rebel movement. The United Nations has estimated that up to 400,000 innocent civilians have died; 2.7 million more have fled their homes and now reside in refugee camps. The United Nations humanitarian efforts and direct diplomacy have proved ineffective. There is good reason to believe that economic sanctions in the form of targeted divestments will make forced changes in Sudanese actions in Darfur. Currently, over

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100 cities, states, and universities have joined this nationwide effort to put the financial squeeze on the Sudanese. That's basically what this is. I would hope that you will agree with me that it's time for Nebraska companies and citizens to join in imposing economic sanctions in order to voice our disapproval of genocide in that region. In 2007, President Bush signed into law the Sudan Accountability and Divestment Act which authorized states like Nebraska or local governments to divest of state or local assets or prohibit altogether investments of these assets in Darfur. So there is a nationwide effort to do what we can to put pressure on the government to end the genocide. This divestment legislation will not have a significant impact on financial returns to Nebraska. I think it was last year we had a representative from the national Sudanese divestment campaign who was able to establish rather convincingly, I thought, that the impact need not be great to Nebraska. But the impact on the Sudanese could be significant, because they used the returns from these investments in order to finance the war against the rebels. The number of companies considered for divestment would be a very small percentage of Nebraska total investment portfolio. It's important to emphasize that this kind of financial withdrawal can have an impact on the government of Sudan. Targeted divestments limits the government's ability to carry out genocide, creates economic incentives for Sudan to accept an international peacekeeping force. I took a look at the fiscal note. I'm sure you have looked at it. That this is what you'd call death by fiscal note. It's not good news, but...and I have to tell you, I'm a realist. I understand the economic times now are not good for any kind of bill that will cost us money. I do, however, want to point out that the fiscal note calling for the need to do one of two things: either add a position at the Nebraska Investment Council or to hire a consultant. My own view is that that is completely an estimate that is not founded in the experience of other states. We contacted Kansas and Iowa, and we have people who will testify after I'm here who will probably have e-mails that they've exchanged with Kansas and Iowa executive directors of their retirement systems. They have legislation that does this, and they did not need to add new positions. They did not go out and hire a \$450,000 consultant. Look at the note. I mean, that's outrageous that we would have to hire a \$450,000 consultant to do something that other states can do using internal resources. So, you know, I've never liked the fiscal note that I've seen (laugh). This will not find particularly difficult to deal with, because it seems to me, it's not founded in any rational calculation of what the cost would be to the Investment Council. I suppose if you don't like the legislation, this is a good way to try to put roadblocks in the way. How can the Investment Council estimate the impact to Nebraska overall? I mean, if you read through this fiscal note, they suggest that the impact would be far beyond anything that other states have experienced. Are we that unique? Are we so unique that we have to spend \$128,000 for a position that other states don't have to create? I guess you figured out by now, I'm not happy with that note. I hope that we can participate with other states in this targeted campaign to divest funds from a terrorist nation that is killing its own people by the hundreds of thousands. We don't need to be party to this. We don't need to have Nebraska resources invested in companies doing business with this government. And I would hope that you would agree with me. Just one other thing, we

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just learned today, The Washington Post just printed a story that reveals that the International Criminal Court has issued an arrest warrant for the president of Sudan, and this is the first time that the high court has ever accused a sitting head of state of war crimes. I think that's significant here. Do we want to be party to this? I think not. Thank you. [LB140]

SENATOR PANKONIN: Thank you, Senator Avery. Questions for the good senator? Senator Louden. [LB140]

SENATOR LOUDEN: Yeah. Senator Avery, do you know if they have any stocks? What are some of the stocks that would be investments in some Sudanese government stuff? I mean, other than... [LB140]

SENATOR AVERY: Do I personally know what they are? I don't know which companies and which... [LB140]

SENATOR LOUDEN: Okay. I mean, Chinese oil maybe but... [LB140]

SENATOR AVERY: ...well, I can tell you that...yeah, the Chinese oil company that has been participating or they're actively participating with the Sudanese government in getting arms into Sudan, just a footnote, Berkshire Hathaway in 2007 divested all of their funds and all their investments in the Chinese petroleum company that's currently doing business in Sudan. [LB140]

SENATOR LOUDEN: Does Nebraska still have Chinese oil? [LB140]

SENATOR AVERY: Does the Nebraska Investment Council? [LB140]

SENATOR LOUDEN: Yeah. [LB140]

SENATOR AVERY: I don't know, I don't know. But there is a national organization that works with investment councils and states to help them identify the investments that would need to be ended in order to comply with legislation of this sort. And so it's not that difficult to figure out how to do it, but I just don't personally know what companies they are... [LB140]

SENATOR LOUDEN: Okay. Thank you. [LB140]

SENATOR AVERY: ...besides the petroleum...Chinese petroleum company. [LB140]

SENATOR PANKONIN: Okay. Seeing no other questions, thank you, Senator Avery, for your introduction. I know we have some proponents here, and I might ask for a show of hands of how many are planning to testify for this bill? One, two, three, four, five. Okay.

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We have a light system. I'm going to try not to use it, but this committee meets during the noontime, and so we are a little limited on time. I'm just going to ask you to try to be as brief as possible and not repeat testimony. But we are interested in all of your testimony, so please come forward, and the rest of you may move further forward so that you're ready to go right behind each other. Welcome. [LB140]

MIKHAELA MULLINS: (Exhibits 4, 5, 6, 7) Good afternoon, members of the Retirement Systems Committee. My name is Mikhaela Mullins. That's M-i-k-h-a-e-l-a, last name Mullins, M-u-l-l-i-n-s. I'm a sophomore at the University of Nebraska-Lincoln as an environmental studies major with a specialization in anthropology. I'm here to briefly speak to you today about the targeted Sudan divestment bill, LB140. I'd like to take a moment to explain the three criteria of targeted divestment, and following my testimony, Sarah Beringer, a cofounder of Divest Nebraska, will speak to you about the efficacy of Sudan divestment. Thirdly, Stephanie Sutton, also a cofounder of Divest Nebraska, will address the committee about Nebraska's Investment Council's role in divestment. LB140 is designed to have a maximal impact on the government of Sudan and a minimal impact on the citizens of Sudan. In contrast to other models of divestment in the past that advocate targeting all nonhumanitarian business connections to Sudan, LB140 focuses shareholder pressure on problematic companies that meet certain criteria. Under LB140, Nebraska's public pension funds would be required to divest from companies that meet three criteria. These three criteria are that the company has a business relationship with the government of Sudan or is affiliated with a government-created project; or that the company provides little benefit to the disadvantaged populations of Sudan; and thirdly, that the company has not developed a substantial business practice policy addressing the fact that the company may be, and sometimes inadvertently, contributing to the government of Sudan's genocidal capacity. If a company does not meet the above-mentioned criteria, for example, if the company is a humanitarian organization, then they will not be scrutinized for divestment. As a Nebraska citizen, I strongly support Sudan divestment, and would like to thank you for listening to my testimony. [LB140]

SENATOR PANKONIN: Thank you, Ms. Mullins. You did a great job. Any questions for the testifier? Seeing none, thank you. Next testifier. Welcome. [LB140]

SARAH BERINGER: (Exhibit 8) Thank you. My name is Sarah Beringer, S-a-r-a-h B-e-r-i-n-g-e-r. I am a senior political science and international studies major, and I am the cofounder of Divest Nebraska. I'm going to briefly note some of the provisions in LB140 and also speak about the efficacy of divestment. During last year's hearing of LB992, the similar Sudan divestment bill, the Nebraska Investment Council expressed some concerns over the potential administrative and financial burden of Sudan divestment, and these concerns were addressed in this year's bill, so I would like to briefly talk about those. This year's Sudan divestment bill, LB140, provides legal protection for the council members, ensures that NIC will not violate its fiduciary duties

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by implementing LB140, changes the opt-out clause trigger from 50 to only 5 basis points, and it also alleviates NIC's administrative burdens by streamlining the process for compiling a scrutinized companies' list, clarifying the use of third-party research recommendations, allowing the use of template letters to expediate the engagement process. Although divestment will not end the conflict on its own, divestment creates conditions for lasting peace. Divestment helps prevent harmful corporate activities and prods companies to use their economic leverage with the government of Sudan. The Sudan divestment movement has already prompted 12 major companies to either change problematic operations or to leave the country entirely. Sudan has proven unresponsive to political pressure without corresponding economic pressure. In 1997, the United States imposed sanctions on Sudan for its support of al-Qaeda terrorists. In response, the government of Sudan changes its policy completely. It shared intelligence with the United States and helped the United States in detaining al-Qaeda terrorist suspects. And I want to close with the reminder that Nebraska was the first state to pass divestment legislation from South Africa during the apartheid era, and our efforts helped bring an end to the rights-repressive regime of South Africa. With LB140, Nebraska has a similar opportunity to make a difference. Thank you. [LB140]

SENATOR PANKONIN: Thank you for your testimony. Are there any questions? Okay. We'll have the next proponent testifier. Good afternoon. [LB140]

STEPHANIE SUTTON: (Exhibits 9, 10, 11) Good afternoon, members of the Retirement Systems Committee. My name is Stephanie Sutton and I'm a junior international studies major at the University of Nebraska with a regional specialization in African Studies. It is through my travels to Africa on four different occasions to seven different countries that I have realized that the state of Nebraska and the continent of Africa share more similarities than differences. Since the U.S. companies have been prohibited to operate operations in Sudan since 1997, as mentioned by Sarah, it is only through an economic loophole that Nebraska is able to invest in foreign countries that operate in Sudan. It has been noted in the International Herald Tribune that a study showed that the highest offending Sudanese companies, which are about two dozen companies that we would be divesting from, are actually underperforming their peers in related areas. Over one year, this was underperformance by 46 percent; over two years, by 22 percent; and over five years, by 7 percent. Therefore, it could be stated that the Nebraska Investment Council has an economic reason to divest as well as moral reasons as aforementioned. Secondly, it has been brought to the attention by the State Investment Officer that our neighbor, Colorado, required additional staffing to implement Sudan divestment. However, this comparison is invalid, because Colorado passed legislation that required Iran divestment simultaneously with Sudan divestment. Therefore, this comparison does not relate to Nebraska. As mentioned by Senator Avery, we, therefore, contacted two states, our neighbors Kansas and Iowa, who will be more indicative of Nebraska divestment, and both of them have said that they did not need additional staffing. Written documentation has been provided in your packets, and you can take a look at

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the e-mail sent from the director of the Kansas Public Employees Retirement System which states: "KPERS has absorbed the workload for the compliance tasks required by HB2457 within existing investment staff and has not added staff to implement this legislation." Also, Iowa, in their report to the legislature stated, "The cost to implement the Sudan monitoring and divestment program has been very low so far. IPERS has been able to avoid payment of any staff overtime costs during the implementation phase of the program, and has not incurred any third party costs for research or other services by using the public information made available by the task force." And the task force is the nonprofit organization which Nebraska has been working with. They offer the company list which is the two dozen companies that we would be divested for. They update that quarterly, and that is a free service, and also, they offer free template letters which have been worked into LB140. Therefore, it can be seen that we have helped to alleviate the concerns of the Nebraska Investment Council. And I, as a citizen of Nebraska, feel strongly that we should not invest in foreign companies that have a business relationship with the Sudanese government at the expense of marginalized populations such as the Darfurians. I do not want our state's investments funding genocide, and I support LB140. Thank you. [LB140]

SENATOR PANKONIN: Thank you for your testimony. Any questions for Ms. Sutton? Senator Nordquist. [LB140]

SENATOR NORDQUIST: Yeah, Ms. Sutton. First of all, thank you for all your leadership and all of you on all of your leadership on this. I guess as Ms. Beringer said, that you made some concessions, I know we got to a point of an amendment last year that we were hoping to get out of committee. There was...basically the concessions that are in this bill, are they similar to that amendment? Is there anything that's not in it that, you know, that maybe we can continue to work on or? [LB140]

STEPHANIE SUTTON: These concessions are the exact same of the amendment that we were working on last year,... [LB140]

SENATOR NORDQUIST: Okay. Okay. [LB140]

STEPHANIE SUTTON: ...after having talked with the Nebraska Investment Council, so we added all of those. Yes. [LB140]

SENATOR NORDQUIST: Thank you. Thanks. [LB140]

SENATOR PANKONIN: Senator Louden. [LB140]

SENATOR LOUDEN: Yes, thank you. Is this a class project you do every year? [LB140]

STEPHANIE SUTTON: No, not at all. [LB140]

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SENATOR LOUDEN: Okay. [LB140]

STEPHANIE SUTTON: This is initiative we've taken on our own. [LB140]

SENATOR LOUDEN: I noticed you have a lot of...and you have a list of some of the companies that Iowa has. Do you have a list of the ones that Nebraska has? [LB140]

STEPHANIE SUTTON: That we have currently invested? [LB140]

SENATOR LOUDEN: Yeah. [LB140]

STEPHANIE SUTTON: Normally, it is less than 1 percent of each state's portfolio, and the question of the companies such as the Chinese oil companies, Indian oil companies, and European energy companies that we specifically have invested in could be directed towards the State Investment Officer. [LB140]

SENATOR LOUDEN: What I mean is, see, in this handout you have here, you got a list of the Iowa...the ones that the Iowa Public Employees Retirement System is in. [LB140]

STEPHANIE SUTTON: Uh-huh. [LB140]

SENATOR LOUDEN: Why don't you give us one that the Nebraska Retirement System has investments in? [LB140]

STEPHANIE SUTTON: Yes. That's a good question that could be directed towards the person who's in charge of that, which is the State Investment Officer. [LB140]

SENATOR LOUDEN: Where did you guys get this? [LB140]

STEPHANIE SUTTON: We got that by talking with the Iowa Investment Council, and that is the report that they sent to their legislature in regards to the implementation. [LB140]

SENATOR LOUDEN: Okay. Did you talk to the Nebraska Investment Council? [LB140]

STEPHANIE SUTTON: Yes, we have been talking with the Nebraska Investment Council. [LB140]

SENATOR LOUDEN: Did they give you a report like this? [LB140]

STEPHANIE SUTTON: No, they have not. [LB140]

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SENATOR LOUDEN: Why not? [LB140]

STEPHANIE SUTTON: That is a question I'm unable to answer. [LB140]

SENATOR LOUDEN: Okay. Thank you. [LB140]

STEPHANIE SUTTON: Yes. [LB140]

SENATOR PANKONIN: Okay, seeing no other questions for Ms. Sutton, thank you. [LB140]

STEPHANIE SUTTON: Thank you. [LB140]

SENATOR PANKONIN: Next testifier proponent. Welcome. [LB140]

MARK GUDGEL: Good afternoon, thank you. My name is Mark Gudgel, G-u-d-g-e-l, and I teach high school. I teach English here in Lincoln, Nebraska. Specifically, I teach literature of the Holocaust. As Senator Avery made you aware of this morning, Luis Moreno-Ocampo, the chief prosecutor for the International Criminal Court, indicted the sitting president of Sudan, Omar al-Bashir, for the crime of genocide which he has been perpetrating against his own people since 2003. I speak to you today on behalf of two separate groups. The first is on behalf of my peers in education. Weeks ago, I sent an e-mail to many of those peers, soliciting advice and offering information in regard to this bill, LB140. Their response has been absolutely overwhelming. The unanimous outcry is in full support of targeted divestment from Sudan. I can speak on behalf of my peers in saying that none of us wants to retire on blood money. As educators, we're committed to the lives of children and not just those in our schools and our immediate community but all of them everywhere around the world. We do not wish to shore up the comfort of our futures with the unimaginable suffering of our fellow human beings today. My peers in education have reinforced this statement of principle with their actions and their words as every day they labor to ensure a better tomorrow for Nebraska, this country, and for this world by never giving up on those who need us the most, our children. And yet we know that we are painfully aware that there are children in the world with no such education, children without climate-controlled classrooms, without textbooks, without food. Today I would tell you that those children do not have to continue to go without us, and that the many educators of this state that I have had the privilege and the pleasure of speaking with about this issue have shown themselves to be in overwhelming support of any effort, large or small, that may help in some way to bring about an end to the suffering of the Darfuri people. Some of them that I've come to speak for today are students. Already our students have amazed not only me but our entire country and the world community. Moreover, the youth of this up-and-coming generation have proudly, rigorously taken a stronger stand against genocide than any who have come before them. Our youth, many of whom cannot yet vote for you, cannot yet even drive a car,

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who make \$6 an hour while trying to balance their education with other activities, have organized and initiated a grass-roots movement in support of the people of Darfur, the likes of which the world has never before seen. It is largely because of the efforts of people like them that we're here today. On behalf of the children, children around the world, I would ask you to do only your part in lending your authority and influence to the cause that is the human race. Divestment alone will not put a stop to the genocide in Darfur, but it's a step. It's a step that 20 other states have already taken, including many of our neighbors, and it's a step that we can take, knowing that elsewhere in the world men like Luis Moreno-Ocampo and the future leaders of our world like those you've heard from and will hear from today are also taking. Those steps can bring an end to the genocide in Darfur. It's steps such as these, seemingly small, that have led to success and saved lives in the past, and it's steps such as this, a simple divestment bill in 1 of but 50 states in the United States of America, that separate humanity into bystanders and perpetrators. And history has shown us that no bystander is ever innocent. Thank you. [LB140]

SENATOR PANKONIN: Thank you for your testimony. Any questions? Seeing none, thank you. Is there any other proponent testifier? Okay, come forward. Welcome. [LB140]

ALYSSA KLOEFKORN: Good afternoon. My name is Alyssa Kloefkorn, A-l-y-s-s-a K-l-o-e-f-k-o-r-n, and I am a high school student at Lincoln Southwest High School. In 2004, as you are well aware, our government officially declared this to be a genocide, and that is significant because it's the first time ongoing atrocities have been identified as a genocide, and so that gives us a responsibility to act in any way that we can to take steps forward to end this genocide. As was mentioned before, Nebraska was the first state to pass legislative divestment action during the apartheid regime in South Africa. And though the two situations, the one in South Africa then and the one in Sudan now, are very different, divestment during the apartheid regime proved to be very effective and proved that if enough people are willing to take the steps to divest, that it can make a significant difference. Sudan has a history of being very responsive to foreign pressure. In the nineties, the Sudanese government was very lax when it came to their terrorist policies. During this time, Osama bin Laden was operating in the country. Fake passports were being given to al-Qaeda operatives; terrorists were allowed to set up training camps, and the U.S., of course, recognized this as a possible threat to our national security. And because of that, they imposed strong sanctions against the government of Sudan, and as a result of this, the Sudanese government drastically altered their views on terrorists and their support for terrorists ceased and also Osama bin Laden was expelled from the country. This is just one example of how they have responded to foreign pressure for their situation. So though divesting from Sudan would be a very small action, Nebraska should feel obligated to do so. After all, already 27 states have divested from Sudan and the more states that choose to do so, it places more pressure on those states who have yet to act. And that is all I have to say. [LB140]

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SENATOR PANKONIN: Okay. Thank you, appreciate you coming today. Did you get out of school to come? [LB140]

ALYSSA KLOEFKORN: Yes, I did. [LB140]

SENATOR PANKONIN: All right, okay. Any questions for this testifier? Seeing none, thank you. [LB140]

ALYSSA KLOEFKORN: Thank you. [LB140]

SENATOR PANKONIN: Any other proponent testifier? Are there anybody in the opponent testifying? Seeing none, any neutral testifiers? Welcome. [LB140]

DAVID BOMBERGER: (Exhibit 12) Good afternoon, Chairman Pankonin and members of the Retirement Committee. My name is Dave Bomberger, D-a-v-i-d B-o-m-b-e-r-g-e-r. I served as the Nebraska State Investment Officer from July 2006 through February 2009, and recently started a new position as the deputy chief investment officer of the Colorado Public Employees Retirement Association. Thanks for the opportunity to testify before you today on LB140, and my testimony is intended to be neutral, and it really is intended to provide you with some additional information to consider as you evaluate this bill. There was a horrific story on CNN.com this morning, and I assume some of you may have seen it on this very subject and discussed many of the atrocities. And I hope that you understand my intent to testify is to provide you information and not to suggest that I don't believe something bad is going on in Sudan, simply to give you information to consider as you're evaluating the merits of this bill. The second slide in your packet would just refresh your memory that, by statute, the appointed members of the Nebraska Investment Council and the State Investment Officers are deemed to be fiduciaries and are directed to act solely in the best interests of the members and beneficiaries of the plans that they oversee. And as fiduciaries, the council and the State Investment Officer are obliged to respond to issues that may impact risk, return, or cost associated with the portfolios that it manages. While I'm not a lawyer, I believe that mandatory divestment is in conflict with the council's and the SIO's fiduciary duty. Now, I do acknowledge that the folks sponsoring this bill have added language that carves out the divestment activity that would be required by this bill and provide some protection to the council members and the SIO from litigation, but it's unclear to me whether this eliminates the conflict or simply makes it permanent in the statutes. During the time that I served as the State Investment Officer, the Investment Council was involved in a number of activities on this subject. Shortly after I arrived in July of '06, sometime that summer, I had an opportunity to meet with members of the Sudan Divestment Task Force to learn about the issue and to learn about what other states were contemplating. One of the things that the council considered during the last half of 2006 was adopting a resolution that condemned what's going on in Sudan, and on the next page there's a

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copy of that language. And I'll share with you why the council chose not to adopt that. During the spring of...first quarter of 2007, Senator Chambers was working on introducing a bill, and we worked very closely with him, corresponded with him, and met with him several times and helped him as he was drafting what was at the time LB468. And he introduced that bill, and I understand it didn't have the support of the groups that were encouraging this sort of legislation, and he withdrew that bill. We also had meetings with the Lieutenant Governor during the summer of 2007, and during the previous session, had an opportunity to meet with Senator Avery and his staff on the subject. And one of the points that I tried to make in each of the interactions I had throughout any of those discussions was that the Investment Council's duty is to follow the law as has been enacted in the state and not to try to make law or to change law. And the legal interpretation that we received leads us to believe that fiduciary duty is in conflict with mandatory divestment. And then the last statute I would refer you to, and you can see it on page 10, 72-1239.01(3) prohibits the Investment Council from making any investments whose primary objective is a social objective or economic development and so, again, we believe that there's a statutory conflict with LB140. As I mentioned earlier, during the second half of 2006, the Investment Council considered a resolution generally in the form that you see on slide 4, and after consideration by the Chair and by legal counsel to the Investment Council, we determined that this type of action violated the council's fiduciary duty, and so we didn't proceed on adopting this sort of action, because we felt that it, one, violated the fiduciary duty, and secondly, it violated the prohibition on social investments. The next page, some other issues for you to consider, and I think one of the things that makes it challenging in implementing this kind of legislation, there's no universal source that defines which issuers must be divested. One commercial vendor, KLD Research and Analytics, is well known as a commercial service provider that provides this sort of screening. There's another firm, ISS, that provides screens and the Sudan Divestment Task Force is a nonprofit organization that provides screens. In talking with my current colleagues in Colorado, I understand that they have subscribed to KLD, they've subscribed to ISS, and they also use the list provided by the Sudan Divestment Task Force. And so there is at least three different lists that they consider in determining which companies are on the list to be considered for divestment. Secondly, from an investment theory perspective, anytime you...the theory is that anytime you reduce the investable universe, you reduce the potential of future return as well as increase future risk. And so by identifying certain issuers that might be excluded from the opportunity set that the council would invest in, may have an impact on future return. On slide 6, one of the points that we...and I suspect, except for Senator Mello, you've seen a lot of this material, as I testified last year. And I really felt that because the amended bill was very similar, my testimony this year is very similar to what I shared with all of you last year. And, Senator Pankonin, you weren't on the committee last year either, so for Senator Heidemann and Senator Nordquist and Senator Karpisek, this is kind of a refresher, and, Senator Pankonin and Senator Mello, this would be new material for you. About two-thirds of the portfolios that the Investment Council manages are in passive index funds and, as such, we're not

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making a decision on the business merits of an issuer. We're simply investing in companies that someone has determined are in an index. And so we're not endorsing their business strategies, that we're simply investing because they're in an index. Also, a lot of the investments that the council makes are in commingled funds where we don't own a hundred percent of the account that is being managed, and so we don't have control over how it's managed, and we can't dictate what's in and what's out. So we're not able, in the index funds especially, we're not able to tell the manager to divest of companies A, B, and C. We would be required to move from one index fund to another index fund, and there's a significant cost associated with transitioning from one index fund to another. Also, some of the managers that we use don't have a Sudan-free product. There's at least two non-U.S. investment funds that the Investment Council utilizes that are in a mutual fund format that are not available in a Sudan-free form. Page 7 goes through some other types of investments that might be affected by divestment. Private investments, such as private...equity in private real estate, generally are blind pools so we don't know what we're investing in until the general partner invests in those. We have...this bill does exclude participant directed funds that would include the defined contribution plans and deferred compensation plans, and I presume the college savings plan. While that's not an employee-directed fund, that is a participant-directed fund, but we do believe that the operating investment pool might be included in that. Now, Senator Avery commented on the fiscal note, and I think one of the things that I've shared with many of you over the last couple of years is the growth of the assets that the Investment Council is responsible for and, basically, the static size of the staff. The assets have grown...through the end of 2007, they had quadrupled. After the market's performance last year, they're down substantially, and so it's kind of three times asset growth over 10 or 12 years, and essentially, the staff is unchanged. And the current staff is very fully burdened, and there is an excess capacity to take on this sort of activity. And so what I tried to do in preparing the fiscal note was a realistic assessment of the capacity or lack thereof of current staff, and the alternatives to get this work done, because this is...there is a lot of work in terms of engagement, in terms of recordkeeping, in terms of reporting. And my best guess was that it would take one person for the first year and about a half-time person thereafter once the procedure was implemented. And given the challenges that at least I experienced as State Investment Officer in adding to staff, I felt it was prudent to share with you, if the council wasn't able to add staff, what the alternative was. And so I reached out to Ennis, Knupp, the council's investment consultant, and asked them for an estimate of what their fee would be if they provided the service in lieu of a staff addition. And I know that's a big number, but outsourcing is often very expensive. And I felt it was my responsibility to share with you my best guess on costs. Quantifying the five basis point underperformance that is provided for in the bill, that would suggest that the funds could underperform by about \$5 million, and that's not an insignificant cost. As issuers are eliminated from indices, there is additional tracking error and measure of risk that's introduced. And so I thought it was important to share all of that with you. Last year there was a suggestion that the burden to implement what was last year LB992 and this year LB140 was similar to the

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burden on the Investment Council staff to implement the Northern Ireland investment statutes. And what I've provided for you on page 9 is an excerpt from the statutes, and, you know, I'll let you draw your own conclusion. There's five bullet points here versus however many pages there are in LB140. The Northern Ireland statutes don't require the engagement, the recordkeeping, and divestment. Finally, I refer you on page 10 to a couple of statutes that the Investment Council thinks you need to be aware of, and we've referred to those before. The first is 72-1239.01(3) which specifically says that no assets of the retirement system or the college savings plan shall be invested or reinvested if the sole or primary objective is for economic development or social purposes. And it's at least...again, I'm not an attorney, but it's my opinion that mandatory divestment would violate that statute, and then we also repeat the fiduciary responsibility. It seems to me that LB140, if it's adopted as drafted, there are several provisions of the Nebraska State Funds and Investment Act that would need to be reworded to conform to avoid conflict. Also, if it's adopted as drafted, the fiduciary duty sections of the same act would need to be revised to make sure that they're consistent and provide the appropriate exception for decisions made to accommodate the divestment requirements. And while I, you know, I no longer have a dog in the fight, I'm sure that the Investment Council is prepared to work with you all and work with all the Legislature to find a solution. We're not necessarily opposed to the law. We just think that there's a burden on the council that the council currently doesn't have the excess capacity to deal with. Thank you. [LB140]

SENATOR PANKONIN: Thank you, Mr. Bomberger. Any questions? I know we're running up against the next committee but, Senator Nordquist. [LB140]

SENATOR NORDQUIST: Real quickly, first, Dave, thanks for your service to the state. And I agree with you about the staffing at the Nebraska Investment Council, that we need to continue to look at that and hire the appropriate amount of people to manage the ever-growing investments and assets. Quickly, the difference between the bill we're looking at and what you worked on with Senator Chambers. is the difference the commingled funds and the passively invested funds or? [LB140]

DAVID BOMBERGER: Yeah, I think the differences were the index funds were excluded from divestment. I believe the commingled funds were excluded from divestment. I think those are the two most significant distinctions, Senator. [LB140]

SENATOR NORDQUIST: Okay, thank you. [LB140]

SENATOR PANKONIN: Any other questions? Seeing none, best wishes to you. [LB140]

DAVID BOMBERGER: Thank you. [LB140]

SENATOR PANKONIN: All right. Any other neutral testifiers? [LB140]

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JOE SCHAEFER: Good afternoon again. My name is Joe Schaefer, members of the committee. It's spelled J-o-e S-c-h-a-e-f-e-r. I'm legal counsel to the Public Employees Retirement Board, and I'm testifying on their behalf today in a neutral capacity. My purpose here today is to provide information about the exclusive benefit rule, and how it applies to the retirement systems we administer. All five of our retirement plans--county, judges, school, patrol, and state--are qualified plans under the Internal Revenue Service provisions that are found at 26 U.S.C. 401(a). It is through these provisions that the tax deferral which makes these plans so important is available. We last received federal review of our plans in 2002, having received favorable determination letters for all five plans at that time. A determination letter is simply a finding by the IRS that a plan meets all federal requirements for operation of a qualified plan. And we have submitted determination letter applications this fall for new letters for all the plans under the five-year cycle that the IRS has adopted. In the federal statute I cited above is a provision which states that one of the requirements for qualification is that if under the trust instrument it is impossible for any part of the corpus or income to be used for or diverted to purposes other than for the exclusive benefit of the employees or their beneficiaries. In order to satisfy this federal requirement, each of our plans has a provision incorporating exclusive benefit language. Those provisions may be found at 23-2330.02 for the county plan; 24-713.02 for the judges' plan; 79-977.02 in the school plan; 81-2039 for the patrol plan; and 84-1329.04 for the state plan; and 84-1505 for deferred compensation. I believe it's important to remember that these assets we're talking about in the retirement plans are not state assets. They're trust funds held by the state for the exclusive benefit of the members. With that, I'll be happy to try to answer any questions you might have. [LB140]

SENATOR PANKONIN: Thank you, Mr. Schaefer. Are there any questions? Seeing none, any other neutral testifiers on LB140? I don't think we have any. I do have a couple of letters in support of LB140 that have been received by the committee and from Jessica Gall of Omaha; and Sitaram Jaswal of Lincoln. These letters will be entered into the hearing record. Looks like Senator Avery has left, so I assume he will waive closing. Okay, thank you all for being here for the hearing. (See also Exhibits 13, 14, and 15) [LB140]

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Disposition of Bills:

LB140 - Held in committee.

LB187 - Placed on General File with amendments.

LB449 - Placed on General File with amendments.

Chairperson

Committee Clerk