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Nebraska Retirement Systems Committee  
February 04, 2015

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[LB594 CONFIRMATION]

The Committee on Nebraska Retirement Systems met at 12:00 p.m. on Wednesday, February 4, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB594 and gubernatorial appointments. Senators present: Jeremy Nordquist, Chairperson; Al Davis, Vice Chairperson; Mike Groene; Rick Kolowski; Mark Kolterman; and Heath Mello. Senators absent: None.

SENATOR NORDQUIST: Hello, everyone. Welcome to the Retirement Systems Committee. I'm state Senator Jeremy Nordquist from District 7 in downtown and south Omaha. I guess we'll wait on another member to join us before we get to our hearings, but just preliminary stuff. Please silence your cell phones. If you choose to testify, there are testifier sheets in the back corner. Please complete those and submit those to the committee clerk. Please be sure to state and spell your name for the transcription. We are inverting the order here. We're going to start with Senator Kolowski's bill because I believe we have a member who will be joining us who also may need to leave early. And then we will take up the appointment of John Dinkel. Just on Senator Kolowski's bill, how many people intend to testify on that bill? Let's see, three, four. All right. Okay. And just real quick, Senator Kolowski, why don't you go around, and committee members with us right now are Senator Mark Kolterman from Seward; Senator Heath Mello from Omaha; Senator Kolowski from Omaha; Vice Chairman Davis from Hyannis will be joining us I believe; and Senator Groene from North Platte will also be joining us. Committee staff: Kate Allen, my legal counsel; and our committee clerk, Laurie Vollertsen; and Brandon is our page today if you need anything from him. We'll go ahead and get started. Senator Kolowski. [LB594]

SENATOR KOLOWSKI: Good afternoon, Chairman Nordquist and members of the Retirement Systems Committee. I am Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31 in southwest Omaha. LB594 allows each county that participates in the county employees' retirement system and each first-class city to increase contribution rates for law enforcement officers as long as the rate increase is more than the contribution rates currently established in statute. The contribution rates currently established for police officers in first-class cities is 6.5 percent until October 1, 2015, and 7 percent after October 1, 2015. The current supplemental contribution rate for law enforcement officers in counties participating in the county employees retirement system is 2 percent for counties with populations in the excess of 85,000 and 1 percent for counties with populations under 85,000. Please refer to the handout on your desk that details the current contribution rates, and thank you again to Kate Allen for providing us with this particular handout. And I'm free to take questions or those behind me will deal with those. [LB594]

SENATOR NORDQUIST: Well, just...Senator Kolowski, just looking over, maybe someone behind can answer, but do you have a sense of how Nebraska stacks up to

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other neighboring states in terms of how we treat our law enforcement? [LB594]

SENATOR KOLOWSKI: I'm sorry, I don't have that information myself. I'm sure others can speak to that. [LB594]

SENATOR NORDQUIST: I got a letter here that I'll read into the record that talks about it a little bit. [LB594]

SENATOR KOLOWSKI: Yes. [LB594]

SENATOR NORDQUIST: But if others are addressing it could, that would be great. Thank you. [LB594]

SENATOR KOLOWSKI: I believe so. [LB594]

SENATOR NORDQUIST: Any other questions? Seeing none, thank you. [LB594]

SENATOR KOLOWSKI: Thank you. [LB594]

SENATOR NORDQUIST: First proponent. Welcome. [LB594]

SEAN KELLEY: (Exhibit 1) Good afternoon, Chairman Nordquist, members of the Retirement Systems Committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today as a registered lobbyist on behalf of the Nebraska Fraternal Order of Police in support of LB594. I would like to thank Senator Kolowski for introducing this piece of legislation and apologize to the committee for not having any law enforcement here today. I'm stepping in their role. We had one officer who was...didn't get out of Aurora today and another from Sarpy County who wound up in the ditch on I-80. So appreciate their efforts, but I'll try to do my best to cover why we support LB594. And I may just read into the record a letter by our president, John Francavilla, if I may. I would like to thank Senator Kolowski for introducing LB594 and would ask that you accept this letter as our endorsement and support of LB594 from the Fraternal Order of Police Nebraska State Lodge. Throughout the years, the Fraternal Order of Police has worked to improve the retirement benefits for law enforcement officers in Nebraska. Our goal was to provide a retirement benefit for our members that were sustainable and affordable. When we began our process of determining what was best for the members, we did a comparability study of retirement plans for states that surround Nebraska as well as instate plans. We wanted to know what those agencies that we compared to and what they had for plans. What the Fraternal Order of Police found is Nebraska law enforcement has the lowest retirement benefit to all of our surrounding states. We were also behind other state agencies in retirement as well. I will try to be brief in the summary of retirement systems both within the state and outside the state of Nebraska for law enforcement. This was information that was obtained by an interim report,

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LR391, in January of 2005. This is to give a historical perspective of what law enforcement officers in first-class cities and counties are up against. First-class city retirement hired after January 1, 1984, is the defined contribution plan of 6.5 (percent) employee contribution with 6.5 percent employer match. Upon retirement, they have the cash value of what it is in the plan at that time. An officer can defer at age 70 collection of his retirement, and they have several choices of how to accept the payment. To give you a brief idea of where other state law enforcement agencies are at, Omaha police, defined benefit, 13.86 percent. Contribution rate by the employee and the employer puts in 19.48 percent in that defined benefit plan. Lincoln police, defined benefit plan, 8 percent employee contribution. Employer percent fluctuates, 64 percent of high 26 biweekly base pay divided by...that's a little complicated how it's paid out. You guys are familiar with the county employee retirement system. Wyoming's defined benefit plan, 8.6 percent, equal match by the employer, plus 2.5 percent times years of service times high average salary. Colorado's defined benefit as well with the 16 percent contribution between employee and employer. South Dakota's defined benefit plan as well, and Iowa's defined benefit plan as well. So I just wanted to give you a little bit of a historical analysis of where law enforcement comes across and the perspective from the Nebraska Fraternal Order of Police. So with that, I'd be happy to try to answer any questions. And if I can't answer them, I'll be happy to get those answer to you. [LB594]

SENATOR NORDQUIST: Thank you, Mr. Kelley. Any questions from the committee? We see challenges of retention because of the lack, whether it's within Nebraska going to Omaha, Lincoln, or going to one of the neighboring states? [LB594]

SEAN KELLEY: Yeah. They see that all the time, especially in the Omaha metropolitan area, particularly cities just outside of Omaha. I mean, it's not a hard sell for those law enforcement officers to jump because of the retirement system and the pay when the scope of work is pretty much the same. [LB594]

SENATOR NORDQUIST: Any other questions? Seeing none, thank you. [LB594]

SEAN KELLEY: Thank you. [LB594]

SENATOR NORDQUIST: Next proponent. Seeing none, any opponent? Welcome. [LB594]

ORRON HILL: (Exhibit 3) Greetings, Chairman Nordquist and Retirement Systems Committee members. My name is Orron Hill, spelled O-r-r-o-n H-i-l-l. I am legal counsel for the Public Employees Retirement Board and the Nebraska Public Employees Retirement System. I'm here to testify in opposition to LB594 as written. LB594's "at least" language allows the 91 Nebraska counties participating in the county employees retirement plan and their law enforcement agencies, or LEAs, to negotiate the contribution rate for the law enforcement supplement to the county plan. The language

is concerning for three reasons. First, it may jeopardize the county plan's qualified status under the Internal Revenue Code. Second, the courts may question the constitutionality of the language. And, third, LB594's implementation presents several operational challenges for NPERS. As you know, a pension plan that qualifies for favorable tax treatment under the Internal Revenue Code only if the plan's written documents contain definitely determinable key elements for establishing the employee benefits. I've provided you a list of references in the document that you can look at. This IRS...the IRS definition of "key elements" includes contribution rates, allocation formulas, benefit formulas, and actuarial assumptions. The IRS also states that "a plan provision that simply provides that persons will from time to time determine such key elements violates the definitely determinable requirement of Internal Revenue Code Section 401(a)." LB594's "at least" language does not set a definitely determinable contribution rate within the county plan's enabling document. Rather, it allows the counties and their law enforcement agencies to, from time to time, set the contribution rates. This appears contrary to how the Internal Revenue Service is implementing the Internal Revenue Code. If LB594 is passed and if the IRS continues its present course, the counties plan's qualified status under the Internal Revenue Code could be in jeopardy. Nebraska legislative power is vested in the Legislature subject only to the initiative and referendum provisions specifically reserved to the people. The Legislature's power to make laws is a sovereign power, requiring the exercise of judgment and discretion, and it cannot be delegated unless the Legislature includes reasonable limitations and standards for carrying out the delegated duties. I've cited several Supreme Court cases that you may find instructive. LB594's "at least" language places a lower limit on the contribution rates. However, it lacks an upper limit. It also lacks guidance on when and how often the contribution rate can be changed. Thus, the counties and their LEAs have unlimited discretion to exercise their judgment over the maximum contribution rate and when and how often the contribution rate is changed. The courts may find that this language lacks reasonable limitations and standards and, therefore, question its constitutionality. The issue is pulled into sharper focus when examined under the lens of the county's cash balance benefit. The state guarantees a 5 percent rate of return on contributions made to the cash balance benefit accounts. Set contribution rates allow the state to assess its liability to the plan. By allowing the 91 separate counties and their law enforcement agencies to set contribution rates when and how they see fit, the state would be assuming an unknown financial liability. The courts may question whether this is a constitutional delegation of the Legislature's power of the purse. Finally, LB594 will be difficult to implement. It would create 91 separate jurisdictions with their own contribution rates and rate change schedules that would need to be monitored for compliance with both Nebraska law and the Internal Revenue Code. These operational hurdles could be time consuming and may incur additional costs. The PERB has not formally voted to testify in opposition of LB594 because LB594 was introduced after the last board meeting. However, the bill has been discussed with Chairman Denis Blank and Elaine Stuhr, the legislative chair, and I'm able to state that there's a general consensus that the PERB is opposed to LB594 as

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written. I'll be happy to take any questions. [LB594]

SENATOR NORDQUIST: Thank you, Mr. Hill. Are there questions from the committee? Seeing none, thank you. Next opponent. Welcome. [LB594]

GARY KRUMLAND: Senator Nordquist, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. And the reason I'm appearing today in opposition is not that we oppose that the employer of the police officers increase their contribution but the city is also required to contribute the same amount. And if one city under Nebraska law...public employers are required to pay comparable wages and benefits. So if you have a situation where one city may negotiate a higher rate, and then in comparison with other cities it could have effect on others even though they did not have the same negotiation. So that's a concern about a bill like this where you have the ability to change it. And in I think it was 2012, a bill was passed to increase the amounts and those are in the process right now. If you look on page 2, it was 6 percent. It was increase to 6.5 and will be going to 7 percent later this year. But at least that applies to everybody, so it's equal for all first-class city police officers. So that would be the concern we would have. [LB594]

SENATOR NORDQUIST: Great. Thank you, Gary. Any questions? Senator Kolterman. [LB594]

SENATOR KOLTERMAN: Yeah, I have a question. Thank you for coming to testify, especially today. My question is, are you referring to the comparability studies that first-class cities have to do as well as the CIR? [LB594]

GARY KRUMLAND: Yeah. Under the...well, the statutes for the Commission of Industrial Relations, public employers are required to pay comparable wages and benefits. And so if a...one city would negotiate a higher contribution for their pension when comparing that to other cities to compare wages, that would be taken in consideration. And if it would go to the CIR, they could say, ah, well, other cities should pay that amount, too, even though it's higher than what the standard is in the statutes. [LB594]

SENATOR KOLTERMAN: And so somewhat forcing you into a raise. [LB594]

GARY KRUMLAND: Yeah, it could be. [LB594]

SENATOR KOLTERMAN: All right. [LB594]

GARY KRUMLAND: And that's the concern. [LB594]

SENATOR KOLTERMAN: Thank you. [LB594]

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SENATOR NORDQUIST: Do you hear much from your cities about a concern of turnover, retention in law enforcement because of the differential between the larger cities in Nebraska and neighboring states when it comes to retirement? [LB594]

GARY KRUMLAND: I probably am not the one to answer. I don't know that we would hear that. What we do hear is probably hear more of the movement from smaller cities to medium-size cities to larger cities after the smaller cities have trained the law enforcement officers. And they just don't pay the wages and benefits and it moves up. So we do hear some of that. [LB594]

SENATOR NORDQUIST: Okay. Great. Any other questions? Seeing none, thank you, Gary. Any other opponents? Welcome. [LB594]

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Nordquist, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in opposition to LB594. When our board looked at this bill, the first thought was, well, this might be a good tool to negotiate with the unions and we might, you know, find this helpful. But as the discussion went on, the idea came up that maybe instead of being a positive option it would be a negative option because the 2 percent and the 1 percent additional contributions would become a floor rather than a set rate, and the expectation would always be that that would...the negotiations would be at a higher rate than that. So it would be a detriment rather than a benefit to the negotiations. We also did talk about some of the things that Mr. Krumland indicated. There might be a comparability issue between counties. One might have a higher rate than another and so on. And there are also is, as mentioned, retention issues. [LB594]

CHUCK HUBKA: That's your appointee. [LB594]

SENATOR NORDQUIST: Oh, all right. Mr. Dinkel? [LB594]

JOHN DINKEL: Yes, this is John Dinkel. [LB594]

SENATOR NORDQUIST: Yeah, we're just wrapping up our hearing before. If you can just hold on, we'll be with you in just a couple of minutes. [LB594]

JOHN DINKEL: Okay. Thank you. [LB594]

SENATOR NORDQUIST: Thank you. All right. Go ahead. [LB594]

BETH BAZYN FERRELL: Okay. I'll just leave it at that. I'd be happy to answer any questions. [LB594]

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SENATOR NORDQUIST: All right. Okay. Any questions from the committee? Yeah, Senator Kolterman. [LB594]

SENATOR KOLTERMAN: I have a question. Do most of the counties have a 457 plan that allows people to contribute in addition to their match? Do you know? [LB594]

BETH BAZYN FERRELL: I don't know an exact number but I know that a number of them do have like a different comp plan. [LB594]

SENATOR KOLTERMAN: Okay. So the option is there to put more voluntary money in if they so desire in most cases? [LB594]

BETH BAZYN FERRELL: They can. There would not be a county match to it though. [LB594]

SENATOR KOLTERMAN: Yeah. Okay. Thank you. [LB594]

SENATOR NORDQUIST: (Exhibit 2) Thank you. Any additional questions from the committee? Seeing none, thank you, Beth. Any additional opponents? Anyone in a neutral capacity? Seeing none, Senator Kolowski, would you like to close? Senator Kolowski waives closing. I will say we have a letter in addition to the one read in by Mr. Kelley, a letter from Jarret Daugherty, second vice president of the Nebraska Fraternal Order of Police state lodge in support of the bill. That will conclude the hearing on LB594, and we will move to a confirmation hearing of Mr. John Dinkel. Mr. Dinkel has been appointed to serve. This is his third term on the Nebraska Investment Council. And we'll have Mr. Dinkel give us a little bit of his background and why he seeks to continue service on the Investment Council, and then we would take any testimony related to this appointment. Mr. Dinkel, can you hear us? [LB594]

JOHN DINKEL: Yes, I can. [CONFIRMATION]

SENATOR NORDQUIST: Welcome. Go right ahead. [CONFIRMATION]

JOHN DINKEL: Okay. Well, good afternoon, Senators, and I really appreciate doing this over the phone so I didn't have to risk my life coming down there. I've heard the snow has stopped now, but it was nasty earlier I guess. So thank you again for letting me do it this way. Well, first of all, I want to say it's indeed an honor to serve the last however many years, eight or nine years so far. And it's an honor to be reappointed again. By the way, I want to thank all of you senators for serving, too, because I know you don't do it for the money, so. Thank you. Thank you for your service though. I enjoy the work I guess. I feel it's rewarding. I feel we've got a great council. I had actually considered not re-uping again or offer my name for consideration, but with a brand new SIO who you

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know and met, he may be in the audience actually. [CONFIRMATION]

SENATOR NORDQUIST: He is, so say nice things about him. (Laughter)  
[CONFIRMATION]

JOHN DINKEL: Okay. Anyway, I think we got a great guy there, so I couldn't resist offering my name again to serve with him again, so I think he's going to be a great asset for us and we have a great council and I'm excited about serving again. I think we've done okay the last...since I've been on. And I think you got all my bio information, all that, so I don't need to bore you with all that I don't think. [CONFIRMATION]

SENATOR NORDQUIST: I sure do. [CONFIRMATION]

JOHN DINKEL: I'm fairly conservative I guess. I'm not big into alternatives and so forth. We do have, of course, 5 percent PE and we've just increased allocation on real estate to 7.5 eventually. And so we have a nice mix on the board. I'm more of a lay-type person, although I'm into personal investments a lot and I've learned a lot the last nine years. So I think I'm pretty well in the loop of what's going on, so. Whatever else you'd like to know I'd be happy to share. [CONFIRMATION]

SENATOR NORDQUIST: Well, just general thoughts on just the overall direction of the Investment Council and anything you'd like to share with us as we look at policies related to the Investment Council or our public pensions? [CONFIRMATION]

JOHN DINKEL: Well, one of the big things we've talked about at length on the council is the 8 percent assumed rate of return that we need to earn. And as a council, I think all of us feel that's historically maybe it looks attainable, but going forward I think that's going to be a challenge, especially, you know, with our allocation of fixed income on the low returns there, so. Given the average 8 percent is definitely a challenge and I don't think any of us want to try to reach for that by using more alternatives and so forth, and that's kind of the way that it looks like you're going to have to do this to hit that 8 percent. So we would certainly ask for consideration of slightly lowering that in the future. I think that's our consensus that 8 percent is a stretch. That's probably the number one thing. I think we've done a pretty good job of keeping our fees very low, overall fees. We use a lot of index funds and have with past investments there to monitor, to mirror, mimic the general market. So I think we'll keep an eye on that and I think we've done pretty good as far as fees with HEA, our investment advisor. We negotiated lower fees with them a few years ago when we renewed the contract. I think most of you probably know that we've brought the OIP back in house a year and a half or so ago and I want to thank the senators also for letting us increase our staff, both in quantity and salary so we retain top people. That's very, very important. With this many dollars that we're looking at, it's absolutely essential that we have the right people and the right number of people. I think, I guess Michael can tell you more, but I think we're

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pretty well there, so. Anyway, I think that's some of the highlights I guess that I feel about. [CONFIRMATION]

SENATOR NORDQUIST: Great. I'll see if there are any questions from the committee. Seeing none, that's all we got for you, John. [CONFIRMATION]

JOHN DINKEL: Boy, that was easy. [CONFIRMATION]

SENATOR NORDQUIST: We'll see...just a second, Chuck, is he still on or...we'll see if...I don't know if you want to be on the phone if anyone's going to testify on this appointment. Yes, Senator or Phyllis, not Senator Chambers. (Laughter) Ms. Chambers. Please go right ahead. Welcome. [CONFIRMATION]

PHYLLIS CHAMBERS: Hi, Senator Nordquist and Retirement Committee members and John. I'm glad you're safe in Norfolk. This is Phyllis Chambers and I am the director of the retirement systems but I'm also an ex officio member of the Investment Council. And it's been my pleasure to serve on the Investment Council with John Dinkel. He is an exceptional councilmember. He comes to all the meetings and he drives the "farthest" of anyone whether it's in Lincoln or Omaha, wherever we're meeting. He is very conscientious. He's always prepared and he...as he said, he lends a conservative approach to investing. He's very conscientious about the fees that we're paying and we're privileged to have him serve. So I would highly recommend that you move this nomination forward and he be confirmed. [CONFIRMATION]

SENATOR NORDQUIST: Great. Thank you. Any questions? Seeing none, thank you. Any additional testifiers? Seeing none, that will conclude the hearing on this appointment. Thank you. [CONFIRMATION]

JOHN DINKEL: Okay. Thank you, Mr. Chairman. [CONFIRMATION]

SENATOR NORDQUIST: All right. Thank you, John. [CONFIRMATION]

JOHN DINKEL: I appreciate your service, Senator Nordquist. [CONFIRMATION]

SENATOR NORDQUIST: All right. Great. That concludes our hearing today. [CONFIRMATION]