

January 11, 1989

LB 341-372

LR 3, 5

able to assist other agencies, other investigating committees, other individuals who are involved. I have pledged my cooperation to some of them with whom I have visited. I know that Senator Chambers feels the same way. I know that other members of the committee feel the same way. I hope that we are all pursuing the same goals, same objectives and that we can work together. I want to say again that this committee will act with propriety, honesty and integrity. We intend to obtain the best counsel we possibly can and we intend to protect the rights of the innocent and to pursue those who might have been less than innocent. Mr. President and members, I ask for a positive vote on the resolution.

PRESIDENT: That was the closing. The question is the adoption of the resolution. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please. Record, Mr. Clerk, please.

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of LR 5.

PRESIDENT: The resolution is adopted. You have some new bills, Mr. Clerk.

CLERK: Mr. President, I do. New bills. Mr. President, Senator Labedz would like to have a meeting of the Reference Committee now in the Senate Lounge. Referencing Committee in the Senate Lounge, Mr. President, right now. Senate Lounge for Referencing Committee. New bills. (Read by title for the first time LBs 341-355 as found on pages 183-87 of the Legislative Journal.)

PRESIDENT: We will be at ease for a few minutes for referencing and receiving a few more bills.

EASE

PRESIDENT: (Microphone not activated) and capable of transacting business. I propose to sign and do sign LR 3. Would you like to continue, Mr. Clerk, please.

CLERK: Yes, Mr. President, thank you. New bills. (Read by title for the first time LBs 356-372 as found on pages 187-91 of the Legislative Journal.)

Mr. President, I have a new resolution offered by Senator Hall.

February 8, 1989

LB 47, 75, 186, 357, 358, 359, 474  
499, 608, 697

wish for absolute clarity. School officials only recently discovered the potential conflict. They have always believed that 79-548.01 was a specific grant of authority. There have been many projects that Class VI schools have paid for with Construction Sinking Funds after only the vote of the school board to authorize the expenditure. LB 499 simply clarifies that such actions are absolutely legal and appropriate with only a vote of the school board. In addition, the bill repeals some obsolete language contained in Section 79-1103, the opened section, and that is it. Thank you.

PRESIDENT: Thank you. Any further discussion? If not, the question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 499.

PRESIDENT: LB 499 is advanced. Mr. Clerk, you have something for the record?

CLERK: I do, Mr. President, thank you. Mr. President, your Committee on Transportation, whose Chair is Senator Lamb, reports LB 47 to General File, LB 75 General File, LB 608 General File, LB 186 indefinitely postponed, and LB 474 indefinitely postponed, all signed by Senator Lamb as Chair.

Banking Committee reports LB 359 to General File, and LB 358 indefinitely postponed, both signed by Senator Landis as Chair. (See page 464 of the Legislative Journal.)

I have notice of hearing from the Natural Resources Committee signed by Senator Schmit, and a motion from Senator Schmit to withdraw LB 697. Mr. President, that will be laid over pursuant to legislative rules. That is all that I have, Mr. President.

PRESIDENT: Thank you. We will move on to LB 357, please.

CLERK: Mr. President, LB 357 was a bill that was introduced by Senators Nelson, Smith, Schellpeper, Coordsen, and Crosby. (Read title.) The bill was introduced on January 11 of this year, referred to the Education Committee. The bill was advanced to General File, Mr. President. I do have committee amendments pending by the Education Committee.

register their motor vehicle at their place of residence and I suspect in most cases it's because, by registering it in some other location, there is a lesser tax levy and, as a result, as a result reduce what they are paying. What this bill does, it merely increases the fine maximum that would be permitted. The current statute is a Class V misdemeanor which is a maximum of a 100 and this would change it to a Class IV which is a range of 100 to 500. Obviously, it would not necessarily correct the problem but, at least, it would make violations of this nature a little more expensive. I don't have statistics to prove this but I suspect that those individuals who may opt to do this it's more likely to be the more expensive vehicles, perhaps, which they could have a savings even if they were caught in a fine so they wouldn't really be concerned with it. If that fine was heavier, why then, obviously, they may give more thought to whether or not they would register the vehicle in the appropriate county where it was actually housed. So I would move that the bill be advanced as an effort to, at least, reduce the incidence of this kind of a problem.

SPEAKER BARRETT: Thank you. Any discussion? Seeing none, the question is, shall LB 75 be advanced to E & R Initial? All in favor vote aye, opposed nay. Have you all voted? Record.

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 75.

SPEAKER BARRETT: LB 75 advances. As indicated earlier, we temporarily pass over LB 608. Another bill has been deleted from the agenda, LB 129, and 129A, near the bottom of the agenda, has just been deleted. LB 129 comes off. The next bill, Mr. Clerk, LB 359.

CLERK: Mr. President, LB 359 was a bill introduced by Senator Wesely. (Read title.) The bill was introduced on January 11, Referred to the Banking committee, advanced to General File. I do have a motion.

SPEAKER BARRETT: Mr. Clerk. Senator Wesely, would you like to explain your bill before we go to the motion?

SENATOR WESELY: Right.

SPEAKER BARRETT: Thank you.

SENATOR WESELY: I think I have the right to open on my piece of legislation. LB 359 is a bill brought to the Banking Committee and advanced unanimously to deal with a problem that occurred this last year on the Investment Council. For a number of years, probably close to 20, we have had a Nebraska Investment Council that's been established to take our state funds and invest those funds for a maximum return, with also the greatest protection of those funds possible. It's called prudent man is what we describe that as now, back about five years ago we went to that system. And the Investment Council hires the State Investment Officer and they proceed to handle something like \$800 million in funds for the state which is quite a responsibility. The Investment Council is appointed by the Governor. They serve for a period of time. They are based...they are picked on the basis of expertise in economics and investment background. As I said, they then turn around and hire a state investment officer who has been Don Mathes now for a number of years and Mr. Mathes hires additional staff and they take on the responsibility, basically being the investment experts for the State of Nebraska. This has been going on, as I said, for about 20 or so years and recently the Investment Council, in working with their consultants and experts, came to the conclusion that to diversify their portfolio and to maximize investment return and broaden their investment portfolio they would look toward a venture capital activity that would be managed by a Kansas consulting firm that had the experience in Kansas in this area and have had an excellent response and success in that area. They proceeded to contract with this Kansas consulting firm, at which time a section of law which this bill would amend, Section 72-1242, was identified to have the Governor allowed to approve the Investment Council's selection of council auditors, financial advisors and private consultants. Don Mathes, who is the investment officer, as I said, for a long period of time, the others that have been involved in this had no idea that the Governor had any such authority, had never been exercised before and they hadn't even realized where this section had come from and so the Governor did intercede based on this language and block the hiring of this consultant firm out of Kansas and stopped the initiative into using a portion of funds that we have now to promote venture capital activity. So, with that controversy, I talked to the Investment Council and with the investment officer and others involved in this area and came to the conclusion that the policy that we thought had been in place and had been the practice for so many years was the best policy for the State of

Nebraska, that the Governor appoints people to the Investment Council. They have the expertise to carry out their responsibilities, that they then, in turn hire and fire the investment officer and that investment officer, in conjunction with the council, can hire and fire consultants to work with them to maximize the return on investment and deal with the portfolio that they have. The Governor's role is one that hasn't been exercised before and ought not to be in the future and it has caused some follow-up problems. For instance, the Governor approved the hiring of the Provident Investment Council the very same day and she sent a letter approving their hiring the same day the Investment Council voted to terminate their contract because of lack of performance to the desired goals of the Investment Council. There was also approval for contacts that were turned down by the council later on. And I could go through this, problems that have already in just a few months come up as a result of the Governor's role in trying to hire and fire consultants for the Investment Council. It isn't a proper function, I believe, for the Governor to have. It's not been exercised before, as I said, and ought not to be in the future and the Banking Committee, looking at this, said that that ought to be the situation that the experts are the ones, the firsthand people involved, know who the best people are. They work with them day in and day out. They're there providing the oversight. They're there working on our behalf and the State of Nebraska's behalf to make sure that our investment portfolio is the best possible. We have given them the authority under the prudent man rule to do the job needed to make sure that our investments have the best return possible and are safe and secure. And I think they have done an excellent job. The new system we have in place is not working and it won't work. It's a problem and it ought to be changed and this is corrective action to try and bring us back to the system that was in place prior to this change in philosophy. So I would ask for advancement of the bill, Mr. Speaker.

SPEAKER BARRETT: Thank you. Mr. Clerk.

CLERK: Mr. President, Senator Warner would move to indefinitely postpone. Senator Wesely would have the option to lay the bill over at this time, Mr. President.

SPEAKER BARRETT: Senator Wesely, your wishes.

SENATOR WESELY: I would like to take it up.

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, I became interested last summer in this issue, too, at the time that the Investment Council was considering hiring the consultant. And I became more concerned because the recommendations as a study matter were such that gave me a great deal of concern with the kind of investments that was being considered, which essentially were in the nature of the broad concept of venture capital, which, by its very nature, is more speculative. I think as time went along it's probably accurate that the Investment Council were narrowing the type of investments that they were going to make and the percentage of the total dollars that they would consider in this kind of an investment, but nevertheless the report they had earlier received suggested a much higher percentage than what they were considering. My concern lies in this in that the only funds that are available for this kind of investment as the law now reads are those retirement funds which are not to define contributions but to define benefit. And under the define benefit retirement system, those are guarantees and to the extent that there is a loss of funds in the future it would be the responsibility of the state to make up the loss of those investments should that occur, in order to be able to pay for those benefits when the individual who is retired or is eligible to receive them under the statutes as they exist. My concern is that, and particularly in this area, which can have a very long-term major impact, that the chief executive officer of the state being the Governor ought not only have the right but, more importantly, have the responsibility as an elected official when decisions are made which can have extreme long-term financial impact that that...an elected official ought to have that ultimate responsibility of approving any of these kind of contracts because they deal in the millions of dollars. Most of us...well, all of us, I know, receive a variety of publications but in the recent few months, about the last two, three years, in particular, there have been numerous, numerous articles of people looking at retirement funds, particularly public employee retirement funds, as a source of revenue or source of capital, rather, for a variety of things, huge amounts. It become very attractive. Because they become attractive, it also leads to the possibility of not making prudent decisions, not prudent man rule but it's just a simple prudent decision. I think a board which has that much authority ought to have at least one elected

official who has a shared responsibility in how those investments are made and particularly when they are going to outside people to sign contracts. I know of no business in which the chief executive officer does not have an ultimate responsibility on the signing of contracts that have major long-term impact upon that business, and state government and retirement is exceedingly big business. I feel very strongly that to take the Governor out, the Office of the Governor, out of any responsibility is wrong and for those reasons feel very strongly that the bill should be indefinitely postponed.

SPEAKER BARRETT: Thank you. Discussion on the motion to indefinitely postpone. I'm sorry, Senator Wesely, yes, you please respond.

SENATOR WESELY: Thank you. Mr. Speaker and members, I'm sorry to take up a few minutes of your time this morning and I'm especially sorry that Senator Warner has made this motion. I understand his philosophical concerns and so he legitimately has the right to do that. But I thought to bring this issue to the floor this is the one chance we have to even discuss this matter this session. Obviously, it looks like we'll probably run out of time before we have a chance to vote on it. But you ought to start thinking about the question at hand and I definitely oppose the points Senator Warner is making here because I think he is living in another era in terms of where we're at today and in terms of the needs of the state for economic development and in terms of the needs of what we can do with our pension funds. Right now we send out \$800 million in investments across the state, across the country, and I don't think many of us know where that money is going to, but it's being invested in the same sort of things only maybe unseen by us that we are talking about trying to bring back into venture capital activity here in Nebraska primarily. We have \$800 million that can be working for the State of Nebraska that...money that's a resource that is untapped for some of the very basic needs of our economic future. And in my view, philosophically, I think that we have to recognize that today, 1989, is not 1929 and the philosophies of 1929 have to be reviewed in light of the new recognition of the need to utilize resources and capital in ways different than we have in the past. Now that isn't to say that we just throw money around and that we take the prudent man concept and throw it out the window. The Investment Council, with their expertise, looked at this issue and said, following the prudent man rule, it is prudent to diversify our portfolio, to move into

venture capital activity, to utilize a small portion of our \$800 million. And right now they talked about a cap of something like \$25 million, I believe...I'm trying to remember, \$35 million, I guess, of that 800 million was what they were ultimately thinking might eventually be phased into. Now Senator Warner does have a bill to limit the amount of these monies that could go into venture capital and I would support some sort of limitation, perhaps 5 percent as originally introduced of his bill would be a reasonable effort to try and limit our exposure in this area because we are uncertain. This state does not know very much about venture capital. We are behind the times. Most of the states have moved in this area. They have recognized the need for venture capital. They have initiated different programs. We have Senator Abboud's venture capital network and aside from that next to nothing other than the R&D Authority and thank goodness for that. We did move in the area with the R&D Authority to put a couple million dollars a year to try and make investments in Nebraska entrepreneurial activity to bring those small ideas into larger companies that eventually prosper and grow in this state and I think that's been a good investment. The same kind of concept is what we're talking about here only it's using sitting capital over there in our portfolio of 800 some million dollars in the Investment Council and we send that money out and I would like you to try and take a look at where is that money going to now? It's sent out around the country. It's invested in all kinds of different activity and the concept I have is bring it back home, bring back a little bit of that money and use it to take our struggling smaller businesses that have the potential to grow and develop in this state and give them that working capital to be able to develop their ideas, to take their ideas and make them into strong companies that can be right here in Nebraska and take those ideas and run with them.

SPEAKER BARRETT: One minute remaining.

SENATOR WESELY: And in my view it's absolutely wrong to not allow us to proceed in this manner and right now the only thing stopping that procedure is an intervention by the Governor that was never anticipated and not thought to be possible. A study has been done of the other states that have been involved with a consultant that we were going to hire and they looked at the other states, no other state has the Governor involved in this matter. No other state has seen fit to have the Governor, as Senator Warner would have us follow, involved in investment



decisions. They don't have the expertise and they don't have, I think, the background to be involved in this. They don't hire and fire consultants over in the Department of Social Services, the Department of Health, the Department of Public Institutions and on and on and on. All of those consultants are hired and fired at the department level. You don't have every consultant reviewed by the Governor's office. If we're going to go to this policy that the Governor has to review the consultants for the Investment Council...

SPEAKER BARRETT: Senator Wesely, I'm sorry, time has expired.

SENATOR WESELY: ...then I'm going to come in with a bill next year and have every consultant reviewed by the Governor.

SPEAKER BARRETT: Thank you. Time is expired on LB 359. The Chair is pleased to take a moment to advise that Senator Schimek has a guest under the north balcony, Rich Halverson from Lincoln. Mr. Halverson, would you please stand and be recognized. The Chair also is advised that under the north balcony a former member of this Legislature is present, Senator Nelson Merz from Falls City. Senator Merz. Also, Senator Robak has some guests in the north balcony, 15 eighth graders from St. Francis in Humphrey, Nebraska, with their teacher. Would you folks please stand and be recognized. And also a special announcement. All is not lost, Senator Wesely, we are advised that this is your birthday today, your 35th birthday, we're advised, and again you are responsible for the kolaches which have been passed out. Your mother is responsible. Thank you. Happy birthday, Senator Wesely. LB 548, Mr. Clerk.

CLERK: Mr. President, 548 offered by Senators Conway, Scofield and Hefner. (Read title.) The bill was introduced on January 18, referred to the Agriculture Committee for public hearing, advanced to General File. I have no amendments to the bill, Mr. President.

SPEAKER BARRETT: Senator Conway.

SENATOR CONWAY: Mr. Speaker and members, LB 548, as the Clerk announced, exempts the bed and breakfast establishments from our Nebraska Pure Food Act. The concept behind this bill is an ever growing area that is of great interest for tourism and other forms of travel and activity in the State of Nebraska. Many of us are familiar with the various Victorian homes that may be

PRESIDENT: The Withem amendment is adopted. Now on the advancement of the bill, Senator Withem. The advancement of the bill.

SENATOR WITHEM: Yeah, I'd simply move the A bill. It funds the pilot projects at \$100,000 each for four of them and then it creates the center within the Department of Education at slightly over \$100,000, so it's approximately a half a million dollar appropriation bill. Would urge you to advance it.

PRESIDENT: Thank you. Senator Labedz, on the advancement of the bill.

SENATOR LABEDZ: Thank you, Mr. President. LB 567A was introduced by Senator Withem, Senator Wesely, Senator Ashford and Senator Bernard-Stevens. I thought long and hard about bringing that bill into, or gutting that bill and bringing it into 769, but unfortunately I agree with what they're doing in this bill. But in the handout that you received, on the front page I want to read this for the record. Many things can wait, the child cannot. Right now hip bones are being formed, blood is being made, senses are being developed. To the infant we cannot say tomorrow, the child's name is today, and it is by Gabriella Mistral from the Chilean poet, a Chilean poet. And I think that is so appropriate that I bring that up this morning. Thank you.

PRESIDENT: Thank you. Any closing, Senator Withem?

SENATOR WITHEM: No.

PRESIDENT: The question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLEFK: 26 ayes, 0 nays, Mr. President, on the advancement of the A bill.

PRESIDENT: LB 567A is advanced. LB 359.

CLEFK: Mr. President, an announcement very quickly, Education-Revenue will meet in Exec Session to discuss, well joint session at eleven-thirty in Room 2102, Education-Revenue Committee.

Mr. President, 359 is a bill originally introduced by Senator Wesely. (Read title.) The bill was introduced on January 11 of last year, referred to the Banking Committee for public hearing. The bill was advanced. It was discussed, Mr. President, on March 30 of last year. At that time there was a motion to indefinitely postpone the bill offered by Senator Warner. Senator Warner, or Senator Wesely as the introducer agreed to lay the bill over, Mr. President. That motion is now pending.

PRESIDENT: Senator Wesely, would you like to explain the bill to us, please.

SENATOR WESELY: Thank you. Is the kill motion pending? Have we actually...?

PRESIDENT: Well, it depends. We're not on it at the moment. We're having you talk about the bill. It's lurking in the background so I understand.

SENATOR WESELY: It's a good way to put it, thank you. Mr. President and members, I would rise in support of LB 359 and try and give you a little background. We're going to shift gears here a little bit from children to venture capital and risk capital and seed capital and some other types of issues that seem far removed from children, but maybe talk a bit about the future of the state. Back a couple of years ago now, not quite a couple of years ago, but the Investment Council of this state selected by the Governor and hopefully independent of the Governor and of this Legislature in terms of trying to make decisions to invest the 850 million plus amount of money...

PRESIDENT: Senator Wesely, may I interrupt you?

SENATOR WESELY: Sure.

PRESIDENT: (Gavel.) Please, let's hold the conversation down so we can hear the speakers. Thank you. Senator Wesely.

SENATOR WESELY: Thank you. The Investment Council, again, has authority for something like \$850 million, although Senator Haberman is working on trying to sort out exactly what that responsibility is, but we have different investment funds, pension funds, whatever, retirement funds of state, actually state employees are over in the Public Employee Retirement

Board, at least at this point. I guess there is a little confusion over the whole situation, Senator Haberman, but essentially the Investment Council has had authority for schools and other defined benefit retirement plans and that amount of money is, the last I heard, 850 plus million dollars. So the Investment Council is selected by the Governor and those individuals confirmed by the Legislature and then they serve independently to try and make decisions about how best to invest that money. A few years ago this Legislature passed a bill that allowed the Investment Council to invest that money based on the concept of prudent man. The prudent man rule was a much expansion of authority to invest in various ways for the Investment Council. They had previously been quite limited in where they could invest that money. But we took a chance a few years because we found that the Investment Council was not having an adequate return on investment, that their lack of flexibility was inadequate to meet the different market conditions, and so we took a chance and we passed the prudent man rule. That change has proven to be a very successful change indeed and despite the liberalization of the investment policy of the Investment Council, they have done a good job, I think, overall and have been able to return more money to the taxpayers of this state through investments and also to the retirement contributors to the different systems that they have responsibility for. Well as time has marched on from the time we went to prudent man, we have also recognized in a number of states in this country that when you have a pool of money, as in the Investment Council resources, the \$850 million, rather than sending that money out of the state, rather than sending that money elsewhere to invest, we need to look at how we could keep that money here at home and how we could find ways in which it could be utilized to benefit the state, its inhabitants and build up the economy of the state. And so in a number of states they initiated projects through their pension funds to allow for investment within their state, although sometimes they allowed diversification beyond that, into these concepts of equity capital, risk capital, seed capital, venture capital. And essentially what they are trying to do is use that capital in a way that will build a state's future, to build a state's economy because our economic system is built on capitalism. You must have people and workers and ideas, but you also need other resources and that other big resource that we need is capital. If you don't have money, you aren't able to make the investment to then create the business, the products and services that create the jobs and the tax revenues that this state needs. One

of the things that we have found in study after study in this state, that we have a lack of this sort of capital available in Nebraska. Studies start back in 1983 with a task force on small business equity financing. The report was called Equity Capital for Nebraska Small Businesses and they found, and I won't read through all these but they did find a need for additional financing for small business. In 1983 again, another task force on state public pension fund investment, looked at a report that called for the investment of Nebraska Public Pension Funds and talked about the idea of utilizing some of these pension funds in this manner. The 1986, another study resulted in a report, the model for the Nebraska Statewide Risk Capital System which again suggested we look at the pension fund system and the potential it has for assisting in our capital needs. The new seeds study, Strategies for Building the Next Economy, 1987, referenced this need as well and the New Horizons study in 1988, State for All Ages Report talked about the need to study this concept that it was necessary to be reviewed by the Legislature. So study after study has recognized an issue and have made some recommendations on those issues. What we've done in this state in response, and I have a number of bills pending, is to try and find a way to flow capital back into the state, so with that capital we can take those ideas, take those potential products and services and turn them into reality. The first stage of any concept being developed as new businesses is what is usually referred to as seed capital and there we have a very high risk involved. Seed capital is when somebody has an idea, but really is just getting started and most individuals feel the private sector is where we need to make those decisions and there is a bill, LB 577, that is pending that is likely to come up this session that would provide incentives to the private sector to meet the need of seed capital, that initial stage of capital needs. The second stage of capital needs is for research and development. After you've taken the idea and developed it to a point where you know that there is some viability, then you need to research it further, develop it. And the R & D stage is where we have developed the R & D Authority and there we put in \$2 million a year to provide assistance in this capital need. The next stage after you've done the research and development can be referred to as mezzanine financing and it is at that stage that we find a gap that needs to be addressed that the pension funds can enter into. This mezzanine financing was identified by the Investment Council as a need for the state and as a potential high return also for investment. The Investment Council looked at this whole issue and found recommendations

looking at other states and looking at their own investment policy that by diversifying and moving into this sort of thing, that they could find a rate of return that would diversify their portfolio and perhaps be very beneficial to the state, again, to the retirees involved in the retirement plans and to the taxpayers of the state. Now there is higher risk here, obviously, because this is not the...maybe the tried and true bond that you might want, but there is risk in any investment. It's a question of level of risk. If you invest in bonds you always hope that they'll be fine, but sometimes even those have trouble. If you invest in the stock market, when we moved to the prudent man rule we allowed for that investment, there is always risk in the stock market, you're never for sure what is going to happen and you have winners and losers. Things have been pretty good lately, but you're never sure. This idea of this type of financing in venture capital in a broad sense, just using it as a broad generic term in venture capital, does provide perhaps slightly higher risks than some of these other types of investment, not to say that the other investment doesn't have risk. The question is overall in a portfolio diversifying it. Do you end up with unreasonable risk that a prudent man would not take and with that risk do you have the potential for high return? And what we find is that, yes, you'll find that maybe in some of these investments if you invest in five companies and four of them don't work out, you still come out ahead, if you're able to invest early, on that one company that does succeed because you find with that investment a very high rate of return on that investment, the R & D authority has found out in some of their investments and we could find that as well in the different discussions on pension funds. And so, yes, you maybe don't have the high number of investments consistently coming back as winners, but what you do is you take that risk with the potential that when you do hit the mark, when you do find that business that does succeed, your return on that particular investment will more than make up for the losses in the other investments and make up a return adequate and perhaps even more than you would find by making other investments elsewhere.

PRESIDENT: One minute.

SENATOR WESELY: Thank you. So the concept is I think a sound one. It does help return investment capital to the state. It does allow for the opportunity to work in this area and right now the Investment Council has been denied that chance to move

forward in this area because their contract that would have brought in some expertise from outside of the state to deal with this issue was denied by the Governor, and the Governor found a section of law that hadn't really been looked at much and which was invoked much to the surprise of the Investment Council, not realizing that the Governor even had that authority to approve contracts for investment advisors and so the whole effort in this area I've just outlined was stymied as a result. So this legislation was introduced to remove that section, prohibition against the Investment Council being able to hire their own investment advisors and you go back to the system that had been in place...

PRESIDENT: Time.

SENATOR WESELY: ...for quite some number of years. I know my time is up so I will hope to have another opportunity to go into this and give more background on the issue.

PRESIDENT: Thank you. Senator Warner, please, followed by Senator Langford. Senator Warner, we're now on the kill motion.

SENATOR WARNER: Yes. Mr. President, members of the Legislature, the motion filed last session is to indefinitely postpone 359. Senator Wesely has discussed, at some length, investment policy of the or potential investment policy by the investment board of retirement funds. Really that is not the issue here. As he indicated at the close of his opening, the situation did come about where the investment board had wanted to enter into a contract that would move into some of these kinds of areas with a private firm, and it was true the Governor did not agree or did not sign the contract as required by law for it to be valid. But the issue here to me is not one of venture capital, although that is probably the way it is being presented. Senator Wesely didn't like the message of the veto and so he obviously is resorting, not the veto, well the veto of the contract in effect, by refusing to sign. But it's the classic, I don't like the message so I'm going to kill the messenger, and in this case it seems to me that the reason that has been put in there, and I was sitting in this body when this whole concept was enacted many years ago. Senator Whitney primarily was a strong advocate of that approach. And it was the intent that you should isolate, as much as possible, some of these investment policies, it should be done by professionals, all of which I agree and all of which I would say is true.

There is one thing that is different, however, and because the state, in fact, does have a very strong interest in how those funds are invested for two reasons, some of those funds at least are public employees for which the state certainly has an interest in protecting the employees' interest, but more importantly the state also has a budgetary interest because with the defined benefits plan, the state may well be responsible with tax funds to provide the money for those retirements, should the investments fail. My interest in retaining the law as it is now is to have at least one elected official who has an accountability on their duties of office to look at these kinds of contracts before they are signed and become binding upon the state. If an investment board makes a mistake, we are still bound by that contract once it is signed. And it seems to me that the Chief Executive Officer of the state should have the responsibility of reviewing those contracts when they are so binding, when they involve such large amounts of money, when there is a potential for state tax impact if mistakes are made, and most importantly, of course, that you are protecting the retirement money of some individuals, many individuals who are public employees. And I think that safeguard is important to be there. The fact that in one instance it was not agreed to by a current Governor does not mean the policy is wrong. I think the policy is right irregardless of how a Governor might have acted upon a contract at some time in the past and I would urge the bill be indefinitely postponed. It's the only issue in the bill, the only issue in the bill, and that whether or not you want to so totally isolate the Investment Council with the tremendous amount of money and authority they have, if you want to so totally isolate them that no elected official has any review, you can't review it as a budget matter. We do not sit and make a budget decision on how they operate internally, and the only possible review is the one that is here and I'd urge the body would indefinitely postpone the bill.

PRESIDENT: Thank you. Senator Langford, please, followed by Senator Wesely.

SENATOR LANGFORD: I agree fully with Senator Warner on what he has said. Investment is something I know just a little bit about. I cannot believe that someone is actually suggesting that we use retirement funds for investment capital for start-up on business. The time will come when we'll go into a recession and that capital will disappear. Then the state will be required to replace part of it and I do urge you, please,



please, think about what has been proposed today. It sounds like pie in the sky to use retirement funds for new ventures. I will support Senator Warner's amendment and I do hope that those of you who are here and listening will think seriously about what has been said because it is a very dangerous enterprise. Thank you.

PRESIDENT: Thank you. Senator Wesely, please.

SENATOR WESELY: Yes, thank you. The concept of investment and venture capital and the issues I'm raising here, Senator Langford said she knew just a little bit about it and evidently that's the case. It's a difficult subject for many of us to know much about and I don't claim any expertise, but I have spent a little bit of time looking at this and the idea is not to take start-up business as I said before, but the idea was to take those businesses ready to expand, develop and grow beyond the first two stages you normally would make investment on was where we find the need and that is a much less risky activity than what Senator Langford just referred to, and that really is the issue. I understand where Senator Warner is coming into this, saying that it is the policy of the Governor being involved in the decision-making, but I think there would have never been any issue raised had there not been this particular proposal put forward and so it really is the matter. Because I asked Senator Warner if the Research and Development Authority right now contracts for consultants, do they have their contracts all approved by the Governor? Does the PERB board that now is out there making investment policy, at least at this time, for different investment funds that their contracts get approved by the Governor? Are we talking about equity so that all of these types of contracts get reviewed by the Governor anywhere that they are? No. We're just singling out the Investment Council and pulling them in under a statute that not very many people recognize were out there and saying the Governor is going to now take advantage of that and be involved in it. And I think it's a mistake. If you want to get back to that particular point, I understand where Senator Warner is coming from about the desire for accountability and I certainly have belief in that, but there are also times in which frankly, you have to question about that interjection of politics in the decision-making that requires professionals. For example, Governor Orr approved hiring Provident Investment Council some time ago, the same day that the Investment Council voted to terminate them. So the very same day that the Investment

Council with their expertise saw the desire to terminate this particular Investment Council, the Governor approved that they could be hired and that just exactly points out the problem, that the Investment Council is made up of experts, people that understand what they are doing, know the business, know the people involved and hopefully that's why they're there and that's what they're supposed to be doing. And the Governor has got many other responsibilities and other things to do and cannot take the time or doesn't have the ability to really be able to look into this and so you'll have mistakes like this happen. In addition, the Governor approved Travelers' Keystone despite the fact that Travelers had sold Keystone two months before she approved their contract. Additionally, two contracts were approved by the Governor that the portfolio advisors had recommended against and one of them being Commerce Capital, and there are other examples as well. What you find then is that now that the Governor has taken on this responsibility, it's causing confusion and difficulty as we try to move forward and make sound investment in this state. The Governor and the politics involved ought to be taken out of it and I'm going to say that now, not just because of disagreement with what Governor Orr did last year, but I frankly anticipate that there will be another Governor a year from now and I still think that under those circumstances that the next Governor also should be taken out of the process, decision-making process, and allow those that have the expertise to make the decision of how to invest this money. I think that it has worked in this manner now for a number of years. It has been a successful effort that has not resulted in difficulty and I think if they had proceeded with the plan that they had in place, I think people would have been pleased with it as well, but clearly there were those that have doubts about it and I want to get back to that particular issue.

PRESIDENT: One minute.

SENATOR WESELY: And not enough time to do that, but I think clearly the concept of trying to allow for individuals to make decisions about how to make the best investment for these retirement funds is what we're really talking about here and this Investment Council I think has done a good job and what they saw was that their portfolio and stocks and bonds was not diversified enough. It wasn't coming back and helping our state and our businesses and our economic development to the degree it could and it wasn't bringing in the return that they could if

they had diversified their portfolio, so they moved forward. Now Kansas has done this. Nobody has talked about disasters down in Kansas. It has been a successful program and many other states have likewise initiated programs like this. It's not dangerous, Senator Langford. And as for the downturn in the economy that could result in the loss of investment, that can happen now in the stocks. I mean, if the stock market falls, if the economy goes into recession, stock values drop and we've seen that happen. There is a cyclical situation there as well. And so risk is involved in any...

PRESIDENT: Time.

SENATOR WESELY: ...investment that's made and my point is that this is a risk well worth taking, the prudent man rule still applies, and we ought not to have interjected opposition from the Governor's office.

PRESIDENT: Thank you. Senator Warner, would you like to close on your...Senator Wesely, do you wish to talk again? Okay, you may.

SENATOR WESELY: I appreciate the lack of interest in the topic and this is one good way to clear the floor I guess, as we all have a chance to move into the lunch hour, but an important issue it is and I definitely understand where concerns from Senator Warner and others come, but I think we can't ignore the fact that this is an issue that's time will come. Maybe not today, maybe not as the Investment Council would like to see, but those studies I talked about were clear back in 1983. We've been talking now for seven years about the concept of trying to utilize capital in this state to build the state, and it's not only with pension funds, but we also take a number of other investments and send them out to different banks to hold for us and then we don't request they do anything with that capital and make it available to local communities that they serve and that is called link deposits, that's another bill that is pending. There is a Venture Capital Incentive Act that is pending on General File as well. Again, all these different efforts to try and recognize one of the big gaps in our economic development policy in this state. We have not utilized capital adequately. Venture capital has not been made available as it should be in this state. As a result the economic development of this state has been retarded, it's been held back as a result of that and we need to understand that we need to understand that problem

and deal with it. And one of the ways to deal with it is not to throw aside the opportunity to make investment through the Investment Council. So I would ask you to oppose the indefinite postponement of the bill. I'm willing to work with Senator Warner and I have offered to do so but the concept of recognizing that there is some limits into how much of that money is actually invested in venture capital that he had a piece of legislation that would have limited to 5 percent, the committee lowered it to 3 percent of how much of our investment funds could go into this sort of venture capital we're talking about. That seems to make sense to me. Let the Investment Council do their job. Let's talk about how much money is prudent to put into this and I think what they were talking about was \$35 million out of \$850 million and I'm not sure that that's asking too much and the way it has been handled in other states, it's been very successful and so there are ways in which we can proceed in a prudent fashion to deal with this matter and I think killing the bill simply delays action on this issue for the future, understanding the concerns that are there, understanding the sincerity I think of Senator Warner, but still understanding where I'm coming from as well, that I served as Economic Development Chairman, I looked at this issue, we spent some time on it and a number of task forces have looked at this. They have all come to the same conclusion, this is a problem in this state and we need to address it, but it's not a problem that a lot of people have taken an interest in as evidenced by the debate we have and the interest we have on the floor here at this time. And I understand that, it's not an easy issue. It's not something that is pressing, but when the down-turn comes again with the economic cycle, swings back around as it did in the mid-eighties and comes back around at some point in the future, maybe in the near future, we're going to think again about what our tools are for economic development, what we've done and what we could be doing and that's the time at which we are going to revisit this issue and find that we could be doing some things that we haven't been. And so I understand things are pretty good right now. The economy isn't too bad, that we see some viability there although the revenues are dropping and concern is being expressed about where we're going in the near future, still things aren't too bad. And it seems like always we don't innovate and make progress until the bad times, hard times come and then we think some more about it. And so I'm just alerting you to what I think is a key issue. I appreciated the Banking Committee's advancement of the bill. It was advanced 5-0. I think they understood the desire to have the

Investment Council with their expertise making these decisions and I'd ask all of you to recognize that as well and oppose the kill motion.

PRESIDENT: Senator Schimek, please.

SENATOR SCHIMEK: Mr. President and members of the body, I'd like to ask Senator Wesely a couple of questions.

PRESIDENT: Senator Wesely, would you respond?

SENATOR SCHIMEK: Senator Wesely, just for the record, would you tell us what groups, whose retirement funds these are and whether those groups support this concept or this bill?

SENATOR WESELY: The groups are the state teachers, the State Patrol, state judges, I believe are the three.

SENATOR SCHIMEK: Just three? I was thinking there were a couple of others, but that's okay.

SENATOR WESELY: There could be. Those are the main ones.

SENATOR SCHIMEK: That gives us an idea.

SENATOR WESELY: These are all defined benefit plans.

SENATOR SCHIMEK: Okay. Then what about the groups' feelings about this approach? Do you have any idea about that?

SENATOR WESELY: Well the groups involved as a defined benefit plan, they get their benefits regardless.

SENATOR SCHIMEK: No matter what.

SENATOR WESELY: So in truth, they've not testified on the bill or expressed, I think, they are neutral.

SENATOR SCHIMEK: So that if there were any losses incurred in this type of investment, it would be loss to the state then?

SENATOR WESELY: Yes, that's right.

SENATOR SCHIMEK: Thank you.

SENATOR WESELY: That if there were losses in any of the investments, the state would have that responsibility.

PRESIDENT: Thank you. Senator Warner, would you like to close?

SENATOR WARNER: Mr. President, members of the Legislature, earlier this week there was a hearing before the Retirement Committee, evening hearing, large attendance and it dealt with the issues Senator Wesely was making some comments in his first opening with Senator Haberman and there was a lady there who was, the firm that she is with, slips my mind at the moment, but who was obviously a very professional, a very competent investment counsellor and this issue in a general sense came up during that and she described the issue that Senator Wesely has been talking about as probably the hottest issue across the country, that is where people in elected office are looking for ways to get into retirement funds and use them for economic development. That's a fact. And that's one of the things that really makes me nervous also, because good investment and good policy can sometimes take second seat to the desire for "economic development". But that's not my reasons for putting the kill motion on. I also have a bill in that does authorize some of these kind of investments by the Investment Council as Senator Wesely has indicated I believe, and it does have some limits on it as opposed to there are none now. I'm certainly not doing this because of the position of the current Governor. As I recall, or at least I read in the paper at the time that she had indicated she would not sign a contract, she made a comment that one of her concerns was that it was not limited, those investments were not limited to within the state. As Senator Wesely has just indicated that he thinks they ought to be limited to within the state. Every professional I know of, that I've heard from at least who is objective, says that's the worst policy you could have. It's not to limit them to the state. You'd have to be statewide. So my position is not at all on this issue on venture capital or seed money or any of those. My position is solely one that I believe the chief executive officer ought to have the responsibility to approve these kinds of contracts because the impact of them can be tremendous and there is no opportunity, no opportunity to do anything about them once signed. And I think that because of that potential, that responsibility ought to rest with that chief executive officer. There is no question in my mind, when Governor Kerrey was serving he was, as I recall, a proponent of using those funds in a variety of ways or at least discussing,

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1063, 1070

open to it certainly. In fact, it used to become an issue in confirmation, as I recall, on some of the various appointed boards as to which side they were on. I think, as I've said several times now I guess, that it's important to retain that responsibility with an elected official who does not initiate them, but only has that review authority to say no to a particular contract and I think that protection ought to be there for the state as well as for the employees who are covered by those plans.

PRESIDENT: Thank you. Senator Warner was closing on the indefinite postpone motion and the question is, shall LB 359 be indefinitely postponed? All those in favor vote aye, opposed nay. Simple majority. Have you all voted? Record, Mr. Clerk, please.

CLERK: 18 ayes, 2 nays, Mr. President, on the motion to indefinitely postpone the bill.

PRESIDENT: LB 359 is indefinitely postponed. Mr. Clerk, anything for the good of the cause?

CLERK: Yes, Mr. President, I do. Senator Wesely has amendments to LB 720 to be printed, and to LB 742. Senator Rod Johnson has amendments to LB 163 and Senator Labedz to LB 662. (See pages 542-45 of the Legislative Journal.)

Health and Human Services Committee reports LB 871 to General File, LB 1022 to General File, LB 1063 and LB 1070 to General File, those signed by Senator Wesely as Chair. (See page 545 of the Legislative Journal.) I believe that's all that I have, Mr. President.

PRESIDENT: Senator Emil Beyer, would you like to adjourn us until Monday, the 29th of January at nine o'clock, please.

SENATOR BEYER: How about adjourning sine die? No, I would move that we adjourn until nine o'clock on Monday.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. We are adjourned.

Proofed by:

  
Sandy Ryan