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Business and Labor Committee
February 26, 2007

[LB265 LB339 LB500]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 26, 2007, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB265, LB339, and LB500. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Ernie Chambers; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: None.

SENATOR CORNETT: Good afternoon and welcome to the Business and Labor Committee. I would like to introduce the members of the committee that are here, and as others enter we'll introduce them later. On my right is Senator Wallman, from Cortland; Senator Rogert just joined us, he is the Vice Chair, and he is from Tekamah; Lori Thomas is our legal counsel. To my left is Tessa Warner; Amanda McGill, from Lincoln; and Tom White, from Omaha. Our page today is Matt and he's originally from Falls City. These proceedings are recorded and will be transcribed, so at this time if you have any cell phones or pagers please turn them off or turn them to silent. The committee will first hear the bills. When the bills are heard, we'll first hear proponent testimony, then opponent testimony. Please listen to the comments of the people preceding you and try not to repeat what has already been said. Testifier sheets are available near the doors at the end of the table. If you are going to testify, please fill out these sheets and place it in the box next to the witness area. Let's see, and I think that about covers everything before we get started today. The first bill we are going to hear today is LB265. And I'd like to introduce Senator Chambers who has just joined us.
[LB265]

LORI THOMAS: Good afternoon, Chairperson Cornett and members of the Business and Labor Committee. I'm Lori Thomas, T-h-o-m-a-s, counsel to the committee, and I've been asked to introduce LB265 on behalf of the committee. This bill was introduced at the request of the Department of Labor. LB265 makes several changes to employment and security law or, in other words, unemployment insurance program. Many of the provisions of this bill are housekeeping, so for the sake of brevity I am going to keep my testimony focused on the substantive changes in the bill. First, Sections 1, 4, and 5 of the bill are confidentiality requirements regarding the conditions under which confidential employment records can be disclosed. The state needs to adopt these provisions to stay in conformity with federal confidentiality requirements under 20 Code of Federal Regulations Part 603. Section 4 strikes the existing confidentiality requirements under Section 48-612 and also provides a criminal penalty for violations of disclosures that are set forth in the new language in Section 5. Section 5 then goes on to lay out the new confidentiality requirements and is largely modeled after the pertinent federal code. Section 2 on page 9 would require that commodities paid to agriculture employees not intended for personal consumption by the worker or their immediate family would be taxed as wages. Section 3 would authorize the commissioner to charge a fee to employers for returned checks or electronic payments not accepted. Sections 6

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and 14 address emergency solvency surcharge. Section 14 would repeal the authority to impose the tax, and Section 6 amends Section 48-624 to remove the cap on the maximum weekly benefit amount that was put in place to also help control the Unemployment Trust Fund level. Moving on to pages 25 and 26 in Section 7, the changes there address potential rate manipulation by positive-balance employers who artificially move employees among various related companies in order to achieve lower rates. The changes on page 27 would allow Nebraska employers with the best reserve-account ratios to achieve a zero percent tax rate and redistribute that tax among the higher-rate categories. Near the top of page 30, the amended language places a set date of October 31 for employers to cure any filing delinquencies, and breaks out the definition of standard rate. Moving on to Section 9 which is on page 39, these provisions would allow the department to invoke administrative garnishments of wages in order to collect unemployment overpayments from individuals who fraudulently obtained unemployment benefits. Section 10 amends Nebraska Revised Statutes Section 48-664 on page 40 to provide that an employer who willfully refuses to repay unemployment taxes could be held personally liable for those taxes. Finally, I just want to touch briefly on Sections 11 and 12. As they are drafted in the bill, they would make it easier to collect unemployment benefit overpayments from individuals who file for bankruptcy, but I believe the department is going to ask for those provisions to be stricken so I'll let them talk about that issue. That concludes my opening testimony. John Albin from the Department of Labor will be following my testimony and he'll be available for questions if you have them. [LB265]

SENATOR CORNETT: Seeing none, thank you, Lori. [LB265]

LORI THOMAS: Thank you. [LB265]

JOHN ALBIN: (Exhibit 1) Senator Cornett, members of the committee, for the record my name is John Albin and I'm agency legal counsel for the Nebraska Department of Labor. First, I want to thank the committee for introducing this legislation on behalf of the department. LB265 contains a lot of different provisions, many of which are just housekeeping measures, but at least one of which needs to be enacted in order to keep Nebraska's unemployment statutes in conformance with federal requirements. Since you were provided with a summary of the provisions of the bill some weeks ago, I will touch quickly on the elements of the bill for the record and then try to answer any questions that you might have. Sections 1, 4, and 5 of the bill are the conformity provisions of LB265. The United States Department of Labor recently adopted a set of regulations at 20 CFR Part 603 regarding the confidentiality of unemployment data. The confidentiality provisions of Nebraska Revised Statutes Section 48-612 do not satisfy the federal requirements. Section 48-612 generally complies with the federal requirements except that 48-612 does not impose a criminal sanction for unauthorized redisclosures of confidential unemployment information provided by the department as is required under 25 CFR 603.09. While the federal regulations prohibit most

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disclosures of unemployment information, the regulations do contain some optional commonsense exceptions to the confidentiality rule that were not present under previous USDOL interpretations of the unemployment confidentiality requirements. Most of those permitted exceptions are contained in Section 5 of LB265. Section 2 of the bill deals with agricultural workers. Only agricultural employers with a quarterly payroll of \$20,000 or more are required to provide unemployment insurance coverage for their workers. Section 2 of the bill reflects a desire to ensure that agricultural employers cannot circumvent the unemployment system by paying their workers with commodities in lieu of cash. While LB265 would make certain in-kind payments such as commodities, taxable wages, the amendment would not make housing or commodities supplied to the worker in his or her family for their personal consumption or use, subject to unemployment taxes. The changes in Sections 3, 7, and 8 of the bill are primarily housekeeping measures, with the exception of the provisions in Section 7 prohibiting rate manipulation by positive-balance employers and the provision of a zero percent tax bracket. Federal conformity requirements provide that a state must have an experience-rated unemployment tax system. Nebraska law provides that employers who have paid wages during each of the two preceding years are eligible for an experience-rated tax rate. All other employers are considered unrated nonexperience-rated employers and are assigned to category 12 of our 20-category system. Positive-balance employers who are eligible for experience rating can be assigned tax rates higher than the category 12 rate under the current system. Consequently, an opportunity exists in the current system for unscrupulous employers to artificially reduce their tax rate to a rate lower than their actual experience would require by moving employees amongst payrolls of related companies. By showing no taxable wages during one year, that company will qualify for a lower category-12 rate the following year even though its actual experience would dictate a higher rate. Due to a different system of setting tax rates prior to LB739, this potential abuse did not previously exist. LB265 would eliminate the loophole and restore the previous practice of taxing those few employers at the highest rates applicable to positive-balance employers. The provisions of Section 7 establishing a zero percent tax bracket are revenue-neutral, as other tax categories are increased to make up for the revenue that will be lost because of the creation of a zero percent tax bracket. This provision is offered as an economic development tool, as states with a zero percent tax bracket are generally perceived as being more business friendly than states that do not. Sections 6 and 14 would eliminate the solvency surcharge that is already scheduled to sunset in 2009 and all references to it. The Unemployment Trust Fund has improved to the point that it is no longer in danger of going insolvent even in the face of a major recession, so the solvency surcharge is no longer needed. In addition, the existence of the solvency surcharge causes Nebraska to be rated lower than its actual experience would indicate on some of the business tax climate surveys, so the department is proposing its early repeal. Currently, law allows the department to administratively garnish wages and other assets to collect delinquent taxes. Section 9 would allow the department to administratively garnish wages if a fraudulent overpayment of benefits is not repaid

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within one year of the administrative or judicial decision becoming final. Current law provides an employer who willfully refuses to pay unemployment taxes as subject to criminal liability. Section 10 would make such an officer or member or a corporation or LLC who willfully refuses to pay unemployment taxes personally liable for those taxes. I would ask the committee to remove the reference to an individual employer and partner in line 17 on page 40 of LB265, as individual employers and partners are already individually liable for taxes owed by the business, and the language used there is redundant, not that lawyers like me don't get redundant on occasion, (laugh) but we really don't need to put it in statute. Finally, I would ask the committee to strike Sections 11 and 12 from the bill. When we brought this proposal forward we had not received any rulings from the federal district court on the issue of the common law right to recoupment in the case of unemployment benefit overpayments. We have now submitted our brief on the issue to the Nebraska Federal District Court and are waiting the brief of opposing counsel. In hindsight it just seems wiser to wait and see how the current statute is interpreted by the federal courts before asking this committee to fix a statute that may not even need amendment to accomplish our purpose. That concludes my prepared testimony and I'd be happy to try and answer any questions. [LB265]

SENATOR CORNETT: Any questions from the committee? Senator Rogert. [LB265]

SENATOR CORNETT: Thank you, John. [LB265]

JOHN ALBIN: Thank you. [LB265]

SENATOR CORNETT: Proponents? Opponents? Neutral testimony? [LB265]

RON SEDLACEK: Madam Chair and members of the Business and Labor Committee, for the record my name is Ron Sedlacek, that's spelled R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and would like to testify in a neutral capacity. This is one of those areas where in presenting testimony there is not really a great slot. There are some areas of the bill that we do support and that would be particularly Sections 1, 4 and 5 which would achieve federal conformity. We are certainly supportive of those aspects of the legislation. In regard to Section 3 dealing with banking charges due by employers, we don't have a position on that particular issue and we will be watching Section 6 as well as Section 7 just to see how that would proceed should the committee decide to advance the bill with those particular sections. We did ask for input from our widely diverse membership in regard to how those changes might affect them, and did not receive really any what I would call adverse responses, but sometimes more questioning than anything else. However, it appears that it would allow for those who have the best experience rate with little or no unemployment activity to benefit from this revision in the schedule as opposed to without doing anything at all. So in that regard we would certainly not be opposed at this point, but we will just continue to watch and advise the committee should we hear of any

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further input in that regard. Section 9, dealing with the department's ability for administrative nonjudicial garnishment of wages, we have no position. And as I understand it now, the sections dealing with willful repayment of the taxes is going to be stricken, but again we had no position on that particular issue because we felt that the law had already addressed that. And so with that if there are any questions I'd be happy to entertain them. [LB265]

SENATOR CORNETT: Seeing none, Ron, thank you. [LB265]

RON SEDLACEK: Thank you, Senators. [LB265]

SENATOR CORNETT: Are there any further testifiers in the neutral capacity? Seeing none that closes the hearing on LB265 and opens the hearing on LB339. [LB265 LB339]

LORI THOMAS: Chairperson Cornett and members of the Business and Labor Committee, for the record I am Lori Thomas, legal counsel of the committee, and I'm here to introduce LB339. The committee is introducing this bill on behalf of the Department of Administrative Services. The state's Risk Manager, Laura Peterson, will be following my testimony and will be able to speak to their need for the bill and explain how these changes will be implemented within their department from a procedural standpoint. With that I am going to briefly explain the major components of the bill. I'd also like to point out that this bill makes changes to all three different areas of claims against the state, namely tort, miscellaneous, and contract claims, so I'll try to make it clear as I switch from one act to the next. Sections 2-7 make changes to the Tort Claims Act. Section 2 adds the definition of Risk Manager within the Tort Claims Act. Section 3 would allow the Risk Manager to approve tort claims under \$5,000. Currently, the Risk Manager does not have the authority to approve or deny any tort claim. If a claimant is dissatisfied with the decision of the Risk Manager, he or she will have 60 days to apply for the review by the claims board. Section 3 also adjusts the dollar threshold requiring unanimous approval from the board by increasing that amount from \$5,000 to \$10,000. The bill would keep in place the dollar amount thresholds which require approval of the district court and/or legislative review. Section 4 provides that the Attorney General will serve as the legal advisor to the Risk Manager because of the additional duties of the Risk Manager proposed under this bill. Section 5 deals with the filing of a lawsuit under the Tort Claims Act. The amended language inserts "Risk Manager" so that it's clear in statute that the decision of the Risk Manager can be a final disposition for purposes of determining when suit can be filed. Section 6 is more of a housekeeping measure to allow the Risk Manager to submit claims for payment. Section 7 would give the Risk Manager the authority to include attorney fees in approved tort claims in the same way that the claims board and the court can now under Section 81-8,228. Sections 1, 8, 9 and 11 make changes to the Miscellaneous Claims Act. Section 9 primarily increases the Risk Manager's authority to approve miscellaneous claims from \$2,000 to \$5,000. It

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also clarifies that the Risk Manager may place limitations on approved claims and deny any claim. Finally, Section 9 makes legislative review necessary on claims over \$50,000 rather than the \$10,000 threshold that currently is in place. This change would match the threshold for legislative review under the Tort Claims Act. Section 11 would provide a two-year statute of limitation for miscellaneous claims. The statute of limitations would not apply to expired state warrants or agency write-offs. Finally, Section 1 would place the Miscellaneous Claims Act within the tolling statute under Section 25-213. As a side note, I wanted to point out that there's a general statute of limitations for claims against the state under Section 25-218. There has been a verbal opinion by the Attorney General stating that that statute of limitations within Section 25-218 does apply to miscellaneous claims though in the past the statute had not been applied to miscellaneous claims. I believe this ambiguity has placed the department in a difficult situation and that is why they are introducing this bill to try to clarify that. Last but not least, Section 10 amends the Contract Claims Act by placing a one-year appeal deadline for claimants who object to the jurisdiction of the claims board and choose to file suit. Currently, there is no known deadline for which an individual can file suit with the court after objecting to the claims board jurisdiction. This concludes my prepared testimony. If I can answer any questions I'd be happy to try. [LB339]

SENATOR CORNETT: Lori, did we ever receive the opinion from the Attorney General's Office that we have been waiting for? [LB339]

LORI THOMAS: No, we have not. [LB339]

SENATOR CORNETT: And that was supposed to be... [LB339]

LORI THOMAS: It was requested back in October. I was told it would be here Friday, as in last Friday, a couple of days ago, and it's not available at this time. [LB339]

SENATOR CORNETT: Thank you. [LB339]

LORI THOMAS: You're welcome. [LB339]

SENATOR CORNETT: Proponents? We have Laura. [LB339]

LAURA PETERSON: (Exhibit 2) Good afternoon, Senator Cornett and members of the Business and Labor Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n, and I'm the State Risk Manager. I'm appearing here today in support of LB339, and we thank you very much for introducing it on our behalf. Over the past few years risk management has been discussing with members of the Business and Labor Committee ways to make the claims process more efficient for both claimants and for state agencies. LB339 offers a number of changes to the claims process to facilitate such efficiencies. One of the biggest efficiencies in this bill is to authorize action by the Risk

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Manager on tort claims under \$5,000 and to increase the Risk Manager's authority over miscellaneous claims from \$2,000 to \$5,000. Currently, every court tort claim regardless of the dollar amount must be submitted to the claims board. Allowing the Risk Manager authority over claims up to \$5,000 will allow faster access to recovery for claimants and will allow the Risk Manager to act in a capacity similar to the function of a claims adjuster in the private sector. The dollar thresholds at which the district court and the Legislature review tort claims is unchanged in this bill. The dollar threshold at which the Legislature reviews miscellaneous claims is increased in the bill from \$10,000 to \$50,000 to match the dollar threshold of legislative review for tort claims. The increase does not apply to requests by agencies to write off bad debt. Under LB339 the Legislature would continue to review all agency debt write-off requests. One of the questions posed to me since the introduction of this bill relates to the six-month extension of time for filing a lawsuit after mailing of the notice of final disposition as addressed in 81-8,227. I want to be clear, that is not our intent through LB339 to change or in any way decrease the rights or time to file for any claimant. In reviewing the language of 81-8,227, we believe the language that is there allows the six-month extension to continue as it is in current law without any change to that section. However, we would be happy to work with you if a determination is made that we need to clarify that language to ensure the continued application of the six-month extension upon passage of LB339. This might be addressed as simply as adding Risk Manager to the board in 81-8,227. The second major change in LB339 is to introduce a statute of limitations for filing miscellaneous claims. Currently, there is a two-year statute of limitations in both the Tort Claims and Contract Claims Acts. There is no statute of limitations contained within sections in Chapter 81 identified as the Miscellaneous Claims Act. However, there is a general statute of limitations found in Nebraska Revised Statute 25-218. The claims board received verbal advice from the Attorney General's Office that the two-year statute of limitations in 25-218 does apply to miscellaneous claims. The claims board requested a written opinion from the Attorney General's office to confirm that verbal advice. As you've heard, we are waiting for that opinion and we will be happy to provide you a copy as soon as we receive one. LB339 would take the two-year statute of limitations and place it within the Miscellaneous Claims Act to avoid any future confusion regarding whether there is a statute of limitations that applies to miscellaneous claims or not. The only change then is that LB339 would provide an exception to the statute of limitations for two types of miscellaneous claims: expired warrants and agency requests to write off debts. In part, this is based on direction from the Business and Labor Committee last year that the members of the committee were uncomfortable having a statute of limitations applied to expired warrants. Generally though, the reason for a statute of limitations is to allow investigation of a claim while the evidence is still preserved, memories are still fresh, etcetera. In the case of expired warrants, the state has already made an investigation into the claim by the individual or entity and determined it to be a valid obligation of the state. In response, the state issued a warrant with a one-year expiration date on the warrant, but the individual did not cash the warrant within the one-year valid period and is now asking for a reissue of

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that warrant. In this instance, there is not the same need to preserve evidence or memories as the documentation of the warrant should be sufficient. Under current law, the two-year statute of limitations in 25-218 which does apply to claims for expired warrants, the statute of limitations does not remove the underlying obligation of the state on the debt for which the warrant was issued. What the statute of limitations does is bars recovery of the underlying debt by providing an exemption to the statute of limitations for warrants. The intent is to remove that bar to recovery and allow claimants to recover. That is not to say there cannot be warrant claims that are denied by the board, but they would be denied for other reasons other than the statute of limitations. The other type of claim where the statute of limitations does not make any sense is the agency write-off. As you know, agencies are required to write off uncollectible debts through the miscellaneous claims process. Often, the state is attempting to collect debts through a state bankruptcy or other proceedings that may take more than two years. Having a statute of limitations on write-offs would mean that if agencies did not determine a debt was uncollectible within the two years, they would be required to keep that debt on their books indefinitely. This simply does not make any sense and would be an expansion of the statute of limitations from what applies now. The current statute in 25-218 applies to claims against the state but does not apply to agency requests for write-off as it applies only to claims against the state and claims against others on behalf of the state. Agency write-offs are neither one of those things. Therefore stating that there is no statute of limitations for the Miscellaneous Claims Act in LB339, simply codifies within the Miscellaneous Claims Act the current policy with regard to agency write-offs; that is they have no statute of limitations. The final major change in LB339 is to introduce a deadline for filing contract claims in district court once the jurisdiction of the claims court has been removed by one of the parties of the claim. Currently, there is no stated deadline for filing in court, leaving both claimants and the state agencies without clarity regarding what is required. That concludes my prepared testimony but I would be happy to answer any questions. [LB339]

SENATOR CORNETT: Laura, with the verbal opinion from the AG's Office, what are you currently doing now with expired warrants? [LB339]

LAURA PETERSON: Well, we have actually a verbal opinion on the record from them. [LB339]

SENATOR CORNETT: Right. [LB339]

LAURA PETERSON: We have a few claims that are expired warrants within...that have come in recently that we're holding. [LB339]

SENATOR CORNETT: So you're just holding those and... [LB339]

LAURA PETERSON: They haven't been scheduled for a hearing. [LB339]

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SENATOR CORNETT: All right. And the original verbal opinion was in October?
[LB339]

LAURA PETERSON: It was...I'd have to go back and look. We actually have it on a transcript from...there were two hearings on a miscellaneous claim where the statute of limitations came into play, and we actually had a verbal opinion from the AG sometime in the fall or earlier that wasn't on the record. And then one of those hearings...I'd have to go back and look and see on the transcript when that was that it was actually, where we have it on the record on a transcript. [LB339]

SENATOR CORNETT: So your office has been holding warrants since that time?
[LB339]

LAURA PETERSON: We actually were holding them when we just decided to introduce this legislation... [LB339]

SENATOR CORNETT: But without, I was going to say, without an E clause you'd be holding them for quite a while wouldn't you? [LB339]

LAURA PETERSON: Well, we have two choices at this time. We can deny the claims or, and I'm not sure they won't be denied anyway, to be honest. We just haven't exactly figured out what we need to do with those. What happened is, during last year as those of you who are here know, we came with LB1158, and based on the discussion we had determining that 25-218 applied and that all miscellaneous claims had a two-year statute of limitations, we came and asked to have that statute of limitations codified in the Miscellaneous Claims Act similar to what we're asking for here but without an exception for expired warrants. And during the discussion, both in the hearing and after the hearing, what we heard back from the committee and as I just said was that the committee had some discomfort with having that two-year statute of limitations apply to expired warrants. And so based on that from the committee, we were basically placed in a position that said, we have an opinion from the Attorney General's Office that says, you can't approve miscellaneous claims for warrants beyond the two years but the Legislature is of the opinion that the two-year statute of limitations shouldn't apply to the warrants. And so part of the reason that bill didn't pass was because there was no exception for warrants. And so we decided we would hold them and come back to the Legislature and ask truly for a determination on what needs to be done with expired warrants. [LB339]

SENATOR CORNETT: Last year, did that bill, did not also include unrecoverable debt, did it? That's a new component to this? [LB339]

LAURA PETERSON: I think the bill itself did not, but I think when we came in with the

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testimony if you would go back to the testimony that I gave, what we asked was for the committee to make that amendment. [LB339]

SENATOR CORNETT: And that amendment was or was not made? [LB339]

LAURA PETERSON: The bill was killed because of the question about warrants. [LB339]

SENATOR CORNETT: Warrants. [LB339]

LAURA PETERSON: And there was another provision in that bill that dealt with qualifications for the Risk Manager, but a couple of members of the committee had some discomfort with and there wasn't agreement on the committee, so that bill was actually killed. So then I don't think the amendment was ever actually drafted, because what I had said at the time of the testimony was, if you are going to advance this bill we'd ask that you place an exemption in the statute of limitations to make clear that it doesn't apply to agency requests for write-off. And but because it was never advanced we never ended up with the amendment. [LB339]

SENATOR CORNETT: Okay, thank you. [LB339]

LAURA PETERSON: You're welcome. [LB339]

SENATOR CORNETT: Any questions from the committee? Senator White. Sorry, Senator Chambers. [LB339]

SENATOR WHITE: Yes, thank you. Who issued this verbal opinion? What attorney? [LB339]

LAURA PETERSON: We've actually received it from a variety of attorneys, but I think the attorney who is actually on the record is an attorney whose name is, I think her name was Michele Lewon? She was...at each claims board hearing there is a member of the Attorney General's Office who is present at the claims board as the advisor to the claims board, and I believe the attorney that was there that day, her name was Michele Lewon. [LB339]

SENATOR WHITE: Does your agency regularly rely on verbal opinions to make determinations of this type without asking them to be codified by the Attorney General in the form of a letter opinion? [LB339]

LAURA PETERSON: We frequently rely on verbal advice from them at the claims board hearing, I think because what happens, although we have asked for the codification of this particular opinion, we had been in discussions with them also prior to that hearing,

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not because of any claim that was coming up, but because of issues that had come up over a number of years with the expired warrants on the floor of the Legislature in interim hearings and then with LB1158 last year. But what happens is, we're sitting at the hearing and frequently something will come up and the board wants to make a determination on that claim, and that's why the member of the Attorney General's Office is represented there so that the claims board can receive advice and appropriately act on the claim. So yes, I mean, I don't know that we frequently have questions, but when we do we generally do rely on their advice at the time of the hearing. [LB339]

SENATOR WHITE: With regard to the claim involved, what claim was it that Counselor Lewon expressed this opinion? [LB339]

LAURA PETERSON: It was a miscellaneous claim by the city of Norfolk. [LB339]

SENATOR WHITE: And is that the first time, to your knowledge, that claim has been...that statute of limitations has been applied to a miscellaneous claim? [LB339]

LAURA PETERSON: I don't want to say that for sure. I don't know for sure. I don't want to say yes or no because I'm not certain. [LB339]

SENATOR WHITE: Help me through the structure here. We have a Tort Claims Act, correct? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: And that has a specific statute of limitations that the Legislature put in it, correct? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: And when that one is, if a tort claim is turned down by your office, that claim then is taken to the court system, correct? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: So the Legislature doesn't control the outcome of that, correct? The courts do. [LB339]

LAURA PETERSON: If it's over \$50,000, the Legislature also has control because once you're above \$50,000 before any tort claim can be paid, even if it is the judgment of the court, the Legislature has the requirement to review it as part of the Claims Act, but yes, in appeal, the claims board can act, it can be taken to district court and the Legislature has the ultimate control. [LB339]

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SENATOR WHITE: So the Tort Claim Act has a specific statute of limitation and then there is also a Contract Claims Act, correct? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: And in that act there is a specific statute of limitations, correct? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: So the Legislature put a time limit on both of those two, and both of those would go to the court system after your office is completed with them, correct? [LB339]

LAURA PETERSON: That is true for tort claims. Now with contract claims...there are basically two processes that can happen with a contract claim. The contract claim is filed in my office. Under the statutory procedure, what happens is, the contract claim is filed in my office and then a letter goes out to both parties: the party who filed the claim, the contractor; and the agency that was involved in the contract, that was party to the contract. In that letter, they are given notice that, I think, I can't remember if it's 60 or 90 days, but they have a time frame, a statutory time frame, to object to the jurisdiction of the board. If they object to the jurisdiction of the board, then they have the right to, the contractor has the right to file a claim with the court. If neither party objects to the jurisdiction of the board, then it remains within the jurisdiction of the board and it becomes handled procedurally like a miscellaneous claim, in which case there is no judicial review. [LB339]

SENATOR WHITE: Now, the Legislature did not put a specific statute of limitations in the Miscellaneous Claims Act, isn't that true? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: Why do you think it was within your agency or the Attorney General's prerogative to read such a statute of limitations into an act where the claims directly go to the Legislature after your office has completed their work on them? [LB339]

LAURA PETERSON: I don't think we've read...we haven't read a statute of limitations into the act itself. What we have done is--and I think that's why for a period of time, looking only at the act, there were claims that were paid without any recognition of a statute of limitations. However, what happened is, a few years ago, and the time line is a little bit fuzzy for me, I think it was the session...two interims ago, the session before

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that, what exactly that time line is, there were a number of expired warrants, that most miscellaneous claims are either expired warrants or agency write-offs, and there were a number that were large dollar amounts, and there was some frustration on the part of some senators during the floor debate of those, about why people had not cashed their checks in a timely manner. And so we started to look more at expired warrants, all the statutes involved, not just the act itself, not within the confines of act. As part of our research--I'm not sure that time line is exactly correct, but at some point we became aware of 25-218, and I don't think we are trying to read into the Miscellaneous Act itself, what we are trying to do is figure out if 25-218, which is a general statute of limitations, applies to miscellaneous claims or not. [LB339]

SENATOR WHITE: Well, and I am concerned about that for a number of different reasons. First of all, for many years until in fact the Norfolk case, your office did not apply any statute of limitations to claims, correct? [LB339]

LAURA PETERSON: Any statute of limitations to miscellaneous... [LB339]

SENATOR WHITE: To the miscellaneous claims. [LB339]

LAURA PETERSON: Well... [LB339]

SENATOR WHITE: Is that correct, yes or no? [LB339]

LAURA PETERSON: I don't...I can't exactly give you a yes or no, and I am not trying to avoid your question but... [LB339]

SENATOR WHITE: Well, you've testified previously, have you not, repeatedly, that there was no statute of limitations applicable to the Miscellaneous Claims Act, isn't that true? [LB339]

LAURA PETERSON: I think what my testimony has said, I believe...there was a time period where I was not aware that there was a statute of limitations that might apply to the Miscellaneous Claims Act, and I may very well have testified to that. What I, the only thing I would disagree with you about was whether the Norfolk claim itself is relevant to our becoming aware of 25-218 and beginning to apply it. And... [LB339]

SENATOR WHITE: Well, you testified previously, Ms. Peterson, just now, that what triggered that inquiry was alleged discontent on the floor among legislators with the time period of warrants. Was it that or was it the Norfolk case? Which was it? [LB339]

LAURA PETERSON: We asked for an opinion verbally on the record during the time of the Norfolk case. We had started to look into the question of expired warrants prior to that, due to discontent, malcontent, whatever, on the floor of the Legislature. [LB339]

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SENATOR WHITE: Do you recall your testimony on October 7, 2005, with Business and Labor Committee, was with regard to LR173, and do you recall this testimony? Laura Peterson: What we do is, the way the statute is written, they have a year to cash the check and then they have the right--what it says is then after that year they file a claim, a miscellaneous claim, with the claims board. Unlike the Tort Claims Act, the Miscellaneous Claims Act does not have a statute of limitations. And so for quite some time, and I haven't been in this office for that long, three or four years now, which really is, there is no statute of limitations in the Miscellaneous Claims Act. Do you recall that testimony? [LB339]

LAURA PETERSON: And that's exactly what I've said here today. There is no statute of limitations contained within the Miscellaneous Claims Act. I still think that's true. [LB339]

SENATOR WHITE: And your testimony today says you want to introduce such a statute of limitations into the act, is that correct? [LB339]

LAURA PETERSON: That's correct. [LB339]

SENATOR WHITE: And yet your office has barred claims, claiming a statute of limitations does apply, so that in effect acting as a gatekeeper to the Legislature on the Miscellaneous Claims Act. What basis do you have to do that, (inaudible)? [LB339]

LAURA PETERSON: The Nebraska Statute 25-218. We have... [LB339]

SENATOR WHITE: Which was expressly was not included in the statute even though it was...such restrictions were included in the Tort Claims Act and were included in the Contract Claim Act. Doesn't it strike you that the Legislature left it out for a reason? [LB339]

LAURA PETERSON: And I think that...I mean, partly what we are asking you to do, regardless of the city of Norfolk claims, which were decided based on advice and which the Legislature will review in a separate day, in a separate forum... [LB339]

SENATOR WHITE: Did you deny those claims based on the claim that a statute of limitations exists governing the Miscellaneous Tort Claims Act? Yes or no. [LB339]

LAURA PETERSON: I'm sorry...can... [LB339]

SENATOR WHITE: Did your office deny those claims at first? [LB339]

LAURA PETERSON: Yes. Well, my office did not; the State Claims Board did. [LB339]

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SENATOR WHITE: The claims board denied those? Did the claims board deny them on the claim or on the basis that there was a statute of limitations that barred them? Yes or no? [LB339]

LAURA PETERSON: Yes. The statute in 25-218. [LB339]

SENATOR WHITE: And that was...and let's talk about that. Do you know what a claim is defined as? It's a case. There is no case here... [LB339]

LAURA PETERSON: I am not aware that either 25-218 or...well, I think the Miscellaneous Claims Act has a definition of the types of things that can fall within a claim. [LB339]

SENATOR WHITE: They're different than the legal description of lawsuits or claims to be pressed in a court, aren't they? [LB339]

LAURA PETERSON: Yes, but that definition... [LB339]

SENATOR WHITE: Okay, but nevertheless your office,... [LB339]

LAURA PETERSON: ...is not contained within 25-218. [LB339]

SENATOR WHITE: ...nevertheless, your office, even though this is not a lawsuit, a miscellaneous claim is not a lawsuit, can never be a lawsuit, correct? [LB339]

LAURA PETERSON: Right. [LB339]

SENATOR WHITE: (Inaudible) a statute that clearly applies to lawsuits to bar claims. And I am concerned what gives your office the authority to do that. I'm very concerned that the Attorney General has not come through with a written opinion if that's what they are telling you to do, and that that is a major claim. That was \$800,000, is that correct? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR WHITE: And the people of Norfolk had their drinking wells poisoned and had to relocate them, correct? [LB339]

LAURA PETERSON: I'm not sure that the... [LB339]

SENATOR WHITE: Is that correct? [LB339]

LAURA PETERSON: That was the claim. [LB339]

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SENATOR WHITE: Yes. [LB339]

LAURA PETERSON: Within the contents of those four claims. [LB339]

SENATOR WHITE: And that claim was denied even though it's not state money. That money would come from a fund paid by petroleum distributors to deal with this very problem, correct? [LB339]

LAURA PETERSON: It comes from the Petroleum Remediation Fund. [LB339]

SENATOR WHITE: Which is not tax dollars, it's not state General Fund dollars. [LB339]

LAURA PETERSON: It's paid in by petroleum companies or... [LB339]

SENATOR WHITE: So that money was denied to the people of Norfolk who had to build new wells to get pure drinking water by an interpretation that a statute of limitation that only applies to lawsuits would now be applied to something that can never be a lawsuit even though the Legislature specifically left such language out of the statute. Do I have that clear? [LB339]

LAURA PETERSON: That is the position of the city of Norfolk, yes. That is what they have stated. [LB339]

SENATOR WHITE: Well, that's what happened. Isn't that what has happened here? You have read in an act, a limitation that applies to lawsuits into a area that can never be a lawsuit. Isn't that true? [LB339]

LAURA PETERSON: That is one interpretation. We would just...we looked at 25-218, we tried to determine how it applied. We sought legal advice as to how it applied. We received that and the claims board responded. Now, certainly there can be disagreements about that. [LB339]

SENATOR WHITE: It also is of great concern to me that for many years prior to that claim coming up, it was interpreted that there was no such statute of limitations. Was there political pressure applied to your office to block that Norfolk claim? [LB339]

LAURA PETERSON: No. [LB339]

SENATOR WHITE: Then why the sudden and dramatic shift of long-standing precedent in a large claim that was being brought by the people of Norfolk to recoup damages for having their drinking water poisoned? [LB339]

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LAURA PETERSON: I think in a way that's unfortunate timing because we were...I took over my office in about June or so of 2002. As due diligence, I started to review everything in our office. There have been a number of changes related to that which some people would be happy about and some would be unhappy about. Section 25-218 came up as a result of an intensive review we were doing of Miscellaneous Claims Act and expired warrants. It really didn't come up as a result of the city of Norfolk. However, the timing is that the city of Norfolk's claim came along at about that same time, and we had to make a determination on the application of all the laws, 25-218 and the Miscellaneous Claims Act, as to how to deal with the city of Norfolk claim. There are also a number of other substantive issues within the City of Norfolk claim that the claims board asked for, sought the advice of the Attorney General about whether 25-218 barred that claim or not. And the answer at the time was yes, and the claims board acted on that. But... [LB339]

SENATOR WHITE: So let me just be real careful. We have an \$800,000 claim because of poisoned drinking water against a subdivision of the state of Nebraska, and you don't even have a written opinion saying that's what they told you to do? [LB339]

LAURA PETERSON: You can see that we have requested that in October, and we've contacted them a number... [LB339]

SENATOR WHITE: But you already denied the claim without even a written reasoned opinion. [LB339]

LAURA PETERSON: That's right. We received a verbal opinion and acted upon it. [LB339]

SENATOR WHITE: Thank you. [LB339]

SENATOR CORNETT: Senator Chambers. [LB339]

SENATOR CHAMBERS: That was very interesting. And I don't know that the end of the discussion should end the inquiry. In the statement of intent is this comment, and I want you to tell me if this is accurate, and if so, what it means. "Increases the Risk Manager's authority to approve Miscellaneous Claims from \$2,000 to \$5,000 and authorizes the Risk Manager to deny Miscellaneous Claims." Is that accurate? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR CHAMBERS: Okay. "Any claimant dissatisfied with the Risk Manager's decision may seek review by the Claims Board." Is that accurate? [LB339]

LAURA PETERSON: Yes. [LB339]

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SENATOR CHAMBERS: "The bill also changes the legislative review threshold for Miscellaneous Claims by increasing the dollar amount from \$10,000 to \$50,000." Is that accurate? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR CHAMBERS: What is being referred to when it mentions the legislative review? [LB339]

LAURA PETERSON: Right now, when we receive a miscellaneous claim and it goes through the process of review by the claims board and the claims board approves it, if it is over \$10,000 in its amount, it has to be included within the claims bill that we bring to you annually, and the claims bill has to pass before we can issue the check. [LB339]

SENATOR CHAMBERS: And now that amount which can be paid without the Legislature's review will be \$50,000. [LB339]

LAURA PETERSON: Right. And that would match what your legislative review is for tort claims. [LB339]

SENATOR CHAMBERS: But if a claim is denied, there is no threshold amount. [LB339]

LAURA PETERSON: That's exactly right. If it's denied...if I would deny it, it could be reviewed by the claims board. If the claims board denied it, that review at any dollar level comes to you in the form of the denied claims bill. [LB339]

SENATOR CHAMBERS: I just wanted to be crystal clear. It is not...I thought that is what it was saying. [LB339]

LAURA PETERSON: That's exactly right. [LB339]

SENATOR CHAMBERS: But I just wanted to be sure. [LB339]

LAURA PETERSON: We are not put...we are not instituting a dollar threshold for the denial review. You would always still do those. [LB339]

SENATOR CHAMBERS: Thank you. [LB339]

SENATOR CORNETT: Senator Lathrop. [LB339]

SENATOR LATHROP: Yes. I do have some questions and I want to focus my questions at least initially on the tort claims practices. [LB339]

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LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: You are the Risk Manager, is that true? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: So when we talk about the Risk Manager in this bill, you are the person we're referring to, or at least you occupy that office. [LB339]

LAURA PETERSON: I occupy that office, yes. [LB339]

SENATOR LATHROP: Okay. And in the usual case when someone has a claim against the state of Nebraska, at least prior to amending this section of law, they are required to make a claim against the state within two years. [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: Is that true? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: And they do that by filling out a prescribed form, and that goes to your office and is served upon you by certified mail, return receipt requested. [L339]

LAURA PETERSON: I'm not sure we always get them certified mail, but yes, it's filed in our office. [LB339]

SENATOR LATHROP: And then the claims board can do whatever it is they do with that claim, and that's what I want to talk about in a minute, and they can ultimately agree to pay the claim or deny the claim, is that right? [LB339]

LAURA PETERSON: Right. [LB339]

SENATOR LATHROP: And then if there is a denial of the claim or the offer to pay isn't enough, then the claimant can then proceed to file a lawsuit. [LB339]

LAURA PETERSON: Correct. [LB339]

SENATOR LATHROP: Presently, the way the Tort Claims Act works is that the claim is sent, and you, as the Risk Manager, present the claim to the board, is that right? [LB339]

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LAURA PETERSON: Right. [LB339]

SENATOR LATHROP: And what you are asking us to do is to authorize you yourself or the person that occupies your office, to approve the smaller claims, those of \$5,000 or less. Is that right? [LB339]

LAURA PETERSON: That's right. [LB339]

SENATOR LATHROP: Okay. Now I want to ask you something about the State Claims Board and what it does for the people of the state of Nebraska. [LB339]

LAURA PETERSON: Okay. [LB339]

SENATOR LATHROP: Can you tell me what kind of things come up in the State Claims Court? Are those mostly auto accidents? [LB339]

LAURA PETERSON: There are a good number of auto accidents. We also have incidents where people are injured on state property. Those are probably the two most common, where somebody has received an injury or been in an auto accident. [LB339]

SENATOR LATHROP: Okay, and in a month's time can you tell us how many claims you typically get? [LB339]

LAURA PETERSON: No, but I have a list of how many we get in a year. [LB339]

SENATOR LATHROP: Why don't you tell me that. [LB339]

LAURA PETERSON: Let me look so I can give you an accurate number. We get about...between 450 and 500 or so a year. [LB339]

SENATOR LATHROP: Four-hundred fifty to five hundred tort claims a year? [LB339]

LAURA PETERSON: Tort claims a year, yes. [LB339]

SENATOR LATHROP: And how many of those would fall below the \$5,000 threshold that you'd like to be given authority to resolve yourself? [LB339]

LAURA PETERSON: I should have brought that but I did not. [LB339]

SENATOR LATHROP: Do you have any estimate? [LB339]

LAURA PETERSON: I would say probably less than half but I don't know for sure. I'd be happy to get that for you. I should have brought it but I didn't. [LB339]

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SENATOR LATHROP: Okay. One of the purposes of having the state Tort Claims Act is to allow the state an opportunity to investigate the claim before it becomes a lawsuit, is that right? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: And pay if there weren't. [LB339]

LAURA PETERSON: Right. [LB339]

SENATOR LATHROP: How many claims did the state pay...of the 450 to 500, how many tort claims did the state pay without requiring the claimant to file a lawsuit against the state of Nebraska? [LB339]

LAURA PETERSON: About 100. I'm giving you an estimate, but approximately 100. [LB339]

SENATOR LATHROP: Okay. So the remaining 350 to 400 were... [LB339]

LAURA PETERSON: They may have had a lawsuit or they may not have. Sometimes what happens is people don't understand that there may be an exemption within the Tort Claims Act that applies to them, particularly the one related to acts of nature. So sometimes we have slips and falls that are as a result of ice, are very common, and people are not aware that that's not...where that's something that the private sector might have, a med pay policy or something, to pay because their client is coming in, that there is that exemption within the state. [LB339]

SENATOR LATHROP: So they fall within the 100 that get result without a lawsuit? [LB339]

LAURA PETERSON: No, they would fall within those that don't, but they may never go on and file the lawsuit is all. [LB339]

SENATOR LATHROP: Okay. But what you're telling me is, the state of Nebraska, out of 500 claims, paid 100 of them without ever having to be sued. [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: Are those all the smaller claims under \$5,000? [LB339]

LAURA PETERSON: They are not always smaller claims but most of them fall under the \$50,000. What I don't know is how many are under the \$5,000, how many are under

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the \$50,000. We only have maybe a few a year that are at the \$50,000. We also...there is a dollar threshold of \$25,000 for it to be approved by the court before we can pay it. And I know there are only a few of, a handful of those. I don't know the exact number. There are only a handful of those a year. Those would be ones where the claims board approved them for a dollar amount, \$25,000 or more, and therefore they had to seek court approval. I know I pay...we file that in court a handful of times year. So I can tell you the majority of those 100 are under \$25,000, but I can't tell you how many are under \$5,000. [LB339]

SENATOR LATHROP: Okay. [LB339]

LAURA PETERSON: Sorry,... [LB339]

SENATOR LATHROP: That's all right. [LB339]

LAURA PETERSON: ...am I confusing you? [LB339]

SENATOR LATHROP: You don't know how many of the 450 to 500 you would actually be responsible for if we make the threshold \$5,000 and the Risk Manager can settle it? [LB339]

LAURA PETERSON: I don't have that with me but I'd be happy to provide you a breakdown of dollar thresholds... [LB339]

SENATOR LATHROP: You've been doing this for how many years? [LB339]

LAURA PETERSON: Four; four and a half. [LB339]

SENATOR LATHROP: Do you have an idea? We're trying to get a sense of whether we should give you authority to settle cases with a value under \$5,000, and I don't know, so far,... [LB339]

LAURA PETERSON: Exactly how many. [LB399]

SENATOR LATHROP: ...how many we are talking about, whether we're talking about 400 or if we are talking about 30. [LB399]

LAURA PETERSON: You are talking about less than a hundred for sure and probably at half of those or less, but I'm...of the hundred, I'm not certain how many you're giving me authority for, and I apologize for that. I'll be happy to provide it to you though. [LB339]

SENATOR LATHROP: So you think we're talking about 50 claims a year? [LB339]

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LAURA PETERSON: To a hundred... [LB339]

SENATOR LATHROP: Give or take? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: Okay. Just trying to get a sense of...this isn't a trap, I'm just trying to find out what we are giving... [LB339]

LAURA PETERSON: No, I don't want to give you bad information is all. [LB339]

SENATOR LATHROP: Okay. [LB339]

SENATOR LATHROP: The claims board, how is that constituted? Who sits on the claims board presently? [LB339]

LAURA PETERSON: It's by statute. It's the directors of the departments of Administrative Services, Labor, and Insurance. So it's Carlos Castillo, "Butch" Lecuona, and Tim Wagner. [LB339]

SENATOR LATHROP: If we go along with these changes, you would make a decision initially to pay the \$5,000. Would you require the approval of the board in each case or would you simply be permitted to write the check and be done? [LB339]

LAURA PETERSON: I would simply be permitted to write the check and be done. [LB339]

SENATOR LATHROP: And if you made a decision that a case was only worth \$1,000 and the claimant thought it was worth \$2,000, that person could then appeal to the board? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: How does that appeal affect the deadlines for the claimant? And to put some context in that, you get two years to file the claim and then two years to file the lawsuit, both from the date of the event, right? [LB339]

LAURA PETERSON: Right. [LB339]

SENATOR LATHROP: And if the claims board is holding the claim beyond the two years, you get six months from the time you dispose of it, is that true? [L339]

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LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: If you decide that a claim is worth \$1,000 and somebody thinks it's worth \$2,000, they appeal it to the claims board, what's that do to their time limit? [LB339]

LAURA PETERSON: Our intention is not to change the time lines. For example, the six month would still...they would still receive a six-month extension, so from the time there was an action by me or even an action for the board. So, for example, if I would issue a decision that they were unsatisfied with and they would appeal to the board, presumably it's six months from the final actions of the board. If I acted, the board acted, you would still get the additional six months, and the same with the two years. The intention is not to change and certainly not to decrease any claimant's time line. We want to still give them the same time line. And so as I sort of testified to, I'm not entirely certain that there's a need to change the language, but if it would provide some security that we aren't intending to shorten any time line by inserting in the authority of the Risk Manager, we'd certainly be happy to work on an amendment to that effect, because... [LB339]

SENATOR LATHROP: All I want to do is make sure the people...that it's clear so that there's no misunderstanding for people who are making a claim. You make a decision and then they get an opportunity to appeal. Your understanding of the language in this bill is that the six months that you have to file a claim, if the two years passed, begins when the board is done with it and not when you are. [LB339]

LAURA PETERSON: That would be my understanding. [LB339]

SENATOR LATHROP: You said you have 450 claims, 450-500 claims last year? [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: And that you settled 100 of them. [LB339]

LAURA PETERSON: Yes. [LB339]

SENATOR LATHROP: Do you have that, do you maintain a list of those? [LB339]

LAURA PETERSON: We have a database that we can run reports out of, in various configurations. [LB339]

SENATOR LATHROP: Does that tell us who you paid and how much? [LB339]

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LAURA PETERSON: We can; yes. [LB339]

SENATOR LATHROP: Is that something you can get me a copy of for the last year? [LB339]

LAURA PETERSON: Absolutely. [LB339]

SENATOR LATHROP: Okay. Thank you. [LB339]

LAURA PETERSON: It's relatively easy. [LB339]

SENATOR LATHROP: I would think so. Thank you. [LB339]

LAURA PETERSON: You're welcome. [LB339]

SENATOR CORNETT: Senator White. [LB339]

SENATOR WHITE: Following up on that, am I correct, and Senator Lathrop, you might want to listen to this because you deal with this area more than I, but if you have a claim that has been pending for over two years, you cannot withdraw it and file suit because you don't get the six-month extension. Is that in this system or is that in the county? [LB339]

LAURA PETERSON: That's the current system. [LB339]

SENATOR WHITE: So, did you know that, Senator Lathrop, that if you are outside of the two-year statute of limitations, you don't get the six-month grace period, you can no longer withdraw the claim from consideration and then file because they are just sitting on it? Because you only get your additional six months if you, (a) if they actually come to a decision, and then you get six months? Do you see the trap? [LB339]

SENATOR LATHROP: Um-hum [LB339]

SENATOR WHITE: Okay, let's say I file a claim, if I'm correct, with your office. I file it and I am now outside of two years, that you've sat on it, the office has sat on it for whatever reason, eight months. At that point in time it's been 27 months since the incident. I cannot withdraw that claim and then file it in court for failure to act, because if I do, it's barred because I'm outside of the two years, and I don't get the six months unless they come to a decision. [LB339]

LAURA PETERSON: Yeah, and in that instance that...I actually think that's right now. We have...the only instances I am aware that's happened, we've actually gone on to act. What generally happens to us--the only reason that the claims board would fail to

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act is for the agency failing to send us an opinion. We generally wait for the agency to provide us an opinion. Now, there's a question about whether the claims board could be required to act, but your six months is triggered by the action of the claims board, if the claims board would fail to act, which I'm not aware that there are very many cases of that, but... [LB339]

SENATOR WHITE: I'm not sure you can bring a writ of mandamus because it is a discretionary decision in (inaudible). [LB339]

SENATOR LATHROP: So you think that the State Claims Board can sit on something and not do anything and leave that claimant in limbo if you are outside the two years? [LB339]

SENATOR WHITE: They can do that. [LB339]

SENATOR LATHROP: Do you agree with that? [LB339]

LAURA PETERSON: I'm not...if you read through the statute, the process is as the Senator describes it, that the trigger for the six-month extension is the action of the board. If the board would fail to act, I'm not...you'd have to make an argument that your right to withdraw is also extended. And I mean, it doesn't specifically state that in the statutes. [LB339]

SENATOR WHITE: I think there's a case that indicates this, is there not, that you don't have the extension? [LB339]

LAURA PETERSON: There may very well be. [LB339]

SENATOR WHITE: I'm not certain about that, but I believe, Senator, there is. [LB339]

SENATOR LATHROP: Well this might be a good place to clean that up. [LB339]

SENATOR WHITE: I was just raising that point. [LB339]

LAURA PETERSON: But certainly just reading the context of this statute, the process is statutorily as you describe it. [LB339]

SENATOR LATHROP: I have one more question for you. Can you tell me why if you are resolving a claim of \$5,000 or less why we would need to give you authority to approve the attorney fees? Because the bill doesn't give you authority to give, award attorney fees on top of what you decide is fair, but from what you decide is fair. [LB339]

LAURA PETERSON: I believe, isn't that the authority of the claims board now? That

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they don't have the right to award on top of but... [LB339]

SENATOR LATHROP: Yeah, that's true, but... [LB339]

LAURA PETERSON: ...so what you are arguing is it's not necessary. The question is, is it necessary? [LB339]

SENATOR LATHROP: Exactly. [LB339]

LAURA PETERSON: I'm not sure. I think really what we did is said, okay, if the claims board is required to do it, we want to be sure that we don't take away anybody's right to obtain attorney's fees so we made that amendment. I'm not sure in that scenario if the claim...I mean generally when the claims board is acting on a claim, they aren't addressing the attorney's fees. I mean that's an arrangement between the claimant and the claimant's attorney and that check is written to the attorney and then... [L399]

SENATOR LATHROP: But this, in page 7, line 19, in 81-8,228, you are required to determine and allow attorneys' fees and expenses. So essentially someone who makes a claim in front of you then has to, after going through the claims process with you, which is adversarial, then have you approve the attorneys' fees and costs of the person you were just arguing with. [LB339]

LAURA PETERSON: You're right, and that says that the State Claims Board should be doing that now. And I suspect that...I am not aware of any instance where we have recently, I hate to say never, but we have not...generally when we get the claim, the attorneys, what portion of that claim, whether we're paying the amount that was claimed or whether we are paying some sort of settled agreement amount, we are not addressing in those the amount of the attorneys' fees that are allowable from within that claim, according to this statute. The claims board should be doing that now and I would continue to do that and I hate to say that's not... [LB339]

SENATOR LATHROP: Then the reality is, is nobody is doing it now even though it's mandatory in this statute. Yes? [LB339]

LAURA PETERSON: I hate to say that, but yes, you're right. [LB339]

SENATOR LATHROP: I know you hate to say that but we're glad you were honest with us. Thank you. [LB339]

LAURA PETERSON: And I mean, really, I think we, you know, that agreement is between the attorney and the claimant, and not the state's, but it is mandatory. [LB339]

SENATOR LATHROP: Thank you. [LB339]

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SENATOR CORNETT: Are there any further questions? Thank you. Next proponent? Okay, we'll move to opponents, I was confused for a moment, but opponents? Neutral testimony? That closes the hearing on LB339 and opens the hearing on LB500, and Senator White, you are welcome to open. [LB339 LB500]

SENATOR WHITE: Tom White, W-h-i-t-e, appearing with the permission of the committee to introduce LB500. Madam Chair, I offer LB500 to address a problem with a serious lack of highly trained workers in the state of Nebraska. LB500 would amend Section 48-628 of the revised statutes to exclude apprenticeship training programs as a condition disqualifying an applicant for employment benefits. Additionally, LB500 states an employer's account shall not be charged for this type of training. Such approved training includes but is not limited to apprenticeship programs established pursuant to 3-302(c)(5) of the federal Labor Management Relations Act, 29 U.S.C. 4-2842. Essentially one of the problems that we face in Nebraska is that we are a large state. The training facilities for highly skilled industrial occupations--steamfitting, electricians, and other high-trained items--are largely located in Omaha or Lincoln. Many of our jobs, especially with the advent of ethanol plants, are located in far western Nebraska, different areas. It is extremely difficult to send a person in an apprentice program out to those areas and have them complete the program. They cannot complete eight hours of work as a normal apprentice does and then come back to the training facility for two hours of further training to complete their education. What this bill would allow is that if an employer hired an apprentice, that one week out of a month they would be allowed to come back to Omaha, Nebraska, or Lincoln, or wherever the training center was, and do 40 hours of training. And during that week they would receive unemployment compensation for that lost week. When we were in Revenue Committee, as you know Madam Chairman, the Governor's head of economic development indicated there are 30,000 jobs in the state of Nebraska paying \$30,000 or more that are going unfulfilled as we speak. That's enough empty jobs to fill our third or fourth largest cities. One of the occupations that is most in demand and the shortages are most critical are the occupations that would be served by this. The cost is very low. The benefits would flow largely to developing skilled workers who would be willing to work in the rural areas of our state where the needs are particularly acute. In light of the cost, in light of the need, in light of the rural nature of the economic development that would be encouraged, I ask the committee to forward LB500 to the floor and I would be happy to try to address any questions that you may have. [LB500]

SENATOR CORNETT: Thank you, Senator White. Seeing no questions... [LB500]

SENATOR WHITE: Thank you. [LB500]

SENATOR CORNETT: First proponent? [LB500]

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MARK McCOLLEY: (Exhibits 3 and 4) I have some written testimony here too if you want to... My name is Mark McColley. I am president of the Omaha and Southwest Iowa Building Trades. [LB500]

SENATOR CORNETT: Mark, I'm sorry, could you spell your name for the record? [LB500]

MARK McCOLLEY: M-c-C-o-l-l-e-y. [LB500]

SENATOR CORNETT: Thank you. Sorry. [LB500]

MARK McCOLLEY: And again, I'm president of the Omaha and Southwest Building Trades, and business manager of Steamfitters and Plumbers Local Union 464. For years, the building trades have been trying to figure out a way to train apprentices in rural Nebraska. There was talk of a training center in the Grand Island area at one time, and we would utilize grant money from the work force development to help build that. That proved to be a pretty expensive proposition and we felt that we couldn't do that at this time. Right now, an apprentice attends school two night a week for 34 weeks, September through May. He works a regular 40-hour work and then attends school in the evening for three hours a night, two nights a week. He is required by the Office of Apprenticeship Training, Employers and Labor Services, OATELS, to attend 250 hours of classroom training a year. So you see, under this scenario an apprentice from western Nebraska is unable to work in the area and attend school. In the past, apprentices had to move to Omaha or to Lincoln and attend the five-year apprenticeship program, and then after graduating move back home, and we have had several members that have done just that. LB500 would allow for our apprentices to be brought in for 40 hours a week training every six weeks, and draw unemployment for those wages for that week. The apprentice program would supply rooms and food for the week while they are in training. The key to this is not to have the unemployment go against the employer account for those weeks of training. This will allow us to work apprentices close to home and enable contractors in rural Nebraska to be able to have apprentices on their payroll. They have a similar law in Iowa and they have daytime training over there that works very well. Statistics show that a person retains more information from a 40-hour class than they do attending evening classes three hours a night after working all day. With a short supply of skilled work force in the country, LB500 will go a long ways to train Nebraskans and fill those jobs created by a very fast-growing energy and ethanol industry. That's all I have. Thank you. I'd take any questions. [LB500]

SENATOR CORNETT: Questions from the committee? [LB500]

SENATOR WHITE: Mark, I misspoke. I said four weeks and it's only once out of every six weeks, is that the plan? [LB500]

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MARK McCOLLEY: Yes. There's like, it's a five-year apprenticeship program so you have first through fifth year apprentices. So they'd be on a weekly rotation so you'd do the first year, then the second year, third year, fourth year, and fifth year, and then you'd start over again. So every sixth week they would be coming in. [LB500]

SENATOR WHITE: Thank you for clarifying that. [LB500]

MARK McCOLLEY: Sure. [LB500]

SENATOR CORNETT: Thank you. Seeing no further questions, thank you, Mark. [LB500]

MARK McCOLLEY: All right, thank you. [LB500]

SENATOR CORNETT: Next proponent? Opponents? Neutral testimony? [LB500]

RON SEDLACEK: Good afternoon, Madam Chair and members of the Business and Labor Committee. For the record my name is Ron Sedlacek. For the transcriber, I previously spelled my name and unless you want me to do it again, I'd be happy to. [LB500]

SENATOR CORNETT: Until she learns it, Ron. [LB500]

RON SEDLACEK: R-o-n S-e-d-l-a-c-e-k. [LB500]

SENATOR CORNETT: Thank you. [LB500]

RON SEDLACEK: Thank you very much. I would like to just express on behalf of the Nebraska Chamber of Commerce that we have no objection to the legislation should the legislation be advanced to the floor of the Legislature, that the committee statement does reflect that we do not have an objection to the legislation. At this point we do not have a position of a supportive mode. We did have some questioning in regard to the socialization of the cost due to noncharging of benefits, but by the same token in support of the general intent of the legislation in training, there were many advocates in that regard. So we have decided, at this point at least, to take a neutral posture. [LB500]

SENATOR CORNETT: Thank you, Ron. Any questions from the committee? Seeing none, thank you, Ron. [LB500]

RON SEDLACEK: Thank you, Senator. [LB500]

SENATOR CORNETT: Are there any further in a neutral capacity? Seeing none, that

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ends the Business and Labor Committee for the day. And I move that we move into Executive Session. Do I have a second? I have a second from Senator White. Thank you, ladies and gentlemen, for coming. [LB500]

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Disposition of Bills:

LB265 - Advanced to General File, as amended.

LB339 - Advanced to General File, as amended.

LB500 - Advanced to General File, as amended.

Chairperson

Committee Clerk