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Transcriber's Office

Business and Labor Committee
November 13, 2007

[LR185 LR197]

SENATOR CORNETT: Good morning, and welcome to Business and Labor. First, I'm going to introduce members of the committee. To my immediate left is Senator Tom White from Omaha, and Senator Wallman, Senator Rogert, and legal counsel is Lori Thomas. And we have a new staff member, Andrew Zimmerman, who will be the committee clerk today. Our page is Cora, and she is from Lincoln. She's over there in the corner. If you have any pagers or cell phones, could you please turn them to vibrate at this time. With that, we're going to start the hearings, and our first interim study is by Senator Nantkes. LR185 is an interim study to examine the film industry in Nebraska as it relates to economic development. Good morning, Senator Nantkes. How are you?
[LR185]

SENATOR NANTKES: I'm good. Good morning, Senator Cornett, members of the committee. My name is Senator Danielle Nantkes, N-a-n-t-k-e-s, and I represent the Fightin' 46th Legislative District. (Laughter) I'm here today to introduce LR185. Last year I introduced LB235, a bill that would provide incentives for film production in Nebraska. That bill is currently on General File and will be discussed by the full Legislature during the upcoming session. LB235 was modeled after similar legislation that was passed in Oklahoma. That legislation has been very successful. Since that legislation has been passed, the state has seen an increase of \$11 million in film production in the first year, during 2005, and last year an increase of \$18.9 million in production. Last year Nebraska approximately realized about \$1.5 million from film production. Imagine the possibilities that we have before us if we offered film incentives, in terms of productions and jobs that would be created. I introduced LR185 to offer this committee an opportunity to hear from Nebraskans who are working in the industry and to highlight the tremendous economic impact these jobs mean to our state economy. I believe that this program will make our overall economic development tools more comprehensive, and it will help to celebrate and showcase the inherent natural beauty of the Nebraska landscape. I also believe that legislation like this is critical to stop the brain drain in Nebraska and to retain the creative class. Following me today are representatives from unions, actors, filmmakers, tourism, and economic development professionals who will tell you that incenting and growing the film industry in Nebraska would boost our economy in a myriad of ways. I'd be happy to take any questions at this time, but thank you for this opportunity, and thank you for your thoughtful consideration of this important issue. [LR185]

SENATOR CORNETT: Thank you, Senator Nantkes. [LR185]

SENATOR NANTKES: Thank you. [LR185]

MARK HOEGER: Senator Cornett, members of the committee, my name is Mark Hoeger, but that is spelled funny. It's H-o-e-g-e-r. I'm from Omaha, and I'm copresident

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of Oberon Entertainment, which is one of several film production companies based in Omaha. I was asked to sort of, as the first speaker, to kind of give a general frame of the arguments on this issue, and then I'll talk a little bit about some specific information that I have. But the overall arguments boil down to several. The tangible benefits of direct--obviously, as money is spent and people are employed within the state, that's an obvious no-brainer, and the economic ripples that come from that, and people will be talking about that. But there are also some very important intangible benefits to film production in a state, that in some ways, in the long run, more important than the direct dollars that are spent, because first of all, just in the area of tourism--they're going to talk about that as well, too--having films made in your state puts you on the state, literally. As people begin to see your landscapes, understand who you are, it creates an identity that is, you know, the best...you know, companies spend literally millions of dollars to do product placements in films. And to the extent that if you're a location in a film, it's worth equivalents of millions of dollars on top of what is directly spent. The other argument, which is an even more intangible one, but I think even more important, one of the issues that we all know we face big-time in Nebraska is brain drain, the notion of young people feeling like, when they get out of school, that they're going to go someplace cool, some place where things are happening. And having a film industry, a recording industry...one of the biggest benefits for Nebraska recently has been the rise of Saddle Creek records and the notion that, you know, significant creative and artistic production that finds a place on the world stage helps everyone feel more proud of being here and like that I'm in a place where I want to stay and grow up and eventually raise my own kids. The other thing I wanted to bring up specifically in testimony is we as a company represent a number of large investors who basically we act as a development company for them and go out and develop projects, and then we find other funding to actually fund the productions. And we recently just secured funding for a \$20...up to \$30 million film, but probably more a \$20 million film out in LA with a hedge fund, private equity hedge fund, a group out there. But what is significant is that we will not be shooting this film in Nebraska because we can't. We can't look our investors in the eye and say, this is...you know, I'd love to shoot it here; there's no reason why we couldn't shoot it here. But it just won't take place because there are too many other films out there that are...or states out there where...or countries, even, where you can get the incentives to make it make sense. And in talking with some of the coproducers on this particular production, the consensus from them is that, in fact, that we're going to see a tremendous reemergence of production in the United States largely because of the combination of incentives that are beginning to become widespread throughout the United States in many states, and more significantly, the lowering of the dollar. Because it used to be, for example, that going to Canada was a major economic benefit because you could take a dollar here and it's worth \$1.20 once you get across the border. Now that's flipped over, and so even to go to Europe, take advantage of incentives there, the euro now is making it prohibitive to go over there. So a lot of production is going to be coming back into the United States, and unless Nebraska is in a position to take advantage of that, it's going to be going to Iowa, Colorado, or all of our neighbors

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around us that have these possibilities. Thank you. Any questions? [LR185]

SENATOR CORNETT: Thank you very much. [LR185]

MARK HOEGER: Thank you. [LR185]

SENATOR CORNETT: And I apologize. It was an oversight on my part. Each testifier, when you come up, please state and spell your name for us. Thank you. [LR185]

KATHY ROCCO: Good morning, Senators, and Senator Cornett and the Business and Labor Committee. My name is Kathy Rocco, R-o-c-c-o, and I am from the Omaha Film Office. Today's producer is very cost conscious, exploring digital technology and every avenue that's open to them to reduce the cost of production. One of the most important areas to research before beginning a production has to do with what incentives countries and states are offering to attract filming to their areas. It is strongly recommended that the film commissioner in the state that is being considered for a film project be contacted to get the complete details of what is being offered in the way of production incentives. Benefits can be seen in retail sales, manufacturing, travel and tourism that would not otherwise be injected into our community and state. Each production results in jobs for camera operators, sound and lighting technicians, caterers, carpenters, truck drivers, hair and makeup, graphic artists, photographers, set designers, painters, actors, and the list continues. Budgets are spent on hardware to props, plants to steel, paint to timber, draperies to carpets, furniture to portable dressing rooms, generators to saddle makers, restaurants to hotel rooms, cleaners to car rentals, and that list continues as well. Feature films have a cast and crew of approximately 50 to 100 people, with a budget of \$3 to \$75 million. Prep begins up to 60 days of shooting, with an average of three months of filming. A producer explained, we don't pollute, we don't require zoning changes. We come in for three to eight months, we can employ up to 100 people, drop a million dollars into your economy, and then we're gone. Many times the difference of going to a state with incentive is the difference between whether the movie gets made or doesn't. Thirty-seven states at this time offer some kind of an incentive package, and these are some of the states that have now recorded what has happened because of the incentives: The Louisiana Film and Video Commission reports \$510 million in total production revenue for 2006, and \$20 million less than its revenue for 2005. That shift was caused by a change in the state's incentive package. In Michigan, last fiscal year revenue from the features did not exceed \$2 million--we had no business because we had no incentives. As the first state to introduce an incentive program in 1997, Minnesota felt the business impact five years later when it lost its program due to budget cuts. Last July the incentive was reinstated, adding almost \$4 million to the previous year's production revenue; in 2006, Minnesota took in \$26 million. New Mexico film office reported an economic impact of \$428 million from the production industry in 2006, largely due to its 25 percent taxed incentives. Texas had a good year, has no incentives and says, we continue to see the effects of the film incentive

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programs by all of our neighboring states. South Carolina, since installation of a new legislature, jobs created in the state have increased 67 percent and shoot days have increased 58 percent. North Carolina film and TV production revenue increased nearly 22 percent last year and accounted for 22,000 jobs, according to the state's department of commerce. In New York the city can attribute more than \$500 million in new film and television business, as well as 6,000 new industry jobs. The tax credit changed everything. In Illinois we're estimating that revenues will be up by 260 percent over 2003. Illinois enacted tax incentives beginning 2004 and have seen a steady increased production over previous years. In the Des Moines Register it states, An aggressive plan to entice movie producers to spend their money on projects filmed in Iowa has shown promise even before it becomes law. The tax incentive plan, which received final approval last Wednesday, created a lot of buzz at an international film commissioner trade show in California. Three movie projects are on tap for Iowa and possibly two more could be shot in the state within the next two years. If we enact this program, they will come. The incentives are designed to make Iowa competitive with states such as Louisiana and Illinois that have lured movie producers to locations away from Hollywood. It's going to put Iowa once more on the map. And lastly, green light Oregon, which includes a labor rebate incentive, was created after the governor met with Hollywood studio execs to discuss additional means of increasing production to the state. A recently completed economic impact analysis shows that these incentives have reversed the downward trend of out-of-state production shooting in the state. Activity in Oregon during 2005 has more than doubled from the recent low hit in 2003 as incentives stimulated filming in the state. According to the study Oregon's film and video industry had an overall statewide economic impact of \$985 million and paid a total of \$192 million to Oregon's employees who work in the industry. I just ask you to consider this piece of legislation, and I will be open to any questions that you might have.

[LR185]

SENATOR CORNETT: Seeing none, thank you very much. [LR185]

KATHY ROCCO: Thank you. [LR185]

DAVE BARTHOLET: Morning, Senator Cornett and committee members. My name is Dave Bartholet, and that's spelled B-a-r-t-h-o-l-e-t. I'm the director of visitor center services with the village of Boys Town, and today I'm testifying as the legislative chair for the Nebraska Travel Association. And basically the Nebraska Travel Association is here to promote, protect, and enhance the economic interests of the tourism industry in Nebraska through collective teamwork, education, public awareness, lobbying, and strategic marketing efforts. So I'm here to represent tourism. I represent attractions, bed and breakfasts, wine growers, ranchers, outfitters, convention and visitors' bureaus. I work closely with the Department of Tourism to promote tourism bills, and I am pleased to announce that this bill right here in the number one priority bill for our organization this next legislative session. As an employee of Father Flanagan's Boys Home--Girls

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and Boys Town today--I know the economic impact of the film industry through the movie Boys Town that was filmed on location in 1938, and without such a movie it's very difficult to imagine how successful Father Flanagan's Boys Home would have been. And in 2006 we had just under 180,000 visitors to Boys Town. Approximately 30,000 of those visitors came from out of state, and they came here to see the attraction. They came here to see the village of Boys Town, because a lot of them, you know, Turner Classic Movies, they still see the movie--it's still aired today--and it's meant great success for our organization, and it's helped us reach more and more kids and at-risk youth and families. We as a tourism industry are behind this bill. We see this as a great impact for jobs for Nebraska. We see this as an impact for small communities that might get a film in their area. I personally feel that Nebraska has something to offer a lot of states can't. We have a lot of flat, and we have a lot of great topography, and we don't have a lot of windmills and such things in our western part of the state. And we really feel that, from talking to people in the industry, that a lot of films would really take a look of us if we have incentives. This is a neat bill, it's a fun bill, it's a bill that people can get behind. It's a bill that people like to read, and we feel that it's just going to have a great impact on our state. So I'm here to let you know that the tourism industry is behind this solidly. We'll be talking to people behind the scenes. We'll be talking to our senators to really promote this bill. It's due, and it's nothing but a win/win for everybody. And with that, I'll take any questions. [LR185]

SENATOR CORNETT: Seeing none, thank you very much. [LR185]

DAVE BARTHOLET: Thank you. [LR185]

MANYA NOGG: I almost need a cushion. Good morning, Senator Cornett and members of the committee. I'm sorry about my laryngitis. If I need to talk louder, ask me. My name is Manya Nogg, spelled M-a-n-y-a N-o-g-g, and I'm kind of the Methuselah of the group. And we're going to have a little humor, but it's a very serious situation, as far as I'm concerned. Thirty-three years ago I founded a company called Actors Etcetera, Limited, whose sole purpose was to offer location scouting for regional companies, national companies, and we've had international clients. From 1980 to 1985 I was the film commissioner for Omaha, and Lincoln did not have one so I served as a stopgap, for want of a better word. And at that time I talked to Governor Thone and many businessmen, trying to make them understand the significance of the tax incentives. And sad to say, the only thing that has changed since then is the motel tax bill, which is really a token because it doesn't help a lot of the production companies unless they're here over 30 days. But I want to put my little speech in a perspective each of you can relate to, even if you're not going to spend \$300 at the spa. Several years ago we were local casting directors for the Sean Penn film. It was a very big project, but it was only here for about two weeks, so that tax incentive didn't mean anything to them. We are talking about...that particular case, if you're not here a month, it doesn't mean anything. So for instance, in order to prove my point, some years ago I went out and got

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thousands of dollars in \$2 bills. I gave them to the production company, they gave me a check, and they paid their people in \$2 bills. Within a week everyone in Omaha knew they were around. One of the things you need to look at is the day-to-day stuff of film making. The crews receive \$100 to \$150 a day for food, but they eat several meals a day on the set. Comes the weekend, every high class restaurant, every expensive restaurant, every club, every bar gets that money. That doesn't...Kathy did a wonderful job of giving you all of the details, but they aren't the day-to-day things that we all can relate to. When they came in, for instance, dentists, masseuse--they have sore muscles--doctors, gym memberships--all benefit from the money, and this doesn't show on the information you're given. I had one friend who was too lazy to go to the gym, so she had me rent equipment and take it to her hotel room. (Laugh) I told you I would make you laugh. There's an interesting joke in the industry wise, it's called the 100-mile syndrome. And when you get 100 miles from home and a lot of money to spend and you don't have time to spend it, you buy stupid stuff. We took them to a football game. They spent over \$100 on those silly foam fingers which they threw away before they went home. That's the kind of money they spend that you never know anything about. During About Schmidt, because that was something everyone heard about, three of Jack's gals went to the most expensive spa in Omaha every Saturday, and by the time they left, they had dropped between \$300 and \$500 every Saturday for three months. That's something we can understand. Years ago there was a mini-series called America. A lot of it was shot here in Lincoln. My best friend was the decorator on the set. He loved the stuff at the Furniture Mart--bought an entire truckload of furnishings to take back to Hollywood to use in the next TV show he was doing. So my point of what I'm talking about is that there is so much money spent that never shows up on these records. The bottom line, folks, is really the bottom line, and if we don't offer them incentives to come here, they're going to go elsewhere. Now do you have any questions? I will try to answer them. And if you want the name of the spa, I'll give it to you later. (Laughter) Thank you for your time. [LR185]

SENATOR CORNETT: I don't have time to spend \$300 at a spa. (Laugh) [LR185]

MANYA NOGG: Well, who has time to spend! Even if you had the time, would you spend \$300? [LR185]

SENATOR CORNETT: No. Next testifier? [LR185]

DANA ALTMAN: Good morning. Thank you for having me. My name is Dana Altman, D-a-n-a A-l-t-m-a-n. I didn't get any sleep last night because yesterday was our first day of principal photography on a \$1.4 million film to be shot in Omaha, Nebraska. So I'm a little nervous and a little tired at the same time. We have...my production company is an entertainment development company in Omaha, and we, since I've been here, since '90 or '88, have done four feature films, five feature films, three of which were done in Omaha and around the state. I've done PBS specials that have all run. I just finished a

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six-year documentary with Marine Corps Aviation. We have on this current picture, to give you a sense of it--it's a small film--but we do have two Academy Award winning actors. We have a first-time director that lives in Omaha, Nebraska, by the name of Nick Fackler, and we have an Academy Award nominated production designer. We struggle to continue to do film, and I...my wife and I figured that we may want to move to some other state, and we're highly considering that. But I prefer to stay in Nebraska and raise by six children, five of which still live at home. And without any kind of support, it gets harder and harder. This particular picture was financed by three individuals in New York City. They came up with \$1.4 million, and that's their money that's going to be spent here. Of that money, we intend or have done cost reports with my accountant, who is from Minnesota by way of California, because I can't find an accountant in Nebraska. I have 15 people that have come from out of state to help us with our film, because we don't a crew base that's been supported by additional film. With just those 15 crew people and not including cast, I can guarantee you that we will give them \$41,000 in cash to spend while they're here. We will spend \$23,000 in lodging for those 15 people. I am going to take a break over Thanksgiving and give everybody a reprieve, but guess what? I'm buying hotel rooms for days that they won't be here so that I can capitalize on the only thing that this state provides, which is 30 days' tax incentive on lodging. I don't want to be a downer, but when we look at where we're at right now, we're spending \$12,000...\$13,000 a day on just Nebraska labor, and this is a small film. That has an impact. Manya Nogs's definition of how that money is spent can be seen when you come and hang out with us for one day. I don't...we started...and I'm about done. But we started this production, and I went directly to the labor support staff in Omaha, the Teamsters, and they looked at my budget and they said, if we apply our arrangement to you, it will cost you so much money that you'll probably have to shut down. So we were in a position where they recognized that we would abide by their laws and that we'd do as much as possible, but it didn't make sense for us to sign a contract. Had that happened, we wouldn't be filming in Nebraska. Today is our second day of principal photography. Everybody is going 100 miles an hour in Omaha right now, but my accountant and I wanted to come and voice our opinion. And we're going to quickly leave when we're done, so that we can get back to work. But cost to date--we had four weeks of preproduction, and we've spent \$312,000. Below the line, by the time we leave it will be \$685,000. Above the line it will be \$115,000. We have \$34,000 in catering and \$63,000 inclusive of hotel and per diems, as I mentioned. And we won't leave Omaha without spending close to \$970,000 on a \$1.4 million budget. So whatever you can do to support us, we're interested in, before I have to leave and do my work in some other state. Thank you. [LR185]

SENATOR CORNETT: Senator White. [LR185]

SENATOR WHITE: Mr. Altman, I live on 55th and Lake. Your film is shooting blocks from my home, and I think blocks from Senator Cornett's childhood home. Thank you for bringing those jobs to my district. [LR185]

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DANA ALTMAN: Thank you for allowing me to. [LR185]

SENATOR CORNETT: Senator Rogert. [LR185]

SENATOR ROBERT: Mr. Altman, I just have a couple. If we created a meager package, versus if we created a super package, how much of an increase do you think the state would see on either end, just in your opinion, in dollars coming into the state? [LR185]

DANA ALTMAN: There's no definition of meager. I don't understand. I look at the current bill that has...I look at every little detail. My accountant looks at every detail. But I can guarantee you that if you do nothing, you will see nothing. The industry is at such a critical state that literally my investors looked at my budget, and I said we have to shoot in Nebraska. My director is from Nebraska. He said we have to shoot in Nebraska. And they said, well, we're going to deduct from the budget the tax savings that you could find in another state. They picked that and put that burden on us. I'm running around Omaha, Nebraska, trying to find lodging for Martin Landau, an Academy Award winner, at 78 years old. And I can't get a deal. And I wouldn't ask for rooms if I had a tax incentive package that would help me offset my production costs. So how much will it increase? It will, it will retain. It will allow me to continue to bring money and have financiers support my effort in staying at home near my children. [LR185]

SENATOR ROBERT: Super. Thank you. I appreciate your efforts. [LR185]

DANA ALTMAN: Any other questions? Thank you. [LR185]

SENATOR CORNETT: Seeing none, thank you very much for taking the time out today. [LR185]

DANA ALTMAN: Thank you very much. Thank you. Do you mind if I leave? (Laughter) [LR185]

SENATOR CORNETT: No, no. Go right ahead. How many more testifiers on this bill are there? [LR185]

CHAD BISHOFF: Good morning, Senator Cornett, committee members. My name is Chad Bishoff. That's B-i-s-h-o-f-f. I live in Omaha, Nebraska. I am president of a company called Bishoff Casting. I am also a freelance production coordinator in Omaha. One big thing that I've noticed...I've only been in this business for seven years, and in that time I've had the pleasure of working with a whole number of new people to the industry, people that, you know, have had the chance to intern with Dana's company, people that have had a chance to intern with Oberon Entertainment. And I don't see any

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of those people any more. They aren't staying in Omaha. They're moving on, they're going out of state, you know. Most of my friends, both in the industry and out of the industry, have left the state. They all think I'm crazy for actually wanting to stay here. But I absolutely love the lifestyle in Omaha and in Nebraska. I want to start a family. I want to raise a family in Nebraska, but quite frankly, I'm scared that without tax incentives and without a reason for more industry to come here and work in Nebraska, where my job is going to take me. I don't know if I'll be able to make a living in the industry that I've grown up loving since I was ten years old making home movies of my friends, you know. I don't have a lot of numbers and figures to sit here and talk about, but what I do talk about is the quality of life. Everyone knows that Nebraska is an excellent place to raise a family. Nebraska is an excellent place to grow up. It's safe, and we have a lot of talented people in this city, but they leave. In the last seven years I haven't seen any increase in the grip and electric department. The same department...it's the same five, six guys that have been here for the last seven years. You know, we're all...you know, no one is sticking. You know, and I think that's the biggest thing that concerns me. We've got a lot of talented people that are here now and working, but I think I'm one of the last people that has been able to maintain a living in this industry, and I think that's what is probably the biggest concern, is that nobody thinks that you can make a living in Nebraska doing this, this line of work. That's really all I have to say, if you guys have any questions. Thank you. [LR185]

SENATOR CORNETT: Seeing none, thank you very much. [LR185]

RICH LOMBARDI: (Exhibit 1) Good morning. My name is Rich Lombardi. I'm appearing today on behalf of the International Brotherhood of Teamsters, Local 544. Teamsters love the movies. [LR185]

SENATOR CORNETT: Rich, I'm sorry. We have a new committee clerk. Could you spell your last name for him? [LR185]

RICH LOMBARDI: Sure. L-o-m-b-a-r-d-i. We...Jim Scheard and Kim Quick wanted to be down here, and they've testified on many occasions in support of this type of legislation. And I want to thank those members here that are on the Revenue Committee for advancing LB235 to General File last year. I'm just providing, and we've sent by e-mail to all your offices, kind of a compendium of economic and employment studies that have been done around the various states that all pretty well concur with, I think, the goals of this particular study, which is to show that this generates jobs and from the Teamsters' standpoint, these are great jobs. We have a motion picture and theatrical trades division in our international. This is a huge part of Teamsters' work across the country, and I think as you take a look at these various studies, I think they're all pretty conclusive that these types of tax incentives work. These are performance-based tax incentives, that you don't get the tax break unless you actually provide something, and they're also transparent. You know who gets them and how much they get. So I'll leave

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this with the committee, and thank you all for your time. [LR185]

SENATOR CORNETT: Thank you, Rich. Are there any further testifiers? [LR185]

LAURIE RICHARDS: Good morning. My name is Laurie Richards, L-a-u-r-i-e R-i-c-h-a-r-d-s. And good morning, Senator Cornett and all of the senators on this committee. My current position is with the state of Nebraska as the state film officer, and I contract with the state of Nebraska to the Department of Economic Development, and I work approximately 20 hours a week. So I want to do is to testify neutrally about this, obviously, but just to give you any more information that I can, and not to double up on what any of these other people have said or brought to bear today about the film industry in Nebraska and what the film industry has been and what it is and what it could be in the future. I think everybody in Nebraska wants to do the right thing, and we want to attract the film industry, and we want to look at it and understand that it is an industry and that it is a viable industry. And many other jurisdictions and states and other countries around the world embrace the film industry now, as much as they embrace any other industry of brick and mortar and product and raw materials that go into make that product that is sold around the world. One of the United States' largest exports is the information technology industry. Nebraska certainly has had a role in that and continues to play a role in that, because of all of our wonderful key fibrotic activities that we have rolling through the state. Of all of the components that go to make up a film and what a film becomes, that infrastructure is here in some part, and what we continue to try to do is to nurture that. As the film officer for the state, I get phone calls every day of the week, and we probably field about 15 calls a week, approximately. Of those calls that we get with the state film office, and Kathy gets with the Omaha Film Commission, there are probably three or four of them that are very, very serious in our green lit, meaning they have the dollars to film, and they're in a position to move forward, just like Dana Altman, whom you've just heard from, and he's moving forward with a \$1.4 million project in Nebraska. These projects that we get phone calls for are looking for locations certainly, and looking for resources, and that's information in a database that we keep and that Kathy and I continue to update, and working with local communities and resources across the state. But the first thing that comes out of this producer's mouth or their liaison when they call me or they call Kathy is, what kind of incentive do you have? And so we'll proceed to tell them what we do have, and many times they'll be somewhat interested, but for the most part, they're really interested in the industry as it stands in Nebraska and what that means for their bottom line, and it's just like any other industry. And it is a bottom line. The difference that we're not used to maybe in Nebraska, and supporting completely in this fashion is, this is a temporary industry. It comes in, it hires locally, it uses all of these resources we've talked about. They can spend millions of dollars, but then they go away. And typically they go away leaving behind a smarter resource base, too, and a resource base that has garnered and learned more, to become a better crew person, through transportation, through the other services of production, from assistant directors all the way down to production

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assistants. Typically these crews will bring in everybody above the line, and below the line they hire locally. Above the line are their stars and the actors, the director perhaps, that they'll bring in. So yes, they can come in, they can bring in millions of dollars, and we try to do what we can to support that. Just to give you a little bit of that history and where the state of Nebraska is right now within the Department of Economic Development, the film office was generated about in the early 80s at the state level, after Terms of Endearment. And it was seen at that time by the administration that it would be important to have a liaison to work with the film industry. So it's gone through some reincarnations through that time period, and at this point, the film office is consulting position through the Department of Economic Development. I think it's a good place for the film person liaison to be, and it would be a wonderful opportunity if we would be able to encourage more film production and film production activity, see real dollars generated and brought in new dollars in the state, in Nebraska, if we were to encourage some kind of an inducement opportunity. Now I've just said a whole bunch, and you've heard a lot of it already. I don't know if you have any questions. I don't know what your study has entailed. I don't know of all the materials that you may have or do not have. But if you are interested in any other additional materials that I could help provide, I certainly will be available to do that. You can get ahold of me through our web site at filmnebraska.org or through the Department of Economic Development at 471-3111, or my personal phone number is (402) 202-1905. And that's also my business number. So wherever I am is the film office, but I turned my phone off a minute ago, so. (Laughter) Any questions, Senator Cornett? [LR185]

SENATOR CORNETT: None for myself. Any for the committee? No. Thank you very much for taking time today. [LR185]

LAURIE RICHARDS: Okay, sure. Thank you. [LR185]

SENATOR CORNETT: Was that the last testifier? Okay, that concludes the hearing on LR185. Oh, I'm sorry. Senator Nantkes, you're recognized to close. My apologies. [LR185]

SENATOR NANTKES: Senator Cornett, members of the committee, thank you for your time and thoughtful consideration of this important issue. I was remiss in not including in my opening remarks a sincere thank you, Senator Cornett, to you and Senator White for advancing LB235 out of the Revenue Committee last session and also a sincere thank you to Senator Wallman and Senator Rogert, who are cosponsors of LB235. So thank you for your support. Many members of the committee are well-versed in the many, many positive impacts this type of legislation would have for Nebraska. I think that we've heard a lot of good information today about how economic considerations in the world economy make the time...the time is now for this type of legislation. We've heard that, you know, Nebraska may not have the mountains, we may not have the oceans, but we do have the Great Plains, and we need to get on the same plain as other states to bring

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this industry here. Furthermore, I would just like to note that time and time again on the campaign trail so many of us and our colleagues have highlighted that one of Nebraska's greatest public policy challenges is addressing the brain drain. And this is the type of legislation that has significant ability to address that very real concern and that would continue to showcase and highlight the inherent beauty and quality of life that we know Nebraska has to offer. So with that, I again thank you for your time this morning, and we'll look forward to continuing the dialogue on this important issue. And we'll continue talking to your offices before session begins next January, so thank you very much. [LR185]

SENATOR CORNETT: Thank you, Senator Nantkes. Now that concludes the hearing on LR185. We're just going to wait until the room clears out for a moment. The next interim study we're going to hear is LR197. It is an interim study of workers' compensation program to examine issues relating to the vocational rehabilitation program. My legal counsel, Lori Thomas, is going to open on this legislative resolution. May I see a show of hands of how many people are going to testify? Okay. What I...I hadn't gone over this earlier. I would appreciate it, if you have something to say that you say it, but please try not to repeat what the person in front of you has already testified to. That will reduce the amount of time on the hearing and reduce the redundancy. Go ahead, Lori. Thank you. [LR185 LR197]

LORI THOMAS: (Exhibit 2) Good morning, Chairperson Cornett and members of the Business and Labor Committee. For the record, I'm Lori Thomas, T-h-o-m-a-s, here to introduce LR197 regarding the voc. rehab program, as it pertains to the Nebraska Workers' Compensation program. Senator Cornett introduced LR197 to conduct a general examination of the vocational rehabilitation program, with the goal of identifying concerns within the program, which if addressed could improve the outcomes for the injured worker. As part of this study I've had the opportunity to speak with staff from the compensation court, vocational rehabilitation counselors, and other interested parties. One of the reoccurring concerns that surfaced during these conversations is the need to get injured workers into a vocational rehabilitation program more quickly. As you will note in the memo that is in your folders, according to the workers' compensation court's internal data, in Nebraska over the last five years the average time, from the date of injury until the worker enters a voc. rehab program, is just over three years. It's almost universally recognized that the longer an injured worker is out of the system, the less likely they are to return to work. We will have a testifier from the court here in a moment, who will be able to talk more specifically about the Nebraska outcomes in the voc. rehab program, as well as provide more information on the costs associated with the program. There will also be counselors who can share their experience and the obstacles they face that contribute to the delays in providing those counseling services. Another issue that I heard more than once was that the data that we have is largely raw data, without supporting details that may provide helpful insights into the effectiveness of our program. For example, we know how many cases were opened in voc. rehab, and also

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we know how many of those cases were returned...or individuals returned to work. However, when we look at the voc. rehab cases, they do not indicate...that don't indicate a return to work, we don't have data showing if there were contributing circumstances such as maybe the injured worker voluntarily left the program, or their attorney withdrew them from the program. I think maybe having more detailed data might help to provide better indication of what aspects need to be looked at within the program; also, what aspects could be strengthened or where efforts could be concentrated. Also, in your packet...I think Andrew put it in there, there is written testimony from the Nebraska Department of Administrative Services, which provides the state of Nebraska's vocational rehabilitation cases and their expenditures. As you will note, voc. rehab makes up only a small portion of the overall workers' compensation dollars that are spent. And once again, that data does lack specificity, but it's nonetheless relevant to our conversations today. And finally, Senator Cornett had asked me to remind those wishing to participate today in the hearing that this is a general inquiry into the voc. rehab program, so any thoughts, concerns, or ideas regarding the voc. rehab program are welcomed. So with that, I would turn it over to Glenn Morton, the administrator of the workers' compensation court. [LR197]

SENATOR CORNETT: Thank you, Lori. [LR197]

GLENN MORTON: (Exhibit 3) Senator Cornett, members of the committee, my name is Glenn Morton, and that's M-o-r-t-o-n. I'm the administrator of the workers' compensation court, and I just note that we're going from the glamour of the film industry to the nuts and bolts of vocational rehabilitation, so you get the full spectrum today. As you know, the vocational rehabilitation training benefits, as you probably know, are paid from the Workers' Compensation Trust Fund. I'm testifying today to give you basically background information regarding the fund and the purpose of the fund, the history of the expenditures from the fund, assessments made for the fund, how those are made, and so on. And hopefully that will provide some background for the more detailed testimony you'll hear today. I don't have...I've got some statistics on the fund; I don't have some of the statistics that Lori was referencing. But Kris Peterson, our voc. rehab manager, vocational rehabilitation manager, does have those or some of those, and she'll be testifying after me. The Workers' Compensation Trust Fund was created in 2000 as a result of the merger of two previous funds--the Second Injury Fund and the Vocational Rehabilitation Fund. Those statutory provisions relating to the trust fund are found in Section 48-162.02. The purpose of the fund, as stated in the statute, is to make second injury benefit payments in accordance with Section 48-128 and vocational rehabilitation payments in Section--and I won't keep citing sections here, but these are the foundational ones--vocational benefit payments are covered in Section 48-162.01. I'll mention just...I'll just touch on the second injury benefits, because I know those are not the subject of this hearing, but I did want to make sure to reference those benefits, because it gives you a real picture of the full operation of the fund. Second injury benefits are, and I won't go into the details of even what those are, unless you have

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questions, but they're now limited to injuries that occurred before December 1, 1997. But they are still available for second injuries that occurred prior to that date. The bottom line with that is the second injury benefits are intended to relieve the employer of a burden for additional compensation that may be due to a preexisting condition that doesn't have to do with the work-related injury, right? That's the basic bottom line there. Actually those are running off now. We have very few if any new cases coming in, but most of those benefits are lifetime benefits, so it's going to take several years for that to run off. The last three fiscal years we've...the payments for those benefits have ranged between \$400,000 and \$450,000 a year. Again, we expect those to drop off, but they haven't been; again, because the same people are staying pretty much in the system. Going back to the trust fund, the trust fund is financed by assessments against workers' compensation insurers, self-insurers, and the intergovernmental risk management pools. Those are the three payors that we've talked about in our system. The assessments are equal to 2 percent of the benefits paid by the insurer and self-insurer and so on, in the preceding calendar year. Assessments are made whenever the balance of the fund goes below \$1.2 million or when the administrator of the court determines that it's likely to go below \$1.2 million in the next upcoming year. The initial balance of the fund in 2000 was approximately \$6.2 million. Those were transfers from the previous two funds. Since then we've made an assessment in fiscal year '04 totaling about \$5.6 million, and again in 2007, just last year, totaling \$4.9 million. The balance of the fund at the end of FY 2007, which is June 30, 2007, was about \$6.7 million. So the history is that we're making assessments...needing to make assessments every three or four years because of the way the fund is set up. The State Treasurer acts as the custodian of the fund. All monies and securities in the fund are held in trust by the State Treasurer. They're not considered money of the state or property of the state. The administrator of the compensation court is charged with administering the fund and also with conserving the assets of that fund. The Attorney General appoints a member of his or her staff to represent the fund in any cases brought by or against the fund. Under Section 48-162.01, which again is the basic vocational rehabilitation provisions section of our statute, an employee is entitled and benefits--and I'll do some quoting here--if as a result of the work-related injury, the employee "is unable to perform suitable work for which he or she has previous training or experience." That's the fundamental test for whether voc. rehab is an entitlement. If so, the employee is entitled to "such vocational rehabilitation services, including job placement and training, as may be reasonably necessary to restore him or her to suitable employment." So that "suitable employment" is the standard. The statute also refers to gainful employment. The case law really doesn't make a whole lot of distinction between suitable and gainful and kind of treats them the same way. The trust fund is...now there are various different benefits available, and they're paid by various different types of entities, if you would, or different sources. The Workers' Compensation Trust Fund is responsible for training costs--the tuition and fees, books, related costs of that sort--and it's also responsible in some cases for board, lodging, and travel, depending on the circumstances of the employee. Now in turn the employer, or its insurer, or if it's a self-insurer, the employer, or its

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insurance company or pool, if it's a government entity, is responsible the cost of evaluating the employee and if necessary, developing and implementing a voc. rehab plan. Those services are provided by private rehab counselors; they are certified by the court. So that again is the employer, the employer or the insurance company pays those costs. Now in addition to that, the employer or its insurer is also responsible for paying the weekly temporary disability benefits, the wage law's type benefits, when the employee is engaged in an approved plan. So those are how the basic payments and who pays them lies out. In addition to my written testimony which I've handed out, there's also a chart at the back of those materials showing the total annual expenditures from the trust fund for voc. rehab, not for second injury but for voc. rehab, for the past ten years. And it's broken out by the direct benefit costs--benefits to the employee for training and so on--and the administrative costs for the court in operating the program. Just as a general point of information, the benefit costs for the last three fiscal years have been right around one million dollars a year, and the administrative and operational costs have been around \$350,000 or a little less for those same three years. Now if you look for the total ten-year period on the chart, as you can see, the total expenditures from the trust fund has been about \$12 million over those ten years. So that concludes my testimony, but I'd be happy to respond to any questions. [LR197]

SENATOR CORNETT: Senator Rogert. [LR197]

SENATOR ROBERT: Mr. Morton, can you tell me what is all involved in the administrative costs? [LR197]

GLENN MORTON: Yes, I can. It's the salaries and benefits for our staff. We have three specialists who actually are engaged full-time in reviewing plans--two master's-level and one doctorate-level specialists. We have two support staff, and we have a voc. rehab manager, who is a part time manager. She has...that's Kris Peterson. She has several other duties as well--salaries and benefits for those people, operating costs, rent, that sort of thing...training, travel, and so on. So it's typical kind of operating expenses for...in a support program. [LR197]

SENATOR ROBERT: Okay, thank you. [LR197]

SENATOR CORNETT: Any further questions? Thank you very much. [LR197]

KRIS PETERSON: (Exhibit 4) I saw you look around when somebody said, Chris Peterson, because you thought you knew who you were looking for. (Laughter) I'm one of those other Kris Petersons, and it's K-r-i-s, Peterson, P-e-t-e-r-s-o-n, and I am the vocational rehabilitation manager for the Nebraska Workers' Compensation Court. My purpose this morning is to present information collected from the vocational rehabilitation database maintained by the court. Lori has already warned you that we have lots and lots of number, but I hesitate drawing any conclusions myself from what

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some of these numbers say, but they are somewhat meaningful. The first part of the information that I will be giving you corresponds to the ten-year chart that you have received from Mr. Morton. Between July 1, 1997, and July 1, 2007, 9,440 cases were opened in voc. rehab. Cases are opened when an injured worker claims entitlement to services, and a private counselor is either agreed to or request for appointment of a counselor is made to the court; 8,885 of those cases have been closed; 2,431 of the cases show one or more implemented vocational rehabilitation plans. So that's 2,400 cases out of a total of 9,400 cases actually show plans implemented; 1,524 of those cases have one plan, and 907 of the cases show two or more plans. Two or more plans can happen either when a plan is extended, like job placement, you try 90 days; it looks like there's a good possibility that a few more months or weeks could help. If it's extended, that becomes a second plan for the same individual. Other examples of multiple plans--we have a number of individuals that go through English as a Second Language training to get their language skills to the point where perhaps they can take on another kind of plan, whether it be a G.E.D. plan, a job placement plan, or even an associate degree type plan. So it's not unusual for people to have more than one implemented plan. Twenty-one hundred forty-seven of the cases with plans have closed. On the 2,431 cases with plans, the average time--and the information in your earlier memo is at the end of this prepared testimony, and so this is what I did that's new--the average time between the date of injury and the date a case was opened--and I want to make sure that we know what dates we're talking about is, that claim to entitlement--is 831 days or approximately 2.3 years. The average number of days between the injury and the case opening in voc. rehab for all 9,440 cases is 741 or again, slightly over two years from the date of injury. The significance of that is generally, if you draw any kind of conclusion, these people have already been out of the work world for two years. We have recorded counselor costs--3,212 closed cases. This is not a monitored report, meaning we get case closure forms that don't include the costs, and so the only thing I have done is totaled the costs reported on cases where we've been given that information, is \$14,084,227.62. This averages \$4,385 per case, but the range of charges is extreme. The highest recorded counselor costs on those 3,200 cases is \$43,500, and the lowest is \$270. So again, you know, you've got a lot of numbers, but drawing big conclusions from them could be dangerous. Since some of the questions raised about the successes of placement activities, I did the smaller extract of data that most of you have already seen before, and that is 3,739 cases were opened in voc. rehab, beginning in January of 2002. The average length of time from the date of injury to date opened in VR is 1,117 days, or a little over three years. So the smaller...the closer...the more recent data shows that we're going out farther from the date of injury to the date a case is opened. Twelve hundred eighty-seven of those cases had a plan or plans of some type. Because some cases had multiple plans, there were 1,922 plans approved for those cases; 762 cases had one or more job placement plans approved, for a total of 931 job placement plans. Two hundred eighty-five of the 762 cases show a closure code indicating a return to work at closure, 280 cases reported a new job with a new employer, and the remaining 5 were reported as being

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self-employed. One hundred twenty-seven cases closed because a lump-sum settlement was either pending or approved, and 18 were closed with a code indicating the employee was not working. This concludes the information I prepared for presentation. I'll be happy to answer any questions, and again, if there are additional statistics or information that you think would be helpful from the database that we can get, I'll be happy to provide that, too. [LR197]

SENATOR CORNETT: I see Senator Wallman has a question, but I'm going to ask one first here. I just want to make sure I have the numbers straight. With people that were in vocational rehabilitation and in the plans, you have a number of 285 show cases...a closure code indicating returned to work at closure. That means 285 people were placed in jobs through the vocational rehabilitation? [LR197]

KRIS PETERSON: I would not draw that conclusion necessarily. [LR197]

SENATOR CORNETT: Okay, what is the difference between the 285 and the 280 number? [LR197]

KRIS PETERSON: When the counselor... [LR197]

SENATOR CORNETT: I assume the 280 found employment on their own, after... [LR197]

KRIS PETERSON: Well, 285 cases closed showing the individual was working. [LR197]

SENATOR CORNETT: That doesn't mean they found work through vocational rehab? [LR197]

KRIS PETERSON: Now...right. That doesn't mean that...that's true, that doesn't mean...and you'll be hearing more about "suitable," "gainful." That doesn't mean that the person was, in fact, in a suitable, gainful job. That just means they were working. [LR197]

SENATOR CORNETT: What is the difference between that number and the 280 cases? [LR197]

KRIS PETERSON: The 280 is of the 285. [LR197]

SENATOR CORNETT: Got it. I'm sorry, okay. So do we have a number for the people that are in these plans, that their vocational rehab specialist or the company that they're working with actually finds employment for? [LR197]

KRIS PETERSON: No. (Laugh) I mean, the simple answer is no. The closure form can

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come in at the end of a plan, and at that time it's either successful or it's not successful, meaning the person is working. Or the closure form comes in after all the litigation has played out. The closure form comes in when a lump-sum settlement is approved. And there can be a big delay between the end of a plan and that closure form coming in, and that's...we get the code off the closure form. [LR197]

SENATOR CORNETT: Part of the vocational rehab is to find work, correct? [LR197]

KRIS PETERSON: I mean, that is the ultimate goal of vocational rehabilitation, is to return injured workers who cannot go back to a job that they could do, based on education, training and experience, because of their injury, to a job that is suitable. [LR197]

SENATOR WHITE: And gainful. [LR197]

KRIS PETERSON: And gainful...or gainful. (Laugh) [LR197]

SENATOR CORNETT: There is a difference. [LR197]

KRIS PETERSON: I mean, and that's all...case law will address that in various manners. You know, we see some cases where, in fact, part-time employment at minimum wage is considered suitable for any given individual, based on a lot of different factors. And sometimes it is. [LR197]

SENATOR CORNETT: Senator Wallman. [LR197]

SENATOR WALLMAN: Thank you, Senator Cornett. Thank you, Kris, for being here. I know this is an emotional issue for some people, and I as an employer, you know, if somebody gets hurt on the job, I'm probably going to be reluctant to hire that person, if I think there's a recurring physical ailment. And I know of a person that worked for the state--he got laid off on account of that. And I don't know what he's going to do. But isn't there some way we could make this a little better, so transition from private to off of this here, because they want to stay on this, because you know, who's going to hire them? [LR197]

KRIS PETERSON: Oh, I agree. You know, that...if there was a magic pill (laugh)...and I'm going to be moderating a session at workers' compensation college, and the question...the paper that the students will have to complete is, if there's one thing that you could do that you think would benefit the system, what would it be? And the one thing that I think, not only in Nebraska but every place else, is we've got to do something to keep these workers at their time-of-injury employer. I mean, that to be is key. And other jurisdictions have instituted incentive programs where they incent employers through either premium discounts or other ways to take back these injured

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workers. But you know, you've just heard that anywhere from two-plus to over three years, and that's no good. That's...a lot of times that's probably too late. And you're right. These people...a lot of the injured workers have gotten used to not getting up in the morning and getting dressed and brushing their teeth and putting their makeup on and hitting the street. And that makes everybody's job, including the private counselors, tougher. [LR197]

SENATOR CORNETT: Do we have the data on how long...what the time period is from the time the people actually start vocational rehab to the average time that they find a job inside that plan is, or are we seeing the people wait until the plans expire and then go find work, and then it's considered closed with new employment? [LR197]

KRIS PETERSON: Anything that, you know, that I would have on that would be anecdotal, and the problem is there's so many different kinds of plans, you know. And so to say, you know...we have ESL plans that go on for two and three years. And so, you know, it's hard to...you don't have apples and apples, because we've got associate degree plans that, you know, are less than two years. We have on-the-job training plans, where somebody can...a counselor works with an actual employer to take on an injured worker and teach them a marketable skill, sometimes hire them afterwards or sometimes they have the skill to go out and work for somebody else. [LR197]

SENATOR CORNETT: Senator White. [LR197]

SENATOR WHITE: I have a series of questions about the figures that you've brought in. First of all, in response to Senator Wallman's concern, wasn't the Second Injury Fund created to encourage employers to hire previously injured workers without risk that they would be hit for higher premiums? For example, a laborer who injures a back and then wants to go back on the job--has it been successful at that. [LR197]

KRIS PETERSON: I think what...you know, and obviously Glenn would know a lot more about that. The ADA played a big part in doing away with a lot of second injury funds, because the ADA has its own incentives and abilities to, you know, encourage employers to take on injured workers or...again, I don't know. [LR197]

SENATOR WHITE: So the answer is, you don't know. [LR197]

KRIS PETERSON: Yeah. [LR197]

SENATOR WHITE: I've litigated ADA claims repeatedly, and actually it's been gutted. So it does not help much,... [LR197]

KRIS PETERSON: Yeah. [LR197]

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SENATOR WHITE: ...for the vast majority of injured workers. The question I have is, what can we do in response to Senator Wallman's concern, that people who have been injured who want to go back to work, don't find a barrier in their way? [LR197]

KRIS PETERSON: And again, my...you know, my magic pill is, we've got to...stay at work with the time-of-injury employer, or return to work with the time-of-injury employer. [LR197]

SENATOR WHITE: Now with regard to the delay in the implementation of plans, you show sometimes up to...from date of injury to date opened is a little over three years; is that correct? [LR197]

KRIS PETERSON: Right. [LR197]

SENATOR WHITE: Voc rehab is generally used for the most severely injured workers; correct? [LR197]

KRIS PETERSON: Again, you know, not...we don't have numbers, so what I'm going to tell you is my impression, just based on what we see on a daily basis. You would be surprised at the minimal severity of injuries that can prevent someone from being able to go back to work. [LR197]

SENATOR WHITE: I misspoke. It should have been the most disabled workers, whether or not the severity of the injury--disabled from working. [LR197]

KRIS PETERSON: An example--LPN, RN, who...very well educated, been on the job 15 years, making good money, \$18 to \$20 an hour. Gets a back injury, can't lift more than 50 pounds. I don't lift 50 pounds, you know, on a daily basis. But the hospitals, the nursing homes, the assisted living homes, will not employ an LPN or an RN who has a 50-pound limit. [LR197]

SENATOR WHITE: Correct. Now... [LR197]

KRIS PETERSON: So she/he is unable to return, but not severely disabled. [LR197]

SENATOR WHITE: Well, they're disabled from making a gainful employment. [LR197]

KRIS PETERSON: Right, and there's a difference. [LR197]

SENATOR WHITE: All right. Now, let's talk about the delay between injury and that. Isn't that because they have to find out what their final disposition is with regard to their recovery before they qualify for voc. rehab? [LR197]

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KRIS PETERSON: Right. [LR197]

SENATOR WHITE: Okay, one of the things that concern me is that...maybe you indicated or at least I heard you indicating that these people just want to stay home and don't want to put on their makeup and hit the street. In reality, they don't even qualify to apply for voc. rehab until they've reached maximum medical improvement, do they? [LR197]

KRIS PETERSON: Right. [LR197]

SENATOR WHITE: Okay. Let's go on to another point. [LR197]

KRIS PETERSON: And I didn't want to leave you with that impression. It's not that I think they all do. It's just that because of the way the system works, they have been sitting at home for three years. [LR197]

SENATOR WHITE: Let's talk about the fact that it looks like over the ten years, that only approximately one in four people who initially apply for voc. rehab ever get a case...a plan actually confirmed and implemented; is that correct? [LR197]

KRIS PETERSON: Right. [LR197]

SENATOR WHITE: What happens to the three and four employees that don't get such a plan, and what is the cost to the economy, both the state in the form of taxes, but also the economy, for our failure to properly get them retrained? [LR197]

KRIS PETERSON: First of all, there's a lot of reasons those cases close without a plan. Either the request or the claim of entitlement has been made before the person is returned to maximum medical improvement and when they do, they don't have restrictions that prevent them from being able to return to work. They've made a choice to not participate for one reason or another. We see everything from "I'm so close to retirement; I'm going to go ahead and retire," "I'm a mother who has a spouse who can support me, and so I've decided not to return to the working world," lump-sum settlement, moving out of state, they die. I mean, there's a lot of reasons that those cases close without a plan ever being developed. [LR197]

SENATOR WHITE: What percentage are just denied voc. rehab benefits by the courts? They make the application and they just aren't awarded. [LR197]

KRIS PETERSON: I have no information about that. The only ones we see are the ones where it's awarded. (Laugh) [LR197]

SENATOR WHITE: The other one is, do you know what the cost is to the economy of

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us failing, and to the state, to properly rehabilitate a worker and allow them to return to suitable and gainful employment? [LR197]

KRIS PETERSON: No. [LR197]

SENATOR WHITE: Thank you. [LR197]

KRIS PETERSON: Um-hum. [LR197]

SENATOR CORNETT: Any further questions? Thank you very much. [LR197]

KRIS PETERSON: Um-hum. [LR197]

SENATOR CORNETT: Next testifier? [LR197]

MIKE NEWMAN: Good morning. My name is Mike Newman, and that's spelled N-e-w-m-a-n. I'm a practicing rehabilitation counselor out of Omaha, Nebraska, and I've been in the field for 28 years, so I've seen a lot of changes over time. And I am here just to lay a foundation of what vocational rehabilitation is about, and then there will be some follow-up from my colleagues that will elaborate further. I'm going to begin just by stating that vocational rehabilitation has been with us for a long time. It's actually rooted in federal legislation that dates back to the War Risk Act of 1914. So even way back then they recognized the need, because people get hurt on the job. And I think of...every time when I see a building or a bridge or a road, just because of the profession I'm in, I realize that probably somebody got hurt during that venture. Anyway,...and the need continued to grow and by 1911, just from a historical perspective, ten states in the U.S. enacted compulsory workers' compensation laws because they saw the need. And then in 1920 there was an act called the Smith-Fess Act that actually provided vocational rehabilitation counseling, training, prosthetic appliance, and job placement to physically disabled workers. And then by 1921, 45 of the states and territories had laws on the books regarding workers' compensation, even though they weren't uniform across the board. And they're still not uniform across the board, from state to state. There are similarities, but each state has their own style and their own system. Now I'm going to talk just briefly about the mission, what it is we're about, and what we're trying to accomplish. When a worker sustains a disabling injury, the first course in terms of the medical...following the medical treatment is to really try to return them to their own job. And that's the most cost-effective way to provide rehabilitation services, but unfortunately it doesn't happen very often, and when that does not occur, vocational rehabilitation comes into play. And I want you to understand that there's two segments here: There's a return to work, and there's a vocational rehabilitation segment. And return to work really encompasses doing everything possible to get the person back to their job of injury, with or without reasonable accommodations; you know, assistive technology, whatever is available. That, if that does not occur, the next step is to see if

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there is another job within the employer that they have skills, training, temperament, you know, the aptitude for. But the mission there is to really try to salvage that person's career, as close as possible, to what they were doing. That notwithstanding, when that does not happen, then vocational rehabilitation comes into play. When a person actually needs vocational rehabilitation, then it's our mission to actually provide services that include counseling, testing, job placement, retraining--whatever is necessary to restore them to suitable and gainful employment. And I want to define those terms for you, so that they're clearly understood. "Suitable" means getting a person placed into or prepared for, that is, within their qualifications by way of education, training, transferable skills, compatibility with their permanent work restrictions sustained from the injury. Then we talk about the issue of gainful employment, and that's equally important because it really refers to the wage level, and the goal of the mission there is simply to get the person into a career field that is suitable and also gainful, meaning at or near their prior wage level. So you want to get the person back, you know, as close as possible to where they previously ended, and that constitutes vocational rehabilitation. If we achieve that, then the mission has been achieved. And I'll just leave you briefly with a thought: Through our workers' compensation system in Nebraska, we do utilize that model, and it's called the...in many circles it's called the rehab continuum. In our system it's known as the rehab priority system, and it's very well laid out. It talks about return to previous job with the same employer, modification of the previous job, and then a new job with the same employer, and then flips into the rehab component. So we are following a national model that is well-known, that works, that is appropriate and is effective when it's allowed to be utilized. Thank you. [LR197]

SENATOR CORNETT: Thank you. Seeing no questions, thank you. Because of the number of testifiers left, I'm going to limit testimony to five minutes. [LR197]

LORI PETERSON: Hello. Thank you very much for allowing me to testify. My name is Lori Peterson. I'm a vocational rehab counselor in Omaha, and I'm here today just to talk very briefly about job placement, just one aspect of our job. Once it has been determined that the injured worker cannot go back to work, it's our job to get them suitable employment. Things we need to look at before we can even determine a vocational goal, we have to work through the issues that have come up since they've been off work--the anger, the depression. Some of them, their whole identity is wiped out because it was...their whole identity was what...the job that they did. Some of them are non-English speaking, so that's another component. And then we've got the injury to deal with--what restrictions they have from that. We come up with a vocational goal, and then we need to support that goal with labor market research to make sure that those jobs are out there and to make sure that the claimant can do the job with the restrictions. And then we need to teach them how to look for a job--job-seeking skills training, they have no idea. Many of them really have never done a formal job search before. We need to get as basic as filling out the applications, developing a resume, interviewing skills, how to go look for a job, what are the sources that are there. There is

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nothing in that continuum, when you really look at it, that spells success. You have a non-English speaking, lower-educated individual who no longer is able to do what they were doing, no longer able to support their family, their financial situation is devastated. Early return to work--I know that's been addressed before, and just focusing on returning to work in some aspect needs to be allowed as early as possible. Right now the statutes are that they cannot participate in vocational rehabilitation until maximum medical improvement is determined. That could be a considerable amount of time while the person is healing from the injury but still able to participate in the evaluation process, in the thinking, the developing...the job development aspect of it, and just remaining focused on returning to work. After we've actually got a plan in place, developed, then we have the job search itself, which is another aspect that tends to be very frightening to the claimant. They're never been out there doing that. We're providing them with job leads, we're expecting them to come up with job leads on their own. The whole time we're having to support them through that process. It tends to be probably one of the more costly aspects of vocational rehabilitation, just due to the fact that there is so much time and attention required for job placement. The best way to really combat some of this is early intervention, getting the claimant focused on returning to work, even though they may still go back to their employer at time of injury. Two years off the job, you're not thinking about returning to work. That's all I have to say at this time. [LR197]

SENATOR CORNETT: Thank you very much. [LR197]

STEVE HOWARD: (Exhibit 5) Good morning. I'm Steve Howard, H-o-w-a-r-d. May I please the committee, I'm with the law firm of Dowd Howard and Corrigan, appearing today on behalf of the state AFL-CIO and the membership of the state AFL-CIO and the clients that our firm represents, here to speak on the vocational rehabilitation issues. Just to sort of pick up on some of the comments that have been made, it's a very valid point that the employee must hit maximum medical improvement before you get any services. Perhaps a legislative change to permit that to take place earlier is if everyone agrees--the employer and employee both agree--that voc. rehab is inevitable, to sort of get that process jump-started a little early. Some of the legwork could be done, some of the background and research into the individual employee's training and experience and abilities could be accomplished before MMI. Many times with a catastrophic injury, you know well in advance that this person is going to need voc. rehab. The second thing I want to talk about was a case that came down two weeks ago yesterday from the Nebraska Court of Appeals entitled McKay v. Hershey. What happened in that case is Mr. McKay was hurt on the job, Hershey was able to keep him working, and so Mr. McKay went to trial the first time and wasn't awarded voc. rehab. Well, he probably wasn't entitled to voc. rehab at that time. The award was silent on the issue of voc. rehab. Then the Hershey plant closed, and Mr. McKay came back to court and said, I'd like some voc. rehab help. And the trial court and ultimately the Nebraska Court of Appeals said, you know, if you weren't awarded voc. rehab the first time, you can never

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go back and get it. Perhaps...and I think under the current law, that's a correct decision. It's not my place to second guess the Nebraska appellate courts, but perhaps another legislative change that might be in order is, in the event voc. rehab is not awarded the first time, but there's a significant change in material circumstances due to some cause other than the employee's own fault or wrongdoing, that employee can then go back and have that award modified or have that award changed. When the Vickers plant closed on North 72nd Street, it threw many fairly highly paid workers with plenty of benefits out on the streets, but if they had already been to the work comp court and been denied voc. rehab, they didn't have an opportunity to go back. It's similar to the divorce standard. You know, in a divorce case, if there's a significant change, if a job comes up or something with the children or income changes, the court can always go back and revisit those issues, but not so with voc. rehab in the work comp court, unless it is awarded the first time through. Another scenario perhaps as often as the plant closure is the circumstance where an employer keeps that injured worker working through the day of trial, and then sometime after trial, that individual is fired and they're let go. And if they weren't awarded voc. rehab the first time through, they can only be awarded it based upon a very narrow standard, which is an increase in incapacity due solely to the injury, not to the job conditions, not to the market, not to something else that happened, but due solely to the injury. The initial thought was to say, any material change in circumstance would entitle someone to go back and modify an award. Perhaps that's not very appealing to business and maybe rightly so. If it were narrowed to say, you know, if it wasn't the employee's fault, number one, and number two, it relates specifically to that employer--a change at that employer--then that may be a narrow enough definition for the court to go back and award it. Basically what it would be is, if these were the circumstances that were in place the first time you went to trial and you would have gotten voc. rehab, the court can modify that award. So I think that McKay v. Hershey case is very, very significant. Just some other general thoughts: You know, the comp court, the Nebraska comp court does not have the power to penalize an employer for refusing to accommodate an employee's restrictions. And as Senator White correctly pointed out, the Americans with Disabilities Act just...it is so watered down and it is so thin and so weak it does very little to supply much incentive for an employer to take an employee back, with the federal court decisions that have come down and the delay. I mean, you're looking at a couple years in federal court to get there. If there were some type of a penalty or some type of authority vested with the judges of the comp court to say, all right, the first priority is same job, same employer, or modified job, same employer. If that employer unreasonably refuses to make the accommodation, perhaps the court should be empowered with some ability to effect the benefits, to say, well, this man or this woman is off work, and the court really believes that that person could have been employed if the employer had done the right thing and accommodated those restrictions. Perhaps vesting the court with some authority, some statutory authority to give incentive to bring that person back would serve as a greater purpose, because remember, I mean, that's first priority of voc. rehab, is right back with the same employer. And as the appellate courts have recognized, the most important

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job out there that goes into the big mix and the big analysis of what a person's loss of earning power is and their employability is, the job they were doing on the day they got hurt. That's really the most important one. I'll try to move along. [LR197]

SENATOR CORNETT: I was going to say, you have about one minute left. [LR197]

STEVE HOWARD: Okay. If there were...well, what I'd like to do, then, is just close. And I'd like to introduce a gentleman to my right. This is Mr. Patrick Cloonan, C-I-o-o-n-a-n. Pat is a union sheet metal worker that suffered an injury. He's had three surgeries. He's in a voc. rehab plan right now, so if you have questions for someone that's trying to make it in a play right now, Mr. Patrick Cloonan would be a good person. [LR197]

SENATOR CORNETT: Really quickly, if you have further things, my legal counsel will be happy to accept those. Do you have copies for all the committee? [LR197]

STEVE HOWARD: I have copies of the McKay case. [LR197]

SENATOR CORNETT: Okay, the page will take those from you. [LR197]

STEVE HOWARD: Thank you for the committee's time. I appreciate the opportunity to speak today. [LR197]

PATRICK CLOONAN: Good morning, everybody. Ladies and gentlemen, I'm Pat Cloonan, C-I-o-o-n-a-n. I'm here; I don't have all the answers--I wish I did. I got a whole bunch of questions, a lot of problems. I'm presently in voc. rehab at Metro Tech in Omaha. I'm very happy with it. It's working well, I believe, and it's with Strickland and Associates up in Omaha. I'm very happy with them. Very happy with workmen's comp and everything. My big problem right now is I don't see how I'm going to finish. I'm not going to go through...I can't go through with it. It's another year before I graduate with a degree. I've lost all my insurance. I have nothing. My wife, she's got one prescription that's \$200...I think it's \$229 a month, another prescription that's \$184 a month, then a few lower ones--now \$10, \$20 a month, whatever. Well, not little, but without insurance and everything, I can't see how I'm going to make it. It is absolutely killing me. We've tried to get on Medicaid. I've tried everywhere, and I would love to be able to finish my voc. rehab, because I believe in the end it's going to work out well for me. But right now, there's just no way. I mean, I've talked to my wife so many nights about this. We've sat up talking and everything. Right now she's going without medicines because we don't have to do it. I was making very good money, and now \$600 a week is what I'm getting and it seems fair. But we just can't make it on that there. I mean, we're not living a "richy, richy" lifestyle or anything like that. It's just we're having very big difficulties, and I thank God that this ain't 20 years ago, where I had children at home. Like I say, it's just me and my wife now, and it is very, very difficult to make it without insurance. We're on...I had COBRA payments, but they were running \$769 a month, and that ran out. Is

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there any way we can get help, even to get state insurance while we're on this plan or something, or have the employees (sic) continue our insurance while we're...you know, we were out there, we were working for them, got hurt working for them. When I personally got hurt, I worked a year after getting hurt. I mean, I reported it right away. The doctor said it was not life threatening, and it wasn't...had nothing to do, so I kept working for another year before I had to have surgery, and I wound up having three surgeries. There was complication with it, got an infection and that. But then voc. rehab without insurance, I don't see how anybody makes it on this here--I really don't. I mean, it would be just like...and if you guys went out and got hurt seriously, had to go to voc. rehab, lost your insurance, I mean, God forbid, but it could happen to anybody. And it happened to me. [LR197]

SENATOR CORNETT: It's Mr. Cullen, correct? [LR197]

PATRICK CLOONAN: Cloonan, yeah. [LR197]

SENATOR CORNETT: Cloonan. Just to let you know, I went through the vocational rehab program. [LR197]

PATRICK CLOONAN: I see it worked out good. (Laughter) [LR197]

SENATOR CORNETT: Well, I'm making about \$45,000 less a year. (Laugh) But at least in the immediacy, our office has information on pharmaceutical companies offer plans for people that are unable to afford the medications, and that would not be a legislative change immediately, but that is something we can...might be able to help you with. [LR197]

PATRICK CLOONAN: Well, I hope so. [LR197]

SENATOR CORNETT: Okay. [LR197]

PATRICK CLOONAN: Have you got a phone number and address, because I'll take them, whatever I can get. [LR197]

SENATOR CORNETT: I don't have them right now, but I will...if you leave your name and address with us or e-mail, we will contact you on that. [LR197]

PATRICK CLOONAN: Okay, I'll be glad to. I mean, we need help--I need help. [LR197]

SENATOR CORNETT: Are there any questions from the committee? Thank you very much. [LR197]

PATRICK CLOONAN: Thank you. Everybody have a great day now. [LR197]

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SENATOR CORNETT: Wait. [LR197]

PATRICK CLOONAN: Was there a question? [LR197]

SENATOR CORNETT: Oh. [LR197]

PATRICK CLOONAN: Okay. Thanks a lot. [LR197]

HOLLY BERQUIST: (Exhibit 6) Good morning, Senator Cornett. My name is Holly Berquist, B-e-r-q-u-i-s-t. I'm a vocational rehabilitation counselor, and I have been doing this for ten years. Prior to that I was a elementary music teacher. My purpose today is to provide an example of a case that I am currently working, in an attempt to receive vocational services and implement a plan. So what I've done is I've given you just a brief scenario. This is a 40-year-old male, injured left knee while employed as a cement truck driver in June, 2005. Given you his average weekly wage, it figures out to \$13.60 per hour. I consider him a high wage earner. His academic level is...I'm very fortunate to have someone with some college skills. He's currently attending college classes, so I have an intelligent person. His work history--cement truck driver, delivery driver, assistant manager, and customer service representative. His permanent work restrictions are 35 pounds that he can lift, but he must alternate walk, sit, stand, which takes him out of a lot of labor jobs. As you can see, the injury to the knee was on June 25. He had surgery in August, 2005. Then clarification on permanent work restrictions was December 2005 to July 2006. He was terminated in March 2006 and was not referred for vocational rehabilitation services until five months later. And so at that point we had to get more clarifications on his permanent work restrictions, and that was received in October 2006. I then was able to write a plan for him to go to school to become a social studies teacher, history teacher. He'd have to finish his degree. That plan was submitted to the court on November 6, and then the court approved that on November 9, which was very quickly turned around. And then the insurance carrier denied that on November 17. The long wait then becomes before we get to trial, which is 9.5 months. So on September 5 the trial was heard, and the decision was made very quickly--within two weeks. We then had to wait two weeks to see if there would be an appeal. There was no appeal that took place. And so October 5, 2007, the services resumed. Unfortunately, the qualifications, the criteria to get into social studies program, teacher program, you know, changed in that time. So a letter had to be sent to the court on November 2 stating, I can't implement this plan; it's now a year later. And so we've had to start over. So what...my purpose here for today is, if we could start sooner with vocational services, that would be a very good thing. And if there would be any way to reduce the amount of time to get it to trial and to get a decision, that would be tremendous for the injured worker, because life happens. Things change while we're waiting. That's all. [LR197]

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SENATOR CORNETT: Thank you very much. Any questions from the committee. Seeing none, thank you for your testimony. [LR197]

PATRICIA REILLY: Good morning. My name is Patricia Reilly, R-e-i-l-l-y, and I've been a vocational rehabilitation counselor for 18 years. I would like to briefly talk about job placement, just to reiterate what Lori Peterson was able to say but also to remind the people on the panel that the vocational rehabilitation counselor's role in job placement is to teach the individual to locate new employment. It's not necessarily to place them in a job. That's a mistaken impression. It's very necessary for those individuals to go back out into the work force at any given time. They need the skills to locate new work. I'd also like you to consider, when looking at the statistics for success in job placement, that you consider the clientele that we typically work with. Many of our people are uneducated. They may be non-English speaking. They may be undocumented workers. They may have a history, or family history of being on Social Security disability. They may have mental illness, drug addiction, alcohol addiction. Those are all issues that we deal with on a day-to-day basis when working with these people. So please consider those issues when you're looking at the numbers for success versus nonsuccess. One of the issues that we've talking about is earlier referral, and I have a brief example of a case that I'm working on right now. It appears that everything was done right, but we're in a holding pattern because this individual has not reached maximum medical improvement. He is a crane operator. He's a 40-year-old man working in the construction industry, has done heavy labor, and heavy equipment operation. His crane tipped, he jumped, it caught him, mangled both of his legs. He's clearly a sedentary worker. He has been very successful in his rehab. He's able to walk with a cane. But it's apparent that he will be at a sedentary work level. He has a high school education. He was making \$18 an hour. You know, when we look at all of this, the early referral was made six months ago, but we haven't been able to write a vocational rehabilitation plan. He's done his career exploration. We're waiting for permanent physical restrictions. Any questions? [LR197]

SENATOR CORNETT: Seeing none, thank you. [LR197]

HOLLY BERQUIST: Thank you. [LR197]

ROD REHM: Good morning. My name is Rod Rehm, R-e-h-m, and I'm here on behalf of the Nebraska Association of Trial Attorneys. It's 600- or 700-member organization primarily engaged in representing the injured people around the state of Nebraska. I've been active in the workers' comp area for 25 years more or less, and first of all, our association supports the concept of vocational rehabilitation, thinks it's great that we've got it. I'm active in a national organization called the Workplace Injury Law and Advocacy Group, and I'm keenly aware that we're one of the very few states that has any significant voc. rehab. It's shocking. Iowa doesn't have it, Missouri doesn't have it, Kansas doesn't have it. It just doesn't exist, and it's great that we've got it. The problem

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with voc. rehab, in a way, is that we have a group of really good-hearted people trying to do a good thing--that's the voc. rehab folks--caught right in the middle of an advocacy system. And one of the things that has been overlooked so far in the discussions is that, you know, you have to qualify for voc. rehab to get the benefit of these people, and there's a bunch of hoops that have to be gone through, and the insurance industry and the employers--and I'm not saying that they're bad people; I mean, they have duties to their insureds and their shareholders, to make sure that the claims are all valid. I mean, you have to do a lot of things to get people eligible for voc. rehab. They aren't all really obvious. And as a consequence, when you finally reach that point, it may be years down the road. I'd really like to see how they arrived at those enormous delays as an average. That just doesn't match up with my practice when we practice in Lincoln and Omaha, and represent hundreds of people at a time. And we're in the voc. rehab system an awful lot quicker than that. I don't get that, but you know...when you're averages and so forth. We think some things can be improved in the system. This whole idea of the early intervention; that's a nice idea, but I don't know how you can get to that, because one of the hurdles that you get with the employer's side is, they don't want to start paying benefits and start having to hire these folks, to do studies and so forth, if they don't have to do it. And you don't get to that point until you reach this maximum medical improvement, which is kind of a medical legal term. It basically means the person's body isn't going to improve any more, whatever that means. Typically that's at least a year after the fact. And then...excuse me. Let me finish my thought for the people that don't do this for a living. And then the world just caves in on the workers, because if they have a back injury, for instance, and they're getting paid...this gentleman that talked about getting \$600 a week, when his doctor says that he's got a 20 percent disability, he's probably going to go down to \$120 a week. That's how it works, because that's all they'll pay voluntarily, while he figures out if he can get into voc. rehab, or what his true loss of earning capacity is, which would be paid at a higher rate for a back injury. My understanding it was a back injury? [LR197]

PATRICK CLOONAN: Hernia. [LR197]

ROD REHM: Hernia, okay. But at any rate, I mean, there's tremendous pressure on the workers, because they get...their world drops out from underneath them, and then they have to figure out, do I want to go to school? Am I going to be able to go to school? That sort of thing. Sorry, Senator. [LR197]

SENATOR CORNETT: I was just going to make a point. That may not be your experience in regards to the time line, but I know that it's public record: My date of injury was November 2000, and I can honestly say I had a really good law firm, and that was Senator White. And I was not placed, or I did not find my own job until 2004. [LR197]

ROD REHM: I don't doubt that. [LR197]

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SENATOR CORNETT: Through the vocational rehab plan. But part of that is the burden of the court. I'm sorry. Go ahead, Senator White. [LR197]

SENATOR WHITE: No, not at all. I agree, maximum medical improvement takes time, but don't you also agree with the testimony that came forward? There are situations where it's absolutely abundantly clear that a person, even though they haven't reached maximum medical improvement, is not going to return to their previous line of work and they need retraining. [LR197]

ROD REHM: Absolutely. [LR197]

SENATOR WHITE: Would you have a problem if the statutes were adjusted to allow for voc. rehab to start earlier under those circumstances? [LR197]

ROD REHM: No. I think that would be a good idea. I fear there would be some resistance in the Legislature, but I think that is a good idea. Essentially what NATA, Nebraska Association Trial Attorneys, thinks needs to be done is we need to look at the statutes to see if we couldn't figure out some way to make the process less burdensome. The people that run the court's voc. rehab section are guided by the priorities. We have to establish that you can't go back to any other employment with your previous employer before you can go to the next steps. That takes time to determine. Those are largely...and they have regulations set up to do that. I think that that's an area of concern to those of us that are out there in the field, down on the ground with the cases, as it seems like some of the regulations are burdensome. And that may be brought up by voc. rehab people who actually deal with it. You know, we kind of get it secondarily. I just got done with a situation where gosh, everybody was in agreement, but it turned out that some regulations, some forms maybe, had been changed since we started this whole process, and we kind of had to drop back at the last minute and reshuffle a bunch of paperwork. And you know, maybe that's something that could be looked at. [LR197]

SENATOR WHITE: Is the second injury fund functioning properly with regard to the primary objective of returning workers to employment? [LR197]

ROD REHM: Well, it's nonexistent, so... [LR197]

SENATOR WHITE: What has stepped up to take its place? [LR197]

ROD REHM: Nothing that's I'm aware of. [LR197]

SENATOR WHITE: Well, how much does it cost, in your experience, the economy to not have that in place? [LR197]

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ROD REHM: I wish I could know. I mean, I think it did encourage people to...employers to keep workers back on the job, because they didn't have to bear the whole cost of it. That may be something that would need to be revisited as a part of the whole picture of voc. rehab, frankly. [LR197]

SENATOR WHITE: Finally, in your experience, has it been a concern for you to return an employee to an employer, figuring that they're doing it just to avoid the cost of voc. rehab and then will subsequently find a reason to discharge or lay them off? [LR197]

ROD REHM: It's a big concern, and it's funny that you would say that, because we have this conversation with our employees virtually every day. I had a gentleman call me up last night, his wife actually, and she was in tears. And he has a badly broken hand that's had like, I think, five surgeries on it by now, and he's at a job that requires him to crawl up and down railroad cars at a grain elevator. And his hand doctor says he can go back to work with the right hand only. He's got a brain injury that is being disputed, and he's taking heavy medication for his...you know, and we're waiting for our day in court to find out whether that's compensable, and they're terrified, his wife, that if he goes back to work he can't do anything with the right hand only. And you know, what do you do? I mean, this is just every day in the workers' comp world, this offer of some sort of accommodated work, which we're now negotiating with them, and the fear that they're going to go back to work, they can't do the job, or they get frustrated and they quit. And if you quit, then that's one more thing that the employer can say as to why you can't get voc. rehab, as if, you know, employment was offered and you turned it down. So it's a big problem; it's a huge problem. [LR197]

SENATOR WHITE: Or if this gentleman has a close call because he can't grasp with two hands as he's crawling up a train, and he fears he will die or get worse, and he quits? [LR197]

ROD REHM: Absolutely. I mean, that's the obvious fear that his family has, and he does, too. And the employers can...and in this case the employer...basically, everybody was on the phone until 5:30 or 6:00 last night, and they ended up saying, well, we don't care if he can work one-handed. We don't want him back here till everything is worked out. But we still don't know...and in that case, the way the law works--the law works different on different injuries--he's going to get some full workers' comp because his payments are paid at full rate because it's a hand case. But if that was a back injury, he'd go down because they're paid differently. [LR197]

SENATOR WHITE: Let me, for the other members of the committee, see if this is your experience then. We have a system that penalizes employers who take previously injured workers back on the job; for example, a laborer with a herniated disk, that employer is taking a bigger risk. We have a system that punishes and frightens employees into going back to work at their previous job, and yet the state has testified

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that the best outcome is for the employees to return to the original employer. And right now we have obstacles both to the employer and the employee to achieve that outcome. [LR197]

ROD REHM: Yeah, that's true. But the numbers that didn't get spoken, that I'm aware of, is that during that same period of '97 to '07, that 9,000 people got into voc. rehab, there was about a half a million injuries. So... [LR197]

SENATOR WHITE: The few people who even qualify. [LR197]

ROD REHM: I've been testifying in front of this committee for darn near 20 years, and I've said for all that time period that the system by and large works pretty well, because the vast majority of our people do go back to work. One of our big client bases is Goodyear, and until they started reducing their work force they were a great employer; they took people back to work. And there's a lot of employers like that out here, way more of them than there are, you know...I'm not saying the employers are all bad people and the insurance companies are all bad people. But I mean, I think your earlier point that, when you asked Kris Peterson...I mean, the voc. rehab folks are on the tougher cases, just the more difficult ones where the requirements of the work are more onerous, like you're a police officer. I mean law enforcement people have a heck of a time going back to work. I just got done with that for a jailer where, I mean, she had a terrible knee and she's been there forever, and she was...she wanted to keep working. And one of her doctors said, you don't have any business back in the jail, and she says, I don't have any way to make \$45,000 a year as the head of a section of the jail. And that one worked out. She's still working there; they want her. They're going to work with her to keep her on the job. [LR197]

SENATOR WHITE: Senator Cornett--I'll make the record clear. She desperately wanted to return to work, too, but was not allowed to. [LR197]

RON REHM: Well, I believe that. Yeah, and I assumed that was the case. So I mean, the trial lawyers' overall big position is, rehab is a good thing. These rehab counselors, even though they get abused by all sides, myself included, are doing a wonderful thing for people, and I think if there would be a way that some legislation could get crafted that would make it simpler and easier, that would be great. I mean, among other things, right now if a person takes the initiative and goes to school and starts paying for their own plan, under our current case law, they can't get reimbursed for that unless it's done voluntarily. That should be changed. And you know, a lot of times if they want to go to school, they're going to miss their window for a year or two sometimes, depending upon the program, if they don't start now, you know, while they're trying to get it, because they may not be able to have an opening in some of these specialized fields for another year or two. And then, you know, they have a heck of a choice to either give up that chance to get out there and fully employed and productive on their own dime, because

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they're never going to get it back, even if they go to court. And that happens, sadly, fairly frequently, as well. That's one thing, and I think the regulations need to get looked at. I don't know what the Legislature has got, but that seems to be the area where we have the most problems and we hear the most complaints, is that it's just cumbersome dealing with the procedures. [LR197]

SENATOR CORNETT: Just so...to reiterate what Lori had me say at the beginning, that's what the intent of this hearing is, to look at the system and see how we can improve it or where there are problems, for both sides. Not for labor, not for businesses, insurance--just an overall view. [LR197]

ROD REHM: Just one last thing that we... [LR197]

SENATOR CORNETT: And we are running out of time, and so quickly--sorry. [LR197]

ROD REHM: The information that we heard today was some of the most detailed and unique information that I've ever heard about workers' comp voc. rehab. The statistics, the stuff that you read in the official reports just don't tell you much. If nothing else, some direction from the committee to start giving everybody that's participating in this system a little more of that information about average case cost, this, that, and the other thing, so people can really understand what's going on, because it's hard to know what the big picture is when you look at the annual report and the statistical stuff. It's like, ugh, what does that mean, you know? The information we got today was a step in the right direction. Thank you. [LR197]

SENATOR CORNETT: Thank you very much for your time, and we appreciate your testimony. [LR197]

KAREN STRICKLETT: (Exhibit 7) Hello. I'm Karen Stricklett. I'm a vocational rehabilitation counselor, and I've been vocational rehabilitation counselor... [LR197]

SENATOR CORNETT: Spell it; I'm sorry, Karen. [LR197]

KAREN STRICKLETT: Oh, I'm sorry. Karen, and the last name is Stricklett; it's S-t-r-i-c-k-l-e-t-t. And I've been practicing in Nebraska for the past 28 years. I worked as a state rehab counselor for one year and then in private for the last 27 years. And I'm going to keep it very brief. I was going to read something, but I'd just like to hit a few points that I think are relevant in my view, and as a vocational rehabilitation counselor. We discussed the second injury fund. I remember the day when I felt that that was a great benefit to me as a voc. counselor working with my clients, because I was able to convince employers to take a risk if they knew that someone else might help pay for part of the disability, if additional disability developed because of the risk that they were taking. And it was much more valuable to me than the ADA has been, although the ADA

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does have some good points, but again, as you pointed out, Senator White, it hasn't been the answer to the questions, to the problems. [LR197]

SENATOR WHITE: When Toyota Motor Company case was decided, and a woman who had carpal tunnel--completely disabled her from working in a United Auto Worker job, or that equivalent--they're not unionized--making \$30 an hour plus benefits, and the court said that was not a disability with meaning the law, because it did not affect an essential life function, for the vast majority of the people who are injured--the laborer who has a herniated disk--they don't qualify at all under the ADA any more. [LR197]

KAREN STRICKLETT: And exactly, and that's what I've discovered, too. The other thing I'd like to mention is, there's been discussion about early referral for services, and we do have a problem as vocational counselors, because we do have to wait until the person has reached maximum medical improvement before we can initiate services. There was a time long ago when that wasn't regulated. We did get involved earlier--and I'm talking about many years ago--and started counseling with people who were still receiving their temporary total disability, and help them look at options, gave them things to explore. I would tell them when I met with them, this is scary, but this is also an opportunity for you to start thinking about other things, to keep the process a positive one, a focused one. And I do think that...and now, just to give a quick example, what I will try to do sometimes to get my client services earlier, is get the doctor to say this person probably will have these restrictions, and it's pretty clear to me they can't go back to this or that job, so that then I can try to get things started up. The insurance companies and employers are paying temporary total disability benefits anyway. They might as well be paying this person to help during the process to get them started on the road to recovery. That's my opinion. [LR197]

SENATOR WHITE: The problem of depression and the failure rate we've heard, dealing with people who have been out of work for three years...at that point they've lost their car, their home, their savings. They're deeply in debt. Is your success rate higher when you can intervene early on in the injury to start counseling them that there is a future, that we can get you out of this, we can work through it, rather than waiting three years until their life has come apart? [LR197]

KAREN STRICKLETT: Well, again...and I don't...personally, because I've done it for so many years and I do have several working with me, yes. My response would be I could try to pull some of that information together, but just everybody...any client that we've ever worked with early on has been...has benefited from the intervention. And it may just be meeting with the person. I tell people when we first meet with them, we are career counselors for people who have disabilities. That's what we do. This is your opportunity to explore all of the things that might be available to you. Granted you've lost a lot, but hopefully we can help you regain some of that and get you back on the path where you are in charge of your life, and other people aren't controlling it. So my

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experience has been that the earlier we're involved, the more positive the outcome has been. And the last thing I'd like to say is, if I can read my handwriting, oh, in terms of some of the testimony pertaining to the fact that...and I do have clients that say, well, I'm going to go back to work. But what if I lose my job after my case is settled? And I don't know if Rod is still here. I will tell them, well, don't settle it until you know for sure. I mean, you might want to think about that, because if you do, and the vocational circumstances change, you're out of luck. You can't come back to me. And I've had some who have called and said, well, I lost my job, Karen. Now what do I do? Well, I have to refer them to state voc. rehab for services, and that's a whole other issue, a whole new issue for them. If there could be something that allowed for a change in vocational circumstances as being something that might enable that person to come back through the system and say, I need voc. rehab now--I didn't before but I do now--and it's available to them, I think that would be very beneficial to the injured worker and the state, as well. And I had a letter that one of my clients wanted me to read, but I won't do that, so. [LR197]

SENATOR CORNETT: If you'd like, you can enter that into testimony. The page can make copies of that. [LR197]

KAREN STRICKLETT: Okay. That would work. [LR197]

SENATOR CORNETT: Okay. [LR197]

KAREN STRICKLETT: Any questions from anyone? [LR197]

SENATOR CORNETT: Seeing none, thank you, Karen. [LR197]

KAREN STRICKLETT: Okay. Thank you, Senator. [LR197]

SENATOR CORNETT: Are there any further testifiers? Seeing none, that closes the hearing on LR197. I want to thank everyone for coming this afternoon. [LR197]