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Business and Labor Committee
March 02, 2009

[LB537 LB552 LB563]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 2, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a hearing on LB563, LB537, and LB552. Senators present: Steve Lathrop, Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; Norm Wallman; and Tom White. Senators absent: Brenda Council, Vice Chairperson. []

SENATOR LATHROP: Good afternoon. You're in the Business and Labor Committee. If you meant to be somewhere else, sorry. I'm Steve Lathrop. I chair the committee. Today we're going to hear, I think, three or four bills. Three? Three bills including mine, LB563. Just some kind of...for those of you that are not here all the time, and a lot of you do testify frequently here, we will ask you...first, we'll have the senators introduce their bill. It'll be followed by the proponents, followed by the opponents, neutral, and then close by the senator. When you testify, you'll have to come to the mic and you'll have to fill out a sheet so that the clerk has the information necessary so that we can make a good record. Please give us your name and spell your last name, and confine your remarks to somewhere around three or four minutes. Much beyond that and Senator McGill, who will chair this before Senator Council gets here will, or I, will interrupt you and ask you to wrap it up. Not being rude, but since we have three bills and a lot of people here that want to be heard, that's going to be necessary. We don't yet have the light system here but we still do employ a clock up here that Chris Chapek, the committee clerk, keeps track of to make sure that we're moving along. I'm joined today by my colleagues which I would like to introduce. Norm Wallman is to my far left, followed by Ken Schilz. Our committee clerk is Chris Chapek; Molly Burton is legal counsel; and of course, Senator Amanda McGill who is here for her third year. And with that, I'll come around and introduce LB563. []

SENATOR MCGILL: Senator Lathrop. [LB552]

SENATOR LATHROP: (Exhibit 5) Good afternoon, members of the Business and Labor Committee. I'm here today to introduce LB563. LB563, the Contractor Employee Classification Act, addresses a growing and longstanding problem of employers misclassifying employees as independent contractors. A constituent approached me a couple years ago and told me that he was losing bids to dishonest contractors who were not properly classifying their workers. These contractors either classified their workers as independent contractors and give them 1099s or simply pay the workers with cash under the table. Misclassification creates an unfair advantage to unscrupulous contractors who are able to underbid law-abiding employers that lawfully take into account the payment and withholding of taxes and insurance premiums when bidding for jobs. Not taking into account taxes and premiums for overhead expenses can result in an estimated 30 percent lower bid. Not only does misclassification hurt honest contractors who end up paying higher insurance premiums and lose bid to corrupt

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employers, but it also hurts workers and the state of Nebraska. The cost that should be paid by the employer are borne by the worker. Many cannot afford insurance, and end up in emergency healthcare facilities, which ultimately falls on the back of the rest of us. Classifying workers as independent contractors removes these workers from the protection of labor laws. The state loses revenue from nonpayment of taxes and unemployment insurance, and other state programs are not properly funded. The state cannot afford to ignore this problem, especially when the Nebraska Economic Forecasting Board recently estimated that state revenues this year and the next two years will be approximately \$340 million less than what was predicted only four months ago. I introduced LB1016 last year to address misclassification. LB1016 was advanced out of committee but was never fully debated on the floor. LB563 is similar legislation that provides a remedy to the worker and the state. This bill discourages misclassification by defining which workers are employees and which are legitimate independent contractors. The enforcement mechanism is a private cause of action that permits the misclassified employee, the Department of Labor, and the Department of Revenue to bring a suit in the district court. The bill requires contractors to post rights enumerated in the act and prohibits employers from retaliating against workers who exercise those rights. Again, this problem is not limited to Nebraska. Many states have addressed misclassification by enacting laws or creating task forces to study the issue. In fact, last year Kelly Pinkham, a researcher with the University of Missouri in Kansas City, testified in support of LB1016. Kelly conducted a misclassification study in Illinois. He testified that the trend is that more and more employers are misclassifying workers. He quoted from a U.S. Department of Labor survey that found the practice went up 42 percent from 2002 to 2003. Kelly also testified that his study found those employers who misclassified do so as a way of doing business; meaning it's not an accident, it is intentional. These same employers will likely break other rules, specifically safety regulations. Kelly found that 18 percent of employers in Illinois misclassified. This is not a problem that needs to be studied. We know it's happening. We know people are being hurt, and the state is losing money in the meantime when it cannot afford to recoup these losses. I would ask the committee to move LB563 to General File for full consideration. Thank you. [LB563]

SENATOR MCGILL: Thank you, Senator Lathrop. Are there any questions? I don't see any, thank you. [LB563]

SENATOR LATHROP: Thank you. [LB563]

SENATOR MCGILL: We'll begin taking proponents. We've also been joined by a couple of Toms: Senator Tom White and Senator Tom Carlson. [LB563]

SENATOR CARLSON: And White was later in here than me. (Laughter) [LB563]

SENATOR WHITE: Only because I trusted you and held the door for you. [LB563]

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JIM STEELE: (Exhibit 1) Hi everybody. My name is Jim Steele, I'm the safety director with Falewitch Construction Services, Incorporated. We're a company headquartered in La Vista, Nebraska. I traveled to Lincoln to testify on behalf of our company, and other companies like ours, in favor of LB563, the Contractor Employee Classification Act. I think everybody agrees that it's a problem; I don't think that anybody disputes that. And my written testimony, I'll give everybody a copy of that if they want, outlines how this specifically affects our company. It gives you some of the bottom lines and how it affects our company if you'd like to see that. I've completely read the legislative bill and gone through it pretty thoroughly, and so what I'd like to reserve my verbal comments to are things that I think that you guys should consider when making any final drafts and other things that might improve the legislative bill. The first thing I'd like to discuss is that misclassified workers are hard to identify on any construction site for three basic reasons. Generally, they take home more pay than their properly classified counterparts, and you can see the matrix on the handout that I gave. This makes them highly unlikely to complain unless they get seriously hurt and need insurance, or they run out of work and apply for unemployment. It is safe to assume that most misclassified workers understand these services are not available to them, so they won't apply. The second reason it's hard to identify them is that misclassified workers on a construction site are usually several tiers down, making it impossible for the general contractor or anyone else to distinguish them. The tier one subcontractor, who works for the general contractor, the construction manager, or the owner, is usually always a legitimate contractor. However, the tier one subcontractor may subcontract to tier two subcontractors, and at that level the problem becomes prominent. Many unprincipled subcontractors have an employee base and only pepper their work force with misclassified workers, also making it hard to distinguish one from the other. The second thing I'd like you to consider is that the Department of Labor and the Department of Revenue contractor registration programs register misclassified workers and give legitimacy to their status. There is no mechanism in these programs to distinguish between a legitimate contractor and a misclassified worker. An unprincipled contractor can send a misclassified worker to the Department of Labor and the Department of Revenue to register. Perhaps one or both of these agencies should apply the definition used by the unemployment department to distinguish employees from contractors. I would suggest the DOL use the definition. The DOR could refer to the DOL's list before allowing someone to register with the Department of Revenue. In other words, if a person does not qualify to register with the Department of Labor, they would not be registered with the Department of Revenue either. The third thing to consider is that if the Department of Labor establishes and fairly and strictly enforces a definition to distinguish legitimate contractors from employees, let that be the single criteria to determine compliance with this law. In other words, if you hire a registered contractor, you cannot be in violation of this law, assuming the Department of Labor would strictly enforce that rule. Also Section 5 in the legislative bill only seems to reimburse the unprincipled contractors what they saved by misclassification. If there is no additional

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penalty and the likelihood of being caught remains low, the legislative bill offers little deterrence. Perhaps an additional amount equal to the settlement or judgment outlined in this section should be paid, by the company violating the act, to the misclassified worker. This would increase the likelihood misclassified workers would step out of the shadows and report their circumstance. And finally, Section 5 should include reimbursement for workers' compensation premiums that would have been paid on all misclassified workers. In our industry, workers' compensation premiums are set by the state at about 11 percent of wages--an enormous amount of money. There are anecdotal reports of unprincipled contractors making workers' compensation claims for people who were initially misclassified workers until they became seriously hurt, disabled, or killed. I researched the possibility of this and it would be quite simple. Simply by adding the person to the payroll during the pay period she or he was injured and submitting a first report of alleged occupational injury, the claim will be paid and very few questions will be asked that will uncover such a scenario. So, unprincipled contractors can avoid the 11 percent of their wages to workers' compensation but can enjoy the benefits of having work comp coverage for those workers in the event that something serious happens. And that's all I've got. Are there any questions? [LB563]

SENATOR MCGILL: Thank you. Are there any questions? It doesn't look like it. Thank you, Mr. Steele. Next proponent. Any other proponents? [LB563]

KEN MASS: Senator McGill and the committee, my name is Ken Mass with the Nebraska AFL-CIO, and here today in support of LB563. I think the previous speaker and Senator Lathrop have outlined the bill, what's in it. But I think the emphasis needs to be, on this committee and also to the body, is the loss of revenue. And what the loss of revenue means is we're in a little budget cut here in Nebraska, possibly, that I think you need to take serious about the loss of revenue may be done, as they're not paying workers' comp, unemployment; they're not paying the Department of Revenue. So what that amount of money may be, I think is the interesting fact of what the state is losing on that, so. If there are any other questions, I'll feel free to answer them so. [LB563]

SENATOR MCGILL: Any questions? I don't see any. Thank you. Any other proponents? Okay, we'll move on to the opposition then? Opponents to LB563? [LB563]

BRUCE KEVIL: I'm Bruce Kevil, testifying on behalf of the Nebraska State Homebuilders Association. My address is 1227 H Street, Room 220. You spell the last name K-e-v-i-l. We have one concern that causes us to be opposed to the bill and that's the private cause of action. I think it will create unnecessary litigation. I think, as a proponent previously stated, this is really the responsibility, if you're carving it out, of the state Labor Department. And with that, it concludes my testimony. I'll answer questions. [LB563]

SENATOR MCGILL: All right. Thank you. Questions? No. Thank you very much. Next

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opponent. [LB563]

JAMES OVERCASH: (Exhibit 2) Good afternoon, Senator McGill. My name is James Overcash, O-v-e-r-c-a-s-h. I'm an attorney that's been involved in the construction industry for approximately 20 years, and I'm here testifying on behalf of three associations: the Association of General Contractors; the Electrical Contractors Association, which is an association of union contractors; and the Mechanical Contractors Association of Omaha, which is the association of mechanical contractors there. And we're here to testify in opposition to LB563. First, I want to state the members of our associations are supportive of efforts to make sure that all businesses and individuals pay taxes and fees for which they're responsible. We strongly believe that everyone paying their fair share stabilizes our tax system and provides a level playing field between businesses. At the same time, we do believe that already there is considerable filing and reporting obligations that our businesses do have, and those already existing obligations cause us to be concerned about additional obligations that LB563 may impose. To address this issue, the issue of independent contractors, last year the construction industry worked with the Legislature to adopt and pass at that time it was called LB1001. That was codified, and state law now has entered 77-2753 in the Department of Revenue section of the statutes. This bill has an operative date of January 1, 2009, about two months ago. As you may recall, this legislative bill created a database to list all independent contractors in the construction industry. Now, a construction industry contractor who pays money in the state of Nebraska is required to make income tax withholding of that party if the person or entity is not listed on the independent contractor database. The withholding must be made or the person must be registered. Because of this legislation, we think the Department of Revenue is able to monitor this issue and hopefully enforce the current requirements regarding independent contractors. Now does this mean that no one ever in the future will violate the requirements of state law? Sadly, no. But we think this recent law is a significant advancement on the issue of independent contractors and provides for a clear standard. The straightforward compliance and payment process that was contained in LB1001 and the information that's provided to the Department of Revenue allows the department to enforce proper legal requirements regarding payment to independent contractors. We ask that you consider LB1001 and give it time to work before additional obligations are mandated by the Legislature on this issue. Additionally, specifically regarding LB563, I believe that the presumptions contained in Section 3(2) in regards to what would create a safe harbor for payments to independent contractors should be examined by this committee. Additionally, we're concerned about the new job site postings. Postings, you know, cost money. They can be somewhat difficult to maintain and they're difficult on small projects. Additionally we are concerned about the private cause of action that's created by LB563. We realize, though, with the same degree that LB563 affects industries beyond construction and these other industries were not covered by LB1001 that passed last year, given, last year, that it only applied to construction, we would ask that if you do advance LB563, that you'd consider removing

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construction industry and construction related businesses from the parameters of LB563 and that you exempt the construction industry. Finally, although my testimony is here obviously to be against the bill, the associations I represent appreciate this committee's efforts on independent contractors. We appreciate your efforts last year and we'll continue to work on this issue and dialogue with the committee. Thank you very much. [LB563]

SENATOR MCGILL: Thank you, Mr. Overcash. Are there any questions? No? Thank you very much. [LB563]

JAMES OVERCASH: Thank you. [LB563]

SENATOR MCGILL: Next opponent? [LB563]

RICHARD REISER: Good afternoon, Senator McGill and members of the committee. My name is Richard Reiser. I work for and am representing Werner Enterprises which is a trucking company located in Omaha, Nebraska. We have approximately 700 owner-operators who own their own trucks and lease them to our companies as independent contractors. Some of them have one truck which they drive themselves, others have many trucks and they take care of finding drivers for their other trucks which are leased to us. We operate in 48 states and are looking for uniformity on the issue of independent contractor status. Each of our owner-operators has a written operating agreement which clarifies that they are independent contractors, clarifies the relationship between the parties. We do require that each...pursuant to our contract, we require that each of them have workers' compensation coverage or we will not contract with them. Our contracts are controlled by the federal government under 49 CFR 376.12. That section controls what an owner-operator agreement in our industry must include and how it must say it. One of the things that's a problem for us with the bill here today, and workers' compensation generally, is that regulation requires that we have exclusive control over the truck. At 49 CFR 376.12(c) it states, "The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease." So they're required to be leased to us under a written contract and it must be exclusive to our company. It also deals directly with the issue of whether that control should be used to determine independent contractor status. It says at 49 CFR 376.12(4), "Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of an authorized carrier lessee." That was an attempt by the FMCSA or I think originally the ICC to clarify that just because they require us to have a written lease with exclusive control, it doesn't make them an employee and does not defeat our ability to classify them as independent contractors. Our industry has a long history of using owner-operators. There are, currently, approximately 368,000 owner-operators using an independent operator agreement in the United States. It's an extremely complicated area. There are several

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tests used to determine independent contractor status, and cases have reached the United States Supreme Court. The IRS has one definition; the NLRV has another definition. There are numerous definitions used by the states under workers' compensation law, and the common law has yet another definition. It's a difficult area for us to operate in. We can't just, on the other hand, take someone who comes to us with a truck and wants to lease it to us, and say, okay, you're an employee. They aren't an employee; they're a businessman. They own a truck valued at between \$50,000 and over \$100,000, which they bring forward and lease and want to be paid for. Some states have dealt with this issue directly. There is a law in Kansas, for example, that says owner-operator means a person, firm, corporation, or other business entity that is the owner of one or more vehicles that are driven exclusively by the owner or the owner's employees or agents under a lease agreement or contract with a licensed motor carrier. They deal directly with this issue. Eight other states have similar laws which are less broad in varying degrees. But the point is, this is not capable of a simple definition. Nebraska Statute 48-2103, which is the Contractor Registration Act, has a definition of contractor which states a contractor means a person who engages in the business of construction, includes a subcontractor, general contractor, and other person arranging for the performance of construction. So we have one definition there and then in LB563 we'll have yet another definition of what a contractor is. In dealing directly with this bill, LB563, there are several issues that we have with that, starting with the definition under Section 2(1) where it states, "Contractor means a sole proprietorship, partnership, firm, corporation, limited liability company, association, or other legal business form or any other person or group or persons acting directly or indirectly in the interest of an employer in relation to an employee." The last part "in relation to an employee," we find troublesome from a definitional standpoint. I would submit that someone hired to paint one of our trucks, who had their own business painting trucks, could be considered an employee under that definition. The control issue that is stated in here under Section 3(a), "The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract and in fact." That's something that in our industry absolutely won't fit because of the statute and the regulations that I just discussed with you. [LB563]

SENATOR MCGILL: I'm am going to ask you to sum up. [LB563]

RICHARD REISER: Okay. In summary, reading this we felt that, originally reading it, that it was directed only at the construction industry. One of the definitions, in fact, talks about the "at least six months prior to commencing construction work." In reading it more carefully, we don't think that it does. We think that it has broader applicability. We don't think it does anything to clarify the law in that area, but it makes it more difficult, and we're specifically concerned that in our case it'll just make it more difficult to decide what is or isn't an independent contractor. We would like to see it clarified as to the definition to make it clear that it does not include motor carriers. Thank you. [LB563]

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SENATOR MCGILL: All right. Thank you. Are there any questions? It doesn't look like it. Thank you very much. Next opponent. [LB563]

JACK PEETZ: Good afternoon. My name is Jack Peetz, P-e-e-t-z, and I'm here representing Crete Carrier Corporation, a Lincoln-based over-the-road trucking company, and I'm here in my capacity as legislative chair of the Nebraska Trucking Association. And I would, for the purposes of being brief, I would like to incorporate the testimony of Mr. Reiser who was just here. We have the same issues that he just laid out to the committee. We do not have quite as many owner-operators as Werner has, but Crete Carrier itself has a little over 400 owner-operators that run all 48 states. And almost all of those owner-operators are independent businessmen who buy their own truck, and almost all of them drive that truck themselves and are under lease to us. The purpose of opposing the bill at this particular stage is because it appears that the language could unintentionally, in my opinion, maybe not in the opinion of the author of the bill, include owner-operators in the trucking business. This would present a real issue for us insofar as the control and the regulatory issues that we're required to maintain with respect to those owner-operators. So in a nutshell, we would like to work with the committee to get further clarification to make certain that the bill does not intend to include owner-operators in the trucking industry who are over-the-road drivers running 48 states. [LB563]

SENATOR MCGILL: Thank you, Mr. Peetz. Any questions? No? Thank you very much. Next opponent. [LB563]

LARRY JOHNSON: Good afternoon, Senator McGill and members of the committee. My name is Larry Johnson, J-o-h-n-s-o-n, and I'm the president of the Nebraska Trucking Association representing over 800 member companies across the state. I'm here to speak in opposition of LB563. Although I do work closely with Mr. Reiser and Mr. Peetz's companies, the majority of my members are companies that in many cases are classified as owner-operators. This category of my membership represents almost 30 percent of the 800 members. This category of my membership that are owner-operators are representative of how you get started in the trucking business. Much like young farmers in agriculture, we start out as owner-operators in the trucking industry. It's primarily because we are a very...even though we are a deregulated industry, there are many barriers to entrance. The high cost of equipment and safety regulation compliance and the ability to have a sales force and maintain a liquid cash flow are very high barriers for most beginners in this business. Companies like a Werner or a Crete that will take on owner-operators, help these folks get started. They wouldn't be able to...if we don't have the owner-operators, they wouldn't be able to live in literally every small community across the state, bringing in income taxes and children to the school districts. As the trucking industry grows, these large companies have become the lifeline that allow these small businesses to become part of the world's supply chain in this world economy, and still allow them to live in Holdrege or Minden, Nebraska. As

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Nebraska farms have become more efficient, many entrepreneurs in greater Nebraska have chosen to buy equipment in the trucking industry. A new truck runs around \$150,000 and a trailer can be \$40,000--a high enough burden on most small companies, but if you consider the accounts receivable from the shipping industry, that runs upwards of \$100,000 at any time on a 60-90 day rotation. So to summarize, LB563's current language could very possibly, and I believe unintentionally, provide consequences for these people on their chance to own their own companies. With that, any questions? [LB563]

SENATOR MCGILL: Thank you, Mr. Johnson. Questions? No. Thank you very much. [LB563]

LARRY JOHNSON: Thank you very much. [LB563]

TIM KEIGHER: Good afternoon, Senator McGill and members of the committee. For the record, my name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today as a registered lobbyist and the executive director of the Nebraska Petroleum Marketers and Convenience Store Association in opposition to LB563. I guess I really don't have anything to add to what has already been said. I just had members that fall into pretty much all of these categories that have been talked about, and our organization is definitely willing to work with Senator Lathrop to try and find a resolution to this, so. With that, I'll be brief. [LB563]

SENATOR MCGILL: All right. Thanks. Questions? No. Thank you very much for your briefness. Any other opponents? Opponents? Okay, seeing none, neutral testimony? [LB563]

RON SEDLACEK: Senator McGill and members of the Business and Labor Committee, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, appearing here today on behalf of the Nebraska Chamber of Commerce. We've had many communication with Senator Lathrop regarding LB563. We understand the intent of the legislation. When our board of directors has reviewed legislative bills introduced, at that point we had not been instructed to weigh in either for or against this particular bill, but to monitor it closely. As we continued to gather facts from our diversity of membership, we realized that there are many members who certainly have expressed concerns and we're very conscious of those, and, in fact, we may reconsider our position on LB563, at least in the green copy version. But at this point what we would suggest is that we gather the parties together and continue to work with Senator Lathrop to address any particular issues that need to be addressed this session, fully realizing also that we have implementing legislation that just began, as well as the particular unintended consequences previously expressed to this committee. With that in mind, as I say, we continue to offer our assistance in working with the introducer of the bill and the committee. Thank you. [LB563]

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SENATOR MCGILL: All right. Any questions? No. Thank you very much. Any other neutral testimony? Anyone neutral? Okay, with that, Senator Lathrop to close. [LB563]

SENATOR LATHROP: Thank you. And just briefly, I appreciate the testimony that we've heard this afternoon, both for and against and in a neutral capacity, I guess, on this bill. What is clear is that there is a problem in this state with misclassifying employees as independent contractors. It is a scheme used by those who don't want to incur the additional expense of properly withholding wages and covering the employees with work comp, and basically fulfilling the obligations the state imposes on employers. I appreciate...I have heard from most of the folks who have testified today in neutral and in opposition. We intend to make some changes to the bill to accommodate some of those interests, and we hope to put it out or bring an amendment to the committee that will make the bill better and improve its prospects for passage. Thank you. [LB563]

SENATOR MCGILL: A question from Senator Norm Wallman. [LB563]

SENATOR WALLMAN: Thank you, Vice Chair McGill. Thank you, Senator Lathrop. I guess I would have a little trouble if I was a contractor or a person, page 5, line 13...you know, the Spanish words. You know, why would I want to put myself at risk putting that in there if I was a contractor. I don't know Spanish, you know. Shouldn't they have to learn? I would have trouble with that if I was a contractor. [LB563]

SENATOR LATHROP: They don't have to learn Spanish. All they have to do is post a sign. And generally what happens, Senator Wallman, is we have a number of signage requirements, already, for employers. They have to put up minimum wage information and some other federal requirements. They go out...there are stationery stores that sell this. The employer just goes and buys these forms, and, you know, they staple them to a wall in the workplace. So the Spanish is in there, because frequently the misclassification of employees is used as a way to retain and employ illegal immigrants in an industry, especially in the wake of the requirement of E-Verify. You hire undocumented workers; they need to know what their rights are, in Spanish, because many of them, that's their only language. So that's why it's there. [LB563]

SENATOR WALLMAN: Thank you. [LB563]

SENATOR MCGILL: All right. Thank you. Senator Carlson. [LB563]

SENATOR CARLSON: Senator McGill. Senator Lathrop, somebody brought up in testimony about that an employer could, upon an injury, following...pay a work comp premium or something, back a month, and then get the person covered? Is that, in fact, a practice? [LB563]

SENATOR LATHROP: We have a bill that we just put out, I think it's LB260, out of

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Judiciary Committee, to stop the practice that was described which is covering your employees, calling some of them less risky employees, like the secretaries. That makes it...I believe it's a felony if they misclassify an employee for purposes of cheating the work comp carrier. So while that may be part of and an aspect of misclassification, we're going to make it against the law in a bill that's coming out of Judiciary Committee. This really addresses something different, which is, overall, not covering people with work comp, not withholding wages, and all in all, giving yourself a competitive advantage by not doing the things the law requires of an employer. [LB563]

SENATOR CARLSON: But I think it would be in the interest of a company that provides workmen's comp that they...they need to want to put a stop to that in a big hurry, because they've lost a lot of past revenue with the premiums not being paid. [LB563]

SENATOR LATHROP: Well, that's true. Right. And what's happening, apparently, and I know this only because I'm in Judiciary Committee where we heard this subject matter. Senator Lautenbaugh put a bill in and we moved it out. Basically, somebody who employs a variety of different people classifies somebody doing a high risk job...the example is, if you run a roofing business and you classify one of your roofers as a secretary or clerical, the premium for that person is going to be a lot cheaper than if you have them classified as a roofer. The claim gets made...no one knows it unless a claim has been made. If the claim has been made, then the guy claims that it's an honest mistake and, you know, sure, I'll pay you the past back due premium for that work comp, and the guy is covered. [LB563]

SENATOR CARLSON: One other question. Would you say the intent of your bill is far different from trying to reach out to the people that are from the trucking companies that have expressed an opposition? [LB563]

SENATOR LATHROP: Yeah, the trucking companies. I think we...hopefully, can find an accommodation. Because that's a longstanding practice. It's different than what we're talking about, which is more of...it's not just in the construction industry. It happens in a variety of industries where people simply call somebody an independent contractor and then proceed to treat them as an employee and maintain that relationship. But, no, we're not trying to get somebody in the Werner and the Crete and the folks that are true independent operators. [LB563]

SENATOR CARLSON: Okay. Thank you. [LB563]

SENATOR MCGILL: (See also Exhibits 3 and 4). Thank you. Are there questions? No. Thank you, Senator Lathrop, and that closes the hearing on LB563. And we'll start with LB537 and Senator Giese. [LB563]

SENATOR GIESE: Thank you, Senator McGill. Senator Lathrop, thank you, and

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members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District, which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. The purpose of LB537 is to provide flexibility to cities that rely entirely on a volunteer fire department but would like to employ a small number of paid firefighters to assist the department. In these tough economic times, many cities have found it difficult to maintain an entirely volunteer fire department, particularly when it comes to fighting fires during the business day. Faced with a shortage of firefighters, cities like South Sioux City are looking to hire one or two previously volunteer firefighters to work the 8-to-5 shift. Currently, the language of Section 35-302 will not allow paid firefighters to work more than 40 hours per week unless they are scheduled for a 24-hour shift during that same week. As originally written, LB537 would have created a distinction between cities of the metropolitan and primary class, which would retain the existing statutory structure, and cities of the first or second class, which would operate under less restrictive rules. My office has worked extensively with the Nebraska Professional Firefighters Association and the South Sioux City officials to find language which would allow the city some flexibility, while protecting the firefighters who rely upon hourly wages to provide for their families. This language is found in AM378 which committee members should have received. The amendment which replaces the original bill would allow voluntary agreements between the city and any firefighter that is not working a 24-hour shift to work more than 40 hours per week. Current language in Section 35-302 allows voluntary agreements between cities and firefighters who work a 24-hour shift, but voluntary agreements are not allowed for firefighters scheduled for 8-to-5 shifts. The remaining language of the amendment is included to prevent a situation where management personnel are used to fill already scheduled shifts of hourly firefighters. City officials from South Sioux City and a representative from the firefighters are both on hand to testify to clarify this bill, and I would be happy to try to answer any questions as well. [LB537]

SENATOR LATHROP: Thank you, Senator. Are there any questions? I don't see any. [LB537]

SENATOR GIESE: Thank you. [LB537]

SENATOR LATHROP: Are you going to stick around to close? [LB537]

SENATOR GIESE: I'll stick around. [LB537]

SENATOR LATHROP: Okay, good. First proponent for LB537? [LB537]

LANCE HEDQUIST: (Exhibit 1) Thank you, Chairman Lathrop, members of the Business and Labor Committee. My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. The city of South Sioux City appreciates Senator Giese for introducing this bill. South Sioux City, like many areas,

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are short in terms of volunteer fire and rescue personnel, and, as you know, it takes a great deal of time, training, and education to provide this service. Our department responds to over 600 calls a year, both fire and rescue calls. The city and the fire department have both recognized the dilemma and noticed that most of the problems we were having were during the day when many volunteers are working. We wanted to have two full-time employees. We wanted these employees also to be able to go to the state fire training meetings, local fire meetings, regional fire meetings, state and local training programs, and to respond to emergency calls. In the course of this process we received an Attorney General's Opinion, which is attached, stating that if the city were to hire firefighters that were not working in 24-hour shifts, which is not what we desired, they could not work for more than 40 hours per week. So if they work from 8 to 5, they could not respond to a call at night. They could not go to night fire meetings, could not go to fire schools on weekends, and that defeated part of the purpose that we wanted to have and what our volunteer fire department wanted to have, and most importantly, what is needed by our citizens. We know that other cities do operate in deference to this ruling, but having knowledge of the same we could not do such. This would provide the relief that we need in this regard, and would urge you to pass this bill. Senator Giese and his staff have done a great job in writing this proposal and has done a great job in working with the fire associations in terms of getting this bill to the stage its in, and we encourage its passage. [LB537]

SENATOR LATHROP: Thank you very much. Are there any questions? I don't see any. Thank you. [LB537]

LANCE HEDQUIST: Thank you. [LB537]

DAVE ENGLER: Good afternoon. My name is Dave Engler, I'm the president of the Nebraska Professional Firefighters Association. That's E-n-g-l-e-r. First of all, I would like to say we are here in support of this legislation, the amended version. The original version we had some issues with. But I would like to thank Senator Giese and his office for doing an excellent job of working with us and making language that we can all bring here and support. The original language in the state statute is designed because there were numerous abuses of firefighter work schedules, over the years, and it took years to get it to the point where everyone was pretty comfortable and we no longer had any problems. So we were a little bit leery, at first, when we started looking at changes to the language. But again, Senator Giese's office has been excellent. We are in full support of the city of South Sioux City, who I have had contact with their firefighters in working towards hiring paid personnel, which they have had, but allowing them the flexibility to utilize them in the manner in which they'd like to. So with that, again, the firefighters are in support of this and I'd be happy to answer any questions. [LB537]

SENATOR LATHROP: Thank you, Mr. Engler. Any questions? I don't see any. Thank you for your testimony. Any other proponents? [LB537]

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GARY KRUMLAND: Senator Lathrop and members of the committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB537 and of the proposed amendment. As many of you know, fire departments across the state who are staffed by volunteers are having trouble getting volunteers in many areas of the state or to have volunteers available 24 hours a day. And there's various incentives and things that we and the volunteer firefighters are looking for. One way that cities have found that may be helpful is, as you've heard, to hire one or two paid full-time firefighters to be there during the day. A lot of the volunteers may be working outside of the city and are not readily available if there is an emergency or a response, and having some full-time paid firefighters on staff would fill in that gap. So this will be a very useful tool for cities across the state, and we do support it and thank Senator Giese and the Professional Firefighters Association for working to come up with a solution. [LB537]

SENATOR LATHROP: Thank you. Any questions? Senator Wallman has a question for you. [LB537]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, then would most fire departments have enough room for an office or something for these (inaudible)? [LB537]

GARY KRUMLAND: Yeah, I think the ones that are looking...I mean, this is probably not one that a lot of the departments will look at, but I know some of them in the large cities would be able to do it and I think they would have, clearly have the room and the equipment to handle this. [LB537]

SENATOR WALLMAN: Thank you. [LB537]

SENATOR LATHROP: Very good. I think that's it. Thanks, Gary. Any other proponents here to testify in favor of LB537? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Giese, you're up to close. [LB537]

SENATOR GIESE: Thank you. Just briefly, in closing, this problem is unfortunately not unique probably to the city of South Sioux City and other cities as we go forward. A city of 12,000 people, 30 years ago had over 50 volunteer firefighters, or more, and today I think at last count we were in the twenties. So this legislation would help cities such as South Sioux City and a lot of others address this issue, and I would appreciate your support to an advancement of this bill. So thank you. [LB537]

SENATOR LATHROP: Very good. Thank you for your being here today and introducing the bill. [LB537]

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SENATOR GIESE: Thank you. [LB537]

SENATOR LATHROP: We'll move on to LB552 which brings us to Senator White and the Construction Prompt Pay Act. [LB537]

SENATOR WHITE: Thank you, Chairman Lathrop, members of the committee. LB552 was drafted for a specific problem that many of our contractors and subcontractors in the state are currently encountering. Frequently, unscrupulous contractors will have subcontractors perform work and then not pay them timely as is provided for in the underlying contract. That leaves the subcontractor in a very difficult position. They can either continue to extend credit and work on the job, even though they themselves have not been promptly paid, or they can walk off the job, in which case they forfeit, at least potentially, not only the investment they've made so far but also could be held responsible for damages. As the economy is tightened, we have seen a number of contractors who have left subcontractors without payment. These are people who are uniquely vulnerable to this kind of a problem. It's very difficult for a subcontractor on one job to hold a contractor's feet to the fire, knowing that the next series of jobs they will not be permitted. Essentially, what unscrupulous contractors have been doing, particularly many located out of state, is using the subcontractors as their bankers in the construction of these projects. LB552 would put Nebraska in line with the majority of states in the union which have what are called prompt pay laws. LB552 essentially provides that if there is legitimate work done that's not subject to a good-faith dispute on quality, quantity, nature of how it was done, then the subcontractor must be paid within 30 days of the presentation of that and they also must pay their subcontractors, if there are any. It also then provides for a method to resolve claims and disputes against the state and its contractors, which is a different setup. But again, in dealing with the state, at least, one generally has the right to rely on the state of Nebraska's fiscal integrity. We have worked...and I want to thank both labor and contractors across the state in their efforts on drafting this bill and finding a workable compromise that will actually assist the entire industry in being efficient, in making sure we have contractors who want to do business here and subcontractors who can do business here. If there are any questions regarding LB552, I will try to address them. But I would tell the committee I believe that generally we enjoy...certainly have tried to work with both owners and contractors and subcontractors in creating this bill. [LB552]

SENATOR LATHROP: Senator White, this actually came through the contractors, who have the biggest problem, don't they? [LB552]

SENATOR WHITE: We had some problems...some contractors came to me with problems that they'd have, especially with out-of-state general contractors and how they were treated on large jobs. And we then took their concerns to other contractors and then also to some of the labor unions, and they have been just extraordinarily helpful in working together at looking for a set of laws that will help our industry, the construction

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industry, move forward into the next century. [LB552]

SENATOR LATHROP: There was a...I think we both attended a meeting where some contractors expressed some concern about this, and there's also a practice of holding a residual or... [LB552]

SENATOR WHITE: Retainage. [LB552]

SENATOR LATHROP: ...a retainage, which has become an abuse. [LB552]

SENATOR WHITE: It gets abusive. And this bill would...some contractors have told me of situations where 20-30 percent of their payments are held for more than a year after completion of a project. Essentially they're just a free-interest bank for the contractors. And this does have requirements on retainage, how much can be retained. It also provides that if you retain money and it's found out not to have been in good faith, because you had concerns...for example, if you have concerns about the quality of the construction, the law provides that's a good-faith dispute. You can withhold that money. But if it's found that you did not, then you would pay 1 percent a month interest, and basically it's to take away the economic incentive to not pay people for the work they've completed. [LB552]

SENATOR LATHROP: Very good. Any questions for Senator White? Senator Wallman. [LB552]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, I noticed the state department is against this bill. And do you think that's on account of withholding some money until a project gets done? [LB552]

SENATOR WHITE: I don't know, Senator. I'll listen to their testimony with interest. [LB552]

SENATOR WALLMAN: Thank you, Senator White. [LB552]

SENATOR LATHROP: I think that was a letter we got after you sat down. Any other...anyone else have a question for Senator White? Okay, I assume you'll want to close. [LB552]

SENATOR WHITE: I will, thank you. [LB552]

SENATOR LATHROP: Okay. We'll take the first proponent on LB552. [LB552]

JAMES OVERCASH: Good afternoon, Chairman, members of the committee. My name is James Overcash. My last name is spelled O-v-e-r-c-a-s-h. As I testified earlier, I'm an

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attorney that works in the construction industry. I'm here today to testify on behalf of the Associated General Contractors of America--Building Chapter, as well as the National Electrical Contractors Association, and I'm here to support LB552. Senator White, I think aptly described LB552. I would a couple things to his testimony. This was a...this same topic was part of a bill in the last legislative session. Senator White and others that have been involved on this issue for not only last session but this session, we appreciate that work. Additionally, I wanted to describe two other items that I think are interesting in the bill that help the construction industry, in addition to Senator White's comments. One is that the bill does provide that the state law applicable to a construction contract will be the state of Nebraska. Many times, when there are contractors that come from outside the state, they may for example make the law of the state of Virginia apply, and that can be problematic for someone that's trying to understand and investigate the risk of what they're trying to take on. Secondly, there's a provision that requires that in the construction contracts, if it provides for the location of a hearing for the arbitration or court hearing of a matter, that if it wasn't in the state of Nebraska that provision would be void. Many times with an out-of-state contractor, again they may require a local contractor, if there is a dispute, that that would be, for example, travel to Charlotte, North Carolina, for the hearing. The problem becomes is that if there is a dispute that's, let's say, \$10,000 or so, when you start trying to evaluate how much money it's going to take to travel to another state and to undertake that dispute resolution process, whether it's a court hearing or an arbitration, that can become problematic. In summary, thank you for your consideration of this bill. Our organizations would like to thank Senator White for his time as introducer. We appreciate your time and hope that you would advance this bill out of committee. With that, I'd be happy to answer any questions I could. [LB552]

SENATOR LATHROP: Thank you. Any questions? I don't see any. Thanks for your testimony. [LB552]

JAMES OVERCASH: Thank you, Senator. [LB552]

SENATOR LATHROP: Next proponent. [LB552]

PAUL HEIMAN: Good afternoon. My name is Paul Heiman, spelled H-e-i-m-a-n. I'm the owner and operator of Hy-Electric in Lincoln, Nebraska. And I'll be very brief. I'd just like to make a statement in support of LB552. I would like to point out to the committee this is a very, very real problem. It's one that goes on, on an ongoing basis, and puts an unbelievable burden on small contractors like myself to finance large projects, without being a bank. And something like this would be a great help to us. I'd just like to recommend the committee move it ahead, thank you. [LB552]

SENATOR LATHROP: Mr. Heiman, before we let you get away maybe you can help educate us by giving us an example of how this...you're an electrical contractor, I

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assume? [LB552]

PAUL HEIMAN: That is correct. [LB552]

SENATOR LATHROP: And so you work on jobs where there's a general contractor that might be building some commercial work and they hire you to work there... [LB552]

PAUL HEIMAN: You bet. [LB552]

SENATOR LATHROP: ...and your folks, and you come in and you...tell us what happens. Why is this a problem? [LB552]

PAUL HEIMAN: I will tell you. An excellent example is, last Friday, I received a check for work that we completed in December of last year. So that's 30 days beyond what we were promised to be paid. During that 60 days I've been waiting for my money, my employees have been paid all within the week after they completed the work. I've made payments to all of my suppliers to pay for the materials that were used in that work, and I have since incurred over \$300 in fees from my bank to cover those expenses. That pretty much summarizes the problem, I think. Had we been paid in a timely manner, I would have been able to meet all those obligations without additional interest and penalties from my bank. [LB552]

SENATOR LATHROP: And is this unique to electrical contractors, or is it common for plumbers and...? [LB552]

PAUL HEIMAN: I would say it's across the board. All subcontractors experience this same problem. [LB552]

SENATOR LATHROP: You described something that was a couple of months' delay in payment. Is that typical or does it get worse or is that about average? [LB552]

PAUL HEIMAN: That's probably a little worse than normal. It's not uncommon for us to wait 45 days. Sixty days is really pushing it. I had actually even drafted letters and threatened to file a lien on the property, and that seemed to stimulate a payment, or it was a coincidence. I don't know. But the same day they got the letter, the general contractor received his payment from the owner and then three days later we got our payment. So it was not an issue, in this case, with the general contractor; it was an issue with the owner. [LB552]

SENATOR LATHROP: And Senator White talked about the retainage, where some portion of what they owe you is withheld until the job is.... [LB552]

PAUL HEIMAN: That's a very common practice. That, too, can be quite burdensome for

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a small contractor like myself. If you've got a \$600,000 job, which would be a large job for us, and they retain 10 percent of it--which is not unusual--you'd have \$60,000 tied up until the very end of the job before you could collect your retainage. [LB552]

SENATOR LATHROP: And by the very end of the job, you're talking about until the contractors left the job site. [LB552]

PAUL HEIMAN: That's correct. The retainage is normally withheld until the owner is completely satisfied with every last piece of work that's done on that project. And it seems like retainage is also an issue that is something that people really like to drag their feet on. The work is all done, everything has been signed off, and you sit and wait for retainage. I've got another job that I'm waiting for \$12,000 worth of retainage right now on, and the job was completed well over a month ago. I put my final bill in and received final payment a month ago...and I'm still waiting for retainage. [LB552]

SENATOR LATHROP: Very good. Senator Carlson has a question for you. [LB552]

SENATOR CARLSON: Senator Lathrop. Do you have any experience where, on this retainage, that they end up being nitpicky things, just another reason to delay, and then you never do get paid, or have you had that experience? [LB552]

PAUL HEIMAN: I have never not been paid the retainage. To say that they retain it for nitpicky issues would be an understatement, oftentimes. [LB552]

SENATOR CARLSON: Thank you. [LB552]

PAUL HEIMAN: You bet. Thank you. [LB552]

SENATOR LATHROP: Very good. I don't see any other questions. Thanks for your testimony. [LB552]

PAUL HEIMAN: You bet. Thank you. [LB552]

SENATOR LATHROP: Anyone else here as a proponent? Anyone here in opposition to LB552? [LB552]

JEFFREY SILVER: Good afternoon, Senator Lathrop. Mr. Chairman, committee members, my name is Jeffrey Silver, and I am an attorney from Omaha, Nebraska, who has the privilege of appearing before you on behalf of the Nebraska Association of Commercial Property Owners in opposition to LB552, the Nebraska Construction Prompt Payment Act. I have been involved, personally, in drafting a number of construction contracts, as well as litigating a number of construction contracts, including those against my esteemed opponent, Mr. Overcash, in the back there. In our opinion,

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LB552's expansion of the Nebraska Construction Prompt Payment Act from being applicable to agencies of the state of Nebraska, to private parties, is unnecessary and will, in fact, lead to more disputes. The act as we now see it provides for the payment to the contractor within 30 days, the payment of a subcontractor within 10 days, and if that's not done, interest accrues at 1 percent per month. Section 45-104 of the current statutes already provides for the payment of interest at 12 percent per annum on money due on any instrument or contract in writing from the date of billing. So that 12 percent, when you figure it, is equal to the same 1 percent as in this bill. In addition, contractors and subcontractors have the benefits provided by 52-125, the Nebraska Construction Lien Act, to protect their interests. In listening to Senator White's opening comments, he talked about good-faith disputes. As I see and review the bill, I do not see any provision in there that provides that the bill is not applicable if there's a good-faith dispute. So I think if the committee is going to advance the bill, there should be similar language that exists now in the bill amending 81-2407 that says, "Claims subject to a good faith dispute if notice of the dispute is conveyed to the creditor in writing before the time required for payment," so that there is a provision on the other side to provide for resolution if there is a good-faith dispute. And I would comment also on the issue of retainage. It has been a longstanding practice in the construction industry to have retainage. Usually it's 10 percent and usually it is retained to ensure that the project is completed on time, the quality is as represented in the contract. At the end of that time, the retainage is usually distributed to either the contractor or the subcontractor if the work has been done in an orderly and efficient manner. That concludes my remarks. I'll be happy to answer any questions. [LB552]

SENATOR LATHROP: I have one for you, Jeff,... [LB552]

JEFFREY SILVER: Sure. [LB552]

SENATOR LATHROP: ...about retainage. And I've listened to contractors describe it this way. If my job is to...let's say that I put the block in or the foundation in a building, and you retain 10 percent of the contract amount, I now, as the first guy on the job site--maybe I'm the excavator--I have to wait until, you know, they get done laying the carpet and they clean the windows before I get my retainage. That's the problem, isn't it? [LB552]

JEFFREY SILVER: I think in the contracts that I have done, when that contract or subcontractor has completed his job or her job, as the case may be, that retainage is going to be released and not held back until the whole job is done. [LB552]

SENATOR LATHROP: Well, I think that's the concern they have, and maybe Senator White is more of a student of this subject than I am and he'll be able to comment on that. Any other questions? Senator Carlson. [LB552]

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SENATOR CARLSON: Senator Lathrop. In your testimony, you talked about that there is current law to deal with this. But Mr. Heiman, who testified just before you, has some problems that he experiences. So how do we make current law deal with his problems? [LB552]

JEFFREY SILVER: Well, I think, as the way I'm looking at LB552 as it's written, he would be entitled to receive 1 percent per month interest once the work has been done. Under 45-104, which is under the interest statutes now, it also provides that if you have a written contract and you have performed, you are entitled to get 12 percent interest on the money that is due you from the time you perform. So I don't know that this act, other than maybe talking about 30 days and 10 days, is going to give him any more interest money than he would have or could get under the current statutory scheme. [LB552]

SENATOR CARLSON: Okay. Another question on retainage. And I have no experience as a contractor at all, but I have contractors build structures for me. And oftentimes, we move in...we moved into a condo a little over a year ago, and then you don't even see some problems until you've been there a few months. Is that part of the reason maybe sometimes retainage is held, so that you've got to wait and see what the problems are? [LB552]

JEFFREY SILVER: Absolutely. And I think you see the retainage be more of an issue on more complex jobs, simply because you have so many different contractors, you have so many different aspects of the job, and certainly you want to make sure. Because the contractor, or the general contractor in this case, is not going to get paid from whomever the owner is until the owner is satisfied that the building has been built as it was supposed to be constructed and everything that's in the building works as it's supposed to work. So the answer is yes. [LB552]

SENATOR CARLSON: But it may well not be the subcontractor's fault at all, and he's done with his work and he wants to be paid. And sometimes I could see that time is unreasonable. [LB552]

JEFFREY SILVER: I can see there are certainly going to be cases where that happens. [LB552]

SENATOR CARLSON: Thank you. [LB552]

SENATOR LATHROP: I think that's it. Thanks, Jeff. [LB552]

JEFFREY SILVER: Thank you. Thanks very much. [LB552]

SENATOR LATHROP: Good to see you. Anyone else here in opposition to LB552? Anyone here in a neutral capacity? [LB552]

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MARY CAMPBELL: Mr. Chairman, members of the committee, my name is Mary Campbell, C-a-m-p-b-e-l-l, registered lobbyist for the Lincoln Public Schools. Our testimony is truly neutral, but with one concern--a logistical concern. Our neutrality stems from the fact that the language of the bill is largely duplicative of the AIA standard agreements that we use and subscribe to, and so the basic philosophy and fairness principles of this bill are those that we subscribe to. Our concern is a logistical one and that is the 30-day payment. Some of these matters require two board meetings--to go two rounds, two readings--for approval of the payments. And there is the month of July which is also customarily a month when the board does not meet and would also be a main construction period. And so we try always to pay promptly, but there may just be some timing issues and then we would be penalized for something that logistically we really maybe couldn't prevent. So that's our only qualm, if you will, with the bill. [LB552]

SENATOR LATHROP: Okay. Thanks, Mary. Any questions? I don't see any. Anyone else here in a neutral capacity? I don't see anybody. Senator White, you are free to close. [LB552]

SENATOR WHITE: Thank you, Mr. Lathrop and members of the committee. A couple points. I used the term good faith and that was not an accurate reflection of what is in the contract. Actually it says, for example, reasonable amounts or it says when a contractor who has performed work in accordance with the provisions of a contract with an owner. So the provisions basically are stating the person claiming the right under this act has to prove that they complied with the contract. The obligation is on them to prove that before they have any rights for a claim. My experience is that if an owner or if a contractor had a good-faith basis saying that didn't meet the specs, at that point the courts have generally interpreted these kinds of languages not to be applicable. I would say with regard to the last concern, we'd be glad to work with them to try to alleviate that concern, but if in truth this statute mirrors what's already there and you already have presented a bill, then you're already on the hook for the interest. If anything, this makes the contractor and the owner have a better defense. Rather than just the mere presentation of a bill, they actually have to complete the work. It also talks about reasonable retainages; it talks about those kinds of things. These become incredibly important. We are on the edge of a true meltdown in the industry, and fair and prompt payment is going to be essential to keeping this part of our economy alive and surviving until better times. Finally, I am very familiar with the AIA contracts. I have litigated a number of disputes under those contracts. I do not agree that it is the same thing to have an AIA contract which the parties can modify and use, or not, as it is to have a statute that says this is the base level playing field. Also, the AIA contracts, for example, could allow you to require a person--an electrician, for example--to go to the site of the general contractors to arbitrate a dispute. Well, if you've got to relocate to Alabama or hire an arbitrator and go to arbitrate a \$12,000 claim in the state of Alabama, that's the same as not having any claim. This requires, simply, that if you're going to do business

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here, you're going to build buildings here, you're going to adopt our law and you're going to solve your disputes, if any, here in Nebraska, where you're willing to do business in the first instance. So I'd very much appreciate the committee's consideration. We remain open to any reasonable input from the state or any contractor or organization to make this more workable. The point of this bill is to enhance and promote the construction industry. Chasing people away from doing business in this state does not help our subcontractors at all, and so we simply ask that business be done in a fair and aboveboard manner. Thank you. [LB552]

SENATOR LATHROP: (See also Exhibit 1) Very good. Thank you, Senator White. That concludes our hearings for today and thanks for coming. [LB552]

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Disposition of Bills:

LB537 - Placed on General File with amendments.

LB552 - Placed on General File.

LB563 - Held in committee.

Chairperson

Committee Clerk