

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

[LB564 LB628 LB629]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 23, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB564, LB629, and LB628. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; Norman Wallman; and Tom White. Senators absent: none. []

SENATOR LATHROP: Okay. Good afternoon, I'm sorry I am late. We were doing an Exec Session in Judiciary Committee and if you were hoping something wouldn't move over there, chances are it did because we just moved a lot of bills. In any case, we're here today in Business and Labor to take up three bills, two of them claims bills and my LB564. If you've never been here before, welcome to the committee. Just a few of the rules that we try to observe in the committee. Bills will be introduced by the state senator and then we will hear from the proponents, the opponents, and then those that are here to testify in a neutral capacity. We'll ask you to confine your remarks to three or four minutes so that we can give everyone that's appeared here an opportunity to be heard before it gets too late in the day. Turn off the cell phones. You'll fill out a sheet if you're going to speak, fill out a sheet so that we can use that to help make a record. When you are seated, please give us your name and spell your last name for us as well. And with that, I will introduce my colleagues here: to my immediate left or my far left is Senator Tom White from Omaha; Norm Wallman from Cortland; Ken Schilz from...what's your home town? Ogallala, okay, I knew it was out in ranch country; Chris Chapek is my committee clerk; Molly Burton is our committee counsel; and then we have Senator McGill from Lincoln; and Tom Carlson from Holdrege. And with that, we'll start out with LB564, which is me. We'll be joined shortly by Senator Council. I'm sure she was in that Exec Session. Will you take over? []

SENATOR MCGILL: To start we'll open with Senator Lathrop on LB564. [LB564]

SENATOR LATHROP: Good afternoon, colleagues, my name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 in Omaha, and here today to introduce LB564. LB564 in its current form requires contractors required to register under the Contractor Registration Act to apply for and receive a contractor's license from the Department of Labor before performing contractor work. My intent is to, pardon me, my intent is to focus on general contractors in charge of home building or remodeling. There are numerous instances where homeowners either building or improving their homes hire contractors who convince the owner that he or she is competent and knowledgeable of relevant code, regulations, and law. Unfortunately, this isn't always the case and the homeowner ends up with a structure that does not meet the contracted expectations and/or legal requirements. Remedies include lawsuits for breach of contract and liens against the contractor's property, but this costs additional money. Often the contractor has left the area or filed bankruptcy leaving the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

owner without a recourse. The owner is faced with a decision of how to fix the problem, spend more money on another contractor, or try to fix it himself. This is a problem. There are people in Nebraska acting as general contractors who have minimal or no knowledge of the business. It is incongruent that we do not require licensure for general contractors but require licensure for specialized contractors such as electricians and plumbers. This bill complements the Contractor Registration Act by adding a licensure requirement. Not only will people know if a contractor is registered with the Department of Labor, but they will now have the added assurance that the contractor has passed the licensed exam. Many states require general contractors to be licensed before working on or bidding on jobs. Other states like Nebraska merely require registration and leaves the issue of licensure for communities to address. To my knowledge, Alliance is the only Nebraska community that has adopted an ordinance pertaining to general contractor licensure. I am aware that amendment language needs to be drafted limiting LB564's application to general contractors constructing or improving residential homes. The issue of licensing fees also needs to be addressed. I'm willing to work on language with the interested parties. I think I've been pretty clear that the bill will be narrowed before we try to move it from the committee to the residential home construction industry and to that end I've met with a number of the homeowners and their--or the home builders--and their group, and they are not only willing to work with me but interested in seeing some form of competency test and licensure as well. So this bill is one that will hear some testimony today. But I think ultimately, hold over the interim, make some changes and improvements, and then move it out next session. Next year, I guess. [LB564]

SENATOR COUNCIL: Are there any questions for Senator Lathrop? Yes, Senator Carlson. [LB564]

SENATOR CARLSON: Senator Council. So just your last few statements make me feel a little bit better. You started out by talking about you were focusing on home building and remodeling. [LB564]

SENATOR LATHROP: Yes, sir. [LB564]

SENATOR CARLSON: I've had a bad experience so I understand maybe that need. But I didn't understand all of the rest of it. Is it going to be so that it will be pretty well narrowed, that's your intent? [LB564]

SENATOR LATHROP: My intent is to narrow the scope of the...instead of, right now it applies to any contractor required to be licensed under the Contractor Registration Act, and that is more broad than we intended or then we now intend. The focus will be on residential home builders and remodelers and the competency test. Honestly, the competency test is an open book test so what we want to do is make sure that people understand what the...have a basic understanding of building zone requirements,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

understand the requirements for electrical, plumbing, a general working knowledge so that they can do the job properly and not leave time bombs in people's homes in the form of bad electrical or bad cement work, even. The foundation is another problem where if they don't dig it deep enough and they build the foundation, you don't know you have a problem until the next frost. [LB564]

SENATOR CARLSON: If none of us good foundation, eventually we get in trouble. [LB564]

SENATOR LATHROP: Exactly, exactly, we can agree on that, Senator Carlson. [LB564]

SENATOR CARLSON: Now, you mentioned Alliance. Do they have...and they've got a city ordinance? [LB564]

SENATOR LATHROP: They have a city ordinance where they've said if you're going to build, as I understand, in Alliance you have to be a licensed contractor. [LB564]

SENATOR CARLSON: That's all that is. Do you know the ins and outs of that? Because one thing good about it would be Alliance saw they had a problem and maybe they took care of their own problem. [LB564]

SENATOR LATHROP: I think that is probably true. [LB564]

SENATOR CARLSON: And that might be a factor, too. Thank you. [LB564]

SENATOR COUNCIL: Any other questions for Senator Lathrop? Senator, I have one. Was LB564 patterned after any bill in surrounding states or...? [LB564]

SENATOR LATHROP: I don't think so. I think it's a bill that we put together sort of on our own. And I expected when we put LB564 in, honestly, that it would draw the fire of the people that are standing behind me or sitting behind me. That it would develop and generate interest and that we would bring these folks to the table and talk about what do we need to do, what kind of licensing, and what kind of knowledge base should these folks have? If they're going to be working on homes or building homes and that's just what it's done. And I've already had the assurance of the home-building industry that they'll work over the interim to develop the licensing requirements and the educational and the testing. [LB564]

SENATOR COUNCIL: Okay, because the reason I asked, I've received a couple of inquiries about looking at other states and as well as the licensing...some kind of contractor recovery protection because the situation...and I don't know whether the particular contractors that have been involved would have satisfied these requirements or not. But the residential remodelers...the people that are having their homes

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

remodeled are getting stuck with these astronomical costs and then the contractor files bankruptcy and then they're caught. And I've been directed to some other states that have some greater protection for the consumer in that situation. I was just wondering if we could... [LB564]

SENATOR LATHROP: We can certainly look at them. Mostly what I expected or hoped to accomplish was this, to establish a base minimum level of knowledge before you can hold yourself out as a contractor. You could, I suppose, take this opportunity to put in bonding requirements and insurance requirements and bury the industry with a bunch of additional expenses and that wasn't my intent. With the recession, we've seen a lot of the fly-by-nights go back to doing whatever it is they did before they held themselves out as contractors. And in a lot of ways the recession sort of weeds out the people that do it right and the people that are going to be around in the future. And that's the folks that have come together and said you're right, we need to police our own industry and we'd like to work with you on this bill. [LB564]

SENATOR COUNCIL: My question has prompted any questions of Senator Lathrop? If not we'll begin by hearing from the proponents of LB564. Proponents. Seeing none, opponents? Proponent? If you'd state and spell your name, please. [LB564]

GERALD TORCZON: Gerald Torczon, T-o-r-c-z-o-n. I'm president of Birchwood Homes, Incorporated in Omaha, Nebraska. Been in business for 30 years and constructed up near 1,000 homes. And when we found out about this bill, it didn't surprise me. I think in the testimony we just heard it's a lot more common than what people think. You have statewide licensing in Minnesota. Seward and Alliance are the ones that have testing or licensing in the state of Nebraska. Council Bluffs, Kansas City, it's in Colorado and numerous states. And as like I said, my interest in this is as a home builder. And when I found out about this bill and met Senator Lathrop at our legislative banquet, voiced some concerns on this particular bill and he assured us that he would work with us. But I made it crystal clear that I was in favor of a licensing bill because I know it's coming and it's pretty predominate around other parts of the country. Senator Carlson, your question on Alliance and Seward, they are under the international residential code. It's a test that's put out by the International Code Council, it's a national testing group and they are approved in 20 states and over 100 cities. And the only reason I know that is being a builder in Omaha, I had a request to build a house in Council Bluffs and when I went over there I was told I couldn't build there because I had to have a license. And so that's when I got on the Web site and figured out, well, if I'm going to build in Omaha, I might as well build in Council Bluffs. Got involved, did my homework, and went over there and got tested and passed and now I'm on that particular list. So I won't reiterate a lot of stuff that Senator Lathrop has said but there's things changing in the industry. Some, you know, you see...in the last few years you've seen a movement towards open concept floor plans, green building initiatives which are usually done...to meet the green building initiatives you should, you build under truss design. Which, you don't have solid

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

sawn lumber, trusses and I joists and that type of framing technology in the home building industry is critical but you cannot cut those joists, or drill them or because it takes away all the strength. So it's just a change that I see in the industry over the years that I've been in it that you have to be aware of the limitations of the trusses and items like that, so. And for years like you said, I was kind of surprised that as Senator Lathrop mentioned, you know, plumbers, electricians, mechanical contractors in the city of Omaha, lawn sprinkler guys, sewer contractors have to be licensed and I was just always perplexed that home builders didn't have to be licensed. But with that, if anybody has any questions. But I thank Senator Lathrop of offering to work with us and that's all I have. [LB564]

SENATOR COUNCIL: Okay. Any questions? Senator Wallman. [LB564]

SENATOR WALLMAN: Thank you Chairman. Yes, modern day technology, as you said, has really changed. So who covers a warranty if, say a plumbing contractor, heating contractor drills through one of my new modern day floor joists, you know, how they're made, is there a warranty on them? [LB564]

GERALD TORCZON: Well, the building inspectors should catch it, but the home builders have to know the limitations of the structures of the trusses. And like I said, they're a little different than your typical sawn floor joists. In the old days, you could notch them and head them off and do what you want. These, if you do anything to affect their strength, then you've just got to replace it. And it just cannot be altered any way. It says, and a matter of fact in the code council book, it says any alterations have to be approved by a licensed engineer. [LB564]

SENATOR COUNCIL: Any other questions for Mr. Torczon? Senator Carlson. [LB564]

SENATOR CARLSON: Thank you, Senator Council. I think I just saw something. This is a part of the Contractor Registration Act, but the contractor registration is simply paying a fee to be registered. Licensure, that carries with it the definition of testing, doesn't it? Some kind of an exam of competency. [LB564]

GERALD TORCZON: That's my interpretation. [LB564]

SENATOR CARLSON: Okay. Thank you. [LB564]

SENATOR COUNCIL: Any other questions for Mr. Torczon? If not, thank you very much for your testimony. [LB564]

GERALD TORCZON: Thank you. [LB564]

SENATOR COUNCIL: Are there any other proponents? And, while I didn't say it and I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

don't know whether Senator Lathrop before he introduced the bill said it, we do not have the light system here but we'd ask that you keep your testimony between three to five minutes. [LB564]

DENNIS VAN MOORLEGHEM : Good afternoon. I am Denny Van Moorleghem. I'm the president of Regency Homes in Omaha, Nebraska, 3758 S 184th Avenue in Omaha. [LB564]

SENATOR COUNCIL: Can I ask you to spell you last name, please? [LB564]

DENNIS VAN MOORLEGHEM: V-a-n M-o-o-r-l-e-g-h-e-m, that will take the whole three minutes, so. (Laughter) Regency Homes normally builds, in a good market, 80 to 100 houses a year and I've been doing this for about 40 years. About 25 years ago, I was definitely against builder licensing. In fact we lobbied against it, us and some other builders in Omaha. And but I think the time has come to change that. As the houses get more complicated and as the codes get more complicated and more aggressive, it's harder even for us with 27 on the payroll--27 people--to keep up. So we need a base, which is tests--testing--and we need some type of continuing education because the codes change every two to three to four years. And that's the reason that a lot of us, that the builders now are interested in the licensing proposal that Senator Lathrop has put forward. We see some of our old competitors that you were talking about that are no longer here building houses the wrong way. And ultimately, that hurts me. That hurts our business. That hurts our reputation and your comment, Senator, about being hurt, that reflects on me because it reflects on our industry and we don't like that. So we want to try to change that image and we want to raise the level of the people who are in our business, okay? It's a good place to start and we appreciate you bringing it forward. Senator Council, we have already begun collecting information from different licensing programs from different states. And, as a matter of fact, I was given the task to read it all. So, and I understand that it's about that deep. So we are in support of this and we would like to go forward. I'm glad that you extended until next session because we need more time than the next few weeks to get it together because we want to do it right. And we have a lot of things to talk about amongst ourselves that we haven't even discovered yet and hopefully by reading this information we get, we'll be able to come up with an agenda. Okay. [LB564]

SENATOR COUNCIL: Any questions for Mr. Van Moorleghem? And I'm going to extend the invitation for you to get in contact with my Legislative Aide because I have her doing the same thing. [LB564]

DENNIS VAN MOORLEGHEM: Oh, really? [LB564]

SENATOR COUNCIL: Looking at other states, so you might want to do a comparison and make sure we're pulling the same pieces of legislation. They may be under different

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

captions so feel free to contact my office to compare my Legislative Aide's research with that which is being conducted by you and your association. [LB564]

DENNIS VAN MOORLEGHEM: Okay. Thank you. [LB564]

SENATOR COUNCIL: Thank you. Any other proponents? [LB564]

JOHN BACHMAN: Good afternoon, senators, my name is John Bachman, B-a-c-h-m-a-n. I'm an attorney in Omaha and I represent a number of builders. And in particular for this hearing, I am here on behalf of Dave Paik Builders. Mr. Paik has built over 1,300 homes in the last 25 years in the Omaha and surrounding areas. We are appreciative of Senator Lathrop for introducing this builder licensing bill and we strongly support the testing and licensing of builders. With that, I'll conclude my comments. [LB564]

SENATOR COUNCIL: Thank you, Mr. Bachman. Any questions? If not, thank you for appearing and testifying this afternoon. Any other proponents? [LB564]

JERRY STANDERFORD: Good afternoon, my name is Jerry Standerford, I'm from Omaha. I am the president of Lane Building Corporation, I'm the general manager of Sherwood Homes. Between Lane Building Corporation and Sherwood Homes we're the third largest builder in Omaha. We've been in business for over 40 years and I'm here to speak as a proponent for this legislation that Senator Lathrop has introduced. In the state of Nebraska, there are currently no requirements for any education, continued education, knowledge. The only thing you have to do to obtain a building permit in Omaha, Nebraska, is go down to the city of Omaha and write a check, submit a set of plans and write a check. The National Association of Home Builders over the years has offered many opportunities. They offer education at varying levels, certification at different levels. As far as I know in the state of Nebraska there are only two builders in the state that have ever taken advantage of this education opportunity or certification. One in Omaha, that's myself, and another one here in Lincoln. So even though it's offered and education is available and is promoted by the National Association of Builders, not many builders take advantage of that. And I think it's going to take some legislation to bring this to the builders out there. I've sat on the code review committee for the International Residential Code since 2000. And you have to understand that the codes do change and now with the IRC being the adopted code, that is changed every three years, 2000, 2003, 2006, 2009. There are tons of changes that happen every year that are put out there and every time that we introduce a new code there's a new code brought forward, it seems that it's a big surprise to everybody in the building business. I have a home under construction right now, a custom home, and the way I found this buyer is he originally was referred to me to see if I could help him because he had given his builder that he had signed a contract with a \$9,000 earnest deposit. It was 75 days into the contract and no construction had started. He was able to get the majority of his

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

money back from that builder. We went ahead and their house was under construction now, but that's not uncommon. I've seen over the years and we've been in business...Sherwood Homes has been in business for nearly 50 years and it's not uncommon to see that happen. So I would really just encourage that we move forward and thank you for this and if we can offer any help as far as moving it forward, we'd be very excited to see it happen. [LB564]

SENATOR COUNCIL: Thank you. Any questions for Mr. Standerford? If not, thank you for your testimony. [LB564]

JERRY STANDERFORD: Thank you. [LB564]

SENATOR COUNCIL: Any other proponents? Seeing none, any opponents? [LB564]

LAWRENCE FISCHER: Good afternoon, my name is Lawrence Fischer, F-i-s-c-h-e-r. I represent Nebraska Land Improvement Contractors Association. We have approximately 100 members across the state of Nebraska. I particularly come to this, I have 34 years in the earth moving business. I started my business in 1975 and I'm an owner-operator. We are against this legislation because as written, because a majority of our contractors are engaged in earth moving, excavating, drainage, and soil conservation type of work which is closely supervised by the Natural Resource Conservation Service, which is a federal agency or private engineers which monitor soil compaction and the work that we do. Most of our work we're not paid until the project is done. There's no earnest money up-front and then on the larger projects like watershed dams they--we have to be insured and bonded. So and if anything goes wrong they take all of that out of the bonding. Our association offers continuing education which covers governmental regulations. We work with EPA, DEQ to keep the members update on the new things that's coming down, silt fence and everything else that's required...safety programs, this is all in conjunction with state and national. National LICA just sent out a booklet like tailgate talks and stuff for anybody with employees to keep them apprised on it. Finally, we feel an examination or test would just have another fee, would not really accomplish anything so therefore we are against LB564 as written. Thank you for your time. Are there any questions? [LB564]

SENATOR COUNCIL: Are there any questions for Mr. Fischer? Senator Carlson. [LB564]

SENATOR CARLSON: Senator Council. Mr. Fischer, I understand you're against it and to go back to Senator Lathrop's initial comment about confining to home building and home remodeling. If that were done, does that change your opposition? [LB564]

LAWRENCE FISCHER: It...like I said, we're opposing it as written. Not if it would be changed, you just specify home builders and we would not be opposed to that. [LB564]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR CARLSON: Now, I try to keep an open mind on this. The term contractor is so wide, but if it gets narrowed enough, I would think maybe it could be looked at differently. The other concern regards whether it's this or something else is if we start something with one segment it's going to spread to the rest and that may be a concern. But I think there are some real differences in the whole area of contracting in some areas that maybe need some attention and others that don't. [LB564]

LAWRENCE FISCHER: Yes, sir. [LB564]

SENATOR CARLSON: Thank you for your testimony. [LB564]

LAWRENCE FISCHER: Thank you. [LB564]

SENATOR COUNCIL: Seeing no other questions, thank you for your testimony Mr. Fischer. [LB564]

LAWRENCE FISCHER: Thank you, Senator. [LB564]

SENATOR COUNCIL: Any other opponents? Anyone in a neutral capacity? [LB564]

JUSTIN BRADY: (Exhibit 1) Senator Council and members of the committee, my name is Justin Brady. J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska State Homebuilders Association in a neutral capacity on LB564. We've had discussions with Senator Lathrop and want to work to come up with suggestions of what a licensure law in Nebraska should look like. We don't believe what's before you is what it should look like but we understand that we need one and we will look to make recommendations. I'll give you two areas where they're working on that. They've set up a task force...the state home builders have, to come up with recommendations to have that to Senator Lathrop and this committee by October so we can have that to going next year. Also, they're learning and working with HHS and the EPA, because the EPA has ruled that anybody doing remodeling of a 1978 or older home has to be certified now. So they're following...seeing what they learned from that too to be able to draw into this. So with that I'd try to answer any questions. [LB564]

SENATOR COUNCIL: Any questions for Mr. Brady? Seeing none, thank you for your testimony. [LB564]

JUSTIN BRADY: Thank you. [LB564]

SENATOR COUNCIL: Any other testimony in the neutral capacity? [LB564]

JEAN PETSCH: You'll be happy to know I went from a page and with your amendment

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

proposal coming I went to this little paragraph over here. I'm Jean Petsch, J-e-a-n P-e-t-s-c-h. I'm the executive director of the Associated General Contractors Nebraska Building Chapter and I'm also representing the members of the Nebraska Chapter of the Associated General Contractors. Those two organizations represent a good number of the commercial building contractors and commercial heavy contractors in the state. And with consideration of the pending amendment to more narrowly define general contractor, we'll be in a neutral capacity on this bill. Any questions? [LB564]

SENATOR COUNCIL: Any questions for Ms. Petsch? Seeing none, thank you for your testimony. [LB564]

JEAN PETSCH: Thank you. [LB564]

SENATOR COUNCIL: Any other testimony in a neutral capacity? Seeing none, Senator Lathrop. [LB564]

SENATOR LATHROP: Just briefly, I think you can see that we have...with the bill we've introduced and have the attention of the home building industry. They are not only, you know, they're not only willing to work with me but I think they see the importance and the need for legislation in the area. We're not going to regulate for the sake of regulating but to try to develop some base level of competency and so I look forward to working with that group and bringing an amendment to you next session that will move right through here. So thank you. [LB564]

SENATOR COUNCIL: Thank you. And I'll restore the chair to Senator Lathrop. [LB564]

SENATOR LATHROP: Okay, we'll now proceed to the claims bills and committee counsel will introduce the claims that we're asked to approve. [LB628]

MOLLY BURTON: Yes. Senator Lathrop, my name is Molly Burton, legal counsel for Business and Labor Committee. First up will be LB628 which is introduced on behalf of the director of administrative services, specifically the risk manager. It is the annual approved claims bill. These claims are either tort, miscellaneous, or contract claims against the state. The claims that are before you in LB628 were either approved of by the State Claims Board or were litigated in Lancaster District Court and the court found for the claimant. It has been necessary that the Legislature approve these appropriations to take care of these claims. This bill also contains agency write-offs which must also be approved by the Legislature, and these are write-offs due to uncollected debts from the agencies. Laura Peterson, the risk manager for the director of administrative services is here to testify. She will go through each claim. There are also some representatives of the specific agencies that have claims against them that are also here to testify. Ms. Peterson will also present to the committee for consideration two amendments to LB628. AM768 adds another settled tort claim. It also

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

increases the total monetary claims amount due to this additional claim and it also decreases the Supreme Court's write-off amounts. And then the last amendment, AM811, also adds a newly settled claim that was just settled this morning and because of that it also increases the total amounts of the monetary claims. And with that, are there any questions? [LB628]

SENATOR LATHROP: None. We turn it over to Ms. Peterson. [LB628]

LAURA PETERSON: Thank you, Senator Lathrop, members of the Business and Labor Committee, my name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager. I'm here today in support of LB628 which contains claims approved by the claims board or litigated claims which were settled or in which a judgment was obtained against the state and which require approval of your committee and the Legislature. I'll go through the claims in the bill and provide a summary of each claim. I'm not sure I can do it in three minutes. [LB628]

SENATOR LATHROP: Oh, you've got more. If you tried to get through this in three minutes, we wouldn't get the information we need. So I wonder if you want to go through each one. Since there's not a long line of them, let's have you go through each one, and then allow...and then we'll see if anybody has any questions after your explanation. [LB628]

LAURA PETERSON: Do you want me to pause after each one or you want me...? [LB628]

SENATOR LATHROP: Please. [LB628]

LAURA PETERSON: Okay. Section 1 of the bill contains two miscellaneous claims approved by the board that need legislative approval. Claim number 2009-03297 was filed by the Nebraska Press Advertising Service requesting payment for publication of ballot measures in the general and primary elections in the total amount of \$87,387.20. The Constitution requires publication in at least one newspaper in each county, each week, for three consecutive weeks. Publication has historically been funded through the claims process. The Secretary of State's office reviewed the bills and recommended the claim be approved and the Claims Board approved the claim. [LB628]

SENATOR LATHROP: This would be the typical approach for the state paying for the cost of printing on different ballot items. [LB628]

LAURA PETERSON: Yeah, essentially because we don't know how many ballot items or Constitutional amendments are going to be in any given election. Rather than trying to put funding in the Secretary of State's office budget anticipating what it would be, you know, two years ahead of time, the Nebraska Press Advertising Association up-fronts

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

the publication costs and then they are paid back through the claims process. [LB628]

SENATOR LATHROP: Okay. Next one. [LB628]

LAURA PETERSON: Claim number 2009-03442 was filed by Ogborn Summerlin & Ogborn law firm in the amount of \$209,549.92 requesting payment as a result of a U.S. District Court order awarding attorney's fees in the case of Mohamed El-Tabech v. Clarke. The Department of Correctional Services and the Attorney General's office both reviewed the order and the calculation of interest and recommended the claim be approved and the Claims Board approved the claim in that amount. [LB628]

SENATOR LATHROP: Okay. Senator White. [LB628]

SENATOR WHITE: What was the underlying case? [LB628]

LAURA PETERSON: The underlying case related to religious accommodation associated with this inmate's food needs for religious purposes. [LB628]

SENATOR WHITE: Pork and issues like that? [LB628]

LAURA PETERSON: Essentially, yes. [LB628]

SENATOR WHITE: And how much money was awarded to the inmate for compensation? [LB628]

LAURA PETERSON: I don't believe there were any...that there was a monetary award but rather a perspective relief related to his food needs. [LB628]

SENATOR WHITE: So it was an injunctive relief going forward and we spent \$210,000 to fight it. [LB628]

LAURA PETERSON: We are awarding \$210,000 right now. There is also an order in the Federal Court that relates to additional interest because the attorneys for Mr. Tabech do not believe that they should be required to file a claim to obtain their attorney's fees. But that order is on appeal, so you may actually see an additional claim related to that but for right now, yes. The underlying case cost \$209,000 plus, for Mr. Tabech's attorneys. [LB628]

SENATOR WHITE: Would have been a lot cheaper to buy him chicken, wouldn't it? [LB628]

LAURA PETERSON: Could have been. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR WHITE: Thank you. [LB628]

SENATOR LATHROP: And that's over and above what we spent defending it. [LB628]

LAURA PETERSON: Right. [LB628]

SENATOR LATHROP: That's just what we have to pay for his lawyer because we lost. [LB628]

LAURA PETERSON: That is our payment of his attorney's fees. [LB628]

SENATOR LATHROP: Okay. Senator Carlson. [LB628]

SENATOR CARLSON: I don't know if this is a fair question for you. Help me understand, what food needs for religious purposes? [LB628]

SENATOR WHITE: Muslims can't eat pork. [LB628]

SENATOR CARLSON: I'll ask you later. [LB628]

LAURA PETERSON: I think there were actually some other issues related to how he was being accommodated and whether he had switched his religious beliefs and he was being accommodated for one set of religious beliefs and then had changed and the change was not, according to the court case, adequately made. I think I'm saying that right. There's probably a little bit more detail to it than that but. [LB628]

SENATOR LATHROP: And I will say just because I've been through this process before having served on this committee, we have witnesses that will testify if you want to hear more about a particular claim, just say so and we have people from the AG's office that will come up and tell us what actually happened. [LB628]

LAURA PETERSON: Yeah, I should have said there are...I don't think any of them are planning to testify unless you have specific questions. [LB628]

SENATOR LATHROP: Right. [LB628]

LAURA PETERSON: But there are representatives of Correctional Services, Department of Roads, Department of Health and Human Services, and the Attorney General's Office if there are questions that I can't be specific enough in my answer. [LB628]

SENATOR LATHROP: Okay. Yeah. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR COUNCIL: You communicated that the \$209,000 doesn't include interest? [LB628]

LAURA PETERSON: It does include interest. We calculate interest until the time we estimate that we would be able to pay it at the end of the session. [LB628]

SENATOR COUNCIL: Post-judgment interest? [LB628]

LAURA PETERSON: Yes. [LB628]

SENATOR LATHROP: Any other questions so far? Okay. The next one. [LB628]

LAURA PETERSON: Those are the two miscellaneous claims. Section 2 of the bill include tort claims which need legislative approval. The first two amounts found on lines 5 and 9 of page 3 of the bill represent tort claim numbers 04-127 filed by Ross Ostergard, 04-275 filed by William Kirkwood, 04-297 by Robert Johnson, and 04-298 by Mavis Johnson. All of these against the Department of Roads and all relating to the road design and signage during a road construction project at one intersection. The court, during litigation, determined the state was negligent in the signage that was placed in the construction project and that such negligence was the proximate cause of the two accidents identified in these four tort claims. The state has paid the \$50,000 that is allowable under the State Tort Claims Act and the remaining amounts plus interest calculated until we would be able to pay are the amounts that you see in LB628. [LB628]

SENATOR LATHROP: Did you say these were judgment amounts, Laura? [LB628]

LAURA PETERSON: These are judgment amounts. [LB628]

SENATOR LATHROP: So it's not...this isn't an amount somebody settled a case for, but the amount the court has actually told us to pay. [LB628]

LAURA PETERSON: The only amount that is estimated is our estimation of the amount of interest between the time the court order came down and when we estimate we will be able to pay as a result of the legislative session but the amounts to the claimants were awarded by the court. [LB628]

SENATOR LATHROP: Okay. Any questions with respect to those claims? Senator Wallman. [LB628]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Was this gross negligence then on the Department of Roads? [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

LAURA PETERSON: I don't know that there was a determination in the court order of gross negligence. But essentially, the determination was that due to the placement of the sign in the intersection, that it may not have completely complied with the manual for signage during construction projects and even if it did, was not clear enough to the traveling public and that they should have had enough information to make a change to that signage. I'm summarizing that's close to what they said. [LB628]

SENATOR WALLMAN: Thanks. [LB628]

SENATOR LATHROP: Any other questions? Senator Carlson. [LB628]

SENATOR CARLSON: Well, Senator Lathrop, this is just kind of a point of clarification...might even ask you. All these amounts, they don't mean anything to me, and I understand there's not enough room here to give any information about the cases but we're supposed to make a decision on something and all we have is an amount of money here. [LB628]

SENATOR LATHROP: Well, we have and just so that you know, if you want to know what happened...and these are claims because of some action or inaction or negligence on the part of the Department of Roads. People got hurt and they sued the state of Nebraska and those claims were defended by the Department of Roads or the Attorney General's Office and a court listened to the case...in the case of these two amounts that we're taking up right now and entered a judgment against the state. The state can't pay that until Business and Labor approves it and the body approves it. So we're getting a summary of it. If you want to hear the detail, we can bring somebody up or you can ask for it and we'll have somebody from the AG's Office or the Department of Roads expand and we're going to hear one that was just settled this morning that you very well likely will want to hear some information about. Okay? [LB628]

LAURA PETERSON: Yeah, and in each of these cases there was...well, in three of the four there were relatively significant personal injuries by these folks who were involved in a two-party auto accident at this intersection. I think one was a spouse who was traveling with the other who was not as significantly injured. But there were some relatively significant injuries. [LB628]

SENATOR LATHROP: Yeah, and knowing the details won't do us any good because its a court judgment. Right? [LB628]

LAURA PETERSON: You really can't do anything. And what you can do is be assured that the court reviewed the level of injury and determined that these were the damages that were due to these folks related to their injuries. [LB628]

SENATOR LATHROP: Right. Okay. Senator Council. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR COUNCIL: And maybe to provide some additional information to Senator Carlson, if the AG thought there was any possibility of reversing that award, there would have been an appeal taken. [LB628]

LAURA PETERSON: And actually in these cases were appealed... [LB628]

SENATOR COUNCIL: And lost on appeal. [LB628]

LAURA PETERSON: ...and they were consolidated...they were appealed, I know, to the appeals court level and... [LB628]

SENATOR COUNCIL: So it's gone. [LB628]

LAURA PETERSON: ...I believe that there was a petition for review by the Supreme Court which was denied. I'm not 100 percent certain of that. But I know it at least went to the appellate level so they have been significantly appealed and reviewed both on the level of damages and the underlying liability. [LB628]

SENATOR LATHROP: Okay, next claim. [LB628]

LAURA PETERSON: Next tort claim is claim number 2008-01916 which was filed by Steven Werner as a result of an auto accident where a state driver turned in front of Mr. Werner's motorcycle...Mr. Werner had the right of way. Mr. Werner suffered significant injury, he has had at least one surgery and has documented the need for additional future surgery. Mr. Werner and the state reached a settlement in the amount of \$119,000 which was approved by the District Court. The state has paid the \$50,000 allowed under the Tort Claims Act, and approval of the State Claims Board and the District Court...and the \$69,000 identified in LB628 represents the remainder of the settlement amount due to Mr. Werner. [LB628]

SENATOR LATHROP: Any questions? Seeing none, go ahead. [LB628]

LAURA PETERSON: The final two tort claims in LB628 as it was originally drafted are tort claim numbers 2007-01467 and 2009-03181. These two claims are the result of one auto accident where the state driver stopped at a stop sign but then pulled out into oncoming traffic striking the claimant in claim number 2007-01467. The claimant received significant injury to her back and had almost \$100,000 in medical bills, \$57,606.73 of which were paid by the state of South Dakota Employee Health Plan, which she had health insurance through and that represents the other claim from this accident. The State Claims Board and the District Court both approved settlement of the two claims in the amounts of \$156,157.32 to be paid to Ms. Trebesch, and \$57,606.73 to be paid to her health plan in subrogation. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR LATHROP: Any questions with respect to that tort claim? Seeing none, you may proceed. [LB628]

LAURA PETERSON: Section four of the bill includes agency write-off requests. Request number 2008-02408 was filed by the Supreme Court. The original write-off request of \$245.88 was reduced to the amount in the bill which is \$213.28 because several debts were collected between the time the claim was submitted and the time the claim was heard by the board. I'm offering a further amendment reducing the final amount to be written off to \$202.53 because additional debts were collected after the Claims Board approved the write-off and before it was time to come here today. The agency made several attempts to collect the remaining \$202.53 which is from 37 individuals with the largest individual debt being \$31 and most being under \$5. Because of the small individual amounts, the Claims Board agreed it's not economical to pursue collection or legal action beyond the efforts that have already been made. [LB628]

SENATOR LATHROP: I see no questions. [LB628]

LAURA PETERSON: Request number 2009-03129 was filed by the Clerk of the Legislature to write off \$61.64 stemming from two individual debts for reproduction of legislative materials. The dollar amounts involved in the two debts are very small and unlikely to be collected. The cost of pursuing collection further will likely outweigh the amount collected and therefore the board approved this request. [LB628]

SENATOR LATHROP: Very good. [LB628]

LAURA PETERSON: Request 2009-03176 was filed by the Department of Health and Human Services. The request is to write-off \$260,275 of bad debt incurred in the department facilities and benefit programs; \$173,080.20 of the request represents debt from the Aged, Blind, and Disabled, Aid to Dependent Children, Child Care, and Children of Family Services programs. The remaining \$87,194.78 represents bad debt incurred at the department's facilities and in their programs including the Beatrice State Developmental Center, the Regional Centers in Lincoln and Norfolk, the Vital Records program, and the State Health Lab; \$16,702.96 of the total represents debts that were uncollectable due to death of the debtors with no assets; \$45,805.34 represents debt that was uncollectable due to the bankruptcy of the debtor; \$125,025.27 was uncollectable because the debtor continued to be on some sort of government assistance or had assets that were legally protected from collection and the statute of limitations for collection of the debt ran while the debtor was still in that status. Based on these statistics, the board approved the write-off request in the amount of \$260,275 as I've described. Request 2009-03206 was filed by the Military Department to write off debt in the amount of \$2,632.29 owed by seven individuals who were involved in the National Guard Tuition Assistance Program. Each of the students withdrew from the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

program and therefore was responsible for repayment of the cost of the course. The department made reasonable efforts to obtain repayment as authorized in the statute creating the program. After submission of the claim, we found one individual and we were able to collect using offsetting in the state accounting system but it was unlikely that offsetting would be available in the remaining cases. So the Claims Board approved the write-off in the reduced amount of \$2,456.79 which is the amount you see in the bill. [LB628]

SENATOR COUNCIL: I have a question. [LB628]

SENATOR LATHROP: Yes, Senator. [LB628]

SENATOR COUNCIL: Are these individuals who are in the reserve? [LB628]

LAURA PETERSON: In the Nebraska National Guard. [LB628]

SENATOR COUNCIL: In the Nebraska National Guard and the Tuition Assistance Program is such that they're eligible after their reserve status? I mean... [LB628]

LAURA PETERSON: No, essentially the tuition program allows them to take the classes while they're in, and then I believe they have to maintain reserve status for a certain period of time or they have to repay. And so these folks withdrew, or were no longer in the reserve. [LB628]

SENATOR COUNCIL: They were no longer on reserve status, okay. [LB628]

LAURA PETERSON: Right. And therefore were required to repay. [LB628]

SENATOR COUNCIL: Okay. [LB628]

SENATOR LATHROP: Any other questions? I don't see any. Go ahead. [LB628]

LAURA PETERSON: Request 2009-03218 was filed by the Nebraska Workers' Compensation Court in the amount of \$22,796.08 which was overpaid to a recipient from the Second Injury Fund. The overpayment was a result of a failure to terminate benefits after the court-ordered 300 weeks. Legal research provided by the agency's general counsel and agreed to with the Attorney General's Office shows that recovery of an overpayment of workers' compensation benefits is available only if the overpayment was obtained as a result of fraud or misrepresentation by the recipient. In this case, there was no wrongdoing on the part of the injured individual and so recovery is not available. Therefore, the board approved the agency's write-off request. [LB628]

SENATOR LATHROP: Is that one claimant? [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

LAURA PETERSON: One person. [LB628]

SENATOR LATHROP: One person was overpaid \$260,000 before we noticed. [LB628]

LAURA PETERSON: Over a number of years before they determined...my understanding from the documentation submitted by the agency is that most second injury funds are perm total so they're receiving lifetime awards and this one happened to be a very unusual case of one that had a 300-week court order and so they failed to terminate it after 300 weeks. [LB628]

SENATOR LATHROP: So the guy should have stopped after 300 weeks and they continued to pay him. [LB628]

LAURA PETERSON: For several years. [LB628]

SENATOR LATHROP: For a long time. [LB628]

LAURA PETERSON: And as soon as they recognized it, they sent a letter terminating the benefits immediately and then they began the research to recover but determined that they could not recover. My understanding from the agency, the information that they submitted to the board is that they have now changed their procedures for payouts of Second Injury Fund claims. [LB628]

SENATOR LATHROP: Good. [LB628]

LAURA PETERSON: Which also, I think, are less and less common now because the Second Injury Fund is not an ongoing cause. [LB628]

SENATOR LATHROP: Okay. [LB628]

LAURA PETERSON: Request number 2009-03243 was filed by the Department of Roads. The Department of Roads request permission to write off \$12,249.31 in uncollectable debt representing damage to department property along the roadside, generally the result of auto accidents which damage right of way markers and road signs. The amount to be written off consists of 21 debts all less than \$2,500. The agency made diligent efforts to collect all the debts and the remainder due is being written off for a variety of reasons including inability to locate the debtor, compromise and settlement of the amount due, bankruptcy of the debtor and several other issues. The Claims Board reviewed the reason for each write-off and agreed the agency had exhausted its ability to collect and therefore approved the claim. Request 2009-03246 was also filed by the Supreme Court. The original write-off request of \$210.82 was reduced to the amount in the bill of \$185.82 because several debts were collected

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

between the time the claim was submitted and the time the claim was heard by the board. In the amendment that I provided you, it would reduce the final amount to be written off to \$176.82 because additional debts were collected after the Claims Board approved the write-off. The agency made several attempts to collect the remaining \$176.82 from 33 individuals with the largest individual debt being \$19.75 and most of the debts being less than \$5. Because of the small individual amounts, the board agreed that it is not economical to pursue collection or legal action beyond the efforts already made by the agency and approved the write-off. [LB628]

SENATOR LATHROP: That's people That are stiffing the Supreme Court on photocopies? [LB628]

LAURA PETERSON: Yeah, it's mostly filing, a few filings and mostly obtaining copies. [LB628]

SENATOR LATHROP: Presumably not lawyers that still practice there. [LB628]

LAURA PETERSON: We actually, you see that we have collected some of the debts. We actually went through the active bar list and sent a second notice to those folks, most of whom paid, so. [LB628]

SENATOR LATHROP: Yeah. Okay. [LB628]

LAURA PETERSON: It's mostly other folks, pro se individuals and others. Request 2009-03339 was filed by the State Fire Marshal requesting to write-off \$4,470 in uncollectable debts from underground storage tank registration fees for the years 2000 through 2004. The amount represents 27 individual debts with none of the debts being over \$600 and most of them being less than \$125. The agency made reasonable attempts to collect the debts and enlisted the assistance of the Attorney General's Office in reviewing the debts for the possibility of collection. The statute of limitations for collections has also now run on each of these debts and therefore the Claims Board approved the write-off as requested by the agency. [LB628]

SENATOR LATHROP: That's everything in the original bill. [LB628]

LAURA PETERSON: And I distributed the two amendments that I would ask you to advance with the bill. The first amendment contains the changes I described earlier to the Supreme Court write-off request. It also contains \$2,500 for tort claim number 2007-01616 filed by Joshua Vandenberg who was a passenger in the Seward School bus accident during the accident in... [LB628]

SENATOR LATHROP: You are on AM768, just so that we keep that straight. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

LAURA PETERSON: I apologize, yes. Thank you. [LB628]

SENATOR LATHROP: Okay. Why don't you take them one at a time, if you don't mind. [LB628]

LAURA PETERSON: Okay. Let me grab that amendment. I think I gave you all my copies of the amendment, but that's okay. Sorry. It contains the two...the first change to add \$2,500 for tort claim number 2007-01616 which was filed by Joshua Vandenberg who was a passenger on the school bus during the Seward School bus accident in 2001. A lawsuit was filed in this case and a settlement was recently reached between the state, the claimant, and the contractor. This amount represents the amount the state is paying, not the contractor's payment. The settlement was approved by the District Court. This is the last claim that the state has on file from the Seward School bus accident and while the claim itself does not exceed \$50,000, the amounts paid to all claimants from this accident well exceeds \$50,000 and therefore legislative approval is required before this claim can be paid. [LB628]

SENATOR LATHROP: Okay. [LB628]

LAURA PETERSON: The other two changes in this amendment are the changes that I described earlier to the Supreme Court write-off requests reducing the amounts of each of those requests because of collection activities since the time that we filed the original bill. [LB628]

SENATOR LATHROP: Okay. [LB628]

LAURA PETERSON: And the other amendment, AM811, contains tort claim number 2009-03528 which was filed by David Manes who is the personal representative for the estate of Olivia Manes. Ms. Manes was a resident of the Beatrice State Developmental Center. The claim alleged medical malpractice and wrongful death as a result of Ms. Manes' care at the Beatrice State Development Center. This claim was settled by the Attorney General's Office and Ms. Manes attorney on Friday of last week. The Claims Board held a meeting this morning and approved the claim in the settlement amount of \$600,000 which you see represented in the amendment and the claim has been submitted to the District Court for approval, which we anticipate receiving prior to debate of the claims bill in the full Legislature. [LB628]

SENATOR LATHROP: Do you have somebody coming up to talk about that? [LB628]

LAURA PETERSON: I can try to answer questions or there are representatives both of Health and Human Services and the Attorney General's Office who are here who can address that. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR LATHROP: I see Mr. Cookson here. I think we should have some testimony since this is...the speed with which this matter was resolved is unlike a typical case before the State Claims Board, would you agree with that? [LB628]

LAURA PETERSON: Yes. [LB628]

SENATOR LATHROP: And the circumstances involve something of interest to the Legislature since it was the death of someone at BSDC in January of this year, right? [LB628]

LAURA PETERSON: Yes, and I believe Mr. Cookson is prepared to testify. [LB628]

SENATOR LATHROP: I can see Mr. Cookson is behind you waving his hand like he's prepared to enlighten us. Are there any questions on any of the claims or the amendments to the claims bill at this point in time? Seeing none, thank you for giving us the claim by claim. Alan, did you want to testify? [LB628]

ALAN BEERMANN: Just as to exhibits and answer questions if you have any. [LB628]

SENATOR LATHROP: Okay, we will see if there are any. [LB628]

ALAN BEERMANN: Senator and Chairman Lathrop and members of this committee, my name is Alan Beermann, B-e-e-r-m-a-n-n. I represent the Nebraska Press Association and the Nebraska Press Advertising Service. This claim represents the publication in newspapers of ballot measures for the entire election cycle of 2008, meaning the primary and the general. There are not always amendments in the primary, but occasionally the Legislature does place one in the primary. There was such a measure in 2008. All of the affidavits for the proof of publication of every newspaper for each insertion has been filed as required by law with the Secretary of State and they're housed in his office if anyone cares to see them. Otherwise, we believe the claim fairly represents the publication. For transparency purposes we have shared with you all of the contracts with the Governor and with the Secretary of State for those who may be new to this process. That would constitute my testimony and thank you for the courtesy of being here. [LB628]

SENATOR LATHROP: Very good, thank you Mr. Beermann. Any questions? I don't see any. I appreciate it. [LB628]

ALAN BEERMANN: Thank you. [LB628]

SENATOR LATHROP: Mr. Cookson, why don't you come on down? [LB628]

DAVID COOKSON: My name is David Cookson, I'm chief deputy Attorney General. I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

here to talk...I believe the amendment is AM811. This was the case of David Manes as guardian and personal representative of the estate of Olivia Manes. Olivia Manes was a 18-year-old resident...18 years old, she was a resident of BSDC, she suffered from Dandy-Walker syndrome. She was...had little or no vision and was not able to communicate other than to make discernible noises that over the years staff had come to understand were her response to outside stimulus. She had a...she had been in BSDC since she was 7, so she had been there almost 12 years at the time of her death. She had originally been on a treatment regimen of drugs for her seizure situation. In September, the neurologist assigned to BSDC made an evaluation to gradually wean her off that seizure medicine. They went to a half dose starting in September of 2008, September 12, 2008, through January 12, 2009. On the evening of January 15, developmental techs at Beatrice noticed that Olivia was in a full-body seizure in her bed. They notified nursing care, nursing care notified the attending physician...seizure medication was ordered...the medication...the first shot given to Ms. Manes, the needle broke off in her leg, another nurse went to retrieve more medication. It's unclear from the records whether that initial shot indicated any medication actually got to the patient. Another dosage was put in in about...within about five minutes. The care provided basically from the point the seizures were noticed until Olivia passed, nearly two hours later, was clearly substandard. Negligence was clear in this case, liability on behalf of the state was clear on this case. Our involvement in this matter began with the decision of Dr. Schaefer to terminate a portion of the license at BSDC as a result of the Olivia Manes case and a previous case that occurred the year before. Generally about the same time David Manes in his capacity as guardian and personal representative filed a claim with the state Tort Claims Board for \$1.75 million. We then contacted HHS shortly after the decision was made to terminate and asked if they wanted us to try to resolve this case as quickly as possible given that it was clear liability and it was simply a question of finding a value for the pain and suffering suffered during the two hours that we know Olivia was in a...having seizures and also for the wrongful death of Olivia. HHS indicated yes, that they felt it was appropriate to try to resolve this as quickly as possible from the state's perspective if generally we have...particularly in cases where we have little leverage, we try to resolve these cases in time to get them in a particular year's claims bill because that generally, folks are more receptive to settling if they know they're going to get paid relatively quickly rather than having to wait, you know, for a trial and potential appeals...this case likely wouldn't have come before this committee for another two years, if that soon. And so it does give us a certain impetus to try to settle these cases quickly if we can, and so we entered into negotiations about two weeks ago with the attorneys for the Manes and the Manes themselves and were able to resolve the claim last Friday. We, in addition to liability being clear, we did a jury sampling for verdicts or reported verdicts or settlements for wrongful death of developmentally disabled. We were only able to find one in Nebraska, a jury verdict in Adams County in Martin Luther King Home bowel obstruction. Patient had issues for approximately a day and a half and then had died as a result of that incident and the jury verdict in Adams County had awarded \$600,000 back in 2002. There was a wrongful death of a teenager

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

in Gering, medical malpractice, but it was not developmentally disabled it was...but a 13-year-old. That was approximately \$1.2 million in 2007 and we found a jury verdict in Iowa of \$2.5 million in another teenager wrongful death medical malpractice case. We're the only ones in the last three years besides the Adams County one, that were of some comparative availability for us. And with that I'll answer any questions. [LB628]

SENATOR LATHROP: Anyone have any questions for Mr. Cookson regarding the settlement with the Manes family? Senator Wallman. [LB628]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, Mr. Cookson, you know, I don't disagree we did wrong if...just say, I was disabled at my age, by the fault of the state, wouldn't they figure my future earning power? [LB628]

DAVID COOKSON: We...obviously there was no future earning calculation for Olivia given her condition. So this was a damage for the loss of society, comfort, and companionship to the parents who in comparison to other parents or guardians of residents at BSDC had a long history of visiting Olivia on a regular basis, spending a considerable amount of time there. Mr. Manes brother has been a 40-year resident of BSDC. They live in the area, so compared to other guardians, the Manes had an established track record of spending time. So part of the settlement is for that loss of society and companionship and the other part is for the pain and suffering suffered by Olivia Manes during the two hours we know of that she was having seizures. The plaintiff's had already retained, counsel had already retained two pediatric neurologists of credible nature from Missouri, Illinois, and then they'd also retained a neurologist to talk about the physiological effects of seizures on the human body in terms of the pain and suffering and what you're cognitive of as it occurs. The plaintiff's counsel was very able, obviously, the Manes had retained a firm from Kansas City who had gotten a number of significant medical malpractice awards in the last three--we also did research on them--significant medical malpractice awards in the last three years in the Kansas City Metro area. [LB628]

SENATOR LATHROP: Any other questions? I do have a couple. When you say that there was clear liability what you're suggesting is the state's medical malpractice was beyond dispute. [LB628]

DAVID COOKSON: Yes. [LB628]

SENATOR LATHROP: The care this young lady received at BSDC was clearly outside of the standard of care. [LB628]

DAVID COOKSON: During those two hours, yes. That's all we looked at because that's all the claim referenced. [LB628]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR LATHROP: Okay. Besides the Olivia Manes claim and the claim made by the Manes family which we're resolving with AM811, are there any other pending claims for... [LB628]

DAVID COOKSON: There is a case... [LB628]

SENATOR LATHROP: ...tort claims against the state for care received by people at BSDC? [LB628]

DAVID COOKSON: I am aware of at least one other, the Bauer claim which is filed in Beatrice District Court. That patient suffered broken bones, I believe, in both legs. [LB628]

SENATOR LATHROP: What's the name of that one? [LB628]

DAVID COOKSON: Bauer, B-a-u-e-r. And we've been attempting with Bruce Mason at Nebraska Advocacy Services who is representing the Bauers to reach a settlement with them as well. [LB628]

SENATOR LATHROP: Have you admitted liability in that one? [LB628]

DAVID COOKSON: I don't believe...I believe we're filing our answer this week. We probably won't admit liability in the answer, but ultimately probably try to resolve it. [LB628]

SENATOR LATHROP: There was somebody that passed away and it was in the news and received considerable press coverage in March of '08 that had gone, I believe, into a seizure or at least wasn't breathing, and there was a question about the competency of the folks that were there to attend to that person. [LB628]

DAVID COOKSON: I am aware of the situation, I do not believe that a claim has been filed at this point. [LB628]

SENATOR LATHROP: Okay. Any other questions? Senator White. [LB628]

SENATOR WHITE: Was Bauer the young woman who was dropped, broke both her legs and left for a week without care, roughly? [LB628]

DAVID COOKSON: Well, I know she was dropped and broke both legs. [LB628]

SENATOR WHITE: And you don't know long before... [LB628]

DAVID COOKSON: I have not specifically, personally reviewed the medical records in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

that case. [LB628]

SENATOR WHITE: Okay, thank you, David. [LB628]

SENATOR LATHROP: Okay, any other questions with respect to the Manes claim? Maybe just a couple points just so that people who aren't familiar with the claims process. Typically the Claims Board gets a claim from a claimant and then they're allowed to sit on it, investigate it, or do nothing with it for six months, is that right? [LB628]

DAVID COOKSON: Generally, they have a normal schedule that they go through, yes. [LB628]

SENATOR LATHROP: Okay. The fact that these folks made a claim and had it resolved in a month, it's unusual in the claims process, isn't it? [LB628]

DAVID COOKSON: This case would be unusual, but typically we don't find cases where it's clear liability on behalf of the state. We as a...and this case was one where because the claim was filed so soon after we got involved in the matter and we had previously settled a case with that attorney, we knew that the likelihood of us being able to sit down and negotiate with them up-front was probable that we would have the ability to do that. [LB628]

SENATOR LATHROP: Well I...it's an awful, awful, awful thing to have had happen. And in my judgment, completely unnecessary, completely unnecessary but I appreciate the work that you did to resolve it with this family. So thank you for your testimony. [LB628]

DAVID COOKSON: Thanks. [LB628]

SENATOR LATHROP: Does anybody feel like they need to hear from any other departments on any of the claims bills? I don't see where anybody feels like that's necessary. Anyone else here to testify in favor of LB628? Anyone here in opposition to LB628? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB628 and we will then go to LB629. [LB628]

MOLLY BURTON: Senator Lathrop, members of the committee, my name is Molly Burton, legal counsel for the Business and Labor Committee here to introduce LB629, which is the counterpart to LB628 in that this is the disapproval claims bill brought by the Department of Administrative Services, specifically the risk manager division. LB629 contains three claims that were disapproved by the State Claims Board. Laura Peterson is again here to testify to state the board's reasons for disapproving these claims. They're brought to you--to the Legislature--by statute the claimants have a right to appeal the disapprovals to the Legislature. And I believe there is one claimant, I know,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

Erwin Jefferson, III, contacted Senator Lathrop's office and he may be here to testify and there may be other claimants here to testify as well. [LB629]

SENATOR LATHROP: Okay. We will, I know Mr. Jefferson is here and wants to be heard and that's great. What we're going to do is hear from Laura Peterson first. She'll explain the three claims which she proposes be denied and then we will take up people who are here to testify in favor of those denials, then we'll take up people in opposition. And, Mr. Jefferson, that's when you'll have your chance to address the Business and Labor Committee. Thank you. [LB629]

MOLLY BURTON: Is there any questions? [LB629]

SENATOR LATHROP: Thanks, Molly. Laura, you're up. And we'll again, if you don't mind, we'll take them one at a time. [LB629]

LAURA PETERSON: Good afternoon, Senator Lathrop, members of the Business and Labor Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager and here in support of claims which were denied by the Claims Board as they are represented in LB629. The first claim is claim number 2008-02420 which was filed by Bomgaars Supply in South Sioux City, or in Sioux City, Iowa, in the amount of \$317.64. The claim is for a purchase made by the Norfolk Veterans' Home staff in 2005. The claimant has a copy of a receipt showing the purchase of items from the store by the state employee. While there does not appear to be a dispute regarding the fact that the state employees did purchase items from the claimant's store, the claim was not filed until January 2008, which is well over the two years after the purchase. State Claims Board denied the claim because the claim was filed beyond the two years allowed by Nebraska Revised Statute 81-8,300.01. Claimant admits they filed the claim beyond the statute of limitations but indicates that they were unaware of the statute and have previously resolved unpaid bills successfully without being informed of any statute of limitations. While the claimant states that they were unaware of the claims process, the same company filed a claim related to a purchase by the Game and Parks Department in 2006 so they were or should have been aware of the process and therefore the Claims Board denied solely on the reason of statute of limitations. [LB629]

SENATOR LATHROP: Senator Council. [LB629]

SENATOR COUNCIL: What's the process, the state employees go to vendors and...? [LB629]

LAURA PETERSON: They can either have a purchasing card in which case this wouldn't be an issue or in some cases they may have an account established with that particular company. The company, then, is supposed to invoice them on a regular basis presumably 30, 60, 90 days, a year. In this case, we're not entirely certain what

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

happened except that an invoice either didn't get sent or when sent was lost, didn't get paid and a significant amount of time went by and then after...well, after two years after the original purchase date, which was in August of 2006, they did ultimately file. I think they went to the agency and the agency said, well, we're not allowed to pay now, it's too late, it's beyond our operational budget. We can't pay an invoice that's that old, you'll have to file a claim. They came to the Claims Board and the Claims Board said, you know, there's a two-year statute of limitations and I think, you know, the point of that statute of limitations is so that we can still identify purchases made, services received, and they were beyond it, so it was denied. [LB629]

SENATOR COUNCIL: So, now, if the state employees who made the purchase for the \$317.64 had received a receipt, is there a standard procedure in terms of like them turning that receipt over and then that receipt...? [LB629]

LAURA PETERSON: I think the common practice is that they turn the receipt in and then when the invoice comes into an accounting, they don't pay from the receipt. They wait for the invoice and then, you know, because of checks and balances those who do the accounting process are supposed to match the invoice to the receipt. Although I'm not sure there's a procedure, if we have a receipt and we don't receive an invoice, for going out and seeking out that invoice. And if there is now, there certainly wasn't three years ago when this was occurring. [LB629]

SENATOR COUNCIL: Okay, that's it. Thank you. [LB629]

SENATOR LATHROP: Any other questions? Okay. So we got them on a statute of limitations, do we owe the money? [LB629]

LAURA PETERSON: I mean, I don't think that the agency is disputing that they received the goods. I think, you know, the complication from the Claims Board standpoint is, okay, it was two or three years and they have a pretty good receipt...that nobody is disputing, and it's a fairly small dollar amount but if it was five years or 10 years and we don't have somebody who knows they received it, then what do we do? I think that's how the, but I don't think in this case there's a... [LB629]

SENATOR LATHROP: Right. We can pay it without opening the door to...I mean, the rule is what the rule is and we can exercise some discretion and agree to pay this outfit... [LB629]

LAURA PETERSON: I think the other thing is because... [LB629]

SENATOR LATHROP: ...and we don't dispute the amount. We don't dispute the state benefited from buying the goods from Bomgaars and \$317 was a fair and reasonable amount. It's just, you know what, you filed this about three, four months too late. [LB629]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

LAURA PETERSON: Yeah, and I think the other question is did we, you know, that this has occurred before with the same company where they've waited a significant amount of time to try to collect and... [LB629]

SENATOR LATHROP: My guess is, my guess is they won't sell us anything anymore if we stiff them, right? [LB629]

LAURA PETERSON: I, well, they aren't saying that. I guess it depends on how much business we're doing. [LB629]

SENATOR LATHROP: I mean, if it was me and I bought something from these guys they'd have a lot more than two years time to sue me. Right? For the sale of goods and services, but anyway. [LB629]

SENATOR WALLMAN: Thank you, Chairman. Is it possible we lost the receipt, you know? [LB629]

LAURA PETERSON: We don't know for sure if the invoice was sent and never received or if the invoice was received and never paid. We just don't know which side dropped the ball. [LB629]

SENATOR LATHROP: Okay. Next one, if you don't mind? [LB629]

LAURA PETERSON: The second claim is claim number 2008-02424 which was filed by attorney Joy Shiffermiller on behalf of Stephen Lenzen against the Nebraska Educational Television. The claim was filed as a contract claim and neither party objected to the jurisdiction of the State Claims Board and therefore the claim proceeds as a miscellaneous claim. The claimant alleges he was forced to resign from his employment at NETV and was thus denied his rights under reduction in force policies when his job was eliminated. He is seeking...in the claim he seeks 90 days of pay he would have received if he had been RIFed. The agency provided a voluntary resignation document from the claimant along with evidence that his position was not eliminated but that he resigned during a disciplinary proceeding. The Claims Board held a hearing on the matter and determined RIF rights and benefits were not applicable because there was no reduction in force. The board found that but for his resignation, claimant's termination would have been for cause as he shared confidential and proprietary information with another business entity in violation of a nondisclosure agreement. Ultimately, the board determined the claimant failed to provide proof that his employee rights were violated and they denied the claim. [LB629]

SENATOR LATHROP: Okay. Any questions about that one? I don't see any. You may proceed to the last one. [LB629]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

LAURA PETERSON: The last claim is 2008-02461 filed by Erwin Jefferson against the Nebraska Supreme Court related to his dissatisfaction with the outcome of a probate matter. The claimant refiled in this claim a claim that was originally filed in 2006. The prior claim was removed from the jurisdiction of the Claims Board and proceeded to court. Claimant alleges the Supreme Court sustained his assertions in the prior claim. He believes various courts and members of the court as well as attorneys who previously represented him were negligent and their errors deprived him of his parent's estate and home which was ultimately sold. Claimant failed to prove any decisions made throughout the court proceedings were negligent. Claimant also failed to provide any documentation the Supreme Court ruled in his favor or held any of the parties were negligent in the handling of the case. Claimant filed this as a contract claim but failed to show any contract between himself and the state which can be reviewed or enforced under the state Contract Claims Act. He did not provide a copy of any such contract or allegations regarding breach of contract. To the extent claimant simply disagrees with the court ruling that is not in his favor, the state and the judges retain immunity for those decisions under the Tort Claims Act and the Contract Claims Act under which this claim is filed is not applicable to that kind of allegation. Further, it is not clear that claimant can file another identical claim in the same matter. However, the Claims Board agreed to review the claim in an abundance of caution with regard to protecting the claimant's due process rights, if they exist, in the second filed claim on the same matter. Based on these various reasons, including but not limited to jurisdictional issues, lack of a contract to be enforced, and failure to prove contract breach or negligence, the board denied the claim. [LB629]

SENATOR LATHROP: Very good. Any questions about the last claim? Any other questions of Ms. Peterson with respect to LB629? I don't see any. Are there any persons here to testify in support of LB629? And, are there anyone here--is--there anyone here wishing to testify in opposition to LB629? Mr. Jefferson, you may approach and I know this has been a long-standing dispute between you and the state and typically we would limit people to three minutes in their testimony. We will just try to ask you to state your position in five minutes or so, if you don't mind? And you will have our undivided attention. [LB629]

ERWIN JEFFERSON: (Exhibit 1) Good afternoon, Senators. [LB629]

SENATOR LATHROP: Why don't you start with your name, if you don't mind? [LB629]

ERWIN JEFFERSON: Erwin W. Jefferson, III, J-e-f-f-e-r-s-o-n. I'll try to be real succinct and not suffer so much abuse but I think I'll get to the heart of the matter. In Nebraska, the Constitution gives equity jurisdiction to the District Courts and the Nebraska Supreme Court has held...well, in addition to that it also states that, and such other jurisdiction as the Legislature may provide. The Nebraska Supreme Court has held that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

County Courts can acquire jurisdiction through legislative enactment as from Miller v. Janecek, 210 Neb. 316, or 314 N.W. 2d 250 (1982). It has also been held by the Supreme Court that the county courts in exercising exclusive original jurisdiction over estates may apply equitable principles to matters within probate jurisdiction. That's In re Estate of Steppuhn, 221 Neb. 329, 377 N.W. 2d 83 (1985). The jurisdictional statutes regarding probate code is found in Nebraska Revised Stat. Section 24-517 (1995). It provides county courts with exclusive original jurisdiction over all matters relating to decedents' estates, including the probate of wills and the construction thereof. What it doesn't expressly include is language giving the county courts permission to apply equity issues to wills or contracts arising out of the probate code. Under the Nebraska Probate Code, at Section 30-2351 there's a statutory scheme for what they call a contract concerning succession wherein usually people of modest estates or small estates where they can pass their estates down one to another and then to a final beneficiary. In the instant case it was me. I was the primary beneficiary. It was my father and my stepmother. They were married for more than 40 years. Briefly, I didn't meet my dad until I got ready to go to Vietnam so I just wanted to know who he was. I grew up in Minnesota. I came to Nebraska. I met him. We established a bit of relationship, me, him and his wife. During their lifetime they told me that they had prepared the will and asked me...they said, well...my dad said when I die, you do nothing. You let Ruby live on the property if I die before her or vice versa and in the end everything will come to you. And he asked me if that was okay, and I said, yeah, sure. In my mind it's your property. Yeah, it was agreeable with me. My dad died first. At his funeral my stepmom told me of some sibling rivalry. I won't even get into that because long story short, I think people were just taking advantage of a flaw in the law. Because the exclusive jurisdictional statute by the Legislature does not expressly include language that gives the county court jurisdiction over contracts, or in this case would be a contractual will. I have within the papers that I provided, exhibit number 1 is the three page contractual will. The trial court would only admit the first page. The first page, my dad gives everything to his wife and then there's a phrase that should death occur to both of us, everything will be passed to me and then to my sister Sherrell, they carved out a section of money for her. But if you notice my mother also signed that will and holographic wills do not have to be witnessed in the state of Nebraska. My dad signed it as father and my stepmother's signature is also on it. When you get to page two, it pretty much says the same thing only it's my mother giving it back to my father. But therein lies the problem because that forms a contract because of the reciprocal promises and I believe that's why they excluded it. With regard to this, they also had a listing of banks where they did institutions. For some reason it was crossed out and my dad did a third page, again, listing the banks and signing it. So when you put all three pages together, I did a petition to bypass and allege that the first page was a probated will. When you add the second page it becomes the contract concerning succession of my stepmom because both pages contain her signature. When you add the third page that has my dad's signature it becomes a contractual will that contains a contract of succession. But there's no court that has jurisdiction, neither does the Claims Board have jurisdiction to apply equity

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

principles. [LB629]

SENATOR LATHROP: Right. Let me ask you a couple of questions, if I can. So this property that you expected to pass to you, by virtue of these instruments went to whom? [LB629]

ERWIN JEFFERSON: My stepmother's sisters. [LB629]

SENATOR LATHROP: Okay, so your stepmother's sisters end up being the beneficiary of her estate and your father's estate goes to your stepmother. When she dies everything goes to her sisters and none of it ended up with you. Did you file a lawsuit alleging, I mean, did you make a claim against somebody because of that? [LB629]

ERWIN JEFFERSON: Well, yes. Well, when I tried to... [LB629]

SENATOR LATHROP: Okay, and when you made that claim did you prevail? [LB629]

ERWIN JEFFERSON: No. No one would listen to anything I had to say. [LB629]

SENATOR LATHROP: Okay, so they dismissed your lawsuit and your claims against...claims for the money in the civil proceeding brought in whatever would be the appropriate court. [LB629]

ERWIN JEFFERSON: Well, the problem is when I went before...there was a statute where you could transfer the claim to the district court, but the district court...in fact, they find me as being a frivolous lawsuit because even though it's a civil matter, these documents are written under the Probate Code. District court has no jurisdiction over the Probate Code, anything in the Probate Code. These documents were written under the Probate Code. [LB629]

SENATOR LATHROP: I got that part of your claim. This is a claim for \$95,000. Is that what the sisters...your stepmother's sisters came into on her death? [LB629]

ERWIN JEFFERSON: I really don't know because they said since I wasn't a blood relative they wouldn't... I know things were taken. I don't know the value of. They took all the furniture. [LB629]

SENATOR LATHROP: Okay. Did the state of Nebraska benefit at all from...in other words, none of this money is money that the state got that you think they should not have received. It all went to the stepmother's sisters, is that right? [LB629]

ERWIN JEFFERSON: Well, the stepmother's sisters, attorneys fees, filing fees to the state. [LB629]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

SENATOR LATHROP: Okay. But the state didn't benefit, the money went somewhere else and your claim is you think people that work for the state didn't properly adjudicate your claim? [LB629]

ERWIN JEFFERSON: Well, they couldn't adjudicate the claim because the Supreme Court has ruled the Legislature must provide statutory enactment for the county court and it says they can use equitable principles. So a contract was designed under the Probate Code. [LB629]

SENATOR LATHROP: Okay, but...well, Mr. Jefferson, I'm going to try to say this...because I appreciate...you've e-mailed me. I know you've e-mailed Senator Council, probably everybody on the committee. You've provided documents and documentation and I guess as the Chair of the committee, and I can't speak for the committee, we'll take a vote later on, but as the Chair of the committee and as a lawyer I can tell you that if someone does you wrong somehow, or you've got a claim to a fund of money you can go after that person or you can go after that fund of money but if the legal process doesn't pan out for you, you don't get to go after the legal process. And so a claim against the state because you didn't get some form of redress that you thought you were due. [LB629]

ERWIN JEFFERSON: Well, according to the documents, I have no standing because... [LB629]

SENATOR LATHROP: I appreciate that. I appreciate that and I understand your argument, I really do. But if the state of Nebraska tried to make up and compensate everybody who came up short in the litigation process then we'd quit functioning as a state. [LB629]

ERWIN JEFFERSON: What has happened...this has been going on for years. I had found a article. It was alluded to by an attorney here in Nebraska who is now a partner in a law firm, but when he was with the Supreme Court he wrote a review in the Nebraska Law Review stating that intent in wills is not considered in the state of Nebraska. And he cited In re Foxley and because I've been so close to this and what's happened, it seemed to me, honestly, like there was a ring. And it's happened before and what's happening is they're putting the judgments in unpublished cases. [LB629]

SENATOR LATHROP: Okay. But all of those things are things I think the state can do, and if you don't get your way...and I'm not...I don't want to sound like I'm being judgmental about what you're doing today, but if you don't prevail in a proceeding, the solution isn't to go after the people that were involved in the process. So, anyway, that's my thought on the claim, although I appreciate the fact that you presented it to us and that you've done it with a great deal of respect to the committee and the people

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

involved. Senator Council. [LB629]

SENATOR COUNCIL: Yes and thank you, Senator Lathrop. And if I may, Mr. Jefferson, after having, you know, read your material and discussed the matter with you briefly, my understanding of your claim is slightly different than Senator Lathrop's. And it's my understanding of your claim is that in terms of the question that Senator Lathrop asked you, as to how did the state benefit from this? I don't think you're asserting that the state actually benefited from it. As I understood your claim and the theory upon which you pursued the claim since the court decision is it's your argument that the Legislature failed to provide the legislation to enable you to pursue a recovery. [LB629]

ERWIN JEFFERSON: Yes. Yes. [LB629]

SENATOR COUNCIL: Does that...essentially that the Legislature created this gap in jurisdiction that the county courts have jurisdiction over probate matters, the district court doesn't. The district court can have jurisdiction over equity but it won't exercise jurisdiction if the equity matter involves a probate issue. And so in terms of the probate case that this arose under, you really had no remedy. But what Senator Lathrop was saying that your stepmother's sisters wrongfully accessed this money and I think the question that Senator Lathrop was asking, did you ever sue them? Your stepmother's two sisters. I mean, did you ever directly sue them? [LB629]

ERWIN JEFFERSON: No, I did not directly sue them. [LB629]

SENATOR COUNCIL: You proceeded through the probate. You tried to exercise your rights through the probate. [LB629]

ERWIN JEFFERSON: Right. It was a probate matter and I didn't understand...I didn't discover it, actually until the Supreme Court agreed with me. And then when I went before the Claims Board, the Claims Board said no one did anything wrong, I said, well how could someone not do anything wrong. So I download the statutes and I'm on the bus and I'm reading and I'm saying, oh, my goodness, nobody has jurisdiction. And the claim is to be filed when there is no other remedy. So, it's like property has just been taken away, under the guise of law. They gave it to them intestate. And, you know, usually when you have a will, the only way to defeat a will is with another will. They wouldn't allow me to introduce any evidence to present a case, even in the Lancaster District Court. Even the Supreme Court didn't look at the issues. They agreed with me but they did not rule on equity issues. They don't have jurisdiction. [LB629]

SENATOR LATHROP: Okay. I think we understand the claim and you've certainly provided us with documentation of it too. We don't make this decision on the spot. Generally what we'll do is get together at a later time and visit about the claims bills and we'll take a vote at that time but thank you for coming down. Is there anyone else here

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

in opposition to any of the matters found in LB629? Anyone here in a neutral capacity?
Seeing none, I think that will close our hearing on LB629, and close our hearings for the
day. Thank you. [LB629]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
March 23, 2009

Disposition of Bills:

LB564 - Held in committee.

LB629 - Placed on General File.

LB628 - Placed on General File with amendments.

Chairperson

Committee Clerk