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Business and Labor Committee  
February 01, 2010

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[LB925 LB934 LB1020 LB1055 LB1086]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 1, 2010, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB934, LB925, LB1055, LB1020, and LB1086. 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: My name is Steve Lathrop, I'm Chair. We have, you may notice those of you that are regular attendees, you will notice that we have the light system. That's because we're going to try to train you before next week. Next week we have ten bills in this committee, and we will be held to...the only way we'll get through them and out of here at a reasonable hour is to enforce the light system. Today we're going to ease you into it by making a four-minute limit with the yellow light going on after three. Next week it's going to be a three-minute limit, which we think will help in getting us through all ten bills. We have five bills up today, one of which is a shell bill, my bill, and we'll talk about that when it's being introduced. But let me begin by introducing my colleagues. The usual rules: if you have a cell phone, turn it off or turn it to vibrate, please. And when you come up to testify, if you're not familiar with the process, we need to have you fill a sheet out. And then we're going to ask you to bring the sheet over here and put it into the box so that Kate Wolfe will have an opportunity to spell your name correctly. That helps the transcribers when she's doing whatever she does while we're talking here. Committee members: Senator Carlson is here on my immediate right or on my right; Senator McGill; Senator Council from Omaha; Molly Burton is our legal counsel. Kate Wolfe...was that somebody turning their phone off or did somebody's phone just go off? All right. Kate Wolfe is our committee clerk. And Ken Schilz is from Ogallala; Norm Wallman from Cortland; and Tom White from Omaha. And our first bill up today brings us to Senator Haar who brings us LB934. Welcome.

SENATOR HAAR: Thank you, Chairman Lathrop, members of the committee. My name is Ken Haar, H-a-a-r, and I'm here to open on LB934, which is mandatory helmets for Civil Air Patrol, no, no (laughter). [LB934]

SENATOR LATHROP: I don't know why everybody thinks they got to crack jokes in Business and Labor. We about had to throw Jim Pappas out of here last week. Go ahead. [LB934]

SENATOR HAAR: LB934 adds members of the Civil Air Patrol to the Volunteer Emergency Responders Act. That act currently covers volunteer firefighters and volunteer emergency service. Now the act currently provides that, first of all, employers cannot terminate or take disciplinary action against an emergency responder when they miss work due to responding to an emergency. Secondly, employers may subtract wages from the employee for missed time. It requires employees to make a reasonable

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effort to notify the employer that they will miss work due to responding to an emergency. Employers may request that the employee provide a signed, written statement that they were responding to an emergency. And before an employee may seek protection under this act, they must provide written notice to the employer. And finally, it provides a cause of action if the employee is wrongfully terminated under this act. Again, right now the Volunteer Emergency Responders Act covers volunteer firefighters and voluntary emergency service. This would simply add Civil Air Patrol as well. Just as kind of an aside, there are quite a few Civil Air Patrol members in the Legislature. I have 12 cosigners and then there are a couple of other ones so. I will be happy to answer any questions. [LB934]

SENATOR LATHROP: Are all 12 of them on the Civil Air Patrol? [LB934]

SENATOR HAAR: Um-hum, um-hum. [LB934]

SENATOR LATHROP: Really. [LB934]

SENATOR HAAR: Coash, Cook, Cornett, Council, Fulton, Giese, Gloor, Janssen, McCoy, Stuthman, Wallman, and Wightman. [LB934]

SENATOR LATHROP: Okay, interesting. I didn't know that. Senator White. [LB934]

SENATOR WHITE: What kind of emergency response do Civil Air Patrol do, Senator? [LB934]

SENATOR HAAR: Well, one of the things we talked about when I talked with them is probably not as much as they could do. And part of our effort is going to be getting them to help, for example, the State Patrol with more things like an emergency search if an airplane goes down or just any other kind of emergency. [LB934]

SENATOR WHITE: Crash responses. [LB934]

SENATOR HAAR: Yeah, yeah. The Civil Air Patrol has airplanes and except for a small cost, it's covered by the Air Force, that sort of thing. So it's really a resource that Nebraska probably hasn't been using enough. But in looking at that, we need to add them to the Volunteer Emergency Responders Act. [LB934]

SENATOR LATHROP: Very good. Senator Carlson. [LB934]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Haar, on the memo here, an employee must notify and if requested provide a written statement to the employer that he or she may be absent or late due to an emergency. Well, you can't predict an emergency so it's all after the fact. Or is this just a letter that says I am on the Civil Air

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Patrol and I may be called out? [LB934]

SENATOR HAAR: No, no. It would not be a general letter. I must tell you I'm not sure exactly how that works, but certainly the gist of this is that the employer has a right to certify that an employee is involved in an emergency responder situation. And that very same thing would be true of volunteer firefighters or again, volunteer emergency service people. [LB934]

SENATOR CARLSON: Okay, thank you. [LB934]

SENATOR LATHROP: Very good. Thanks, Ken. Do you want to stick around to close? [LB934]

SENATOR HAAR: I think not. We have the DREAM Act going on downstairs and so I want to get in on that discussion. So thank you very much, appreciate if you pass this forward. [LB934]

SENATOR WHITE: Wear your mandatory helmet in that meeting. (Laugh) [LB934]

SENATOR LATHROP: Are there folks here that want to speak in favor of this bill? Come on up. Have you filled out one of these sheets? [LB934]

BOB TODD: Yes, sir. [LB934]

SENATOR LATHROP: Okay, terrific. Welcome. [LB934]

BOB TODD: (Exhibits 1, 2) My name is Bob Todd, T-o-d-d. I'm currently the Nebraska Wing Commander for the Civil Air Patrol which is the state commander. Civil Air Patrol has a long history, it will only take 30 seconds or so, but it was founded December 1, 1941, six days before Pearl Harbor. During the Second World War, it was doing coastal search and helping out the military because we weren't prepared for the war. Basically we were doing homeland security. In 1948, we were congressionally chartered as a private volunteer corporation and made the auxiliary of the newly formed Air Force. Over the years, most of our work is in search and rescue for aircraft and so forth, but again, since 9-11 we're moving more in the role of homeland security. Nationally we have over 55,000 members, about 24,000 of those are cadets ages 12 to 18. And they attend regular meetings and they're just great young people. In our emergency services, last year nationally we have been credited with 79 saves. That doesn't mean we got down there and gave CPR to someone, but we did, in fact, were involved in a life that may have been injured or lost if the members hadn't been involved. Nebraska last year we are credited with two saves. Again, we did not actually save a person but were involved in the search for an Alzheimer's patient who had wandered off and the State Patrol and Civil Air Patrol were both doing air searches. We've helped state agencies.

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We look for downed aircraft and have several last year that were located after we get called out. We work under the Air Force for those things. In Nebraska we have about on average 500 members, again, a little over 200 of those are cadets. The schools pretty much let the cadets get out of school if we call an emergency and if we're asked to come out, subject to their parents saying they've got their homework done and their grades are up. But the parents have the last call on that. We sent nine cadets and four senior members to Katrina, an aircraft to Hurricane Rita to do aerial photography and so forth. Just a week ago we were put on call for the possibility of ice jams on the Platte River which we photograph every year so they know where the channel is and so forth. We train every month, and we're trained to FEMA and NIMS standards. So our members are trained and they keep themselves trained pretty much on their own. It's all volunteers. All we're asking for is that we are provided with some kind of protection for our volunteer members if they are called out for some kind of emergency such as the Hallam tornado and others. We were put on standby for the North Dakota floods and the Iowa floods. Fortunately, they didn't need us. Iowa has a similar bill as this. North and South Dakota have a similar coverage that we're asking for here. [LB934]

SENATOR LATHROP: Very good. Thanks for the background too. [LB934]

BOB TODD: Any questions? [LB934]

SENATOR LATHROP: I didn't know anything about the Civil Air Patrol so I appreciate the background. [LB934]

BOB TODD: Well, we have fact sheets if you'd like to have them or we have now, I guess, 22 legislative members signed up. [LB934]

SENATOR LATHROP: I didn't realize that. Well, that's neat that they do that. [LB934]

BOB TODD: Okay. [LB934]

SENATOR LATHROP: I don't see any questions so we appreciate you coming down here today and your testimony. [LB934]

BOB TODD: Thank you very much. [LB934]

SENATOR LATHROP: Anyone else here in support of this LB934? Anyone here in opposition? Is anyone here in a neutral capacity? Seeing no one and with Senator Haar waiving his right to close, that will close our hearing on LB934. Next up will be LB925 which is Senator Conrad, who I don't see but I imagine she will be coming. Ron, are you going to testify against this before she gets here? (Laughter) [LB934]

RON SEDLACEK: I'm going to save you time.

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SENATOR WHITE: And you wonder why this is a comedian committee. (Laughter)

SENATOR LATHROP: Yeah, I know. I might be contributing to that.

\_\_\_\_\_ : And once it starts it's hard to stop.

SENATOR LATHROP: It is. It's contagious.

SENATOR COUNCIL: And levity has been abounding (inaudible).

SENATOR LATHROP: Senator Conrad, you made it along with your entourage. It's good to have you all here.

SENATOR CONRAD: Posse.

SENATOR LATHROP: Your posse.

SENATOR CONRAD: (Exhibits 3, 7) Senator Lathrop, members of the Business and Labor Committee, my name is Danielle Conrad. I represent north Lincoln, "The Fighting 46th Legislative District" and I'm here today to introduce LB925. The Nebraska Jobs Act is a narrowly targeted solution intended to address the unique economic conditions our state and our country are now facing. Quite simply, this legislation seeks to put Nebraska workers and Nebraska businesses first when making hiring decisions for public works projects during periods of excessive unemployment. This is a bill about creating and retaining quality jobs in Nebraska's economy. This common-sense legislation is unfortunately necessary during these very difficult economic times. Now more than at any other time in our recent history Nebraska faces record unemployment levels due to a downturn in our national, state, and local economy. Let's take a look at the numbers, and I have a handout here for the page to bring around. These figures are provided by the Legislative Fiscal Office. It outlines Nebraska's historical unemployment rates over the past 20 years. Nebraska has long enjoyed very low unemployment rates because of our strong work ethic and a variety of other factors. For example, as you can see on the chart from 1990 to 1999, the average unemployment for these years was about 2.63 percent. From 2000 to 2009, the average unemployment rate in Nebraska was about 3.55 percent, making an average 20-year rate of 3.09 percent. However, if you turn your attention to the column for 2009, you can see that the average unemployment rate rose dramatically to 4.73 percent, with two months at 5 percent, July and August 2009. Increased unemployment levels have a significant impact on many areas of our state budget and our public expenditures, including but not limited to a direct strain on our unemployment system and benefits, increased utilization of critical human service programs such as food stamps and other forms of public assistance, and an increase and additional strain on our job training, vocational rehab, and job

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placement services. Most notably we also see sharp decreases in state and local revenues from reduced payroll, income, and sales tax collections. As you may well remember in the most recent special session of this Legislature during the fall of 2009, we implemented over \$300 million in budget cuts which was prompted most notably from a precipitous decline in personal income tax collections. When unemployment rises to these unprecedented levels and revenues spiral downward to these low levels, we must begin to think outside the box and we must work together to find ways to be responsive to economic conditions that are affecting each of our districts and each of our respective constituencies. This bill is one of those innovative solutions that puts the focus on creating jobs for Nebraska. When times are tough, we need Nebraskans working, especially when it's with Nebraskans' hard-earned tax dollars that are being spent and paying for public works projects. It is imperative that we help put Nebraska workers and Nebraska businesses first in line for building these projects. This proposal will help to ensure that qualified Nebraska employees and businesses can retain or expand their work force, that they be rewarded for their work, and that we lessen our public expenditures on public assistance programs while also alleviating the effects of declining revenues in personal income and other sources. This bill helps to ensure that Nebraska tax dollars that pay for these public works projects stay in Nebraska instead of being outsourced to out-of-state contractors and foreign corporations. That outsourcing, particularly in times of record unemployment, weakens Nebraska's economy and furthers our budgetary crisis. A few technical notes that I would like to direct the committee's attention to: Today I will be presenting an amendment to the committee that would lower the threshold to trigger these provisions when Nebraska's unemployment rate is up 4 percent. The 5 percent number you can see reflected on the green copy of the bill was simply utilized as a placeholder for drafting purposes. After we had a chance for more complete information to come to us from the fiscal analyst, it seems that the 4 percent threshold is the most appropriate threshold for this legislation as it more accurately reflects Nebraska's historically low unemployment rates. Further, I can tell you that our office has been in contact with many groups and individuals that have an interest in this legislation. And as you have all well experienced, those conversations prior to our hearing today are valuable in improving and strengthening the legislation that we bring. A few ideas I want to make sure that are included in the record and that should be a part of this process that are a by-product of those prehearing conversations: One, this legislation is not meant to affect projects that have already been bid and awarded. It is prospective in nature according to our generally accepted principles that we do not legislate on a retroactive basis for a variety of legal and practical reasons. If adopted, this legislation would simply be applied at the point contract is bid, not in the midst of ongoing projects. However, if the committee sees a need to clarify the language in the original bill to address that issue, I'm happy to work with you in that regard. Second, this legislation specifically provides an exception to utilize out-of-state firms or employees when and if specialized knowledge or expertise regarding the public works project may not be available locally for some reason. It's meant to provide flexibility for those circumstances to address those kinds of special

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circumstances. And number three, the legislation contemplates a narrowly targeted measure to help alleviate negative consequences in times of economic downturn and high unemployment, which I think is quite clear on its face. However, there have been inquiries as to how this might apply if Nebraska were to be struck by a natural disaster or otherwise. Of course, I believe common sense and our shared sense of security should always prevail. However, if the committee sees a need to clarify the original language to provide a specific exemption for exigent circumstances, I'm happy to work with you on that as well. Finally, as you travel your districts and talk to your constituents, I'm sure you're hearing the same things I'm hearing: Families are worried about their jobs, they're worried about the economy, and they're worried about our state budget. This legislation is one way that we can work together to address this fear and uncertainty in a positive way. A vote in favor of this legislation is a vote in favor of Nebraska jobs, period. I'm happy to answer any questions that the committee has at this time or can do that in closing, but I want to thank you in advance for your time and your kind consideration. Thank you. [LB925]

SENATOR LATHROP: Thank you, Senator Conrad. Senator Council, you're recognized. [LB925]

SENATOR COUNCIL: Yes, thank you, Senator Lathrop. Senator Conrad, I really appreciate you bringing a bill like this. I don't think there's anyone inside or outside of this room who does not support the intent to create employment opportunities for Nebraskans. And in that regard, I'd be delighted to have a 4.73 unemployment rate in my district. What is unprecedented is my district's unemployment rate has been in double digits for decades. So clearly there's a need. But from a legal perspective, I understand that the tie is to the unemployment rates and that's the issue that is being attempted to be addressed here. But do you think it withstands constitutional scrutiny to restrict nonresidents from employment opportunities in the state when what is seen as the compelling reason is the unemployment rate? [LB925]

SENATOR CONRAD: Sure. Thank you, Senator Council. And your personal experience in your district well understands the principles contained in this legislation. To the additional question surrounding potential legal issues surrounding LB925, I can tell this committee quite frankly that we've had the chance to review this legislation in comparison and in conjunction and up against the vast jurisprudence that exists on these kinds of economic public policies that do have implications for the Commerce Clause, Dormant Commerce Clause and privileges and immunities clause contained within the U.S. Constitution. I am confident that this legislation passes the test as put forward by the controlling cases in these realms. For example, I turn the committee's attention to the Camden case out of the United States Supreme Court. I can provide a specific cite to you on that if need be. I believe committee counsel has also received a copy of that case. And if you follow really the two-part test put forward in that case, this legislation and similar policies like it do, in fact, meet constitutional scrutiny when

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narrowly applied to meet a specific state interest. [LB925]

SENATOR COUNCIL: Thank you. [LB925]

SENATOR LATHROP: Senator White. [LB925]

SENATOR WHITE: In fact, Senator Conrad, we have similar provisions now. It's common for police officers to have to live in the urban area that employs them or various residence requirements for different benefits. As long as state money is involved, is your bill limited to projects receiving public funds, which I think is one of the distinctions that allows us to do this? [LB925]

SENATOR CONRAD: It is, Senator White. It is narrowly targeted to those exact kind of projects limited to those paid for with public funds. And as you correctly point out, residency is defined differently for different legal purposes: for voting, for taxes, for in-state tuition. For a variety of other legitimate state interests, we define residency in different ways. Contained within LB925 is a very simple definition for residency that requires the employee to only live in Nebraska for 30 days. [LB925]

SENATOR WHITE: Senator, we've had unfortunate experiences in the Omaha area, for example, the construction of the Qwest Center where large numbers of not only non-Nebraskans but people who were not citizens of the United States (inaudible) came up and worked on those projects. Would this bill be a measure that would be helpful in combatting that? [LB925]

SENATOR CONRAD: I believe that it would be. While not the primary objective of this legislation, this and other public policies that have been advanced in other states do that. They help to provide a level playing field for local contractors and employees who have strong ties to the state who play by our rules to have a shot at being a part of the process and are not simply undercut by potentially unscrupulous employees or contractors from out of state or who may not have employment verification or ability to work here. So you're right. That is definitely an added benefit in terms of protecting our work force and ensuring that we have the right kind of folks doing this work. [LB925]

SENATOR WHITE: Thank you, Senator. [LB925]

SENATOR LATHROP: Senator Wallman. [LB925]

SENATOR WALLMAN: Thank you, Senator Lathrop. Thank you for being here in this esteemed committee. [LB925]

SENATOR CONRAD: Yes. [LB925]

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SENATOR WALLMAN: Would this affect something like the Canadian pipeline going through our region, you know, would that affect that too? Is that a public...? [LB925]

SENATOR CONRAD: You know, Senator Wallman, and that is a good example because it is a very significant public works project. But, and to be clear, I'm not an expert on that project in total, but am familiar with it, and I can tell you it probably wouldn't have immediate impacts in relation to that project because that's already been bid and awarded and it's already being undertaken. But I think that your train of thought in terms of what kind of projects are we talking about, that's definitely something to be contemplated. Those larger public works projects that are going to entail a significant outlay of public funds and require employment of a significant amount of workers to come forward and carry out those important public purposes. [LB925]

SENATOR WALLMAN: Thank you. [LB925]

SENATOR CONRAD: Yes, thank you. [LB925]

SENATOR LATHROP: Senator Schilz. [LB925]

SENATOR SCHILZ: Thank you, Senator Lathrop. Senator Conrad, thanks for coming in today. You just seem to be getting all the questions this afternoon. [LB925]

SENATOR CONRAD: That's okay. I thought maybe we'd do a round robin here. [LB925]

SENATOR SCHILZ: Oh, everybody think of their other questions. (Laugh) I guess just a couple questions that I have, obviously, being from rural Nebraska... [LB925]

SENATOR CONRAD: Sure. [LB925]

SENATOR SCHILZ: ...it's concerning to me. How do you...I guess one of the things here, what kind of criteria is used to decide when Nebraska employees are not available or not skilled enough to provide the work needs? How does that...how do you come about that or have you thought about that? [LB925]

SENATOR CONRAD: No, that is something that we've thought about and, you know, again, this could be something that if the committee decides to move forward on this that we can spell out in greater detail through working with the committee on language to amend or further provide clarification or definition in that regard. But I think at the stage of drafting and introduction we wanted to provide maximum flexibility to those who would be charged with implementing this to make some of those threshold determinations. I envision it as being a very simple and straightforward process that when the bids are let and awarded that there would just be a statement of fact surrounding some of those issues about whether or not they would need to comply with

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this or, in fact, there was a determination that, you know, after putting out a want-ad or an RFP that no one responded locally that that would be sufficient to move forward and to not have to comply with the provisions. [LB925]

SENATOR SCHILZ: Right. Do you think that having this law in place would that preclude somebody from out of state from putting up a bid that could possibly be a better deal as far as at least paying for a service? That's one of my concerns. And I look at it coming from a county that borders another state... [LB925]

SENATOR CONRAD: Sure. [LB925]

SENATOR SCHILZ: ...and where there's less population. I'm just wondering are we going to be able to get all that out there? [LB925]

SENATOR CONRAD: Yeah. And I think that should be the part of any publicly awarded contract or utilization of every tax dollar, whether it's in the public works, public contracting, or other context is a discussion about what should be the criteria that we look at in terms of deciding how those dollars are awarded and spent. For example, almost every state and locality has some sort of rules or regs or laws on the books that say, you know, when all things are equal you should award the contract or bid to the lowest responsible bidder. Well, who the lowest responsible bidder is isn't always reflective of the dollar, the bottom line on the dollars and cents on the bid sheet. For example, if somebody comes in with a very low bid but has a long track record of immigration or labor or other abuses, they may not be considered a lowest responsible bidder under the other standards applied. So I think this is really an ongoing discussion about the best use of tax dollars and how sometimes there's special conditions that come into play that really the lowest dollar amount isn't the best value. [LB925]

SENATOR SCHILZ: Right, sure, absolutely. Okay, thank you. [LB925]

SENATOR CONRAD: Okay, thank you. Yes. [LB925]

SENATOR LATHROP: Senator Council. [LB925]

SENATOR COUNCIL: Just one other question. Senator Conrad, since you indicated a willingness to work on the bill to tighten it up, Section 6 says that either the Department of Labor or any aggrieved party or the Department of Labor, through the Attorney General, or any aggrieved party could seek injunctive relief against the awarding of any contract or the continuation of any public work under any contract if these requirements are not satisfied. My question is, how do you, in the awarding of the contract, determine? Is there some certification that you're contemplating that when the contractor submits his or her bid if they have to complete something that says all of my employees, with the exception of certain technical supervisory people, are Nebraska

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residents? Is that what you're contemplating? [LB925]

SENATOR CONRAD: I think that that would be something that has been along the lines of the same train of thought in drafting this legislation and again to provide maximum flexibility for those who will have to implement and comply with this law, we didn't get to that level of detail and anticipate some can be worked out in rules and regs or otherwise. But if the committee would like to provide additional specifications or details in that regard, we'd be wide open to that. I think what we want to do is to ensure that we don't have a cumbersome process in this inquiry, but rather have a very straightforward, very uniform process that makes for ease of compliance for all public entities who will have to comply with this when letting out bids and awards. [LB925]

SENATOR COUNCIL: That's my only question. I mean, you couldn't even determine whether they had...whether they were complying if it's before the contracts are awarded. [LB925]

SENATOR CONRAD: Sure. [LB925]

SENATOR COUNCIL: I mean, somebody could submit a bid and at the time they submitted the bid not be in compliance and at the time of the award of the bid might not be in compliance, but at the time the project starts... [LB925]

SENATOR CONRAD: Right. [LB925]

SENATOR COUNCIL: ...would be in compliance. So I guess there has to be some way that you can...because if someone is awarded a contract and prior to the award they were, clearly all of their employees were residents of another state, I wouldn't want to subject a contractor in that situation to having to defend him or herself under this legislation before they even started the work. So maybe we can tie it to like project start date... [LB925]

SENATOR CONRAD: Yes. [LB925]

SENATOR COUNCIL: ...or something as opposed to prior to award of the contract. [LB925]

SENATOR CONRAD: Absolutely and I think that your question really anticipates one of the most widely discussed points in terms of logistics surrounding this legislation. And I would envision a snapshot in time, whatever the committee's preference may be into when that snapshot would be, whether it's at the point of bid, award, or sometime other that we make a determination about whether or not this threshold regarding excessive unemployment is triggered. And if so, we make a documentation surrounding that and everybody moves on and moves forward instead of rather having it be an ongoing kind

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of process and a continual kind of update which would be burdensome to contractors and the entities involved in the letting of public works. [LB925]

SENATOR LATHROP: Senator Carlson. [LB925]

SENATOR CARLSON: I don't want to be left out, Senator Lathrop. [LB925]

SENATOR LATHROP: I hope McGill is working on something. [LB925]

SENATOR CARLSON: Let's take, for example, we have a firm in Council Bluffs that has bid on a job in Omaha and their bid is a million dollars under the next one in Omaha. Now in Section 2, "except that other laborers may be used when Nebraska laborers are not available or" incapable. Now I could imagine the business in Council Bluffs has gotten a certain amount of training and experience with his employees, he knows them and knows what to expect of them. And so with that, he defines the employees in Omaha as incapable, not because of inability but he doesn't want to mess with training very much. So he says I can't hire any of the people in Omaha. Then what happens because he is a million dollars under the next one in Omaha? So how is that resolved? [LB925]

SENATOR CONRAD: Well, a couple different, I think, issues involved in that question. Number one, we understand and are appreciative of the fact that in an ever-changing global economy that state border lines and county border lines and jurisdictional lines that exist on a map and are important for our work in other contexts have decreasing amount of relevance for those involved in a free-market economy and that there is a certain amount of fluidity that happens within the labor work force and market that exists. And, of course, we wouldn't want to impose additional costs upon contractors in terms of retraining or new recruitment costs if they have a work force that is well trained and tested and otherwise. So those are things that we're open to working with the committee on if there are additional questions. And the last part is when you said, under the hypothetical example, their bid would come in, say, for example, a million dollars under the next lowest. It goes back to that question of value on terms of your investment. And remember, these are public dollars, taxpayer dollars, every one of them that are going out for these kinds of public contracts. And I think it's appropriate to ask from a state policy perspective, even if that's a million dollars under, what's it going to do in terms of our unemployment costs, our labor costs, our loss in revenues in terms of payroll and income taxes or otherwise? You can get to a million dollars pretty quickly. That would level that playing field. And so that's a policy decision that this committee is going to have to make. And I am definitely willing to work with the committee to find any kind of language that would be acceptable to those kinds of contractors, particularly on the border areas who are going to have, like Senator Schilz mentioned or has contemplated under your question with Council Bluffs, the most factors that play in making these kinds of determinations in terms of their, you know, decision whether or

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not to bid on a public contract. That's the other thing I think that we have to keep in mind is that with a public contract, if you're a private contractor and say, I don't want to mess with this, I'm not going to comply with these kinds of rules, you don't have to bid on the contract. I, of course, would hope that people stay competitive and put in bids so that, again, the public can get the best value. But from a public policy perspective, we have to make the dollars and cents balance. And if Nebraskans are going to end up paying the bill not only for the public works contract but in other areas when we force unemployment hire within our borders, those are legitimate questions to ask. [LB925]

SENATOR CARLSON: Now you've used two terminologies here, and in Section 3, "public funds"--and I almost assume public funds means Nebraska funds--and in Section 5, "federal aid funds." Well, we know what federal aid funds are, but there would be a mixture, wouldn't there very well be a mixture? [LB925]

SENATOR CONRAD: There could be. And of course, Senator Carlson, as you well know, that the most...the majority of federal dollars that are out there come from taxpayers in Nebraska and across these great United States. So they are public dollars, whether they're returned to Nebraska through federal aid grants or originate in another source, but they are taxpayer dollars. [LB925]

SENATOR CARLSON: But Section 5 says if they're federal aid funds, Sections 1 through 6 shall not be enforced. [LB925]

SENATOR CONRAD: So that they would not conflict. If there are specific parameters involved surrounding a federal grant or a federal contract, then we, of course, could not put forward any legislation that would conflict with federal requirements and rules, just under principles of federalism and otherwise. [LB925]

SENATOR CARLSON: Thank you. [LB925]

SENATOR LATHROP: Senator White. [LB925]

SENATOR WHITE: I wanted to go back to something Senator Council raised. Senator, would you accept an alteration in the bill that would provide, for example, that a bidding contractor shall certify that if he or she receives the contract that then they will have employees on the job that will conform to the requirements of the law. They don't have to certify it at the time of bidding. They just have to certify they will employ such. And that might give...a lot of these projects are multiyear projects. So if they want the Council Bluffs people, they want to use a bunch of them, they can move literally to Omaha, 30-day residency by the time...between the time the contract is let and the time the work commences they can establish residency. [LB925]

SENATOR CONRAD: Yes, Senator White. I'm absolutely open to that kind of language

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which might help to provide greater detail and specificity to the issues that have been brought forward from other committee members. And again, our goal is to not put extraordinary burden on contractors that state government and other public entities utilize, but rather to have a dialogue about how we use our tax dollars and if there is a way that we can put Nebraska workers and businesses first. [LB925]

SENATOR WHITE: Final point, "incapable": perhaps we can more clearly define that as a term because one of the issues is whether or not we have in Senator Schilz's area, the electricians and plumbers. So if we can put in language that would strongly encourage people to train Nebraska residents in needed skills so that we don't have to rely on trained crafts people from other states, would you also accept something like that? [LB925]

SENATOR CONRAD: Yes, absolutely. We'd be willing to work with the committee on any of those kind of additions to improve and strengthen the legislation. And as another point of information, this legislation actually is modeled after a similar bill that has become law, not exactly the same, it's actually very different in many ways, but that Missouri had in place for some time. And there is a real-life example from our sister state in Missouri to see how some of those very questions related to implementation have been dealt with that we could for sure get more information on and provide to the committee in terms of ironing out the logistics on this. [LB925]

SENATOR WHITE: We could define "incapable" as unable to recruit and train Nebraska residents in a manner that they can adequately and safely perform the work in time to perform the contract. [LB925]

SENATOR CONRAD: That would be a wonderful suggestion. [LB925]

SENATOR WHITE: Thank you, Senator. [LB925]

SENATOR CONRAD: Thank you. [LB925]

SENATOR LATHROP: I think that's it. [LB925]

SENATOR CONRAD: Great. And I know that there is a variety of folks coming behind me with dialogue in favor and additional information regards to how this would work or could work. And I'll stick around to close just in case there's some other issues that come up during that part. But otherwise, thank you. [LB925]

SENATOR LATHROP: Thank you. Proponents of LB925. [LB925]

RON KAMINSKI: Thank you, Mr. Chairman. My name is Ron Kaminski, last name is K-a-m-i-n-s-k-i. My address is 8040 Chicago Street, that's Omaha, Nebraska 68114. I

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am here today to testify in support of LB925. I do that not only as the business manager of the Laborer's Union here in the state of Nebraska but also as for the Omaha Federation of Labor. We have seen over the last couple of years, especially with when the stock market has hit the tank, that there has been a few contractors in the area, especially with the construction of a new power plant down in Nebraska City, where contractors would actually hire folks from outside of this country, a bus full of Filipinos would come in. They were so-called welders. We don't know and we're not able to get the information from the contractor or NPPD about where these folks were from. All that we received informationwise is that they had green cards. At that same point, we had hundreds of qualified folks within the state, especially within 50 miles of this project that were more than capable, trained, experienced workers in this field. This happens all across every aspect, not only public projects but private projects across this state. I don't understand what the reasoning is behind it. That's for somebody else to answer. But the point is, is that the amount of unemployment we see in our state, not only here but nationwide, is too high for anybody's comfort level. And I believe that although there may be some burden put on the contractors or these governing bodies, that it is the right thing to do for everybody, not only the workers but the taxpayers of the state. And with that, I will close and take any questions if you have them. [LB925]

SENATOR LATHROP: Thank you, Mr. Kaminski. Senator Schilz. [LB925]

SENATOR SCHILZ: Thank you, Senator Lathrop. Mr. Kaminski, thanks for coming in today. [LB925]

RON KAMINSKI: Yeah, thank you. [LB925]

SENATOR SCHILZ: As you talk about persons that could be qualified for this, if I understand it right, if you've lived here for 30 days and you're a legal resident, if you have a green card, that works as well. How would that...how would this law preclude that? I mean, doesn't that work for them as well? [LB925]

RON KAMINSKI: Well, I don't know if I can answer your question how you would like it to be answered, but what I would say is the contractor is going to have to bid on the work. They're going to have to have a comfort level with their employees. If I own a business, I'm not going to hire some guy that's hanging out at Home Depot looking for a job. I'm going to hire somebody that's here in...that lives in the state if I can that is trained to do that work. So I would say that that's going to have to be the comfort level of the contractor who's actually employing the folks, not the Legislature or the facility that's contracting the work. [LB925]

SENATOR SCHILZ: Okay. [LB925]

SENATOR LATHROP: I see no other questions. Thanks for coming down today, Ron.

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[LB925]

RON KAMINSKI: Thank you. Thank you. [LB925]

SENATOR LATHROP: Other proponents. [LB925]

KEN MASS: Chairman Lathrop and members of the committee, my name is Ken Mass, that's M-a-s-s. I'm here representing Nebraska AFL-CIO, and just to make a couple of comments that I think without question reduction in employment among Nebraska residents constitutes a valid state goal. And I bring to your attention a statute in Wyoming they had in 1985. They created a 100 percent hiring goal for residents of the public-funded constitution projects by allowing contractors to hire nonstate workers only when Wyoming laborers were not available for employment within the state and not qualified to perform the work. Under this Wyoming statute, an employer must deny nonresidents only when the state employment office provides a sufficient number of residents who are qualified and available to work. Based on this approach, it was challenged to the Supreme Court there. It was ruled that the statute was constitutional because it precisely filled a particular evil identification by the state. So with that, I'm here in support of LB925. [LB925]

SENATOR LATHROP: Thank you. Any questions for Mr. Mass? Senator Carlson. [LB925]

SENATOR CARLSON: Senator Lathrop. Do you still go to church? [LB925]

KEN MASS: Yes, sir. [LB925]

SENATOR CARLSON: Okay, good. (Laughter) That's a little thing between the two of us. [LB925]

KEN MASS: Tomorrow I will too. And next Monday I will too (laugh). [LB925]

SENATOR CARLSON: I'm asking this because I sit here, I don't really know, but we're talking about resident in 30 days. What's involved in establishing residency? [LB925]

KEN MASS: I think you have to live in the state, what? I don't know to tell you the truth. [LB925]

SENATOR WHITE: With intent to remain indefinitely with an address. [LB925]

SENATOR CARLSON: Intent, that's all it is, is intent. [LB925]

SENATOR WHITE: Yes. And so you've got to stay here for 30 days with the intent to

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reside here and maintain a residence. [LB925]

SENATOR CARLSON: Okay. [LB925]

KEN MASS: Have you still got Wyoming plates on your car? [LB925]

SENATOR CARLSON: Do I what? [LB925]

KEN MASS: Do you still got Wyoming plates on your car? (Laughter) [LB925]

SENATOR CARLSON: I hope not. Thank you. [LB925]

SENATOR LATHROP: Okay, boys. Thank you, Mr. Mass. Any other proponents that wish to testify? Anyone here in opposition to LB925? [LB925]

KATE BOLZ: Senator, proponent. [LB925]

SENATOR LATHROP: Oh, I'm sorry. [LB925]

KATE BOLZ: (Exhibit 4) My name is Kate Bolz, that's spelled B-o-l-z, and I will keep my remarks brief. I just have two points to make on behalf of the Nebraska Appleseed Center for Law in the Public Interest, which is a nonprofit, nonpartisan public interest law firm and advocacy organization that works on behalf of working families in the state. The first point that I would like to make is that we support the strategy of LB925 to have essentially a double bottom line for public works dollars. We think this bill both supports public works and employment goals for the state. The second point that I would like to add to the discussion is to share an idea drawn from California and Connecticut in which states have implemented first source referral agreements with contractors for public works projects. In other words, contractors would agree to post jobs and provide interviews with targeted training facilities such as Nebraska's one-stop career centers first in searching out employees. This strategy both helps the contractors find those qualified workers and supports our Department of Labor initiatives to train and connect workers to employment. So those are my two points to add to the discussion this afternoon. [LB925]

SENATOR LATHROP: Very good. Thank you for...we'll make sure no one has any questions before you get away. Any questions? I don't see any. Thank you for coming down. Any other proponents? Anyone here in opposition? Come on up. [LB925]

CURTIS SMITH: Good afternoon, Senator Lathrop, members of the committee. My name is Curtis Smith. I am the executive director of the Associated General Contractors, Nebraska Chapter, the highway guys. I'm here to speak in opposition of LB925. And I have a few points and some of them have already been addressed here,

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and I think further discussion would be appropriate. Now our members understand the concern addressed by the introduced legislation. The highway contractors in Nebraska have experienced that difficult economic problems as a result of limited funds available for highway construction. Unemployment is up. Many have been forced to lay off employees. They know the value of employing an experienced work force and they understand the benefits of hiring local workers. Most public works projects in the highway business are low bid. We've talked about that, lowest responsible bid, and the bidders list is extensive. It includes, and in the case of Nebraska highways, it's quite an extensive list. It includes potential contractors--these are all preapproved contractors from across many states, including Nebraska, Iowa, Kansas, South Dakota, Oklahoma, Missouri. Many of these contractors have a semi permanent work force. And when they move to a job site, low bid, contract is awarded, whether they certified what past practices have been, they'll move in with not only their supervisory and semi supervisory people, which are excluded from this contract or from this bill, but they move in with skilled laboring force. Bridge contractor may move in with crane operators, they move in with skilled carpenters, and so on. And then they supplement this force...they supplement that work force with local hires. If you require a 30-day residency, I'm not sure how that would happen unless, as Senator White mentioned, the work force moves in 30 days ahead of time, does nothing for 30 days and so on, but that would be one way around it. How it would be. Our members are already required to use E-Verify. That law was passed last year and it's also part of the stimulus funds. All stimulus-funded projects require extensive documentation and reporting. Contractors are required to comply with a multitude of laws regarding equal employment and nondiscrimination. However well intended, this bill would require additional documentation to assure compliance. It would place additional burden on the contractors and place them at risk in potential unforeseen lawsuits. There are costs involved in recordkeeping. These costs would come when employers are struggling just to stay in business. For the stated reasons, we are opposed to LB925 as written. If you have questions, I'd be glad to try to answer them. [LB925]

SENATOR LATHROP: Very good. Thank you, Mr. Smith. Any questions? I don't see any. Thanks for coming down. [LB925]

CURTIS SMITH: Okay, thank you. [LB925]

SENATOR LATHROP: Anyone else here in opposition to LB925? [LB925]

GARY KRUMLAND: Senator Lathrop, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in opposition to LB925. Although we understand and applaud the intent of the bill, we have some concerns about the place it puts some elected officials. Right now when they go out for bid for infrastructure projects, they generally follow and state law often requires that they take the lowest responsible bidder. The purpose for that is to

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keep the taxes as low as possible since these are tax funds. If there is anything that is going to increase the cost, delay bidding, or possibly keep somebody from bidding if they're out of state or they have employees from out of state, it will increase costs for the cities. And so there is a concern about whether, you know, which direction we go, especially if it delays it. It's similar to the situation that they face now is very often you have local citizens saying, we should have local preference in bidding. We should give it to the local people rather than someone from outside of the city. Generally, though, the policy of the state and there's a Supreme Court case that even says that is not appropriate. The goal is to get the lowest responsible bid to protect the property tax or the sales tax base. So that's the concern we have about this. Right now the local governments are facing decreasing revenue in the area of gas tax, state aid, those sorts of things. And I guess the concern we have is anything that could possibly increase the costs. And I know there's been suggestions made out and we'd be happy to work with the committee and with Senator Conrad to take care of some of these concerns if, you know, there's a way we can do that. [LB925]

SENATOR LATHROP: Very good. Senator White. [LB925]

SENATOR WHITE: Thank you for coming, Gary. Don't we get to define what's responsible? I mean, for example, not using children on the job site, that's a law and that's in essence responsible. So I mean... [LB925]

GARY KRUMLAND: I mean, yeah, from policy, the Legislature can set policy. It just local government officials, though, then potentially have to make, you know, less money to do what they need to do if this increases costs I guess. [LB925]

SENATOR WHITE: But if instead they have more people living in their towns, shopping in their stores, carrying skills that are hopefully going to be in demand when the economy turns around, aren't they better off? [LB925]

GARY KRUMLAND: Yeah, if that will do that. But... [LB925]

SENATOR WHITE: Well, you know, the WPA in the thirties didn't have a darn thing to do really with people needing (inaudible). It had to do with putting people to work. That's been a traditionally accepted purpose of public works projects since the Romans. So is it the League of Municipality's position that it is somehow irresponsible or wrong for the state to say, in tough economic times we want our people to go to work? [LB925]

GARY KRUMLAND: No, I guess the concern we have is that the local elected officials who are making decisions based on local taxes have to deal with, you know, local property taxes, those sorts of things. [LB925]

SENATOR WHITE: Well, and I understand that if... [LB925]

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GARY KRUMLAND: And so if it's any... [LB925]

SENATOR WHITE: ...they blame the Legislature... [LB925]

GARY KRUMLAND: Well... [LB925]

SENATOR WHITE: ...they can, you know, Senator Carlson has great big shoulders. He'll take you (inaudible). (Laughter) [LB925]

GARY KRUMLAND: But it puts them in the dilemma that they're in the middle of trying, you know, there's a state policy saying one thing; there's another state policy saying something else. [LB925]

SENATOR WHITE: Thank you, Gary. I appreciate your courtesy. [LB925]

SENATOR LATHROP: Senator Wallman. [LB925]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, thanks for coming down. And as far as responsible bids, you know, accountable bids, public officials also bother me, who is held responsible for sloppy work? [LB925]

GARY KRUMLAND: Um-hum. [LB925]

SENATOR WALLMAN: You know, for instance, we build a highway down here, an expressway, and look how much money they're spending already, the highway contractors. So the cheapest bid, like the space shuttle or whatever, don't we have engineers on board sharp enough to see it's not quality work? [LB925]

GARY KRUMLAND: Well, and I don't know about the specific project... [LB925]

SENATOR WALLMAN: And I think local people would be more apt to, you know, you built this road or you built this street, more ownership. [LB925]

GARY KRUMLAND: Well, and that's where the word "responsible" comes in. It's the lowest responsible bid that one of the criteria, one of the things they look at when they do bidding is to make sure that the company making the bid is responsible and takes care of those sorts of things. [LB925]

SENATOR WALLMAN: But what if they aren't responsible? [LB925]

GARY KRUMLAND: Well, then you go after them and you probably take them off the list. You show they're not responsible and they don't bid the next time. [LB925]

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SENATOR WALLMAN: Thank you. [LB925]

SENATOR LATHROP: Senator Carlson. [LB925]

SENATOR CARLSON: Thank you, Senator Lathrop. Both you and Mr. Smith used the term lowest responsible bid and I'm hearing some things. What are the key points in responsible? [LB925]

GARY KRUMLAND: Well, it's a general term but usually it's somebody who can do the job, somebody who has the financial ability to do it, somebody who has shown in the past that they can do the work. Very often if somebody awards a bid to somebody and they don't do it on time, they can say that you're not responsible or our experience shows that you haven't done it like you should and so we're going to award it to somebody else. It's just a whole range of ideas that they look at. [LB925]

SENATOR CARLSON: And it's probably a situation where in public office if there's some experience there if you end up having a bad experience with some firm, regardless of how low they are, you don't want them the next time. [LB925]

GARY KRUMLAND: Right. I mean that would be one of the things that even if they came in low they would probably not necessarily get the bid because the work wasn't done well or it wasn't done on time or those are considerations. [LB925]

SENATOR CARLSON: Okay, thank you. [LB925]

SENATOR LATHROP: I see no other questions. Thanks, Gary. [LB925]

JOHN McCLURE: Chairman Lathrop, members of the committee, my name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District, and I'm here today on behalf of the Nebraska Power Association, which is an association of Nebraska utilities. First, I want to acknowledge our appreciation for the openness of Senator Conrad in asking about our concerns and listening very attentively through her staff about questions we had as well as other proponents of this legislation. Certainly we support jobs for Nebraskans. We think Nebraskans have a great work ethic, and when we recruit employees at NPPD, and we have over 2,200, we are very interested in finding people who have Nebraska roots and want to live here. We think the electric utility industry has some very unique circumstances that make this legislation troublesome for our particular endeavors. First, we are concerned about how this works as it applies to utilities. If you look at the language in the legislation, again we've raised these questions with the senator's staff, it talks about in line 13 on page 2 for a public utility "any work done." And we are curious, is this new construction? Is this a maintenance activity? And let me give you some

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specific examples. We have situations where a piece of equipment will fail and we need to bring someone in very quickly. Let me use our nuclear power plant as an example. That power plant in a day can produce \$500,000 of revenue. So if it's not operating, we lose all of that and we still have all our fixed costs and we have to go out and buy additional replacement power. So there are situations where a piece of equipment breaks down, it's not a matter of putting it out for bid. It's an emergency. It needs to be fixed right now and you need to find someone very quickly and get them in to make that repair. For most of our components, we know who that company is and they may bring in their laborers to do that repair that might get taken care of in 24 hours or less. In addition, this particular legislation is more restrictive than the Missouri law. And certainly you have the right to craft a law however you choose. As I understand the Missouri law, it's basically saying if another state tells us in Missouri that our workers cannot work in that state, we will not allow them to work in Missouri. And so it's not just restricted to Missouri labor, it's labor from Missouri or from any other nonrestrictive state. And I think there's about, I don't know, 15 or 20 states that have some form of restrictions. It's been discussed. We have a question mechanically, what do we have to do to comply with this determination whether there are qualified workers in Nebraska? Again, sometimes we are on very short time frames and we are concerned about whether we would comply with this. Another example that we have in our industry is ice storms and some of you have experienced that. When an ice storm happens, we need to go find as many workers as fast as we can, and we'll work with Nebraska utilities, we'll work with utilities in the region and contractors to get an immediate response and to start with that restoration. I was kind of curious when I read this because I know we've sent crews to Illinois, and Illinois is one of the states that restricts out-of-state labor although it wasn't in a time of high unemployment. We have some questions about technical versus skilled, which is language used on page 3 of the bill. A technical personnel of a nonresident employer are exempt from this, but skilled laborers from out of state are not. And we're curious about whether that would conflict with each other. So I see the light is red, and I would be happy to answer any questions. [LB925]

SENATOR LATHROP: Thanks, John. Senator White. [LB925]

SENATOR WHITE: Thank you for coming here, appreciate that. Assuming we work through the emergency issues which, of course, no one here or in the state advocates people being without power and hamstringing you in a way that you can't get crews in, and hopefully you'll work with us to adopt that. One of the concerns that has arisen that piques my interest in this, the Nebraska Public Power or the Nebraska City power plant, I don't think that was you. Was it OPPD? [LB925]

JOHN McCLURE: Yes. [LB925]

SENATOR WHITE: And in fact that was the power plant that hired a Texas contractor who came in, my recollection is \$40 million under the bids in the area, and then brought

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in a large number of Filipino welders to do work. There are now questions, at least in circles I frequent, as to the quality and whether or not they're going to have to redo that. So I mean that's something we can explore. But there's been this history that are quite bitter for Nebraska skilled workers, whether they're pipe fitters, whether they're welders, electricians, carpenters about public entities importing workers who are not citizens, much not residents of the state, and it's our public power. That also happened at the Qwest, you know. What we...I can honestly tell you is I don't want to see that happen again. And God help the public power official who says that they've got some kind of bounded right to bring Filipino labor in to replace Nebraska citizens as welders or steam fitters because that politically won't work. But at the same time we want to work with you in a way that we can keep Nebraskans working, make sure Nebraskans, because your jobs are great, they have access to your jobs, you guys can do business in a responsible manner. So I mean I do understand your concerns and I'm going to try to work with your legitimate concerns because you raise some. But there's also a very bitter history here that for a lot of people that I am concerned about, labor unions and workers, are very upset about and remain very upset. Please. [LB925]

JOHN McCLURE: Senator White, I appreciate the question and, yes, NPPD did not build that plant so I... [LB925]

SENATOR WHITE: That wasn't your... [LB925]

JOHN McCLURE: ...but I will say this. [LB925]

SENATOR WHITE: I thought that albatross got hung on your neck. [LB925]

JOHN McCLURE: And I'm sure that you'll have an opportunity to hear from OPPD on that at some point... [LB925]

SENATOR WHITE: I'm sure. [LB925]

JOHN McCLURE: ...but if you have questions. But I would point out how ironic it is a couple of years ago we were preparing for a scheduled maintenance outage at our nuclear plant. [LB925]

SENATOR WHITE: Right. [LB925]

JOHN McCLURE: And that was a time when the economy was still going strong. Ethanol plants were being built in the region. Nebraska City 2 was under construction. We were having great difficulty finding qualified welders. We were very concerned about it. And we've done a 180 from that time period. I understand construction has slowed and... [LB925]

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SENATOR WHITE: Well, this law has a trigger, you know. [LB925]

JOHN McCLURE: Yes. [LB925]

SENATOR WHITE: I mean that's the point. If the trigger is the issue, you know, we could put in a trigger that says if you cannot find qualified Nebraskans... [LB925]

JOHN McCLURE: Right. [LB925]

SENATOR WHITE: ...who can be trained in time at a reasonable expense. I mean those are legitimate points. I just want you to know I get it. If we meet those, could you support this bill? [LB925]

JOHN McCLURE: Again, we'd have to see what the details look like, but... [LB925]

SENATOR WHITE: And that's where the devil lives, but. [LB925]

JOHN McCLURE: (Laugh) But again, we think we have some unique concerns because of the nature of our business. [LB925]

SENATOR WHITE: No doubt about that. But what I'd like to see is us moving forward, both management in our big public institutions like public power, and labor to say, look, we've got to get our neighbors and our friends and family back to work because nobody wants to have a fight with you guys. I mean, but we do intend to put our neighbors to work. [LB925]

JOHN McCLURE: We certainly are willing to work with Senator Conrad and the committee to see if there's good common ground. [LB925]

SENATOR WHITE: Speaking for myself, I'd be grateful for that. [LB925]

SENATOR LATHROP: I see no other questions. Thanks, John. [LB925]

JOHN McCLURE: Thank you. [LB925]

CHRIS DIBBERN: Good afternoon, members of the committee. I will fill out a form when I'm done. My name is Chris Dibbern, it's C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel for the Municipal Energy Agency of Nebraska. MEAN is made up of members from five states, and we are a political subdivision. And we think the goals of Senator Conrad's bill are very commendable--jobs, jobs, jobs. And we know that's your focus too. And I'm very pleased and Senator Conrad said it's prospective in nature, and we appreciate that. Currently MEAN is part of an interlocal that is building a power plant in Hastings, Nebraska. One of our larger partners is out of South Dakota. So the power

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plant could have been built in any of the states that are members of it, and they've located it in Hastings. It's a partnership. These jobs are highly skilled, just like you talked about, well paid, dangerous, complex, and teamwork is very important when you're building a project. This project was bid out in 2004. I am not their general counsel. I am just one of the members that's part of this interlocal. But we feel that competitive bids were very important to our members. Taxpayers and ratepayers are two different people. Ratepayers are looking for the lowest, most responsive bidder. And maybe it says "responsible" in some areas of the law, but I believe in bidding it's "responsive." And you've already said, too, what that meant--credit worthy, insurable, a history, knowledgeable. So at the end of the day, these kinds of projects that are located in Nebraska actually do create jobs. Hundreds of people will work at this job. We are very pleased that it's in Hastings. We are very pleased that it's coming in under budget, and it's a project that we think is very good for Nebraskans. So I think that's something to consider, too, when you're looking at these projects. If the laws are not well planned, the project may not be in our state and then we've harmed everyone. [LB925]

SENATOR LATHROP: Very good. Any questions? Senator Carlson. [LB925]

SENATOR CARLSON: Senator Lathrop. So let's go back to "responsible" and "responsive." What distinguishes responsive from responsible? [LB925]

CHRIS DIBBERN: Well, I just think that the term "responsive" means are you able to comply? Are you able to comply with that bid? So the lowest and most responsive bidder means I am credit worthy, I have...I'm able to fulfill the duties of the contract, whether they're drug-free workplaces, whether they're nondiscriminatory laws, those kind of issues. I can comply with your bidding requirements. [LB925]

SENATOR CARLSON: Okay. Thank you. [LB925]

SENATOR LATHROP: Very good. Thank you for your testimony. Any other opponents? Anyone here in a neutral capacity on LB925? [LB925]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek. Sedlacek is spelled S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. Our labor relations council met this morning and one of the issues that was brought up at the particular meeting was this particular piece of legislation. And at this time, although we have not yet established firm policy, they did have a number of questions of mechanical as well as philosophical nature that asked to be brought to the table and to communicate with the senators in formulating policy for the state of Nebraska in this regard. In that respect, also echoing others before me, we do commend Senator Conrad for thinking Nebraska business, Nebraska employers, Nebraska employees first, and to keep those ideas coming. What our concern is particularly, at least what is

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being raised until addressed is, what do we do about regional or national construction companies that are based in Nebraska, let's say Omaha or particularly in bordering states in which they do utilize employees from across the river, let's say for example? In order to qualify for a bid, do they have to consider laying off? If they're unionized, is that going to be able to be done in compliance with a contract? Would there be an exception made by the Legislature to such a contract in order to qualify for a bid? Or is it just won't be able to do the work and there's no use bidding? A good example that Senator White mentioned was a number of municipalities require particular professions, such as law enforcement, to be residents of that city. And so we have a border city, a spouse moves over, takes that job, they're qualified, but then they move with the spouse. Does that make that contractor then disqualified from the project? These are small considerations. They're mechanical in nature. Some of that can be addressed by amendment we're sure. More philosophical is the question of the potential of retaliation. After all, we're trying to employ not only Nebraskans but Americans. That's the most important is try to get ourselves dug out of the economic slump at this particular time. And when we get into a situation where we set up these borders, every state, every legislature can make the same, the very same argument that was made here today to justify the bill--to employ the people in our state. But we need to resolve this as a nation, as a region, and that's our concern too. Because if we get too retaliatory, it may come back to bite us in the long run. And whether or not our industries can just support Nebraska only projects becomes a question. We've already heard of Wyoming, Missouri, it can happen elsewhere. And we, I think, just have to be real careful in that policy. And those were the concerns that they asked me to convey to you. [LB925]

SENATOR LATHROP: Very good. Any questions for Ron? Senator White. [LB925]

SENATOR WHITE: Thank you for coming, Ron. I appreciate it. Ron, one of the concerns I have is we're looking face-to-face with the biggest public works project in the history of the state in a walk, and that is the sewer separation and the infrastructure in Omaha. That's going to be a back breaker for the taxpayers in that district. It doesn't strike me as unfair that if I'm asking the voters in those areas that they have to pony up and pay what could be just really a real painful amount that the work go to their neighbors, those folks have commitment to the community and that they stay there and pay taxes and also pay sewer fees to help defray those costs. I do understand retaliation. But will you work with us on things that say, look, if we don't have the people then you can bring them in from across the river, concerns like that. I mean is it something that we can work with you on, do you think? [LB925]

RON SEDLACEK: I think so. I think, you know, preference, priority, the ability to be a bit more flexible, however, is important so that we've got two issues here essentially policywise that we're trying to balance and that is the biggest bang for the buck for the taxpayer, but by the same token, we want to make sure that we provide opportunity for our own citizens. And so balancing that out is the importance. [LB925]

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SENATOR WHITE: But it's something you would be willing to work with Senator Conrad on, and I see her nodding. She'd be happy to do that. Will you do that? [LB925]

RON SEDLACEK: We'll sure try. [LB925]

SENATOR WHITE: Because we're not only looking at that one, we're also looking at an industry that if we develop wind power, and right now that expertise is in Iowa, okay, we will export according to the Department of Energy, somewhere between \$1 billion and \$2 billion of electricity a year. But most of the people that are trained in those areas aren't from here. So does that mean we have to open our borders to people for those kind of jobs, let them fly through and not train our own work force? I mean it's a big deal long term for the citizens. [LB925]

RON SEDLACEK: Um-hum. [LB925]

SENATOR WHITE: Thank you. [LB925]

SENATOR LATHROP: Okay. Thanks, Ron. [LB925]

RON SEDLACEK: Thank you, Senator. [LB925]

SENATOR LATHROP: (Exhibits 5, 6) Anyone else here in a neutral capacity? We do have some letters that we've received, one in support from Julie Dake Abel with NAPE/AFSCME and that's in letter form dated today, February 1, 2010; also from Larry Dix in opposition from the Nebraska Association of County Officials dated today. And those are the additions to the record. Senator Conrad, you're free to close. [LB925]

SENATOR CONRAD: Thank you, Mr. Chairman. Thank you, colleagues, for fantastic questions and fantastic dialogue on this legislation. And briefly in closing, because I know you have a long day in front of you and people are probably eager to get home with uncertain weather conditions that are upon us, but a few points I did want to make for the record as we move forward. One thing, in terms of residency definitions, Senator White aptly, I think, injected that in response to a question from Senator Carlson. Generally speaking, it's my understanding from a legal perspective your residency is required by really the intersection of two factors: one a physical presence and the other being intent to remain indefinitely. And once you have intersection of those two factors, you've established residency for general purposes. Of course, it's also a well-established principle within the law that we have different definitions for different purposes. It's the old is x a y for the purposes of z kind of calculation. And is a person a resident for purposes of LB925, you've got a 30-day threshold. So that's one thing that I wanted to put in the record that goes to those specific questions. Finally, the other topic that came up a lot today was in regards to terms surrounding lowest responsible bid or

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bidder and lowest responsive bid or bidder. And to be clear, colleagues, this legislation does not change those definitions which exist in other areas of statute and in corresponding case law. Rather, those issues have been brought forward as a point of comparative analysis in terms of making these policy decisions as we move forward in terms of value for taxpayer dollar and otherwise. Another point I want to note in regards to the issue about, well, is this about retaliation? What does this mean in terms of competition with other states? What do other states have on the books? What are the distinctions with some of what they have on the books with what's in LB925? And a couple of pieces I want to point out: As you are all well aware, Nebraska is a right to work state and has been for some time and will continue to be. Other states that have similar things on the books have specific exclusions because they're not classified as that. They're open shops. They're different classifications, so that's a key distinction there that I think you want to remember when saying, well, why is this treated differently in other states that may or may not have a list of exclusions? It's because of how they're classified in terms of a labor state which, of course, Nebraska is very different in that regard. Another point I do want to let you know that every single person who came forward here today rather...whether they were in opposition or in favor of this legislation has been nothing but straightforward and open with my office. And I want to commend each and every one of the people who have come forward in that regard. It really has been a very instructive, open dialogue. For example, in conversation with representatives from the public power association and otherwise, they actually take great pains to try and ensure that they do hire Nebraska workers. They're really a shining example of this policy in practice. And I think that we have a lot to learn from their example as we move forward. And Mr. Smith and the Association of General Contractors I want to thank them specifically as well because I worked very hard to cultivate a strong relationship with them over the years. And many of you know my strong support for infrastructure financing issues and otherwise because of the good jobs that their firms create for Nebraskans and in addition to the other benefits of infrastructure issues that we are well aware of but. And, you know, the key point I want to note in closing is really this: that there's a difference between technical concerns in opposition and philosophical opposition to this type of public policy decision that's before us. And to be clear, we can work on the technical issues to ensure efficient administration and implementation. And to be clear, there are some philosophical distinctions regarding this and any other bill that is before us. And my belief is, is that really these philosophical issues should be something that we can all find common ground on. And that's about putting Nebraska workers to work, putting Nebraska businesses first, and lessening our budgetary constraints in times of excessive unemployment. With that, that is a laundry list of things that I know came up during the context of the hearing, but I wanted to make sure we got on record. And do I have an ability to answer more questions or I can do that off the mike, too, at another time. So... [LB925]

SENATOR LATHROP: Okay. I think you're going to answer them off the mike if there

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are any left. [LB925]

SENATOR CONRAD: Okay, thank you. [LB925]

SENATOR LATHROP: Thank you, Senator Conrad, and good to have you here. That will close our hearing on LB925 and bring us to LB1055 and our own Senator Carlson. Senator Carlson, you may open on LB1055. [LB925 LB1055]

SENATOR CARLSON: Thank you, Senator Lathrop and members of the committee. I am Tom Carlson, C-a-r-l-s-o-n, representing District 38, here to introduce LB1055. The bill was brought to me by the Department of Labor. Commissioner Lang is here to testify on behalf of the department. LB1055 is a cleanup bill to address many changes in Nebraska statutes due to ever-changing federal requirements concerning state unemployment and, in extreme cases, extended unemployment benefits. Upon reviewing our state statutes, the department and our Revisor's Office agreed that some changes were needed. The bill has a second part that would let Nebraska take advantage of a provision in federal law that allows a state to pay extended unemployment benefits entirely from federal funds rather than the traditional 50-50 split. And that portion of it was real important to me: to allow benefits paid entirely from federal funds instead of the 50-50 split. Federal law requires that the state have the language in place to take advantage of the funds. Specifically, I asked questions as Commissioner Lang asked me to bring this bill forward was whether or not this involved additional spending for the state of Nebraska. My understanding is it does not. And while I am not always in agreement with the way we receive federal dollars and whether we should take them or not, I'm comfortable with the fact that if we don't change our statute to allow this somebody else will receive these dollars and it just as well be the state of Nebraska that receives them for the benefit of those unemployed. That concludes my introduction. [LB1055]

SENATOR LATHROP: Very good. Thank you, Senator Carlson. I don't see any questions. You must have been very clear. [LB1055]

SENATOR CARLSON: They just figure I couldn't answer them anyway. [LB1055]

SENATOR LATHROP: That or you were very clear. Commissioner. Welcome. [LB1055]

CATHERINE LANG: Thank you, Chairman Lathrop and members of the Business and Labor Committee. My name is Catherine Lang, L-a-n-g, and I'm the Commissioner of Labor for the state of Nebraska. I appear in support of LB1055. And I want to thank Senator Carlson for introducing the legislation on behalf of the agency. The first aspect of LB1055 that I want to bring to your attention is that the entirety of Section 48-628.02 of the Employment Security Law has been rewritten. Over the years there have been multiple amendments to this section because of frequent overlapping changes in federal

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provisions regarding the payment of extended unemployment benefits. The results have been that the current state statute contains a considerable amount of obsolete language and mixes definitional provisions in with program procedures. LB1055 retains all current provisions regarding eligibility for extended unemployment benefits. The Department of Labor originally approached the Revisor of Statutes Office about the possibility of fixing 48-628.02 in a Revisor's bill. Although the Revisor agreed that the statute had a lot of obsolete provisions and could use clarification, the Revisor did not think that it met their criteria for introduction as a Revisor's bill, particularly in light of the fact that we would have additional changes that we wanted to make to the section. Secondly, under federal conformity provisions each state unemployment program must provide for the payment of extended unemployment benefits in times of high unemployment. Although Nebraska has not reached the level of unemployment that would trigger the payment of extended unemployment benefits during the current recession, the department did review the applicable statutes. LB1055 would allow Nebraska to take advantage of a provision in federal law that allows the state to pay extended unemployment benefits entirely from federal funds rather than the traditional one-half cost-share between state and federal programs. Currently, one-half of the regular extended unemployment benefits would be paid for by the federal government and one-half paid from the state Unemployment Trust Fund if we were to hit those levels of unemployment. Section 2005 of Public Law 111-5, as amended by Public Law 111-118, provides that in certain instances the federal government will pay the full amount of extended unemployment benefits if the state law so allows. While Section 2005 option currently is scheduled to expire on February 28 of this year, it is anticipated that this provision will be extended or available under the federal extended unemployment benefit legislation, and so therefore LB1055 would amend our provisions so that we can take advantage of Section 2005 of federal law. And with that I'd be happy to answer any questions. [LB1055]

SENATOR LATHROP: I do have a question for you. Is this time-sensitive? I mean, do we need to pass this before February 28? [LB1055]

CATHERINE LANG: We don't believe so because we do believe that the federal provision will be extended. But if it were not to be extended, then, yes, it would be time-sensitive. So if it were to be possible to move this, that would be helpful, but we do not think that it will be a problem. We think they will extend the provision of 2005. [LB1055]

SENATOR LATHROP: Okay. Just keep it alerted if it becomes time-sensitive or you have some reason to think we need to move quickly. [LB1055]

CATHERINE LANG: Yes, we will do that. Thank you. [LB1055]

SENATOR LATHROP: Senator Wallman. [LB1055]

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SENATOR WALLMAN: Thank you, Senator Lathrop. Thanks for coming here. This has no correlation to what the cost to the employer...or the employees? [LB1055]

CATHERINE LANG: Well, actually if we were to ever reach these levels of high unemployment as defined for extended benefits, it would be a benefit to our employer community to make this provision change...to change this provision of law as we have recommended in LB1055. [LB1055]

SENATOR WALLMAN: Thank you. [LB1055]

CATHERINE LANG: Yes. [LB1055]

SENATOR COUNCIL: Just a quick question. [LB1055]

SENATOR LATHROP: Senator Council. [LB1055]

SENATOR COUNCIL: Yes. Thank you, Commissioner Lang. I'm always supportive of cleaning up bills where the provisions have become obsolete, and particularly when benefits are available and we may be at risk of not being able to take advantage of them. And I guess that's the question I have. This...what we're doing here relative to extended benefits, does it or does it not have anything to do with the \$40 million-plus that was available to Nebraska under the stimulus package that was related to unemployment insurance? [LB1055]

CATHERINE LANG: Okay, you're referencing the Unemployment Insurance Modernization Act, UIMA, and this provision does not have anything to do with that. [LB1055]

SENATOR COUNCIL: Okay. Thank you. [LB1055]

CATHERINE LANG: That is separate. [LB1055]

SENATOR LATHROP: I see no other questions. Are you going to stick around for the next two bills? [LB1055]

CATHERINE LANG: Yes, sir. I am. [LB1055]

SENATOR LATHROP: Okay. Very good. Thank you, Commissioner. [LB1055]

CATHERINE LANG: Thank you. [LB1055]

SENATOR LATHROP: Anyone else here in support of LB1055? Anyone here in opposition? Anyone here in a neutral capacity? Senator Carlson waives closing and that

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closes our hearing on LB1055 and brings us to LB1020, which is me. Good afternoon, Vice Chair and members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from District 12 and I'm here today to introduce LB1020. This is in common understanding, a shell bill, and the purpose in putting in LB1020 was to provide the committee an opportunity to work with the business community and the Department of Labor, as well as labor, on whether or not we can craft some amendments to our unemployment law that would permit us to take advantage of the very fund Senator Council was just talking about, the federal stimulus dollars for unemployment. That work is being done. Commissioner Lang is running numbers and different scenarios about improvements, things that would permit us to take the federal dollars and try to do it in a way that's revenue neutral. If that can be achieved and we can get some agreement between the business and the labor communities and it makes good sense to this committee, we will, I would expect, amend LB1020 and try to pass a bill that would allow us to take advantage of those federal dollars. [LB1055 LB1020]

SENATOR COUNCIL: Good. Thank you. Any questions of Senator Lathrop? It is serendipitous that I asked that question then. I've had no knowledge that that was the express purpose of your bill. But Senators Nelson and Pirsch and Nordquist, we were at an NCSL meeting...conference in San Diego in December, and the U.S. Department of Labor released a packet, a state-by-state comparison of how states have taken advantage of stimulus dollars for labor purposes. And it's just this glaring number there and not knowing what the modernization issues entailed, I'm sitting here going there's \$46 million, it's... [LB1020]

SENATOR LATHROP: Yeah, Senator Mello and I have had a number of meetings with both the business community and labor to see if there isn't some way to take advantage of it. Of course, business just received notice of significant hikes in their unemployment withholding rates, and that's gotten their attention. And it's \$43 million which would be helpful in softening the effect of those next year with the addition of \$43 million to the trust account. [LB1020]

SENATOR COUNCIL: Do you have anybody testifying today, Senator Lathrop? [LB1020]

SENATOR LATHROP: I think...maybe not. We'll see. In any case, I'll waive closing. [LB1020]

SENATOR COUNCIL: Okay. With Senator Lathrop's introduction, I would ask are there any proponents of LB1020? Are there any opponents? Anyone speaking in a neutral capacity? And I am assuming that Senator Lathrop is waiving closing. With that, the hearing on LB1020 is complete. [LB1020]

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SENATOR LATHROP: And that brings us to LB1086 and Senator McCoy who I do not see in the room. We'll have to give him a call. Senator McCoy, welcome to Business and Labor. [LB1086]

SENATOR McCOY: Thank you, Chairman Lathrop and members of the Business and Labor Committee. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th Legislative District and today I'm pleased to bring you LB1086. Before I tell you what LB1086 does, let me explain why I introduced the bill. I was contacted by constituents who received their 2010 unemployment tax notice and were shocked by the dramatic rise. With the struggling economy, they were preparing for an increase, but some rates quadrupled, and one constituent shared that he's going to have to lay people off in order to pay the increase. I know many of you have heard similar stories. No one likes layoffs but it is especially counterproductive for a business to be forced into the decision in order to pay their unemployment tax increase. As I understand, our current law has a mechanism in place for businesses to appeal their unemployment rate if they believe the Department of Labor used incorrect numbers or made an error in the calculation but no process for them to communicate the impact rates will have on their ability to employ Nebraskans. Up through 2005, there was an annual hearing as part of the rate setting process. This was because it was an annual rule-making and required a public hearing, and the commissioner could then adjust the proposed rates in response to hearing testimony. LB1086 attempts to establish such a process and give the commissioner some discretion in changing or phasing in the overall rate if it is appropriate. We all understand the importance of keeping unemployment funds solvent but we must look for solutions to accomplish this without increasing the number of people who utilize the fund. In closing, let me address the fiscal note. It is not my intention that any changes made to assist businesses who are faced with extraordinarily high unemployment taxes have a negative impact on the budget problems facing our state currently. If the committee is interested in pursuing this legislation, I'd be happy to work with you to find a way to make it revenue neutral. Thank you for your time and I'd be happy to answer any questions. [LB1086]

SENATOR LATHROP: Thank you, Senator McCoy. Are there any questions? I don't see any. [LB1086]

SENATOR McCOY: I would waive closing. [LB1086]

SENATOR LATHROP: You want to waive closing? Very good. [LB1086]

SENATOR McCOY: I've got to get to another bill introduction. Thank you, sir. [LB1086]

SENATOR LATHROP: All right. Okay. Thanks for bringing this one up. Are there individuals here wishing to testify in support of LB1086? [LB1086]

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ANN KELLEHER: Mr. Chairman and members of the committee, I'm Ann Kelleher, that's K-e-l-l-e-h-e-r, and I'm president and owner of Integrity Staffing in Omaha, and I'm appearing before you today in support of LB1086. I'm grateful to Senator McCoy for bringing the proposal forward and I thank you for the opportunity to testify today on the bill. And my throat is a little bit dry so I apologize. But I've been an owner in the staffing business for almost 20 years. My company places people in temporary jobs and also in regular positions. From 2009 to 2010, my SUTA rate in fact did more than quadruple. And I'll explain why that happened. When the economy started to take a dive here in Nebraska last fall I had to lay off two people in my office. And then my company employs dozens of men and women throughout the year on a temporary basis. Some of them filed for unemployment benefits when they were unable to find work. So what has happened is from 2009 I paid \$113 per employee on the first \$9,000 of payroll, and this year I will be paying \$464 per person for each \$9,000. My level on the chart, the unemployment rate chart, went from a level 3 to a level 17. So you can see it just skyrocketed. And this is really serious for a small business like mine. Now I did just have someone from my staff voluntarily resign because he's going to be moving out of state and I was going to be eliminating that person's position before he resigned. There has been a significant slowdown in my business this past year and it especially slowed down even more in November and December, and I'd hoped to see some increase in January but I really didn't see any significant improvement at that point. Now I do know that as there is recovery from a recession that employment is a lagging factor. But I do believe that because just about every business is helping to bear the burden of this increase in the unemployment tax, companies are now earmarking money to pay the tax that they might have used to actually hire people on either a temporary or regular basis. And I want to make it clear that I believe in paying as you go along, and that is what my family instilled in me when they raised me. My grandfather, LeRoy Erisman, from Nemaha County, was a very principled man and I wanted to share that he was a senator in the very last Bicameral Legislature here in Nebraska, and his generation did pay things as they went along. And I know this Capitol Building was indeed paid for in just that way. And I also understand why it's necessary to have some increase in the SUTA rate because a lot of money was paid out last year in unemployment benefits. But I don't understand why businesses are having to repay that and replenish the funds at such a rapid rate, because many of us really are struggling right now and we're strapped for cash. It doesn't encourage hiring; it discourages hiring. And hiring is what we need now to help pull out of this economic slump that we're in. So I feel that LB1086 has a lot of merit because it is going to set a more balanced approach to establishing that SUTA rate and I think that it can do it in a way that doesn't jeopardize our economic growth. And so I certainly encourage you to support this bill. I think it's a very important bill and I'm happy to take any questions. [LB1086]

SENATOR LATHROP: Thank you. Are there any questions? Senator Carlson. [LB1086]

SENATOR CARLSON: Thank you, Senator Lathrop. Did I hear this right, that it went

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from \$113 to four hundred and... [LB1086]

ANN KELLEHER: Sixty-four. [LB1086]

SENATOR CARLSON: ...sixty-four. Okay. Now in your mind you probably knew there was going to be an increase. [LB1086]

ANN KELLEHER: Yes. [LB1086]

SENATOR CARLSON: What would you have expected, maybe, or what was your best hope? [LB1086]

ANN KELLEHER: Well, I thought it might double. I knew it was coming but it was just absolutely shocking to open that envelope and see what the rate was going to be. I got that in early December. And, you know, just...business was still slowing down and then you get socked with that. [LB1086]

SENATOR CARLSON: Okay. Thank you. [LB1086]

SENATOR LATHROP: Senator Council. [LB1086]

SENATOR COUNCIL: Yes. Thank you, Ms. Kelleher, for coming and testifying today. I guess I'm just trying to get a feeling...and maybe I should have asked the question of Senator McCoy, as well. But what would be your expectation of what the commissioner would be hearing at such a public hearing that the commissioner should already know in terms of the impact that increasing taxes, rates, fees, whatever, have? But are you talking about a hearing to adjust...? You're not talking about a hearing to adjust individual rates. You're talking about a hearing to discuss the concerns about the adjustment to the rate that applies to all employers in a particular category of employment, correct? [LB1086]

ANN KELLEHER: Right. Well, correct, Senator Council. It would be all employers...I think almost every business has been impacted with this. Some businesses have seen a two- to three-fold increase, and mine was pretty steep at quadrupling and I talked to another business and theirs had increased five times what it had been last year. And so it's...I think it's a complicated formula. I really don't know the formula. And certainly when that was put in place there was no way to anticipate what we'd be facing in 2010, so, you know, I understand that. But if there could be a little different approach taken to this, I know we need to increase the revenue that's in the coffers for unemployment benefits. But if somehow this could be slowed down a bit, the rapid rate of how we're replacing the funds, if somehow that could be slowed down a bit or adjusted as Senator McCoy is suggesting, that maybe it could be lower...a little lower rate at the beginning of the year and then if conditions improve six months from now then maybe the rate could

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increase a little bit more. It would certainly be easier to pay if that's the case. [LB1086]

SENATOR COUNCIL: And then, quite frankly, your answer has gotten to the point of my question. I mean that would be your expectation that following the commissioner's hearing testimony about the impact that rate increases have, that the commissioner would take that back and consider it, and in the commissioner's discretion...and that's what critical here. [LB1086]

ANN KELLEHER: Yes. [LB1086]

SENATOR COUNCIL: I mean, the commissioner is still going to make the decision as to what rate is going to be established. And exactly the information you just conveyed to this committee is information that could be conveyed to the commissioner. I'm just seeing the necessity of having a public hearing for the purpose of that form of communication... [LB1086]

ANN KELLEHER: Yes. [LB1086]

SENATOR COUNCIL: I mean, because it's still left to the commissioner's discretion and I would hope that any public official in the state of Nebraska who receives communication from residents, business people, whomever, takes those communications seriously and takes them into consideration when carrying out their duties. And I know Senator McCoy has said he would be willing to make this revenue neutral. That's what I'm trying to see. I mean, I don't know why we'd need to...when...to me, I think you just, quite frankly, made the message loud and clear to the commissioner of what your and you and other business people's expectation is when the rates are being set. [LB1086]

ANN KELLEHER: Yes. If there could be input given. Yes, absolutely. [LB1086]

SENATOR COUNCIL: I understand. I understand. Thank you. [LB1086]

SENATOR LATHROP: Very good. Thank you for your testimony, Ms. Kelleher. [LB1086]

ANN KELLEHER: Well, thank you. [LB1086]

ROBERT J. HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business in support of LB1086. I would echo the comments of the witness that gave you the personal story with regard to her business interests. On behalf of NFIB, I'd talk more about when you look at the introducer's statement of intent, it talks about reinstating the hearing process. I can recall years ago when we used to

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have that very process set up with the Department of Labor. The commissioner would meet with some of the trade associations in advance; would set a figure that was designed to keep the funds solvent. And sometimes we ran into situations where, because of countercyclical effects and the like, we still wanted to have some input in the hearing process. Occasionally they might aim a little high and we got them to shoot a little low when the hearing process was finished, and that's something that I think this would potentially reinstate. I do know, because of some of the administrative burdens and the costs, that perhaps that was why the hearing process was done away with. There were some advisory committees, I think, over the years that may be another alternative to look at to make sure that the commissioner is getting all of the proper information in hand to make the best decision possible under the circumstances. With that, I'd be happy to address any questions. [LB1086]

SENATOR LATHROP: Any questions for Bob? Senator Wallman. [LB1086]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, thanks for coming, Bob. And in regards to unemployment, it's been years since I...but it used to, I think, they took some out of the employee's check, didn't they? Do they still do that? Or is it all employers? [LB1086]

ROBERT J. HALLSTROM: It is completely employer-funded, and as long as I can remember that's the way it's been. We're pretty close to the same age but I may not have near as far back a memory as you do, Senator. [LB1086]

SENATOR WALLMAN: But it's in regard to the income level, right? If you get 20 bucks an hour you get so much, or? [LB1086]

ROBERT J. HALLSTROM: There's a ceiling on total wages on which the rate is paid. I think it was raised from \$7,000 to \$9,000 perhaps a number of years ago when the reform was made on UI. Okay? [LB1086]

SENATOR WALLMAN: Okay. Thanks. [LB1086]

SENATOR LATHROP: Very good. Thanks, Bob. [LB1086]

ROBERT J. HALLSTROM: Thank you. [LB1086]

SENATOR LATHROP: Any other proponents? Anyone here in opposition to the bill? [LB1086]

KEN MASS: Senator Lathrop, members of the committee, my name is Ken Mass. I represent the Nebraska AFL-CIO in opposition to LB1086. This bill seems to be very worrisome and it apparently gives the commissioner the authority to change the tax rate

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based on public opinion and public testimony after first publishing the determination. In contact and conversation with the United States Department of Labor, they have identified these discretionary rate setting procedures as a source of some of the most dangerous state financing schemes and some of the most insolvent trust funds. Thus for, I'd ask the committee to recommend we go against this legislative tax rate setting. [LB1086]

SENATOR LATHROP: Very good. [LB1086]

KEN MASS: Any questions? [LB1086]

SENATOR LATHROP: I don't see any. Thanks, Ken. [LB1086]

KEN MASS: You don't see? Are you there? [LB1086]

SENATOR LATHROP: I'm here. I can see, too. All right, thanks, Ken. Anyone else here in opposition? Anyone in a neutral capacity? Commissioner Lang, thanks for showing up in a neutral capacity. [LB1086]

CATHERINE LANG: Why, thank you, Senator Lathrop, and I'll fill this out as soon as we're done. [LB1086]

SENATOR LATHROP: Okay. [LB1086]

CATHERINE LANG: Okay. [LB1086]

SENATOR LATHROP: Do you have anything to say or do you just want me to ask you a few questions? [LB1086]

CATHERINE LANG: Well, for the record I'll state that I'm Catherine Lang, L-a-n-g, Commissioner of Labor, appearing in a neutral capacity on this bill, and I'd be happy to answer questions regarding the rate setting process in particular. [LB1086]

SENATOR LATHROP: I would like you to do that for us since this committee probably hasn't had to deal with the issue of the setting of the unemployment compensation rate. I'd like you to give us a little historical perspective because I think at one time there was sort of a grand compromise on rate setting and it became an administrative function and not a political function. And maybe you could walk us through the history that brought us to the formula that you use in setting those rates and how long that's been the case, and then I'll have a few questions about this bill. [LB1086]

CATHERINE LANG: You bet. I'll do the best that I can in that regard. Back in about 2004-2005, there were great concerns about the viability of the Unemployment

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Insurance Trust Fund balance. And the business community and the labor community came together and the Department of Labor played a critical role in introducing legislation that I believe the first year of its implementation was either 2006 or 2007, wherein, a statutorily mandated formula was established to assure primarily that the trust fund balance would be available for the payment of benefits each and every year going forward. Primarily, the formula that has been established is to use objective, known information to calculate the rates. One factor, probably the most influential factor in establishing the rates is how many benefit dollars were paid out in the prior program year. And when I say program year, I am running from October 1 through September 30 for rates to be set the following January 1. So you look back and you know how many dollars of benefits were paid out. And the other thing that is important is to examine the balance of the fund relative to the total wages paid in the state. And we want to be between .85 and 1 percent of the total wages paid in the state. If we slip below the .85, and depending how far we slip below that lower threshold, we have a factor that increases not only paying back the benefits of the prior program year, but a factor applied to that to replenish the fund so that it will come between those two numbers. And if, in fact, we are above that--and in good economic times that happens--we would have a factor that would then decrease the need to pull back in exactly what we paid out in that prior program year. And that started, I believe, the first year of implementation was 2007. So this is...or 2006? John? Two thousand six. So this was our fifth year of calculating it in this statutory manner. [LB1086]

SENATOR LATHROP: One of the problems with unemployment withholdings is it's countercyclical, which is employers are getting statements increasing the amount of the withholding or the amount they have to transmit to the state at the worst time economically. [LB1086]

CATHERINE LANG: That is correct. [LB1086]

SENATOR LATHROP: The issue that occurs to me...well, I guess let me just ask you this question. If we have a five- or six-year experience with this, is it working? [LB1086]

CATHERINE LANG: We believe that it is working to maintain the solvency of the fund. We have run analyses to help us indicate would there ever be a point at which we would be in a difficult situation, because Nebraska would not want to be in a situation of borrowing because we would not be able to borrow. And for us, the most critical months of the trust fund are between...February, March, April, because the payments, the first tax payments that come in are on right around April 30. And so our low point of the trust fund balance usually occurs right around that period of time. And you can do analysis that can help you indicate at what point and with what insured unemployment rate could you hit the point of having not enough money in the trust fund. [LB1086]

SENATOR LATHROP: Two questions for you. One is, would you tweak the formula now

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that we've been through and we're at this point of, for Nebraska at least, higher unemployment? In looking back over the experience since we established this formula, would you tweak it in any way? [LB1086]

CATHERINE LANG: I would not, however...because it does work. It is countercyclical in this current environment because we are still in an economic downturn and we have just issued tax requirements that are going to significantly impact the employer community. The only other option that you could examine, and it was examined during the analysis of this new methodology, is what if you were to maintain a higher trust fund balance. [LB1086]

SENATOR LATHROP: So not ease up on employers when things are good. [LB1086]

CATHERINE LANG: So that it would hopefully push out...you can imagine the wave. You know, here's this wave of benefit being paid out. Now you've got to replenish that: Could you figure out a way to push that farther forward in the future to get you beyond where you are in that current recession? And... [LB1086]

SENATOR LATHROP: Well, the difficulty with that is, is that you could run out of money waiting for the improvement in the economic conditions. [LB1086]

CATHERINE LANG: Unless you maintained a higher reserve in the trust fund. And the counter to that is, because you need to know that, the counter to that is in good years you will have maintained this higher reserve pool of benefits. And it's the same argument that is made any time...it's the cash reserve argument that we experience all the time in Nebraska, is why are we hanging on to all that money. [LB1086]

SENATOR LATHROP: If this bill were law, we had an appeals process in place where you were, as this bill would require that you have a hearing, and assume, as we could expect, that if you gave notice of a public hearing and said I'm about to set the rates, they're set by formula, let's hear from the business community; and they came in and told you, testified as Ms. Kelleher did--and there's millions of stories across the state right now. You are, no doubt, hearing them when those statements went out. And people said this is a terrible time; it's hard; it hurts; I'm going to have to lay people off, would you have done anything different? Or would you simply let the formula run its course? [LB1086]

CATHERINE LANG: Well, the formula remains intact. So the formula would remain intact. Oh, if... [LB1086]

SENATOR LATHROP: But this bill would give you some level of discretion. And my question is, is that a good idea or a bad idea? [LB1086]

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CATHERINE LANG: I believe that it would be a very difficult decision for a Commissioner of Labor to make. And in my opinion, it would not be a decision I would relish making. [LB1086]

SENATOR LATHROP: That sounds like an understatement. But the reality is, if...the reality is, with a formula we've taken politics out of the process. [LB1086]

CATHERINE LANG: Yes, you have. [LB1086]

SENATOR LATHROP: And the other reality is, if we have this hearing process and they come to you, it introduces some level of politics at the risk of the solvency of the fund. [LB1086]

CATHERINE LANG: Or discretion at the risk of the solvency of the trust fund. [LB1086]

SENATOR LATHROP: Well, and the discretion...whoever the Governor is, and we're not--I mean we don't know who's going to be the Governor in the next recession--but whoever the Governor is, is going to get heat to soften the blow on business at the risk of imperiling the solvency of the fund. [LB1086]

CATHERINE LANG: Yes, that's correct. [LB1086]

SENATOR LATHROP: Okay. Does anybody have any questions for the commissioner in light of that discussion? Senator Council. [LB1086]

SENATOR COUNCIL: All I was going to do was to thank you, Commissioner Lang, because that was the point of my question to Ms. Kelleher. I mean, the bill talks about discretion. You really don't have, under the current state of the law, much if any discretion, because the formula for calculating the rate is statutory. And, in essence, it would be a venting session and everybody would be able to get off their chest what's on their chest, but in the final analysis you're going to go back and set the rate according to the statute. And I'm glad that...and maybe I wasn't as clear in my question to Ms. Kelleher, but that...and there's nothing...and I'm sure you do get unsolicited input from businesses about the effect of increasing unemployment insurance rates. [LB1086]

CATHERINE LANG: We received those comments similar to the testifier earlier about the timing of this tax increase. And our staff is very sensitive to the issue and very concerned about it, but we also know that the statutory formula assures the solvency of the trust fund based on economic factors and objective, known data, and so our answer is, at this time, is the statutory formula has prescribed these rates. These are the rates for 2010. [LB1086]

SENATOR COUNCIL: See, I personally don't like doing things when I know all it does is

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make people feel good and it's not going to change the way things are meant to be or will be. And that's what...when I read this and I'm (inaudible), that's what this would do, it would give almost a false hope to individuals that their input could have a marked impact on the rate. And at least as I read the statute, it wouldn't. [LB1086]

CATHERINE LANG: No, as the bill is currently drafted, it would not change the rate. [LB1086]

SENATOR COUNCIL: And even the bill we are considering doesn't change the rate. All it does is say we're going to have this public hearing before that rate is set. [LB1086]

CATHERINE LANG: Right. It allows discretion in modifying the SUT rate but it does not change the federal unemployment tax rate. [LB1086]

SENATOR COUNCIL: Okay. Thank you. [LB1086]

SENATOR LATHROP: Yeah, you would...if you had this hearing, people could come to you and plead and talk about how damaging the increase in withholding rate is, and you could, if this passes, make an adjustment to that. And then whoever the Governor is--and believe me, this isn't about the current Governor--but whoever it is, is going to be pressured by the business community to lower the rate at the risk of the solvency of the fund. [LB1086]

CATHERINE LANG: That could happen. [LB1086]

SENATOR LATHROP: I do have another couple of questions for you. If you are an employer in this state and you receive a statement that you sent out from your office after making these adjustments, you can question whether or not you have been misclassified into a rate. There is an appeals process for that where you can say you have me classified as a 12 and I should be a 6 because I didn't lay off as many people as you apparently think I did, for example. [LB1086]

CATHERINE LANG: That's correct. Yes, that is correct. That exists. [LB1086]

SENATOR LATHROP: So on a case-by-case basis, we already have an appeals process in place. [LB1086]

CATHERINE LANG: That is correct. And what happens even in advance of that is that our staff members work directly with employers to assure that our data is correct, answering questions, and correcting data, if in fact we discover that we have erroneous information. [LB1086]

SENATOR LATHROP: Okay. I think that's all the questions I have and I don't see any

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others. So we appreciate your...I really do appreciate you giving us a little history lesson and the background we needed. [LB1086]

CATHERINE LANG: Thank you. [LB1086]

SENATOR LATHROP: I think that closes. Senator McCoy...anybody else here in a neutral capacity? Senator McCoy has waived close on LB1086. That'll close our hearing on LB1086 and finish our hearings for today. [LB1086]