

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON HEALTH AND HUMAN SERVICES
February 4, 2005
LB 453, 547, 319

The Committee on Health and Human Services met at 1:30 p.m. on February 4, 2005, in Room 1402 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 453, LB 547, and LB 319. Senators present: Dennis Byars, Vice Chairperson; Doug Cunningham; Philip Erdman; Gwen Howard; Joel Johnson; and Arnie Stuthman. Senators absent: Senator Jim Jensen.

SENATOR BYARS: If everyone could please take their seats, we would appreciate it very much, and we'll begin this afternoon's committee hearings. I want to thank everybody who's in attendance today. Welcome to the public hearings of your Nebraska Unicameral's Health and Human Services Committee. We're always glad to have you as guests. I would first like to introduce the members of the committee. Senator Jensen, who is the chair of the committee, is introducing a bill in another committee and will be joining us after he finishes that. To my far right, usually, is Senator Phil Erdman from Bayard, and I think he's going to be joining us this afternoon. To my immediate right is Senator Doug Cunningham from Wausa. I am Senator Dennis Byars from Beatrice, the vice chair of the Health Committee. To my left is Jeff Santema, who is our legal counsel, and Joan Warner, the committee clerk--I won't tell you how many times I've mispronounced her name or called her Judy or Jill, rather than Joan. But on this sheet of paper she has her name this big, to make sure I get it right. To Joan Warner's left is Senator Joel Johnson from Kearney, and next to him is Senator Arnie Stuthman from Platte Center, and Senator Gwen Howard from Omaha, who is the newest member of our committee. I want to make everyone aware of the fact that our proceedings are electronically recorded and they will be transcribed. And if you do have a cell phone with you, please shut off the ringer, and we have been known to hang people by their thumbs if they don't do that. So we just want to make sure that you understand that rule. The committee always first hears the testimony in favor of the bill being considered, then testimony in opposition, and followed by neutral testimony. This always is preceded by the introducer of the bill, who has an opportunity to open and to close on the bill. We limit testimony to three minutes, with each side being given a two-hour time limit. Hopefully we're not going to have to deal with that today.

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

Committee on Health and
Human Services
February 4, 2005
Page 2

LB 453

You're all going to be very expedient and be very brief and not be redundant, and we won't need to deal with that. There are testifier sheets in the back of the room for you to fill out and put in the box when you come up to testify. If you would like to just sign in in favor or in opposition to a bill, or in a neutral position, we have sheets in the back of the room to do that. If you have printed materials, when you come up to testify please give them to Jill, our wonderful page, and she will distribute them to the committee. If you need copies, she can make copies so that the committee has the appropriate number. Typically, we want 12 copies. If you don't have enough, Jill will make copies for you. So we'll begin today's agenda with LB 453, and a member of our committee, Senator Cunningham, will be introducing that bill. Welcome to the Health and Human Services Committee, Senator Cunningham.

LB 453

SENATOR CUNNINGHAM: Well, thank you, Senator Byars. Senator Byars and members of the committee, my name is Doug Cunningham, a senator in District 40 in northeast Nebraska. C-u-n-n-i-n-g-h-a-m. And I'm here this afternoon to introduce LB 453. LB 453 would amend the Radiation Control Act by creating the Medical Radiographer Advisory Committee. The advisory committee shall consist of the director of credentialing within the Department of Health and Human Services Regulation and Licensure, who is to serve as the chairperson, and four medical radiographers appointed to four-year terms by the state Board of Health. The advisory committee is to meet at the call of the chairperson, but not less than twice a year. Members would not receive compensation other than reimbursement for their expenses. The Medical Radiographer Advisory Committee is to advise the department on all matters pertaining to the licensure and regulation of medical radiographers, including the practice of medical radiography, the assurance of continuing competency, and the disciplining of medical radiographers. Currently, medical radiographers, or better known as X-ray technicians, are virtually the only healthcare profession licensed by the department that has no professional board. The licensure of medical radiographers is in the statutes under the Radiation Control and Radioactive Waste Act rather

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

Committee on Health and
Human Services
February 4, 2005
Page 3

LB 453

than the Uniform Licensure Law, where most other healthcare professions are licensed, most likely because they are authorized to possess and use a source of radiation. Medical radiographers previously had a seat on the Radiation Advisory Committee, but the Legislature eliminated that body. In order to be licensed in Nebraska, medical radiographers must meet certain minimum initial and continuing education requirements and pass a department approved examination. The department is authorized to issue and administer regulations implementing such licensing requirements, but there is no method for receiving advice or reaction to proposed rules, as the profession has no established means of communication with the department. Additionally, under present law the department's means of receiving a report on or disciplining a medical radiographer found to be practicing outside of accepted standards of practice, is not clear. As I understand, the Nebraska Society of Radiology Technologists asked the department several months ago whether a small, informal advisory committee could be formed for the purpose of providing an avenue of communication between the department and medical radiographers. That request was denied. I realized this bill would add another committee to state government, but I feel it would create a necessary voice for the medical radiographers. Some examples of professions that have a professional committee or membership on such a committee within HHS Regulation and Licensure include dental hygienists, embalmers, audiologists, athletic trainers, massage therapists, and veterinarians, to name a few. Clearly, having a professional committee to serve as a means of engaging health professions in matters pertaining to their own regulation and licensure is a well established practice in Nebraska state government. I feel that it's only fair to provide the medical radiographers with the same opportunity, and I would urge your favorable consideration of LB 453. And I could try to answer any questions if you have any, but I think there is someone following me that might have more information for you.

SENATOR BYARS: Thanks, Senator Cunningham. Any questions of the senator? I want to welcome Senator Erdman, who has joined us.

SENATOR ERDMAN: Thank you. Thank you for the opportunity

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

Committee on Health and
Human Services
February 4, 2005
Page 4

LB 453

to speak. Senator Cunningham, is there a bigger issue out there that isn't being resolved by the department, besides the denial of an informal group, that would require something like this to be created?

SENATOR CUNNINGHAM: Not to my knowledge. It's just when they have issues to be talked about, they have no formal way to do that, and as I stated in the testimony, they tried to set up an informal advisory committee. That was turned down by the department. You know, there's no way, when they're talking about disciplining, it's unclear, as I understand it, how that all works. When there's rules and regulations, there's no formal way to visit about that, and that's kind of what the issue is. But I don't honestly know most of the details there.

SENATOR ERDMAN: A letter from the department says that they have a strong commitment to seek input and involvement of stakeholders on issues. (Exhibit 1)

SENATOR CUNNINGHAM: I would tell you that the letter seeks to contradict the information I was giving, so you might visit with the person following me on that.

SENATOR ERDMAN: Great, all right.

SENATOR CUNNINGHAM: And I would tell you...I mean, my personal view, they sent a letter. They didn't come to testify. They must not really be against it. That's a joke, Senator Erdman. (Laughter)

SENATOR ERDMAN: Okay, I was going to comment, but we'll leave it alone.

SENATOR BYARS: Thank you, Senator Erdman. Any other comments or questions on the part of the committee? If not, thank you, Senator Cunningham. Will you wish to close?

SENATOR CUNNINGHAM: I'll see how it goes.

SENATOR BYARS: Okay. Proponent? Welcome.

DANIEL GILBERT: Thank you. Vice chairman Byars and the other members of the Health and Human Services Committee, my

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

Committee on Health and
Human Services
February 4, 2005
Page 5

LB 453

name is Dan Gilbert. I am a radiologic technologist, referred to as medical radiographers by the state of Nebraska. I come from Scottsbluff. I am the current president of the Nebraska Society of Radiologic Technologists. I practice at Regional West Medical Center in Scottsbluff, and I appreciate the opportunity to speak to you about LB 453 this afternoon. We would propose to establish a four person advisory board made up of medical radiographers, to provide input to the Department of Health and Human Services Regulation and Licensure. I was a member of the now defunct Radiation Advisory Committee. I was the labor representative at the time, and it was a very frustrating committee to be on, because most of the...there was a considerable range of issues that was discussed, everything from agriculture to medicine on that committee. But it was something that we could work with, because we could provide some input to the Health and Human Services Committee. We strongly feel that our profession needs to provide some input to the Health and Human Services Committee, especially from the aspect that there is no other mechanism within the state currently to provide that input to the Health and Human Services Committee. We are not part of the Uniform Licensure Law. We fall under the Radiation Control Act; therefore, we don't have a board of examiners, and as I said, at the time the Radiation Advisory Committee was the only mechanism that we had to provide some input. Our profession does not feel it is necessary for the medical radiographers to need a full blown board of examiners, as much as the other healthcare professions do, but we do think that it's really necessary that our profession have a means of advising and providing feedback to the department that licenses us and regulates us. As Senator Cunningham commented, we've tried to do an informal board. In fact, the last two directors, or this director and the preceding director of Regulation and Licensure both turned down our suggestion to do that. So we've come to you, asking you to consider LB 453, which is a minimal approach to solving this problem. The Medical Radiography Advisory Committee would have four members, and it would be chaired by the director of credentialing. We wouldn't be opposed to having a consumer sit on this board, as well. And we are suggesting that we only need to meet twice a year, unless there was some other reason to meet more frequently. The only expense that we would request is the mileage and et cetera to attend

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

Committee on Health and
Human Services
February 4, 2005
Page 6

LB 453

these meetings. We are concerned about the fact that the Health and Human Services Department sees the establishment of this committee as to be excessive. As Senator Cunningham mentioned, there are quite a few other people or organizations that have licensure or examining boards available. Some of those ones that are included with that are medicine and surgery, dentistry, dental hygienists, optometry, podiatry, nursing, embalmers, pharmacy, veterinarians, audiologists, psychologists, respiratory therapists, athletic trainers, social workers, professional counselors, marriage and family therapists, massage therapists, nutritional therapists, nursing home administrators. And you'll notice that there is no place on there that talks about an opportunity to talk about radiation, those individuals who deal with radiation on a daily basis. In radiologic technology we are faced with ever-changing technology. We have technology that is occurring today that was not here two years ago, and so we think that it's important that our profession provide some input to the Health and Human Services to assure that Licensure and Regulation is meeting the needs of the profession, also to meet the needs of the patients that we care for. After all, the reason that all of these boards are established are to protect the patient's safety, and that's really what we are concerned about. We really feel that the opportunity to establish this committee would be most in favor of the patients that we are caring for. Thank you for letting me speak about this issue, and if there are any questions, I'd like to answer them.

SENATOR BYARS: Thank you, Mr. Gilbert. I appreciate you being here very much. We'll start with Senator Erdman.

SENATOR ERDMAN: Thank you, Senator Byars. Dan, thanks for traveling down here.

DAN GILBERT: Sure.

SENATOR ERDMAN: I know it's not a short trip. Talk to me a little bit about the denial that the department gave you and those in your profession, and why or what issues spurred the discussion, and I guess, what was the reason why they thought they were smarter and didn't need your help?

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

Committee on Health and
Human Services
February 4, 2005
Page 7

LB 453

DAN GILBERT: The letter that Dr. Raymond sent to our lobbyist indicated that they thought that there was no reason to have this committee, because since 1995, there have been no disciplinary actions taken, and only one license had been denied during that period. So they're simply looking at it from the perspective of ethics, regulation of people who are violating the rules and regulations of the state. And I think we're looking at it from a different aspect. We want to provide feedback to the Health and Human Services Department so that we can enable statutes to be created that really are for the benefit of the profession and the patients that we serve.

SENATOR ERDMAN: Well it sounds like, from reading the letter, that they are all fine and good to have you come and give your input after they've written rules and regs and get your ideas, but they don't seem to want your input to help develop those; is that accurate?

DAN GILBERT: I think that's pretty true. In Chapter 16 of the rules and regulations that was just put out recently, there was a revision made, and I believe it was in October, and I'm not aware that anybody in our profession was provided any input on that, and it was regarding ethics and I don't have a problem with what was written there. But as far as I know, there was no input requested from anybody in our profession.

SENATOR ERDMAN: Okay, thanks.

SENATOR BYARS: Thank you. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Dan, do you think there will be any problem with getting volunteers to serve on this board of the radiographers?

DAN GILBERT: What we have--I've had several people who have commented that they would like to serve on this board that are technologists. The other thing is that if necessary, we can certainly add that to one of the responsibilities for our society. One of the officers could certainly take that responsibility on. The NSRT is basically the representative for all the technologists in the state, and so any feedback to the NSRT could be then sent to the division about that.

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

Committee on Health and
Human Services
February 4, 2005
Page 8

LB 453

SENATOR STUTHMAN: So you feel it would be, you know, very receptive to having a board by these individuals?

DAN GILBERT: Yes. I don't think that we'd have a problem keeping four people on the committee.

SENATOR STUTHMAN: There'd be an interest in it?

DAN GILBERT: Yes.

SENATOR STUTHMAN: Okay, thank you.

DAN GILBERT: Sure.

SENATOR BYARS: Thank you, Senator Stuthman. I did notice, Dan, that you're actually a five-member committee, with the chair of the department as the chair of the committee, and then four radiographers.

DAN GILBERT: Yes.

SENATOR BYARS: And those--your members of your profession are appointed to the board by the Board of Health, if I'm not mistaken, right?

DAN GILBERT: Right, right, with input from the profession, I think is what it says.

SENATOR BYARS: Okay. I'm not sure, maybe we'll have testimony later relative to the Board of Health and their opinion, their feeling relative to this issue. Certainly I know you can't share their feelings, but if you have any, go ahead.

DAN GILBERT: We...I think that one of the things that we see in the current licensure law is that it's very, very rudimentary. It does not--all that this licensure law talks about is medical radiographers and limited radiographers, which are people who do X-ray procedures. It doesn't say anything about people who do therapy. It doesn't say anything about people who do increment medicine studies, MRIs, or any of those advanced procedures that are becoming more and more common all the time. And we as a profession

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

Committee on Health and
Human Services
February 4, 2005
Page 9

LB 453

think that there should be some way of licensing these people to assure that patients are receiving accurate care. And that's one of our concerns, that we met with the Health and Human Services Committee in--let me see--it was about September. And they said, well, that sounds like a good idea, but if you would like to go ahead with it, go right ahead. So that really distresses us. Because the Health and Human Services Committee ought to be looking at this from the standpoint of, what do we need to do to assist the profession to be caring for their patients better? And they don't seem to be very interested in that. So it concerns me.

SENATOR BYARS: Well, that's a question, because we do deal with nuclear medicine in particular at this point in your departments.

DAN GILBERT: Yes, that's right.

SENATOR BYARS: How are the people that are administering certified, or how do we know that they're...

DAN GILBERT: Right now, the current rules and regulations state that a person who administers radioactive material either has to have 1200 hours of--maybe it's 120 hours, I apologize--120 hours of education or pass a national certification. But it's fairly generalized. It doesn't really specifically address what happens if this person has an ethical issue or violates statutes, or anything like that. There's no, that I can see, there's nothing in there that comments about what happens in that situation.

SENATOR BYARS: Okay, thank you, Mr. Gilbert. Any other questions or comments? Senator Johnson?

SENATOR JOHNSON: This one doesn't really apply very much, but I was sitting here thinking, when you started talking about low level nuclear waste. What do you do with your low level nuclear waste in Scottsbluff?

DAN GILBERT: We don't have a whole lot, because most of what we use has a relatively short half-life, meaning it doesn't stick around for a long period of time. So commonly what we do is simply have a room in our hospital where it

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

Committee on Health and
Human Services
February 4, 2005
Page 10

LB 453, 547

just simply sits until it decays away. Most of what we have even falls below low level waste in terms of that amount of radiation. Whatever we do have we simply box back up and send it back to the company, and it's their problem.

SENATOR JOHNSON: Thank you.

DAN GILBERT: Sure.

SENATOR BYARS: Any other questions? Thank you for testifying, appreciate you being here. Next proponent? Any other proponents? Anyone testifying in opposition? Anyone in opposition? Anyone to testify neutral? Well, Senator Cunningham, do you wish to close? Senator Cunningham waives closing. LB 547, Senator Johnson to introduce. Welcome to the Health and Human Services Committee, Senator Johnson.

LB 547

SENATOR JOHNSON: Thank you, Senator Byars and members of the committee. My name is Senator Joel Johnson, J-o-h-n-s-o-n, representing the 37th District. Today we are going to hear a second bill from a group that feels that they are somewhat disenfranchised as well. LB 547 seeks to amend the statute so that there is an expansion of the membership to the Board of Engineers and Architects. The new members would include a local code enforcement official, a building contractor, a home builder, a municipal official, and a real estate agent or salesperson. Similar to what we had in the previous bill, we see where a board makes decisions that affects both public and private structures, as opposed, of course, to patients. But there are other many similarities as to the previous discussion. And similarly, I think one of the things that we have, whereas we do not have a statement from the Health and Human Services Department, where they state the department has a strong commitment to seek the input and involvement of stakeholders as alluded to by Senator Erdman, we do have a group that approached me with the sense that this same type of input was not sufficient, at least in their minds. I felt that this, as with the previous bill, deserved a public airing, and that there at least was some evidence that these concerns were unmet. One of the other things that I would

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

Committee on Health and
Human Services
February 4, 2005
Page 11

LB 547

request from both sides as they testify--because it could have consequences regarding the statute if it is left alone, as well--is this: the current statute applies the words "knowingly and intentionally" standard to one of the violations, one of the violations. What is included in this bill is, LB 547 would apply the standard to all violations of the statute. So I would ask for the people who approached me regarding this to make their case, and I am aware of those that feel contrary, and that the statute should be left alone. And we'll leave that up to the committee to decide.

SENATOR BYARS: Thank you, Senator Johnson. Any questions of Senator Johnson? If not, thank you. Will you be closing, Senator?

SENATOR JOHNSON: I have to go somewhere else, but we'll see what we can do.

SENATOR BYARS: Okay, thank you very much. Proponents of LB 547? Welcome.

GARY KRUMLAND: Senator Byars, members of the committee, my name is Gary Krumland, spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB 547. First of all, I want to thank Senator Johnson for introducing the bill so we can bring this issue forward for discussion. We do support the bill for expanding the board, and the reason mainly is that engineers and architects boards make decisions regarding construction of both public and private structures because the architects and engineers board has statute and rule-making authority that affect when an engineer and architect is required to be involved with the plans and the construction of a building. This affects the cost and the time it takes to get something constructed. Some of you that have been on the committee before are somewhat familiar with this issue, because last session you had before you and was enacted LB 599, which put in a negotiated rule-making procedure with the Board of Engineers and Architects to take care of some of this problem. From what I understand, though, that has not implemented yet because of lack of funds, and maybe it will be in the future. But we think by having additional members on the board from these various groups would provide input on how

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

Committee on Health and
Human Services
February 4, 2005
Page 12

LB 547

these standards affect various construction entities and would be very helpful in determining how those standards should be brought forward. The other part of the bill that Senator Johnson mentioned is the part on the criminal statute. Section 81-3442, and that's on the bottom of page 3 and page 4, is a statute that makes certain acts under the Engineers and Architects Act criminal statutes. It's either a Class I misdemeanor, which is the highest misdemeanor, or second or subsequent offenses makes it a felony. And currently it has a whole list there of what may or may not be a violation of the act. It does say if you knowingly and intentionally employ a person to practice architecture who is not licensed, that is a felony. But the rest of them don't have the phrase "knowingly and intentionally," so someone could inadvertently violate it and still be subject to a criminal statute. We think that if the criminal law is being involved and someone is going to be charged with a crime, the standard of knowing that it's a crime and intentionally intended to do it, should be applied to all acts that could be made criminal. This does affect the authority of the board regarding their civil actions. When somebody violates the act, they can take civil action, and this doesn't change that. But we think there should be a higher standard when it's a criminal matter, and someone could be charged with a crime. And with that, I'd be happy to answer any questions.

SENATOR BYARS: Thank you, Gary. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Gary, can you tell me what the main function is of the Board of Engineers and Architects? What is their responsibility by serving on this board, and what are they supposed to promote?

GARY KRUMLAND: I'm assuming they license engineers and architects, and discipline the profession. They also have--in 1997, the act was changed and they were given a lot of authority regarding when an engineer or architect needed to approve a plan for construction. And that's the part that, I guess, we're talking about here, because that not only affects the engineer and architect professions, but it affects all of the other groups that are listed here, because they're all involved with construction.

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

Committee on Health and
Human Services
February 4, 2005
Page 13

LB 547

SENATOR STUTHMAN: In my research that I have done, you know...in my opinion, you know, this board is supposed to safeguard life, health, and protect the public.

GARY KRUMLAND: Um-hum.

SENATOR STUTHMAN: You know, and that is the function that I think this board is supposed to be doing.

GARY KRUMLAND: Yeah, and I...

SENATOR STUTHMAN: Are they not doing this, as that board?

GARY KRUMLAND: I think that.... Well, especially in terms of construction standards, I think it would be helpful to have representatives from other areas who are involved also with the protection, like building code officials are involved with safety and protection of the public. And to have input and help with decisions from these other groups I think would be helpful.

SENATOR STUTHMAN: Okay, thank you.

GARY KRUMLAND: Um-hum.

SENATOR BYARS: Thank you, Senator Stuthman. Senator Cunningham?

SENATOR CUNNINGHAM: Yes. Gary, I don't know for sure how many people are on the Board of Engineers and Architects.

GARY KRUMLAND: I think there are seven.

SENATOR CUNNINGHAM: Seven? And you want to add five more? I mean, that's not quite half, but it gets awfully close to half when you're in an area that sometimes you're putting people on that really don't know anything about that area. I mean, I could maybe see an advisory group to work with the board, but to have voting members, and especially that many voting members, would seem to be a problem.

GARY KRUMLAND: Well, maybe there is another structure to get this kind of input, but we do think it's important to have input from these type of professions, too, because of

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

Committee on Health and
Human Services
February 4, 2005
Page 14

LB 547

the decisions that they make.

SENATOR CUNNINGHAM: I mean...

GARY KRUMLAND: So maybe there's...

SENATOR CUNNINGHAM: ...I can certainly see the desire to have input, but it troubles me a little bit with...

GARY KRUMLAND: Yeah, so maybe there's, you know, ex officio members or something like that, or you know, for when they make these decisions. But there are decisions made that affect other groups that need input into these decisions.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR BYARS: Gary, we might have to look at the statute a little bit. As I'm counting up the additions...they're saying the board should consist of 11 members, and if I...

GARY KRUMLAND: Okay, I'm...

SENATOR BYARS: ...if I look at four professionals, three architects, and then you add five or six more, you're at a 13-member board, rather than eleven.

GARY KRUMLAND: Yeah, I think it's talking--that threw me off, too. And let me go back and read this. The 11 members are in addition to two members somewhere, so there are actually...I think back. There are eight members on there more, and they're adding five.

SENATOR BYARS: Okay.

GARY KRUMLAND: Of the eight that are on there now, one is a public member; the other seven are either engineers or architects.

SENATOR BYARS: Okay, thank you, Gary. Any other questions of Gary? If not, thank you very much. Next proponent of LB 547? Welcome.

WALT BROER: Senator Byars, members of the Health and Human Services Committee, my name is Walt Broer, B-r-o-e-r. I'm

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

Committee on Health and
Human Services
February 4, 2005
Page 15

LB 547

the executive director for the Associated General Contractors, the Nebraska Building Chapter, and this afternoon I'm also representing Dick Johnson, J-o-h-n-s-o-n. He is executive director for the Associated Builders and Contractors. We both have members that range from some of the largest contractors in the world to the mom and pop's. We are here to support LB 547 for reasons that a lot of people had put input into this with LB 599 a year ago and previous to that. There are very few boards that represent an entire industry that are only comprised of one part of that industry. We have a very good relationship and have had for many, many years with our architects and engineer friends. Many of the people sitting in back of me I've built buildings with and for. We feel that the input, as Gary said, to bring our knowledge to the table is of a great value to this board. Even with the new board I still believe that the architects and engineers would consist of a majority, if it did come down to hard facts voting. With the gaining popularity of what we call design build work, which in the old days was called negotiated work, not only in the private sector but in the public sector where we work as a team--being the architect, the engineer, the mechanical engineer, the electrical engineer, or whomever to comprise of that design build team--why should not this board also be a team and bring all the expertise to the table for the state of Nebraska? If you have any questions, I'd be happy to answer them.

SENATOR BYARS: Thank you, Mr. Broer. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Walt, in the additional members that you want to add to it, you've got a code enforcement official. Why would you have to have that one on there, because the codes, the engineers and architects would, you know, build or would lay out the plans according to code, wouldn't they?

WALT BROER: Well, there are, as you well know, Senator, in our state of Nebraska, a lot of code officials. And the code officials have had some difficulties sometimes deciphering the proper answer to the question that may be presented to them. So we felt it was very important that they also be a part of this board. It does and can and has happened.

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

Committee on Health and
Human Services
February 4, 2005
Page 16

LB 547

SENATOR STUTHMAN: But you know, I'm under the understanding that the architects and the engineers, you know, the main issue is to safeguard life, health, and to promote public welfare. And there's got to be a code for that, and the way it should be followed.

WALT BROER: That is correct.

SENATOR STUTHMAN: And you know, I don't know why you would want to add one of them to it.

WALT BROER: Well, most of us...I think it's from the necessity of interpreting some of those codes. Most of us know, in the state of Nebraska, work under the UBC, you know, the international. Some may not yet--I'm not too aware of some of our out-state members. But we're governed by some very strict codes, and as far as the part of the bill that says the architects shall and will be licensed and so forth, we have no problem with that. That's a must. There's no question about that. We just feel that that public official can also bring in maybe some interpretation questions.

SENATOR STUTHMAN: And another comment that you made that you've had a good working relationship, you know, in the past. And if it's working, you know, why would we really want to change it?

WALT BROER: Well, this goes back just a little bit, where we, as contractors, we call it the architects' bill and we call it the 5,000 square foot bill. I think some of this stems back from those early bills, where we were not able to do some of the smaller projects in the state of Nebraska because of that new bill. For example, at Burger King, could not put on a 20 by 20 addition because of the occupancy loading. And most people can build a Burger King addition in their sleep, if they have any ability whatsoever. And that's where some of this started, and we felt at that particular time it would be good to have other input on this board.

SENATOR STUTHMAN: But if you couldn't put that on there, an approval of the Board of Engineers and Architects because,

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

Committee on Health and
Human Services
February 4, 2005
Page 17

LB 547

you know, they're following the code, how can one put it on
and another one can't put it on?

WALT BROER: Well, they would be following the code as the
law now states under LB 599.

SENATOR STUTHMAN: Okay, thank you.

WALT BROER: Um-hum.

SENATOR BYARS: Thank you, Senator Stuthman. Senator
Erdman?

SENATOR ERDMAN: Walt, a question for you. As I read the
bill and the fiscal note, this will cost money to add the
members for expenses of a number of areas and travel and
such. And there's no requirement, I guess, of those new
members to, or their associations that they may be members
of, to pay any fee or anything to be...to help cover with
this. So essentially, you add the new members and require
the Board of Engineers and Architects to expand with these
new members and the fees for that association or group is
currently paid by engineers and architects. Do you have any
idea of how the necessary funds might be raised, or is there
a better solution than just saying, we want to add five
members and get to pay for us?

WALT BROER: Well, Senator, the fee structure, I think those
are some of the things that could be tweaked in this. I
think that our industry would be more than happy to serve on
this board without pay. I personally served on, was
appointed by Governor Kay Orr at the time, on the state
handicapped committee, where after the Legislature wrote the
handicap bills, we tweaked and gleaned for 10 years. That
was all nonpay, so I think that's something that could be
considered later down the road.

SENATOR ERDMAN: Okay, thank you.

SENATOR BYARS: Thank you, Mr. Broer. Any more questions?

WALT BROER: Thank you very much.

SENATOR BYARS: Thank you. Next proponent?

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

Committee on Health and
Human Services
February 4, 2005
Page 18

LB 547

JUSTIN BRADY: Senator Byars and members of the Health Committee, my name is Justin Brady, B-r-a-d-y. I'm appearing today as the registered lobbyist on behalf of the Nebraska Realtors Association, and they would just like to signify their support for LB 547 and believe over the years they've tried to have a working relationship with this board, but stuff that this board does has a direct impact on a daily basis of realtors, and they feel that they would like to have a seat at the table when some of the decisions are made about this board. So with that, I'll conclude my testimony and try to answer any questions.

SENATOR BYARS: Thank you very much, Justin. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Justin, what would be the day-to-day circumstance, or you commented they have problems day to day, with the realtors? What would be an instance of that?

JUSTIN BRADY: An instance of that would be where...currently the board can set the threshold at which architects' and engineers' certificates or stamps are needed to build residential homes. If they want to change that square footage...part of LB 599 last year, they had come in and asked to have free realm to be able to go up or down with that number. So in essence--not that they would have done this--but in essence, they could have lowered it enough that you would have needed architect and engineer stamps to build a dog house. So, I mean...so because of that, they have the ability to affect, on a day-to-day basis, the real estate market, because as you need those stamps, the cost of real estate goes up and therefore their day-to-day operations when they go to sell homes.

SENATOR STUTHMAN: Okay, thank you.

JUSTIN BRADY: Um-hum.

SENATOR BYARS: Thank you, Senator Stuthman. Senator Erdman?

SENATOR ERDMAN: Thank you, Senator Byars. Justin, would

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

Committee on Health and
Human Services
February 4, 2005
Page 19

LB 547

the realtors approve adding an engineer or an architect to say, the Real Estate Commission or the Real Estate Appraisers Board, since they're so closely related, based on your testimony?

JUSTIN BRADY: I don't know their official position, but I don't know why they would object to having...I feel the more voices at the table to address, I mean, what Senator Stuthman has been asking about, the public health and safety of people, I mean, why have one entity? Why not bring more people to the table to address the issues? And so based on that, I don't know why they would object, but...

SENATOR ERDMAN: I guess the only reason I asked, I look at the Real Estate Commission and their five members, who are engaged in the actual business of real estate, either brokers or otherwise, and there's one member of the public. And on the Real Estate Appraisers Board, there are mainly people in the area of appraising, with one individual who is a broker and one is a financial institution, and so I'm just trying to figure out the logic in coming to try to add more people to one board without offering the same reciprocal, but I appreciate the answer.

JUSTIN BRADY: I would just say that the realtors didn't bring this bill, I mean. So that was just--there was a bill, and we supported the concept.

SENATOR BYARS: Thank you, Senator Erdman. Any other questions or comments of Justin? Thank you, Justin. Next proponent of LB 547?

JEFF SINNETT: Afternoon, Senators. My name is Jeff Sinnett, S-i-n-n-e-t-t. I'm the chief building official with the city of LaVista. I'm also the current president of the Nebraskaland Chapter of Building Officials and Inspectors, and I am here today representing the Nebraskaland Conference of Building Officials and Inspectors in support of LB 547. .cm found on google. Everybody recognizes that the successful completion of any project is a unified team effort of all parties involved, with no one team member being more important than the other. From the community that encourages the development to the eventual occupants of a structure, all parties strive to construct a

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

Committee on Health and
Human Services
February 4, 2005
Page 20

LB 547

safe, enjoyable environment. As it now exists, the Engineers and Architects Regulation Act sets the engineers and architects apart from all other parties involved in the construction industry. The Board of Engineers and Architects is made up solely of engineers and architects and one member of the public. Why would this board not be patterned off the Nebraska State Electrical Board? The electrical board is made up of electrical engineers, contractors, journeyman electricians, electrical inspectors, and other entities involved in the electrical industry. It would seem more appropriate that a board that has the ability to determine policy concerning construction statewide and to pursue criminal charges against members of the construction community lacks representation of those involved in the construction process. In closing the Nebraskaland Conference of Building Officials and Inspectors believe that LB 547 is a giant step forward in being more inclusive of all team members in the construction of all projects throughout the state of Nebraska.

SENATOR BYARS: Thank you, Mr. Sinnett. Any questions?
Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Jeff, you're a building inspector?

JEFF SINNETT: I'm the chief building official, yes.

SENATOR STUTHMAN: Chief building inspector?

JEFF SINNETT: Um-hum.

SENATOR STUTHMAN: Do you find problems with construction to be problems of architects and engineers, or the contractor more?

JEFF SINNETT: Well, I've been an inspector over 15 years, and there's very few construction submittals, drawings, that haven't had at least something redlined, or it was in direct violation--or not violation, but in direct conflict of the code.

SENATOR STUTHMAN: And that would have come from the architects and engineers?

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

Committee on Health and
Human Services
February 4, 2005
Page 21

LB 547

JEFF SINNETT: From the stamped architect that submitted the plans.

SENATOR STUTHMAN: And you're finding a problem with that, before the construction is built, right?

JEFF SINNETT: Correct. And I think if you check with other municipalities, it's probably pretty much the same across the state, or at least the larger ones.

SENATOR STUTHMAN: Okay, thank you.

SENATOR BYARS: Thank you, Senator Stuthman. Thank you Senator...Senator. We just demoted you, I'm sorry. (Laughter) Thank you, Mr. Sinnett. How many more testifiers in favor? How many opposed? Okay, thank you very much. Are there any more in favor? I didn't see any hands go up. If not, we'll begin on opposition testimony, and remember, if it is redundant testimony, if it has been given, please sign in in opposition or in favor, so we can limit testimony. First person in opposition?

DALE SALL: (Exhibit 3) My name is Dale Sall from Holdrege, last name is spelled S-a-l-l. Senator Byars and the committee, I appreciate the opportunity to appear before you today in this facility, which is a credit to the engineering and architecture professions, and one that we all are very proud of. I am the current chair of the Board of Engineers and Architects. I've been active on the board for 24 years, and I've served on national committees which prepare the exams for civil engineers for 17 years. I was elected treasurer of the National Council of Examiners for Engineering and Surveying, which is the organization of all the state engineering and licensing boards. Following that, I was the first member ever from Nebraska to be elected to the presidency of the national organization. I served four years on the national board and chaired and served on many committees at the national level. I have been for the past five years the chairman of the United States Council for International Engineering Practice. I tell you this, not to boast, but to explain the level of commitment that I and the other members of the board have for the public welfare. We all do this as a service to our peers and the public. But I

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

Committee on Health and
Human Services
February 4, 2005
Page 22

LB 547

point out that the work at the national level by many of our board members allows Nebraska to be looked upon with respect by other states. We believe this allows us to better function as a board, because of the knowledge we gain from the interaction with many other board members from the various states. Although we oppose this bill strongly, we wish to thank the sponsors for providing us an opportunity to talk about the work our board does, and I believe does well. We are proud, and I am proud of the work that we do on behalf of Nebraska citizens. For 24 years it's been my honor to serve for six governors, and 24 legislative sessions of this board. These last few years have been exciting, in that we have been in a partnership with this committee, have established some of the best law in this country that provides public protection and safety oversight. We pride ourselves on the efforts to make and include others in what we do, and we know that the senators also know that, because last year you passed LB 599, that entrusts us with some serious responsibilities. I welcome the opportunity to meet with any of the members periodically to update you on our work. Specific to our work is your recognition of our unique use of the negotiated rule-making process and all-inclusive dispute resolution process that I daresay we pioneered for all of state government, and that you recognized in LB 599. This bill subverts the public interest by stacking a public interest board with special interests. It essentially elevates a special interest over the public interest and does not improve the health and safety of the state, which is the sole measurement of the passage of a new law. This board's primary concern is public health and safety as it relates to who may practice engineering and architecture in the state. That concern leads us to the primary job, which is to determine who is qualified to practice in this state. We all take that responsibility very seriously and discuss at length the qualifications of candidates. This leads to our next responsibility, which is to deal with alleged violations of the act in two areas. One is when licensed persons practice beyond their expertise, and secondly is when persons not licensed to practice engage in activities that the law says shall be performed only by licensed engineers and architects. We receive complaints from other state agencies such as the state Fire Marshal's Office, Department of Environmental Quality. We also get these from municipal

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

Committee on Health and
Human Services
February 4, 2005
Page 23

LB 547

code officials, and we take each and every one very seriously. We always try to be fair to everyone involved and get all sides of the issue before we pass judgment. I feel it would be very difficult for these special interest groups to make judgments on the qualifications of engineers and architects who wish to be licensed in Nebraska. This being the board's primary function, I don't see how these additions to the board will help protect the health and safety of the public. As a note, of those licensed to practice in Nebraska, only 35 percent are residents of this state. This means we are looking at a wide variety of education and experience, and I believe it takes people with similar education and experiences to make judgments on these candidates. I once again remind you that we strongly oppose this bill. Thank you. I do have a letter from our public member, Bill Tringe, that I would like to enter into the record.

SENATOR BYARS: Thank you very much, Mr. Sall; is that right?

DALE SALL: Sall, yes.

SENATOR BYARS: Thank you for being here. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Dale, I'm sure you just heard the last conversation I had with the building inspector, and the building inspector finds that there are some discrepancies, some failures in a plan that has been drawn up by an architect.

DALE SALL: Correct.

SENATOR STUTHMAN: Is that a responsibility of your board, doing that, or is that a failure of your board, of getting the information down to the architects that you have licensed?

DALE SALL: Well, I don't know that it's a...where the failure is, Senator. I guess the way we look at it is, if that building official would send us a complaint form that he's received this, then our board will investigate and find out is that architect or engineer not qualified to practice. You know, do they not understand the rules? And we have

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

Committee on Health and
Human Services
February 4, 2005
Page 24

LB 547

undertaken, over the past two years, and have a huge public relations campaign to explain to the engineers, the architects, and the general public what our board is there for, what the rules are, to try and let everybody know the rules, so that we don't have these kinds of problems. But we take them seriously, if they're brought to our attention.

SENATOR STUTHMAN: Okay, thank you.

SENATOR BYARS: Thank you, Senator Stuthman. Any other questions, comments? Senator Cunningham?

SENATOR CUNNINGHAM: Yes, Dale. Earlier I mentioned that, what would your board's position be on an advisory group, to just work, give their opinion, and hear your opinion, and maybe hear the reasons why you do some things the way you do it, so they could take it back to their groups?

DALE SALL: I don't believe that the board would be opposed to that in any way. The negotiated rule-making process is really almost that kind of an organization. When we were working on the new law back in '97 or 98, we had, I think, 24 different groups involved in that negotiated rule making, to try and put together how our law would be and how the rules should be. And we have that in the process--we're moving forward with some rule changes, and that negotiated rule making would be used for that, so we're using it.

SENATOR CUNNINGHAM: So all of these changes go through the rule-making process anyway?

DALE SALL: We go through that rule-making process and we get all this input. The final say comes down to the board to make that final rule. But I can't quote an instance when we have gone against the best judgment of that group as a whole, that we've always looked at that as, you know, the input of those groups was very important to us.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR BYARS: Thank you, Senator Cunningham. Any other questions of Mr. Sall? Thank you very much for being here.

DALE SALL: Thank you, Senator Byars and committee.

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

Committee on Health and
Human Services
February 4, 2005
Page 25

LB 547

SENATOR BYARS: Next person in opposition?

RON HUGHBANKS: (Exhibit 4) My name is Ron Hughbanks, that's H-u-g-h-b-a-n-k-s. I'm executive vice president with ADR Architecture based in Omaha, Nebraska. I am also the chair of the government affairs committee for the American Institute of Architects, Nebraska Chapter, and speaking on their behalf today. What we would to...we have looked at this from the perspective of practicing professionals and how it impacts us. We too think that it needs to be a focus on the board, which is, we believe, primarily the health, safety, and welfare of the public, which is one of the preambles of our licensure laws for practicing architects and engineers. We think that's really one of the most important missions, and we think it's best left to the professionals that have that experience behind them, to be able to review, judge, and determine whether or not those professionals have or have not been practicing accordingly. I would offer to you for consideration that if there is ever a case where an architect or engineer is being judged as to whether they were negligent or not, and they go to a court of law, expert witnesses are always a practicing professional architect or engineer from the same discipline that they were involved with, as opposed to a special interest group, as such. By like token, we investigated this through some of our insurers, just to get the take that they had. By that I mean the professional liability insurance, or what some people call errors and omissions insurance, and besides finding out that most of them were against it, we were surprised to see that some of them were saying it would even make them consider whether or not they would be willing to insure practicing professionals within the state. That's going to really catch people's attention on our side, when we're practicing the profession, if we have to consider doing projects without errors and omissions insurance. You may choose not to practice; by like token, if you did choose to practice, you're going to have to build a significant contingency into your fees to cover the risks that you would normally take over with your errors and omissions insurance. We'd equate that to almost 5 percent of the construction cost. We say that would be a terrible economic burden to place on the state, with regard to the construction that goes on here. When you look at the

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

Committee on Health and
Human Services
February 4, 2005
Page 26

LB 547

qualifications of the current board, you'll find that, with the exception of the one public member, they are licensed architects and engineers. They also have, as the licensed architects and engineers, a continuing education requirement. Seventy percent of that is aimed at health, safety, and welfare in the case of the architects, so they get a continual education toward the things that we believe are most important. Just looking at it from the standpoint it is a very disruptive, we believe, modification to the board. You're talking about over an 80 percent increase in the members of the board. We don't quite see the necessity for that, why it's required, and again, we're looking at it as practicing professionals having been subject to the review and legislation of that board. And then finally, we'd like to just put on the table that the negotiated rule-making process is in place. We believe that that does put a system in place which will address and can address the special interest groups that are interested in bringing this bill forward. And we would offer that that process needs to be exercised more or tried more, if you will, before you'd make such an excessive change here.

SENATOR BYARS: Thank you for your testimony. Questions? Comments? Thank you for being here. Next opponent?

WAYNE DRUMMOND: Senator Byars, senators, my name is Wayne Drummond, D-r-u-m-m-o-n-d. I'm testifying before you today as a citizen and as a registered architect, although I do serve as the dean of the College of Architecture at the University of Nebraska. I am speaking in opposition to the bill, because both of these professions, engineering and architecture, are learned professions. That means that there's an enormous amount of investment that occurs in the educational process, it occurs in the experience, and it also occurs in examination. Architecture nationwide requires a minimum of five to six years of architectural education, full educational experience that deals with many very serious and technical matters. So does engineering. In fact, our program at the University of Nebraska is a six-year program that is followed by a minimum of two years, in most states, of experience which is documented through an internship development program. And you have then qualified, if you have completed that eight years' composite--if you have a five-year degree from some of the

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

Committee on Health and
Human Services
February 4, 2005
Page 27

LB 547

states, and three years' experience--anyway, it's a minimum combination of eight years of education and experience. Once you've attained that, you are eligible to sit for the exam, and the architectural exam I can assure you, which are issued by the National Council of Architectural Registration Boards, are very extensive and include virtually a one-week period in order to complete the exam's full, multiple sections. The reality of it is then we are also required, as licensed professionals--assuming that that is achieved--we are also expected to do continuing education, because it is a changing field which requires technological and rule changes. For example, we are indeed now operating under the International Building Code. I mention that specifically, because in addition to my role here as a citizen and an architect, I've also served as the national president of the Association of Collegiate Schools of Architecture faculties, involving some 30,000 students and faculty across the country, and I currently serve on the National Architectural Accrediting Board. That is the board that deals with accreditation for the schools of architecture. The schools of architecture is where the process begins. It's imperative that every school and every licensee candidate come from an accredited school, so the interlocking of detailed criteria relative to the professional bodies of knowledge that are required begin with architectural education. After that experience is there and the testing and examination is complete, we then have a very serious responsibility--and I think it's been brought up several times this afternoon--in terms of life, health, safety, and welfare of the public. That is the central mission of this board, and it is the central focus. I also teach a course in professional practice and standards, and therefore standard of care, ethical standards, and professional behavior are very serious and very dear to my heart as an individual. We work very hard on those aspects. We do, in fact, advocate--and I think Walter Broer and others have talked about--it's a team process. It is one that requires many skills. But in this case, in terms of maintaining the credibility and the behavior of the professionals involved in architecture and engineering, these other individuals are very vital to the process. I think it's also been stated that the board would welcome advisory--and in fact, have many working, positive relationships with others, and I think it would be really

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

Committee on Health and
Human Services
February 4, 2005
Page 28

LB 547

important for us to understand that these things occur on an everyday basis. This is not about exclusionary practice. It is not about limiting opportunity and business opportunities. It is about the life, health, safety, and welfare of the public. I wasn't going to perhaps bring this up, but since it was mentioned on two occasions in affirmative testimony here earlier...Walter brought up the idea of the 20 by 20 addition to Burger King. That may sound trite to some others, that that's incidental. It was also mentioned that a dog house be built by those, maybe, maybe not having expertise. But I would like to suggest to you that we do appreciate the work that the plan reviewers and building inspectors conduct, and in fact, there are thousands and thousands of decisions that could be made, and there are many interpretations of the various codes. And there is a lot of variability also in the people who review plans, in terms of their areas of expertise and training. And that is not a demeaning comment whatsoever. It's just simply stating that there is a lot of variability. And so there is always this interpretation relative to code, and I don't think it's necessarily--I think Senator Stuthman asked about whether there are mistakes. I don't think that there are always necessarily a red line will appear from a mistake, but will be appearing from a different interpretation of the code. The bottom line is that the core issue here is about the life, safety, health, and welfare of our citizens, and since these other smaller projects were brought up, I would like to close by mentioning a friend of my granddaughter's, a young lady who was killed, an eight-year-old girl who was killed in Crete last summer, with the falling of a single concrete block out of the public restroom at the Tuxedo Park, in which it was a laterally unsupported wall that unfortunately toppled while the children were celebrating the end of the year. It's unfortunate that the family, the foster family who lost their daughter in Crete this past summer. These are the kinds of tragedies that this board is focused on in trying to make certain that the licensing standards and the personal behavior and the technical competency of the architects and engineers are of the highest quality. I'll be open to any questions.

SENATOR BYARS: Thank you, Mr. Drummond. Any questions of the committee? Thank you for being here today.

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

Committee on Health and
Human Services
February 4, 2005
Page 29

LB 547

WAYNE DRUMMOND: Thank you, sir.

SENATOR BYARS: Next opponent? Welcome.

GRETCHEN LIVINGSTON: (Exhibit 5) I have exhibits. Thank you. Good afternoon. Senator Byars and members of the Health and Human Services Committee, my name is Gretchen Livingston, L-i-v-i-n-g-s-t-o-n. I am a registered professional engineer in the state of Nebraska. I'm here today in the order of, I am the president of the Professional Engineers Coalition. The coalition comprises of multiple organizations. They include the American Council of Engineering Companies, the Nebraska Society of Professional Engineers, the American Society of Civil Engineers, and the Professional Surveyors Association of Nebraska. Also, as an associate member is the American Society of Mechanical Engineers. The Professional Engineers Coalition is in opposition of Legislative Bill 547 for the reasons that several individuals have talked about before. I will not go through those again. Senator Erdman, I would concur with your earlier statement about the Real Estate Commission, which is five of six, and the Real Estate Appraisers Board, which is everybody. So I would agree with that. PEC, again, is in opposition of this bill, and this is an issue that we're very passionate about, as professional engineers. We appreciate the opportunity to have a dialogue on this issue. Any questions?

SENATOR BYARS: Thank you, Ms. Livingston. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Gretchen...

GRETCHEN LIVINGSTON: Um-hum.

SENATOR BYARS: Can't leave yet, Gretchen.

GRETCHEN LIVINGSTON, Oh, I was going to try.

SENATOR STUTHMAN: You tried to get away from me, but not quite.

GRETCHEN LIVINGSTON: I was going to go to the golf course.

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

Committee on Health and
Human Services
February 4, 2005
Page 30

LB 547

It's nice out.

SENATOR STUTHMAN: State again what your position...I mean, what is your profession?

GRETCHEN LIVINGSTON: I am a registered professional engineer. I'm a civil engineer in the state of Nebraska.

SENATOR STUTHMAN: Civil engineer?

GRETCHEN LIVINGSTON: I'm a civil engineer.

SENATOR STUTHMAN: Do you have problems with this board of engineers, or architects? And then the second question is, is it working well, what they're doing? It's okay, and there's no problem with what they're doing? Or is there something that they could be doing different?

GRETCHEN LIVINGSTON: I think they're both good questions, and Dale is probably a better person to answer them.

SENATOR STUTHMAN: Well, you lucked out.

GRETCHEN LIVINGSTON: He definitely knows more about it than I do. My personal experiences with them, I have very good luck in working with Charles Nelson and the board, when need be. They have been very responsive to questions I have had, questions on clarification of the statute, whenever I have needed it. I have not run into issues. I have been blessed in my short career to have worked with some pretty good contractors and city officials, and the system seems to be working to me. With negotiated rule making, I think some of that will improve, as well, but time will tell on that.

SENATOR STUTHMAN: Okay, thank you, Gretchen.

GRETCHEN LIVINGSTON: Um-hum. I do have a couple of letters.

SENATOR BYARS: Any other questions of Ms. Livingston? Thank you for being here.

GRETCHEN LIVINGSTON: Thank you. I'm on her chair.

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

Committee on Health and
Human Services
February 4, 2005
Page 31

LB 547

SENATOR BYARS: Next opponent? Any other opponents?

STEVEN GOANS: Senator Byars, members of the committee, my name is Steve Goans, G-o-a-n-s. I'm here on behalf of myself. I'm a registered professional engineer in Nebraska. I'd like to try and address just a few things, the knowledge and intent portion of the bill. To my understanding, most agencies in the state, including the Board of Engineers, use voluntary compliance as much as possible. Also, they have to go through the Attorney General's Office to complete an act, and they have due process. So I feel that's not necessary. So I'd like to say that that should be left unchanged as it is. Also, to get a speeding ticket, if you didn't know the sign changed, now you still get the ticket. And sometimes you get a warning, and sometimes you don't. I never seem to get a warning. Codes, for example, many of the codes that they are talking about are building codes. Well, you have to go to the code agencies that have codes. The Health Department, the Department of Environmental Quality, county buildings, city codes, that's where the codes are for most of the building structures. The base codes are...they go through long processes of public hearings, announcements, notifications, for changes of the codes. The engineers' board is not a specific code agency of what size beam applies in a deck. That all goes to a city code. If you go down to the Lincoln Building office, they have a chart which will show you just exactly what you need there. Now there are times, though, that you need an engineer in certain structures, because the code does not cover all aspects, and many of the people are not trained in determining the full extent of the code. So I think the impact that the league and the other contractors are asking for on code does not apply to the licensing of engineers. They need to work with the communities, the counties, and the state agencies that handle that situation. I know for a fact that some of the rules and regs that change in the state, they send letters to every town in the state, every county in the state, and those that are certified under a program that they change, before they change the rules and regulations. So there's due process and notification there, which is much more than I think for finding out what I heard from the league did, in their effort to notify the engineers. As a matter of fact, I don't think they even discussed this bill, before it was brought forth and

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

Committee on Health and
Human Services
February 4, 2005
Page 32

LB 547

promoted, with any of the Board of Engineers. I found out about it at a volleyball game. It was very frustrating that happened. The bill that passed last year, the same impact. The Board of Geologists had a bill in front of the Natural Resources Committee last week, same thing. The League of Municipalities made no effort to work with their board or discuss and reach a resolution. So I think that they're trying to circumvent the process that we all live by in our Legislature, to notify the people impacted. With that, I'll conclude.

SENATOR BYARS: Thank you very much. Any questions? Thank you for being here to testify.

STEVEN GOANS: Thank you.

SENATOR BYARS: Anyone else in opposition? How many more opposition testifiers do we have? This appears to be the last one. Thank you.

DAVID JESSE: Good afternoon, Senator, members of the committee. My name is David Jesse, J-e-s-s-e, and I am an insurance broker with the Harry A. Koch Company. And I am here today representing professional liability insurance carriers. I specialize in working with design firms throughout the state in creating and managing risk management programs for these firms. And a big part of that is the personal liability insurance that Mr. Highbanks had referenced earlier. And there is a limited number of insurance carriers that are even offering this type of insurance to design firms. And I have been in discussion with a number of these carriers here in this past week, to get their responses. And all of them have very strong concerns about this, because as the underwriting manager for St. Paul Travelers writes, nonlicensed individuals simply are not as qualified as licensed design professionals in determining if an individual has met the needed qualifications. They are concerned enough that if there is a change in the standard, the change in liability will follow, and their risk will go up accordingly. And one insurance company, XL Design Professional, even indicated that if this were to go through, they would reevaluate the extent to which they offer professional liability insurance here in the state of Nebraska. So the possibility of a

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

Committee on Health and
Human Services
February 4, 2005
Page 33

LB 547

reduction in availability of the insurance is very real, and even if there is not the reduction of carriers offering the insurance, there is the strong possibility of the increase in premiums, which could force a number of design firms to simply not be able to afford the insurance any longer, and so now they are working for the public interest, with no insurance backing. Questions?

SENATOR BYARS: Thank you. Any questions? Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. Dave, the issue about the insurance and not being able to make it available for some, would that be because of the fact of the public safety part of it?

DAVID JESSE: That would be a part of it. The potential or the perceived change in the standards with which design firms will be held, that decision is going to be made by an underwriting manager in Connecticut, or St. Paul or Chicago. Whether or not we necessarily agree with that, if they feel that there has been a change in the standards to which the professional will be held, that will impact their entire underwriting, whether they offer it or whether they charge more or not.

SENATOR STUTHMAN: Okay, thank you.

SENATOR BYARS: Thank you, Mr. Jesse. And I presume the companies you're talking about and their possible hesitancy to write policies in the state of Nebraska are directly related to architects and engineers?

DAVID JESSE: Correct.

SENATOR BYARS: Is that correct?

DAVID JESSE: Correct, yes.

SENATOR BYARS: Thank you very much for your testimony. Anybody else in opposition? Anyone testifying neutral? If not, this will close the hearing on...Excuse me. Senator Johnson, would you care to close? (See also Exhibits 1 and 2)

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

Committee on Health and
Human Services
February 4, 2005
Page 34

LB 547, 319

SENATOR JOHNSON: I'll make it easy on you and waive.
(Laughter)

SENATOR BYARS: (Exhibits 6 and 7) Senator Johnson waives closing. I always forget that. That will close the hearing on LB 547, and we will be move to open on LB 319, and opening on behalf of Senator Jensen will be his legislative aide, Jon Edwards.

LB 319

JON EDWARDS: Good afternoon, senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I am here on behalf of Senator Jensen, as his legislative aide, to introduce LB 319. Currently the Public Service Commission has civil penalty authority over the manufacturing and sale of manufactured homes and recreational vehicles. LB 319...

SENATOR BYARS: Excuse me just a second, Jon. Could you take your conversations outside the room, please? Walt? Okay, Jon, I'm sorry to interrupt you. Go ahead.

JON EDWARDS: Not a problem. Thank you, Senator Byars. LB 319 provides similar civil penalty authority to the Public Service Commission in relation to modular housing units. Under the Nebraska Uniform Standards for Modular Housing Units Act the commission currently has the authority to assess fines through criminal proceedings. LB 319 would allow for civil penalties assessed through administrative processes at the commission. Additionally, LB 319 will move the current civil penalty authority for manufactured homes and RVs, so that the penalty provisions for all three types of products, manufactured homes, recreational vehicles, and modular housing units are contained within Section 75-156, with other commission's civil penalty provisions. Other details and limitations are provided for within LB 319. A representative from the Public Service Commission will follow to go over details of the bill and address whatever questions the members might have. I might also mention that the commission will have an amendment that they'd like to offer on this bill as well, so with that, thank you, Senators.

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

Committee on Health and
Human Services
February 4, 2005
Page 35

LB 319

SENATOR BYARS: Thank you, Jon. Any questions of the committee? If not, thank you very much. Next testifier in favor of LB 319?

ANDY POLLOCK: (Exhibit 1) Good afternoon, Mr. Vice Chairman, and members of the committee. My name is Andy Pollock. I serve as director of the Nebraska Public Service Commission. On behalf of the commission, I would like to first thank Senator Jensen and his staff for their work in putting together and introducing LB 319 for the commission. LB 319 would give the authority to the commission to assess civil penalties for violations of what Mr. Edwards has called the Nebraska Uniform Standards for Modular Housing Units Act, quite a mouthful there. I'll probably refer to it in shorthand. The commission regulates the making and the selling of modular homes in this state. We also regulate the making and the selling of manufactured homes and recreational vehicles, or RVs. For all of these products, the commission performs inspections that make sure that federal safety codes are followed. For violations of the law and regulations that apply to manufactured homes and RVs, the commission currently has authority to assess a civil penalty up to \$1,000. That amount may be assessed for each violation. The maximum penalty for each related series of violations is \$1,000,000, and I would say that's a cap that's never been reached and is unlikely to be reached in the future. LB 319 would simply bring penalties for modular housing violations into line with current penalties for manufactured home and RV violations. This harmonization is important, because several manufacturers in the state build more than one of these types of products. Currently, violations of the housing act may be fined through criminal proceedings, as Mr. Edwards said, and this requires getting the county attorney involved. Fines are also limited to \$500. Civil penalties provide enforcement that is more efficient and expeditious, without depriving the violator of the company's due process rights. The commission exercises its current civil penalty authority, which we have with respect to manufactured homes and RVs and a number of other industries that we regulate, we exercise that civil penalty authority with care and with prudence. We have no intention here to haphazardly start handing down fines for modular housing act violations. We prefer to work with the

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

Committee on Health and
Human Services
February 4, 2005
Page 36

LB 319

manufacturers to make sure that violations don't happen. We want the products to be safe before they leave the plant. LB 319 simply complements our existing authority, giving the commission the enforcement authority it needs in those rare instances in which cooperation does not work. Before I conclude, and again, to follow up with what Mr. Edwards said, I would like to ask this committee to consider a possible committee amendment to LB 319, and I would offer that now. I have circulated that through the clerk. My testimony should say "existing law" authorizes the commission to charge RV makers for the commission's costs of reviewing RV plans. These costs mainly include engineering services. The change that we propose in the amendment would allow the commission to set rates, within a statutory range, after notice and hearing. It would eliminate the current requirement that the rate could only be changed in a rule-making proceeding. This is a more efficient and cost effective method of changing the rate, and I'd point out that it is supported by the industry. This amendment does not affect the statutory range within which the rates must be set by the commission, and that's \$15 to \$50. This amendment does not change that; it just changes the method of doing so. This amendment should have been made in 2003 as part of LB 241, which was enacted without any opposition. The 2003 legislation made the same change in process for RV seal fees, very similar. The need for the proposed amendment was overlooked in 2003 and when the commission submitted the draft legislation that became LB 319 this year. It was not until the Attorney General, in an unrelated rule-making proceeding, pointed out the need for the change that we realized it. That, unfortunately, came after LB 319 was introduced. The amendment is germane to the original bill. It modifies a section of law in close proximity to those modified in LB 319. It concerns RV regulation, as do the changes that would be brought about in LB 319. In closing, we would ask you to advance LB 319 from your committee, amended as we propose. I'm authorized to say also that the industry has no opposition to this bill, and I have attached to my testimony a letter from Mr. Martin Huff, who is the executive director of the Nebraska Manufactured Housing Association, to that effect. I'd be happy to answer any questions you might have.

SENATOR BYARS: Thank you, Mr. Pollock. Any questions?

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

Committee on Health and
Human Services
February 4, 2005
Page 37

LB 319

Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Byars. On the amendment, I need to have something clarified, or I need to have something, you know, explained to me. In the first portion of (a), Every manufactured home or recreational vehicle manufactured more than four months after May 27...why don't you just have the date in there, manufactured after, the four months after the 27th...that...I don't know what it's really trying to say.

ANDY POLLOCK: That's the law...

SENATOR STUTHMAN: Is it a clerical error?

ANDY POLLOCK: ...that's on the books right now. And I, not having been with the commission then, I don't know why it says that. We're amending Section 3 of that section of law, and so certainly, if an amendment to that first section would be helpful and in order, we'd be amenable to that. But I'd have to kind of think through whether that makes sense.

SENATOR STUTHMAN: I just was reading, glancing through it, and I thought, when they say that, why don't they say September 22, 1975, and be done with it?

ANDY POLLOCK: I don't know. That's a good question. We can look at that.

SENATOR STUTHMAN: Okay, thank you.

SENATOR BYARS: Thank you, Senator Stuthman. Any other questions of Mr. Pollock? Thank you very much for being here.

ANDY POLLOCK: Thank you, thank you.

SENATOR BYARS: Any other proponents of the bill? No more proponents? Any opponents? Anyone testifying neutral? Jon's gone, so I presume he doesn't want to close. That will close the hearing on LB 319, and close the hearings for this afternoon.