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Business and Labor Committee
February 02, 2009

[LB554 LB573 LB579 LB627]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 2, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB573, LB554, LB579, and LB627. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; Norman Wallman; and Tom White. Senators absent: None. []

SENATOR LATHROP: Okay. I think we're ready to start. You're at the Business and Labor Committee hearing, if you meant to be somewhere else, this would be a good time to leave. Otherwise we're going to take up four bills today. My name is Steve Lathrop and I think I'll start by introducing my colleagues starting with Senator Carlson--last week I messed this up, hopefully I won't this year, this time--Senator Carlson; Senator Council; Senator McGill; our committee counsel, Molly Burton; this is our committee clerk Chris Chapek; and then Senator Ken Schilz; Norm Wallman; and Tom White. We have four bills to take up, the first one we're going to take up is LB573. Just a couple of rules, if we can observe these today. We have to have you fill out a sheet if you're going to testify. We'll have the introducer go followed by those people that are in support, those are in opposition and then neutrals. If you...other than the senator introducing the bill, if you could limit your testimony to three minutes or so, if it goes much longer than that, Chris Chapek who is keeping the timer since we don't have our lights here yet is going to kick me under the table and I'm going to try to slow you down or stop you. Okay? And at some point I have to leave to introduce a bill in a different committee in which case, the Vice Chair Senator Council, will take over. And with that, we'll start. Senator Nordquist. []

SENATOR NORDQUIST: Thank you, Mr. Chairman and members of the committee, my name is Jeremy Nordquist and I represent District 7, in Omaha. LB573 seeks to enhance the protections and safety regulations in the existing Conveyance Safety Act by expanding the act's jurisdiction to statewide. Currently the act only applies in Douglas, Lancaster, and Sarpy Counties; all counties which have a population of more than 100,000 people. The Conveyance Safety Act mandates that only licensed elevator mechanics and workers under the direct super...or and workers under their direct supervision may install, test, alter, repair, replace, or remove elevators, escalators, and moving sidewalks and other conveyances. Elevators and escalators can be extremely complex devices and the consequences of incorrect installation or maintenance can be deadly. The three largest counties of the state have benefitted from the protections of the Conveyance Safety Act and I believe it's time to extend those protections to the rest of the state. LB573 also alters membership of the Conveyance Advisory Committee from one member from Douglas, Lancaster, and Sarpy County to one member each representing urban, suburban, and rural interests. I want to draw attention to one discrepancy in the bill as it's written. The bill adds language that subjects platform lifts and stair chair lifts to the protections in the act and that's on page 3, line 20, but if fails

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to remove language in Section 3 that exempts the same equipment from the bill. So I'll leave that to the committee's discretion which one of those directions they want to take. I appreciate your consideration and I'd be glad to answer any questions. There are very knowledgeable people about the elevator industry that are going to be testifying after me. Thank you. [LB573]

SENATOR LATHROP: Any questions for Senator Nordquist? Seeing none, thank you. Are you going to stay around to close? [LB573]

SENATOR NORDQUIST: I am going to waive closing, actually, I have two other bills today so I've got to mosey on but appreciate your time. [LB573]

SENATOR LATHROP: Okay. Good to have you here. [LB573]

SENATOR NORDQUIST: Thank you. [LB573]

SENATOR LATHROP: Thanks. Those...proponents. [LB573]

GREGG ROGERS: I have my sign-in sheet right here. [LB573]

SENATOR LATHROP: That's good, I probably should have told you to give us your name and spell your last name at the outset too, if you wouldn't mind. [LB573]

GREGG ROGERS: There's two pages, one's filled out. My name's Gregg Rogers, I'm a national coordinator for the Elevator Industry Work Preservation Fund. I introduce elevator safety legislation around the country, this being one of them. And I want to thank the committee for taking the time to hear us today. By expanding the elevator act to include the entire state only makes sense. With the current language, the elevator program that is administered by the state needs to work under two sets of guidelines. One for the counties having 100,000 residents or more and one for the remainder of the state. This is burdensome and unnecessary. The citizens in Nebraska who live in counties less than 100,000 should be entitled to the same safety protections as those who live in counties of 100,000 or more. Under Section 1, Section 48-2503(1) by restructuring the Conveyance Advisory Committee to include representation from urban, suburban, and rural interests, the citizens are assured of representation no matter where they live in Nebraska. Under Section 2, 48-2507(1)(a) by adding platform lifts and stairway chair lifts back into equipment covered by the act will guarantee that those who use this type of equipment whether it be installed in a school, church, or nonprofit building are using equipment that has been inspected by the state. Prior to changing the law in 2007, this type of equipment was included in equipment covered. The state is losing revenue on more than 300 plus units and the riders have no way of knowing the equipment is not inspected or maintained by qualified persons. Under Section 2, Section 48-2507(3) the addition of residential conveyances located throughout the state

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would serve to protect the mobility impaired in their homes from those who would put profit ahead of safety. One needs to ask themselves, what is the price of safety? I would say it is minimal compared to the loss of a child or a loved one because some unqualified person installed or tried to maintain the equipment. Under Section 4, Section 48-2512(1) the addition of new language in this section would allow and clarify that license is not required to change light bulbs inside the car of an elevator or to clean glass and polish stainless steel on the inside of the elevator or polish the brass doors and handrails in the elevator, etcetera. This is good legislation and will serve the citizens of Nebraska well. It will establish minimum standards for all who intend to work on conveyances, it will simplify what the elevator safety division is required to do, and most importantly it will protect the citizens from those who are willing to put profit ahead of safety. Remember, all forms of conveyances are powerful by nature and unforgiving when they malfunction. The voting citizens depend on the expertise of the Legislature to protect it and to establish the laws that provide these protection. I urge your support on LB573 and be glad to answer questions. [LB573]

SENATOR LATHROP: Any questions for Mr. Rogers? Senator Council. [LB573]

SENATOR COUNCIL: Just...thank you. Good afternoon, Mr. Rogers. I just have one question and I maybe should have asked Senator Nordquist. On page 2, beginning at line 3, and in the opening of your remarks...you as well, mentioned alters the Conveyance Advisory Committee to include three members of the general public. Now, I see on lines 14 through 17 where it states that on and after the effective date of this act that three representatives from the general public may be appointed from three different counties, but no where prior to that does it state that there shall be three members of the general public. Is that an oversight? [LB573]

GREGG ROGERS: Let's see here. On lines 11 and 12, one representative of the general public from each county that has a population of more than 100,000. [LB573]

SENATOR COUNCIL: See, that's deleted. [LB573]

GREGG ROGERS: We're deleting that and then broadening that out to cover the entire state so there's representation from the whole state. [LB573]

SENATOR COUNCIL: Yeah. I understand what the intent is, but it doesn't state that the Governor will appoint three members of the general public. It just...I'm just bringing it to the attention of the committee that we may need to further amend it. It doesn't specifically require the appointment, it just says that three representatives from the general public may be appointed. [LB573]

GREGG ROGERS: May be in the key word there. I understand what you're saying, yes. [LB573]

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SENATOR LATHROP: Any other questions? Senator Schilz. [LB573]

SENATOR SCHILZ: Thank you, Senator Lathrop. And sir, do you know how many licensed elevator inspectors we have in the state of Nebraska? [LB573]

GREGG ROGERS: In the state of Nebraska, I don't. The department does all the inspections here. [LB573]

SENATOR SCHILZ: Sure. [LB573]

GREGG ROGERS: I think there might be an insurance company or something that has private inspectors but they're all state employees that work for the state. [LB573]

SENATOR SCHILZ: So, as far as you know are they all located...are they located in Lincoln or spread out? [LB573]

GREGG ROGERS: They're all over the state. There are some out in Chadron, and out in that area. [LB573]

SENATOR SCHILZ: And I take it from this, the people who have the elevators would pay for those inspections, is that correct? [LB573]

GREGG ROGERS: Yes, it's...they are already inspected, all the conveyances out west. The stuff that was inspected prior to passage in '07 of the legislation, those pieces of equipment were inspected then and they were removed out of the act when it passed and brought it into the three counties. So they lost that, you know, that protection of the state inspecting it and making sure it's code compliant on that specific date. [LB573]

SENATOR SCHILZ: Sure and then I guess my last question would be is...and maybe somebody else could answer this better than you, but how many elevators are there in outstate Nebraska, outside of those three counties that you're talking about. [LB573]

GREGG ROGERS: I don't have the...I don't know. [LB573]

SENATOR SCHILZ: Sure. Any maybe that's for somebody else and we can save it. That's all. Thank you. [LB573]

SENATOR LATHROP: Senator Carlson has a question. [LB573]

SENATOR CARLSON: Senator Lathrop. To follow up on Senator Schilz's question, can we ask if somebody from the department is going to testify? Is there anybody from the department that will testify? [LB573]

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SENATOR LATHROP: I see the director shaking her head in the negative and counsel is too. We could make them if you want. (Laughter) Okay, I'll shake my head yes, we'll hear from them maybe in a neutral capacity. [LB573]

SENATOR CARLSON: That is all the questions I have, thank you. [LB573]

SENATOR LATHROP: So you can ask some questions. Okay. Thank you. Any other proponents? [LB573]

STEVE SIMPSON: (Exhibit 1) Good afternoon, senators. My name is Steve Simpson, spelled S-i-m-p-s-o-n. I'm the business representative for the International Union of Elevator Constructors Local 28 in Omaha, Nebraska. And I currently can answer a few of the questions that they did...that Senator Schilz did ask, I can give him a rough idea. But currently I represent 94 of the 97 elevator mechanics who would fall under the current bill as it sits. Ironically, this bill is going to be brought up to everybody here as this being a union bill. The Conveyance Safety Act as it stands right now has a conveyance safety committee. No member on that committee is a union member. I just want to bring that out in front. Currently, I would say close to 99 percent of the elevators in this state that are being looked at and being installed are being installed by my members...members who have elected me. I, too, understand what it's like to work for your constituents, so I'm here today, so. This bill to me doesn't...what it represents is it's going to bring 10 more--that I know if--elevator constructor mechanics that will have to be licensed into the area. Currently, there's at least 10 elevator constructors, mechanics, that would be represented. They work out of Des Moines or out of Rapid City, South Dakota. They work out of Cheyenne, Wyoming area. They work out of Kearney, they work out of Grand Island and Hastings area. They do not have to be licensed as the bill sits but they will be should the bill go forward and pass. And I just think that to me this is a revenue grower for the state and a protection for the people out there in the western half of the state. If nothing...if everything is in place as it sits right now there's no cost really to continue, to change anything. The elevator inspectors are already out there, they're already inspecting the elevators. The people out there that were looking to get licensed are just people that are qualified as of right now. And then further continuing education would continue to keep them qualified. The member...we're trying to protect people out there from putting in a lift that you can buy in some places like Home Depot or other places. The platform lifts, I can tell you from experience, I'm also an elevator mechanic. I can tell you from experience, the platform lifts that were deleted...I can speak about Omaha, Nebraska. Omaha Public Schools, I did all of the...I did every single test one year for one of the companies that was there...83 schools, at least 50 of these platform lifts where students who require them, use them to get up on the stages for different events, right now they are not required to be looked at. We don't know if they're safe or unsafe, anything can happen. It would be a terrible tragedy in my opinion if we just decided not to look at these lifts in order to pass a bill. We want to

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incorporate them, this is about safety, so. That's all I have. If anybody has any questions, I'm willing to answer. [LB573]

SENATOR LATHROP: Very good. We'll see. Anybody have a question? Senator Wallman. [LB573]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, I think platform lifts would probably be a little different. Aren't most of them run by a screw instead of a cable or something? [LB573]

STEVE SIMPSON: They vary. A lot of them run by screws, some of them do run by cable and hydraulics and require a pressure safety test and others do run by screws. But there are switches in there that stop them at the certain levels that they're supposed to be at and there's switches that--and they're all electrical--and they should all be looked at. [LB573]

SENATOR WALLMAN: Thank you. [LB573]

SENATOR LATHROP: Any other questions? Senator Carlson. [LB573]

SENATOR CARLSON: Senator Lathrop. What kind of procedure is involved in becoming a licensed elevator mechanic? [LB573]

STEVE SIMPSON: Well, as described in the Conveyance Safety Act currently, you have to...there's three different procedures. One of which that I qualify for is to go through what's called the National Elevator Industry Education Program, which is now currently a recognized apprenticeship program through the Bureau of Apprenticeship Training. Once you pass your mechanic's examination you are qualified to become a elevator mechanic, or a licensed elevator mechanic and then after that every two years you have to renew your license. And you have to take eight hours of continuing education, which the conveyance safety board, or advisory committee just approved the National Elevator Industry Education Program as one of its vendors. [LB573]

SENATOR CARLSON: Okay, so you go through a course and then take an exam and pass the exam and once you've done that, you're eligible to become a licensed. [LB573]

STEVE SIMPSON: It's a four-year program. [LB573]

SENATOR CARLSON: It's a four year. [LB573]

STEVE SIMPSON: With on the job training and with four years of schooling, you have to pass every year of education in order to advance. [LB573]

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SENATOR CARLSON: Okay, now you mentioned several outstate towns that have licensed, or they have mechanics that will need to become licensed. But they're people that would be available out in rural Nebraska and you mentioned that they're already being inspected. How often are they being...I took it that...how often are they being inspected? [LB573]

STEVE SIMPSON: Well, the elevators themselves...the state requires the elevators to have an annual inspection. [LB573]

SENATOR CARLSON: Okay. [LB573]

STEVE SIMPSON: And they're being inspected...they should be inspected annually and on a traction elevator, which is a cable elevator, they make them in different types...but a cable elevator every five years gets what's called a full load safety test which they pretty much crash the elevator in order to see if it will survive the crash with the full weight on it. And they do that annually with no weight on it as well. [LB573]

SENATOR CARLSON: But that requirement is no different than what is in place now? [LB573]

STEVE SIMPSON: That's correct. [LB573]

SENATOR CARLSON: This doesn't change that. [LB573]

STEVE SIMPSON: No it does not change it. However, platform lifts are not involved in this particular. [LB573]

SENATOR CARLSON: Yeah. So in terms of the cost, ongoing cost, it should be much different than it is now. [LB573]

STEVE SIMPSON: No, I would say not. I would say the ongoing cost would actually benefit the state because the people out there that will be performing these tests would have to become required licensed elevator mechanics and they would get a...pay for a license that the money would go into the revenue of the state. [LB573]

SENATOR CARLSON: Okay, so you did make a statement this was going to involve some revenue to the state, is that what you meant, it'd be more licensed people to pay the fee? [LB573]

STEVE SIMPSON: I believe more licensed, I think, yeah. Plus the platform lifts, like we said, there's at least 400 of them out there that the state lost when this passed. When the original bill passed, the state lost that revenue. That's 400 inspections, annual inspections, that they don't take a look at these anymore. And that's revenue that the

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state lost. I can't give you exact numbers on what the state charges, but that's significant. [LB573]

SENATOR CARLSON: And who pays that? [LB573]

STEVE SIMPSON: The owner of the platform lift. [LB573]

SENATOR CARLSON: Okay, thank you. [LB573]

SENATOR LATHROP: Senator Schilz. [LB573]

SENATOR SCHILZ: Thank you, Senator Lathrop. Mr. Simpson, thank you, first of all for coming in today. You've probably got plenty of things to do besides being around but I appreciate you sitting down. I see in here where even...where it goes to the point of saying if you're going to take out one of these chair lifts or whatever that somebody licensed has to do that as well. Is that currently the situation? [LB573]

STEVE SIMPSON: Well, currently we want it to be the situation. We have no enforcement as of yet but I could give you an example of what happens. I was down in the Old Market area in Omaha and if those senators who are familiar with one of the...on Jackson Street they put in a upper class restaurant and hotel...not hotel, upper class restaurant and condominiums. And in the back there were two freight elevators, old type freights where you lift the doors up and you put stuff on and run it up and they chose to put a new elevator in the center of the building. Well, when I was there parts from these freight elevators were just screaming down the elevator shaft, they were throwing them down as they were tearing it out. They were just tearing them off and throwing it down the hole. Which, obviously to me that's a terrible safety hazard but, you know, they had caution tape up in order to prevent it from hitting anybody, so I think that was a good decision. That they put this yellow tape up around it so it looked like a police line. Licensed elevator mechanics? We know how to take...we install them, we know how to take them out safely. We would lower the stuff down properly, we would take it out properly, we would take it out where the public isn't going to get hurt. [LB573]

SENATOR SCHILZ: Sure. [LB573]

STEVE SIMPSON: So the people who tore out this elevator were a concrete company, so. I also witnessed recently some escalators being taking out over at the Wells Fargo Bank in Omaha and they were taking them out with a fork truck. In the building, running a fork truck with the doors closed, hitting the escalator with their lift and tearing things out. Well, what we call the truss is the area where the escalator actually...the tin or the metal, the steel where the escalator actually runs in...the person who installed those, gosh, I want to say 40 years ago...actually, I was in contact with him and he said that those were rated at three ton. Well, three ton, I don't know what those things lift but

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you're running a fork truck on there and, you know, this thing could have been a disaster. If it would have fallen, it would have been...it would have been disastrous, it would have been awful. Over in the Brandeis Building one of the columns in the basement where the former escalator stand, got hit by one of the escalators because they just dropped it in the basement. This was about 17 tons of equipment that they just dropped in the basement. In comparison, Eppley Airfield changed their escalators out recently and they did not have any incidents on a very nice floor where they actually wheeled out the old escalators and got in new escalators without issue and they're both running right now. Those were installed by licensed, or currently licensed or qualified licensed elevator mechanics. [LB573]

SENATOR SCHILZ: So all these incidents that you're talking about, do I understand that right, that those are in Omaha? Is that what you mean? [LB573]

STEVE SIMPSON: The ones I've seen, now, I can't tell you what's going on in the middle of the state because we don't know because currently we don't have to take a permit out to tear out an elevator. [LB573]

SENATOR SCHILZ: Right. So are escalators not included in this today? [LB573]

STEVE SIMPSON: They are, escalators are part of this bill. [LB573]

SENATOR SCHILZ: Part of this bill, but not as a law. [LB573]

STEVE SIMPSON: They are, they're covered in the whole thing. [LB573]

SENATOR SCHILZ: So if they're in Omaha, shouldn't they be abiding by that as it is? [LB573]

STEVE SIMPSON: If they don't take a permit out, we don't find out about it until it's half torn out or gone and then by the time we get there it's...it's easier to catch them before they start. You know, when it's done, what are you going to say? Don't do it again. Please don't do it again. [LB573]

SENATOR SCHILZ: Well, and do the fines apply now to those? [LB573]

STEVE SIMPSON: I don't know if the Conveyance Safety Advisory Committee has advised the Commissioner of Labor on any fines as of yet. [LB573]

SENATOR SCHILZ: Okay, thank you very much. [LB573]

SENATOR LATHROP: Your point is that there's safety considerations when you're taking the elevators and escalators out just the same as when you're putting them in.

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[LB573]

STEVE SIMPSON: Well, absolutely. And not necessarily just for the public, I mean, we're actually looking at the people who are actually doing the tearing out and all this stuff. If they're throwing stuff down the hole...I'm using a little bit of terminology, I call the elevator shaft the hole or down the shaft or down the whatever, but if they're throwing stuff down there four or five floors...recently in this industry across this country we had a member in the International Union of Elevator Constructors who took a peek up the hoistway and something fell down and it hit him in the head and it killed him. So it doesn't take much. [LB573]

SENATOR LATHROP: Okay. No, it wouldn't. Not from four stories up. I think that's it. We appreciate your testimony. [LB573]

STEVE SIMPSON: You're welcome. [LB573]

SENATOR LATHROP: Thank you for coming today. Are there any other proponents? Anyone in opposition here today to testify? Come on up, sir. [LB573]

RON ANGLIM: Hi. Mr. Chairman, fellow Senators, my name is Ron Anglim, I live in Omaha, Nebraska. I was in the elevator business for 40 years, three months, to be exact. I'm here to speak in opposition to this particular bill because of the fact of what it's going to cost the taxpayers of the state of Nebraska. I'll draw to a couple of instances. One of them is in Chadron, Nebraska, and one is in McCook. Chadron, Nebraska, right now receives its elevator service from Rapid City, South Dakota, and the one in McCook receives its elevator service from Garden City, Kansas. Now, if you take and you pass this particular bill for the other 90 counties in the state of Nebraska, what you do is you exclude those particular contractors in each one of those other states. The contractors probably will not come to Lincoln to get a license because of the fact that they have to pass these particular tests and they have to be licensed in those particular states and there isn't any licensing requirement for a contractor in the state of South Dakota or Kansas. So as a result, the elevator servicemen will have to come out of Omaha or Lincoln. If you're talking...I checked just the other day, the billing rate for Otis Elevator Company is \$250 per hour plus 50 cents a mile. If you're talking about a 10 hour drive out to Chadron, Nebraska or McCook, 10 hours back, you're talking about a lot of money. So therefore, and of course the taxpayers of the state of Nebraska will have to pay these particular fees. Earlier previous testimony was given about the elevator industry educational program. It's the National Elevator Industry Educational Program, rather. That is a union sponsored particular elevator educational program, it's an apprenticeship. And no other contractors can actually belong to it unless, of course, you are a member of the local union. I have petitioned the elevator contractor or I should say the Chief Elevator Inspector, there are seven of them in the state of Nebraska, and the one that's the farthest west is the one in Grand Island, Nebraska. He

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covers the rest of the state. There's two in Lincoln, there's three in Omaha, and there's one Chief Elevator Inspector. I'm sorry, I forgot where I was at. [LB573]

SENATOR LATHROP: I do it all the time. (Laughter) [LB573]

RON ANGLIM: That's what comes from...I am retired and I do represent the public here in this particular instance today. I remember now. I've petitioned the Chief Elevator Inspector to include conveyances and well, personnel lifts, man lifts. Of course the elevators that are in...under the jurisdiction of the United States Government that should not be...but power platforms, and man lifts, and stair lifts and so forth, those should all be included in this particular Conveyance Safety Act but they are purposely excluded. Recently, there was a man that was killed here in Lincoln at the Archer Daniels Midlands, he was riding a man lift, and as a result I think that they should be included if you're going to include all of the people of the state of Nebraska. This particular bill...and finally...met with a great deal...was introduced two years ago by Senator Synowiecki. And when Senator Synowiecki introduced the particular bill it met with a great deal of opposition from the western part of Nebraska. Finally after he made an amendment, and it was AM3224, he amended the bill just to include Lancaster, Sarpy, and Douglas County and it was because of the fact of the cost with regards to the traveling of an elevator mechanic clear out to the western part of Nebraska. And that particular bill passed through the Legislature for those three counties. But now, of course, they're coming back and they're asking for the rest of the other 90 counties. So at any rate, I will leave a copy of the transcript. I will also leave a copy of the particular different industries that are excluded from this particular bill that I would like to have part of it, if I could please. If you have any questions, I'll entertain them now. [LB573]

SENATOR LATHROP: All right. We'll see if anybody has any questions for you. Thank you. Any questions for Mr. Anglim? Nobody? I don't see any. Let me make sure I understand just a couple of things. [LB573]

RON ANGLIM: Okay. [LB573]

SENATOR LATHROP: You are retired from the industry? [LB573]

RON ANGLIM: I am retired, I was in the elevator business for 40 years and three months, as I said. [LB573]

SENATOR LATHROP: Did you own a business or were you actually working on the elevators yourself? [LB573]

RON ANGLIM: I owned it. I actually worked in the elevator business for five years and then I started my own elevator company and I operated that company for thirty-five. [LB573]

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SENATOR LATHROP: And you told us that there was...when this bill was introduced there was some question about whether stairway lifts and platform lifts are included and you'd like to see them included, is that true? [LB573]

RON ANGLIM: You know, if they are going to. If they're going to include all of the items that are on the particular list then they could probably, yes. [LB573]

SENATOR LATHROP: And that's because it's important to have inspections and qualified people work on them? [LB573]

RON ANGLIM: Yes, it very definitely is. The other thing I will say...in the 40 years that I was in the elevator business, there was not one fatality. And the fact of the matter is I can't even so much as remember a person stubbing their finger and so forth in those 40 years. So you see it's a very, very safe industry as far as Nebraska is concerned. Now there has been fatalities around the country, but here in Nebraska there hasn't been. [LB573]

SENATOR LATHROP: Okay. We appreciate your testimony and thank you for coming down today. Are there anyone else wishing to speak? Here we go. [LB573]

MIKE SCHAFER: Good afternoon, Senator Lathrop, members of the committee. My name is Mike Schafer, that's S-c-h-a-f-e-r. I'm here today testifying in opposition to this legislation on behalf of the League of Human Dignity. The League of Human Dignity is a private nonprofit organization, who, for 38 years has assisted people with disabilities to live independently in their homes and communities. Services provided include independent living skills training, information and referral, individual and systems advocacy, peer mentoring, financial benefits counseling, services coordination, recruitment and supervision of in-home providers, disability awareness, and the service that is pertinent to this legislation, grants to make accessibility modifications in individuals private residences. The League has operated a barrier removal grant program since 1977. The purpose of this program is to provide grants to low and very low income individuals with physical disabilities for the purpose of making their homes wheelchair accessible. One of the frequent modifications made in the homes of people with physical disabilities is the installation of vertical platform and stairway lifts. Generally speaking, vertical platform lifts are used in lieu of wheelchair ramps when there is not enough front, side, or backyard space to accommodate the construction of a wheelchair ramp. In the 32 years that the League has been supplying and paying for the installation of vertical platform and stairway lifts, we have had not one single reported incident of an accident involving a platform or stairway lift in a private entrance, residence. Please be aware that most of the contractors that we use to install wheelchair lifts in homes of individuals with disabilities are not licensed elevator mechanics, and there is simply no need to require that only licensed elevator mechanics

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install and service platform and stairway lifts. While the League's Barrier Removal Program provides and pays for the installation in platform and stairway lifts, the ongoing cost of repair and maintenance of said lifts are the responsibility of the person with a disability for whom the lift was installed. If only licensed elevator mechanics can service and repair vertical platform and stairway lifts and if annual inspections are required, the increased cost will mean the people who have disabilities will not be able to afford to keep their equipment. As is now the case, factory trained and authorized personnel are sufficient to provide service and repair at a much lower cost and there is no annual inspection fee. People with disabilities have a 71 percent unemployment rate. Adding the burden of this legislation to Nebraska's lowest income and most vulnerable citizens is inappropriate any time but unconscionable during the current economic crisis. We believe that it is also important to note that platform and stairway lifts are provided by and paid for through Nebraska's Medicaid program. This means the passage of LB573 will also increase Medicaid costs. If LB573 is passed, the League and others who provide funding to pay for this equipment will be severely restricted from continuing to provide grants to install platform and stairway lifts for low and very low income Nebraskans with physical disabilities. The cost for providing and installing these lifts will increase by 50 to 70 percent. The sad fact is that there is no demonstrated need for this legislation. This legislation is not driven by a need for increased safety. One should ask the question, why then was this legislation created and whose purpose does this legislation serve? LB573 certainly does not serve the needs of Nebraskans who experience disability. As Ronald Anglim mentioned to you earlier, this bill has been introduced in many different forms. In a March 1, 2005, letter from Thomas Ukinski on behalf of John Albin, Nebraska Department of Labor legal counsel to Senator Kremer of the 34th Legislative District, Mr. Ukinski states "the Department of Labor believes that the present elevator inspection program does a good job of protecting the citizens of the state of Nebraska and that the public safety will not be jeopardized if LB99--the predecessor bill--fails to pass." I urge you to not place an increased burden on the backs of Nebraskans of all ages who happen to experience a disability by passing LB573. The League of Human Dignity urges you to act swiftly and decisively to kill LB573 and any associated amendments. People of all ages who experience a physical disability are counting on your vote to kill this legislation. Thank you for the opportunity to appear before you today. [LB573]

SENATOR COUNCIL: Are there any questions of Mr. Schafer? If not, thank you for your testimony. Any other opponents? Any other opponents? Hearing none, then before we close the hearing, Senator Carlson, do you still have any questions of the department, and if so, I can...? [LB573]

SENATOR CARLSON: I think not. I think they were answered. Neutral testimony. [LB573]

SENATOR COUNCIL: Anybody testifying in a neutral capacity? On LB573 and Senator

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Nordquist had to leave for another hearing and waives closing, so that will conclude the hearing on LB573. Next is LB554. Senator White. [LB573]

SENATOR WHITE: Thank you, Senator. LB554 is a bill that is very short and straightforward. The United States Congress, a number of years ago, passed an act called the Family Medical Leave Act. And this is an act that started to recognize the changes in both our economy and in the nature of family and work and tried to accommodate them. One of the problems that many families face is that one, certainly, but often both of the parents must work while their children are yet small or in the household. The Family Medical Leave Act recognized that when something of a serious consequence occurred inside of the family, it would literally break apart the family or cause devastating financial losses if in those circumstances a member of the family could not take time off from work without pay in order to take care of the family crisis and then return to the job when the crisis had resolved. LB554 provides that for an employer with more than 50 employees and who provides paid leave and has policies governing unpaid leave, shall not require an employee to use paid leave of any kind when such employee is legitimately qualified by law or rule or regulation for unpaid family medical leave unless such employer requests to substitute paid leave at the time such employee submits notification to the employer of the leave. This arises from what is a very common and recurring problem. For example, if my daughter scheduled her wedding in Colorado for eight months from now, I then scheduled my vacation so that I could attend and I could help set up the wedding. In the meantime, I break my arm or my leg playing softball or in a car accident, at that point in time, some employees would require before I can ask for Family Medical Leave Act, require that I exhaust all vacation and sick leave. So that, at the time that my daughter's wedding comes I cannot leave for her wedding without violating my employers policies and being fired. This causes a hardship not only on the family, but also on family relations, but also financial hardships. Similarly, if a parent of young children buys in advance a package to go to Disneyland, suffers the same kind of misfortune, that investment is gone. We believe that it is a reasonable and thoughtful extension of the law to allow the employee to structure the use of the unpaid leave in such a manner that allows them to still meet their family obligations and yet causes the employer no additional hardship in that the employer would be required to provide the unpaid leave. Now, one of the people who were very kind and thoughtful in coming to me is the Union Pacific Railroad, and the railroads have objected to this. And yet, recently in court cases under their own rules, now they must in fact provide this consideration to their employees. And that has come by virtue of the federal system that governs railroads. Other states, as others who will follow me will testify, have extended the federal law in this very manner. Wisconsin has extended it and others. I believe when you look at it you will find that it is a reasonable and modest extension of a policy that is said that our families must be protected and we must try to work and we must require employers to reasonably work with them when crises of this type arise. I would to answer any questions members of the committee may have. I will reserve closing and I'll try to address questions at that time as well.

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[LB554]

SENATOR COUNCIL: Any questions for Senator White? I have one, Senator White, before you leave. [LB554]

SENATOR WHITE: Yes, Senator. [LB554]

SENATOR COUNCIL: Is the concern that in those instances where the employee has scheduled vacation and has a condition that makes them eligible for the Family Medical Leave Act and an employer's policy requires them to use their paid leave first? Is the issue that...is it that the employee is being required to use the paid leave, or is the issue that then the employee has no leave available, unpaid or otherwise at the time. I'm trying to get a feel for... [LB554]

SENATOR WHITE: I don't think generally, it's an issue of when the employee get paid. I think it's that they don't have leave and that really hurts them. Although I can see situations, for example, where you have seasonal workers, things like that where household incomes...if you had a construction worker in the house and you were looking at some issues on when you could be paid or when you would have to take unpaid leave if you were looking at a long convalescence. I could see situations where, for example, a person would say, look in three months my husband's going to be laid off. It's going to be a lot easier for me to go without pay now, the doctor says this is a six month recovery before I can return to work. I mean, I could see that situation, but those haven't been the examples reported to me, Senator. It's more the fact that they get put in a squeeze where really important family events occur and they cannot attend them. [LB554]

SENATOR COUNCIL: How many states do you have knowledge of who have provided for this greater benefit which is greater than what the Family Medical Leave Act expressly allows employers to require use of paid leave first? So I'm just wondering how many states? [LB554]

SENATOR WHITE: I can't tell you all of them, Senator, and Mr. Ray Lineweber has done an enormous amount of work on this. I hate to steal his thunder. [LB554]

SENATOR COUNCIL: Okay. [LB554]

SENATOR WHITE: But he has at least several he can give you exhaustive descriptions of. [LB554]

SENATOR COUNCIL: All right. Any other questions for Senator White? And Senator White I'll see you at closing and at this point in time, I ask for any proponents. Mr. Lineweber. [LB554]

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RAY LINEWEBER: Good afternoon, Madam Chairwoman and members of the committee. My name is Ray Lineweber, I am the Nebraska state legislative director for the UTU. I'm here appearing today in support of LB554 and will, at the appropriate time, give you answers to questions you might have. But I can relate firsthand how this process has worked and why this bill is here in that the Family Medical Leave Act passed in 1993 and it worked very well for an eight-year period and in 2001 some folks, members of ours in Alliance, Nebraska, called and said hey, when we call in to mark off the employer the railroad is saying well, we'll just show you off FMLA. And they said well, we aren't marking off FMLA, well, we'll just show you anyhow. So a number of those employees signed affidavits for me and I thought there was something odd and about four months later, the railroad industry said to the Department of Labor--and that being BNSF, I don't want to throw all of them in the same basket--said, look, you know, we have this astronomical mark offs for FMLA. We need some relief. Well they created the spike, quite frankly. And then two months...so the Department of Labor denied that and two months later the BNSF came out with a policy that says, look, if you're going to take FMLA, which the federal government allows for any employee where they have greater than 50 employees...any employee to take off for a serious illness of their own or a family member...so if you have a FMLA situation, according to BNSF at the time and shortly thereafter Union Pacific, they said, you'll have to use all the paid leave first. And in addition, we will add that paid leave in and call it FMLA. So if I was off six months with surgery...six weeks with surgery I would have exhausted all the paid leave and then I only have six weeks FMLA left. And as good Senator White explained had I had the surgery in January and a family vacation planned for July, the railroads have an availability policy so I wouldn't dare take off in July, because then I would have been truant then and subject to being fired. So when the railroads came out with the policy, obviously, a number of groups litigated. It went to the appeals court and they ruled in favor of the respective groups saying that the railroads couldn't force you to substitute paid for unpaid leave. The railroads appealed to the United States Supreme Court and they denied it without comment, and finally, an arbitrator, a three-panel arbitration in December, unanimously ruled that...look, you can't force people to substitute and I'm please that that somewhat taken care of, at this point, but we're just another policy away. Policies are not collectively bargained and for the most part the only regulation that covers the policies is the law itself. So if it's a policy where the law is silent, then the policy obviously would prevail. Senator, in response to your question regarding the number of states that have it, have a more favorable allowance for a person to substitute paid for unpaid leave. The state of Wisconsin has, there are 11 other states that have other forms of more accommodating leave than the federal government. But by way of example, the state of Minnesota says every employer with greater than 21 employees shall allow the employee to have FMLA but they don't allow the employee by regulation to substitute paid for unpaid leave, to chose. So, clearly, I'm hoping that by way of introduction of this legislation, it formalizes something that's been all the way to the Supreme Court. There's a lot of great employers of greater than 50 employees who

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this is no problem for them. There are some who would say, well it causes an economic burden, you know, so we don't want it. Well, the economic burden I thought was important to us to find out what it would really be, so we did a measurement of the last five years in Alliance, Nebraska, where they have hundreds of railroad employees. Some days none are off for FMLA, there's days there is one, and there's very few days when it's up to the number of four. So there's not very many people who take off unpaid FMLA without substituting, but some do, some choose not to. So that's basically what we want to do is allow the employee to make the choice instead of the employer through policy saying, look, you have to use your vacation, everything else paid, and at the same time we're going to count that as FMLA before you qualify. So any questions, Mr. Chairman, I'll answer those. [LB554]

SENATOR LATHROP: Thank you, Mr. Lineweber. Any questions? Doesn't look like it. [LB554]

RAY LINEWEBER: Thank you very much. [LB554]

SENATOR LATHROP: I appreciate the explanation, thanks. Any other proponents wishing to testify? Anybody here in opposition? Okay, come on up. [LB554]

BETH KIRSCHBAUM: Good afternoon, my name is Beth Kirschbaum and I work for Union Pacific Railroad and I'm here today speaking in opposition to LB554. My title is senior EEO associate and my job duties involve ensuring the company's compliance with equal employment laws including the Family Medical Leave Act. By way of background, Union Pacific has approximately 47,000 employees doing business in 23 different states, 80 percent of whom, approximately are covered by collective bargaining agreements. And I just want to address up front some of the comments that have been made about this litigation and arbitration that the railroads have been through on the issue of substitution paid leave, and want to state clearly up front that if you read the 7th Circuit Appeals Court Opinion and the arbitrators opinion as well, neither were saying that the railroads could not substitute paid leave for unpaid FMLA. The Family Medical Leave Act expressly permits it. What they were addressing was the fact that they felt that the issue needed to be collectively bargained for. That the railroads couldn't unilaterally put this policy in place without first addressing the employees rights to paid leave under their collective bargaining agreements, so just to clarify that. In my capacity as, essentially, the company's FMLA compliance officer I'm very familiar with the federal FMLA and as well the leave laws in the 23 different states that we do business. Congress was very clear that the intent of the FMLA was to balance the demands of the workplace with the needs of employees. One way that they sought to strike that balance was to expressly permit employers who already were providing some form of paid leave to cover these qualifying family and medical events to require employees to substitute that leave or run concurrent with--is probably the more appropriate way to put it--the paid leave with the unpaid FMLA. The legislative history and the Department of Labor's

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comments to the regulations both make clear that the intent of this provision was to prevent the stacking--what they call stacking--of leave. That is, the employer's paid leave programs on top of the federally mandated 12 weeks of unpaid FMLA. The...for example, if you have an employer who offers six weeks of paid leave as others have testified to, and they then under this provision would have to provide that on top of the 12 weeks of unpaid FMLA leave. Whereas employers who don't provide any sort of paid leave are only needing to give the 12 weeks that's the minimum required under the Family Medical Leave Act. The unintended consequence of that is to perhaps, encourage the employer who offers a generous paid leave program to pull back on that so that they can remain competitive, so that they can reduce that disruption to operations that may be caused by the addition of six weeks of leave on top of 12 weeks already. It's that unintended consequence that Congress sought to prevent when it implemented this particular provision concerning substitution of paid leave. I also want to note that I have researched this extensively. As I said, I'm familiar with the state leave laws where we do business but I've also researched all of the states and I can find no provision that is similar to LB554. I have a table, you know, detailing the provisions of pretty much all of the states leave laws and Wisconsin and Minnesota, which were referred to in earlier testimony, both allow employers to require substitution and paid leave. If anybody would like to see that, I have it available. Concerning Union Pacific specifically, we are an employer that offers generous paid leave to our employees and previously we did require substitution of paid leave for unpaid FMLA for all of our employees. As you know, the arbitration that's been referred to has essentially mooted the need for this legislation where the railroad industry is concerned, at least for 80 percent of our employees. We now have a policy in place as of this year that says employees are permitted to choose whether they would like to substitute paid leave for unpaid FMLA. The remaining 20 percent of our workforce, the policy has remained the same. There's several reasons that Union Pacific has sought to require this substitution. Of course, number 1 is to prevent the stacking of leave that these provisions permit us to do. Secondly, when Union Pacific put this policy into effect requiring substitution of paid leave, there was a significant drop in absenteeism due to FMLA use. Now what this means, frankly, is that the unnecessary use of FMLA leave was reduced. Employees were more judicious in their use of FMLA leave. Of course, Union Pacific wants to allow it's employees to take time off to be with a new baby or to care for a sick child or parent. Employees are more engaged and productive when they are allowed to do so. However, unnecessary absenteeism does create a burden for employers, it does have a cost and it puts a burden on the employee's coworkers who are left to pick up the slack. So for Union Pacific, the unintended effect of LB554 would be a potentially cause employers to draw back on its paid leave programs and to potentially hurt Nebraska businesses and employees, both of which don't need additional burdens at this time given the economic climate. And I'll take any questions. [LB554]

SENATOR LATHROP: Thank you, Ms. Kirschbaum. Any questions? Senator Council.
[LB554]

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SENATOR COUNCIL: Thank you, Ms. Kirschbaum. And I want to make sure I understand that the basis for the arbitration decision was a finding that change was unilateral and had to be negotiated. [LB554]

BETH KIRSCHBAUM: Yes, that's correct. [LB554]

SENATOR COUNCIL: Okay. What was the policy prior to the change? [LB554]

BETH KIRSCHBAUM: The policy from 1994-95 when the FMLA actually went into effect until 2004 for employees covered by agreements was to allow them to elect to substitute or not. In 2004 the company changed its policy to require substitution of paid leave, which it had always done for employees not covered by agreement. [LB554]

SENATOR COUNCIL: And so in 2004 when the change occurred apparently there was some grievance filed and it was...did it go up to the Supreme Court via challenges to the arbitration award? [LB554]

BETH KIRSCHBAUM: My understanding is the that the unions filed suit in federal court in Illinois and it did go up to the 7th Circuit where the railroads lost and it was appealed to the U.S. Supreme Court who denied cert. and then based on the 7th Circuit's Opinion they said that railroads...this needs to be...an arbitrator needs to decide whether or not what you are doing violates the collective bargaining agreements. [LB554]

SENATOR COUNCIL: Okay. And then that resulted in the arbitration decision. [LB554]

BETH KIRSCHBAUM: Correct, correct. [LB554]

SENATOR COUNCIL: That said that the railroads could not unilaterally change the...was it a mandatory subject of bargaining or is that essentially what they were saying? [LB554]

BETH KIRSCHBAUM: Essentially that this is something that if, you know, you can't just unilaterally do That it's coverage under the National Vacation Agreements that employees have rights to this paid leave and what you're doing impacts on that, therefore it needed to have been an issue of bargaining, that's correct. [LB554]

SENATOR COUNCIL: Okay, because I was...that was the question I'd had was that...was there some particular provision of the existing collective bargaining agreements that the arbitrator found to be violated by the unilateral change, this the vacation policy? [LB554]

BETH KIRSCHBAUM: Yes, that's right. [LB554]

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SENATOR COUNCIL: That's a right that had been achieved through collective bargaining agreement, it could not be affected by a unilateral change in the company's policy? [LB554]

BETH KIRSCHBAUM: Right, absolutely. [LB554]

SENATOR COUNCIL: Okay. All right, I have no further question. [LB554]

SENATOR LATHROP: Senator White. [LB554]

SENATOR WHITE: Yes, and Union Pacific changed it's policy in January, correct? [LB554]

BETH KIRSCHBAUM: That's correct. [LB554]

SENATOR WHITE: And now, an employee can choose to take unpaid leave before exhausting paid leave, is that correct, under the new policy in Union Pacific? [LB554]

BETH KIRSCHBAUM: The new policy is that an employee can choose when they take FMLA leave to either run their paid leave concurrent with that or to take it with no pay. If I'm understanding you correct. [LB554]

SENATOR WHITE: Did you bargain that or did you just concede and allow that to happen? [LB554]

BETH KIRSCHBAUM: At the current time, it hasn't been bargained over, no. [LB554]

SENATOR WHITE: Thank you. [LB554]

SENATOR LATHROP: Senator Wallman. [LB554]

SENATOR WALLMAN: Thank you, Senator, Chairman Lathrop. Yes, thanks for coming. As far as, you know, family leave, sick leave, all this vacation leave, can you carry that over one year to the next or you have to use it the same year, I mean, like vacation time? [LB554]

BETH KIRSCHBAUM: I couldn't answer that specifically for all employees. There is a certain amount of leave that can be carried over every year depending on whether you're covered by an agreement or not. And sometimes it's permitted, sometimes it must be exhausted by the end of the year. [LB554]

SENATOR WALLMAN: Thank you. [LB554]

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BETH KIRSCHBAUM: A lot of different agreements. [LB554]

SENATOR LATHROP: Any other questions? Thank you for coming down... [LB554]

BETH KIRSCHBAUM: Thank you. [LB554]

SENATOR LATHROP: ...we appreciate hearing from you. [LB554]

ROBERTA MUNGUIA: Good afternoon, Senator Lathrop, members of the committee. My name is Roberto, that's R-o-b-e-r-t-o, Mungia, spelled M-u-n-g-u-i-a. And I'm here to give a brief testimony in opposition to LB554. As I said, my comments will be brief, I don't want to duplicate comments made by the previous speaker. In short, I just wanted to make sure that we are on file as opposing this piece of legislation. As information on BNSF Railroad, we have changed our policy to comport basically with the language of this particular bill effective December 16, 2008, and quite frankly, I don't see the necessity for the bill itself as it pertains to the railroad. But in any event, I feel that the state should not restrict our ability--or the railroad's ability--to possibly change our policies that we feel might be appropriate with the changing business conditions. And that's...do you have any questions? [LB554]

SENATOR LATHROP: Short and sweet as promised. [LB554]

ROBERTO MUNGUIA: Yes, sir. [LB554]

SENATOR LATHROP: Thank you. Any questions for this witness? I don't see any. Okay, thank you for coming down. [LB554]

JENNIFER PETERSEN: Senator Lathrop and members of the committee, my name is Jennifer Petersen, P-e-t-e-r-s-e-n. And I appear today on behalf of the Greater Omaha Chamber of Commerce, the Lincoln Chamber of Commerce, and the Nebraska Chamber of Commerce in opposition to LB554. I'm an attorney with Gross & Welch, and I've been practicing in the area of labor and employment law for more than 10 years. LB554 is a bill that purports to assist employees by allowing those employees to take unpaid FMLA leave and then later take sick leave or vacation leave at a later time. Unfortunately, there are a number of unintended consequences that I'd like to address with you which will cause both Nebraska employers and Nebraska employees to lose should LB554 be enacted. There are three primary concerns that I'd like to address with you; the first is, LB554 will cause employers who already have generous paid leave policies to limit or eliminate those paid leave policies entirely; second, LB554 will cause employers who currently have flexible leave policies for hourly workers to limit or eliminate those policies entirely; and finally, LB554 will pose a hardship on those employers who employ family members of those serving in the armed forces. I'll

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address each one of those concerns in turn. First, if LB554 is enacted, employers who already pay for 12 weeks of Family and Medical Leave Act will limit or eliminate the amount of paid leave that they already provide. For example, if an employee takes 12 weeks of Family and Medical Leave Act leave due to birth of a child, if LB554 is enacted, that employee would then be allowed to take the 12 weeks of paid leave offered by her employer by policy in addition to the 12 weeks of FMLA leave. As a result, that employee would have 24 weeks of total leave. Certainly, most employers cannot afford to have employees off for 24 weeks due to a single qualifying event. As a result, the likely consequence is that those employers will simply eliminate the paid FMLA policy in their entirety. Then the employee will be left with whatever vacation and sick time the employee has accrued. And so instead of having a leave benefit of 12 weeks of fully paid FMLA, the employee will be left with two to four weeks or whatever the employee has accrued of paid leave. Certainly, this was not the intent of the bill. Secondly, many employers have flexible policies for it's hourly employees when it comes to maintaining the day to day family life. For example, many employers will allow an employee to take a few hours off in the afternoon without pay to attend to certain family obligations. LB554 applies to any unpaid leave policy for an employer who has 50 employees or more, so that leave may not necessarily be a FMLA qualifying. If an employer wishes to limit the amount of time that an employee can take off, they'll simply eliminate the unpaid leave benefit for its employees. So under that circumstance, if I want to go to my child's piano concert on a Friday afternoon at 2:00, I would be required to substitute my vacation time instead of simply going home at 2:00 without pay for the day. Again, certainly not the intended consequence of LB554. Finally, LB554 will pose a severe hardship on those employers who employ family members of servicemen. As I'm sure the committee is aware, new regulations with respect to the Family and Medical Leave Act went into place on January 16 of this year. Those regulations provide family members of active service people up to 26 weeks of leave to care for a family member who is injured or becomes ill in the line of active duty. Again, if an employer has a policy where the employee would get 12 weeks of leave in that circumstance, the employee could then stack the leave thereby getting 38 weeks of total leave time to care for their ill or injured service member. Certainly, employers may give more leave or work with employees as needed and as is warranted by the individual employee's circumstances. However, that should be up to the individual employee and the employer and not dictated by the state of Nebraska. Thank you. Does anyone have any questions? [LB554]

SENATOR LATHROP: We'll see. Any questions for Ms. Petersen? I see none, thank you for your testimony. [LB554]

JENNIFER PETERSEN: Thank you. [LB554]

BERNARD in den BOSCH: Good afternoon, Senators. My name is Bernard in den Bosch, last name is i-n d-e-n B-o-s-c-h, I'm testifying on behalf of the city of Omaha.

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And I will eliminate most of what I'm going to say because I don't want to be repetitive, frankly, of everybody else who has spoken. Obviously, the Family Medical Leave Act, when implemented has been described, involved a balancing act between the need to protect employees and the need for them to be able to address family situations that required extended absences versus the need of employers to ensure that employees were there. Because the most important thing that the FMLA does, and we haven't really talked about it, is protect that person's job while they're gone. Particularly in the situation of public employers who maybe don't have the flexibility to eliminate the different types of leave like some of the previous presenters have talked about. We, employees of the city of Omaha, frankly, I think of many public entities carry substantial leave balances particularly in sick leave because in many ways it is the short-term disability policy. So the concern that I have in particular is the stacking we've already talked about. The phenomenon where there is a period of time of 12 weeks that would be protected, and under this bill that 12 weeks potentially could be without pay. And then you have the potential for another 12 weeks, or frankly depending on an argument as to whether an employee has a right to take their leave, even longer. And the consequence is, you have positions that are--show up as people that are employed whether they be police officers, firefighters, people who plow streets, or even not that a whole lot of people care, lawyers. And those particular individuals are going to be gone for an extended period of time and the position is protected. That particular phenomenon, I guess, is the primary concern of the city of Omaha. The city of Omaha has adopted a policy since the inception of the FMLA of requiring employees to use leave concurrently with their FMLA absence. That has not been challenged. It is, at least, of all the problems that I deal with in dealing with labor and employment issues for the last 12 years for the city of Omaha, it's, frankly, one of the areas that we have had the least problems. So we would ask that, if nothing else, modifications be made prior to this particular legislation be adopted. I could probably go through some other scenarios that might have an effect but, quite frankly, some of that is speculative and I don't...we have kind of talked about some of those. So I'm happy to answer any questions.

[LB554]

SENATOR LATHROP: Any questions? I don't see any. [LB554]

BERNARD in den BOSCH: Thank you. [LB554]

SENATOR LATHROP: Thanks for coming down. [LB554]

JIM OTTO: Chairman Lathrop, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association. I won't bore you with repeating what's already been said, for the reasons that have already been articulated. The...both associations that I represent wanted to go on record as in opposition. [LB554]

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SENATOR LATHROP: All right. Any questions for Mr. Otto? Thank you. [LB554]

KATHY SIEFKEN: Senator Lathrop and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n. Here today representing the Nebraska Grocery Industry Association in opposition to this bill and I'm simply a...me too, short and sweet. [LB554]

SENATOR LATHROP: Okay, okay. [LB554]

KATHY SIEFKEN: Thank you. [LB554]

SENATOR LATHROP: Any questions? (Laughter) I see none, thank you. Anybody else here in opposition? Anyone here in a neutral capacity? Senator White, would you like to close? [LB554]

SENATOR WHITE: I would, thank you. Members of the committee, not to be too difficult on some of the witnesses who testified, I am looking at a printout of comparison of federal and Wisconsin Family and Medical Leave laws, and it's Wisconsin Department of Workforce Development. I'll be happy to show it to anyone who wishes and then when I look at Wisconsin versus federal, Wisconsin expressly permits employee may elect to substitute accrued paid or unpaid leave of any other type provided by employer. So Wisconsin, in fact, does support exactly as Mr. Lineweber testified and that seems to be a provision that is working well for Wisconsin. I appreciate industry's varied concerns, obviously, they have a lot of problems in trying to staff their jobs. On the other hand, if you look at the problems our families are having as they show up in juvenile court, as they show up in divorce court, as they show up in the host of problems we've seen about young people, our families are also under terrible pressures. I think that if we are forced to choose, we should allow parents to best judge which of the priorities is most important so they can run their family. And that, after all, was the real purpose of the Family Medical Leave Act. Thank the committee for its courtesy. [LB554]

SENATOR LATHROP: Thank you, Senator White, and that will close our hearing on LB554. Next up is LB579, that looks like that brings us to Senator Cornett. You might want to wait a second until the room clears. Okay, I think we're ready for you, Senator Cornett, on LB579. [LB554]

SENATOR CORNETT: Thank you and good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Abbie Cornett, I represent the 45th Legislative District and I'm here to introduce LB579. I've introduced this bill for a single reason, to help small businesses in Nebraska. By and large, it's small business who create jobs both here in Nebraska and in our country. There are lots of things that stand in the way of creating those jobs. Just being an employer means complying with a myriad of federal, state, and local laws that cost small businesses both time and money. This is the time and resources taken away from small businesses core function. One of

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the ways small businesses overcome these challenges it to partner with a professional employer organization to provide human resource and compliance assistance for their workers. These professional employer services include payroll processing, withholding and remittance of payroll taxes, health cares, Section 125 plans, retirement plans, 401(k)s administration, flexible savings plans, commuter benefits and administration, and workplace safety programs. These important professional employer services not only help the small business with the business of employment but they allow small business to recruit and retain high quality workers. Small businesses must offer high quality benefits. Workers and small business now can have benefits and human resource services like those offered at large employers. The public benefits because the professional employer services assist small business in complying with regulations and remitting payroll taxes, but beyond that professional employer services often include services like workplace safety programs to reduce workplace accidents and promote human resources best practices. This legislation accomplishes two things, it reaffirms in law professional employer services used by small businesses by defining industry terms, relations, responsibilities, and addresses common issues involving professional employer services. It requires those offering professional employer services to annual register with the Department of Labor so small businesses can know that minimum financial and operational standards have been met. This legislation is supported by the professional employer industry through their trade association. This bill is based on a model act and would bring Nebraska current with provisions that have already been enacted in 35 other states. After introducing the bill, it has been brought to my attention that there are some concerns that will be brought forward today. Myself and a representative from the organization will be working with other members to address these issues and we will be offering an amendment. But if you have any technical questions on the bill, there will be some people following me that are probably better able to answer how these organizations work. [LB579]

SENATOR LATHROP: Very good. Thank you. Any questions for Senator Cornett? Seeing none, are you going to stay around to close? [LB579]

SENATOR CORNETT: No. [LB579]

SENATOR LATHROP: Waiving closing? [LB579]

SENATOR CORNETT: Yes. [LB579]

SENATOR LATHROP: All right. Thank you, Senator. Those wishing to testify in support. [LB579]

MICHAEL MAPES: Should I wait? Okay. [LB579]

SENATOR LATHROP: You may proceed. [LB579]

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MICHAEL MAPES: (Exhibit 1) Thank you, Mr. Chairman and members of the committee. My name is Mike Mapes, that's M-a-p-e-s and I'm president of The Alliance Group, and we are a professional employer organization based in Omaha. We have clients in lots of states and those clients have over 2,300 employees that we help them manage. The Alliance Group has been in business over 11 years now. The bulk of our clients have offices in Nebraska. As a matter of fact, 110 of our small business clients are located in Nebraska and we help them with their over 2,000--close to 2,000--employees. And I'm appearing today in support of LB579. And a PEO is a company that works with small business owners to provide comprehensive human resources services administration through the model of coemployment. In essence, what we do is we partner with small business owners to provide administrative assistance on some of these HR issues. And in order to provide a little visual help in understanding why small business owners might be overwhelmed by the rules and regulations that apply to them, I have included with this copy a list...if you go to the back page, the one that's...it's showing a list of the rules and regulations that apply to employers, and it shows the progression. And as you can imagine, just from 1980 to the year 2000 you can kind of see why small business owners are hoping there might be a better way for them to remain compliant yet still stay in business. Our clients are small business owners who are aware of these regulations and they truly want to follow the rules. However, they're limited. They're small business owners, they have limited resources, they have limited internal staff resources. They're also limited by time, there's only so much they can do, and let's face it, complying with these rules and regulations it is not why they are in business. Now, if you look at 1980--and there is quite a few rules and regulations there--it's not a coincidence that our industry got its start in 1980. And necessity, as the mother of invention--I've heard said before--and I think that's why our industry is around, because there is a need for it. And I am a member of our national trade association. I've been a member now for 10 years and according to the folks who keep track of this stuff, there are over 700 PEOs in the United States. And if you add up all the employees that they're helping their clients with, the number is greater than 2 million. Now, because the PEO coemployment arrangement deviates from a traditional single employer/employee relationship it presents unique issues for lawmakers and regulators. And NAPEO, which is our national trade association, they've done a very good job in working with the various state legislatures and regulators in getting legislation similar to this LB579 adopted in, I think Senator Cornett said, 35 states. And I'm hoping that we can get this legislation passed in Nebraska so that the small business owners in Nebraska have the same regulatory certainty those in other states enjoy. Thank you. [LB579]

SENATOR LATHROP: Very good. Any questions for Mr. Mapes. Can I just ask if you'd better understand what this does if somebody works for...what's a typical industry? [LB579]

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MICHAEL MAPES: Well, we have dentists, chiropractors... [LB579]

SENATOR LATHROP: All right, let's take the dentist, then. [LB579]

MICHAEL MAPES: Um-hum. [LB554]

SENATOR LATHROP: You have the dentist, he'd normally hire the dental hygienist. Where do you fit in this process now? [LB554]

MICHAEL MAPES: We'll have a... [LB579]

SENATOR LATHROP: Do you become the employer of the dental hygienist and then... [LB579]

MICHAEL MAPES: We'll have a client services agreement with the owner of the business and through that agreement, we agree to take on certain employer responsibilities and liabilities. Not all, but certain ones. For example, our clients still do the hiring, they still do the managing of the day to day and they also do the firing. So we're not there to take control of the employees, we're there to take control of the administrative headaches, the stuff that really doesn't help them run their business more efficiently. [LB579]

SENATOR LATHROP: How does that differ from just hiring the service to do those things? It sounds like you're getting in between the dentist and the hygienist, and that's what's not clear to me because we could hire a service to come into my law firm... [LB579]

MICHAEL MAPES: Of course. [LB554]

SENATOR LATHROP: ...and that service would be a consultant and have no relationship to the employees whatsoever. [LB554]

MICHAEL MAPES: The most significant difference, actually the benefit accrues most to the business owner. Because anyone, like you said, anyone could come in and do the actual work. But because of the coemployment, we've taken that target that's on the back, the various targets that are on the back of the small business owner, we've taken off of him or her and put it on to The Alliance Group. And so we're also transferring many of these liabilities over to us. So it not only makes the small business owner more efficient and more productive, but it also reduces the liabilities a small business owner has of running businesses. [LB579]

SENATOR LATHROP: What about those things that are liabilities that arise out of the conduct of the employee? For example, the employee harasses another employee, the

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employee goes out and gets in a car accident in the scope and course of their employment. [LB579]

MICHAEL MAPES: Well, if that employee got hurt in that car accident, then the work comp would come into play and whether or not if that employee was driving a company car, I'm sure the client, the business owner would have general liability or auto or something like that. But we don't handle the...we just deal with employment stuff. But, for example, we make sure that harassment, discrimination, education trainings are performed. I want to say it the right way but harassment prevention, sorry. We proactively work with our clients to make sure that it's not just something in their employee handbook, but it's also spoken to and addressed in person with employees. [LB579]

SENATOR LATHROP: You do the payroll, you do the withholding... [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR LATHROP: ...you send all that, do you cover...a person gets hurt in the scope and course of their employment do they sue Alliance, or do they sue the dentist or make their claim to...? [LB579]

MICHAEL MAPES: You mean as far as filing a claim? They would file a claim under the Alliance policy. [LB579]

SENATOR LATHROP: All right, so Alliance is going to cover all these...this type of an organization would cover the employees on work comp. [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR LATHROP: Okay. Senator White had some questions, too. [LB579]

SENATOR WHITE: Mr. Mapes, for example, that could also be a benefit to the state. The Alliance Group ensures that work comp benefits are paid even if the employer, for example, that you've contracted with, stops paying you at least for a time. [LB579]

MICHAEL MAPES: Unfortunately, yes. [LB579]

SENATOR WHITE: So you absorb that risk, so it gives an added layer of protection to the employee. Is that correct? [LB579]

MICHAEL MAPES: Yes, that's correct. [LB579]

SENATOR WHITE: And similarly withholding things like that, you then share in the

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liability to pay the state for the share of withholding even if the employer defaults, is that correct? [LB579]

MICHAEL MAPES: That's correct. [LB579]

SENATOR WHITE: So there's substantial benefits to the state and to the employer by having a second responsible party sharing in that burden, is that correct? [LB579]

MICHAEL MAPES: I think on that, and plus, keep in mind if you were to call up, say, a mechanic who has eight or 10 employees and if you're a state regulator, would you rather deal with a professional HR firm to answer your questions or would you rather try to get the business owner in his free time or her free time to answer the question? So I think the state benefits because they're dealing with us. We'll file things timely, we'll fill out the forms properly, we know when things are supposed to be in. [LB579]

SENATOR WHITE: Do you also do, as you pointed out, training of employees so they're better able to comply with the law? [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR WHITE: And so you take your sophistication knowledge of the law and you take that to the mechanic who has eight employees and really may not have time or the inclination to study the niceties of the Americans with Disability Act, things like that. [LB579]

MICHAEL MAPES: Exactly, yes. [LB579]

SENATOR WHITE: Thank you. [LB579]

SENATOR LATHROP: Senator Council. [LB579]

SENATOR COUNCIL: Thank you, Mr. Mapes. And I may have what sounds like an elementary question but I scanned through the 38 pages of the bill and I understand, I think I understand what the service is that a PEO provides. But what I'm questioning is, can you identify what, if anything, exists in current statute that prevents you from doing what you're doing? I guess, my question is, what is the necessity and what does passage of LB579 relieve a PEO of or remove them from the coverage of? I just don't understand what the...I mean it's one thing to recognize that there are professional employer organizations that provide these services, my question is, what is it that we need to be placing in law relative to PEOs? Because reading through it, I just don't understand what it is that you're seeking to be allowed to do that you're currently prohibited from doing or relieved of an obligation to do, can you help me in that regard? [LB579]

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MICHAEL MAPES: Senator Council, that's not an elementary question. That's actually a question I've always asked myself, too, when we first started this. And what was happening then is if it wasn't spelled out in statute then it would leave it up to various departments to decide what they wanted to do. And so instead of staying silent on it what our national trade association has decided to do, is to be proactive and address the concerns and get it so that the statute addresses all the needs of all the parties involved and we have some regulatory certainty and so there's no gray areas. [LB579]

SENATOR COUNCIL: Okay, so say for example, one of the regulations that an employer with 51 employees is subject to the WARN Act. If they're getting ready to close their operation or layoff a specified number of employees it brings them within the WARN Act. What you're saying to me is that the state Department of Labor or the federal Department of Labor is raising questions about who has an obligation to the employees with regard to WARN notice. I'm just not grasping... [LB579]

MICHAEL MAPES: I can give you a specific example on this, is one of it deals with workers' compensation. The state law requires employers to have work comp policies in place for covered employees and then in exchange for that, the employer receives exclusive remedy protection. Well, since The Alliance Group has one policy and a master policy, then if that employee gets injured we want to make sure that our clients...because the intent, they're following the intent, they're making sure that their employees have a work comp policy in place. I just want to make sure exclusive remedy is also...there's no gray area on whether The Alliance Group is protected by exclusive remedy as we should be, and then also the client because work comp is in place just as the state requires, as one good example. [LB579]

SENATOR LATHROP Senator Carlson. [LB579]

SENATOR CARLSON: Senator Lathrop, to follow up a little bit on Senator Council's question. This is the way I would look at it and tell me if I'm tracking correctly. You offer a service that employers can subscribe to voluntarily. What you want is to be recognized by the state as this coemployer relationship so there's no question about that. And so it seems to me like what we're deliberating about is, are we going to allow that or not? It's not like one of Senator White's bills that if that becomes law that mandates some things to employers. This doesn't mandate anything, it simply allows employers that want to, to enter into this contract with people like you. But if they do, your relationship will be recognized as a coemployment relationship. [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR CARLSON: Is that a fair statement? [LB579]

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MICHAEL MAPES: Yes. [LB579]

SENATOR CARLSON: Okay. Thank you. [LB579]

SENATOR LATHROP: Senator White. [LB579]

SENATOR WHITE: One of the things that I think might interest some of the concerns Senator Council raised could be found in Section 5 on page 9 and I think that provides "except as otherwise provided in the Professional Employer Organization Registration Act no person shall provide, advertise, or otherwise hold itself out as providing professional employer services in this state, unless such person is registered under the act." Now, your business, for example, takes responsibility to make the payment for work comp insurance, correct? [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR WHITE: Your employer, your company, takes responsibility to make payments to the state for wages withheld, correct? [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR WHITE: So at some points, the employee or the employer is trusting your company is actually doing what you say because they're not relieved from the liability to make those, even if your company--not yours in particular--but a company, they don't make the tax payments but they would still be under that obligation even if they paid you, correct? [LB579]

MICHAEL MAPES: Yes. [LB579]

SENATOR WHITE: So one of the things that's a benefit under this act it's a very much fiduciary relationship with someone with expertise and financial wherewithal is making payments that the employer is obligated to make. So the employers are trusting you and the state is trusting you and you're asking that we elevate--if we're going to be handling this kind of money and those kind of (inaudible) relationships can be elevated to a licensed organization with standards, is that correct? [LB579]

MICHAEL MAPES: Yes, that's correct. [LB579]

SENATOR LATHROP: I don't see any other questions, thanks for coming down Mr. Mapes. [LB579]

MICHAEL MAPES: Thank you. [LB579]

SENATOR LATHROP: Go ahead. [LB579]

STEVE KNUTH: (Exhibit 2) My name is Steve Knuth, I'm from Holdrege, Nebraska, the spelling on that name is K-n-u-t-h. Senator Lathrop and committee members, I thank you for your time allowing me to show my support for LB579. First of all, I want to clarify that I approach this subject wearing two different hats. One being a business owner who is currently using the service provided through a PEO and secondly, I'm a partner in a PEO company that was formed in 2008. Our PEO, which is called Ag-HR is focusing on the development of a client network in outstate Nebraska. I therefore have perspective from both sides of the PEO and client-company relationship. But my comments today are as a small business owner and the challenges that we face. My company is AgWest Commodities based in Holdrege, Nebraska. We serve the risk management needs of approximately 1,000 agricultural producers in the western Corn Belt. I also have branch offices at Imperial, Sutton, and Gretna, Nebraska. With a total of 18 employees, AgWest is representative of many small businesses across the state. There were a number of reasons why the PEO concept and services made sense for AgWest, but for the sake of time I'll address the top three of which I believe are priority issues for any small business. The first is the cost of healthcare, which is an issue no matter who we are, but in particular, for small businesses this has become a major concern. As part of the PEO services, multiple healthcare choices and quotes can be reviewed far more than a business without a full-blown HR department could ever source. In early 2008 when AgWest first employed the services of a PEO, we were able to trim our healthcare costs by more than 20 percent while maintaining the same coverage for our employees. Secondly, due to the economy of scale involved with the PEO, AgWest was able to shift from a simple retirement plan to a 401(k) for our employees. This change made little difference to my company but provided a great improvement to my employees due to significantly lower management fees. My employees can now hold onto more of their retirement dollars, which can work and compound over time. The last item that was of great interest to me when assessing the value of a PEO relationship came in the area of compliance. There is an ever growing and continually changing list of rules and regulations affecting small businesses and quite honestly, more than any of us can handle correctly. To varying degrees, I believe the majority of small businesses tend to fly under a certain amount of radars in concerning regulations. Which works perfectly well until a problem arises, whether it's an innocent mismanagement of COBRA procedures or shortfalls in safety training or documentation businesses run the risk of fines and/or liability issues. There was little doubt in my mind that the PEO could come closer to keeping AgWest in compliance with the ever increasing amount of regulations that we face. And of course, depending on the area of noncompliance the more important aspect can lie in the safety and well-being of the employees. There are a number of other benefits and efficiencies to the PEO relationship but these were my priority decision drivers. The PEO concept is a logical answer to many of the problems facing small business, and accordingly, the horizon is changing on how Nebraska employers will manage their HR needs. As much as I dislike big government, a certain

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amount of regulation is necessary. More of our state's workforce will be shifting to coemployment relationships in the coming years. I believe that LB579 is needed to assure that minimum financial standards and operational requirements for PEOs are in place to provide uniformity in how they conduct business, and even more importantly to protect Nebraska small businesses and their employees. That concludes my comments, thank you. [LB579]

SENATOR LATHROP: Thank you, Mr. Knuth. Any questions for the witness? Senator Carlson? No. All right. [LB579]

SENATOR CARLSON: No, I know him too well. (Laughter) [LB579]

SENATOR LATHROP: All right. Well he's not under oath, so. [LB579]

ADAM PEER: (Exhibit 3) Good afternoon, Mr. Chairman and members, my name is Adam Peer, P-e-e-r. Like peer pressure. And I represent the National Association of Professional Employer Organizations. And I'm very pleased to appear with you with some of the members of our trade association in support of this piece of legislation. To reiterate just a couple of points, the primary purpose of this legislation is to really do two things. As Mr. Mapes explained, these are extremely valuable services that professional employers provide to small businesses. And putting clarity in the law not only gives assurance to small businesses that the services will continue but in fairness to the administrative department of the state it gives direction to the state on how different programs like UI, work comp, etcetera are to be administered with respect to professional employer organizations, PEO services and small businesses. The other primary purpose of this proposed law is that as you can imagine, if you're a small business and you're handing over your payroll responsibility for benefits that are extremely important to your employees over to another party, you want some assurances that that party is making those payments, and is doing right by the agreement that you've entered into them. So one of the major components of this bill is annual registration, the requirement that professional employer organizations be audited on an annual basis, maintain minimum working capital, and very importantly in that audit there can be no qualification as to going concern. So in other words, when the auditor is going through, they cannot have a reservation about the ability of this business continuing. Audits are comprehensive check, the PEOs operations include things like testing of controls, making sure liabilities are being properly accrued, and making sure that taxes are being properly paid. To address a couple of issues that were brought up in some of the questions about the need for clarification, I thought I'd highlight a couple of examples. One example is, with certain licensed and regulated professional occupations, for example, attorneys or CPAs or doctors, many states have laws that require that the direction and control of people that are in, for example, a CPA firm must come from a CPA. They can't come from some other person. So, for example, this bill would delineate that for the purposes of those types of regulation, the client--the small

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business--clearly retains the ability to direct employees in their professional work. Another example is that some states have economic incentives and tax credits that are based on employment. This bill specifies that those tax credits based on employment remain with the small business. They do not somehow get taken on by the PEO. As the organization has worked with many jurisdictions, we've come across different situations where we're trying to proactively clarify the law so when these issues come up from time to time there's direction for the state on how to treat small businesses that use PEO services. So with that, Mr. Chairman, I'd be happy to answer any questions. [LB579]

SENATOR LATHROP: Very good. Thank you for the explanation. Senator Council. [LB579]

SENATOR COUNCIL: I have two questions, and I should have asked it a minute ago. I'm looking at page 19, Section...subparagraph (c). And this speaks to what shall be included in the professional employer agreement. And my understanding that's the agreement between the client and the professional employer organization, correct? [LB579]

ADAM PEER: Yes. [LB579]

SENATOR COUNCIL: Okay. And subparagraph (c) says that this agreement shall include a provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibility and then it goes on to say the client shall have a right to hire, discipline, and terminate a covered employee. So you have two entities having a right to hire, discipline, and terminate...I guess my question arises in the context of Nebraska's Fair Employment Practices Act and Title VII. Who is the respondent in the case of a claim of a violation of the Nebraska fair labor practices act? [LB579]

ADAM PEER: What would most likely happen... [LB579]

SENATOR COUNCIL: In the Fair Employment Practices Act. [LB579]

ADAM PEER: ...that responsibility, you are correct, Senator, is a shared responsibility between both of those parties. In a practical sense it is the client--the small business--that is doing the hiring and the firing. For the most part for the PEO it's a reserved right. Where that right would most likely be used by the PEO, it's extremely rare, doesn't happen very often. But let's say, for example, that you had a...some sort of discrimination complaint that was in small business that uses a PEO. Typically in PEO arrangement the employee that was aggrieved would complain to the PEO, the PEO would then follow whatever the necessary steps are spelled out in the law. So, for example, it might be a requirement that interviews, investigations done, certain

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documentation that needs to be done. And then at the end there may be an action that needs to be taken that may deal with discipline where ultimately it may even involve the termination of an employee if that's the appropriate response. And in that case, that would be something that most likely be done jointly. Now, if the PEO took an action, for example, terminating an employee and was found to be in violation...of like, say for example, the act that you quoted that would be the PEO's responsibility. [LB579]

SENATOR COUNCIL: Okay. Because I'm going to tell you my concern is an employee of an employer who has an agreement with a PEO who has grounds for a complaint of discrimination under either the Nebraska Fair Employment Practices Act or Title VII, who doesn't know who their employer is, files a complaint. NEOC does an investigation, comes back and says, well you might have been discriminated against, but it's not the PEO, it's the employer. And then by that time, the statute of limitations has run and then they have no recourse, that's troubling to me. And I'm also troubled by the tax credit incentive issue. I don't know how you...if legislation provides that in order to get a certain tax benefit you have to employ x number of people and you coemploy x number of peoples, have you really satisfied the requirements for the tax credit? [LB579]

ADAM PEER: If I'm... [LB579]

SENATOR COUNCIL: If you can answer. [LB579]

ADAM PEER: Absolutely. One of the other provisions that's contained in this act is that rights of employees shall not be diminished because they're involved in a coemployment relationship. Another provision of the act requires that employees must be notified that they're in a PEO relationship and the general nature of that relationship. A real easy example is, I'm a coemployee. I'm a covered employee of a PEO, and we have a PEO that's located out of New York. My handbook is done jointly between my direct employer and my PEO and it spells out in my handbook very clearly where those types of complaints are to be lodged and who administers the different benefits and who I can call and contact. So it's very clear to the employees who the responsible parties are. With respect to the tax credit issue, the purpose of that section is to make it so that if you're...let's say a small business and you qualify for some state tax credit or some other economic benefit, and you qualify for that, just because you move over into a PEO relationship to provide your HR benefits, shouldn't somehow mean that you're not eligible for those tax credits or incentives. The purpose of that section is to hold the small business harmless with regard to being able to otherwise qualify for those incentives. One of the usually distinguishing factors, and is good to point out, is that the PEO doesn't have a business interest in a small business client. They're not owners, there's no equity interest there so we want to preserve whatever the small business would otherwise be eligible for. [LB579]

SENATOR COUNCIL: Thank you. [LB579]

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SENATOR LATHROP: Any other questions? I, you know, it's interesting that Senator Council brought up that example because I had the same concern but I practice more in a different field of law and I wondered why you were testifying if somebody gets hurt at work, are you the defendant or is the person who is, you know, who has the plant that I'm assigned to the defendant? And what if I sue or make my work comp claim against the wrong one? And the...your organization says we're not the employer for work comp purposes, you need to make your claim against the person who's plant you were assigned to or where you were actually laboring. And whether or not making the claim against one of you is the equivalent of making a claim against both of you, and whether it stops the running of the statute of limitations. And maybe that's all in here and I didn't see it. [LB579]

ADAM PEER: Well, for coverage of employees, Mr. Chairman, there's going to be either the PEO or the client, small business, that's going to be providing the coverage. So it's either one plan or the other and that would be adjudicated through the normal law, normal procedures. What I would point out is that PEOs handle worker's compensation a lot better than a small business that can't dedicate resources to it. A real easy example...you have an injury on the job. You look in the handbook, there's a number to call right away because the PEO has an interest in getting that employee the services they need, medical attention they need. Or, you know, depending on circumstances, the vocational training to bring that person back to work quicker to reduce that loss time. If you have a small business that's trying to do it on their own, they may not have the expertise or the wherewithal to dedicate to moving that claim through. The other benefit that a PEO brings is that as Mr. Mapes mentioned he has 2,000 or so coemployees, the insurance company is going to pay attention to that large group and Mr. Mapes is probably going to be able to get services quicker and claims handled quicker for that covered employee than they would if it was a small business owner calling an 800 number and hoping that they're available after 7. [LB579]

SENATOR LATHROP: But the proper party to that claim, is that you? [LB579]

ADAM PEER : If it's the PEO's policy, yes. [LB579]

SENATOR LATHROP: Okay. Senator White. [LB579]

SENATOR WHITE: Would your organization have any objection to state that for purposes of any notice or the filing of suit, notice and service upon either the PEO or the employer shall suffice until such times as they can substitute the other. In other words, that if you have a comp claim, if you have an insurance claim, whatever you have, if one or the other of you gets served properly the notice the other's on the hook. Note that a person would have the right to come in and substitute parties or whatever but would that be an objection to you so that any confusion by this coemployment doesn't cause the

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employer, the employees or the public to suffer. [LB579]

ADAM PEER: I think we can probably work on language that accomplishes something to that end. [LB579]

SENATOR LATHROP: And I appreciate that, and that seems like a good remedy. Let me put it differently or maybe add another wrinkle to it. What if I, do I pick my paycheck up from you guys if I'm now back at the dentist's office and I'm the dental hygienist do I go to...you guys send me the paycheck? [LB579]

ADAM PEER: Most likely, it's direct deposit. [LB579]

SENATOR LATHROP: All right. But when I get the stub is your name on it or is the dentist's name on it? [LB579]

ADAM PEER: It's the PEO's name that appears on the pay stub. [LB579]

SENATOR LATHROP: Okay. Do I have a sufficient employer/employee relationship with the dentist such that that dentist cannot harass me or change the conditions of my employment because of my race, religion... [LB579]

ADAM PEER: Absolutely. And that's actually one of the things that PEOs are really good about doing. Now, the committee was talking about a different sort of regulatory issue before and that would be a great example of what a PEO can help a small business comply with. Things like, you know, doing annual meetings, annual training, everything. [LB579]

SENATOR LATHROP: You're talking about when things are going well and I'm talking about when they aren't. And I'm trying to figure out what the liability is, is there a sufficient employment relationship between, in our example that we were using, the dental hygienist and the dentist such that the dental hygienist can take advantage of those remedies if there's harassment on the job, those sorts of things. [LB579]

ADAM PEER: Absolutely. One example would be if had a very small business, we're using a dentist as an example, and there is, you know...someone is feeling like they're being harassed. Well, it's sort of hard to complain to somebody that may be the harasser, let's say. And in most cases you can complain directly to the PEO. I know the PEO I use there's an 800 number, it's 24/7 if you have those types of issues. The PEO then would immediately take the steps that are spelled out in the law. So, for example, conduct interviews, investigations... [LB579]

SENATOR LATHROP: I appreciate that. [LB579]

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ADAM PEER: Okay. [LB579]

SENATOR LATHROP: And I appreciate that there's a service and the fact that there's a third person there, the PEO, that they can intervene, probably won't be as many claims, probably won't be as many lawsuits. I'm just trying to find out how much of an employee/employer relationship there is left after you have...after you're, sort of, in between the two. [LB579]

ADAM PEER: The PEO isn't in between the two. The PEO is, I think, a better analogy would be side by side. That dentist, let's say for example, in a dental practice is still the employer. It still has, you know, the rights and responsibilities of employment although some of those responsibilities are assumed by the PEO. Now if the PEO is to be found culpable, I mean certainly the PEO would be responsible for whatever the consequences that would be. [LB579]

SENATOR LATHROP: But if a person were harassed on the workplace, and it's a workplace where you're involved in, the claim would be against the client and not against you. [LB579]

ADAM PEER: If, let's say for example, that you had a small business and the PEO is going in and doing all the, you know, appropriate training and there's a complaint, let's say. And the PEO says, this is how to handle the complaint, appropriately does so, and let's say that small business disregards the PEO's advice. Then it would be the small business that would be liable at that point. [LB579]

SENATOR LATHROP: They don't come to you for advice before they sexually harass the dentally hygienist, right? [LB579]

ADAM PEER: Um-hum. [LB579]

SENATOR LATHROP: So, if they do sexually harass the dental hygienist, the dental hygienist can make a claim against your client, the dentist... [LB579]

ADAM PEER: Yes. Yes. [LB579]

SENATOR LATHROP: ...and avail themselves of all the federal and state remedies, is that right? [LB579]

ADAM PEER: Yes. Yes. [LB579]

SENATOR LATHROP: They don't have to sue you? [LB579]

ADAM PEER: No. [LB579]

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SENATOR LATHROP: Yeah. I think that's all the questions I have, if anybody else has some? Senator White. [LB579]

SENATOR WHITE: If you look at page 8 of the act and you look at Section 14(d), "A client have the sole right to direct and control professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for the licensing, registration, or certification of such covered employees or clients." Now that would apply to, for example, the hygienist with respect to whether she's following the rules of the health department. [LB579]

ADAM PEER: Yes. [LB579]

SENATOR WHITE: Do you have any objection, if, upon rereading this, counsel or the committee are concerned that it is unclear that the employer remains, for all purposes, a state and federal law with regard to claims by the employee or by the public a proper party and defendant in an action where it would otherwise lie. [LB579]

ADAM PEER: I think if the language as proposed, you think, could be better clarified, I think we can work on something to that effect. [LB579]

SENATOR WHITE: The point is, I think, if you get the sense of the counsel is, we're not interested in passing a law that allows a covered employer to evade sex discrimination laws, or evade obligations that the law has already placed on them with their responsibility to the outside public. And if the PEO wants to join and share in some of those, I don't think anybody objects. But we don't want the employer to evade those laws and their responsibility under them. If there's nothing in this act that preserves that fact (inaudible) objection, we work on wording with that intent. [LB579]

ADAM PEER: If we can better clarify that point in here, we can do that. But it is the...in working with this legislation, it is the intent not to create that confusion of, well, who is an employer, who do I sue or who do I start an adjudication proceeding against? Not the intent to either confuse that or to relieve those direct duties of the small business to some third party, and that's a good point. If we can better clarify that in there, we'd be happy to do so. [LB579]

SENATOR WHITE: Thank you. [LB579]

SENATOR LATHROP: And I certainly agree with the remarks of Senator White. I don't have a problem with this, it's a new breed of cat and so I'm just trying to understand it, not to derail it. But I also want to make sure that we don't have confusion if an employee does have a claim for work comp for whatever it might be, that if he picks the wrong

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person or the wrong entity whether it's the small business person or your group, The Alliance Group, for example, that they're not somehow penalized because of the confusion created by allowing you to coemploy this employee. [LB579]

ADAM PEER: And certainly this bill is meant to be proactive in that, we hope that there wouldn't be confusion in the first place because there's a duty to communicate to covered employees. But I understand your concern that, you know, I don't know if I remember everything at orientation three years ago, so I understand that concern. We'd be happy to work with you on some sort of clarification. [LB579]

SENATOR LATHROP: Senator White. [LB579]

SENATOR WHITE: The clarification would take two parts. Number one, a provision essentially that service on one shall be sufficient servicing notice on both, both into the lawsuit until such time the court makes a determination of the proper responsible party if it's not both of them. And two, that nothing in this act shall relieve the employer of any obligation it may have under existing state and federal law by virtue of the fact that a PEO relationship is entered into. I would suspect that's the direction we want to go. [LB579]

SENATOR LATHROP: Yes. [LB579]

ADAM PEER: That's fine. [LB579]

SENATOR LATHROP: Senator Council, did you have another question or a thought or...? [LB579]

SENATOR COUNCIL: Yes, because I am looking at...if you look at the cover it also talks about to harmonize unemployment benefit provisions. I've been looking through the act trying to find out where that harmonizing occurs, and I was just sitting...I mean can you point to me in the act where there is this harmonizing of unemployment benefit provisions and I'm sitting here thinking...if there's a coemployment situation and the PEO has assumed the employer's obligation to pay the unemployment insurance premiums...and so, presumably then the unemployment insurance division's record, the employer for that individual shows up as PEO, it shows up as the employer. [LB579]

SENATOR LATHROP: That was a nodded no, and a nod yes. The only reason I say that is we're keeping a record and you're nodding your head and it's not going to show up, so. [LB579]

SENATOR COUNCIL: So you're just paying the premiums on behalf of the employer... [LB579]

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ADAM PEER: Yes. [LB579]

SENATOR COUNCIL: ...not as the employer? [LB579]

ADAM PEER: That's correct, Mr. Chairman, Senator. With respect to unemployment insurance there is no change in how the program currently works. In Nebraska, it's my understanding that the PEO pays into the small businesses tax account. The reason why there is an amendment to the UI section of the statutes is that in that section, PEOs are defined as well as clients and what we've done is we've taken out those definitions and said, for the definitions of those terms, see the PEO act. So it's a cross-reference. [LB579]

SENATOR COUNCIL: Thank you. [LB579]

SENATOR LATHROP: I think that's it. Thank you. [LB579]

ADAM PEER: Thank you, Mr. Chairman. [LB579]

SENATOR LATHROP: Any other proponents? Oh, we're moving towards the door. No more proponents? Anybody here to testify in opposition? Anyone here in a neutral capacity? Yes, yes. Two, come on up. Two directors today. [LB579]

ANN FROHMAN: Good afternoon, Senator Lathrop. [LB579]

SENATOR LATHROP: Good afternoon. [LB579]

ANN FROHMAN: My name is Ann Frohman. I'm the director of insurance and I'm here to testify in a neutral capacity on LB579. My name is spelled A-n-n, no e, F-r-o-h-m-a-n. The testimony here today has been interesting. I've been following PEOs for more than a decade and involved in some of the National Association of Insurance Commissioner issues relative to PEOs, so this is interesting to see it at the dynamic level here within the state. [LB579]

SENATOR LATHROP: Director, can you speak up just a little bit louder? [LB579]

ANN FROHMAN: (Exhibit 4) You bet. The issues that I'm here to testify on are relating to insurance issues and the relationship that the PEO creates as a result of the coemployer relationship. And in particular the area that we have some, I guess, concerns on are in the area of workers' compensation and the rating of those insurance policies. The major factor used to rate workers' compensation is the type of business the employees engage in, the number of employees on payroll, as well as the loss experience. And we are really focused on loss experience at the Insurance Department for a number of reasons. One is, we deem critical to the workers' compensation rating

system that reliable data has to be gathered statistically to develop rates and to reflect those rates in an employer's premium. And we also want to make sure that that reflection is one that shows up to the extent of your risks in your business. Such that a higher risk business will indeed reflect a higher premium due to their loss experience versus, let's say, a roofing company versus a bank. Bank employees are not out there on roofs, you would expect their workers' compensation premium to be much lower. So tracking that data is very, very important for us and to make sure that premiums are an accurate reflection of the business. The National Association of Insurance Commissioners does have a model. The model is a guideline--administrative regulation--it is not a statute and does not rise to the level of the NAIC of encouraging states to enact, but it is there for those that choose to consider areas of...areas that make sense with respect to how workers' compensation would be governed by a PEO structure. And, with that process, the NAIC has recently concluded that they need to revisit it and reopen some of those issues. And actually move forward with consideration of some areas that are more appropriate for statutory enactment versus an administrative regulation. And to work out some of the technicalities in the guideline that's out there, because the guideline isn't a perfect process and we understand that this proposal would essentially recommend that we go enact that guideline. And we are not comfortable that that does what, number one, we need it to do and, number two, that there's the authority to do that. So we would like to see that work through its process at the NAIC level, and then perhaps incorporate what that work product has done, we can possibly work in tandem but we think there's some work that needs to be done. And there's a few examples, and I know you've touched on some of them, workers' compensation cancellation, notice provisions. Do the notice provisions go to the coemployer? Do they go to the employer? How do we follow that? Following the funds, Senator Council asked an interesting question about...is this something you can do anyway? And when I think of following the funds, I think of the insurance regulatory scheme is a heavily regulated one where we're following premiums in a fiduciary capacity from the policyholder all the way to the insurance company. And having a PEO organization in the middle of that creates interesting issues with fiduciary concepts and assurances that funds are there to remit to the insurance company such that premiums will always be there. Insurance coverage will always be there. The NAPEO organization from what we've seen, is a good organization that's trying to put a lot of good work together on the PEOs but we don't regulate for the great organizations out there. We regulate for those that don't always see fit to do some of the good deeds that we see coming with the NAPEO organization. So that is one area where we would have some concerns as well. We also think that this bill needs to be reflective of how the insurance company can audit. Can it audit the employer for its classification codes, you know, or does it audit the PEO? Can it go in and look at all the records? And there needs to be some relationships put together to ensure that the audits can be done in a way that allows the insurance companies access. Also we wouldn't want a PEO to engage in the purchasing of, let's say, a large deductible policy workers' compensation policy where that structure...ordinarily, if you have an insurance agent setting something up or you're

working with an insurance company under a regulated scheme, you're going to have the risk placed back on the self-funded, let's say, single employer who can handle the individual deductible. In this instance where you have many members or clients of a PEO how is that, you know, is there an ability to set a \$500,000 deductible? And if you do, who is responsible for that and is that engaging in the business of insurance? What is that? So there's some issues there. There's also some issues perhaps, perhaps not on the employee benefit side dealing with health insurance. We do have a multiple employer welfare arrangement law that dictates what can and can't be done when you're pooling health benefits on a self-funded basis...is primarily the focus. And I'm not sure this recognizes that PEOs can self-fund health benefits. And I think it would behoove us to take a look at that and see if they're subjecting themselves to our regulatory scheme there, because that's a big area. Where you're taking a pretty big promise to pay benefits and you need to know what you're doing. And I'm not certain how all of that plays out. But what we do see, again with the NAPEO working, they are also working with the NAIC. We see positive results, we had met with them years ago, five, six years ago. And I remember telling them, well, if you want to engage in insurance get licensed as an insurance agent. If you want to become an insurance company get licensed as an insurance company. And they said, well, what's the alternative? I said, well, it would require a regulatory scheme, something unique to PEOs. And that's where they're at and they've come a long way, but we do think there needs to be some fine tuning and that's going to take some time. They're not easy issues, the guidelines alone are over 20 pages and they don't cover everything. So there's a lot of issues there but we do see good work coming out of this organization. Thank you. [LB579]

SENATOR LATHROP: Thank you. Questions, first coming from Senator White. [LB579]

SENATOR WHITE: Right now as it sits though, they're out there doing business willy-nilly. I mean, there are PEO's across the state that are doing things without any regulatory scheme. So generally do you support the concept of putting into place a law like this that says nobody shall represent themselves or engage in the business of being a PEO unless they're registered and they comply with the financial aspects, financial security, audits and things like that? [LB579]

ANN FROHMAN: I think, absolutely, having a regulatory scheme in place makes sense. I would hope that they're not engaging in insurance activities without a license. When I think of a PEO, I think of two kinds. I think of your payroll services company. They've been around a long time. Then I think of the PEO that then wants to get in the business of procuring insurance. Now, there are also other facets that are in this bill, and I'm not even sure that this bill has really been the bill...I've heard 38 states...I think PEOs have a mark all over the place, but I don't think this bill has been adopted in 38 states. [LB579]

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SENATOR WHITE: Then, I mean, you do agree, for example, that as a small businessman I might want to join a PEO's larger health pool because they can get better coverage for my employees for less money. I mean, you don't want to discourage that, the department doesn't. [LB579]

ANN FROHMAN: Just to self-fund or to purchase insurance? [LB579]

SENATOR WHITE: To purchase insurance, but perhaps it has a deductible involved. [LB579]

ANN FROHMAN: To the extent that, let's say, there are fiduciary. I don't...there are insurance agents out there that can do this, can make the purchases, it already exists. My concern, I think it's great, my concern there is if you're pooling for purchasing, that can be done. That's not necessarily a bad thing. But again, self-funding is where my major concerns would be. [LB579]

SENATOR WHITE: And my concern is, so we're clear, is that there are a lot of really substantial benefits potentially from a responsible PEO that can offer both employees and employers if it's properly done. Is your department willing to expedite this so that we can get it on line. Keep a responsible organizations working and supplying services in Nebraska and if there are those who are not responsible chase them out of the state. [LB579]

ANN FROHMAN: Yes, I think it makes sense. [LB579]

SENATOR WHITE: Okay. Well, the issue is, you know, I don't want to put us in a position where all of a sudden we're saying, well, a lot of work to be done and in a couple, three years we'll get back to you. I mean, if this is a business that's growing and it's necessary for other businesses, are you and your department ready to work hopefully relatively swiftly to address whatever deficiencies are on this bill? [LB579]

ANN FROHMAN: Yes, we haven't been asked to do that at this juncture but we'd be happy to. [LB579]

SENATOR WHITE: Okay, well, I appreciate that. Thank you. [LB579]

SENATOR LATHROP: Good observation. Senator Carlson. [LB579]

SENATOR CARLSON: Senator Lathrop. One of the things that you said brought a question to mind. In your mind, are PEOs acting as insurance companies? [LB579]

ANN FROHMAN: I see in this proposal the wherewithal to act as a health insurance company, in the bill before me, but I'm not certain that that's what they intended.

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[LB579]

SENATOR CARLSON: And I can see that if it got to a self-funded. [LB579]

ANN FROHMAN: I saw some self-funding authority in here. [LB579]

SENATOR CARLSON: And you have a concern about that? [LB579]

ANN FROHMAN: Absolutely. [LB579]

SENATOR CARLSON: Yeah, I would too. But I appreciate your willingness to work to resolve whatever concerns there are overall in restating what Senator White said as a question, you can see some advantages to a well-organized and well-run PEO for people in the state. [LB579]

ANN FROHMAN: Right and we do see opportunities for fraud as well. Probably more here than in some of the other areas but I think over time as a industry--a niche industry--like this evolves we work through these issues and can get to a viable industry that makes sense to help the small employer. [LB579]

SENATOR CARLSON: Thank you. [LB579]

SENATOR LATHROP: In some sense, we're not...you don't have to reinvent the wheel, though. They've done this in 38 other states in some variation or another. I understand this isn't a true uniform model statute, but it sounds like the insurance directors or commissioners meet and this is a subject matter with which they are familiar. [LB579]

ANN FROHMAN: It's a big issue for this year, yes. It's on the agenda. [LB579]

SENATOR LATHROP: Okay. Senator White. [LB579]

SENATOR WHITE: Under federal law, there's many options right now for employers to self-fund employees, aren't there? [LB579]

ANN FROHMAN: Not unless you are a large employer and the concept there under a risk says, yes, you can self-fund, but the idea is it's because if an employee has an issue they can go straight to their boss and say, hey, why didn't you cover my benefit, and you have that direct face with your employer. And, you know, so they can self-fund and work with them through that issue, so it's a little bit different, but. [LB579]

SENATOR WHITE: Well, right now, though, the employers can self-fund and all the concerns that you raised can be existing in that employer-employee relationship. If that employer fell on hard times, might be promising employees benefits but not paying

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them. I mean, that exists, I mean, the point is the abuse, the potential for the abuse exists now under federal law, anyway. [LB579]

ANN FROHMAN: I don't see that because I see in this situation you're not really self-funding, you're pooling. So you have John Doe bowling alley over here pooling with small town bank over here. So it's not where a large employer, let's say, UPS self-funds their benefits. It's just on their balance sheets, they're just moving it from one column to the next. This is truly, you're sending in your premiums to a third party and hoping that they do the actuarial and the reserving and fulfill the promise. [LB579]

SENATOR WHITE: But the point of that, and one of the great abiding frustrations for business people...and small business people and employees in state sponsored insurance is, UPSs have the size to get mass buying power, but I as a small employer don't. If this offers and I really have to make it responsible, offers a small employer the opportunity to buy medical services and insurance services with an account and scale similar to UPS, is your department's position that you'll help expedite that? That's really my concern. [LB579]

ANN FROHMAN: Not on self-funding because you don't even have a safety net there. So what I would suggest is when we look at the insurance code and the safety net we put in for insurance enterprises so that policyholders will have benefits in case an insurance company is insolvent, you would have to create a structure. Policyholders actually get a benefit above even general creditors in the event of an insolvency. So there's a whole regulatory scheme that doesn't exist here that I think could put the employers...yes, I understand, I mean, I know where they're coming from. I know how frustrated they are. Our healthcare system is in crisis, financing in particular. But my concern is, how do you protect them to ensure that with the bad actors, not the good actors, but that isn't what we regulate for. It's for the bad actors such that in the event that they were to abscond with the funds or in good faith they didn't actuarially set the rates correctly and the thing goes down, where are the employees at the end of the day? So there's a lot of questions that I don't even think the NAIC has thought through on this. [LB579]

SENATOR WHITE: Then if I understand the department's position is, that insofar as this act would allow any type of self-funding for any amount of exposure, the department is opposed it and they are not going to seek to try and find an answer right now, at least on self... [LB579]

ANN FROHMAN: On self funding, yes. [LB579]

SENATOR WHITE: Thank you. [LB579]

ANN FROHMAN: You're welcome. [LB579]

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SENATOR LATHROP: Senator Carlson has a question yet. [LB579]

SENATOR CARLSON: Well, Senator Lathrop, one statement to go along with Senator White's question and I may be wrong. But firms today can insure something that they think is a self-funded plan. They buy a big deductible and then they self-fund up to that deductible. But that's an insured plan. [LB579]

ANN FROHMAN: Right. [LB579]

SENATOR CARLSON: And where it gets hazy is the bigger that deductible gets, depending on the size of the firm, to where there isn't any deductible at all, it's all self-funded it's an entirely different realm. But it makes a big difference to me, I'm an employee of a small firm. It should make a difference to me whether the insurance plan that the employer has a \$1,500 deductible, a \$5,000 deductible or a \$10,000 deductible or a \$20,000 deductible. And there are limits. They all seem like they are self-funded but they're only partly. [LB579]

ANN FROHMAN: I think, Senator, excuse me to follow up on your question, I do think we have a mechanism in place now on the books that allow for pooling or self-funding. That is the MEWA Act, and so to the extent that...and perhaps that's what they were thinking of that on the self-funded side they might be subject to that. Well, then it's a go. [LB579]

SENATOR WHITE: And I think, what I hope is just that the department communicate with the PEO organizations, recognizing that out there is a real crisis and small employers want to provide affordable health care or, at least, somewhat affordable health care and they can't. And one of the biggest perceptions that there is a removable obstacle under the law is the fact that you can't join the large pools. And so you get self-selecting small pools of high-risk characteristics and you drive everybody in your company into a price point that they just can't afford insurance. And if this is a mechanism that the department can work with these guys to at least try and address that, I beseech you, please help. [LB579]

ANN FROHMAN: Absolutely. I do think there's...all small employers struggle with that and the ability to get size and get mass makes a lot of sense. [LB579]

SENATOR WHITE: Thank you. [LB579]

SENATOR LATHROP: Very good. Thank you for your thoughts and testimony. [LB579]

GLENN MORTON: (Exhibit 5) Senator Lathrop, members of the committee, my name is Glenn Morton, and that is spelled M-o-r-t-o-n. I'm administrator of the Workers'

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Compensation Court, appearing today on behalf of the court in a neutral capacity but also expressing some concerns we have that we would hope to see addressed with this bill before it's advanced. I also have been working and tracking on this issue for the last decade or better through our workers' compensation agency association, which is called the IAIABC and I won't go into what those number of letters mean. But we have a joint working group with NAIC and the IABC and we've met with the NAPEO representatives. We've expressed our concerns on the work comp side, and of course, the insurance side has expressed theirs and so we've been working on it for some time. And I will say first of all, that PEOs I agree--completely--can provide a very important service to our small and medium size employers who need help with their human resource functions, the regulatory issues, and so on. And from that point of view, I think PEOs can provide a very important public policy function that we would want to encourage. So I don't want my testimony to sound in any way like I'm opposed to the idea of regulating PEOs or them functioning in our state because I'm not, and the court is not. However, PEO arrangements and their predecessors--you might have heard earlier referred to as employee leasing companies. This is kind of the progression--they've grown into what are now coemployment relationships. And I think in the past there has been...you've probably even seen articles about fraud and abuse from employee leasing companies trying to wash their experience mod to use the insurance term. So there has been concerns, so I do applaud Senator Cornett for introducing this bill. I applaud NAPEO for their efforts around the country to get the regulation in place. I agree that NAPEO is a very responsible organization and that we can work with, and have worked with, and I think LB579 could go a long way to bring legitimacy to the PEO industry in Nebraska. Because it is happening now, those companies are out there, to the extent I know of most of them now are legitimate, above-board companies in Nebraska. I haven't heard recent complaints about problems but I do agree that the regulation is appropriate. Unfortunately, even legitimate PEO arrangements don't fit well into our traditional regulatory system as many of your questions, I think, focus on. Most of our systems like work comp are dependent on identifying who the employer is. And when you have a coemployment relationship it creates all sorts of questions and practical issues that come up there. I do believe that--of course I'm not a judge--and dependant on how the courts would interpret this, but I see this as a real coemployment relationship. I know that there's been questions about...you've used the term employer for the client employer and that's the natural tendency because they're the frontline person. But I think in this case there is a coemployment relationship created and I think both the PEO and the client would, in many cases, be the responsible entity. Kind of joint in several responsibility kind of thing, I believe. Although that may depend, to some extent, on how the PEO agreement is drafted and that's a question. You know, we don't know exactly how those will be drafted at this stage. As LB59, LB579, excuse me, is drafted I don't believe it adequately takes into consideration our Workers' Compensation Act and how the act is drafted and how it functions and the needs of the work comp system in a couple of, at least, a couple of important ways and several, maybe secondary, but still important ways. The first of the two, I think the most critical area is, is the use of

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policies--of work comp policies--that are written in the name of the PEO rather than the client employers...and that kind of...I believe this concern, kind of, goes to the question Senator Lathrop was raising about...you have a work comp claim, how do you know who the employer is? And in that situation if the policy is written in the name of the PEO rather than individual policies written for the clients, that can be very, very difficult to find out. We have at the court...we have a system in place where we get reports from the National Council on Compensation Insurance whenever an insurance policy is written, when it's renewed, when it's cancelled. All of that data comes in electronically into our system. We have a Web-based system or a Web-based Web site now, where anyone whether it be employee, employer, medical provider can go onto our site and look up insurance coverage. Right. Now, if the only coverage that's shown up there is the PEO then most employees, quite frankly, won't find Joe's Plumbing--to use a common example--if they work for Joe's Plumbing. So that's a major concern, first of all, is how the policies are written and whether the policies are written to cover the PEO, whether the clients show up on that policy or whether they don't. So that's one issue. I think it's impossible...it is possible from all the discussions we've had with NAPEO and with the insurance companies as part of our meetings over the years. I think it's possible for an insurance company to collect sufficient data from the PEO regarding the clients to pass that along to the NCCI which can then pass it along to us. And we've been working for years on the electronic transmission standards and in recent years we've amended those standards. I say we, meaning the IAIABC, a national association, to be able to transmit that kind of data and so it's possible. The difficulty is very few--in my understanding--insurance companies today can have the data that they need to adequately report what's called a master policy or any policy that covers where the PEO is the named insured. So that's the first of the two critical issues, I think. The second one is probably even more important and that goes to perhaps--even more directly--to some of the questions that have been coming up today. And there's been a lot of talk about covered employees. Who is a covered employee under this PEO arrangement? And in this bill, LB579 defines professional employment services as coemployment relationships in which all or a majority of the employees are covered employees. There's a question of some out-of-state clients who come into the state and do business, may or may not be covered. They would need to be covered under the work comp law. Corporate officers and directors may or not be covered and the work comp law handles that. So under the bill, and then under the bill, either the PEO or the client employer would be allocated responsibility for obtaining the work comp insurance, one or the other side would have to obtain that but only for the covered employees. Now what it doesn't say is what happens to the remaining employees. And presumably, then the client employers would have to go out and get another policy to cover those employees. The problem with that is it's illegal under Nebraska's Workers' Compensation Law. Under that on our work comp law, you know, this quote briefly...it says, one of the sections says: each workers' compensation policy shall include within it's terms the payment of compensation to all employees who are within the scope and purview of the Nebraska Workers' Compensation Act. So every policy has to cover all employees. You

can't have a PEO buying a policy first of all, only agreeing to cover certain client employees, and then going out and buying a policy to only cover those employees. So the question of whether the PEO has to cover all the employees of client employer or not is a very fundamental critical question for all work comp laws. Right. I think that as a minimum, and I'm only talking the work comp side now, but the simplest solution is to simply require that every PEO arrangement has to cover all employees of that client employer. Short of that and at a minimum, we think it needs to be clear that any workers' compensation policy has to cover all employees regardless of whether they're covered under the PEO arrangement or not. So beyond that, some other...a few other kind of area beyond those two major areas I've mentioned. Client employers need to have...if you have a policy that's written in the name of the PEO there has to be some way for the client employers to be given notice when that PEO policy is cancelled or nonrenewed, etcetera. Because those clients need to know whether they're covered or not because they are obligated under the law, as Senator Lathrop and Senator White and all of you know. The employee should be given notice of which entity is responsible for the work comp insurance. Now, there was testimony earlier that the bill already requires notice to the employee of the general nature of the coemployment relationship. That's all it says. It doesn't identify any specifics and including work comp. So I think there needs to be some clarification of what notice the employees would have to be given. The PEO, as has been stated, would be given protection of the exclusive remedy provision for work comp but it applies not only to covered employees but it also says it applies to other employees of the client employer. The question is, why should the PEO have the benefit of exclusive remedy provision if it's not covering employees under the PEO agreement? Lastly, and it kind of ties in somewhat, I think, to the testimony from the department, it would allow the PEO to obtain workers' compensation coverage through a duly authorized self-insurance program. Individual self insurance in Nebraska has to be approved by the compensation court, rather than the department, and I can tell you that it would be very difficult for a PEO to qualify as a self-insurer under our work comp standards. We have large...has to be a large employer, has to have sufficient financial resources and backing, but I think the main thing is that it really is...and I hadn't thought of this until I heard the testimony of the department, it's really almost a pooling situation. And right now, in Nebraska workers' compensation there is no group pooling for work comp other than intergovernmental risk management pool, there is intergovernmental risk management pools. Governmental entities like cities and...or cities and other local municipalities and so on, can group together. But other than that, grouping is not permitted for private insurance or private employers. In this situation in order to tell whether the PEO that would be applying for self insurance for work comp is strong enough, we would have to know all of the clients, all of the financials, all the strength of each client employer in order to know whether there was a risk of failure of the PEO. So you almost have a grouping situation there and again, we would have to know who all the clients are. Right now, we don't know that often. So that concludes my testimony. [LB579]

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SENATOR LATHROP: A lot of concerns. Okay. We appreciate your testimony, Mr. Morton, let's see if there are questions. Senator White. [LB579]

SENATOR WHITE: Mr. Morton, first of all, if in the...your first major concern of the two there is listed, for example, that the PEO has an insurance policy covering all of it's employers and then the employer is listed as an additional insured under that policy, would that meet the thrust of your concerns? [LB579]

GLENN MORTON: It would meet the thrust if we...if it were reported to us that way. Now that's the problem right now is that many of the insurance companies don't have the client data. If they did, many of the insurance companies don't have that detailed data and they tell us it would be costly and expensive to gather it, so many of their systems don't. [LB579]

SENATOR WHITE: If the PEO gathers it and provides it, that you are now listed as an additional insured much like you are under health policies regularly offered by employers, would that generally...that scheme? [LB579]

GLENN MORTON: That scheme would work, yes. And I think that, like I said at a minimum--I didn't say it--but at a minimum I think that that bill should be written to clarify that that data will be submitted. [LB579]

SENATOR WHITE: Now with regard to some employees--covered employees--being covered by the PEO, "non-covereds", not. First of all, Nebraska law only requires employees of a company located in Nebraska at any time doing business to be covered by the insurance, correct? [LB579]

GLENN MORTON: Yes. If the employee is doing business in Nebraska, the employer doesn't have to be located in Nebraska, as you know. [LB579]

SENATOR WHITE: No. But if they are doing business here and they have employees here. [LB579]

GLENN MORTON: Doing business, have to be covered, that's right. [LB579]

SENATOR WHITE: We don't purport, for example, to tell Union Pacific--well, that's a bad example, they have FELA... [LB579]

GLENN MORTON: Um-hum. [LB579]

SENATOR WHITE: ...let's say Sears and Roebuck what they have to do with their employees in California. [LB579]

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GLENN MORTON: Right. [LB579]

SENATOR WHITE: Okay. So if, for example, the PEO said--or the policy said--that the employer...that there be two policies, for example, that the primary responsibility shall be on the PEO and then a secondary policy for the employer covering anyone, would that meet your obligation? Point being is, that if they can flow the claims to one policy for the designated employees and then have an umbrella policy for anybody who is not covered, would that meet your issues? That way, the law has...there will be insurance for everyone but they may be able to divert the claims that they have decided to contract under to a different policy. [LB579]

GLENN MORTON: I think that in...right now, in practice there are situations where the premium is allocated, right? [LB579]

SENATOR WHITE: And that is what we're really talking about. [LB579]

GLENN MORTON: That does happen, the premium is allocated and I know in practice there are situations where the claims are allocated or routed one way or the other, right, to one entity or the other. But any time that you start writing, actually writing a policy that only--that limits coverage--that's a problem. It can be handled behind the scenes, but the policy itself, legally...every policy has to cover every employer. [LB579]

SENATOR WHITE: Well, and I guess what I'm trying to ask you is, what is the policy that every employee must be covered by a policy? [LB579]

GLENN MORTON: That's not what the law says right now, and to change...I think that we would have real concern about, about amending that and we would have to talk...do it very, very carefully. [LB579]

SENATOR WHITE: The point would be that every employee must be covered by a master policy, then the question I'm asking is--and I'm just looking for flexible methods to help these folks--for example, they may want to take over one plan but not another plan. So is there a way that you can work with them so that there is accounting method that the policy of every employee...that every employee must be covered is protected--inviolable--and yet at the same time they can do business in a more flexible fashion shifting the cost of some employees to a different policy? [LB579]

GLENN MORTON: I think there's room for discussion. It would have to involve the department, because when it comes to the details of how policies work and how insurance companies work, we'd have to bring them in. We'd be willing to look at that so long as you really didn't get into issues. And we've been resistant, and the court has been resistant in the past to amending a policy so that it, on its face, didn't apply to all employees because you have situations where you have one employer who drops that

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one policy. Say you have these two policies, all employees are covered under one or other of the policies...one employer drops the policy, doesn't renew it, so you have half the employees are not covered by work comp. [LB579]

SENATOR WHITE: But that's the problem you have right now is the employer drops the policy, doesn't advise the court, right now...I mean, that's no different than it is now. [LB579]

GLENN MORTON: That's true. But if you're going to have a situation where you've got multiple policies, we want to have as broad a coverage as possible. [LB579]

SENATOR WHITE: I understand. [LB579]

GLENN MORTON: If there are multiple policies out there, all of them should cover all of those employees. [LB579]

SENATOR WHITE: Yes, and I would like to be able to fly, but it's not likely. (Laughter) I mean, the point is that it may be an undue burden and you're not improving the situation of the employee if that's all your insisting on, because right now an employer can drop one policy and you can lose coverage for everybody. Unlike yourself, I'd rather have half of them covered if we're going to lose half the policy. [LB579]

GLENN MORTON: Well, what you have here is you have coemployment relationship. And if you have both the PEO and the clients being the employer then whichever one has to have a policy must cover all the employees of those clients and so on. [LB579]

SENATOR WHITE: Is the position of the department and the law as you understand it now? [LB579]

GLENN MORTON: As I understand it now. [LB579]

SENATOR WHITE: Okay. And finally, with the notice and I think that's an excellent point, but it's not just insurance. I mean, if they're not making payments to the state for withholding or to the feds for withholding, there ought to be immediate notification requirements as well... [LB579]

GLENN MORTON: Right. [LB579]

SENATOR WHITE: ...so thank you. [LB579]

SENATOR LATHROP: Any other questions? I don't see any, thanks for coming down. We appreciate your thoughts. [LB579]

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KORBY GILBERTSON: Good afternoon Chairman Lathrop, members of the committee, for the record my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of NCCI or the National Council on Compensation Insurance, which is the rating authority for Nebraska. Senator Lathrop had a question earlier regarding who would be considered the employer under workers' compensation. That is somewhat answered on page 23(3) where it says that both the client and the PEO shall be considered the employer for workers' compensation, so I think that somewhat answers your question. NCCI has two primary concerns at this legislation. And those of you who have been involved in the workers' compensation issues over the last few years will be very familiar with our need to be able to gather correct data. And that's one of the concerns with this legislation as it stands. The other one is the ability to complete the impact on experience ratings that may be impacted by this, the director spoke about that earlier as did Mr. Morton. And we have already started conversations with NAPEO about some amendments and we'll continue to work with them and Senator Cornett's office. [LB579]

SENATOR LATHROP: And we appreciate your cooperation... [LB579]

KORBY GILBERTSON: You're welcome. [LB579]

SENATOR LATHROP: ...and your willingness to work with that organization and their representative. Are there any questions? Seeing none, thanks for coming down, Korby. [LB579]

KORBY GILBERTSON: Thank you. [LB579]

SENATOR LATHROP: Still on neutral capacity, any other testifiers? Seeing none, Senator Cornett waives so that will conclude our hearing on LB579. (See also Exhibit 6) We will move to LB627 which is a committee bill and will be introduced by committee counsel. [LB579 LB627]

MOLLY BURTON: I'm going to want to say, may it please the court? (Laughter) It's so different. [LB627]

SENATOR LATHROP: White has that effect on people. (Laughter) [LB627]

MOLLY BURTON: Senator Lathrop and members of the committee, my name is Molly Burton, B-u-r-t-o-n, legal counsel for Business and Labor Committee, introducing LB627 which is a Business and Labor bill. Introduced on behalf of the Department of Labor, specifically this bill amends Nebraska Revised Statute Section 48-722 which is the Boiler Inspection Act. It would allow the commissioner to establish a longer inspection interval for domestic hot water heaters, which would be in conformance with the National Board of Boiler and Pressure Vessel Inspectors inspection requirements.

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Currently under the law, these have to be inspected every year. This would align the law with NBBI, which is the National Board of Boiler Vessel Inspectors, to require a rule or regulation to allow the commissioner to pass such a rule or law or regulation for every other year. John Albin is here from the Department of Labor if you have any specific questions. [LB627]

SENATOR LATHROP: Very good. Apparently Senator White has a question for you. [LB627]

SENATOR WHITE: Are you talking about...I've got a hot water heater in my basement. [LB627]

MOLLY BURTON: Yes, residential. [LB627]

SENATOR WHITE: Are you supposed have those inspected every year? [LB627]

MOLLY BURTON: Well I don't think, no, it's not residential. [LB627]

SENATOR LATHROP: It's boilers, Tom. [LB627]

MOLLY BURTON: No, it's not residential hot water, sorry. Did I say residential? It's domestic. [LB627]

SENATOR WHITE: Well, it's domestic. Yeah, that's what I thought it was residential too, domestic...I don't (inaudible) potable hot water heater is. Thank you. [LB627]

MOLLY BURTON: I'm sure Mr. Albin can answer that. [LB627]

SENATOR LATHROP: We have none other than the Director of the Department of Labor to square that away for you. She'd better know the difference between a residential water heater and a boiler. Welcome. [LB627]

CATHERINE LANG: (Exhibit 1) And I do. Chairman Lathrop and members of the Business and Labor Committee, my name is Catherine Lang, Catherine with a C, Lang, L-a-n-g. And I'm the Commissioner of Labor. Thank you to the committee for introducing this bill on behalf of the Department of Labor. LB627 brings Nebraska's schedule for inspection of domestic potable hot water heaters into line with the legislative recommendations or guidelines established by the National Board of Boiler and Pressure Vessel Inspectors. They issued their guidelines on October 25, 2004. LB627 would authorize the Commissioner of Labor to adopt a two-year inspection cycle for such hot water heaters rather than the one year inspection cycle now required by the Boiler and Safety Act. Typical uses of the tank type water heaters for domestic potable water, that means water that is intended for human consumption and immersion most

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commonly found in schools, apartments, hospitals, hotels, car washes, and are used primarily for heating domestic water. Obviously the ones that are at the car washes are not intended for human consumption but they are included. These tank type water heaters are limited to 160 pounds pressure per square inch and 210 degrees Fahrenheit. The tank type water heaters are acceptable for a biennial inspection frequency because catastrophic failure of these items is not likely to occur because of the controls and safety devices that are required for the code of construction. A typical failure on this type of object is leakage from the lower tube sheet due to corrosion. While tank type water heater explosions can occur they are extremely rare and usually have occurred due to an inferior non ASME construction, or if there's been tampering with the device. Current ASME construction standards would continue to apply and the domestic potable hot water heaters would still be required to be built to the ASME code standards. We will still continue to inspect all new installations to verify that the Boiler Inspection Act construction installation requirements have been met. And with that, I would urge the passage, or the support of this bill out of committee. We also, if it would be helpful to the committee members, have a copy of the standard as well as a chart that compares our laws to all of the surrounding states around Nebraska and I would make that available to the committee members. We have our inspector here today if there would be any technical questions that I could not answer and with that, that concludes my testimony. [LB627]

SENATOR LATHROP: Thank you. And it looks like Senator Wallman has a question for you. [LB627]

SENATOR WALLMAN: Thank you, Chairman Lathrop. And thank you, Cathy, for being here. In these antique tractors and that, do you inspect steam engines? [LB627]

CATHERINE LANG: I don't know the answer to that. [LB627]

SENATOR WALLMAN: Okay. Thank you. I hear some heads shaking...I see some heads shaking. [LB627]

CATHERINE LANG: Shaking this way? Okay. [LB627]

SENATOR LATHROP: The record we create in these hearings. Senator Council. [LB627]

SENATOR COUNCIL: And I guess this is my confusion and I had the same confusion that I think Senator White was laboring under. I mean, when I read the first subsections of the act, all it talks about is boilers, boilers, boilers. And then when I get to the amendment it talks about potable hot water heaters. Where is the definition? [LB627]

CATHERINE LANG: If we could, I would ask Mr. Cantrell to come forward and answer

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that question for you when you guys are done with me. That was easy. [LB627]

SENATOR LATHROP: Apparently we're done with you, so. Thank you for your testimony. [LB627]

CATHERINE LANG: All right, that'll be great. [LB627]

CHRISTOPHER CANTRELL: Mr. Chairman and members of the committee, thank you for having me today, my name is Christopher Cantrell, C-a-n-t-r-e-l-l. And I'm the Chief Boiler Inspector for the state of Nebraska. Senator Council, to answer your question, in the Boiler Inspection Act, paragraph 48-720 we define a boiler "Boiler means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam or vapor is superheated, or any combination thereof, under pressure or vacuum, for internal or external use to itself, by the direct application of heat and an unfired pressure vessel in which the pressure is obtained from an external source or by the application of heat from an indirect or direct source. Boiler includes a fired unit for heating or vaporizing liquids other than water only when such unit is separate from processing systems and complete within itself." Title 229 of the Nebraska Administrative Code basically goes and says we're going to call anything a boiler if it has fire or electricity on one side and heating and hot liquid on the other side. So a water heater is technically, by statute, a boiler. We only regulate commercial water heaters. Also in our statute here or in the act, we exempt the water heaters in residence and private residences and we define private residences as anything with less than...four or less units--dwellings--at one location. So an apartment complex, or a quadplex would not be covered under the act or an individual residence, but anything greater than that would be covered under the act. So that is where we bring the water heaters in and that is where we get into the larger units. Additionally, we do have heat input ratings on some of these. Anything with a heat input rating of greater than 200,000 British thermal units input, anything greater than 210 degrees Fahrenheit or any storage tank greater than 120 gallons would be brought into the act. Anything that is less than all three of those would not be inspected also. So we're looking at primarily commercial applications, higher heat input applications, the higher energy applications. And that's where our water heaters or boilers become subject to the inspection under the Nebraska Boiler Inspection Act. [LB627]

SENATOR LATHROP: Can I ask you a question? [LB627]

CHRISTOPHER CANTRELL: Sure. [LB627]

SENATOR LATHROP: Do you have the bill in front of you? [LB627]

CHRISTOPHER CANTRELL: I do not have the bill in front of me. [LB627]

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SENATOR LATHROP: I'm just wondering because I...and I have to confess I have the same concern when I read the amendment that it seemed like, you know, the entire unamended portion of the bill talks about the Boiler Inspection Act and then we flip it over and it sounds like it's talking about my water heater. And you're saying that the act exempts out my residential water heater and I'm wondering if we don't clarify it by adding inspection schedule for nonexempt domestic potable water heaters? [LB627]

CHRISTOPHER CANTRELL: Yes, that would probably...well, that appears throughout Title 229 as well as the rest of the Boiler Inspection Act so, I believe we call it a jurisdictional object. When we define our exemptions: boilers and vessels to which the act does not apply...yeah, we're calling them all boilers here, yeah, so if we want to I wouldn't have a problem. As the Chief going ahead and defining those. [LB627]

SENATOR LATHROP: There is boilers and then we exempt things out of it. [LB627]

CHRISTOPHER CANTRELL: Yes. [LB627]

SENATOR LATHROP: And the things that have been exempted out of what we call a boiler, you don't want to try to regulate or amend with this act? [LB627]

CHRISTOPHER CANTRELL: Well, additionally in the Boiler Inspection Act, we define boiler itself. In Title 229 is where we expand upon that. We actually define what a water heater is, we define what a high pressure steam boiler is, a low pressure steam boiler is, a high temperature, so. [LB627]

SENATOR LATHROP: Got you. And you have the act, you have it in front of you. Look at the page 4 and you'll see where the confusion comes in. You don't call it a boiler in that new paragraph, you just say a domestic hot water heater, essentially. [LB627]

CHRISTOPHER CANTRELL: Yes. [LB627]

SENATOR LATHROP: And what you mean to say is a nonexempt hot water heater. [LB627]

CHRISTOPHER CANTRELL: I guess what we could say is, the commissioner may by rule and regulation establish an inspection schedule for boilers used primarily for domestic potable water heating. [LB627]

SENATOR WHITE: Or nonexempt boilers. [LB627]

CHRISTOPHER CANTRELL: Nonexempt boilers used primarily for domestic potable water heating. [LB627]

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SENATOR LATHROP: Yep. Because boilers is broad enough to include Senator White's water heater. [LB627]

CHRISTOPHER CANTRELL: We can call it a boiler and then we can define that this specific boiler that we're going to do the two-year inspection frequency on is going to be used for domestic potable water heating. [LB627]

SENATOR LATHROP: All right, now I want to make sure we're on the same page. If we insert there between schedule 4 and domestic potable water, if we make that read schedule 4, nonexempt boilers used for domestic potable water. [LB627]

CHRISTOPHER CANTRELL: That's correct, that would be acceptable. [LB627]

SENATOR LATHROP: Okay. All right, we know what the fix is. Any other questions? All right. We appreciate your testimony. [LB627]

CHRISTOPHER CANTRELL: Thank you. [LB627]

SENATOR LATHROP: Anyone else here in support of LB627? Anyone in opposition? Anyone in a neutral capacity? I think that'll do it. Close the hearing on LB627. That will do it for our hearing today. [LB627]

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Disposition of Bills:

LB554 - Held in committee.

LB573 - Placed on General File with amendments.

LB579 - Placed on General File with amendments.

LB627 - Placed on General File with amendments.

Chairperson

Committee Clerk