

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

Health and Human Services Committee
February 27, 2009

[LB223 LB446 LB452 LB604 CONFIRMATION]

The Committee on Health and Human Services met at 1:30 p.m. on Friday, February 27, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB223, LB446, LB452, LB604, and gubernatorial appointments. Senators present: Tim Gay, Chairperson; Dave Pankonin, Vice Chairperson; Kathy Campbell; Mike Gloor; Gwen Howard; Arnie Stuthman; and Norman Wallman. Senators absent: None. []

SENATOR GAY: We're going to get started right now on...we got public hearings, actually, on appointments for a Commission for the Deaf and Hard of Hearing, Commission for the Blind and Visually Impaired, and then also Board of Emergency Medical Services. So we'll get started with those. I see there were four nominations for the Commission for the Deaf and Hard of Hearing: a Steven Manning, Clifford Carlson, Luana Duennerman, and Jan Moore. I think Senator Colby Coash is coming in for Luana. So when he gets here, we'll go with her. Then we will move onto the Commission for the Blind and Visually Impaired and Carol Jenkins nomination. And then we will go to Board of Emergency Medical Services and Dr. Theresa Hatcher. So we will start off on a...with Steven Manning. [CONFIRMATION]

STEVEN MANNING: Do you want me to stand or sit? [CONFIRMATION]

SENATOR GAY: Welcome. [CONFIRMATION]

STEVEN MANNING: Would you like me to... [CONFIRMATION]

SENATOR GAY: Any time. Oh, sit down. You bet. Whatever is best for you. [CONFIRMATION]

STEVEN MANNING: Hello. [CONFIRMATION]

SENATOR GAY: Hello. Just go ahead and... [CONFIRMATION]

STEVEN MANNING: You want me to have the mike over here or not? [CONFIRMATION]

SENATOR GAY: Yeah, whatever works for you. We'll just go ahead and...tell us a little bit about yourself. We do have..for everybody we have information that you submitted in front of us, so. But if you want to tell us a little bit about yourself. [CONFIRMATION]

STEVEN MANNING: Okay. In the past I've been board members of different agencies in Tennessee. I've been living here in Nebraska in Omaha for 15 years. Now I've become very interested in becoming involved with the Commission for the Deaf and

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Hard of Hearing to be on the board. I'd like to see some improvements in the deaf community. We need some services and more support. Right now, I'm working as a program analyst for a company in Omaha. [CONFIRMATION]

SENATOR GAY: All right. What kind of services are you looking to expand or what would you recommend? [CONFIRMATION]

STEVEN MANNING: We need more qualified interpreters. We have a shortage of interpreters. We need more training and expansion in the schools and colleges. Another thing I'd like to see is more advocacy services for the deaf and lobbying for the state of...no, jobs for the deaf in the state of Nebraska. Also, I'd be please to see more schools and colleges providing sign language classes. You know, it's become a foreign language and I'm interested in that. So then the college students can take that for a foreign language. And later if they want to be able to use that and become interpreters, then they can move on into an interpreter training program. And because there are many job opportunities for them right now. We do not have enough interpreters, so I'm hoping to expand that service more. Thank you. [CONFIRMATION]

SENATOR GAY: Thank you. We'll see if there's other questions from the committee. Are there any questions from the committee they would like to ask? I don't see any at this point. Thank you for coming. [CONFIRMATION]

STEVEN MANNING: Thank you very much. [CONFIRMATION]

SENATOR GAY: I've got a Clifford Carlson. Mr. Carlson. [CONFIRMATION]

CLIFFORD CARLSON: Good afternoon. [CONFIRMATION]

SENATOR GAY: Good afternoon. [CONFIRMATION]

CLIFFORD CARLSON: I'm not sure if I'll need this or not, but I'll move it around. [CONFIRMATION]

SENATOR GAY: Yeah, you will because it's being recorded. [CONFIRMATION]

CLIFFORD CARLSON: Okay. Can you hear me okay? I'll stick with the theme of briefly introducing myself and then take any questions. I am a current member of the Nebraska Commission for the Deaf and Hard of Hearing. The seats on our board have tags on them, if you will. I fill a seat for the hard of hearing community. I am hard of hearing. I've lost my hearing in my right ear. I also...this doesn't involved my appointment to that commission, but I have a deaf son. So I guess I carry those two things with me as I enter our meetings. I think I represent equally the hard of hearing community and the deaf community on behalf of my son. I don't know if it's a good or a bad thing, but I think

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I know almost everyone on this committee in some way, shape or form. Senator Campbell, you may not know this, I'm your constituent. And then I know Senator Gloor and Senator Gay which I had conversations in the past on other bills, and Senator Howard and Senator Pankonin. So I appreciate your service to our state. It's a difficult year legislatively. And so the cause and the reason I value being appointed on the Commission for the Deaf and Hard of Hearing is to help in times of tough, fiscal constraint, know what is, I think, the most valuable to the deaf and hard of hearing community and what we're going to have to maybe let go of during these tough times. I appreciate being reappointed. I think the more consistence we can have on the board at this time the better. I think changing too much right now would be difficult, so I would appreciate being, you know, reappointed. But other than that I would take any questions any of you would have. [CONFIRMATION]

SENATOR GAY: All right. Thank you. Questions from the committee? Senator Gloor. [CONFIRMATION]

SENATOR GLOOR: Thank you, Mr. Carlson, for your service up to this point. [CONFIRMATION]

CLIFFORD CARLSON: Sure. [CONFIRMATION]

SENATOR GLOOR: What has been the most rewarding aspect of serving and what's been the most frustrating aspect of serving? [CONFIRMATION]

CLIFFORD CARLSON: That's a very good question. I think the...clearly the most rewarding aspects of serving so far have been seeing the day-to-day outcomes and impact we have on the community. We are truly a service commission. I think of a lot of the commissions that are in place in the state we touch human lives maybe the most. You know, the division...and the Blind and Visually Impaired Commission are the same way. We can see daily impact on advocacy, on technology, on things that we're doing to help people's lives get better, better career opportunities. So that's been rewarding. Challenging is trying to help people both at the legislative level and at the local level understand that the war we're fighting right now, the wars that we're fighting right now are going to impact the amount of constituents we're going to have in the Nebraska Commission for the Deaf and Hard of Hearing. Every person who serves in a for-capacity firing a weapon for our country comes back with hearing loss ranging from mild to profound. And I think that that downstream effect of our wars on our commission and on our state is not being recognized as much as it should. If our current president's objectives are to end those wars and have those many service men and women coming home, they're going to be looking for services from Veterans Affairs as well as from the Commission for the Deaf and Hard of Hearing because they're going to come back with some pretty significant hearing loss, so. [CONFIRMATION]

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SENATOR GLOOR: Thank you. [CONFIRMATION]

SENATOR GAY: All right. Any other questions? Senator Campbell. [CONFIRMATION]

SENATOR CAMPBELL: Mr. Carlson, thanks for serving. And would like to have any ideas that you have about increasing the number of interpreters and do we need to do something there? [CONFIRMATION]

CLIFFORD CARLSON: Well, I would echo the sentiments of the gentleman I am following in that early identification of the opportunity as interpreter and as a career. The idea that sign language is recognized as a language at the collegiate level is important, but I think that's only the first step. Getting students to enroll and show an interest in sign language is critical. But then also the importance of the impact of state licensure has. I mean, it's important that we have licensed interpreters. And there's people out there who are doing the career and the work of sign language interpreters a disservice by acting in an unlicensed, unapproved way. So I think it's twofold. Educating the young people about the career opportunity for them and getting those opportunities out there. And then two, make sure the people that we have in place in the field now are certified, that they're evaluated, and they're doing good service to the deaf community, so. [CONFIRMATION]

SENATOR GAY: Any other questions? And I know, Mr. Carlson, you been here. I will apologize. I should have introduced. I know you're familiar. But over here I'll introduce people: Jeff Santema is our legal counsel; Senator Mike Gloor is a member; Senator Kathy Campbell; and Senator Dave Pankonin is at a meeting and unavailable to be here. I'm Senator Tim Gay; Senator Stuthman also advised us that he is at a meeting, a prior meeting that he did; Senator Gwen Howard; Senator Norm Wallman; and our clerk Erin Mack. So for those of you in the audience I apologize that we didn't introduce ourselves, but I'll take the blame on that. Usually we start at 1:30 and I kind of just rushed right into it, so. But any other questions? I don't see any. Thank you for your service. [CONFIRMATION]

CLIFFORD CARLSON: Thank you very much, Senator Gay. [CONFIRMATION]

SENATOR GAY: And then I see Senator Colby Coash is here on behalf of a constituent, Senator. [CONFIRMATION]

SENATOR COASH: Correct. [CONFIRMATION]

SENATOR GAY: Did I pronounce...I'll let you pronounce. [CONFIRMATION]

SENATOR COASH: I'll do my best. [CONFIRMATION]

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SENATOR GAY: Luana Duennerman. [CONFIRMATION]

SENATOR COASH: Well, thank you, Senator Gay and members of the Health and Human Services Committee. It's my honor today to be here and represent Luana Duennerman. Luana has been serving on the Commission for the Deaf and Hard of Hearing. And she was unable to be here today, but I do have something to read in her absence to the committee. To the HHS Committee: I am honored, I give my oath to serve to the best of my ability during my second term as board member for the state of Nebraska and the Nebraska Commission for the Deaf and Hard of Hearing. I have enjoyed serving my first term and consider it a great honor. I hope I have been of service to the deaf and hard of hearing within the state of Nebraska. Thank you. [CONFIRMATION]

SENATOR GAY: Thank you. Do you want to answer questions, do you know? Quite a resume here that we have in front of us. [CONFIRMATION]

SENATOR COASH: I will try. [CONFIRMATION]

SENATOR GAY: Well, there may not be any, but anyway. [CONFIRMATION]

SENATOR COASH: I've looked at the resume as well. She's highly qualified and... [CONFIRMATION]

SENATOR GAY: Yeah, very qualified, and we appreciate her service that's for sure, but. [CONFIRMATION]

SENATOR COASH: Some of you may know her from the last committee hearings. [CONFIRMATION]

SENATOR GAY: Right. Are there any...well, any questions for Senator Coash that he may be able to answer? I think we have plenty in front of us. And tell your constituent and your friend appreciate the help and we'll forward it on. Do you want...one thing, though, would you like to make a copy of that? [CONFIRMATION]

SENATOR COASH: I sure... [CONFIRMATION]

SENATOR GAY: Just give it to a page and we'll submit that too. All right. Thank you. [CONFIRMATION]

SENATOR COASH: Thank you. [CONFIRMATION]

SENATOR GAY: Jan Moore. Welcome. Go ahead and tell us a little bit about yourself. [CONFIRMATION]

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JAN MOORE: Well, I'm actually new to Nebraska and I live in Kearney. So I was interested in serving on the commission for a number of reasons, one to hopefully represent the...our stakeholders in the more rural part of the state which is important. Also I have devoted my entire career which is 25 years, over 25 years towards working with families with deaf children. And I am an expert in cochlear implants and, you know, working with patients, both adults and children, with cochlear implants. I'm a professor at UNK, and so I wanted to offer my service to the state as an expert in a low incidence disability. [CONFIRMATION]

SENATOR GAY: All right. Any questions from the committee? Senator Gloor.
[CONFIRMATION]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you for your willingness to consider serving, Ms. Moore. You've got...and you've been in a number of locations.
[CONFIRMATION]

JAN MOORE: Um-hum. [CONFIRMATION]

SENATOR GLOOR: I used to have friends in Yellowknife. [CONFIRMATION]

JAN MOORE: Oh, really? [CONFIRMATION]

SENATOR GLOOR: Yes, but it was a long time ago. [CONFIRMATION]

JAN MOORE: Well, it's been a while since I lived up north, too, but. [CONFIRMATION]

SENATOR GLOOR: But on the other hand, that experience and some of the other experience you've been around, were you ever involved in an opportunity to do some advocacy or serve in a similar position, do you think, in any of those other locations?
[CONFIRMATION]

JAN MOORE: Well, when I was in the Northwest Territories, I was on the NWT Council for Disabled Persons there. I also represented the territory at the national level for providing standards for service for people with disabilities, and actually made a couple of trips to Ottawa for those meetings. You know, since kind of moving back stateside I think there's more people to fulfil those roles in the U.S. but have kind of, I guess, shifted my focus towards getting my Ph.D. and then doing research and teaching, so.
[CONFIRMATION]

SENATOR GLOOR: Okay. Thank you. [CONFIRMATION]

SENATOR GAY: Senator Campbell. [CONFIRMATION]

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SENATOR CAMPBELL: Dr. Moore, I also have a personal connection with you in the sense that I have two children who graduated from Purdue, so. [CONFIRMATION]

JAN MOORE: Oh, hail, hail. (Laughter) [CONFIRMATION]

SENATOR CAMPBELL: Yes. Absolutely, absolutely. I was just curious because I...an administrative aid in another organization that I'm with, her niece has cochlear implants. [CONFIRMATION]

JAN MOORE: Um-hum. [CONFIRMATION]

SENATOR CAMPBELL: What percentage of children across the country need those? I'm just curious based on your research and... [CONFIRMATION]

JAN MOORE: Well, from a medical treatment aspect, I mean, many people with severe and profound deafness could benefit from implants. So whether parents choose that for their child or not, that's really a parental decision based on, you know, their desires of raising their child and what their goals for their child are really. But...and there's a wide variety of outcomes with kids with implants, and some of that has to do with their own anatomy and neural survival of the tissue that they have and other...and then each child's, obviously, their different abilities to learn to use the sound that they get from the implant, which is quite compromised. So it's...you know, it's sound, but it's a pretty compromised sound, so. But, you know, I'm an advocate for helping parents understand what the risk and benefits are, you know, for getting cochlear implantation. And in my position, of course, at UNK I'm actually teaching, you know, future service providers that information. [CONFIRMATION]

SENATOR CAMPBELL: Thank you for your willingness to serve. [CONFIRMATION]

SENATOR GAY: Any other questions? I don't see anymore. Thank you very much. Appreciate it. [CONFIRMATION]

JAN MOORE: Okay. [CONFIRMATION]

SENATOR GAY: All right. We will move on for Commission for the Blind and Visually Impaired, Carol Jenkins. Hello. [CONFIRMATION]

CAROL JENKINS: Hello. [CONFIRMATION]

SENATOR GAY: Thank you for coming. Tell us a little bit about yourself. [CONFIRMATION]

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CAROL JENKINS: I became involved with the Commission about three years ago. I was a junior at Peru State College seeking my bachelor's degree in elementary education and early childhood development, and I had hit a point in my life where I had given up all hope. My vision had become so bad that I didn't want to finish college, I had to resign from my job because I couldn't perform my duties anymore, and I wasn't going to do anything. I was going to live at home with my mom and dad and that was going to be it for me. And then I talked to one of the counselors at the commission and, you know, they encouraged me to finish college, get my degree, you know, and it was going to be good for me and all this stuff. So I did. I finished college and graduated with honors, and I started getting lessons taught to me in my home with Braille and cane travel and independent living skills and things of those sorts. And I went through their training center two years ago, and graduated in June of 2007. And the commission really gave my hope and faith in myself back, but most importantly my independence. And since then I have voluntarily participated in almost every single program that they offer, except one. There's one I haven't done, and I have been a guest instructor, you know, counselors for children, and all sorts of things because I truly believe in what the commission can do to help improve the lives of blind people. [CONFIRMATION]

SENATOR GAY: That's excellent. Thank you very much. Let's see if there's questions for you. Any questions from the committee? I don't...oh, Senator Wallman. Right. Thank you. [CONFIRMATION]

SENATOR WALLMAN: Thank you, Chairman Gay. Thank you for testifying. It looks like you've had an interesting...you know like that Golden Eagle Casino and stuff. Did you enjoy doing that kind of stuff? [CONFIRMATION]

CAROL JENKINS: (Laugh) Yes. That was the job I was doing that I had to quit. It was a very...it's a very interesting job working at a casino. I started out dealing cards, live table games, and switched from that to being a security guard because it got hard to read the numbers on the cards correctly and, you know, decipher the amount of...number of chips correctly. And I think that was me trying to find an easier job thinking that security was going to be easier, you know, but having to read IDs and stuff, it's really difficult when you can't see people's faces to start with, so. But, yeah, it's a very interesting job, gives you a different perspective about things. [CONFIRMATION]

SENATOR WALLMAN: Well, thank you for what you do. [CONFIRMATION]

SENATOR GAY: All right. Well, looking at your resume, that's very impressive, so. [CONFIRMATION]

CAROL JENKINS: Thank you. [CONFIRMATION]

SENATOR GAY: That's a 4.0 (laugh) is excellent. Just can't get much better than that.

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But anyway, that's quite an inspiration. [CONFIRMATION]

CAROL JENKINS: Yes. I had to work very hard for those. [CONFIRMATION]

SENATOR GAY: I'm sure you'll do a great job also. All right. Any other questions? I don't see any. All right. Thank you very much for coming today. [CONFIRMATION]

CAROL JENKINS: Thank you. [CONFIRMATION]

SENATOR GAY: And then we have Board of Emergency Medical Services. What we're doing also, this is just a public hearing. The committee then will discuss nominees and forward them to the full Legislature. So we appreciate you coming down so we can get a chance to visit and see these resumes. And then that will be probably in a week or two. I don't know the exact date that we'd do that. And I don't know...do we notify nominees when it's going to the Legislature at all, Jeff, or is there some way that they would find that out? You can call into the office, okay, to our office, Senator Gay. All right. We'll move on to Board of Emergency Medical Services, Dr. Hatcher. [CONFIRMATION]

THERESA HATCHER: Hi. Theresa Hatcher. Thanks for having me. I've been an emergency medicine physician for over 20 years, and most of that time I've worked with both prehospital providers and training agencies. I've also sat on the Bellevue City Council for 12 years, so I think I know how medicine and government interact. So I think I would bring that to the board. But actually I'm pretty excited about the EMS Board. I've always said, you know, EMS is always overlooked until something bad happens in your life. It's something nobody ever thinks about. But it's important because when you're having a crisis and you dial 911, that's your first access into the healthcare system. You know, that's before you get to an ER, before you get to your primary care doctor, before you ever get admitted to a hospital, that's how you access the system. And the people that respond when you dial 911 have to be trained and quality assured and controlled. And I think that's why this is an important board, and I'd like to be involved and bring to it what I can. [CONFIRMATION]

SENATOR GAY: All right. Any questions for Dr. Hatcher? [CONFIRMATION]

SENATOR CAMPBELL: Just appreciate your stepping forward. [CONFIRMATION]

THERESA HATCHER: I'm pretty excited. [CONFIRMATION]

SENATOR GAY: Yeah. Well, I'd just say, Dr. Hatcher, this isn't a question, but I know I've worked with you for years and appreciate all your service. You're very qualified for this board, I do know that, so. [CONFIRMATION]

THERESA HATCHER: Thanks, Senator. That means a lot. [CONFIRMATION]

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SENATOR GAY: And we've worked together at county things and been watching you, so... [CONFIRMATION]

THERESA HATCHER: Um-hum. Politics and fund-raisers. [CONFIRMATION]

SENATOR GAY: We're fortunate that you want to serve. Thank you. Any questions from the committee for Dr. Hatcher? I don't see any. Thank you for coming down today. [CONFIRMATION]

THERESA HATCHER: Thank you very much. [CONFIRMATION]

SENATOR GAY: Thank you. All right. Let's take about a five minute break and then...unless...well, hold on. Do we need to open up though for the other public hearings? Could we just go right to that? Let's do this: Senator Howard has a commitment. I'm going to move LB604 up. Are your proponents and all that here? [CONFIRMATION]

SENATOR HOWARD: I think we have everybody here, don't we? []

SENATOR GAY: LB604 is going to be moved to the first on the agenda today. And we will get started with Senator Howard introducing LB604. [LB604]

SENATOR HOWARD: Good afternoon, Senator Gay and members of the Health and Human Services Committee. For the record, I am Senator Gwen Howard and I represent Legislative District 9. I appreciate this opportunity to present LB604 for your consideration. LB604 would exempt certain medical oxygen suppliers that supply medical oxygen to patients pursuant to a medical order from the pharmacy licensure and delegated dispensing requirements. Only those medical oxygen suppliers accredited by a recognized accrediting body would be exempt. In the simplest terms, LB604 deletes the requirement in the pharmacy statutes that a pharmacist supervise and be involved in the provision of medical oxygen to home health patients. By providing this exemption, Nebraska law would promote safety, simplify regulation requirements for medical oxygen delivery business, protect pharmacists from undo assumption of risk, and promote access to medical services. The requirement that a pharmacist be involved in the dispensing of oxygen to patients not in a hospital or a nursing home was added to the statutes in 2001, and works a profound change in the way in which medical oxygen is and has been provided to home health patients over many years. Historically, pharmacists have not been involved in the provision of oxygen to home health patients. Physicians, patients, respiratory care professionals, and home health companies are the parties involved in the furnishing of oxygen. The requirement that a pharmacist be involved in the process adds an unnecessary regulatory hurdle with no offsetting benefit to patient safety. In addition, the requirement adds burdens

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that unnecessarily increase the cost of healthcare and that could limit access to medical oxygen for patients in rural areas of Nebraska. Under LB604, pharmacists will retain the credential to dispense oxygen to home health users, but home health companies will not be required to contract with a pharmacist in order to furnish oxygen to patients for use at home. LB604 is supported by the Board of Pharmacy, the Nebraska Department of Health and Human Services, the Midwest Association for Medical Equipment Services, and the Nebraska Pharmacists Association. And I have testifiers who have worked with my office to draft this bill. They're here to provide you with additional details, and they can answer any technical questions that you might have. I also have a letter...I hope you have this letter of support from Health and Human Services supporting this bill, which I plan to frame. [LB604]

SENATOR GAY: If we don't, we'll get it. Thank you, Senator Howard. Proponents on LB604? [LB604]

PATRICIA ZIEG: Are you ready? [LB604]

SENATOR GAY: Yup. [LB604]

PATRICIA ZIEG: (Exhibit 1) Good afternoon, Mr. Chairman and committee members. My name is Patricia, P-a-t-r-i-c-i-a Zieg, Z-i-e-g. I'm here on behalf of Apria Healthcare. Apria is A-p-r-i-a. Apria is a home healthcare products and services provider with operations in Nebraska. We are urging adoption of LB604. And as Senator Howard aptly stated, this will create an exemption from the current pharmacy licensure and delegated dispensing agreement requirements for a limited class of medical oxygen suppliers. These are the suppliers who supply to end users pursuant to a medical order and who are accredited by an approved accreditation body. Since 2001, Nebraska has required that these same medical oxygen suppliers have an agreement with a licensed pharmacist whereby that pharmacist would delegate his/her dispensing authority, if you will, to another entity. The pharmacist then under the agreement accepts certain responsibilities like supervising and validating training proficiency and also conducting some routine inspections at regular periodic intervals. And this has created an interesting regulatory situation because pharmacists are not...the pharmacy education curriculum does not really include with any specificity instruction on the dispensing and especially the administration of oxygen. So as you can well anticipate, we have not been deluged with requests from pharmacists for the option to contract with medical oxygen suppliers. They are not particularly comfortable with this situation nor have they...the pharmacists been able to get bids from their professional liability insurers to cover this kind of duty. So essentially what happened in 2001 is that probably not with this direct intention, but the entire care delivery model for medical oxygen was changed to require a pharmacy model be used. And we do not think that it brings any additional, you know, safety or benefits to any of the businesses involved. Over the last several years, the Board of Pharmacy, the Department of Health, the medical oxygen suppliers,

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and the pharmacists have worked very hard to try to construct a delegated dispensing agreement and permit system that would make some sense for patients and the businesses involved in public safety. And really the conclusion after, you know, four or five, six years of working at this has been, no medical oxygen really needs to be treated in a way differently than other legend drugs. Hence, the agreement that LB604 with the exemption from the Pharmacy Practice Act is probably the best way to go. As represented earlier, the department supports LB604, the Board of Pharmacy supports it, and Nebraska Pharmacists Association also supports it, so. [LB604]

SENATOR GAY: All right. Any questions? Senator Gloor. [LB604]

SENATOR GLOOR: Thank you, Chairman Gay. Ms. Zieg, if I could rather than ask a question, I'll probably use you being up here as a opportunity to share with the committee that teacher testifiers, although some of them may have left thinking that they could come back later, actually used to work for me. Our institution was a half owner in a durable medical equipment company, and the manager of that company was here earlier. I would tell you that this is one of those commonsensical changes in statute that I'm glad to see come forward. It never made sense to me as a half owner of this that we had to have this contract with pharmacists. Frankly, the people that we would turn to as experts and the people that we recruited to head up the business were always respiratory therapists because they had the specific level of training necessary to ensure both quality and efficacy of the operation. So the fact that someone doesn't have to struggle to come up with a pharmacist who is willing to kind of hold a hand under statute is an advancement that I'm glad to see and I think will make a difference in quality care. [LB604]

PATRICIA ZIEG: Great. Thank you, Senator. [LB604]

SENATOR GLOOR: So just by way of reassurance to the committee that this is a...I'm glad to see this come forward. [LB604]

PATRICIA ZIEG: Thank you. [LB604]

SENATOR GLOOR: And I appreciate Senator Howard presenting it so that I probably wouldn't have to in two years (laughter). [LB604]

PATRICIA ZIEG: That's great. Thank you. [LB604]

SENATOR GAY: All right. Very good. Thank you, Senator Gloor. Any questions? I don't see any, thank you. [LB604]

PATRICIA ZIEG: Thank you. [LB604]

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SENATOR GAY: (Exhibits 4, 6) Other proponents? And we did receive two letters of support: Midwest Association for Medical Equipment Services and the Department of Health and Human Services that Senator Howard had alluded to. Welcome. [LB604]

JAMES FITZGERALD: (Exhibit 2) Good afternoon. My name is James Fitzgerald, F-i-t-z-g-e-r-a-l-d. I'm a respiratory therapist and the general manager for American HomePatient. We have five locations here in Nebraska. We supply respiratory and medical equipment to patients in their homes with oxygen distribution being the largest aspect of our business. I'm here today to urge the committee to support LB604, which would exempt credited oxygen providers from the statutes pertaining to the practice of pharmacy. Since 2001, medical gas suppliers have been included in the pharmacy statutes with provisions to oversee the methods in which oxygen is distributed. Our challenge over the past eight years has been to attempt to fit a nonpharmacy business within the guidelines, and the result has been ongoing confusion and debate about how they apply. Medical gas distributors and pharmacies have substantially different business models and methods for distributing their products. In order to comply with the regulations as outlined under delegated dispensing, our company would be required to retain a pharmacist whose duties would include: approving policies and procedures, training and evaluating the competency of staff, and routinely performing inspections. Additionally, compliance would require us to create new administrative and duplicate recordkeeping processes which would represent significant time and cost to develop without a notable improvement in patient care or public safety. Today, our business and its policies related to oxygen are governed by the Food and Drug Administration, the Department of Transportation. Most recently the Centers for Medicare and Medicaid have also mandated that suppliers become accredited by organizations which they have awarded deemed status, such as ACHC, the Accreditation Commission for Health Care, who has granted us our accreditation. These organizations become yet another layer of regulation to ensure quality standards are developed and followed and provide accountability with scheduled and unscheduled on-site surveys. I've worked as a respiratory therapist in the medical gas industry here in Nebraska for 20 years now. I have witnessed the efficient delivery of home oxygen repeated over and over for thousand of patients in that time without issue because of the existing framework of federal regulations along with the expertise of licensed respiratory care practitioners. Pharmacists are not schooled in the specifics of oxygen or the equipment used to provide it nor do pharmacists routinely dispense medical oxygen or counsel on its use. I am concerned that without the exemption outlined in LB604 there will be burdensome costly regulations enforced by those who are not experts in our business. I also share concern with those in our MAMES organization that inability to find pharmacists, especially in rural areas, may prevent access to oxygen for some patients in the future. I would like to thank Senator Gwen Howard for introducing the legislation and appreciate your consideration. [LB604]

SENATOR GAY: Thank you. Any questions from the committee? I don't see any. Would

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you mind if we had your written testimony and we had copies and handed it out, that one which you just read? [LB604]

JAMES FITZGERALD: I have 12 copies right here. [LB604]

SENATOR GAY: Oh, excellent. Thank you. You're way ahead of me. Thank you very much. [LB604]

JAMES FITZGERALD: You're welcome. [LB604]

SENATOR GAY: Other proponents? Any other...come on up. [LB604]

CHRISTINE BARTLETT: Hello. [LB604]

SENATOR GAY: Hello. [LB604]

CHRISTINE BARTLETT: (Exhibit 3) My name is Christine Bartlett, B-a-r-t-l-e-t-t. I'm the branch manager for Apria Healthcare, a home medical equipment company here in Lincoln. Apria Healthcare has been providing home oxygen to the community for the past 25 years. I personally have been with Apria Healthcare for the past 24 of those years. In addition to following our own policies and procedures, we have been required to adhere to strict FDA guidelines for the provision of oxygen to our home care patients. We are accredited by the Joint Commission. We are required to be audit ready for both internal and external audits to ensure that we comply with all regulations related to the dispensing and administration of medical oxygen. Our auditing bodies include a number of departments within our own organization as well as the FDA, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the U.S. Department of Transportation, and the Joint Commission. We feel there are no gaps in the protection to the public with the existing regulations that are currently in place. In fact, our organization has had no reported patient incidents or patient harm as it relates to our dispensing of oxygen over those 25 years. LB604 will allow qualified oxygen providers to continue to provide the community and the state with the professional oxygen services that the people and the physicians of this state expect and are accustomed to receive. This bill makes sense as it allows our respiratory therapists and other properly trained individuals to continue to provide quality oxygen services as ordered by their physician to patients in all geographic areas of the state without the need to retain a delegating pharmacist--excuse me--to supervise their operations although he or she would likely be unfamiliar with oxygen dispensing and administration. We wish to thank Senator Gwen Howard for her support, and respectfully request the committee's consideration of this bill. [LB604]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. [LB604]

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CHRISTINE BARTLETT: Thank you. [LB604]

SENATOR GAY: Any other... [LB604]

CHRISTINE BARTLETT: And I do have copies here as well. Would you like me to leave those? [LB604]

SENATOR GAY: You bet. Hand them to the clerk. You bet. And then for the record, Senator Pankonin and Stuthman have joined us. They were at a meeting prior to, that they couldn't get here until 1:30. Go ahead, Joni. [LB604]

JONI COVER: Good afternoon, Senators. My name is Joni Cover, it's J-o-n-i C-o-v-e-r. I'm the executive vice president of the Nebraska Pharmacists Association, and I'm here today in support of LB604. I, too, would like to thank Senator Howard for introducing this bill. This has been a long time coming. And why it's such a big deal for all of us is that under federal law oxygen is a legend drug. And in Nebraska law, legend drugs may only be dispensed by pharmacists and by physicians with dispensing practitioner licenses. Well, we have this entity...entities across the state of Nebraska who have been distributing oxygen to patients and doing a fine job, but it puts us in precarious position of they're dispensing a legend drug without a pharmacist. So in years of discussion, I will say years because it's taken us that long to get here, we finally came up with the solution of let's exempt the practice from state statute. Primarily because the federal regulations for dispensing of medical gases and oxygen are so cumbersome that it doesn't make sense to have additional layer of regulator oversight by the state. I will tell you, the pharmacists, many across the state do dispense oxygen. Many of them dispense to their local hospitals or to their local long-term care facilities. This doesn't preclude them from doing that. But pharmacists are in a position of if we dispense the medication, the oxygen pursuant to federal law, then we violate our own state Pharmacy Practice Act. If we follow the state Pharmacy Practice Act regulations, then we are in violation of federal law. This will help clear that up. Our pharmacies in Nebraska that dispense oxygen would be able to just follow one set of rules, federal rules, and we will be able to continue to do our jobs as well. I think that those that went before me said everything that needed to be said. If you have any questions, I would be happy to answer them. [LB604]

SENATOR GAY: Thank you. Any questions from the committee? Senator Wallman. [LB604]

SENATOR WALLMAN: Thank you, Chairman Gay. Yes, thanks for coming. Who regulates the oxygen suppliers that supply the quality? You know, I buy industrial oxygen for the farm, you know, for welders and stuff. But who regulates that? [LB604]

JONI COVER: That's a very good question. I don't know who in the state of Nebraska

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would, but this is for medical oxygen. I'm assuming there are rules that apply. I know that they would be on a federal level, but I don't know who does on a state level. I can find that out for you and get back to you. [LB604]

SENATOR WALLMAN: Okay. Thanks. [LB604]

SENATOR GAY: Any other questions? Don't see any. Thank you. [LB604]

JONI COVER: Thanks. [LB604]

SENATOR GAY: Do you have one? Any other proponents? Any opponents? No opponents? Anyone neutral? Senator Howard, do you want to close? [LB604]

SENATOR HOWARD: I think we've said it all. [LB604]

SENATOR GAY: (See also Exhibit 5) There you go. Senator Howard waives closing and we'll close on LB604. And Senator Nantkes is here on LB223. [LB604 LB223]

SENATOR NANTKES: (Exhibit 1) Good afternoon, Chairman Gay, members of the committee. My name is Danielle Nantkes, that's D-a-n-i-e-l-l-e N-a-n-t-k-e-s, and I represent north Lincoln's "Fighting 46" Legislative District. I'm here today as the principal introducer of LB223. Swimming is the most popular recreational activity among children in the United States. I believe that Nebraskans have every right to expect that our public swimming pools are clean and are safe. I also believe that they have every right to expect that when their children swim in these pools they will not be injured, become ill or certainly not die. Unfortunately, illness, injury, and death in Nebraska swimming pools are all too frequent news headlines. Between 1999 and 2004, 15 children ages one through four drowned in our state right here in Nebraska. In July 2, 2008, press release, the administrator of the health promotion section of the Division of Public Health said, "Drowning is the number one cause of accidental death in children ages one through four in Nebraska." Let me recount two horrifying reminders that the public is not always safe in Nebraska's swimming pools. In 2006, five-year-old Brian Guevara and his family were on vacation in Omaha. They checked into the Howard Johnson Hotel and planned to spend half the day swimming and the other half of the day at the zoo. Unfortunately, Brian drowned in the hotel's pool in murky black water. Ten years later a ten-year-old boy drowned under similar circumstances in the very same pool. And then there was the six-year-old child on vacation staying at the Bellevue Super 8 who was hospitalized in an intensive care unit for severe chemical damage to his epiglottis and larynx after swimming in their indoor pool. Twenty-four other people also became ill at the same motel, likely from exposure to toxic levels of chloramines. To understand how this bill will make Nebraska swimming pools safer you must first understand that swimming pools are classified in four different categories in Nebraska. Class A pools are generally municipal pools. Class B are pools that are at hotels,

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motels, apartments, and country clubs, etcetera. Class C pools are spa pools, and Class D pools are wading pools. The Nebraska Department of Health and Human Services requires that every Class A swimming pool must be under the supervisions of a properly trained and certified pool operator. This is good public policy that protects the health and safety of the public. However, Class B swimming pools, the ones that are at the hotels, motels, apartments, country clubs, etcetera, are an entirely different matter. Even though Nebraska's 696 Class B pools are accessible to the public, the department does not require certified pool operators. Moreover, in a meeting that I hosted on this issue last September, department representatives showed really no interest in changing that current policy on the administrative side of things. So that's why we're back before you today in the legislative arena. In January 2008, a paper was submitted by the department for publication in the environmental health perspectives. HHS evaluated the association between operator certification and chemistry violations based upon Nebraska's existing regulations. Their report demonstrates that the results that pools without certified operators are more likely to have chemistry violations than those with certified operators and might pose a greater health risk to the public as a result. Because we have a lack of inaction in relation to the regulation of Class B pools, the health departments in Lancaster County and the city of Omaha have adopted the same operator requirements that are in place for Class A pools within their jurisdiction. However, there are 696 Class B pools in Nebraska, 421 in Lancaster County, and Omaha are required to have this certification for their pool operators. but that leaves about 275 swimming pools throughout the state that are not managed by individuals who are properly trained as to pool cleanliness or safety. This bill is for the people who swim in those 275 pools. The other provision in LB223 allows hotels, motels, neighborhood associations or even small villages to contract with certified pool operators rather than having their own employees trained as pool operators. This contracting is common practice in other states and is an especially effective alternative in sparsely populated areas of Nebraska. As I said before, Nebraskans expect that swimming pools accessible to the public are clean and safe. And LB223 will help protect the unsuspecting public at the 275 Class B pools that are currently unregulated in this regard. I'd be happy to answer any questions the committee may have. And I also know that there are some folks with considerable expertise who are going to testify behind me about how these policies and practices really work in our communities. [LB223]

SENATOR GAY: Okay. Let's see if there's any questions for you. Any questions from the committee right now? We'll hold off, I guess. [LB223]

SENATOR NANTKES: Okay. Thank you. [LB223]

SENATOR GAY: All right thanks. We'll hear from proponents. [LB223]

TRACYNDA DAVIS: Chairman Gay, members of the committee, good afternoon. I'm Tracynda Davis, T-r-a-c-y-n-d-a D-a-v-i-s, director of environmental health at the

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National Swimming Pool Foundation, a nonprofit organization who's mission parallels the government and health departments in order to reduce illness and injury in aquatic settings. I'm here today to testify in favor of LB223. I've a master's degree in public health and have dedicated my career to promoting education and protecting the public. I'm a former health official who managed the swimming pool program for the state of Wisconsin where I crafted rules and regulations and trained health officials to inspect over 4,000 pools and water parks throughout the state. Currently, I lead the environmental health effort at the National Swimming Pool Foundation to promote education at a national level. We provide educational programs which help prevent drowning, illness, and injuries. Senator Nantkes cares deeply about Nebraska and understands that providing more education to pool operators benefits the state immensely by reducing incidences of recreational water illness, injury, and drownings. She gave you examples of tragic swimming pool incidents in Nebraska, and I'd like to build on that testimony. I do have handouts, and I apologize. I will bring those for you on Monday. They are just news articles that have been in your papers. The first one happened in 2000 from June to September. There was an increase in reported cases of cryptosporidiosis, which is parasite, to the Douglas County Health Department involving two private clubs and swimming facilities with other local pools. Two hundred and twenty-five people were laboratory confirmed sick, and the victim's medium age was ten-years-old. June 19, 2006, in an Omaha hotel pool, a five-year-old drowned in cloudy water. Ten years earlier a ten-year-old boy drowned in cloudy water at the same hotel. The presence of cloudy water indicates the pool operator was not properly trained to operate the pool. A trained operator knows how to prevent and treat cloudy water. These drownings were preventable. December 26, 2006, in Bellevue hotel pool, a six-year-old was hospitalized in ICU and an additional 24 other folks were sick. The investigation determined the pH of the water was 1,000 times more acidic than what is required for human recreation and ingestion. The operator had no training and allowed the pool to remain open for use while the bathers were essentially swimming in lemon juice. Again, this was preventable occurrence had someone been properly trained in pool operation at the state licensed hotel. June 29, 2007, in the Minneapolis Golf Club, six-year-old Abigail Taylor from Minnesota had part of her intestines sucked out of a drain...the pool drain which was missing a drain cover. She died at UNMC in March in 2008, and the state of Minnesota strengthened their swimming pool laws as a result of this incident. Health and Human Services have had adequate time to amend their administrative code, yet they have chosen not to. In a meeting last September, we were notified that HHS had created a newsletter in order to become better informed...to better inform pool operators and provide training. The first issue of this newsletter was just released in December. Nebraska cannot afford to wait any longer for HHS to be proactive when in fact you have been waiting for years. There is no fast track for pool rule revision. Had HHS truly believed it was important to do so, the process would have begun two years ago when the Federal Pool and Spa Safety Act was enacted in 2007. And as of this morning, there is nothing on their Web site notifying interested parties on a revision. The statistics from the CDC, the Centers for Disease Control, show that

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recreational water illness outbreaks are increasing nationwide over the last ten years. And in 2007, state and local health departments across the country investigated more recreational water illness outbreaks than ever before. Statistical studies and scientific studies have demonstrated that operator certification training increases compliance of pools and spas to state codes. In addition to the local Nebraska study the senator mentioned, national studies have also been conducted. The Centers for Disease Control has been working on creating a model aquatic health code in order to provide uniform guidelines for design, operation, and maintenance of pools. It includes a section on pool operator training with recommendations that would require trained pool operators to oversee or contract with every public pool. The pool operator course length recommended would require a minimum of 14 hours. Why should you enhance pool operator training? Because Nebraskans presume all water venues to be safe. But the risk for users of all pools is the same. It is irrelevant whether a pool is run by a municipality or private entity like a hotel. Disease transmission and injuries can occur at any facility if an operator is not trained on safety and illness procedures. The news articles that I'll show you on Monday are evidence of that. We recommend that the state of Nebraska require operator training consistent with established benchmarks accepted by 20 states and many counties. Additionally, Montana, South Carolina, and Ohio are currently in different phases of rule revision requiring operator training. Allowing operators to become trained with certified operators without...with training less than the established benchmark of 14 to 16 hours suggested the training will be insufficient to understand the math, chemistry, microbiology, and management concepts required for effective pool and spa operation. To expect an operator to be thoroughly knowledgeable about pool operation with less than 14 hours of training is neither realistic or reasonable. Inadequate training places the citizens and guests of the state of Nebraska at risk. I have handed out two handouts. One is the book, the 14-hour training course, and the other is the training course for the state, the four-hour course. We believe this legislation should be based on cost benefit. The cost of training individuals who operate public pools is minimal compared to the risks involved in the general public by allowing those not adequately trained to provide such a service. Small municipalities and pools in rural areas can contract with independent certified pool operators or service companies as long as there's someone who ensures the pool is properly maintained and complies with the local health laws. Municipalities who hire seasonal employees can train a permanent staff member or the students they hire as seasonal help can take the course on-line, and service technicians can oversee more than one pool. Though our class is nationally recognized, state issues are addressed at the classroom portion of the course with the instructor. Each instructor certified by the National Swimming Pool Foundation is required per contract to teach state and local administrative rules and ordinances. The four-hour course currently provided by the Nebraska Department of Health is not up to the standards nationally recognized, and we believe that you need more time than four hours to be thoroughly knowledgeable about pool operation. I urge the committee to advance LB223 and would answer any questions that you may have. [LB223]

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SENATOR GAY: Thank you. Questions from the committee? Senator Wallman. [LB223]

SENATOR WALLMAN: Thank you, Chairman Gay. Yes, Ms. Davis, thank you for testifying. I agree with your chemical imbalances and everything, but don't they have different filter strips or something to test the chemical imbalance? [LB223]

TRACYNDA DAVIS: There's different test kits, yes. [LB223]

SENATOR WALLMAN: Yes. Because I have a relative that has a swimming pool. I mean, so we check this stuff. But does hot tubs cause the most trouble here or swimming pools? [LB223]

TRACYNDA DAVIS: Hot tubs definitely cause trouble, yes. [LB223]

SENATOR WALLMAN: Okay. Thank you. [LB223]

SENATOR GAY: Senator Gloor. [LB223]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you, Ms. Davis. I'm not quite understanding, though, how if in my community ten different entities contract with a municipal...the city pool that will have somebody who's gone through there, how does this individual able to be in, hypothetically, ten different pools to check the water and the chlorine content at the exact...at the same time? But I understand they can be contacted by telephone, but they can't do chemical tests. [LB223]

TRACYNDA DAVIS: No. They would be coming on site to the property to check the chemicals, yes. So I'm not saying ten. One person...I mean, it would just depend where those pools are located. If they're all in one vicinity, how large those pools are, what they would be doing there. But obviously a company could hire ten CPO people, and those folks could go to ten or more facilities. [LB223]

SENATOR GLOOR: So a municipal pool may choose not to be the contract entity for a variety of pools, but somebody could take the course. [LB223]

TRACYNDA DAVIS: Absolutely. [LB223]

SENATOR GLOOR: And this could be a proprietary company. [LB223]

TRACYNDA DAVIS: Yes. [LB223]

SENATOR GLOOR: Wouldn't have to be a municipality necessarily. [LB223]

TRACYNDA DAVIS: Absolutely. [LB223]

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SENATOR GLOOR: Okay. That helps. I'm thinking in the heat of the summer when it's 104 degrees out, the chemical nature of pools changes very quickly as I recall. [LB223]

TRACYNDA DAVIS: Absolutely, absolutely. [LB223]

SENATOR GLOOR: And so trying to get my mind around how they would do this. [LB223]

TRACYNDA DAVIS: So they could hire other people can do that. So one person could go to one pool. They could just maybe do one pool and just contract out with one pool. I mean, we don't have a limit here, but it has to be reasonable that they can be to these facilities exactly, especially in the summer. [LB223]

SENATOR GLOOR: All right. Thank you. [LB223]

SENATOR GAY: Any other questions? I've got a question for you. On the Class B pools, so an apartment, condominium, home owner's association, whatever, is there liability? Because a lot of those you go to a pool, it says, swim at your own risk boldly on the sign and they have the, you know, life saving equipment there I guess. Thank God haven't had to use it. But if swimming at your own risk, what's the liability versus the Papillion Public Pool who I know has life guards all around and very busy place? But what is the liability for somebody like a small pool operator? [LB223]

TRACYNDA DAVIS: As far as if something would happen? [LB223]

SENATOR GAY: As far as...do you know at all? Maybe if you don't know I could ask... [LB223]

TRACYNDA DAVIS: And I will tell you, most states think of apartment pools and condo pools as public pools and require them to follow requirements as in operator training, testing their water daily, things like that. So there is huge liability with that. In fact, a lot of the drownings and accidents do occur in apartment pools. [LB223]

SENATOR GAY: So, well, there's probably somebody from those pools here today to talk about this, too, so maybe they will answer that. But then do most states...did I miss that, do most states require this then? [LB223]

TRACYNDA DAVIS: Yes. There's 20 states that require pool operator training that's over 14 hours, and 3 states are coming on board--Montana, South Carolina, and Ohio--this year. [LB223]

SENATOR GAY: So 20 out of 50. I was just looking at... [LB223]

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TRACYNDA DAVIS: Yes. There will be 23 by the end of the year it looks like, unless... [LB223]

SENATOR GAY: All right. Any other questions? I don't see any. Thank you. [LB223]

TRACYNDA DAVIS: And Class B pools are not the apartment pools. That is just the hotel pools. [LB223]

SENATOR GAY: It says apartment in this bill, but...okay. Thank you. All right. [LB223]

SCOTT HOLTMEYER: (Exhibit 2) Chairman Gay, members of the committee, good afternoon. My name is Scott Holtmeyer. I am the president of Aqua-Chem Incorporated out of Bellevue, Nebraska. My last name is spelled H-o-l-t-m-e-y-e-r. More important today is my position as an instructor for the National Swimming Pool Foundation's certified pool and spa operator course. I have been involved in the pool industry for 23 years, and have been an instructor for the National Swimming Pool Foundation for the last 5 years. Senator Nantkes and Tracynda Davis with NSPF have already highlighted the need for regulation requiring training at Class B pools. I agree 100 percent with their assessment and position on that issue. I would like to spend a few minutes talking about other aspects of LB223. In this proposed legislation, we offer the owner of a Class A or Class B pool options that they currently do not have. They may either employ a person who has attended a four-hour clinic and passed a test sponsored by the Department of Health and Human Services or they may hire or contract with a person who has passed a course approved by the National Swimming Pool Foundation or an aquatic facility operators course which is sponsored by the Nebraska...or excuse me, National Recreation and Park Association. Should they choose the first option, that facility would be required to have a state certified CPO on site anytime the pool is open. This would typically mean that each facility would have at least two, if not three, people on staff who have been through the state course to cover their normal hours of operation. By allowing the second option, a facility could contract with a person or company that has been through the extensive training provided by the two national courses. LB223 still requires a responsible person to be on site, but the actual CPO doesn't have to be at the facility at all times. Allow me to give you an example of how this might work. In a town such as Holdrege, Nebraska, where there is a municipal pool and two other Class B pools, I can see a scenario where the manager of this municipal pool would take the initiative to be certified by either NSPF or the AFO course. This manager could then contract with the two Class B pools in town to oversee their operation and provide daily instruction and guidance to these facilities. The fees this manager charged would provide additional income to that person and certainly offset the cost of the national training course. It would probably be less expensive for the owners of the two Class B pools to pay a monthly fee as opposed to hiring their own CPOs. I have had some people ask me why someone who has taken one of the national courses should be

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exempt from having to be at the pool at all times that the pool is open. My answer is simple. There is a huge difference between the national course and the four-hour state-approved course. I can only speak directly about the NSPF course, though I have heard the AFO course is similar. In my classroom, we will spend almost four hours on just two chapters--pool water contamination and disinfection. While every chapter is important, it is imperative for pool operators to have a very clear understanding of the chemistry involved in the swimming pools. It must be made clear that at a pool with incorrect chemistry can cause tremendous detrimental health effects to bathers in the water and even spectators. I don't know how you can cover all aspects of swimming pool operations in a four-hour period. Another huge advantage of the NSPF course is the constant updating of information and technology. Just yesterday I received my new CPO book, which Tracynda passed around, along with what's new in the 2009 handbook paper. I have attached a copy for each of you. As you can see, there are updates in almost every chapter including the latest information from the CDC and new technology information on ozone and ultraviolet light. I believe the state course is using a handout from a CPO book that was printed back in the 1990's. For the most part, the information is probably accurate, but it certainly doesn't include information about new technology and current recommendations from the Centers for Disease Control. I would like to share some comments that came directly from students in their review of the national CPO course. Alicia wrote, "Very good at working through individual questions and problems related to specific facilities." In 14- to 16-hour training course, you have time to delve into specific issues that pool operations have not only solving that persons problems, but educating the rest of the class on how to respond to similar situations. The four-hour class doesn't allow time for problem solving. Another student, Suzy, wrote, "Answered questions at a nonexpert level so you could understand. Very helpful. Took time to know our individual pools and relate them to topics." Again, because of the time we have I can personalize the class which keeps a subject matter interesting when they can relate it back to their own facility. There's no time to do that in a four-hour class. Finally, I have included in my handouts course evaluations which were completed by health department officials who attended my class. While all the comments were appreciated, one of them commented, "Keep up the good work. I encourage all industry people, especially pool operators and regulatory employees, to attend this class." I, too, urge the committee to advance LB223, and I am willing to answer any questions you may have. [LB223]

SENATOR GAY: Thank you. Were there any questions? I have one. What's the cost of one of these courses? [LB223]

SCOTT HOLTMEYER: The cost varies per the instructor. My classes have been running \$150. [LB223]

SENATOR GAY: Thank you. I don't see any other questions. Oh, Senator Stuthman. [LB223]

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SENATOR STUTHMAN: Thank you, Senator Gay. Sir, do these Class 2...I mean, Class B pools, do the majority of them have certified operators now or not? [LB223]

SCOTT HOLTMEYER: Well, again, in Omaha and Lancaster County, those two counties required in their county code that the Class B pool operators have a certified operator. The rest of the state does not and, therefore, the pools typically run...may be run by the person at the front desk. [LB223]

SENATOR STUTHMAN: If this bill was passed, will that make it that a lot of those pools, these Class B pools, you know, won't be open or shut down? [LB223]

SCOTT HOLTMEYER: No, no. I don't think it will have that affect at all. What it should do is improve the water quality at that pool. Again, they're either going to have to hire their own certified operator or contract with someone who can do the water testing for them. [LB223]

SENATOR STUTHMAN: But, you know, that's going to be an additional expense. [LB223]

SCOTT HOLTMEYER: It is an additional cost. But a lawsuit, if you have poor water quality and get sued, is a lot more expensive. [LB223]

SENATOR STUTHMAN: Okay. Thank you. [LB223]

SENATOR GAY: So a question. Go ahead, senator. [LB223]

SENATOR CAMPBELL: That's all right. [LB223]

SENATOR GAY: Well, I was just following up with Senator Stuthman. So it would be their choice because some may decide I don't want to fool with this. [LB223]

SCOTT HOLTMEYER: Exactly. They can either contract with somebody or hire their own or train their own staff. [LB223]

SENATOR GAY: So we can't say just, no. It would be their choice, I suppose. [LB223]

SCOTT HOLTMEYER: Correct. [LB223]

SENATOR GAY: All right. Senator Campbell. [LB223]

SENATOR CAMPBELL: Thank you, Senator Gay. In the example that you gave, though, in a lot of cases the community, the public entity may not want to take the

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liability for the oversight of a private pool though. I mean, have you run into that where a small town says, well, I can cover my pool and all the other pools? [LB223]

SCOTT HOLTMEYER: Again, we haven't run into this because it's not in the law right now. I'm just saying this is a scenario whereby a pool operator currently out there, they don't make a lot of money. And this is an opportunity for them to take the expertise that they get from that class and be able to make a little money on the side by helping other Class B pools in town. Right now it's not done because it's not required. [LB223]

SENATOR CAMPBELL: Thank you. [LB223]

SENATOR GAY: Any other questions? I don't... [LB223]

SCOTT HOLTMEYER: Thank you. [LB223]

SENATOR GAY: Thank you. Other proponents? Come on up. I didn't mention, we do have a light system here. I noticed we've kind of gone over. We have five minute and I'm going to be fair on this one, but we have five minutes. But it's green until four, then yellow at four, then when the red light comes on your five minutes is going. I mean, I haven't enforced it yet. I should have brought that up earlier. But that's what we'll do on the next hearing, but I'm not going to start now, so. [LB223]

PETE RINN: You can start now because my testimony will probably be about two minutes. Hi. My name is Pete Rinn. I'm the maintenance supervisor for the Bellevue Public Schools Lied Activity Center, and we have an Olympic-sized swimming pool there. Mr. Holtmeyer asked me to be in attendance today just to help bolster up some of his efforts, which you just heard testified in regards to getting some more stringent requirements for pool operators. Approximately seven months ago I took the Douglas County four-hour pool operator course, and while I found it helpful, informative, and certainly it gave me much more knowledge than I did before I walked in the door, the course did come up short in many different areas. It was a video feed. The instructor was absent that day, and I'm sure that's not their common practice. But because of his absence we had a video feed, and we had a video presentation for four hours. Taking the test after the four hours I felt like if I wasn't paying attention could I have still passed this test. And I walked out of the room saying, you know, if I wasn't paying attention I think I could have still passed this test. When I took Mr. Holtmeyer's comprehensive three-day class I was sweating bullets because I was going home at night having to review all the math equations, having to really pay attention to the chemistry. So I was studying the book, oh, probably two hours, three hours each night before I came back to class the next day. Traditionally I must have a social work background, and so I stayed away from math and sciences, and so I was sweating bullets a little bit in the class. But you really do have to know your stuff to graduate from the class. I think I was the last one taking the test out of a room full of 50 people. And while I did pass the test, I left the

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room feeling like you're going to know this material or you cannot pass that course. There's just no way that you can't be at rapt attention on the edge of your seat paying attention to everything that the facilitator, in this case Mr. Holtmeyer, is imparting to you. So I found myself equipped when I went back to my activity center to be able to take that pool over and to feel confident to what I was doing. So, again, I'm not trying to denigrate the Douglas County experience, but it really was a night and day experience just in terms of walking out of those two separate rooms and feeling knowledgeable. [LB223]

SENATOR GAY: Okay. Could you spell your name, too, for the record? [LB223]

PETE RINN: I'm sorry. It's Rinn, R-i-n-n, Peter, P-e-t-e-r. [LB223]

SENATOR GAY: Thank you. Questions? I've got a question for you. [LB223]

PETE RINN: Yes, sir. [LB223]

SENATOR GAY: You probably studied hard. Bill Richards and Roger Severson were probably watching what you're doing. [LB223]

PETE RINN: Yeah. There you go. [LB223]

SENATOR GAY: (Laughter) Anyway, so you chose to do that on your own though, right? [LB223]

PETE RINN: I certainly did, yes. [LB223]

SENATOR GAY: Because Sarpy County has nothing like this. [LB223]

PETE RINN: That's correct. [LB223]

SENATOR GAY: You wouldn't have had to...okay. All right. Any questions? Don't see any. Thank you. [LB223]

PETE RINN: Okay. Thank you. [LB223]

SENATOR GAY: Other proponents who would like to speak? All right. I don't see any other proponents who would like to speak. Anyone opponents who would like to speak? How many opponents will be speaking on this? Okay. We got one more after you. Two more it looks like. [LB223]

ALICE LICHT: Good afternoon, Senator Gay. My name is Alice Licht, and that's L-i-c-h-t on the last name, A-l-i-c-e on the first name. I represent the Nebraska Hotel and Motel

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Association in the state of Nebraska. We appear not in opposition to the concept of certified pool operators because our hotels and motels in Lincoln or Douglas and Lancaster County have abided by this. I guess we would like to see some language changed and we oppose kind of how it's laid out on the education. First of all, it's indicated that a certified operator that goes to the Department of Health for training has to be on site. Those that are approved by the National Swimming Pool Association do not have to be on site. And I don't think you should make a difference on education. Possibly look at approve several educational courses, and then those do not have to be on site but be in phone contact. Certainly no one in the hotel or motel business want our swimming pools to cause injury. You know in many small towns there's a general manager who may live in the hotel and he may be on site at all times, but there are times that they're out and have to be by phone contact. So if you could do something with the language, and also broaden a little bit the education that would be available approved by the Department of Health rather than essentially sanctioning maybe two or three courses. Because it would appear that under this there would be maybe two or three sanctioned courses and only those by nonprofit associations that would be approved. Perhaps the Department of Health could beef up their training standards and make that available. Our concern is the cost because we have heard that the cost for some of this training is \$300. The individual who testified before indicated his was \$150. Our people...I spoke to hotel operators in the western part of the state today. They have been taking the Department of Health courses, which are \$40. So this would be a significant increase for them and that's their concern. It's a cost type of thing for them. If you could broaden the educational courses, perhaps the Department of Health could beef up their areas, we would be much happier with it. [LB223]

SENATOR GAY: All right. Any questions? I've got a question. You can probably answer the question I asked earlier about the liability that your members must face to have a pool open. [LB223]

ALICE LICHT: Huge, huge. In fact... [LB223]

SENATOR GAY: Like how huge? What kind of premiums or...wouldn't they want to do something like this a little more? [LB223]

ALICE LICHT: Certainly. Absolutely. [LB223]

SENATOR GAY: So and you're saying kind of...yeah. [LB223]

ALICE LICHT: It's a cost approach. But, for example, now it's the Quality Inn and Suites in North Platte. Some of you may have been out there. It used to be a Holiday Inn and they had that great big pool, if you remember, in the middle. They got rid of that simply because they had one drowning. And it was not to do with the quality of the pool. It was a child that couldn't swim, but they went through eight or nine years of litigation and

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hundreds and thousands of dollars of attorney fees in that whole case, but. They are certainly aware of the liability and they're not opposed to being certified at all. They're concerned about the cost and the limited courses that are offered in this bill, and then differentiating between the training that the Department of Health gives. What they're essentially saying is you're trained by the Department of Health, you have to be on site. If you're trained by someone else, you can be within phone contact. That should be one area. Training should be training and everyone should be on equal footing is their concern. [LB223]

SENATOR GAY: Okay. Thank you. Any other questions? I don't see any. Thank you. [LB223]

ALICE LICHT: Thank you. [LB223]

SENATOR GAY: All right. Over here. [LB223]

DOUG CLARK: (Exhibit 3) Good afternoon, Senator Gay and committee members. My name is Doug Clark, 405 Brentwood Drive, Gretna, Nebraska, that's spelled D-o-u-g C-l-a-r-k. I'm the environmental health division chief with the Douglas County Health Department in Omaha, and I'm here to provide testimony in opposition to LB223 and offer amendments. And some of my testimony is comparable to what you just heard, so I'll try to abbreviate it. [LB223]

SENATOR GAY: Thank you. [LB223]

DOUG CLARK: In Section 71-4301 of LB223, page 2, lines 6 through 13, the bill defines a certified operator. And the objection that we have on that is that the Douglas County Health Department annually conducts its own operator training clinics. And those are recognized as being equivalent to those presented by the Department of Health and Human Services. And we certify approximately 500 operators per year. We feel that our staff does an excellent job in training pool operators. And we would recommend that the words provided by a nonprofit organization be deleted or that the words "governmental agency or local health department" be added to this because the definition as it stands now precludes the Douglas County Health Department from providing training because we're not a nonprofit organization, but rather a governmental agency. Okay. Also, in Section 3, page 4, lines 2 through 14, the bill specifies that the owner of a Class A or Class B pool shall employ or contract for the services of a certified operator. And goes on to require that the certified operator shall be on site at all times when the swimming pool is open for use if the operator completed a training clinic sponsored by the health and human services. However, the section also allows the operator to be there on site or available by telephone or electronic communication if the operator completed a course approved by one of the national organizations. And we feel that this is confusing, misleading, and in direct conflict with the local regulations of our department which

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require the operator to be on site at all times that the pool is open for operation regardless of the type of training that the operator has attended. So to correct this, we'd recommend that lines 4 through 14 be deleted. And in addition to the confusion and conflict issues, we do not feel that it's in the best interest of public health to allow operators to be off site and, theoretically, long distances from their pools during operation. And there's a few things that I just found out prior to the hearing today that aren't part of my written testimony, and one of them has to do with state statutes. The state currently has the authority to determine which pool certification programs meet its requirements and has currently approved the NSPF course, as well as some other courses in the duly promulgated regulations. This bill approves NSPF and the aquatic facility operator course approved by the National Recreation and Park Association. It does not specify the course content or any specifics of the program curriculum. Should one of the programs change in the future, a change not seen as beneficial for Nebraska, a statutory change would be required to modify their approval instead of a regulatory change as is now required. And also, it was brought to my attention that there appears to be a conflict between Nebraska Revised Statute 71-4305, Section 3, which currently requires the department to adopt regulations that classify pools and Section 2 of this bill which classifies pools. So although we think it's an improvement in the law to require Class B pools statewide to have certified operators, which is already a law in Douglas County, we feel that the bill needs to be amended as I referenced. So thank you and I'd be happy to answer any questions. [LB223]

SENATOR GAY: Very good. Thank you. Any questions from the committee? I don't see any, but thank you for that. [LB223]

DOUG CLARK: Thanks. [LB223]

SENATOR GAY: Other opponents. [LB223]

KATIE ZULKOSKI: Good afternoon, Senator Gay, members of the Health and Human Services Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying today on behalf of the Nebraska Association of Commercial Property Owners. As Senator Nantkes mentioned earlier, this bill while intended to affect those unregulated Class B pools, we do feel as written this bill would have a negative impact on all Class B pools. And as Senator Stuthman made mention to earlier, this would have perhaps an unintended consequence of with the rising costs of operation and certification of these pools, especially in these economic times, our members simply will not be able to provide this service to their residents. With that, I'd be happy to answer any questions. [LB223]

SENATOR GAY: Thank you. Are there any questions from the committee? Senator Stuthman. [LB223]

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SENATOR STUTHMAN: Thank you, Senator Gay. Katie, you know, you was aware of what I was concerned with. The issue that I'm concerned with and the initial proponents and stuff, you know, that there needed to be a certified operator or they could contract with a certified operator. Well, you know, if a certified operator...if the motel or hotel contracts with a certified operator, it still has to be on site all times. So this one individual, you know, can he be at five different motels? I mean, that's a concern that I have, you know. [LB223]

KATIE ZULKOSKI: I think that would probably be the encouragement to fall under (b) on page 2. [LB223]

SENATOR STUTHMAN: B on page 2. Okay. Thank you. [LB223]

SENATOR GAY: (Exhibit 4) All right. Thank you. Any other questions? I don't see any. Thank you. Any other opponents who would like to speak? And is that letter from the department neutral? We received a neutral letter from the Department of Health and Human Services. That will...Senator Nantkes will close. [LB223]

SENATOR NANTKES: Thank you. Chairman Gay, members of the committee, just in brief, a couple of points. Number one, I want to thank everybody who testified today because I think that it shows that they all took the time to review the legislation and bring some additional attention to this important bill. And I also appreciated the opponents willingness to try and work on this issue over the past interim cycle. And I think we're getting a lot closer, but there's still probably a lot of work to do as well. Just a couple of points. I think it's a good bill because it provides uniformity for Nebraska as a whole in terms of how we deal with this important public safety issue. Number two, I think that the argument surrounding potential increase in costs are really quite minimal at best. We've heard the certifications from different organizations range from \$150 up to maybe \$300 or \$400. And when you compare that with the costs involved in a serious injury or death, I think they're really quite minimal and probably would provide some protection to some of the liabilities that may exist otherwise as Senator Gay mentioned. So I'd hope that we could continue to work in that regard. And I think that we have some good information and ideas that were brought forward in regards to technical amendments or otherwise to ensure that we...as we do advance this legislation that we can do something that harmonizes with existing sections and that makes sense for our structural framework. So with that, thank you. [LB223]

SENATOR GAY: All right. Are there any questions? Senator Pankonin. [LB223]

SENATOR PANKONIN: Thank you, Chairman Gay. Senator Nantkes, sounds to me...was it two years ago or a year ago we... [LB223]

SENATOR NANTKES: A year ago. [LB223]

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SENATOR PANKONIN: Okay. Sounds like we're making maybe some progress though because... [LB223]

SENATOR NANTKES: We are, we are. [LB223]

SENATOR PANKONIN: If I remember correctly... [LB223]

SENATOR NANTKES: I think it was a snowy day when I also came before you to talk about swimming pools last year. So it may bring bad weather. [LB223]

SENATOR PANKONIN: So you're open to some of these suggestions as we continue on... [LB223]

SENATOR NANTKES: Yes. [LB223]

SENATOR PANKONIN: ...and try to get something worked out. [LB223]

SENATOR NANTKES: Absolutely. And like I had mentioned, I really believe that we are making some progress forward, but unfortunately we just still are lacking in uniformity and lacking in some teeth to what exists in terms of the current regulations that exist. [LB223]

SENATOR PANKONIN: Well, thank you for bringing this issue again, and we'll see what we can do. [LB223]

SENATOR GAY: You bet. I'm with Senator Pankonin. I'm with him. I think this has changed for the better and it sounds like people are willing to work with you. So, yeah, I encourage you to do that. [LB223]

SENATOR NANTKES: Absolutely. [LB223]

SENATOR GAY: And hopefully we'll come up with something because I do think there is a concern probably of...there's a public concern where you just want to be safe going into that situation. So thank you. [LB223]

SENATOR NANTKES: Absolutely. And I think, you know, and along the lines of some of the concerns echoed by Senator Stuthman, you know, our hope is that there are healthy, safe recreational activities available in a variety of different contexts across our state. And so we'd hate to have then result be less people out there operating fun, recreational activities for folks. But we want to ensure that when the public walks into those opportunities that they are safe. [LB223]

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SENATOR GAY: Exactly. [LB223]

SENATOR NANTKES: So thank you. [LB223]

SENATOR GAY: You bet. All right. I don't see any other questions. Thank you. All right. We'll move on to LB446, Senator Fulton. Senator Fulton is here to introduce LB446. [LB223 LB446]

SENATOR FULTON: (Exhibit 1) Good afternoon, Chairman. Mr. Chairman, members of the committee, for the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I bring before you LB446. This bill is an effort to prevent brain drain from Nebraska. It ensures that the Board of Engineers and Architects may continue to provide incentive for young architects and engineers to remain in Nebraska. It has been the policy of the board to reimburse University of Nebraska engineers and architects for certain education expenses upon graduation. As an engineering graduate of the University of Nebraska, I can attest to the importance of this particular policy. LB446 amends the Engineers and Architects Regulation Act to ensure that the board may continue this policy and repay certain qualified educational debt obtained by a Nebraska architecture or engineering student out of the Engineers and Architects Regulation Fund, which is funded by various licensing fees for engineers and architects. Section 3 of the bill defines qualified educational debt to include educational loans and associated educational expenses. It is the prerogative of the board to determine the type of expense and the amount of reimbursement that shall be made to graduates. I am submitting an amendment for the committee's consideration that really clarifies Section 3 and ensures that the board may exercise discretion over what type of education expenses it will reimburse from the regulation fund. And I respectfully request the committee consider the amendment and the bill and move it forward to General File. I'll answer any questions if there are any. [LB446]

SENATOR GAY: Thank you, Senator Fulton. Any questions from the committee? Don't see any at this time. Thanks. Proponents? [LB446]

MELINDA PEARSON: (Exhibit 2) Good afternoon. My name is Melinda Pearson, P-e-a-r-s-o-n. I'm the executive director for the Nebraska Board of Engineers and Architects. In 1937, the Legislature passed the Engineers and Architects Regulation Act saying that the professions were subject to regulation in the public interest of safeguarding life, health, and property and to promote the public welfare in the state. In order to practice engineering or architecture you must be licensed. In order to be licensed you basically go through a three-step process. The first is an accredited degree from an accredited college of engineering or architecture. And the University of Nebraska has two programs, both in architecture, one at UNL and engineering at both UNL and UNO. The second step is experience. Both professions require a structured internship of between three and four years. And then at the end of the internship is what

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we call a terminal examine which is a national exam given by the national organizations. Once they have passed this three-step process, they are then licensed to practice in Nebraska. The professions of engineering and architecture are unique in that a large portion of our licensees practice outside their own town. It is not unusual for an engineer or architect to hold multiple state licenses and practice regionally, nationally or internationally. Two of the top 20 engineering and architecture companies in the world are in Omaha. Today, there are approximately 8,000 licensed engineers and architects in Nebraska. Of those, approximately 60 percent, more than 60 percent, are from out of state. So you can see these professionals are highly mobile. Roger Helgoth, a board member and former chair, will tell you why the board believes this is a good idea. During a recent review of our budget request, the fiscal analyst for the Legislature noticed that the board did not have the authority to reimburse University of Nebraska students at the entrance point in this licensure process. At that time, we were advised that this vehicle in repayment of student loans would be an appropriate constitutional remedy for that process. The reason why we are here is that...why we say there is no impact for this bill is that if this passes, the board will continue its current practices. LB446 allows the board to continue to reimburse University of Nebraska engineering students \$50 when they pass the fundamentals of engineering exam on their first try. The national fundamentals exam costs approximately \$145, and the national professional engineering exam costs between \$255 and \$745. Average hard costs for engineering exams and for the students to become licensed is around \$500. LB446 also allows the board to continue to reimburse University of Nebraska architecture students \$100 when they sign up for the intern development program. The national cost to sign up for the internship program is \$350, and the national exam costs \$1,190. The total hard costs for these architecture students to become licensed is approximately \$1,440. So with that, I would be glad to answer any questions that you might have. [LB446]

SENATOR GAY: Thank you. Senator Pankonin. [LB446]

SENATOR PANKONIN: Thank you, Chairman Gay. Thanks for attending today. [LB446]

MELINDA PEARSON: Yes. [LB446]

SENATOR PANKONIN: Just so I get straight on the...and I should have maybe asked Senator Fulton about the fiscal note, so there's this fund for the money to come out of? [LB446]

MELINDA PEARSON: The Engineers and Architects Regulation Fund is a cash fund, and it is...you know, it substantially covers all the PSL and all the agency requirements. Currently since 2003 when the procedure or the policy was passed by the board that enables the board to spend the \$50 for engineering students and \$100 for the architecture students, that started out around less than \$1,000. Today, we have basically doubled the amount of the FE students and the architecture students who are

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taking their entry exams during school. That number has basically doubled. And now we've got a lot of applicants who are asking for this refund. And so right now we're spending around \$14,000 to \$15,000 out of the engineers and architects fund for this reimbursement. [LB446]

SENATOR PANKONIN: And so what we're doing here is to allow additional...it's just to allow... [LB446]

MELINDA PEARSON: No, no. It's just...it's already in the budget. It's actually in the budget already, the appropriations that is being reviewed by the Legislature right now. It just allows the board to continue to do this. And if...so the fiscal note, just to clarify, when they asked me, I said, well, if it passes, there would be no fiscal impact. And they said that's what I should say. Now, if it doesn't pass, then there would be my guess is around \$15,000 in the budget that would be appropriated but would not be spent. We were not aware that we did not have... [LB446]

SENATOR GAY: It's already...so it's already... [LB446]

SENATOR PANKONIN: Okay. This cash fund is already in existence. [LB446]

MELINDA PEARSON: Yes. Yes, the money is already...and we were not aware that the board did not have statutory authority to do this. [LB446]

SENATOR GAY: Okay. And how many of the students right now...you say they're already in school, most are taking the exams early or taking it... [LB446]

MELINDA PEARSON: Yes. Staff and the board members go to the schools. We go to the engineering school twice a semester, at the beginning and the end, and we've actually gotten the FE candidates to sign up and take the exam and doubled that number since about 2003. And Roger will tell you why it's incredibly important that we get students to take the FE exam while they're students instead of waiting until they're out of school. [LB446]

SENATOR GAY: Okay. Because my question...well, I guess it is a question, is why do you need this because if you graduate from a engineering degree, you're going to do pretty well probably. A hundred bucks here or there is not going to make a whole lot of difference, but I think he's going to answer that question next. [LB446]

MELINDA PEARSON: He will, and what you'll find out is that the pass rate if you're in school is 30 percent higher than if you get out of school partly because they test you for academic knowledge as opposed to the practice. [LB446]

SENATOR GAY: You're already in the...yeah. I can see that. Okay. Thank you. Any

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other questions? I don't see any. Thank you. [LB446]

MELINDA PEARSON: Thank you. [LB446]

ROGER HELGOTH: (Exhibit 3) Thank you. My name is Roger Helgoth, R-o-g-e-r H-e-l-g-o-t-h. My address is 2517 South 126th Street in Omaha, Nebraska. Good afternoon. Thank you, Chairman Gay and senators, for listening to our proponent position. I am an engineer member of the board, Nebraska Board of Engineers and Architects, and I've been in that capacity since 2002. A little background: I'm a native Nebraskan, bachelor's and master's degree, graduate from the University of Nebraska, and private engineer and practitioner in Nebraska for almost 40 years. I have been licensed in Nebraska since 1974 and licensed in two other states in my career. I would like to thank Senator Fulton for introducing this bill on our behalf. The Board of Engineers and Architects is unanimous in its support of LB446. The board believes that it is important to encourage university students to become licensed in Nebraska. This initial encouragement, and that's really what it is, in cooperation with the efforts of the University of Nebraska professors, the architectural and engineering professors, produces a very strong positive results for Nebraska. I'd like to give you a few reasons why this issue is so important for us, and it's really a relatively minor investment and produces, I think, very good results. First...there's four reasons I'd like to present here. First of all, is procrastination. And it's hard to say why we want to appoint people from procrastinating. But students...as you'd well expect, students...and I was one many years ago and this is not a new problem, this is an age-old problem. Students wait to take their first professional examination until the very last minute. In some cases they wait until they get out of college or out of the university to take the FE exam. The FE exam, the first exam that part of a professional licensure, is very heavy on academic issues. And so a senior-level student, you know architecture or engineering, can do very well on the licensing exam...the first licensing and have a 30 percent increase in passage if they do it while they're still in college. As we all know, we get a little rusty as we leave the gates. The entire success really is important. And it is a first step of licensure, as Melinda alluded to. We, as a board, have really worked hard to connect to the students. We have one university that has a college of engineering program in Nebraska and has two campuses that deal with it, so it's pretty easy for us as a board to connect to our university. And we connect with the university professors when we try and work with them to encourage the students to become...begin their licensure track as early as possible with the FE. So this financial encouragement, I think, really helps them get in the door, and I think their passage rates are improved. The second issue I'd like to point out is the mobility and the base state issue with licensure because licensure is a state issue. I mean, you have to get licensed in every state. Jurisdiction is not a national license. And no matter how mobile our professionals are, when they get their initial license, that becomes their base state or home. And no matter where they go, and in a global society that we have where people move and transfer to different...get hired away by their companies we might not like the issue of students being very mobile, but they

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are very mobile and we encourage them to be very mobile. The issue is their base state is very important to us. And so we always recognize as practitioners that you keep your license alive in your base state, your home state forever because even if you go get licensed in 52 other entities, as your career changes you'll always keep your base license. So we foster that. Our board connects to these people, and once they get in that track and take the FE, they're connected to our board, and we move forward. The third issue is economic development. We believe that a greater pool of educated licensed professional architects and engineers in Nebraska is going to be great for Nebraska. It's going to improve the quality of life as we try and develop it and protect it. This is a small and powerful incentive to University of Nebraska students to do it, to get it underway, and move that direction. The fourth reason is reducing brain drain. I think once we get them licensed, we get them connected, and they go out and make their place in society with other large firms, etcetera. They become...they eventually come home. And having them licensed here, etcetera, certainly does that. So thank you for your assistance in this bill. We would promote if very strongly in keeping our biggest professional resource here, architects and engineers, and their talents home-based in Nebraska. So with that, I'll...question. [LB446]

SENATOR GAY: Thank you. Senator Wallman. [LB446]

SENATOR WALLMAN: Thank you, Chairman Gay. Yeah, thank you for coming. You mean if I pay the licensure fee here, I mean, take the...if I go to Illinois I've got to pay another fee? [LB446]

ROGER HELGOTH: Yes, absolutely. [LB446]

SENATOR WALLMAN: Is this standard? [LB446]

ROGER HELGOTH: It's the state's right issue. I mean, you go...you can be licensed in Illinois, you might be licensed under...Illinois would have its own rules and regulations. And Nebraska has been very good in keeping our licensing standards high so that comity provisions are being able to go from Nebraska to Illinois to get a license is usually pretty easy. But you would have to pay the license fee there as well. [LB446]

SENATOR WALLMAN: Is it about the same across the nation? [LB446]

ROGER HELGOTH: It's the same and the license fees vary based on the state, so. [LB446]

SENATOR WALLMAN: Okay. Thanks. [LB446]

SENATOR GAY: All right. Any other questions? I don't see any. Thanks, Roger. Any other proponents who would like to speak? [LB446]

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JENNIFER KLEIN: (Exhibit 4) Good afternoon, Senator Gay, members of the Health and Human Services Committee. My name is Jennifer Klein, K-l-e-i-n. I'm a licensed professional engineer and president of the Nebraska Society of Professional Engineers. I'm here today to testify on behalf of the Professional Engineers Coalition, a group comprised of three constituent organizations: The Nebraska Society of Professional Engineers, the American Society of Civil Engineers, the Professional Surveyors Association of Nebraska. The American Society of Mechanical Engineers is also an associate member of our coalition. PEC is in support of LB446 with the amendments, a bill that would amend the Engineers and Architects Act. Reimbursing prospective professional engineers and architects encourages these young professionals to begin the steps toward licensure at their earliest eligibility. Reimbursement fees for this first examination not only provides some relief for University of Nebraska engineering and architecture students from the additional education expenses, but also serves to emphasize the importance of licensure and the end benefits to Nebraska citizens. Current state statute provides specific direction on the need for a licensed design professional in architecture and engineering designs in order to safeguard life, health, and property and to promote public welfare. Architecture and engineering licenses is earned after years of formal education, as we've already heard, years of practice under the supervision of another licensed professional, and examination. Continuing education in our area of discipline and adherence to a code of conduct are also required. Prospective employers of engineering graduates expect to see the achievement of passing the fundamentals of engineering examination listed on a resume. This is one more measure of the graduate's knowledge base, and shows prospective employers initiative and commitment to achieve the higher standards expected of professional engineers. For these reasons, the Professional Engineers Coalition strongly supports LB446, and I would be happy to answer any questions you may have. [LB446]

SENATOR GAY: Thank you, Ms. Klein. Senator Stuthman. [LB446]

SENATOR STUTHMAN: Thank you, Senator Gay. Jennifer, how many students graduate from engineers and architects each year? [LB446]

JENNIFER KLEIN: I don't know the answer to that question. Yeah, honestly I don't know the number off the top of my head. [LB446]

SENATOR STUTHMAN: Are there, you know, a lot of them? Are there a lot of them entering that field? I mean, I have no idea. [LB446]

JENNIFER KLEIN: Melinda, would you say hundreds, not thousands? We could say that. Would that be a good estimate for you? [LB446]

SENATOR STUTHMAN: Okay. Yeah. It isn't just one or two or five. [LB446]

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JENNIFER KLEIN: No, no. It's not one or two or five. There's long lines when we go up to get our diplomas, that's for sure, so. [LB446]

SENATOR STUTHMAN: Okay. [LB446]

SENATOR GAY: The college will stay open then. (laughter) That's good. That's good. Any other questions? I don't see any. Thank you. [LB446]

JENNIFER KLEIN: Thank you [LB446]

SENATOR GAY: (Exhibit 5) And we also did receive a letter of support, though, from one of your members, and then I think Nebraska Section, the American Society of Civil Engineers sent us a separate letter. We received that, too, so. All right. Any other proponents who would like to speak? Okay. I don't see any. Any opponents who would like to speak on this? Anyone neutral? I don't see anyone. No opponents and no neutral. Senator Fulton, you want to close? [LB446]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. Just briefly, we hope that we can move this forward hopefully with your support. I think it's a pretty important part of the engineers life in Nebraska. If there are any questions about the process, how this works, is it good, is it bad...Senator Pankonin might have a question. [LB446]

SENATOR GAY: Yeah. Senator Pankonin. [LB446]

SENATOR PANKONIN: It's good. It's all good, right? [LB446]

SENATOR FULTON: It's all good. [LB446]

SENATOR PANKONIN: Good job. And, you know, it's always appreciated when people that know about their industry or profession bring these bills. Senator Fulton, we all feel more comfortable in your knowledge and interest in it. Thank you for bringing it. [LB446]

SENATOR GAY: I agree. And you could probably help us with that fiscal note. Senator Campbell has a question. [LB446]

SENATOR CAMPBELL: I was just amazed that this has been in practice since 1937. Wow! [LB446]

SENATOR FULTON: Well, to have engineers recognized and regulated and licensed within the state. [LB446]

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SENATOR CAMPBELL: Yeah. That's a long time. [LB446]

SENATOR FULTON: It's a matter of public safety at the time. It's important that we recognize that there was an engineer, a trained engineer that looked over this building design or what have you. [LB446]

SENATOR PANKONIN: After there had been three previous ones that weren't so good. (Laughter) [LB446]

SENATOR GAY: All right. I don't see any other questions. Thank you, Senator Fulton. All right. And then LB452. I don't see Senator Avery anywhere. [LB446]

SENATOR PANKONIN: They were Execing. He was in Exec for his committee. []

SENATOR GAY: Oh, are you going to do that for Senator Avery? All right. [LB452]

NICOLE KANNE: (Exhibit 1) Good afternoon, Chairman Gay, committee members. My name is Nicole Kanne, it's Nicole K-a-n-n-e. Senator Avery is unable to make it this afternoon. I would like to submit for the record a letter of support from your friend and former colleague Bob Wickersham. Senator Avery has introduced LB452 with the intent of allowing individuals to make advanced directives with regard to the administration of lifesaving cardiopulmonary resuscitation. The bill provides for the creation of a uniform medical document which clarifies and executes the individual's cardiopulmonary resuscitation advanced directive wishes. The document shall be developed and disseminated by the Department of Health and Human Services. This uniform document shall be signed by the individual making a CPR declaration or a person authorized to make medical treatment decisions on behalf of the individual requiring treatment. The form shall contain information relating to the individuals birth date and other basic personal information, the name, address, and phone number of any current hospice or attending physician, the terms of consent or refusal of CPR, and the date of execution of the directive. LB452 also provides for rapid-notice provisions to emergency medical services personnel regarding the existence of a directive regarding the administration of CPR. The bill provides for a uniform method of identification of a CPR advanced directive, including but not limited to identification bracelets. These bracelets would indicate to emergency medical services personnel that an advanced directive with respect to consent or refusal of the administration of CPR exists and how emergency personnel should proceed. The bill also contains provisions waiving liability of any emergency medical service personnel or healthcare provider who in good faith complies with the consent or refusal of an individual's advanced directive. In addition, neither the execution nor the failure of execution of an advanced directive in any way modifies or affects an individual's existing or future health or insurance contract. Senator Avery understands the importance of allowing individuals the right to choose the direction of their healthcare. He's hopeful this legislation will provide a universal manner in which to

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quickly and efficiently communicate those wishes to healthcare professionals at the most critical time of a person's life. On behalf of Senator Avery, please support this bill and thank you for your time today. [LB452]

SENATOR GAY: All right. Thank you. Do you want to take any questions from us? (Laughter) All right. Proponents. [LB452]

BRENDON POLT: (Exhibit 2) Good afternoon, Chairman Gay and members of the committee. My name is Brendon Polt, that's P-o-l-t. Today, I'm representing the Nebraska Hospice and Palliative Care Partnership, that's NHPCP, a coalition of approximately 50 organizations with an interest in quality of care for terminally and chronically ill Nebraskans. It includes Nebraska's hospices. There's 37 community end of life coalitions and statewide health and elder care organizations. My testimony will be very brief. NHPCP's mission is to improve the quality of life for Nebraskans who have chronic conditions or are near the end of life. And critical to that mission is ensuring the respect for end-of-life wishes, one of which would be a do not resuscitate order or in this bill, a CPR advanced directive. Specifically in Section 4 is what we support. And that's where the bill instructs the department to promulgate rules or regulations for a uniform method for rapid identification such as a bracelet that you have, a DNR or a CPR advanced directive. There would be other ways of communicating that clearly to providers or EMTs as well. And so we're not necessarily stuck with the notion of a bracelet, but we do support that Section 4. I also want to point out that I'm here representing providers of services for the terminally ill, so I'm focusing on the identification for that population's end-of-life wishes. And we did not participate in drafting of this bill, so I'm not disposed to answer questions or specifically endorse some of the provisions like do-not-resuscitate orders for the nonterminally ill, the liability sections, and the like. But we do hope that the committee would elect to advance a bill to help communicate advanced directives to those who would otherwise not know that the individual has one. Any questions? [LB452]

SENATOR GAY: Okay. Thank you. Any questions? Senator Stuthman. [LB452]

SENATOR STUTHMAN: Thank you, Senator Gay. Brendon, what do we have in place right now as far as any advanced directive? [LB452]

BRENDON POLT: To communicate that? [LB452]

SENATOR STUTHMAN: Yes, yes. [LB452]

BRENDON POLT: There's no uniform method. Actually, in the Columbus area they're doing something called a POLST, but that's not statewide. What that is, is it's a brightly colored form that sits on top of your medical records so that it's usually used in transfer of a resident from one healthcare facility to another. But then the people that are doing

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the transfer can see on top. They all know what it looks like. They're looking for...I can't remember, it's green form, I think, and they know, okay. And they can look down and it says, all right, don't provide this, don't provide the dot, dot, dot. Okay. So then when you go along your way, they're very certain about what types of cares to provide and what not to. Statewide there's nothing. And that also would only apply to someone that is in transfer from a facility to another. Whereas, this bill would be a bit broader if you're receiving hospice services at home, for example, and you're terminally ill and someone calls an ambulance because you've collapsed, you may have somewhere buried in a file an advanced directive. But this would allow a bracelet that the department could make unique looking. And that way when the whoever arrive, the EMTs, would say, okay, we recognize that. That means we're not going to resuscitate. So this is a little more narrow, but nevertheless we do see from our providers that happens quite often where the EMT...and I understand their position that they...they're there to save lives. But the person, if they're terminal in six months anyway and that's not what they wanted, it's unfortunate. [LB452]

SENATOR STUTHMAN: Will this bill complement what we're doing in Columbus then? [LB452]

BRENDON POLT: Yes, I think so. It certainly does nothing to detract from it. I know that the same folks that developed the Columbus policy support the concept of a bracelet or moving statewide that concept of the form. But this is certainly consistent...or I want to say it's not inconsistent. There's separate sort of ideas, but. [LB452]

SENATOR STUTHMAN: Okay. Thank you. [LB452]

SENATOR GAY: Senator Wallman. [LB452]

SENATOR WALLMAN: Thank you, Chairman Gay. Thanks, Brendon. You always brings some insight here. Say I have a bracelet on, you know, code or no code, whatever. And an EMT revives me, are they liable or no? [LB452]

BRENDON POLT: Well, under this bill...you know, I did qualify my testimony to say that I, you know, the provisions of the bill regarding liability aren't something that our organization takes a position on. We would think that they probably should not be liable, certainly criminally, probably civilly as well. [LB452]

SENATOR GAY: Senator Gloor. [LB452]

SENATOR GLOOR: Thank you, Chairman Gay. Mr. Polt, who trains...who's going to be responsible, if this statute takes effect, for training EMT groups across the state about this, do you know? How are we going to get the word out so that it's activated and adhered to? [LB452]

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BRENDON POLT: My understanding of the bill it's not specifically set forth, but like any regulation that's passed by the state, it's the responsibility of the provider to make sure that the staff knows. Like I know with our nursing homes that when regulations are adopted, we have to train on that. [LB452]

SENATOR GLOOR: It would have been interesting to have this heard yesterday with a room full of EMTs. Just curious as to what their take on it would be. I applaud Senator Avery for bringing this up because it is a problem and a chronic problem. And to speak to the liability issue, what sometimes happens, unfortunately far too frequently is they're already DNR orders that could be out there or living wills that people may have taped to their refrigerators like I do. But somebody collapses and a family member says, do everything you can. And the poor EMTs get caught in the position of knowing that there's something on the refrigerator that says one thing and a family member saying something else. And so I don't know that there is a solution to that sort of predicament. But I would say that concerns about issues around liability shouldn't be a small issue and ought to be thought about just a little bit more because I know the EMTs will ask that and they will use that very scenario of when a family member says do something and the bracelet says do not, what do you do if you're an EMT and in that predicament? That's a concern I have about this, but I think it's a great, great idea. We do far too much resuscitation on people who are in the end of the life stages and wish not to have that happen. [LB452]

BRENDON POLT: My thought is if liability were completely limited 100 percent, and so some EMTs still did resuscitate there and it wasn't a perfect scenario, but 75 percent of the people out there had their advanced directives honored that wouldn't have otherwise, then that's better than none. [LB452]

SENATOR GLOOR: Good perspective. Thank you. [LB452]

SENATOR GAY: (Exhibit 3) All right. Any other questions? I don't see any. Thank you. Any other proponents who would like to speak on this? I don't see any. Any opponents? Anyone neutral would like to speak on this? All right. We did receive letter, though, Bob Wickersham on support, and the Health and Human Services is neutral. So we received those letters. No one else wants to speak on this issue? All right. We will close the public hearing and Senator Avery waives closing. (Laughter) [LB452]

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Disposition of Bills:

LB223 - Held in committee.
LB446 - Placed on General File.
LB452 - Held in committee.
LB604 - Placed on General File.

Chairperson

Committee Clerk