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Business and Labor Committee  
January 24, 2011

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[LB151 LB189 LB261 LB262 LB263]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 24, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB261, LB262, LB263, LB151, and LB189. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Brad Ashford; Tom Carlson; Burke Harr; Jim Smith; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: Sorry about being late. I got caught up in a meeting and, yeah, I didn't get out of there in time, so my apologies. That's a bad way to start the first meeting but, generally, you'll find we run this railroad by being on time. Welcome to the Business and Labor Committee. This is our first hearing and the agenda I'll get to in just a moment. Just a few sort of ground rules for the Business and Labor Committee, it looks like most of the folks that are here have been here before, but for those of you that have not and for those of you who might be here to testify for the first time, we will generally proceed in the order the agenda has been posted, which will start out with LB261, and generally we will have the senator who is proposing the legislation introduce the bill. We'll then hear from the proponents, and after we've exhausted that group we'll hear from the opponents, and then from those who will testify in a neutral capacity. We use the light system here. You will find that when you sit down you will be given the green light, which means you're free to talk. When you have a minute left, the yellow light will come on. And when your time is up, the red light will come on. I'll just say this once. Please don't make me interrupt you. If the red light comes on, wrap it up, okay? I know sometimes people come from a long ways away and having a light system seems like it's unfair, but in order to keep the hearings moving along, to give everyone an opportunity to be heard, and for us to have an opportunity to get out of here in a timely manner, we use the light system. If you are to testify or if you intend to testify, there is a box right here. We'll ask you to fill out one of the testifier sheets so that we can get a good record. It helps the transcribers to have your name and the information, and the record will reflect your appearance here, whether you were in favor or opposed or here in a neutral capacity. And I should introduce the members of the committee, too, before we get started. I'm still catching my breath because I was downstairs. Anyway, the committee: we have a returning Tom Carlson from Holdrege; Burke Harr is now on the committee, one of our new senators, and he's from District 8, which is Tom White's old district; Senator Ashford, I'm told that Senator Ashford will be a few minutes late but will be here; Senator Cook is here as well from Omaha; Norm Wallman from Gage County. What do we call it?

SENATOR WALLMAN: Yeah, Cortland, Nebraska, District 30.

SENATOR LATHROP: Cortland, yeah, Gage County; and then Jim Smith who is from Papillion and was my one-time next-door neighbor, small little factoid. And Jim is also new to the Legislature and this committee. So with that, we'll start with LB261, which is

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mine, and I'll introduce that and turn this over to the Vice Chair, Senator Cook. Good afternoon once again. My name is Steve Lathrop, that's L-a-t-h-r-o-p. I'm the state senator from District 12, which includes Ralston and portions of Omaha in the Millard area. I'm here today to introduce LB261. This is introduced at the request of the Department of Labor and it deletes outdated language. It also creates an unemployment insurance exception for direct sellers of newspapers or shopping news. The Federal Unemployment Tax Act has a similar provision. This would bring Nebraska in line with the Federal Unemployment Tax Act. Cathy Lang, the Commissioner of the Department of Labor, and John Albin, legal counsel for the department, will follow my testimony and answer any questions that the committee may have. [LB261]

SENATOR COOK: Thank you, Senator. [LB261]

SENATOR LATHROP: All right, no questions. I'll stick around. [LB261]

SENATOR COOK: Yes. Will you stay to close, Senator Lathrop? [LB261]

SENATOR LATHROP: All right, I'll do that. [LB261]

SENATOR COOK: Okay, good. Thank you. Madam Commissioner, welcome. [LB261]

CATHERINE LANG: Thank you very much. And it's Vice Chairman, is that correct? [LB261]

SENATOR COOK: Ah, yes, the power. Yes. [LB261]

CATHERINE LANG: Vice Chairman Cook, thank you, and members of the Business and Labor Committee. My name is Catherine Lang, L-a-n-g, Commissioner of Labor for the state of Nebraska, and I first want to thank Senator Lathrop for introducing this legislation on behalf of the Department of Labor. The purpose of LB261 is to make the exception to coverage for direct sellers under the Nebraska Employment Security Law identical to the exceptions from coverage for direct sellers in Section 3508 of the Federal Unemployment Tax Act, or FUTA. Nebraska adopted its direct seller exception to the Employment Security Law in 1977. The sponsors of LB130 in 1977 included only the original director seller exception to FUTA but did not include the 1996 amendment to FUTA which extended the direct seller exception to include individuals engaged in the delivery and distribution of newspaper and shopping news. LB261 proposed today would amend the direct seller exception to Nebraska statutes 48-604(6)(t) to make it identical to the current direct seller exception in Section 3508 of FUTA. The department recognizes that there is considerable overlap between the exceptions now found in 48-604(6)(m) and 48-604(6)(n) and the proposals made in LB261. However, because FUTA, the federal provisions, still contain the subdivisions of (m) and (n) exceptions to the coverage in 3306, we have left those provisions alone to make the coverage under

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Nebraska law as identical as possible to the coverage under FUTA. Our conversations with our staff indicate that when an employer is looking at the provisions of federal law, trying to figure out what applies to them or what doesn't, then they're going and looking at state law, it's always a good thing if we can have them match as closely as possible. So that's the intent and purpose of LB261 and I'd be happy to answer any questions. [LB261]

SENATOR COOK: Are there any questions from the committee? Yes, Senator Carlson. [LB261]

SENATOR CARLSON: Thank you, Senator Cook. Commissioner Lang, the only additional wording is on page 17, so could you just give an actual example of somebody that would fall into this. [LB261]

CATHERINE LANG: Well, these would be individuals who are distributing newspapers for our newspapers in the state, carriers that would bring the newspapers to your home or carriers that would be bringing shopping news to your home. Currently, they're not excepted so there's...and yet under the FUTA provisions they are, so there's this disconnect for our Nebraska businesses trying to decide, gee, am I supposed to report the wages for them here in Nebraska. And our position has been, no, because they are direct sellers and we just want to make that absolutely clear. [LB261]

SENATOR CARLSON: So there wouldn't be any direct sellers left in newspapers or shopping news that this doesn't apply to. [LB261]

CATHERINE LANG: That would be correct. Right. [LB261]

SENATOR CARLSON: Okay. Okay. Thank you. [LB261]

CATHERINE LANG: You bet. [LB261]

SENATOR COOK: Are there other questions from the committee? All right. Thank you, Commissioner Lang. [LB261]

CATHERINE LANG: Thank you very much. [LB261]

SENATOR COOK: Next testifier, please. Seeing none, the senator has waived closing and that...oh, that's right. Opposition, are there any opponents? Anyone wishing to testify in opposition to LB261 today? Okay, anyone testifying in a neutral capacity? Any letters sent to the committee on this one? No letters. All right then, with that we will close testimony on LB261 and close the hearing. And Senator Lathrop is recognized to open on LB262. [LB261]

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SENATOR LATHROP: Thank you, Senator Cook and members of the Business and Labor Committee. My name again is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and here today to introduce LB262 which is introduced once again at the request of the Department of Labor. It repeals several health and safety provisions, including the requirement that businesses subject to the Workers' Compensation Act have a safety committee. The Worker Safety Consultation Program would also be repealed. According to the department, it is proposing to repeal certain statutes primarily because OSHA has taken over enforcement. I understand there's concern over repealing some of the provisions. It is not the intent of this legislation to compromise worker safety. I hope to address those concerns raised here today. I look forward to hearing those who testify, both in favor and in opposition. Both Cathy Lang and John Albin will follow my testimony and provide the reasons for these repeals. [LB262]

SENATOR COOK: Do we have any questions of Senator Lathrop at this time? Will you close, Senator, on this bill? [LB262]

SENATOR LATHROP: I'll probably waive close. [LB262]

SENATOR COOK: Okay. Thank you. Okay. First testifier in support of LB262. [LB262]

CATHERINE LANG: (Exhibit 1) Thank you, Vice Chairperson Cook and members of the Business and Labor Committee. My name is Catherine Lang, L-a-n-g, Commissioner of Labor for the state of Nebraska. And again, I would like to thank Senator Lathrop for introducing this legislation on behalf of the department. I appear today in support of LB262. LB262 proposes to eliminate provisions of state law related to specific issues of health and safety of workers. Most of the provisions recommended for repeal are obsolete or have been superseded by federal law. They are handing out a list, a graph, that indicates the provisions that we are proposing for repeal and whether or not those provisions have any federal statute that has superseded them. There are two provisions recommended for appeal that do not meet these two criteria. One is the repeal of statutes authorizing a discretionary Work Force (sic) Safety Consultation Program; and two is the provisions which require the establishment of safety committees. The statutory provisions related to the establishment of safety committees are recommended for repeal because there is no funding to enforce the requirements that businesses establish safety committees and there is little or no activity in this program. The statutory provisions related to the Work Force (sic) Safety Consultation Program are also recommended for repeal because this program is no longer in operation. This was a, and is a, discretionary program which was unable to sustain itself because consultations were not requested to be performed. And when consultations are not requested to be performed there are no revenues, and without revenues you have no funds to sustain the program. We urge your support of LB262 and I would be happy to answer any questions. [LB262]

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SENATOR COOK: Are there any questions for Commissioner Lang? Senator Carlson. [LB262]

SENATOR CARLSON: Thank you, Senator Cook. Do you expect any opposition to this bill? [LB262]

CATHERINE LANG: I believe that if there is opposition it will be regarding the recommendation to repeal the safety committees and that may be the place where someone may testify that perhaps we should leave those in place. There wouldn't be anything problematic in doing that. They would still be required to be established and they can certainly be established through contract negotiations with union representatives and we do have, I believe, businesses in the state that do have them through that. These provisions don't touch that so those would remain intact. We don't get a lot of activity on it. We don't have a lot of calls on it. So the question is, should we have a statute that actually requires them? [LB262]

SENATOR CARLSON: Okay. Thank you. So in your view then, passing of this bill wouldn't add any risk to employees or the public. [LB262]

CATHERINE LANG: Not in our opinion, it would not. [LB262]

SENATOR CARLSON: Okay. Okay. Thank you. [LB262]

SENATOR COOK: Are there other questions from the committee? All right, thank you very much. [LB262]

CATHERINE LANG: Thank you. [LB262]

SENATOR COOK: Next testifier in support of LB262? Seeing none, are there testifiers in opposition to LB262? Good afternoon. [LB262]

KEN MASS: (Exhibit 2) Senator Cook,... [LB262]

SENATOR COOK: Thank you. [LB262]

KEN MASS: ...members of the committee, my name is Ken Mass. I represent the Nebraska AFL-CIO and here today in opposition to LB262. First of all, if there's any Packer fans in here, I congratulate you, and this Bear fan will support the Packers. (Laughter) Anyway, I come today as we bring out the archives. This goes back to 1993, probably before everybody's time here when the Workplace Consultation Program was established. It was established and it...of forming safety committees under the Department of Labor and the position of that was to have people...it was first funded by

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a percentage of workers' comp premiums going to them to establish these employees who go out and check employers for safety and help them, work with them to keep their premiums down. After a period, I think two years, then it became self-funded. And as the Commissioner said, the program, basically, as far as inspectors going out and checking employers does not exist today. Because of being self-funded, going out and checking businesses didn't happen, employers, and it dried up basically. So...but anyway, in that program, if you'll go to I think page 230-6.7, also part of that was establishing safety committees and safety committees were where employers would, because of state law, would have to create a safety committee within their employment and, yes, as the Commissioner stated, in collective bargaining agreements there are provisions in there for safety committees where there's a joint venture between the employer and a representative to have an equal body on that committee, which had worked well and it still works well. Also in provisions of collective bargaining agreements there are articles in there that says that both parties will uphold to state and federal law if the contract is silent. Being as this is a state law, it would uphold to that. Taking this out would take off the commitment of safety committees and I think the obligation of safety of employees of all employers, regardless, in their collective bargaining agreement or not, but the commitment to safety for the employees that work there. If you turn the page to 6.8, it tells how it would start, how you would start a minimum number of committee members on those committees, all the way to...all the way up, and how one employer, one employee representative to serve on that committee. These have worked well. I see no need taking them out of the law, again, because of the concern of the safety of the employees that work for these employers across the state of Nebraska. So with that, I'd answer any questions if anybody may have them. [LB262]

SENATOR COOK: Thank you, Mr. Mass. Are there questions from the committee? Yes, Senator Carlson. [LB262]

SENATOR CARLSON: Thank you, Senator Cook. Ken, this is...it appears to be a small item, however, the A bill on it indicates it would be a savings of \$1,000 and some. And so this is all part of the challenge that we have in balancing the budget and we have however many...well, we have 698 bills, so if they each saved \$1,000 off the budget it ends up being some money. Would you have any suggestions, if this bill is not passed so that we don't have that savings, even though it's a small savings, where should our savings...what would be a good alternative? [LB262]

KEN MASS: I think I'd probably leave that up at the Appropriations Committee. [LB262]

SENATOR CARLSON: Well, and I didn't expect you to have an answer because this is all tough stuff. But I think that's one of the things, in the process of listening not only to you but anyone else that testifies on things that are probably good and probably functional, but we're in a position, when it comes down to balancing the budget, we have to do it. And so there will be decisions made that not everybody would agree with.

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It would be...makes it a whole lot easier if someone comes to us, and I'm not blaming you, and says we need to keep this, here's a better place to take this \$1,000. But this is a difficult process and I know that you understand that. Thank you. [LB262]

KEN MASS: Thank you. [LB262]

SENATOR COOK: Does the committee have any other questions for Mr. Mass at this time? Thank you, sir. [LB262]

KEN MASS: Thank you. [LB262]

SENATOR COOK: Next testifier in opposition to LB262. And while we're waiting for Mr. Holmquist to get situated, the committee welcomes Senator Ashford. Have you served on this committee before, Senator, in a previous life? [LB262]

SENATOR ASHFORD: No. [LB262]

SENATOR COOK: Can't recall? [LB262]

SENATOR ASHFORD: I don't believe I have. [LB262]

SENATOR COOK: Well, welcome. [LB262]

SENATOR ASHFORD: Thank you. [LB262]

SENATOR COOK: And Senator Ashford from Omaha has joined us. Thank you. Thank you, Mr. Holmquist. [LB262]

JAY HOLMQUIST: (Exhibit 3) Thank you, Madam Vice Chair. I appreciate the opportunity to testify. My name is Jay Holmquist, that's J-a-y H-o-l-m-q-u-i-s-t. I'm the general manager of the Nebraska Rural Electric Association, headquartered here in Lincoln, and we represent 35 rural public power districts and electric cooperatives in the state. On the first part of my testimony, I'm also testifying on behalf of the Nebraska Power Association, which represents all the major electric utilities in the state, and I'm here to express our concerns about part of LB262 that would outright repeal a number of sections of existing state law dealing with working near high voltage power lines. And I won't go through all the details but basically it specifies minimum distances by which employees are supposed to stay away from the high voltage power lines, and here I'm referring not to public power district or utility employees but employees that you might find working near power lines. Like someone installing a grain bin, for example, in rural areas would be a common application of the statute. Any construction activity in a municipality, for example, you could come near high voltage power lines. And these statutes have been on the books I think since the late 1960s. LB262 would repeal them

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and I think the Department of Labor offered them up because there is one section that specifies a responsibility for the Department of Labor and that is that the...anybody who's going to work near a high voltage power line is supposed to notify the Department of Labor on forms that the Department of Labor has put together. I would offer an amendment to the bill to retain those sections of law dealing with the high voltage power lines and simply eliminating the role for the Department of Labor, and I think they should not have any expense then for administering this part of the law. We'd like to retain it on the books. It gives us a lever to use with contractors that maybe are engaged in some unsafe work practices near high voltage lines. So I would offer that for your consideration. The second part of my testimony relates to the Workplace Safety Consultation Program and in this one I'm only testifying for the Nebraska Rural Electric Association. The federal law on the Occupational Safety and Health Administration does not apply to public power districts or municipalities or any political subdivision of the state of Nebraska. One of the things that the Workplace Safety Consultation Program Act did back in 1993, and this is our interpretation of it anyway, is that it subjected public power districts to OSHA. Since that time, and one of the most important programs we provide our members is a job training and safety program, so since 1993 we have incorporated the OSHA standards into our safety program. I'm concerned about repeal of the language in the Workplace Safety Consultation Program. I know you could say that we could voluntarily comply with the OSHA standards. I think that practice prior to 1993 indicated that that was not likely to happen and, personally, I would like to see, and our members would like to see that language or some version of it retained so that our members are still subject to the OSHA requirements. So I would be happy to answer any questions. I appreciate your time here this afternoon. [LB262]

SENATOR COOK: Thank you, Mr. Holmquist. Are there questions from the committee? Senator Carlson. [LB262]

SENATOR CARLSON: Thank you, Senator Cook. Jay, would you explain this, what you want in this amendment a little more? I'm not used to looking at red letters with a line through it. [LB262]

JAY HOLMQUIST: Sorry. I did this on my computer so it's not professionally done by the Bill Drafters Office. But what I would propose is simply that you eliminate the language in red... [LB262]

SENATOR CARLSON: Okay. [LB262]

JAY HOLMQUIST: ...that deals with the role for the Commissioner of Labor, the Department of Labor in the sections of law that deal with the high voltage power lines. [LB262]

SENATOR CARLSON: And if that were done, other than the second point that you



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made, then you'd change from opposition to either neutral or support? [LB262]

JAY HOLMQUIST: Yeah, it wouldn't concern us as long as...I mean most of the sections that we're concerned about are actually in the repealer clause. They're in the outright repeal section. So the first part of my amendment deals with those sections as well, but it seems to me that we should be able to just eliminate the Department of Labor from these statutes and then move forward. [LB262]

SENATOR CARLSON: If this alone were done then what would be your stance? [LB262]

JAY HOLMQUIST: Then our stance for the Nebraska Power Association would be that we could be supportive or neutral on the bill. The Nebraska Rural Electric Association would still have concerns about the part of the bill that deals with the Workplace Safety Consultation Program. [LB262]

SENATOR CARLSON: Okay. [LB262]

JAY HOLMQUIST: And I'm sorry to mix my testifying, wearing two hats for part of the time and only one hat for the rest of the time. [LB262]

SENATOR CARLSON: Thank you. [LB262]

SENATOR COOK: Thank you. Are there other questions from members of the committee for Mr. Holmquist? Seeing none, thank you very much. [LB262]

JAY HOLMQUIST: Thank you. [LB262]

SENATOR COOK: Next testifier, please. We're on LB262, listening to testimony in opposition to the proposal. Anyone wishing to offer neutral testimony on this bill? Hey, Ron. [LB262]

RON SEDLACEK: Thank you. Good afternoon, Senator Cook and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, and that's spelled R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce, testifying today in a neutral capacity. Our labor relations council, scheduled to meet actually tomorrow afternoon or tomorrow morning, and did not receive a specific direction at this time in regard to this proposal. However, I would state that the Nebraska Chamber of Commerce was supportive of two provisions that are slated for repeal here and that was to enact the safety committee requirements as well as the Workplace Consultation Program. Both of those were enacted in 1993 as a part of an overall and comprehensive workers' compensation reform measure. It was part of that measure, in an effort to both promote safety in the workplace and hopefully lower

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insurance premiums by a showing of affirmative action by businesses to promote safety and demonstrate a safety program in the workplace, and it did at least reflect in the beginning that there would be reductions in premiums because of that, the enactment of those provisions. In that sense, we could potentially come in opposed to the repeal but have no direction at this time to do so. The problem that we faced was actually not so much the language itself but the implementation of the program and perhaps some members of this panel may remember some of the controversies involved in that, the fact that there were safety inspections taking place that many of the smaller employers were very resistant of because of the cost and the length of time, the inconvenience--two days and \$1,500. And for a small employer, that was quite expensive. They felt that it wasn't worth it, that there was a lot of wasted time on all...on the part of all parties. And the original estimate I believe was someplace trying to get it down to less than \$100 an hour, like \$80 an hour for that type of inspection, but it wouldn't cash flow, from what I recall. So that was a problem in regard to the implementation as well as some of the...a bit of an overzealous administration of the program at the time caused a lot of feedback among particularly the smaller employers. Nonetheless, we were supportive of that program. We're supportive of the safety committee program and advise their members; we continue to do so on our annual updates and handbooks in regard to employment law and safety in the workplace. And with that, if there are any questions I'd be happy to answer them for you. [LB262]

SENATOR COOK: Thank you, Mr. Sedlacek. Are there questions of committee members at this time? Seeing none, thank you very much. [LB262]

RON SEDLACEK: Thank you, Senator. [LB262]

SENATOR COOK: Anybody else? Next neutral testifier? [LB262]

JERRY STILMOCK: Thank you, Senators. Good afternoon. My name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying in a neutral capacity on behalf of two different groups: the Nebraskans for Workers' Compensation Equity and Fairness, as well as the National Federation of Independent Business. We're coming in, in a neutral capacity because business, as Mr. Sedlacek described, came on in, in 1993, on what was LB757 to accept the recommendation of a safety committee. I had the opportunity to work with two of the gentlemen that headed up the consultation part of it and I understand they are no longer with the department but they worked very hard and diligently in helping. We also had volunteer fire departments that were brought in to this portion of the law. But as to the two entities of which I am representing this afternoon, we are coming in as neutral capacity. If it's the will of this committee to advance the legislation to the floor, so be it, but we felt that it would be against our previous agreement that us...the business back in 1993 in which this was included as a part of the package. So we didn't want to back away from that previous agreement though years and senators have passed us by. Thank you. [LB262]

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SENATOR COOK: Okay. Thank you, Mr. Stilmock. Are there questions from the committee members? [LB262]

JERRY STILMOCK: Thank you, Senator. [LB262]

SENATOR COOK: Seeing none, thank you. Next testifier? All right, are there any letters submitted to the committee on this, LB262? Senator Lathrop has waived closing. With that, we'll recognize Senator Lathrop for an opening statement on LB263. [LB262]

SENATOR LATHROP: (Exhibit 4) Good afternoon, Senator Cook and members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and here once again to introduce LB263. Like the last bill or two, this one is introduced at the request of the Department of Labor and would repeal the Nebraska Worker Training Board. That board consists of seven members appointed by the Governor. The board was created in 1994. The purpose of the board is to review applications for the use of money credited to the Nebraska Training and Support Trust Fund. Approved programs include those designed to support private and public job training programs intended to train, retrain, or upgrade skills, pardon me, work skills of existing Nebraska workers; to train new employees of expanding Nebraska businesses; and recruit workers to Nebraska. With the approval of the Governor, the Commissioner of Labor has the authority to appropriate funds from the Nebraska Training and Support Trust Fund to support approved training programs. According to the Department of Labor, the process to approve programs is redundant, as the board makes recommendations to the Commissioner and the Commissioner then makes recommendations to the Governor. LB263 would take the board out of the process. John Bourne, employee representative of the Nebraska Worker Training Board, could not be here today but has provided the committee with a letter that will be offered into the record. Mr. Bourne has been in contact with Commissioner Lang and it's my understanding the parties will further discuss alternatives to repealing the board. And once again, Commissioner Lang will follow my testimony and is available to answer questions of the committee. Thank you. [LB263]

SENATOR COOK: Okay. Thank you, Senator. Will you waive closing on this one as well? [LB263]

SENATOR LATHROP: I'll waive closing on LB263 as well. [LB263]

SENATOR COOK: All right. Thank you. Madam Commissioner. [LB263]

CATHERINE LANG: Thank you, Vice Chairperson Cook and members of the Business and Labor Committee. My name is Catherine Lang, L-a-n-g, Commissioner of Labor for the state of Nebraska. I again want to thank Senator Lathrop for introducing this

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legislation on behalf of the Department of Labor and I'm here in support of LB263. As Senator Lathrop stated, LB263 proposes to eliminate the Worker Training Board. The board was originally authorized in 1994 and performs a number of functions, most of which are to provide recommendations to the Commissioner of Labor. The funding for the expenses of the board, which are not significant--and yet, as we are being asked to look at all expenses of government, we are offering these expenses to be reviewed--are paid from the Nebraska Worker Training and Support Trust Fund. The revenue for this fund come from the interest earned on the State Unemployment Insurance Tax (sic) Fund, which is part of the combined unemployment insurance taxes paid by Nebraska businesses. Again, while the expenses are small, this proposal allows the Business and Labor Committee to determine if the board's function should be continued or modified. Currently, the board meets approximately four times per year and makes recommendations to the Commissioner regarding grant applications filed by Nebraska businesses for training of incumbent workers across the state. The Commissioner then takes these recommendations and determines her recommendations to the Governor, who then approves or denies the grants. The board is also required to prepare a three-year plan and, to the knowledge of anyone at the Department of Labor, this has never been done. The board is required to prepare guidelines for the grant process and it has prepared...performed this function. The question of the Nebraska Department of Labor is whether the board should continue in its current duties or it should be eliminated. We have proposed to eliminate the board. The Department of Labor would like to be on record that if the committee does not support the elimination of this board that it consider modifications of its duties to include continuation of the responsibilities to establish guidelines for the program and require that the guidelines take into consideration the current economic initiatives of the state of Nebraska. The department believes that this program should be part of the larger efforts of the state and the business community, and that the funds should be strategically targeted toward specific goals and objectives of our economic development efforts. And that concludes my testimony. I'd be happy to answer any questions. [LB263]

SENATOR COOK: Thank you. Are there questions of committee members at this time?  
Senator Carlson. [LB263]

SENATOR CARLSON: Thank you, Senator Cook. Commissioner Lang, I think I have an apology due to Mr. Mass. This is the bill that has the \$1,000 savings. [LB263]

CATHERINE LANG: That is correct. [LB263]

SENATOR CARLSON: The other one didn't. [LB263]

CATHERINE LANG: That is correct. [LB263]

SENATOR CARLSON: I apologize. [LB263]

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KEN MASS: Thank you, sir. [LB263]

SENATOR CARLSON: Okay. Thank you. [LB263]

CATHERINE LANG: You bet. [LB263]

SENATOR ASHFORD: That raises a number of questions. (Laughter) [LB263]

SENATOR COOK: Which...all right, yes, I'm certain that Senator Ashford would provide those in great detail... [LB263]

SENATOR ASHFORD: I can put them in writing. [LB263]

SENATOR COOK: ...in writing to your staff. [LB263]

CATHERINE LANG: Okay. Thank you. (Laugh) [LB263]

SENATOR COOK: Thank you very much. [LB263]

CATHERINE LANG: Yes. Thanks. [LB263]

SENATOR COOK: Are there testifiers in support of LB263? Any in opposition today? [LB263]

KEN MASS: Senator Cook and members of the committee, my name again is Ken Mass, and it's M-a-s-s, representing Nebraska AFL-CIO, and here today. As Senator Lathrop mentioned, there's a letter in the file from John Bourne, who is an employee representative on the Nebraska Worker Training Board, and we are here today opposing the bill as is. My understanding, that the Training Board would like some time to meet as a committee and to come to some agreement with their partners in trying to keep this program. The program is great for resources and does not come from the General Fund, as we'll try to work with employees...they will try to work with employees, employees have the skills and ability in Nebraska to compete in the worldwide economy. So for that reason, we are opposed to LB263 until some...maybe something can be worked out. Thank you. [LB263]

SENATOR COOK: Thank you, Mr. Mass. And I do indeed have a letter from Mr. Bourne that's been submitted to the committee. I'll submit that to the committee clerk at this time. Thanks. Are there questions of Mr. Mass actually before he departs? None. Seeing none, thank you very much, sir. [LB263]

KEN MASS: Thank you. [LB263]

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SENATOR COOK: Any other testifiers in opposition to LB263 this afternoon? Is there anyone who would like to testify in a neutral capacity to LB263 this afternoon? All right, seeing none, we'll close the hearing on LB263 and recognize Senator Lathrop to introduce LB151. Senator. [LB263]

SENATOR LATHROP: Thank you very much, Senator Cook and members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and here today to introduce LB151. And I might add you might wonder why I'm introducing like all these bills at the same time. As the Chair of the committee, I get asked by both the Department of Labor and the Workers' Compensation Court to introduce bills and I feel it's my obligation to do that and we can...of course, they generate some discussion, which we're having today, and we'll get to what we're going to do with them later, I guess. On LB151, like the last bills, this one I was asked to introduce but this time on behalf of the Workers' Compensation Court. The court is moving its offices located up on the 12th and 13th floor of the Capitol to a location outside of the Capitol. Current law specifies that the court must maintain its offices in the State Capitol. LB151 removes this requirement. It also clarifies when the actions may be dismissed, Workers' Comp Court actions may be dismissed, and allows for telephonic and videoconferencing for nonevidentiary hearings and evidentiary hearings as stipulated to by the parties. Glenn Morton, the Court Administrator, will follow my testimony and answer questions for the committee and I look forward to hearing views I think on both sides of this issue. [LB151]

SENATOR COOK: Thank you, Senator. Will you waive closing on LB151? [LB151]

SENATOR LATHROP: Yes, I will. [LB151]

SENATOR COOK: Thank you. With that, we will welcome the first testifier in support of LB151. [LB151]

GLENN MORTON: (Exhibit 5) Good afternoon, Senator Cook, members of the committee. I as well need to thank Senator Landis or, excuse me, Senator Lathrop for introducing the bill on behalf of the court. Senator Landis, you may recall, he did introduce many of those for the court and was very helpful that way so...I knew I was going to do that. Sorry, Senator Lathrop. I'm Administrator of the Workers' Compensation Court and I'm appearing today on behalf of the court in support of LB151. [LB151]

SENATOR COOK: And your name, sir, and spell it for me, please. [LB151]

GLENN MORTON: Thank you. M-o-r-t-o-n. Sections 1 and 2, as Senator Lathrop has mentioned, would strike references to the office of the court being in the State Capitol.

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Since early in 2008 and actually since way back in 2007, the court has been attempting to find alternative space for the judges and staff that are now located on the top floors of the Capitol, the 12th and 13th floors anyway. That space is inadequate for the court in a number of important ways. Lack of security for the judges and court staff is of particular concern now. We haven't been able to build in any sort of physical security because of the historical nature of the Capitol Building and the way the construction and the way the building is now constructed and managed. We've had inadequate access to the public and disabled employees. You can imagine it's embarrassing and I think inappropriate for a court that deals with disabled workers to be in a location that is very difficult for them to get to, and it's really been impossible because of the facilities to make it adequate for those disabled workers. Also, where there's insufficient courtroom space, the technology we've had is very inadequate. So for all those reasons we began back in, as I said, in early 2008 with a request for proposal. We've been attempting and working all that time to work out the politics of it, the concerns that different parties have had. It's unfortunate that it's coming to a head now with the budget situation the way it is, but at the same time we had similar concerns before the...in the last budget biennium, before this, the current biennium was...when our budget was going through at that time. And we've now received sign-off from the Supreme Court on the move. The Legislature, through the Appropriations Committee, appropriated rent for the new facility in the last budget cycle, and we've gone through working with the Governor's Office and executive branch, worked with the Department of Administrative Services and the Building Division of the DAS has now signed a lease for new facilities on behalf of the court. So we feel that we've done our homework, we've done due diligence. And again, as I said, the timing is inappropriate but everything is in place and everything was in place and so now we do have a lease. The move in is set for June of this year, open for business on July 1 of 2011. So we would...again, the bill, LB151, would strike language in two places that refers to the office of the court being the Capitol. It doesn't say that the office of the court must be in the Capitol. It just references that...the office of the court in the Capitol in a couple places, so I'd make that point. The bill would also clean up some ambiguity in language relating to dismissal of cases prior to a hearing. That was a bill...previous bill back in 2004 that added language that says the employee could dismiss a petition if the employee is represented by counsel. That was intended to address previous language which would require there be no reasonable...or no further dispute between the parties. Problem was the language that says...that required that there be no dispute...further dispute between the parties was left in the bill, so it was just unartful drafting. And so we'd like to clean that up with no substantive change. And then finally the bill would allow the court to hold hearings telephonically and by videoconferencing. And with that, I will close, except to say that part of the bill is patterned directly after the section of the statute that applies to the state district courts. So we're just mirroring and patterning our law after theirs. So that would be it, but I'd be happy to answer questions. [LB151]

SENATOR COOK: Thank you very much, Mr. Morton. Does the committee have

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questions for Mr. Morton? Senator Harr. [LB151]

SENATOR HARR: Thank you, Senator Cook. There are really two parts to this bill, as I understand it. One is to move to not require the State Capitol. [LB151]

GLENN MORTON: Right. [LB151]

SENATOR HARR: That's fine and dandy, although I may have not signed a lease before that was passed but...but the second part I have a little bit of an issue with, and there are a couple parts. Number one is it allows for telephonic and videoconferencing of nonevidentiary hearings and evidentiary hearings if it's stipulated. [LB151]

GLENN MORTON: Uh-huh. [LB151]

SENATOR HARR: Well, I guess my first question is, since it saves money for travel, I know there's an initial cost of technology but wouldn't there be a long-term savings? [LB151]

GLENN MORTON: Oh yes. Yes, there would. There is, and there is a savings. We do that now. We do use videoconferencing for our review hearings, which are nonevidentiary hearings. It's the first level of appeal before three judges of the court. And we use videoconferencing for those hearings in western Nebraska and that results in very significant savings in travel cost, yes. [LB151]

SENATOR HARR: Do you know why there isn't a fiscal note to that degree? [LB151]

GLENN MORTON: We didn't...we noticed that there...in the note that there would be savings. The problem is that as of now the court has not established exactly under what conditions evidentiary hearings could be held by videoconference. That's a very tough issue and we want to make sure that the judges and all the parties are comfortable with it. We want to make sure that there's videoconferencing facilities available throughout the state where it would be used. So there will be savings but we have not been able to...we're not far enough along the path to identify those with specificity. [LB151]

SENATOR HARR: And what is, if I may follow up, what is the difference between an evidentiary hearing and a nonevidentiary hearing? [LB151]

GLENN MORTON: Evidentiary hearings are when evidence is submitted that is accepted by the court and will be part of the basis of the decision for the court. Nonevidentiary hearings are simply like, for example, our review hearings. They're simply oral arguments, no new evidence is received into testimony. So I don't know if that answers your question but... [LB151]



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SENATOR HARR: Yeah, I think so. [LB151]

GLENN MORTON: Okay. [LB151]

SENATOR HARR: Okay. If there is an evidentiary hearing, where is...if the evidence is accepted, how does the chain of title work, chain of custody? Excuse me. [LB151]

GLENN MORTON: If the evidence is accepted? [LB151]

SENATOR HARR: Yeah. [LB151]

GLENN MORTON: Well, it simply becomes a part of the official court record and it becomes part of the transcript and so on. [LB151]

SENATOR HARR: But how does it...I guess my question is I have a hearing, the two parties are in Omaha but the judge is in Lincoln. [LB151]

GLENN MORTON: Uh-huh. [LB151]

SENATOR HARR: How does that evidence get from Lincoln to...or Omaha to Lincoln? [LB151]

GLENN MORTON: That's a good question. That's a good question. It would...and that's one of the things we'd have to consider very carefully in terms of evidentiary hearings and there's many issues that would need to be looked at and that's one of those. Most of the testimony that's received by the court, most of the evidence that's received is documentary evidence and that could be received electronically and transmitted securely electronically. But there are occasions when there is physical evidence that's introduced and that, we'd have to look at that and make adequate provision for that. [LB151]

SENATOR HARR: Thank you very much. Appreciate it. [LB151]

GLENN MORTON: Uh-huh. [LB151]

SENATOR COOK: Thank you, Senator Harr. Are there other questions from the committee on LB151? Senator Ashford. [LB151]

SENATOR ASHFORD: What's the rent on the new space? [LB151]

GLENN MORTON: Well, we're working that out currently. We're... [LB151]

SENATOR ASHFORD: So you haven't signed a lease then. You haven't signed a lease.

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[LB151]

GLENN MORTON: We have signed a lease. [LB151]

SENATOR ASHFORD: Oh. [LB151]

GLENN MORTON: But there is provision...we have. [LB151]

SENATOR ASHFORD: Just the rent part is not in there. (Laugh) [LB151]

GLENN MORTON: To give you...to answer you directly, there under the lease that's been signed, the actual...the base rent is about \$355,000 a year, all right? [LB151]

SENATOR ASHFORD: How much is that per square foot? [LB151]

GLENN MORTON: Quite frankly, it's been so long since I looked at that, I'm not sure. [LB151]

SENATOR ASHFORD: I'm just wondering what they get for state offices here in Lincoln. But... [LB151]

GLENN MORTON: I'm not sure. [LB151]

SENATOR COOK: All right. What we got...would you step up so we can hear you? [LB151]

GLENN MORTON: I'm sorry. I was just... [LB151]

SENATOR ASHFORD: No, I didn't want...this isn't a gotcha. I was just trying to...I just was interested in how...is that a private landlord that... [LB151]

GLENN MORTON: It's a private landlord, yes. Yes. [LB151]

SENATOR ASHFORD: And it's \$350,000. How many square feet do you have? [LB151]

GLENN MORTON: It's...well, again, I'm embarrassed that I can't remember the exact details right at the moment. [LB151]

SENATOR COOK: Maybe that's another opportunity for staff to follow up with staff. [LB151]

SENATOR ASHFORD: Well,... [LB151]

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GLENN MORTON: Yeah, we...I'd be happy to respond to you, Senator, and give you the information but I don't have it right in front of me right now. [LB151]

SENATOR ASHFORD: Well, I mean I think that's...it would be interesting to see how much we pay in rent for buildings. But there is a signed lease, we just don't have the rent in this. [LB151]

GLENN MORTON: We don't have the rent nailed down. Now in addition to the base rent, where I was... [LB151]

SENATOR ASHFORD: How does that work exactly? (Laugh) [LB151]

SENATOR HARR: And how do I get (inaudible)? [LB151]

SENATOR ASHFORD: I'm just curious. And I know in the private sector, generally, we have to state the rent when we sign. (Laughter) [LB151]

GLENN MORTON: Yes. Let me...let me, if I can, let me...I can answer your question. I can. The issue is that what's called a build out or the tenant improvement costs. [LB151]

SENATOR ASHFORD: Okay. [LB151]

GLENN MORTON: All right? And those we're working on right now and we're working on working those out. Now we have...we have signed a lease but there is understanding and agreement that there will be final adjustments to that lease as soon as we nail down what those buildings costs... [LB151]

SENATOR ASHFORD: Based on how much you build out? [LB151]

GLENN MORTON: Exactly, based on build out costs. [LB151]

SENATOR ASHFORD: It would be help...I'd like to know how much you're going to be paying every month for that space. [LB151]

GLENN MORTON: I will certainly advise the committee of that one as soon as we get that nailed down. [LB151]

SENATOR ASHFORD: And I certainly agree that...with you that the, though the view is great, it is a cramped environment up there. It's been there a long time. [LB151]

GLENN MORTON: Uh-huh. [LB151]

SENATOR ASHFORD: How long has the...do you know, has it been there since the

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beginning, hasn't it? [LB151]

GLENN MORTON: To the best of my knowledge, it's been there since the mid-1930s, when the court was, but I'm not sure. [LB151]

SENATOR ASHFORD: Since the Capitol opened, I think... [LB151]

GLENN MORTON: Yes. Yes. [LB151]

SENATOR ASHFORD: ...Workmen's Comp Court was up there. [LB151]

GLENN MORTON: Uh-huh. [LB151]

SENATOR ASHFORD: Anyway, yeah, thanks. [LB151]

SENATOR COOK: All right. [LB151]

SENATOR HARR: And now it's Workers' Court,... [LB151]

SENATOR COOK: Correct. [LB151]

SENATOR HARR: ...not Workmen's. [LB151]

GLENN MORTON: Now it's Workers' Compensation, exactly. [LB151]

SENATOR COOK: Thank you. [LB151]

SENATOR ASHFORD: I just (inaudible). (Laughter) [LB151]

SENATOR COOK: Any more questions, just musings? Senator Wallman has a question. [LB151]

SENATOR ASHFORD: Well, that's not a musing. I mean I think we do need to know how much we're paying out. [LB151]

SENATOR HARR: Yeah. [LB151]

SENATOR COOK: I agree wholeheartedly, and Mr. Morton has agreed to provide us that information to all of the committee members. Is that... [LB151]

GLENN MORTON: Yes, I will. [LB151]

SENATOR ASHFORD: Well, to me, yeah, then I could provide it to the others. [LB151]

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SENATOR COOK: Okay. Thank you. Senator Wallman has a question. [LB151]

SENATOR WALLMAN: Thank you, Senator Cook. Yes, you paid lease rates in this Capitol, too, didn't you? [LB151]

GLENN MORTON: No. [LB151]

SENATOR WALLMAN: You didn't? [LB151]

GLENN MORTON: No. [LB151]

SENATOR WALLMAN: It was free? [LB151]

GLENN MORTON: Capitol space is free. And one of the big...well, one of the...maybe not big, one benefit is that we are a cash funded agency, not general funded, so as we move out of the Capitol, where our rent is free, there will be...likely be general funded entities that are paying rent now that will move into the Capitol and there will be a savings in General Fund money likely, very likely, depending on who gets that space. But I understand it's likely it will be a general funded agency. [LB151]

SENATOR WALLMAN: Okay. Thank you. [LB151]

SENATOR COOK: Okay. Thank you very much. [LB151]

GLENN MORTON: Thank you. [LB151]

SENATOR COOK: Are there other questions for Mr. Morton at this time, committee members? Thank you very much, sir. [LB151]

GLENN MORTON: Thank you. [LB151]

SENATOR COOK: Anyone else testifying in support for LB151? [LB151]

JERRY STILMOCK: Good afternoon, Senators. Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying in support on behalf of the Nebraskans for Workers' Compensation Equity and Fairness, and the National Federation of Independent Business. The portions...the portion of the bill that we are in support of is simply authorizing the use of videoconferencing. We think it would be helpful. Of course, we recognize as the bill is written that it would be stipulation by both parties, so that would cover the unstated item in the bill as to...depending on what the court does, whether by rule or some other means, to assess the cost, if there would be a cost to one of the parties. If it's a burdensome cost to one of the parties then that party would be able to

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simply not sign on the stipulation, the agreement to conduct the videoconferencing. Noticed two of the workers' compensation judges that are in the room with us this afternoon and my understanding is most of the pretrial orders that go out, the exhibits have to be--I'm going to the question, trying to answer the question that was posed, what about exhibits and the chain of custody--that in a pretrial those exhibits are ordered to be submitted not only to the other opposing side but also to the court so the court would have those. And I trust that the...speculating that the court rule would simply adopt that those exhibits that are with the court then would be part of the official record, because now if, unless counsel would agree to submit exhibits after the pretrial hearing--which, by the way, was conducted by teleconference already--those exhibits would not become part of the final record if they weren't already in the hands of both opposing counsel and the court at the time of the pretrial hearing. But we think it's a good idea. We believe that it would help on the costs in alleviating or reducing some of the costs now in travel. Thank you. [LB151]

SENATOR COOK: Thank you. Questions for Mr. Stilmock? [LB151]

SENATOR HARR: Just quickly. [LB151]

SENATOR COOK: Senator Harr. [LB151]

SENATOR HARR: This would lower the attorney fees also, wouldn't it, since they don't have to travel as much,... [LB151]

JERRY STILMOCK: Well,... [LB151]

SENATOR HARR: ...hypothetically, hopefully? [LB151]

JERRY STILMOCK: Typically, attorney fees that I'm aware of are handled differently by the parties. Attorney fees for the plaintiffs, you know, would be...most likely they're going to be on a contingency fee basis. Attorney fees for the employer, the insurance company would be on an hourly rate. [LB151]

SENATOR HARR: Okay. [LB151]

JERRY STILMOCK: So yes to one party, no to the other party, though...I mean the client is the one that's going to bear the travel expenses to get that attorney to a remote site and so, to answer your question, yes, it would. In terms of the plaintiff's side, the plaintiff's attorney's fees probably remain the same but the expenses to the client would be reduced by limiting travel expenses. [LB151]

SENATOR HARR: Thank you. [LB151]

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JERRY STILMOCK: Yes, sir. [LB151]

SENATOR COOK: Other questions for Mr. Stilmock? Thank you very much, sir. [LB151]

JERRY STILMOCK: Thank you, Senators. [LB151]

SENATOR COOK: Anyone else testifying in support of LB151? Anyone like to testify in opposition to LB151 this afternoon? No, don't see anybody. How about in a neutral capacity for LB151? [LB151]

JAMES MICHAEL FITZGERALD: (Exhibit 6) My name is James Michael Fitzgerald. I am on the Compensation Court so I can answer some of your questions, Senator Harr. [LB151]

SENATOR HARR: Thank you. [LB151]

JAMES MICHAEL FITZGERALD: Anyway, I'm here for a couple reasons and I'm neutral. I mean I gave up. Like last year I came in here and just raised Cain and said it's really crazy for us to be moving out of the court...or moving out of the Capitol where we pay zero rent and now we're going to pay \$355,000. Last year it was \$500,000. So I really don't see any good reason for that. I would also tell you this, that even though it's a cash fund, it's taxpayers' money. It's employers' money and let me tell you why it's taxpayers' money, because I believe back in 2000 or maybe 1998-99, somewhere when the state was flat broke, they just went around and raided our fund and took \$1 million or \$2 million out of it. And so now there's \$355,000 or \$400,000 a year less that you're going to be able to get your hands on. But realistically, we've probably gone too far down the line and I couldn't stop the train; it ran me over. (Laugh) So I'll be. What I did, I did. As long as we're talking about moving, this is one thing I'd want to give to you and I really wish you'd consider adding this on. We're the only court that requires that a judge live in a certain location. Section 48-153 requires that judges on the Workers' Compensation Court live in Lancaster County, Nebraska. The Supreme Court used to have a rule in the constitution that you had to live where the court is, in Lincoln. In 1998, there was a constitutional amendment and now you can live anywhere in the state. My point is this, is that when an opening occurs, a prospective applicant has to agree to live in Lincoln...or live in Lancaster County, not Lincoln, which means we lose out on judges or good lawyers from Grand Island and North Platte and western Nebraska, and we desperately need to put a judge in Grand Island. We send somebody to Grand Island at least three days a week, I think. I mean I'm out there all the time, and I'm going to North Platte, I go to Sidney. Last week I was supposed to be in Sidney and I got 75 miles down the road and they called and there was a problem. I was also supposed to be Hebron and somebody drove in the ditch. And I mean we're traveling all the time. And you're talking about costs, Senator Harr. The cost of us traveling, the cost of every time somebody goes to Grand Island is 100 bucks. We're crossing in the night. You have two

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judges there the same day. You have two judges in Lexington, one in the morning and the afternoon. If you had judge that was there that just had that area, he'd save...we'd save a ton of money. And with, you know, somebody said it's going to be 65 cents, 70 cents a mile before the year is up, so I really wish that you would consider scratching the last sentence in 48-153. It makes it easier for people to apply. And also, now I live in Fort Calhoun, but...and they let me live there, but if I would have had to move I just would have rented an apartment down there because, you know, my wife is not moving to Lincoln, Nebraska. I'm sorry. She's not moving to Lancaster County. And I think that...and I think that I'm a good judge; I do a good job. Let me address the questions that Senator Harr had. I've done everything that's in this bill already, everything. I mean I don't even know why we have to put it in the books because we do it now. We have telephone status conferences that do with the progression of the cases all the time. We have telephone hearings on motions. If there's evidence at a motion then maybe it's got to be live, and I have a court reporter there and I'll be one place but I do let people appear by phone. I don't have any trials if the person lives in Nebraska. I've had three trials by videoconference and it's not the best and I don't like it, but all three people lived far outside the state of Nebraska--one in California, one down south, and one on the East Coast--and they were so invalid that they couldn't make it to the trial, and if they didn't have it by videoconference there would be no trial. So we're already doing all this and it does save some money if you have a case where they're going to present a bill of exceptions and we could have everybody on a videoconference, get the bill of exceptions, nobody travels. Does save money for lawyers because they don't have to travel, because I've had a lawyer in Omaha, I've been in Omaha, I've had a lawyer in Broken Bow, nobody travels, and wherever, we can set it up anywhere. But I won't do trials that way, never. I'm going to see the person. So please consider my request on striking out Lancaster County because there's liable to be some openings come up in the court soon and we broaden the base and we get some Grand Island lawyers or somebody in North Platte or some place out west and they get the appointment. They could have an office out there and we would save a ton of money in travel. [LB151]

SENATOR COOK: Thank you, Judge Fitzgerald. Are there questions at this time from the committee? Senator Carlson. [LB151]

SENATOR CARLSON: Thank you, Senator Cook. Judge Fitzgerald, I should have asked this of Mr. Morton but it was kind of the last thing he said and then I didn't want to hold up the hearing, but the more I think about it I want to ask this, and I don't know if you can answer. If it's \$355,000 in some rent after paying no rent, and we're in the situation that we're in, in this state, how does this save money? Is it a cash funded agency or is it not? I thought I heard it was and then it wasn't going to be, we were going to have General Funds. So how does it all add up? [LB151]

JAMES MICHAEL FITZGERALD: Well, no, we're a cash funded agency that can be tapped for the General Fund. I mean in 1980, 1999, 1980, somewhere around in there,



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the state just came in and said, all the cash funds, comp fund, I think we bellied up to the table with a million bucks. They just took \$1 million out, put it in the General Fund, took \$1 million out of our cash fund. [LB151]

SENATOR CARLSON: But generally speaking, a cash funded agency means that it's not General Funds. [LB151]

JAMES MICHAEL FITZGERALD: True. True. But I'm saying it's funds that are available for the General Fund, because you've taken money, because the Legislature has taken money from our fund and put it in the General Fund. [LB151]

SENATOR CARLSON: Okay. Now let's go back to if we're paying no rent now, we're paying \$350,000 or whatever it is, how do we get...how do we recoup that without going to General Funds? [LB151]

JAMES MICHAEL FITZGERALD: Well, the cash fund would just tax more on the employers. [LB151]

SENATOR CARLSON: Okay. [LB151]

JAMES MICHAEL FITZGERALD: If it needs money, it'd just raise it. There are certain levels of how much we can charge. I think the money for the cash fund comes from the tax on workers' compensation premiums. [LB151]

SENATOR CARLSON: So this will raise work comp premiums. [LB151]

JAMES MICHAEL FITZGERALD: I don't really know. You have to ask Mr. Morton that. [LB151]

SENATOR CARLSON: Thank you. [LB151]

JAMES MICHAEL FITZGERALD: I was against this thing from the word go because of that. [LB151]

SENATOR CARLSON: Okay. [LB151]

JAMES MICHAEL FITZGERALD: I mean the money bothered me but... [LB151]

SENATOR CARLSON: Thank you. [LB151]

JAMES MICHAEL FITZGERALD: ...I mean I'm...I give up on fighting that. You'll have to...the Legislature will have to say no to the move. [LB151]

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SENATOR COOK: Thank you. Any other questions from...Senator Ashford. [LB151]

SENATOR ASHFORD: Yeah, I just...following up on this, because \$350,000 is a lot of money and there are other needs and I think the point is well taken. And the issue of accessibility is an issue and I suppose it would be possible to create a courtroom, possibly, that's more accessible maybe in another building with a lot less space than \$350,000 worth of rent. [LB151]

JAMES MICHAEL FITZGERALD: You could put a courtroom down on the 1st floor because I've done that when somebody couldn't get to the first...couldn't get on the elevator. I just moved downstairs and take a room downstairs. [LB151]

SENATOR ASHFORD: Yeah. [LB151]

JAMES MICHAEL FITZGERALD: We have courtroom...we have trials downstairs on the 1st floor. So the person comes in the ramp over here on the north end, comes in and goes to the room, usually...I forget which room, whichever. I've done it many times when people couldn't get upstairs. [LB151]

SENATOR ASHFORD: Yeah, and we have courts in Douglas County, in Lancaster County, rooms, courtrooms or court offices. That's it? [LB151]

JAMES MICHAEL FITZGERALD: Yes, we have them here at the Capitol and in Lancaster County right now. [LB151]

SENATOR ASHFORD: Or Douglas County? [LB151]

JAMES MICHAEL FITZGERALD: I'm sorry, Douglas County. I'm sorry. But that could change. I mean sooner or later somebody is going to have to put somebody out west because we're not going to be able to afford the drive. [LB151]

SENATOR ASHFORD: Well, I'm wondering if a better use of funds would be to find a facility in North Platte or Grand Island that would... [LB151]

JAMES MICHAEL FITZGERALD: Well, state statutes require that the counties are supposed to give us space in their courthouses. [LB151]

SENATOR ASHFORD: Yeah. [LB151]

JAMES MICHAEL FITZGERALD: So I think you could find a place in...I'm fairly certain you can find a place in North Platte and you could find a place in Grand Island maybe. Maybe Grand Island will be a little hard but we could. [LB151]

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SENATOR ASHFORD: You've already said this but wouldn't...this makes no sense. This is difficult to understand why we would spend \$350,000 a year on new space when we're not paying anything now. It is our money. It's the state's money. It's raised through a cash funded mechanism but it certainly could be used in General Fund or just used for other comp court purposes or other purposes in furtherance of the court, that I right off the top of my head can't think of but I'm sure you have many examples of. But this idea of having a judge in Grand Island or North Platte and one in Lincoln and in Omaha and expending some funds to do that would seem to me to make a lot more sense than spend \$350,000 a year. But I've... [LB151]

JAMES MICHAEL FITZGERALD: I agree. (Laugh) [LB151]

SENATOR ASHFORD: ...you agree, I guess. [LB151]

JAMES MICHAEL FITZGERALD: I agree. I mean I came to this committee last year and raised Cain. And then I went to the Appropriations Committee and raised Cain about...there was \$500,000 in last year's budget. It got out of the Appropriations Committee and I decided... [LB151]

SENATOR COOK: All right. [LB151]

JAMES MICHAEL FITZGERALD: And so that \$500,000 got spent. [LB151]

SENATOR ASHFORD: Okay. Thanks, Judge. [LB151]

SENATOR COOK: Any more questions, Senator Ashford, for the judge? [LB151]

SENATOR ASHFORD: No, I just...I just don't understand. [LB151]

SENATOR COOK: Any other questions for the judge, Judge Fitzgerald? Thank you, sir. [LB151]

JAMES MICHAEL FITZGERALD: Thank you much. [LB151]

SENATOR COOK: Next testifier in a neutral capacity? Please make sure you fill out a testifier form, sir. [LB151]

JAMES MICHAEL FITZGERALD: Oh, I'm sorry. Yeah, I'm sorry. [LB151]

SENATOR COOK: And you too. [LB151]

MICHAEL HIGH: I'll go ahead and get started. I'm Judge Michael High from the Workers' Compensation Court, and the reason I'll get started is Judge Fitzgerald

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testified in a neutral capacity. I don't know if it was neutral. I'm for the move. I was in a motion hearing so I couldn't get down here. Would it be okay with the committee if I went ahead and testified as a proponent? [LB151]

SENATOR COOK: Sure. [LB151]

MICHAEL HIGH: Okay. [LB151]

SENATOR COOK: Yes. [LB151]

MICHAEL HIGH: I...Judge VanNorman is the presiding judge now. She has been the presiding judge for one and a half, going on...or, no, two and a half, going on three years. I was the presiding judge for six years before that. This move, if I may be so bold, is exactly the right thing to do even in this budgetary environment because the Nebraska Workers' Compensation Court is there to provide services to the injured workers and the employers and their insurance companies to resolve disputes and resolve disputes in a way that's set up by statute. I have not...and I started looking at moving the court after we were over in the old Federal Building when the work was being done up on 12 and 13 and we were moved out. We had three real courtrooms. We also had our clerk of the court and all the records on the same floor. We weren't even on two floors as we are today. The efficiencies that I saw then will apply now. In addition to that, there has been ongoing discussion about moving the court for the last four years of my being a presiding judge. I am not aware and have never been approached by anybody from the employers' side, and they're the ones that are paying every dime of our budget, that's negative or is expressing any negative thoughts about this move. All I get from the attorneys that are involved and those plaintiffs that are representing injured workers is positive support for this move. Everybody wants this except perhaps Judge Fitzgerald. And I'm not going to get into the politics of that but there are politics involved with respect to where Judge Fitzgerald wants to be able to hold trials. I'm sure he's talked to a lot of you about his position. But this is, at a minimum, a wash monetarily for this state. I believe it will reflect in savings to the state when you weigh our cash fund payment for our rent, to put us in a place that lets us fully comply with the Americans with Disabilities Act, lets us have injured people park right outside our door, lets us have three courtrooms that give people the feeling and the idea that they've had their day in court. Our second courtroom upstairs is our temporary, it's temporary dividers, and we have signs across the rest of our floor to have our employees be quiet when we're having court because the sound just echoes and ricochets in there. Somebody comes on to the floor and doesn't know it and they talk out loud, and you should see the look on the plaintiff's face. They really wonder when are we going to get our day in court. So I won't take any more of your time, but I just...security and giving people a chance to be heard in an environment that will work, and then please let us have videoconferencing in the future. And I would be glad to answer any questions. [LB151]

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SENATOR COOK: Thank you, sir. I think I see a few hands. Senator Lathrop is the one I saw first. [LB151]

SENATOR LATHROP: I do. And I do have a question for you, and I appreciate the fact that you were in the hearing and you walked out of here after...or walked in perhaps in the middle of what Judge Fitzgerald was talking about, and I have talked to Judge Fitzgerald about his concern and that has to do with a requirement that a work comp judge reside in Lancaster County. And it strikes me as very logical, the more that we have...and there are a lot of work comp trials or cases that get set for trial, Grand Island and west, right? [LB151]

MICHAEL HIGH: Numerous. [LB151]

SENATOR LATHROP: Numerous. I mean there's a lot of packing plants so there's a lot of injuries, just as an example, in the packing industry. [LB151]

MICHAEL HIGH: So I didn't quite agree with you but I'll...there are numerous. [LB151]

SENATOR LATHROP: Well, but it seems to me to make sense, if we're going to have judges, if we're going to make them live in Lancaster County and then they're continuously commuting out to western Nebraska, to get rid of the requirement that they live in Lancaster County so that the Governor could appoint somebody in Grand Island or North Platte and make that person the judge that's going to hear cases out in greater Nebraska. Do you have thoughts about that or an idea,... [LB151]

MICHAEL HIGH: Well, my thought is... [LB151]

SENATOR LATHROP: ...because my inclination it to take Judge... [LB151]

MICHAEL HIGH: My thought is that the practice of the court has not been that; that when a person becomes appointed, wherever he's from, we have met as a court and I believe, it's been a while since Judge Fitzgerald came on board, he does not live in Lincoln, Lancaster County. We... [LB151]

SENATOR LATHROP: No, I'm perfectly aware of that. [LB151]

MICHAEL HIGH: We don't make him. He lives in Blair. What we've interpreted and said is that if you're a judge that was appointed to fill a vacancy of a judge that's hearing and trying cases in Lincoln, your principal place of office needs to be here and you need to show up and you need to conduct your business here on a regular basis. That's for just office business practice so that his assistant who's here can have face-to-face dialogue and transfer work back and forth. [LB151]

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SENATOR LATHROP: Sure. And maybe the point is...I'll make the point differently. If I'm a lawyer out in North Platte or Grand Island and I'm interested in getting on the Work Comp Court and I look at this and say, honey, do you want to move to Grand Island...or to Lancaster County, and, you know, his spouse says, no, not really (laugh), if we eliminate this then at least a person could make that application and be considered. But I'm not sure that, with that on the books, somebody who doesn't want to live in Lancaster County is even going to apply to be a work comp judge. [LB151]

MICHAEL HIGH: The policy decision or thoughts that need to be taken up when that is considered is whether we want to have a judge who is living outstate try all of the outstate cases. And then I haven't looked at the numbers, I didn't know I was going to be talking about this, but...and also then have to come into Lincoln to try a few because of the way the numbers work. That's why I didn't say a lot of cases. There's a significant number out there. [LB151]

SENATOR LATHROP: Do you think you could...do you think you could share with us the breakdown of where the cases are getting tried...or filed... [LB151]

MICHAEL HIGH: I can just talk to you about my... [LB151]

SENATOR LATHROP: ...filed perhaps? [LB151]

MICHAEL HIGH: Well, my personal trial experience is that I have to travel approximately one day a week, sometimes two, to try cases in mostly Grand Island and Lexington, where the packing plants are, for my area. Omaha judges take care of the packing plants in Sioux City and Madison and Norfolk, so they travel out there a fair amount. But we allocate cases coming in to us by physical jurisdiction across judges so that no attorney in Lexington will have one judge try all of those cases every year for years. So right now Judge Fitzgerald, Judge Hoffert, and I are trying cases in Lexington, Grand Island, and anywhere out there that we do not make the presiding judge travel. So it takes a day a week but I think there's an important philosophical thing that the committee ought to consider and that is do we want to...I mean the real crux of it is do we want to have one judge try those cases or do we want to have several? And several judges trying them when it's not assigned in any...it's assigned randomly, I think goes...I personally come down on that's a fairer way to allocate the judicial resources and make sure that people don't get one judge. Each of us... [LB151]

SENATOR LATHROP: But the same logic...the same logic would have us rotating district court judges around, wouldn't it? And we have a district court judge in Scottsbluff, right? [LB151]

MICHAEL HIGH: Correct. [LB151]

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SENATOR LATHROP: And those people don't get to pick which judge, they don't get a chance to have the judge from Madison County be out there. [LB151]

MICHAEL HIGH: Correct. We're set up by statute and that's probably your call. [LB151]

SENATOR LATHROP: Okay. Just... [LB151]

MICHAEL HIGH: But I think you need to give that some consideration because our culture... [LB151]

SENATOR LATHROP: No, I can appreciate that if you have a judge who, you know, is, we'll say, plaintiff oriented or defense oriented and that's who you're stuck with for 15 years of your practice out in Grand Island, you might wish that they rotated judges around a little more. [LB151]

MICHAEL HIGH: Well, I don't...and I'm really not saying that. I'm saying that there are certain conflicts that come up with personalities and that's inherent in the business and it doesn't happen very often but there has been occasion when we judges have a legitimate conflict. We know somebody or...and if we would have...if you have one judge, we just don't have to worry about it because we have a lot of judges and it's rotated and it doesn't come up very often. [LB151]

SENATOR LATHROP: Okay. If you wouldn't mind, and I know you're not the presiding judge but the presiding judge is here, if somebody from the court can get us a breakdown of the jurisdictions where these filings are made so that we can at least look at that and give it some consideration. [LB151]

MICHAEL HIGH: I know we can do that fairly quickly... [LB151]

SENATOR LATHROP: Okay. [LB151]

MICHAEL HIGH: ...because we keep track of it. We can get that to you. [LB151]

SENATOR LATHROP: And if you can have somebody drop that off in my office, I'll share it with the committee. [LB151]

MICHAEL HIGH: I'm sure Judge VanNorman will. [LB151]

SENATOR LATHROP: Thanks. [LB151]

SENATOR COOK: All right. Thank you. We have all kinds of hands popping up. I thought I saw Senator Carlson's first, then Senator Harr, and then Senator Smith.

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[LB151]

SENATOR CARLSON: Thank you, Senator Cook. Now I asked a question of Judge Fitzgerald and so I'm going to ask the same thing of you, and in your testimony you indicated you thought it would be a good idea to move. You said you thought it would save money. And yet it's going to cost \$355,000 of additional rent. So how does that work out without increasing General Funds and without increasing workmen's comp premiums for employers? [LB151]

MICHAEL HIGH: Well, we won't, we will not increase General Funds. Our premiums are assessed by the Department of Labor and there's a trigger mechanism and I cannot explain how it works, but if our cash fund gets below or at a certain level, they trigger an assessment. That assessment, by my recollection, lasts for well over a couple of years, so it's not an assessment that's made every year. It's made when there's a need to do it. We have, at one point, when Judge Fitzgerald was talking about the Legislature reaching out and taking some of the cash fund a half dozen years ago when there was a budget crunch, we had \$4 million of cushion in our cash fund and that had been built up over years and years and years really by Judge Novicoff of the court. He was the presiding judge for 35 years. And I know that his thought was for that to be used to build a building, if we could ever get to that point, and have a Workers' Compensation Court building. Well, we lost that money. That was taken, as you have the right to do that as a Legislature. And if we have a bit of a cushion now, you would have the right to come and take it. My personal feeling about that is that that's taxation without representation because it's money that employers paid to receive services from the court. And I'm going to fall back on my statement. I spoke from the hip when I said I think this is, at a minimum, going to be a wash, but I do not think the money should be the trigger mechanism for how you think about this. Many RFPs were put out. I think we did three iterations. The first two we didn't even...we decided not to move because of the way it looked, the facilities that were offered. They just weren't right. This place is right across the street from the City-County Building on the Mall. It's on the ground floor. It carries with it judicial integrity. It's a place we ought to be. And it will allow us to provide to the people that use us their day in court. I can't tell you about the numbers. I mean I... [LB151]

SENATOR CARLSON: Well, what you might be... [LB151]

MICHAEL HIGH: I can't get into an accounting with you. I don't have that. [LB151]

SENATOR CARLSON: Okay, but what you might be inferring is that it's going to cost more money but there's already being enough that's been assessed under current structure that it won't cause an increase to do this. So it's still going to cost more money but it won't result in a higher assessment. [LB151]



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MICHAEL HIGH: I'm not going...well, it can't result in a higher assessment, I don't believe. I'm not going to say it won't result in a little bit quicker assessment rate. We don't do it every year. There's a trigger mechanism. And I haven't looked at those numbers. I'm not...I'm a trial judge right now. I just wanted to speak to you as a trial judge. And the feedback I've gotten from everyone, and I've spoken about this move with attorneys, is finally. [LB151]

SENATOR CARLSON: Okay, thank you. [LB151]

SENATOR ASHFORD: Senator Carlson, do you want to...I think you're in charge now because you have the most seniority on this committee. [LB151]

MICHAEL HIGH: I'm sorry to take so much time, but this is...it is an important issue. [LB151]

SENATOR CARLSON: No, that's what a hearing...that's what a hearing is for. [LB151]

SENATOR ASHFORD: Or maybe Senator Wallman has the most. I don't know. Somebody...someone has to do this. [LB151]

SENATOR LATHROP: How about I do this? Senator Harr, you're next. [LB151]

SENATOR HARR: Thank you. [LB151]

SENATOR LATHROP: You're recognized. [LB151]

SENATOR HARR: Thank you, Senator Lathrop. The \$350,000 I have a little bit of a problem with, and here's why. I mean you talk about judicial integrity of the new building. I'm assuming you're not saying the current building doesn't have judicial integrity, do you? [LB151]

MICHAEL HIGH: I am. [LB151]

SENATOR HARR: Okay. [LB151]

MICHAEL HIGH: Our...have you been up to our courtroom? All of you should come up to 12 and 13 and pay a visit if you're thinking about not letting us do this. Paint is coming off of every wall, our primary...well, our prime... [LB151]

SENATOR HARR: (Inaudible) Exhibit A, we have paint peeling. [LB151]

MICHAEL HIGH: This is it. Our primary courtroom, when I have a trial, whether it's hot or cold, more than likely I have to go over and hit the special switch that we had the

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building people put in so we kill the heating or air conditioning so we can hear, and it gets hot and it gets cold, and if we open a window it's so noisy the court reporter can't hear the testimony. [LB151]

SENATOR HARR: And you would agree the windows rattle. Not so? [LB151]

MICHAEL HIGH: We don't have the...these are not the big windows, they're smaller. We can crank them down. [LB151]

SENATOR HARR: Okay. [LB151]

MICHAEL HIGH: They don't rattle up there. (Laugh) But they do in my chambers. [LB151]

SENATOR HARR: Yeah. I mean I understand. I've worked on the 9th floor and I understand the rattling windows can be a distraction, and I understand the...I mean I'm currently dealing with the peeling paint. But I don't think that's a reason enough to move a body. [LB151]

MICHAEL HIGH: I'll concede that it isn't. [LB151]

SENATOR HARR: And the 12th floor I will concede that it does seem a little, if we want to be ADA compliant, it would make sense to have it on the 1st floor. I would concede that. It's just I have a question. Three hundred and fifty thousand is a lot of money. Especially you say money can't be the driving force. Well, that's what we have to deal with and that's what we're dealing with as a legislative body. I understand a judicial body is a separate one and your focus is different than ours. We're the most responsible to the people, to the taxpayers, and they're the ones who have an issue with raising any costs. This is, while it's not a direct cost on the taxpayers, it is taxpayer money and it is an increase on their cost, and quite substantial because it's not a one-time hit of \$350,000. That's a continuing down the road \$350,000 as opposed to zero. And while I understand the, you know, some of the issues you make, I think that's a lot of money and I haven't heard... [LB151]

MICHAEL HIGH: Well, I don't want anybody to quote me as saying it's not a lot of money. We do an important job. We're not just moving our three courtrooms. We're moving our staff and we're moving all of our records into a place that's on...we'll all be on the same floor. There are very big efficiencies that come from that. And then I don't know how you quantify security. We have had folks come up and I've had to go out because our assistants can't handle them, and we've had to ask them to leave. They don't leave. We have no idea what they have in their pockets, and I've wrestled with that. I don't know how I would quantify that to say there's a certain level we shouldn't spend in order to have security and have metal detectors and have doors too. People

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walk in and some of them have been mentally unstable. [LB151]

SENATOR HARR: We all deal with that though, I mean, and I mean that's this building. We understand that. That's part of what we do in this building. There is no security for us either and we have a lot of constituents who are angry and upset with what we deal with. So I understand your concern with that and we're looking to address that. I guess my issue is I question the \$350,000 a year. [LB151]

MICHAEL HIGH: Well, I would urge you, I don't believe there's anybody from the employer side or from the plaintiff side that's here testifying against this. If you're thinking about voting against taking the language out because you want to somehow control our budgetary expenditures, talk to some business and labor people. I can't testify for them. I can only tell you that no one has told me this isn't a good thing. They don't just listen to me. They affirmatively tell me, move. [LB151]

SENATOR HARR: Thank you. [LB151]

MICHAEL HIGH: Anything else? [LB151]

SENATOR LATHROP: Yeah, Senator Smith, you're recognized. [LB151]

SENATOR SMITH: I have so many things to ask now after listening to Senator Harr. [LB151]

MICHAEL HIGH: I didn't plan on doing this. (Laugh) [LB151]

SENATOR SMITH: But I think...I think... [LB151]

MICHAEL HIGH: Thank you for listening. [LB151]

SENATOR SMITH: ...well, I think from the employers' standpoint, though, if they knew that there would be an eventual increase in cost to them, I think that they would certainly have something to say about it so...if given the opportunity. I got a question about, just reconciling for me, Judge Fitzgerald talked about or at least he seemed to have said that telephonic and videoconferencing currently exist and then I'm hearing that we have to make these changes in order to introduce that new type of technology. Can you kind of reconcile that for me, maybe perhaps you cannot speak for Judge Fitzgerald, but is there telephonic and videoconferencing currently taking place? [LB151]

MICHAEL HIGH: Well, Judge Fitzgerald, I can speak directly about this in our court. As the presiding judge, Judge Fitzgerald set up on his own some trials that meant he was taking evidence. I wrote him a letter, as the presiding judge, after conferring with the

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rest of the judges, and said don't do it, because there are issues relative to receipt of evidence that every court in the country, including our Nebraska Supreme Court, has to understand and deal with when you start taking evidence and making decisions about people's credibility over video. He's done it. None of the rest of us do it except in the context of review hearings where there is no evidence, and we have done review hearings in the past by telephone because it's just simply a...they brief the issues, they can't give us any new evidence, and we dialogue and ask questions just like we're doing here today about positions. So that's...did I answer your question? [LB151]

SENATOR SMITH: Yes, so it's available today. [LB151]

MICHAEL HIGH: The technology is available by we go over to the State Office...the Executive Office Building and use the facilities that you have, but we can't do it on an evidentiary basis unless and until we make sure it's right. [LB151]

SENATOR SMITH: Then if I can just ask one final question, on the...what Senator Lathrop was referring to before about the language that is...was recommended be struck from 48-153 about the...where judges must reside, there's some additional follow-up language in there that talks about, unless for the convenience of the compensation court they are permitted to reside elsewhere, but it requires a majority of the vote of the compensation court. [LB151]

MICHAEL HIGH: And that's what we do. [LB151]

SENATOR SMITH: Okay, so there is a provision already in there for someone to live outside of Lancaster County? [LB151]

MICHAEL HIGH: Yes. [LB151]

SENATOR SMITH: Okay. [LB151]

MICHAEL HIGH: And I...it's never, I mean as a matter of professional courtesy, as long as the work is done we would all...I will say for all the judges we would always let that happen. [LB151]

SENATOR SMITH: Okay. [LB151]

MICHAEL HIGH: We would love to have somebody from outstate, if they wanted to do it, do it. But as of now, I do believe there would be a requirement that they come to the Lincoln office somewhat regularly. You know, Frankie Moore from the Court of Appeals, all of the Court of Appeals' members, I don't mean to single her out, they do a lot of their work outside the court; they just make sure they're here for some of the business. [LB151]

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SENATOR SMITH: Okay. [LB151]

MICHAEL HIGH: And that's the way we would want to be. [LB151]

SENATOR SMITH: Thank you very much. [LB151]

SENATOR HARR: Thank you. [LB151]

MICHAEL HIGH: Thank you. [LB151]

SENATOR LATHROP: Thanks, Judge. Appreciate it. I think that was neutral capacity turned supporter. And so is there anybody else here in a neutral capacity on my bill, LB151? I think I'm going to close. I wasn't going to, but I think I will just to kind of try to pull this together. This was a worthwhile hearing. I think it was a...it seemed like kind of an innocuous provision and maybe a little history is in order, and you might have picked it up but this decision to move the Work Comp Court really moved on two tracks. We had a bill similar to this come before the Business and Labor Committee, which was to allow the Work Comp Court...I think the statute actually says that the papers and the work of the Work Comp Court shall be situated in the Capitol, and so they couldn't move with that language still in the statute. And they came in here and we listened to these very same arguments, very same concerns, and I don't...obviously, we didn't pass a bill because it's still a problem for them. But the court was also going down to the Appropriations Committee and also visiting with the Governor and said, we think it makes sense for us to move. And that was a decision made by Appropriations and eventually by the Legislature, go ahead and move. So what we're doing today with this bill I think is now sort of taking...a cleanup. It's a cleanup provision. These guys are moving. (Laugh) We've already told them they can. The Governor has told them they can and they have the place picked out and they've signed a lease, even though they might not know how much they're going to pay per square foot. (Laughter) So that part, that really is a cleanup piece. The other piece of this about telephonic and teleconferencing, you know, in Judiciary Committee--Senator Ashford can tell you this--we are dealing with a lot of how do we make the courts more efficient and can this be done now. I've had plenty of hearings. I do Work Comp Court work, not a lot, as much as some guys do, but I do some, and we can have these hearings by phone right now. But I think this is just sort of a nod to the direction that we're headed in, which is to the extent we can save judges' travel out to Grand Island or other locations, to the extent we can save the lawyers travel, then we're making the process more efficient. Because, Senator Ashford will tell you this, when we deal with allocating judicial resources at the district court and the county court level, we have judges in Omaha who hear a lot more cases because they have an office and they never have to leave it. And then we have fellows or judges out in western Nebraska who we have to account for what they call windshield time, and that is they got to drive from Scottsbluff, they may

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need to be in Alliance and then they may need to be in Valentine, and they don't get to hear as many cases. And what we're seeing in the Judiciary Committee is we're looking for ways to get these judges trying cases, hearing cases, and making decisions and not spending their life in their car, which really kind of goes back to what Judge Fitzgerald said, which is, you know, if we took the language out of that statute we might see someone put their name in the next time who lives in North Platte and says I'll stay out here and try cases out in western Nebraska. It's at least worth a look, I think. So I'm looking forward to the discussion that we'll have in Exec on LB151 and thanks for everybody's testimony. All right, that ends my bills for the day and it brings us to Senator Council. [LB151]

SENATOR COUNCIL: Chairman Lathrop, members of the Business and Labor Committee, I am Brenda Council, last name spelled C-o-u-n-c-i-l, and I represent the 11th Legislative District and I appear before you this afternoon for the purpose of introducing LB189, which is known as the Criminal Offender Employment Act. The more common reference nationally is ban the box. And what LB189's intent is, is to increase employment opportunities for ex-offenders by prohibiting state government and its subdivisions from asking whether the applicant has been convicted of a felony or a misdemeanor on the initial employment application. You may ask why is this legislation necessary. Well, one of the factors that affects the successful reintegration of ex-offenders back into our respective communities is their ability to find and maintain gainful employment. According to data collected by the Pew Center for the States, 30,000-plus Nebraskans fall within the category of ex-offender. There are more than 30,000 Nebraskans who are currently incarcerated at the state or county level, or who are currently on probation or parole or have been on probation or parole. That has significance when there is research data that shows that more than 40 percent of employers will automatically disqualify from consideration for employment someone who checks the box yes that he or she has been convicted of a misdemeanor or a felony. What LB189 would do would be not to prevent a state employer from considering someone's criminal record but, rather, to defer that consideration to a point where that individual is being considered as a qualified applicant for that position, rather than allowing the automatic disqualification that is associated with just the admission of the fact that you have had a prior misdemeanor or felony conviction. I introduced a similar bill last year, LB913. We had a very good and productive hearing on that bill. There were no testifiers in opposition, however, there were testifiers who testified in a neutral capacity because they had concerns about the breadth of LB913. And after that bill was heard in the committee, we took the opportunity to meet with those organizations who had expressed concerns, and one of their principal concerns, and I can just kind of illustrate it by holding the two bills up, this is LB935 and it was like over 50 pages long, because in addition to dealing with employment it attempted to address licensing issues as well, and those were some of the concerns that were expressed. If you'll recall, Senator Lathrop and Senator Wallman, it was the Nebraska Bar Association, the Nebraska Association of School Boards were concerned about

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licensing issues. LB189 addresses those by completely eliminating any application of ban the box to the licensing. And again I need to stress, LB189 does not prohibit an employer from considering someone's criminal background. It does not prohibit an employer from denying employment or terminating employment because of one's criminal background. But there must be some relationship established between the work being performed and the conviction. Particularly exempted is law enforcement, and LB189 says ban the box does not apply to law enforcement unless they wanted to adopt it as a part of their policy. And in terms of my advocacy for this, Nebraska has the pleasure and the distinction of having a statewide unemployment rate of somewhere between 4 and 5 percent. Legislative District 11 has a double-digit unemployment rate. According to some, it exceeds 30 percent. And when you talk to residents of my district, one of the primary barriers that they're facing--this is not to disregard lack of job skills and education--but one of the barriers that is consistently discussed when I meet with my constituents is the fact that their criminal backgrounds are being held against them despite the nature of the offense, whether misdemeanor or felony. The other thing that LB189 attempts to do is address another barrier to gainful employment. And I'm reminded of the woman who approached me in November of last year and asked if there was anything that could be done about the fact that she's had a couple of arrests in her past but she's never been prosecuted, never been convicted, and those arrests aren't removed from her record. And she's been told by employers that that's the reason she has not been employed. LB189 attempts to address that circumstance as well, that in making these employment decisions that the employer, state employers, would be prohibited from basing a decision on a person's arrest record when there are no convictions associated with those arrests. And we patterned LB189 after similar legislation that has been passed at the state and local levels across the country. If you'll recall, Senator Lathrop, one of the people who testified in a neutral capacity last year testified in that capacity because he didn't understand why my bill didn't extend to the private sector as well. And I will explain to you that I believe that this is a measure that should be approached incrementally. I think the state should be the standard bearer and set the standard, and hopefully, if the committee advances this to the floor and it's enacted, we can establish a record in terms of providing gainful employment and people successfully reentering, reducing the high cost of recidivism. Because if we look at and compare at no cost, quite frankly, of the implementation of LB189 to the cost of continuing to deny individuals employment opportunity and place them in a position where reoffending becomes a viable alternative to them, the costs we know at the state level approaches \$30,000 annually. If we really want to address reducing recidivism and cutting correction costs in this state, we need to take every opportunity we have to reduce the factors that contribute to recidivism and one of the principal ones being lack of access to employment. With that, I will close on the introduction and answer any questions that the committee may have. [LB189]

SENATOR LATHROP: Thank you, Senator Council, and welcome back to the Business and Labor Committee,... [LB189]

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SENATOR COUNCIL: Thank you. [LB189]

SENATOR LATHROP: ...our former Vice Chair here today... [LB189]

SENATOR COUNCIL: Yeah, everything has changed. (Laugh) [LB189]

SENATOR LATHROP: ...introducing. Yeah, the look of the place has, hasn't it? [LB189]

SENATOR COUNCIL: Yeah, the look of the place changed. [LB189]

SENATOR LATHROP: Okay. Well, thank you for the introduction. [LB189]

SENATOR COUNCIL: Thank you. [LB189]

SENATOR LATHROP: Does anyone have any questions for Senator Council on LB189? Yes, Senator Carlson. [LB189]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Council, I've had to trade you for Senator Harr and I'm still evaluating whether that's a good trade or not. (Laughter) [LB189]

SENATOR COUNCIL: A good trade. [LB189]

SENATOR CARLSON: On page 2, Section 4, "Subject to this section and Section 5," "On an initial application for public employment, there shall be no question or check box for the applicant." What comprises an initial application? That's one question: What's all encompassing to make an initial application complete? And the second question would be, can any of this be verbal? [LB189]

SENATOR COUNCIL: Well, first of all, we're dealing with state government and it is my understanding that all applicants for employment in state and subdivisions thereof have to either submit an application on-line or have to submit a paper application to be considered for employment. So when we talk about the initial application, it's whatever avenue that the particular agency of government or level of government uses to consider applicants for employment and it's either going to be on-line or a hard copy, paper application. [LB189]

SENATOR CARLSON: So if this...if it's...it is hard copy then. So if as an employer I receive that on-line or somebody walks into my office with it and hand that to me and I take a look at it, I have the complete initial application in my hand. Then at that first meeting, in accordance with this bill, would I be able to ask any question that I want to ask in regard to criminal history? [LB189]



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SENATOR COUNCIL: Well, the way the bill is written, Senator, and directing your attention back to the same section that you pointed to, it says that the criminal record shall not operate as a bar to otherwise qualified applicants and shall only be taken into consideration after the applicant has been selected as a finalist for employment. So the employer has to be actually at a point where they're willing to consider extending an offer of employment to the person. [LB189]

SENATOR CARLSON: Well, and I'm asking questions because I can envision you come in and you hand me the paper or I've already got it, and we have a little visit and I'm impressed enough with you that I've pretty much made a decision in my mind, I'd like to hire you, and I don't have to go through the rest of the interviews. Now I've made that decision but in my mind I'm thinking "but." Then at that point, can I ask you questions about your past? [LB189]

SENATOR COUNCIL: Well, I'm going to answer that question this way. You're kind of asking the question in a private employer context and yes. But if you look at how government generally handles employment, I mean they have a defined application process. Applications have to be submitted. They'll go through whatever review process they go through. They'll extend invitations for interviews to candidates, and that's in part why we're just addressing public employment at this point in time, because we have these established employment processes in place and they're rather uniform. [LB189]

SENATOR CARLSON: Okay. I appreciate that and I think I'll ask a similar question to some of the testifiers maybe to follow up. [LB189]

SENATOR COUNCIL: Okay. [LB189]

SENATOR CARLSON: Thank you. [LB189]

SENATOR LATHROP: Hang on a second. Senator Harr. [LB189]

SENATOR HARR: Thank you, Mr. Chairman. I have a question on section (2)(a) on page 3. It talks about, "The following criminal records shall not be used, distributed, or disseminated in connection with an application for public employment," and (a) is: record of an arrest not followed by a valid conviction. Is that information currently available to an employer? [LB189]

SENATOR COUNCIL: And the answer is, yes, but I'm also told that it's not supposed to be and that it's supposed to be removed from the individual's records and what's occurring is that police departments, for whatever reason, are not removing those arrests that did not result in conviction. And so the intent here is that if an employer obtains access to such a record that includes arrests but not convictions, that they can't

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take those arrests into consideration in their employment decision. [LB189]

SENATOR HARR: Okay. Then let me ask you this. Assuming it is eliminated from the record, would...if you're a finalist for a job, at that point, under my hypothetical, could I ask you have you ever been arrested for a felony or a misdemeanor involving moral turpitude? [LB189]

SENATOR COUNCIL: As the bill is currently written, there's nothing that would prohibit an employer from asking that question if that employer is at the point in time where they have determined the applicant to be a finalist for the position. [LB189]

SENATOR HARR: Thank you very much. I appreciate that. [LB189]

SENATOR LATHROP: Senator Council, the point of this bill, if I'm...we had a hearing, didn't we have a hearing on this last year? [LB189]

SENATOR COUNCIL: Yes. Yes. [LB189]

SENATOR LATHROP: And didn't we have a really neat young guy come in... [LB189]

SENATOR COUNCIL: Yes. [LB189]

SENATOR LATHROP: ...that kind of caught a break from the Attorney General? [LB189]

SENATOR COUNCIL: Yes. [LB189]

SENATOR LATHROP: Yeah, I do remember this. [LB189]

SENATOR COUNCIL: Yes. [LB189]

SENATOR LATHROP: And if I remember the hearing, we talked about, and perhaps will in a moment, that the idea here is...with your bill is so that somebody gets past the paper part of it and can go in and when they say, have you ever been convicted of anything, whatever, he can say, yeah, but let me tell you my story. [LB189]

SENATOR COUNCIL: Right. And if I can just, in a nutshell for the benefit of the members who weren't here last year, the young man's name was Justin Tolston and he struggled on the application whether or not he should check the box. He had been convicted of a misdemeanor at age 16. [LB189]

SENATOR LATHROP: Like shoplifting or something. [LB189]

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SENATOR COUNCIL: Shoplifting at age 16. He was now...he was then 19, a student at the University of Nebraska-Lincoln, applying for an internship. And he didn't know whether, because it was committed and the conviction occurred while he was a juvenile, whether it was on his record, whether it was something he had to disclose. And based upon various opinions he received, he did not check the box yes. He was extended an interview by the Attorney General's Office. They were most impressed with him; advised him that they would be scheduling a second interview. After the first interview, that is when the Attorney General's Office conducted the criminal background check, and when I say that's kind of like the process in state government, they performed the criminal background check, the misdemeanor conviction appeared. When he went in for the second interview they told him that he was not eligible for the position and they told him, point blank, had he checked the box yes on the initial application he would have never been given any consideration. After some discussions, Mr. Tolston was offered that position and had a very successful internship in the AG's Office. [LB189]

SENATOR LATHROP: Yeah, a very, very neat young man too. [LB189]

SENATOR COUNCIL: Yeah. [LB189]

SENATOR LATHROP: Any other questions? Senator Smith. [LB189]

SENATOR SMITH: Yes. Senator Council, thank you. I think this is a really commendable bill and, you know, trying to make certain we reintroduce individuals with criminal backgrounds back into society, prior offenders, I think it helps to reestablish that family and put them back as productive members of society. So I really like the intent of it. A concern I have is with the burden that it places on business, however. And I know you're talking about it being incremental, but let's start with the public sector and then go on to the private sector. For those businesses that make it part of their operations to have...to do background checks and they have a clear line that's drawn that says, you know, if you had a criminal background, if you are convicted of a felony, regardless of the reasons for that, we cannot allow you employment simply because of the nature of the work you will be doing, that's a commitment they make to their customers. Now the burden is put on to those businesses that they are going to have to go through the cost of that background check because they cannot provide that initial screening. And on the public sector, and I know that we exempted law enforcement from this, but I know there's probably also some other public sector jobs out there that would have very strict requirements for a clean record with regards to felonies. So a concern I would have is how do we protect the employer and minimize their cost and their exposure, while also trying to do what this bill is intended to do, and that is to help reintroduce people back into the work force? [LB189]

SENATOR COUNCIL: Okay. And that's a very good question, Senator Smith, and my response to that would be to direct your attention to another bill that I've introduced and

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that's the Credit Privacy Act that deals with using credit reports in the employment application process and the determination process. And if you look at the Credit Privacy Act, it recognizes, as well if we ever get to the point where we can extend ban the box to the private sector, that we would get to the...we would address that the same way the Credit Privacy Act addresses it. That is to say, for the Credit Privacy Act, it says an employer is prohibited from using someone's credit score to either deprive them of employment or terminate them unless they are governed by federal or state regulatory requirements, for example, insurance companies, credit collection companies. Many of them are governed by federal and state law that mandate that you have to have a certain credit score, mandate that you can't have been convicted of a felony. In our review and if there is levels of public employment where that same issue is of a concern, it hasn't been brought to my attention. The only place it was brought to my attention was law enforcement and we would certainly be willing to make the same kind of accommodation in that instance as is reflected in the Credit Privacy Act. For example, some employers, the regulations that they operate under, say that the individual occupying that position must be bondable, well, in many instances you can't be bondable with a felony conviction as you can't be bondable with a poor credit score. So if...and if any of the public employers would provide me with evidence that they are governed by such a regulation, I would gladly make the amendment to this bill, just as the Credit Privacy Act currently recognizes that there are situations where the employer, his or herself, are restricted, by the regulations that govern their operations, from hiring certain people. [LB189]

SENATOR SMITH: I would bring up possibly nuclear power plants, the employment at nuclear power plants might fall into that jurisdiction, but I don't know if there's any others that have high security restrictions. [LB189]

SENATOR LATHROP: Well, I see the power plants sitting here so maybe we'll hear from them. [LB189]

SENATOR COUNCIL: Maybe we will. I didn't hear from them last year, so maybe...(laugh) [LB189]

SENATOR LATHROP: Okay. All right. [LB189]

SENATOR SMITH: That's why I was looking right over your shoulder. [LB189]

SENATOR COUNCIL: Okay. [LB189]

SENATOR LATHROP: Thank you. [LB189]

SENATOR ASHFORD: But again, and can I just... [LB189]

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SENATOR LATHROP: Oh, certainly. [LB189]

SENATOR ASHFORD: But we're just talking about the application process, right? [LB189]

SENATOR COUNCIL: Yes. [LB189]

SENATOR ASHFORD: We're not talking about final hiring here. [LB189]

SENATOR COUNCIL: No. There's nothing that prevents, you know, unless if you look at the bill, though, if, you know, there's evidence, if a person has been convicted of a felony... [LB189]

SENATOR ASHFORD: Moral turpitude. [LB189]

SENATOR COUNCIL: ...has been convicted of a felony and their conviction is for committing an act that has no bearing on the job that's being performed and there is evidence that the person has been rehabilitated, then...I mean that's when it comes into play in terms of those beyond the application process. [LB189]

SENATOR ASHFORD: Yeah. [LB189]

SENATOR LATHROP: Okay. Thanks, Senator Council. [LB189]

SENATOR COUNCIL: Thank you. [LB189]

SENATOR LATHROP: Are you going to stay and close? [LB189]

SENATOR COUNCIL: I'm going to stay and listen. (Laughter) [LB189]

SENATOR LATHROP: Okay. All right. Thanks, Senator. Anyone here to testify in favor of or in support of LB189? [LB189]

LAUREL MARSH: Hello. [LB189]

SENATOR LATHROP: Good afternoon. [LB189]

LAUREL MARSH: (Exhibit 7) My name is Laurel Marsh, spelled M-a-r-s-h, and I'm executive director of ACLU Nebraska. I appear here today in support of LB189, which provides...increases opportunities for a more diverse population of people for employment. The Fourteenth Amendment guarantees equal protection under the laws and this is why employment discrimination is prohibited against in certain categories of people based on...including the basis of race, gender, disability, and so on. It is

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currently legal for future employers to discriminate on other categories. For example, an employer may refuse to hire some based on their criminal history. This can appear to be a neutral basis to reject a potential employee. When you more closely at other inequities in society, it becomes apparent that this is an issue of race. Even in Nebraska, where we have a relatively small minority population, the numbers of minorities who are incarcerated as a result of felonies are hugely disproportionate to the percentage of minorities in the state. According to the 2000 census, which is rapidly becoming out of date, 91 percent of Nebraskans are white and about 9 percent are minorities, either multi or biracial. Yet according to the most recent statistical reports available from the Nebraska Department of Corrections, specifically their 35th annual report and statistical summary from 2009, about 45 percent of men and 36 percent of women behind bars in state prisons are people of color. A copy of these statistics are attached to this testimony. Of course, this only shows the number of minorities who are sentenced to prison time, and the statistics do not count the number of people who may have had a felony conviction that resulted in probation rather than prison time. With such a disproportionately large number of felony convictions being levied against minorities, a neutral employment characteristic such as "do you have a felony conviction" quickly becomes a stand-in for race. This is why we applaud LB189. It balances an opportunity for an employer to learn information but allows the potential employee to get their foot in the door and to impress the potential employer without being turned away because of a check mark on a piece of paper. Our office receives multiple calls each year from men and women who have served their time, come back to society, and who wish to move forward in a positive way but cannot find employment as the result of a past conviction. And I would like to interject here that we don't get a lot of these calls, we get about one a month, and they're scattered around the state. There's no specific geographic location that we receive our telephone calls from. It seems to be a statewide problem. One such caller told us, "I have a college degree, ample skills, but I can't even get a call back once I fill out an application that requires me to say I have a conviction." And I know I could...they believe that they could impress the employer if given the opportunity. And I believe the other types of statistical information that we have here were alluded to by Senator Council. I'd be pleased to answer any questions. [LB189]

SENATOR LATHROP: Very good. Thank you for your testimony. Senator Wallman has a question for you. [LB189]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, thanks for being here, Laurel. While I'm not a card-carrying member, but I appreciate your comments here. How many of these convictions do you think are made by court-appointed attorneys, you know, instead of hiring your own? Most of them? [LB189]

LAUREL MARSH: You know, we have a lot of respect for court-appointed attorneys. [LB189]

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SENATOR WALLMAN: Yeah. [LB189]

LAUREL MARSH: We find that they can practice in a field and develop even a certain specialty in it. I'm sure that it depends a little bit on the nature of the crime and the geographic area, but I don't think that's a connection. [LB189]

SENATOR WALLMAN: Okay. Thanks. [LB189]

SENATOR LATHROP: Okay. Senator Carlson. [LB189]

SENATOR CARLSON: Thank you, Senator Lathrop. On the first page of your testimony here--I know it's not anything that there could be a statistic for but it would be very interesting--in the fourth paragraph, 45 percent of the men, 37 percent of the women. It would sure help us if there was a way of determining, we've got a certain percentage incarcerated, what percentage who aren't ought to be, whether minority or whether white. That would be an interesting statistic and, if there were such a thing, could really either lend credibility to this or prove it otherwise. So I don't expect an answer from you because I know that we can't get that, unless you know there's a way to do it, but that would be really helpful if we could somehow add that knowledge. [LB189]

LAUREL MARSH: And I know that this is probably pure speculation. I know that there are certain things that probably, I'm going to say my younger and more foolish days, where there were perhaps times that I could have done something, perhaps driving when I should not have been driving, that might have gotten me arrested and, if convicted, this might have been the type of thing that would have carried over into a later part of my life. So I think that it would be a little awkward to speculate on how many of us might have done something that we should have gotten incarcerated for. I think that I am glad to have been given the opportunity to grow up a little bit and to have done so without carrying forward another burden. [LB189]

SENATOR CARLSON: Thank you. [LB189]

SENATOR LATHROP: Okay. I think that's it. Thanks for your testimony and answering the questions of committee. [LB189]

LAUREL MARSH: Thank you. [LB189]

SENATOR LATHROP: Any other proponents of LB189 here to testify? OPPD, anything like that? [LB189]

TOM RICHARDS: I'm coming but... [LB189]

SENATOR LATHROP: Okay. [LB189]

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TOM RICHARDS: ...I'm waiting for... [LB189]

SENATOR LATHROP: All right, the right time. All right. We'll go to opponents of LB189. Anyone here in opposition to LB189? [LB189]

MARY CAMPBELL: Senator Lathrop, members of the committee, my name is Mary Campbell, C-a-m-p-b-e-l-l, assistant to the superintendent, Lincoln Public Schools, for government relations. This is a very tough one for us, a very hard bill, and there are many very laudable objectives that the senator is bringing forward and we believe in those objectives, but I guess we believe more and where we come down on is the safety of our students. It has to be our primary and in some cases only concern. And so I guess our humble but very earnest request would be to have, if the committee looks favorably on the larger bill, to consider taking K or actually pre-K through 12 out of the bill. We hold ourselves to the highest standards possible in hiring and we believe that the public is demanding that of us and is scrutinizing that very carefully. We can't afford, morally, educationally, financially, to err in the people that be put in front of our children, whether that be our certificated teachers or all the uncertificated personnel that encounter them on buses, in the lunchroom, in activities after school, and so forth. We have, at LPS, we have 7,000 employees and we do nearly 300 new hires every year. At the very least, we think the bill will increase the expenses to us if only by the delays and the duplication of effort in the hiring process. We want to get right on background checks and have them be as thorough and as complete and as early as possible, and then use that as part of our whole deliberation. We know that some arrests do not end in convictions but that if we were privy to some of the underlying background of those situations, those may well signal whether someone is an appropriate candidate to be with our students. We have trouble, our counsel does, with the term "moral turpitude." He thinks it is a phrase without a fixed objective meaning. Whether that's problematic or not, we would certainly want to interpret it as broadly and deeply as possible in hiring. Let me cite one case that happened some years ago and before we were doing the kind of background checks that we do currently. We had an individual who had a misdemeanor of disturbing the peace and, much to our horror and financial liability, we later learned that that had been pled down from sexual assault. We hired him as a substitute teacher and as a coach. He very quickly had relations with a 17-year-old and the two of them fled to, I believe, Canada. We would have wanted to have known what we didn't know in making that extremely unfortunate hire and we're trying everything we can possibly, within the limits of the law and what is available and what is fairly to be accessible to us, to just make very considered determinations in our hiring. The senator did bring to us last year, and I vividly remember the young man that came in and testified and it was a lovely opportunity to see someone like that have a new, literally, new lease on his career and his future. But we can cite to you cases that are not that lovely and those are the ones that, to us, bring forward the suggestion that maybe it would be appropriate to make an exception in hiring for the schools. [LB189]



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SENATOR LATHROP: Very good. I think I may...I have some questions for you about this bill. It seems to do a couple of things. It starts out by saying you can't have a spot on the initial application where you ask have you been convicted of something. [LB189]

MARY CAMPBELL: Uh-huh. Uh-huh. [LB189]

SENATOR LATHROP: And then the other piece seems to be if they have been convicted, you can't use some things that don't really go to what they're being hired to do. Is it the second piece that gives you heartburn or both pieces? [LB189]

MARY CAMPBELL: Both pieces. [LB189]

SENATOR LATHROP: And let's use Lincoln Public Schools, just as an example of a public employer, and talk about if you were hiring a...and I'll say a janitor. Could be a teacher, janitor, football coach, whatever, but let's talk about the janitor. If you were looking to hire somebody to be a custodian in one of the schools, do you publish the opening someplace? [LB189]

MARY CAMPBELL: Yes. [LB189]

SENATOR LATHROP: There's something in the newspaper that says come on in and... [LB189]

MARY CAMPBELL: It's on-line and... [LB189]

SENATOR LATHROP: Okay. And if it's on-line then, if I am interested in that position, tell me what the process is going to look like at Lincoln Public Schools. [LB189]

MARY CAMPBELL: There is first an application and it does have the box. And then there... [LB189]

SENATOR LATHROP: Okay. And is that done on-line? [LB189]

MARY CAMPBELL: It can be. Uh-huh. [LB189]

SENATOR LATHROP: Or I...so I'd have two choices as a potential applicant? [LB189]

MARY CAMPBELL: You can walk it in with a hard copy. You can bring it in on-line. [LB189]

SENATOR LATHROP: Okay. And if I send it on-line, of course, I don't talk to anybody, I've checked the box, send it in and...or I can drop it off but I'm not talking to anybody

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there to say, hey, I had to check the box because I got a DWI but, you know, as it turns out, I've been sober for four years and I go to three AA meetings a week. [LB189]

MARY CAMPBELL: There may...included with that will be, what do I want to say, when people give you an endorsement. I can't think of the appropriate word. [LB189]

SENATOR LATHROP: Recommendation. [LB189]

MARY CAMPBELL: Recommendation, thank you. And reading those may give us pause to consider and reconsider and want to have that conversation. [LB189]

SENATOR LATHROP: When those letters, those applications arrive, whose desk are they landing on? [LB189]

MARY CAMPBELL: A variety of desks, depending on the type of application. We do have someone who immediately gets into background checks as well and... [LB189]

SENATOR LATHROP: But the first filter...okay, so I've checked the box and there's no room for me to write a big story about how it happened or what it is or what I've done in the meantime, what rehabilitation or whether I've quit, if drugs or alcohol or gambling were the issues, whether I've long since got that behind me. Do you throw those away as soon as you see them? [LB189]

MARY CAMPBELL: Well, quite frankly, LPS is a destination hirer for a lot of people. I just had to hire someone to be a runner for me and with materials around to all the 63 buildings that we have. There were 250 applicants for that job. So we are blessed. We have a wealth of people that may well exclude, box or not, a lot of candidates. [LB189]

SENATOR LATHROP: Does the box get them shut out? [LB189]

MARY CAMPBELL: In the case of having way too many good people, yes, it would. [LB189]

SENATOR LATHROP: Okay, so it... [LB189]

MARY CAMPBELL: If there were a very narrow... [LB189]

SENATOR LATHROP: ...it does, as Senator Council would suggest, become the filter for whether anybody ever gets a second, ever has a chance to talk to a warm body at LPS. [LB189]

MARY CAMPBELL: I'm saying that there... [LB189]

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SENATOR LATHROP: And this isn't a criticism... [LB189]

MARY CAMPBELL: No. There could... [LB189]

SENATOR LATHROP: ...or a judgment, but if we're going to talk about the subject matter it's good to have an idea what the process is like. [LB189]

MARY CAMPBELL: Generally speaking, the answer to the scenario you just laid out would be yes, but I think there could be some exceptions to that for exceptional people that would be brought to our attention. [LB189]

SENATOR LATHROP: Okay. I guess I'm wondering if the person that's trying to make the decision about whether someone is exceptional enough to get past the fact that the box has been checked, is that somebody with enough discretion or judgment to do that or do the 250 applications laying on a secretary's desk and she says, box is checked, it's going here; box is checked; this one isn't? [LB189]

MARY CAMPBELL: No. [LB189]

SENATOR LATHROP: You know what I mean? [LB189]

MARY CAMPBELL: Yeah. And I can sharpen up on that. [LB189]

SENATOR LATHROP: And I'm just kind of... [LB189]

MARY CAMPBELL: That's a precise procedure that I can't answer today. [LB189]

SENATOR LATHROP: Okay. [LB189]

MARY CAMPBELL: I know that they go to very capable people to make the initial screenings... [LB189]

SENATOR LATHROP: All right. [LB189]

MARY CAMPBELL: ...based on whether they're elementary, middle, high, or administrative. [LB189]

SENATOR LATHROP: We're just talking about a janitor... [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR LATHROP: ...or the guy that's going to do the snow blowing around the grounds. So if I don't...if you didn't have a box on your application and you had to go

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and perform that initial how do I sort out the 250 people for the one job, you'd be relying on some things that have more to do with their skill set than with their prior conviction. [LB189]

MARY CAMPBELL: Skill set or recommendations. [LB189]

SENATOR LATHROP: Skill set or recommendations. And I guess as I look at Senator Council's bill, I appreciate the idea that somebody ought to be able, like the man did who came in here last year and told us about his story, he ought to be able to get in the door or at least be judged on the merits, and then if you want to exclude him after he has come in and told you, you know, I quit drinking ten years ago but this is still following me around. [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR LATHROP: It does trouble me a little bit that once you find out he's been convicted of something, then you got to make a judgment and try to...he almost becomes a protected class with a conviction, but certainly not checking...not having a box seems to at least afford these folks an opportunity to get through the door, because we're doing an awful lot, an awful lot in the Judiciary Committee to try to find ways to get people employed and end a cycle down in northeast Omaha that is...there's just no way out, and it's becoming generation after generation. And at some point we have to make some policy decision to say, hey, somebody has got to give these people a look or nothing is going to change. [LB189]

MARY CAMPBELL: And I think the counter conundrum to that is ours. If we cannot not hire them or not give them the chance we maybe shouldn't be extending because we don't have all the background information, and then an incident such as I described before of a molestation or worse occurs, not only have we failed... [LB189]

SENATOR LATHROP: But if this...I could not agree more. I couldn't agree more and I just handled a case that led me to read a bunch of cases that involve the duty of a school district to protect the students from somebody who is a bad actor, so I appreciate your liability and I appreciate your concern. But can't that happen at some point after the initial application? [LB189]

MARY CAMPBELL: And again, I guess we're just coming back to some of the logistics, and I know that seems very minor compared to the very lofty things we're discussing, but logistically delaying that hiring, taking it all the way to a final...getting ready to offer the finalist the job before we can get into what's behind the box that wasn't there, that wasn't checked, and again, looking at this year the financial restrictions that are certainly going to be imposed on all schools. But also with this, you know, if we have a July 1 certification, we're going to be doing 300 hires in about a month and a half. We're

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going to be trying to work on those but we're not going to really know whether we have the latitude to go forward with all of that. [LB189]

SENATOR LATHROP: Let me ask one more question and then I'll... [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR LATHROP: ...see who else has questions or let you go. If this bill were distilled down to this very simple proposition, that the initial application of a public employer cannot ask if you've been charged with or convicted of a crime, and you're free to ask any other time, free to use that information once you ask, are you okay with it? [LB189]

MARY CAMPBELL: The instructions that I got from our HR department this morning would have been to say no to that. [LB189]

SENATOR LATHROP: Okay. Okay. And your position sort of illustrates the points Senator Council is trying to make, I think, with the bill but... [LB189]

MARY CAMPBELL: Understood. Understood. It's why I said this was a very difficult bill for us to process. [LB189]

SENATOR LATHROP: Right. Right. Thanks, Mary, for your answers to the questions. Senator Smith. [LB189]

SENATOR SMITH: Yes. Are you aware of any positions within your area of jurisdiction that have very strict standards for employment in terms of a clear background, let's say a comptroller or someone having to deal with financial...in the financial arena of your organization? [LB189]

MARY CAMPBELL: I think every position we have, from bus driver on up. [LB189]

SENATOR SMITH: Very, very strict. So it may not necessarily change the outcome as to whether you are able to postpone finding out that information until doing a background check. It would not necessarily change the outcome, is what I'm hearing you say. Because you have those strict standards, you would not be able to hire someone with a certain offense in their background. [LB189]

MARY CAMPBELL: I'm filling in today for the head of HR... [LB189]

SENATOR SMITH: Okay. Okay. All right. [LB189]

MARY CAMPBELL: ...who has, you know, 30 years of experience. We would have the

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exact answer to that and I don't. [LB189]

SENATOR SMITH: Yeah. [LB189]

MARY CAMPBELL: I will be happy to get that to you. [LB189]

SENATOR SMITH: Yeah. And then also on the boxes that have to be checked, you said on the initial employment application there's no area to explain the circumstances. Is that what I heard or that there is an area to explain the circumstances? Let's say they checked that they had a felony or a misdemeanor and then provide... [LB189]

MARY CAMPBELL: I'm trying to picture it and I can't. [LB189]

SENATOR SMITH: Okay. [LB189]

MARY CAMPBELL: Again, I can pull one up and bring that to you. [LB189]

SENATOR SMITH: Not completely certain on that one. [LB189]

MARY CAMPBELL: I'm not sure. [LB189]

SENATOR SMITH: Okay. [LB189]

MARY CAMPBELL: I don't want to misspeak. [LB189]

SENATOR SMITH: All right. Thank you very much. [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR LATHROP: Senator Carlson. [LB189]

SENATOR CARLSON: Thank you, Senator Lathrop. Mary, under current policy, it sounds like that that is on the application; therefore, if it's checked, that's just an automatic dismissal. But current law doesn't prohibit Lincoln school system from hiring somebody that's got some kind of a background. Would you agree? Nebraska law doesn't prohibit. [LB189]

MARY CAMPBELL: I'll concede what you say. [LB189]

SENATOR CARLSON: Are there any employees in Lincoln of the school system that have a background where the box would have been checked that you're aware of? [LB189]

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MARY CAMPBELL: I'm hesitant to say. [LB189]

SENATOR CARLSON: Okay, because another thing about...that puzzles me a little bit about a law that, first of all, the way you're conducting things now, I think I understand and I kind of understand why. But if we pass this law, then on the initial application that question couldn't be there, but obviously it would be the first question or one of the very first questions on a follow-up interview, right? And immediately, if the answer is yes to that, I'm sorry, good luck but I'm sorry. [LB189]

MARY CAMPBELL: And again, I'm not the HR department but I'm trying to put a lawyer hat on and think wouldn't it be helpful and protection to the district if there were something in writing from that candidate to that effect and not just the he said, she said after the fact. [LB189]

SENATOR CARLSON: Well, and I don't think you know the answer to this and I certainly don't, but if the policy is the minute LPS finds out that somebody has got a conviction, out regardless. On the other hand, Senator Harr might come along and say, you've gotten an application from so-and-so and I'd like to talk to whoever I could talk to as a real recommendation; this person needs a second chance. And it well could be that he's got enough influence with whoever is in charge that might make a difference. Do you think that's possible or do you know whether that's possible? [LB189]

MARY CAMPBELL: I would be guessing. I would guess that it could be possible but I would prefer to go back and talk to our people and get you that answer. [LB189]

SENATOR CARLSON: Would you? That would be an interesting answer to that. [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR CARLSON: Thank you. [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR LATHROP: It does kind of bring me to this question and I'm thinking about DWIs now because a DWI is a Class W misdemeanor, if I'm remembering that correctly. So you ask on the form, you ever been convicted of a felony or misdemeanor, and they check yes, could be a DWI. And my guess is, of all the people that you have working at Lincoln Public Schools, you probably get 25 convictions a year from people that work there for DWI, right, and you don't let them go? [LB189]

MARY CAMPBELL: I have no idea. It can be... [LB189]

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SENATOR LATHROP: Well, if somebody gets a DWI, not a bus driver but let's say a teacher... [LB189]

MARY CAMPBELL: It can be... [LB189]

SENATOR LATHROP: ...gets a DWI. [LB189]

MARY CAMPBELL: It can be grounds for, at the very least, suspension, if not firing. Yes, it can. [LB189]

SENATOR LATHROP: Okay. [LB189]

MARY CAMPBELL: That I know because I've had that come across my desk. [LB189]

SENATOR LATHROP: Okay. Well, it presents some interesting things because certainly I appreciate what Senator Council is doing and it certainly dovetails nicely with some of the things we've been doing in Judiciary Committee for the last four years trying to get to the heart of unemployment of people who have been convicted of some kind of a crime, many of whom are really great people. [LB189]

MARY CAMPBELL: Uh-huh. [LB189]

SENATOR LATHROP: And if they could just get an interview, people would be impressed with them, and they can't even get in the door because of that little box. But...and I appreciate your answering the questions that you could. [LB189]

MARY CAMPBELL: Thank you. [LB189]

SENATOR LATHROP: Okay. That was opposition, right? So is there anyone else here in opposition to or that wants to testify in opposition to LB189? [LB189]

DALE JOHNSON: I don't have multiple copies on a lot of this. I just got permission to hand out a study that...as I was walking out the door, and also there's the state of Minnesota there's a hiring policy... [LB189]

SENATOR LATHROP: Tell you what. We'll have you sit down... [LB189]

DALE JOHNSON: Sure. [LB189]

SENATOR LATHROP: ...and you can tell us who you are and spell your name for us, and then you can tell us what you brought with you and we'll make a record of it. [LB189]



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DALE JOHNSON: (Exhibit 8) Yes. My name is Dale Johnson, J-o-h-n-s-o-n. I live at 2216 East Eighth Street, Fremont, Nebraska. I'm representing myself. I'm a licensed, plainclothes investigator. My company is in the background checking business. A private company or individual who conducts the business of background checks in the state of Nebraska has to be licensed as a detective agency or a private detective. I could say most background checks that are done on secondary schools, etcetera, in the state of Nebraska are not done by licensed individuals. Before I get into the prepared part of my testimony, I wanted to say that we're not really...I'm not that concerned about ban the box because most of the private and public employers that I deal with, and this is nationwide, do not ask that question at the beginning. They only do it towards the end when they get to the background check portion, you know, for finalists. After all, what would be the point of asking, have you been convicted of a crime, unless you're going to see if he's lying or not? It's our experience, and I've got 20 years' experience, that most people are going to lie about it. And if I was in their shoes I probably would, too, because a lot of people do law enforcement background checks and most of that stuff slips through the cracks. So the ban the box is not that big of a problem. There is a problem, though, with some of the schools that have to do background checks for healthcare people, people going into healthcare-related programs. They have to do a background check to make sure that they can be licensed if they complete the program. It would not be a good idea for somebody who's got a criminal record to spend all the money of going through this two-year or four-year medical program and then find out, after he spent four years of his life, that he wouldn't qualify because they didn't do a background check or he couldn't pass a background check. So that's the only case that I know of, because we deal with a lot of colleges, universities with healthcare programs where they ask that question up-front: Have you been convicted of a misdemeanor, have you been convicted of a felony? And they divide it out to where he could say misdemeanor and/or felony. But that's very important to be able to do that, you know, in the beginning so a person doesn't get involved in a program in which they're not going to be able to get hired or licensed. [LB189]

SENATOR LATHROP: Right. [LB189]

DALE JOHNSON: So that's the only concern that I have about ban the box. The problem that I do have with this legislation is not being able to use criminal records that are older than three years. I've looked at a number of studies having to do with recidivism and three years is not near long enough. And before I go on, I wanted to mention something about credit. People that request background checks know very, very little about it. Credit reports for employment purposes, there are two kinds of credit reports that the three credit bureaus issue. One is for credit. You're going to buy a house, you're going to buy a car, they run a credit report on you. There is also a credit report that is specifically used for employment purposes. There's two kinds of credit reports and I, as a licensed professional, better not pull the wrong credit report and give that, you know, to an employer. Credit reports used for employment purposes do not

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have credit scores. People...I keep saying this, seeing this on the national news, we don't want to pull credit reports because they got the credit scores on there. Credit reports pulled for employment purposes do not have credit scores on them. They have a seven-year payment history. If there was a bankruptcy within the last ten years, that will be notated, and if there's any civil type of filings against the person, that will be on there. But there is no credit score on credit reports used for employment purposes. [LB189]

SENATOR LATHROP: Okay. Hey, Mr. Johnson, I'll tell you, I think we have a bill coming up this year dealing with credit scores in the application process. It's not this one, I know Senator Council brought that up, but you'll have an opportunity to testify on that and your... [LB189]

DALE JOHNSON: Yeah, well, I just wanted to... [LB189]

SENATOR LATHROP: ...but your insight will be helpful if you want to return when we have that hearing. You can watch for that bill. [LB189]

DALE JOHNSON: Great. I just wanted to bring that up because there is so much misinformation when it comes to these credit reports for employment purposes. [LB189]

SENATOR LATHROP: Right. We'll see if anybody has any questions for you. [LB189]

DALE JOHNSON: Right. Okay, I wanted to go on to say that there are two primary sources for criminal records. One is law enforcement, the other is court records, and those of us in the background checking business stay away from law enforcement records with a passion. We use court records because they are accurate. There's no arrest record information flowing around. There's no false dispositions. There's no dispositions missing in court records. I deal with human resource departments, including public employers, on a daily basis in regards to background checks. This law is a human resource administrative nightmare from defining specifically what crimes are crimes of moral turpitude to determining exactly when rehabilitation has taken place. Human resource... [LB189]

SENATOR LATHROP: Okay, Mr. Johnson, the red light came on so... [LB189]

DALE JOHNSON: Okay. [LB189]

SENATOR LATHROP: ...what we're going to do is...hang on a minute. You don't need to leave. We'll see if people have questions for you. But when the light comes on, it turns into the question time. Okay? [LB189]

DALE JOHNSON: Sure. [LB189]

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SENATOR LATHROP: I appreciate your testimony. It's been helpful. We'll see if anybody has questions. Senator Harr does. [LB189]

SENATOR HARR: And thank you, Mr. Chairman. I just have a quick question. So if we can use Senator Lathrop's...he broke this bill down into two parts, the first part being check the box, second part being... [LB189]

DALE JOHNSON: Yeah. [LB189]

SENATOR HARR: ...the criminal records, what can and can't be used. You have a larger problem with the second part than the first part. Is that correct? [LB189]

DALE JOHNSON: Right, the three-year stipulation, only being able to use criminal convictions for three years. [LB189]

SENATOR HARR: And I think it's three years, it's a presumption of sufficient rehabilitation. It's a presumption. They could look back further, I believe. I think there's a presumption in there. But I would agree with you that that is a short period of time. I think you could still look back further. Do your credit...no, let me get to this. Do your credit or you, right now, your checks, do they look at records of arrests? Do you look at that right now? [LB189]

DALE JOHNSON: We only use court records. If I use law enforcement records, I can talk about the FBI database, etcetera, if I... [LB189]

SENATOR HARR: Well, no, not NCIS. [LB189]

DALE JOHNSON: Right. [LB189]

SENATOR HARR: I'm not talking about that. What I'm asking you is so if you look at court records, so if I was arrested, given the example earlier of Lincoln Public Schools, so if I was arrested or, excuse me, that person who was arrested for sexual assault on a minor but then pled down to a simple disturbing of the peace, would your current records pick that up? [LB189]

DALE JOHNSON: Yes, if a prosecutor filed charges against someone, if a prosecutor found enough evidence to file charges, it's in the court record. [LB189]

SENATOR HARR: Yeah. [LB189]

DALE JOHNSON: If the person was found guilty or if the person was found innocent or the case was dismissed, it would be in the court record at that point in time. Now many

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people are...make contact with law enforcement and they're arrested and that shows up in a law enforcement database search. So you could have three dozen arrest records but a prosecutor may never have found enough evidence to even file charges against the person, so that would not be in a court record. But if you pulled law enforcement, it might even say conviction for (inaudible) but there's no record in the court system. That's one of the problems with law enforcement databases. A lot of people will arrest someone, they fill out the arrest card and they're supposed to put a disposition on that card before they put it in the computer system, which sometimes ultimately gets to the FBI, but the problem is a lot of law enforcement will put that arrest card into the database without a disposition. Well, oftentimes, and a major problem with the FBI database now, is that a lot of law enforcement will put a disposition on that card before a prosecutor has even...ever even looked at the case. So if you do a law enforcement background check, it's liable to say guilty of something, and then you go to the court, the person would say, well, I was never found...I was never prosecuted, you go to the court record and it will say dismissed or it may not even be in there because the prosecutor didn't find enough evidence to file charges. But when you check law enforcement, it will say guilty of (inaudible). [LB189]

SENATOR HARR: Okay. Thank you, Mr. Johnson. [LB189]

SENATOR LATHROP: Mr. Johnson, I appreciate that you came all the way from Fremont and that you came down here to tell us about the...your niche and the work that you do and it's always helpful to the committee to have... [LB189]

DALE JOHNSON: Can I make one final statement? [LB189]

SENATOR LATHROP: If it's brief. [LB189]

DALE JOHNSON: Federal law normally trumps state law unless the state law is more restrictive than the federal law. [LB189]

SENATOR LATHROP: I would agree with that proposition. [LB189]

DALE JOHNSON: The Fair Credit Reporting Act states that nonconviction records can be reported for seven years and that conviction records can be reported for any length of time. Now that's my problem with the three-year restriction. So if you were to pass this law, this would be in conflict with the federal law that states...this would be less restrictive than the federal law that says that you can report all convictions for any length of time. [LB189]

SENATOR LATHROP: Okay. [LB189]

DALE JOHNSON: So this would be in conflict with federal law. [LB189]

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SENATOR LATHROP: All right. We'll take that into account as well. Thank you very much for your testimony and your time. Are there any other persons wishing to testify in opposition? Anyone here in a neutral capacity? Please come forward and be heard. [LB189]

JOHN BONAIUTO: Thank you. Senator Lathrop and members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director, Nebraska Association of School Boards, and we appreciate that Senator Council has made an effort to try to address the issues we brought forward last year. I listened to Lincoln's testimony and I appreciate that because some of my board members would like to see us exempted from this bill, when in doubt K-12 likes that route, and looking at the higher standard that we try to hold employment to. Having said that, I think that, Senator Carlson and Senator Lathrop, you kind of got to an issue that I have a question about and I didn't get to take it up with Senator Council or her LA earlier, because as I listen to people talk about this bill, what I hear and what I read, there's a little bit of a difference in how that might play out. And I look at page 2 and get down to line 23 and everything there works for us except the part that follows "obtaining public employment," and then it goes into "and shall only be taken into consideration after the applicant has been selected as a finalist for employment. And I think in some of our smaller schools, if you're hiring a custodian, you may have one applicant or you may have...you don't have 100 applicants or 50 applicants. And so we might not look at the terminology of "finalist" for a food service person or in some of those types of situations. And so what I was listening for is when I have an applicant who comes in and says, I see that you have a custodian's position that you're looking to fill and I filled out the application, and they hand it to you and you want to sit down now and talk to the person, can you ask the question, have you ever been convicted or you have any kind of a, you know, a background situation that might cause us problems or concern? And so I don't know if that language, if putting a period after "employment" would change the bill significantly in that... [LB189]

SENATOR LATHROP: Well, maybe the question is whether or not you'd be okay with it if it did. [LB189]

JOHN BONAIUTO: Yeah. [LB189]

SENATOR LATHROP: And the question I think, as long as we're trying to figure out where the opposition is coming from, John, and I appreciate your coming here today, would be if the bill just prohibited putting that on an application and you could ask at any time after you've accepted the application, would you be okay with this legislation? [LB189]

JOHN BONAIUTO: Yeah. Yes. [LB189]

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SENATOR LATHROP: Okay. Okay, I think we understand your concerns and your issue, and I'll see if anybody else has questions. [LB189]

JOHN BONAIUTO: Thank you. Oh, I'm sorry. [LB189]

SENATOR LATHROP: That's all right. I see none. Thanks... [LB189]

JOHN BONAIUTO: Thank you. [LB189]

SENATOR LATHROP: ...for your testimony. Anyone else in the neutral capacity? [LB189]

TOM RICHARDS: Members of the committee, Tom Richards, manager of governmental and community affairs for the Omaha Public Power District, T-o-m R-i-c-h-a-r-d-s. I guess I sit here because you were asking questions about the power district and I wasn't planning to testify, but I'll give you a couple of examples of where regulatory rules will probably trump state law. When you get in to operate in a nuclear station, you have unescorted access and escorted access, and there are certain rules within whether or not somebody is going to get escorted access or unescorted access to get into a nuclear facility, and a lot of that is going to be driven by, you know, the...if they've been convicted of certain crimes, they're not going to get that access. I think if you get into some of our transmission areas, where we run the transmission systems where there's a lot of FERC and NERC--Federal Energy Regulatory Commission, National Electric Reliability Council--I think you're going to run into some regulatory oversight as well. Are there positions inside of OPPD that probably a misdemeanor, somebody coming in the door would get in the door with a misdemeanor? Probably so. A felony conviction, that would be a difficult thing to do. I worked in the criminal justice system for ten years and you asked the question of, if not checking the box, how do people get into work areas? My experience was that you went and advocated for people. If he worked in the criminal justice system where I ran a DWI program for seven years, that those people that had a long history in recovery, you went to bat for them and you went to the different businesses and told them that they had a good record and you advocated for them, and that's how a lot of the people get in the doors, that and in drug courts. Sarpy County, Douglas County both run drug courts, you know. It's independent of the judicial system to some extent and they go and they advocate for the people that have successfully completed those programs. So there are cases where regulatory examples are going to probably trump what the federal law is when it comes to power districts, particularly ones that own transmission distribution and generation assets. So I thought I'd answer your questions. And one last point, too, that Senator Smith made about timewise, there's some critical path hiring people as far as timewise. There is some critical need sometimes to get people into positions. It might have some bearing on that but, again, I'm here in a neutral capacity, answering those questions and hope to shed some light on it for you. [LB189]

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SENATOR LATHROP: Sure. And I'm trying to understand your testimony, Tom. Are you telling us that with OPPD, because of some of the nuclear regulations, that you couldn't function in an environment where that was...where you couldn't ask that question on an initial application? [LB189]

TOM RICHARDS: At some point, you're going to have to ask that question and the quicker you know it probably the better off you're going to be because they're not going...if they're applying for certain jobs, they're not going to get through the process of getting hired because there's federal pre-exclusions to not allow them to get in there. [LB189]

SENATOR LATHROP: Do any of those federal statutes say no conviction of anything? [LB189]

TOM RICHARDS: I'm not that familiar with them. [LB189]

SENATOR LATHROP: And I guess the point is, if the federal law would... [LB189]

TOM RICHARDS: And they would be...they would be... [LB189]

SENATOR LATHROP: ...prohibit somebody that's been involved in theft, you know, give me a list of crimes that would be in play in a federal regulation, but it doesn't prohibit employment by all misdemeanors... [LB189]

TOM RICHARDS: That's correct. [LB189]

SENATOR LATHROP: ...then we could pass this and you just ask it as soon as you talk to them on the phone or something, couldn't you? [LB189]

TOM RICHARDS: That's the part that, as I've listened to the testimony, it's kind of like you'd almost have to have two applications. One would be the noncritical path types of jobs and one would be the critical type jobs. You know, as I listen to people talk, I mean from OPPD's standpoint, there are going to have to be almost two different ways that you take people in the application process. [LB189]

SENATOR LATHROP: Okay. [LB189]

TOM RICHARDS: There are some...even in, for instance, where we buy and sell energy, that's now not a lockdown area but it's a secure facility, and there are people who are in the administrative end of it who have to have credentials to get inside that access area. Now there are people that work a floor under them that, you know, they're secretaries and administrative people that, you know, might come in the door with a

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misdemeanor and get hired but moving up to the next floor they might not. [LB189]

SENATOR LATHROP: Okay. [LB189]

TOM RICHARDS: There's some confusion. [LB189]

SENATOR ASHFORD: Would just make just a comment. [LB189]

SENATOR LATHROP: Senator Ashford, yeah. [LB189]

SENATOR ASHFORD: Mr. Chairman, I mean I think in Judiciary, of course, we face this constantly because the United States incarcerates more people per 100,000 population than any country in the world, you know, more than Iran, more than anyplace else in the world, and the reason partially why we do that is we incarcerate numbers of nonviolent offenders who have committed crimes certainly but they can...and other than crimes of moral turpitude, but many of them are alcohol related, many of them are... [LB189]

TOM RICHARDS: Drug related. [LB189]

SENATOR ASHFORD: ...many of them are drug related. But luckily, we have started to think about that. And one of the ironies is that...and why I think Senator Council is bringing this, and I'm not sure how you write it exactly, but in bringing this issue to us very timely because now we are going to be enhancing the parole process at the Department of Corrections and we're going to be releasing people through the parole process that would be released otherwise but that are for the most part, almost all of them, nonviolent, you know, drug- and alcohol-related offenders. And what's happened in my span of years in this field is, going back to the mid-'80s where, you know, many of these people would have been in institutional...other kinds of institutions, not the prison system. And now they're in the prison system so we rely on the prison system to kind of do the chores of many other kinds of institutions that were under our Department of Public Institutions years ago. That's not a condemnation or criticism of anybody or anything. It's just that we are going to have to come to grips with this issue, clearly, because, first of all, there are many people who are incarcerated in the state system. We talked to the department, Bob Houston. He'll tell you that, you know, very significant...a very high number of those people are very employable and don't have the kinds of records that should preclude them from being employed. And so we address this in many, many ways. We're to have a bill...then I'll shut up because we've been here a long time, but we're going to have a bill in our committee dealing with whether or not the costs of incarceration should be included in the discussion of how...what the sentence is for a particular nonviolent offender, for example. It's just an issue that we are going to have to come to grips with and I...and it has a humongous fiscal impact, not only the number of people we incarcerate at almost \$200 million but also if these people...it's home and a job. Those are the two things that are the number two



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criteria...the number...the first two priorities of preventing someone--and talk to Bob Houston about this, he'll tell you--it's having a place to live and having a job. And if those things happen, those people are unlikely to go back into the system. So this is...you're talking about power plants and I... [LB189]

TOM RICHARDS: Yeah. Well, and not to interrupt you, but from 1975 to 1979, I worked and ran the south Omaha Boys Club... [LB189]

SENATOR ASHFORD: Right. Right, I remember you did. [LB189]

TOM RICHARDS: ...and then from '79 to '85 I ran an alcohol diversion program, and my hobby is I'm a county commissioner now in Sarpy County. To mix hats, the criminal justice system has replaced the social service system that I knew back in the 1960s and 1970s. [LB189]

SENATOR ASHFORD: That's exactly my point and... [LB189]

TOM RICHARDS: I understand your point, but from OPPD's perspective, there are certain people that are hired. If there's certain misdemeanors, that's not going to block you from getting in the door. But all I'm saying is that there are certain points in the regulatory process that there are some roadblocks where they might not make it in. [LB189]

SENATOR ASHFORD: Well, I guess I think we, to some degree, we're kidding ourselves. We went through a 30-year period of punish first, ask later, and I think now we're in a more...hopefully at a more balanced approach but time will tell. Certainly, (knocks) you know, the last four years we've made great strides in addressing making a more balanced approach with the administration, with others to try to get that done. So thanks, Tom. Thanks, Mr. Chairman, for that, allowing me to diverge slightly. [LB189]

SENATOR LATHROP: We always learn something. [LB189]

TOM RICHARDS: Anything else, Mr. Chairman? [LB189]

SENATOR LATHROP: Yeah, thanks, Tom. Anybody else have questions? Senator Carlson. [LB189]

SENATOR CARLSON: Thank you, Senator Lathrop. Tom, I'm going to ask you this and then Senator Council is listening. I almost think, in listening to this discussion, you as an employer now, I think I could tell that if somebody came in and you were interviewing them, you found out about their background, that you would dig a little deeper into it and try and see is there a place that you can fit. And then you might like to say, if it was me and I got something on my history that's not too good but I've done a lot better since

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that time and I impress you that I'm doing better, that you'd almost like to say, Tom, I'm going to give you a chance but you got a short lease. And other people have gone through this process and don't have your background. They've got three strikes but you got one. But I don't think we can do that, can we? Can we do that? Can you do that? [LB189]

TOM RICHARDS: I think an employer would be reluctant to take that role on. In today's world, it's getting more and more difficult to take that role on. There are certain...the story you told earlier about the Attorney General, there are certain advocacy groups that bring people forward and people are willing to take a chance on them, but I think...and I'm not speaking for OPPD directly here, is I think in today's employment world, people would be reluctant to take that on. They'd like to do it but... [LB189]

SENATOR CARLSON: Okay. Thank you. [LB189]

SENATOR LATHROP: Yeah, and the other side of that is, not to go into a big sermon, but the problem is those groups are disappearing, you know? They're getting...the funding is getting pulled. We're spending money on things that are even more seemingly basic services, like giving them a place to live. And, yeah, you're certainly right, but maybe the solution, and nobody will work harder at trying to find a solution than Senator Council, but maybe the solution is if you can't hire somebody because of certain convictions then we identify, have you ever been convicted of any of the enumerated violations of the law, and they can check them. But if that...you have to hire guys to trim grass at OPPD,... [LB189]

TOM RICHARDS: Right. Sure. [LB189]

SENATOR LATHROP: ...you got acres and acres and acres of that, and push snow and the maintenance kind of things, that guy doesn't get in the door and that's a job where he's not going to...where it might be a good opportunity. [LB189]

TOM RICHARDS: Right. I guess what I said earlier is there are people who probably come through OPPD's door that do have misdemeanor convictions. As long as they're not of serious nature and I can't tell you that magically that there's not anybody in there that hasn't been convicted of a misdemeanor, a felony is a different story. That's going to be a much more difficult process. [LB189]

SENATOR LATHROP: Sure. Sure. Well, it's always good to talk to people that are in the business and have them tell us the practical side of it. Senator Harr. [LB189]

SENATOR HARR: As a guy who mowed lawns for OPPD, I can tell you it's very highly skilled and only the best get that job, so... [LB189]

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SENATOR LATHROP: (Laugh) Yeah. [LB189]

SENATOR ASHFORD: Those aren't easy laws. [LB189]

SENATOR LATHROP: Apparently they're on a fast track to being a senator in District 8. [LB189]

SENATOR HARR: Paid less. [LB189]

TOM RICHARDS: Thank you, Senator. [LB189]

SENATOR LATHROP: Okay. Thank you. Is there anyone else here in a neutral capacity? Senator Council. And before you sit down or you're welcome to sit, I'm going to add to the record a letter from the National Association of Social Workers, Nebraska Chapter. (Exhibit 9) Terry Werner wrote us and Mary Bahney wrote a letter in support of LB189 which will be entered in the record. [LB189]

SENATOR COUNCIL: And thank you, Chairman Lathrop, and I'll try to be brief, just to respond to a couple of the points that have been raised by those who have testified, both in opposition and in a neutral capacity. I would just direct the committee's attention to the fact on the issue of moral turpitude, if you looked at LB913, it did not include such a definition and, in fact, that was one of the issues that was raised particularly by representatives speaking on behalf of boards of education. We developed a definition of moral turpitude based upon other definitions, similar definitions of that term in statute, ran it past those who had expressed concern, thought we had addressed the issue. But if the definition that appears in LB189 doesn't go far enough, we're more than willing to consider other definitions. But again, that was one of the reasons for some of the neutral testimony last year, was that we didn't have a definition of moral turpitude in LB913. We have a definition in LB189 that we thought met with everyone's approval, but we're more than willing to consider it even further. Mr. Johnson misreads the statute and misreads LB189. The only reference to three years is that if an employer is considering a felony conviction that has no relationship to the job being performed, the particular employment being sought, whether it's a felony or a misdemeanor conviction involving moral turpitude, if those convictions have no bearing or relationship to the employment then the three years relates to a presumption that the person has been rehabilitated if they've successfully completed probation or completed an incarceration period and has had no subsequent convictions in a three-year period. All it creates is a presumption. It does not prohibit an employer from going back further than three years to check out conviction records at all. It just, in terms of if you're going to use that conviction to justify not hiring or terminating someone, that the presumption is that person has been rehabilitated if they've successfully completed. And I think, Chairman Lathrop, you pointed out, I gave you data, about 40 percent of employers in a survey, and this survey is probably four years old now and I would venture to say, by virtue of the example

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provided by Ms. Campbell, that those numbers...that percentage is higher because we know, just looking around our respective districts, employer...it's not uncommon for an employer to advertise one position and get more than 100 applications. And in that instance, I suspect that the percentage who use the box as an initial screening mechanism is greater than 40 percent, but I can tell you that there's also research data that shows that of the employers who have the box, consider the box, 50 percent won't even consider hiring someone with a conviction. And I must respond, and don't mean to get into any debate, but Ms. Campbell gave an example of a situation that occurred in LPS, you know, that was a very serious situation where someone who apparently LPS knew had a disturbing the peace misdemeanor conviction on their record and hired that person, and then subsequently determined that that had been pled down, that same...I mean it occurs now and there's nothing to say it wouldn't occur under this bill. But this bill does not increase the likelihood of that occurring, because if that's the situation, they relied on what was in the record, they're going to rely on what's in the record here. There's nothing in LB189 that would present them with being placed in a position where they were being forced to hire someone who had a conviction or had issues around moral turpitude, and that would certainly be one of them. I'm willing to work to try to address the situation that if moral turpitude isn't the proper disqualifier then I'm willing to work with the school boards to deal with that. I can think of no one that has greater concern for the safety of young people, but I've been on a board...I've served on a board of education for 11 years and I know that there were people that we employed who had convictions for offenses that had no bearing on the jobs we were asking them to perform, was no indication that they would place our young people in any compromising position with regard to safety. And all this bill is designed to do is to continue to provide those opportunities where warranted. I would like to sit with Mr. Richards because the intent of the language that appears on lines 12 and 13 of page 3 was intended to address the situation presented with regard to particular regulatory restrictions and that is if the criminal conviction directly relates to the particular employment. So if the particular employment says you can't have a felony conviction in order to perform this, then that conviction directly relates to that employment and there's nothing in LB189 that would place that employer in a position of violating some regulatory requirement. In fact, the bill is designed to give them the cover that they would obviously need in that situation. If the criminal conviction directly relates to the particular employment, nothing in my bill says the employer has to hire someone under those circumstances. Again, the primary intent of LB189 is to provide individuals, who have had the unfortunate condition of being arrested and convicted of a misdemeanor or felony, to provide some opportunity for them to obtain gainful and meaningful employment. And no knock on human resource directors, and I know small businesses, you know, don't have the opportunity but, believe me, human resource directors know how to screen applicants for employment. They know how to take into consideration criminal backgrounds and what is and is not indicators of any risk of liability or harm to the consumer. And I know, Senator Smith, and that's one of the other unfortunate realities we deal with, is that we have a lot of private employers, for example, who would

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like to provide employment opportunities to ex-offenders but they believe that their customers don't agree with that particular philosophical direction, but there's nothing regulatory that bars them from doing that, and we recognize that. I would love to extend this to private employers at this point in time, but I think the more prudent approach is to look at how we can develop the process in the government sector and make any tweaks that would be necessary to ensure that when the time comes to seek to extend this to the private sector, we've covered all of those bases. And with that, I would certainly urge the committee's vote to advance the bill with the understanding that amendments would be made to address the moral...any broadening of the definition of moral turpitude, we'll do that, and to make it clear that if there are federal or state regulatory prohibitions to employing someone with a particular conviction, we'll clarify that further. [LB189]

SENATOR LATHROP: Very good. Senator Council, thanks. [LB189]

SENATOR COUNCIL: Thank you. [LB189]

SENATOR LATHROP: That will close our hearings for today. [LB189]