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Business and Labor Committee
February 13, 2012

[LB1072 LB1073 CONFIRMATION]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 13, 2012, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a gubernatorial appointment, LB1072, and LB1073. 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: (Recorder malfunction)...Business and Labor Committee, and we have a lot going on today. The first thing we're going to do, as the agenda would suggest, is take up the Governor's nomination of J.L. Spray to the CIR. Is Mr. Spray here?

J.L. SPRAY: Good afternoon, Senator.

SENATOR LATHROP: Oh, okay. Have a seat and I'll get to you in just a second. Thanks for coming. Then we are going to take up the claims bills. We will do the approved claims, then the denied claims, and I'll have a process for that as we get into the denied claims because I assume that's most of the people here, are here to talk about the denied claims, and I'll have a little bit more to say before we get to those. The process in the Business and Labor Committee, as it is a growing trend in the committee hearings, is to employ the light system. We have a three-minute light system--you will not be on it, I'm happy to say--a three-minute light system after the senator introduces a bill or, in this case, the committee clerk. We will have you come forward if you are first in the supporters, then we'll take the opponents, then we'll take the neutral testimony. You'll be on a three-minute timer: green light for two minutes, yellow light for one minute, and the red light means we'd like you to stop. The reason we use that system is so that everybody has an opportunity to be heard and we are...and move the hearing along in a reasonable manner. If you are asked questions, that's not part of the three minutes. And it is common practice to ask witness questions, although that's not a guarantee. Let me introduce you to the people that you'll see here at the table. Sean Schmeits is our committee clerk; Senator Smith is from Papillion, who is to my far left, your far right; then Senator Wallman; Senator Cook; and myself; and then Molly Burton, our committee counsel. We do have, and I like to explain this at the beginning, you'll see that there are senators who are not here at different times. We all have responsibilities outside of this committee so if there's...for example, Senator Carlson is now introducing a bill in a different committee. So if you see senators come and go, that's not an indication that they lack interest in your testimony or what you have to say but just the practical effects of trying to discharge all our responsibilities to introduce bills into other committees. And with that, Mr. Spray, welcome to the Business and Labor Committee.

J.L. SPRAY: Mr. Chairman, thank you. And I could probably take a yellow light. I don't

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have a very lengthy presentation. My name is J.L. Spray. I'm a lawyer in Lincoln, Nebraska, a partner with Mattson Ricketts Davies Stewart and Calkins. I've been there over 25 years. I have been practicing law and predominantly have a diverse practice, although of late I have been mostly involved in litigation, civil litigation, and if I had to tell you one particular area it would probably be investors, representing investors in disputes with their brokers and broker dealers. I have a history of public service. When I was out of law school and for approximately five or six years after that, I served as a hearing officer at the Department of Labor, mostly involving FUTA tax and taxing issues but had that experience. I served six years on two different terms on the Accountability and Disclosure Commission, and then most recently I've been on the Nebraska Equal Opportunity Commission for seven years and very proud of how that commission is functioning today and the kind of work that we do there. So I would certainly invite any questions you have and really appreciate the opportunity to come see you in person.
[CONFIRMATION]

SENATOR LATHROP: Glad to have you here. Are there questions for Mr. Spray from any of the committee members? Do you go by J.L.? [CONFIRMATION]

J.L. SPRAY: I do. [CONFIRMATION]

SENATOR LATHROP: Okay. J.L., can you tell us, have you been...have you practiced in front of the CIR in the past? [CONFIRMATION]

J.L. SPRAY: I have not. [CONFIRMATION]

SENATOR LATHROP: Okay. You think there's a connection or a similarity between the CIR and the work you've done, for example, on the NEOC? [CONFIRMATION]

J.L. SPRAY: You know, other than the idea of public service, the NEOC does have...I'm going to call them quasi-judicial matters that come to the commission. We have hearings. We evaluate public hearing testimony and the like, make judgments, so, you know, to that extent, but I think they're very different. I mean obviously you've created a set of procedures for the CIR and that's different from anything I've done before.
[CONFIRMATION]

SENATOR LATHROP: Okay. Okay. I do not see any other questions, so we'll hear from proponents or opponents and then we'll get to Exec on your nomination.
[CONFIRMATION]

J.L. SPRAY: Very good. I'll yield you the balance then. [CONFIRMATION]

SENATOR LATHROP: Yeah, thank you very much. [CONFIRMATION]

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J.L. SPRAY: Thank you, Senator. [CONFIRMATION]

SENATOR LATHROP: Glad to have you here. Is there anyone here who wishes to testify in support of Mr. Spray's nomination to the CIR? Anyone here...I'm sorry, are you in support? [CONFIRMATION]

KEN MASS: Yeah. [CONFIRMATION]

SENATOR LATHROP: Okay. Welcome. [CONFIRMATION]

KEN MASS: Senator Lathrop, members of the committee, my name is Ken Mass. I'm with the Nebraska AFL-CIO. First of all, let me say I do not know Mr. Spray but I understand he's fair, and that's what we've always asked, anybody get to...appointed to the CIR be fair in their decisions. Do not let the, you know, political realm play into play...come into play or other past duties that they've had. So for those reasons, we're here in support of Mr. Spray and hopefully he can be a good commissioner because I'm sure there's going to be a lot of cases going to him. So with that, I'd answer any questions you may have. [CONFIRMATION]

SENATOR LATHROP: I see no questions. Thank you for your input, Mr. Mass. [CONFIRMATION]

KEN MASS: Thank you. [CONFIRMATION]

SENATOR LATHROP: Anyone else here in support, who cares to testify in support? Anyone here in opposition to the appointment? How about anyone here in a neutral capacity who wishes to be heard? Seeing none, that will close our hearing on the Governor's nomination of Mr. J.L. Spray to the CIR. With that, thank you, Mr. Spray. Moving then to LB1072 and that brings us to committee counsel, who will introduce the bill. [CONFIRMATION]

MOLLY BURTON: Senator Lathrop, members of the Business and Labor Committee, my name is Molly Burton, M-o-l-l-y B-u-r-t-o-n, legal counsel for the Business and Labor Committee, here to introduce LB1072. That is what we generally call the approved claims bill and that bill and the summaries of the claims are in your binders. Shannon Anderson, who is the state's Risk Manager, will follow me and go through the claims. Also present is Mr. Cookson from the AG's Office, who can also answer questions on those claims that were settled by the Attorney General's Office. This bill also includes agency write-offs, and there should be agency representatives for any write-offs that are greater than \$25,000. [LB1072]

SENATOR LATHROP: And they are subject to call but won't necessarily come forward? [LB1072]

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MOLLY BURTON: Yes. [LB1072]

SENATOR LATHROP: Okay. With that, thank you, Molly. Are there... [LB1072]

MOLLY BURTON: And that's the same with Mr. Cookson as well. He's available for questions. [LB1072]

SENATOR LATHROP: Okay. Okay. Any questions for Molly? Seeing none, that brings us to Shannon Anderson, no stranger to the Business and Labor Committee. [LB1072]

SHANNON ANDERSON: Thank you, Senator. Members of the committee, my name is Shannon Anderson, S-h-a-n-n-o-n. I am the Risk Manager for the state of Nebraska. Office of Risk Management is an office and a division out of the Department of Administrative Services. As committee counsel indicated, LB1072 is the approved claims bill. There's just 12 claims in this bill this year; 3 of them are settlements, if you will, and 9 of them are agency write-offs. Of the three cases of, if you will, the litigation, we have one that's for the ACLU. It's attorney's fees, and this was...go ahead. I'm sorry. [LB1072]

SENATOR LATHROP: Maybe we can start out, just for the benefit of the new members on the committee that haven't been through the claims bill process or may not recall it, if your office wants to settle a claim, a tort claim, for example, for \$50,000 or less, you can do that without our approval. [LB1072]

SHANNON ANDERSON: With the board. The board...the Risk Manager has up to \$5,000 in approval, the board at \$50,000, and anything over \$50,000 has to then be sent to the Legislature for review. Also, you have jurisdiction over denials, which is the next bill. The Attorney General is statutorily authorized to act on behalf of the board and the state claims and so, for example, the first case in the...which is the American Civil Liberties Union case, and it's 2012-11722, this was a case that was a challenge to two statutes regarding petition circulators and it was stemming from legislation passed in '07 and '08, two separate bills. That has been settled. The Attorney General's...the ACLU petitioned the court then for attorney's fees, which are available under 1983 civil rights cases, and although they put in for \$309,000, basically, the Attorney General's Office got them to settle for \$275,000. And so because that's over the amount available to the board, this claim did come before the board. It was recommended to be sent to the Legislature for approval. [LB1072]

SENATOR LATHROP: But its origin is a federal court order requiring us to pay. [LB1072]

SHANNON ANDERSON: This is a 1983...right. The State Claims Board has jurisdiction

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over torts, contracts, and miscellaneous claims. Miscellaneous claims are not everything other than tort and contract. For example, we don't do employment law, we don't do any of those cases, or indemnification for public employees. As well, with this 1983 case, it would not have originated as a claim with the Claims Board, but once the Attorney General settled that case and recommended approval by the Legislature, it comes back through the claims bill. [LB1072]

SENATOR LATHROP: Okay. And they've compromised the amount that was ordered by Judge Bataillon. [LB1072]

SHANNON ANDERSON: Right, just \$270,000... [LB1072]

SENATOR LATHROP: Okay. Very good. Thank you. [LB1072]

SHANNON ANDERSON: Right. I just want to make certain that that was the dollar amount. Yeah, it was originally supposed to be...they had asked for \$302,000, excuse me, and again Mr. Cookson from the AG's Office is on hand to answer any specific questions. Another case is a tort claim that did originate with the board back in 2004, TC04-00646. This was an inmate at the corrections center and it's an assault case. It was actually entered...the judgment was entered against the state back in 2010 but the plaintiff appealed. That appeal was lost and they have now reached an agreement for the \$267,737.62. Some of that is interest and costs attendant to the appeal, but the plaintiff was eligible for those additional costs. [LB1072]

SENATOR LATHROP: And that's a compromise between the plaintiff, a former inmate or an inmate, and the Attorney General's Office. [LB1072]

SHANNON ANDERSON: Actually, this is an order by the court. [LB1072]

SENATOR LATHROP: Oh, okay. [LB1072]

SHANNON ANDERSON: This went to litigation and the court awarded \$250,000 to the inmate, to the plaintiff, back in March of 2010. [LB1072]

SENATOR LATHROP: Okay. Thank you. [LB1072]

SHANNON ANDERSON: The final case is a settlement case. It had not gone to litigation. It was denied originally by the board and then went into where there was...filed for litigation and then to negotiations. It's a claimant, claimant was involved in an accident involving a state snowplow and this case has been settled for \$227,500 and that settlement was just entered in December. [LB1072]

SENATOR LATHROP: And that's between the Attorney General's Office, representing

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the state, and the plaintiff or the person hurt. [LB1072]

SHANNON ANDERSON: Exactly. [LB1072]

SENATOR LATHROP: Okay. [LB1072]

SHANNON ANDERSON: Exactly. And so those are the three, those are the three cases we have this...in this year's bill. We do not have any workers' comp settlements. That's the other area that can be placed in a bill, nothing on workers' comp this year. And then the remainder of the bill are what are agency write-offs. Agencies are required, if they have an uncollectible debt, to present to the State Claims Board approval of that debt being written off. It can't be done automatically. In the last four or five years we have attended to more stringent documentation as to the debts and the reasons for being written off, and then Senator Lathrop has established a rule that for those agencies requiring more than \$25,000 in debts being written off to be available here today, so Director Fredrickson from Department of Roads is here, Jason Walters from the State Treasurer's Office, and Dave McManaman from HHS. Of those three claims, the HHS claim, it is a \$3 million claim that they're writing off and they have demonstrated to the board extensive efforts to not only document the debts but they also have put this on a schedule so they could tell when these debts were going to come up and they have more of a controlled system now. And this is the big...this is their largest net being cast. So the board, too, was surprised by the \$3 million level but it was one that, when presented with the system in place then, this should be the peak amount and it should drop from there, because they have also put into place the collection efforts attendant to not allowing all this debt to become uncollectible. [LB1072]

SENATOR LATHROP: Do you want to walk through them? [LB1072]

SHANNON ANDERSON: We certainly can. They are... [LB1072]

SENATOR LATHROP: Maybe you could...maybe you could go through each of the agencies and pause just for a second to see if it provokes any questions... [LB1072]

SHANNON ANDERSON: Sure. [LB1072]

SENATOR LATHROP: ...from the committee members. [LB1072]

SHANNON ANDERSON: Sure. Military Department had, on your bill it begins on page 5, line 10, Military Department asked for \$2,600, \$2,683.98; Department of Roads does have \$136,153.13... [LB1072]

SENATOR LATHROP: Wait a minute, Shannon. [LB1072]

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SHANNON ANDERSON: Oh. [LB1072]

SENATOR LATHROP: You want to tell us... [LB1072]

SHANNON ANDERSON: Oh. [LB1072]

SENATOR LATHROP: ...just take...give us the nutshell on the Military Department, then we'll see if anybody has any questions, then go to the next one. [LB1072]

SHANNON ANDERSON: Oh, okay. These were...I have to by memory, this was a student loan debt where they have students that they have members that they have provided tuition assistance to, and then when they drop out of school and the program it makes it very difficult for them to collect it back. They don't have any way to reach out to the debtor. But on the front end they're doing better about identifying likely persons to complete the program. Department of Roads was quite a lengthy list of vendors and debtors that they had, contractors, subcontractors and that, that they had that they were writing off. And they were not...it wasn't an extensive amount of detail and so you may want to have questions for the director in that regard. Department of Revenue was Lottery Division on different promotions and accounts that they have. That was at \$21,000. [LB1072]

SENATOR LATHROP: What does that mean? [LB1072]

SHANNON ANDERSON: It was...I'm not certain, Senator, quite frankly. I can get additional information for you on when we came in. I know, in all candor, I had prepared the 25...the 3 and kind of did a brief overview on that. [LB1072]

SENATOR LATHROP: Okay. [LB1072]

SHANNON ANDERSON: Oh, go ahead. [LB1072]

SENATOR LATHROP: Oh, Senator Wallman. [LB1072]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, isn't that lottery self-funded? [LB1072]

SHANNON ANDERSON: But they can still have debts. You still can't write off the debt. You can't just eliminate...you know in private business where you can... [LB1072]

SENATOR WALLMAN: Yeah. [LB1072]

SHANNON ANDERSON: ...take the loss, they still need the authorization to write off the debt, to take the loss. [LB1072]

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SENATOR WALLMAN: Thanks. [LB1072]

SENATOR LATHROP: And is there somebody that owes them money? [LB1072]

SHANNON ANDERSON: Yes, that's... [LB1072]

SENATOR LATHROP: And... [LB1072]

SHANNON ANDERSON: ...all of these are people that they have done...you know, remember, I think the best example I go back to is any agency that has a fee for a service, a bad check. [LB1072]

SENATOR LATHROP: Okay. [LB1072]

SHANNON ANDERSON: I think that's...and then when you get to some of the larger ones here then you have...you'll see...well, I'll continue on the list here. Department of Motor Vehicles, what this is for is for transcripts and the law has now been changed where they don't anticipate...during their DUI proceedings, there is a requirement that when you go to appeal the decision you have to have a transcript. Well, if the appeal went south on the defendant, if you will, they're not paying this dollar amount. And so a bill was passed last year that that transcript isn't required and so they don't...they see this debt going away. [LB1072]

SENATOR LATHROP: Okay. [LB1072]

SHANNON ANDERSON: But they have...they provided us each individual debtor on that and it's basically, quite frankly, a handful of our brethren not paying for...on their clients' behalf so... [LB1072]

SENATOR LATHROP: Our brethren being lawyers? [LB1072]

SHANNON ANDERSON: Lawyers, yeah, (laugh) imagine that, just happens sometimes. When we look at Department of Health and Human Services at \$3.7 million, again, these are...generally they're overpayments in Medicaid, and so the payment should not have been made and then when you go back to try to collect you're collecting from the most vulnerable. And so we are required... [LB1072]

SENATOR LATHROP: Who's here to talk about that? [LB1072]

SHANNON ANDERSON: Dave McManaman is,... [LB1072]

SENATOR LATHROP: Okay. [LB1072]

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SHANNON ANDERSON: ...their attorney for the department. [LB1072]

SENATOR LATHROP: Okay. [LB1072]

SHANNON ANDERSON: For our own agency, what we had is we had for the \$7,500, it was regarding communications contracts. We had some phone services and these are quite old. Our agency is a good example of not having really looked at debt write-off and bringing it current and reaching out then and looking, and then that gave us an opportunity to look at some of the more current debts and go after those more aggressively and identified. So we went through a process of changing the letters. [LB1072]

SENATOR LATHROP: Senator Smith. [LB1072]

SENATOR SMITH: And since you seem a bit more familiar with that one, can you explain that a little bit more, help me to understand? [LB1072]

SHANNON ANDERSON: Yeah, it's...these were in services that we...they were teleconferencing services that we had made available and so in different communities, if they wanted to have meetings, the state made available you could use this office and these telecommuting, these videoconferencing services, and then the vendor, the parties that used it, didn't pay us. And in fact one went out of business and was consumed by another one and they said that, you know, it was one of those situations where they no longer exist, the company that bought them said they are not liable for this debt, and you come down to the discussion, the decision on does it cost more to chase after that money or not, and is there anything to chase after? But it's a very important exercise for agencies to do that and to think about the alternatives, and our goal is to have them think about, long before it would even go to it's too expensive to sue them, to update your collection practices, your letters. And that's what we did as an agency, went through and rewrote all of the letters and the time frames that letters and e-mails and telephone calls went out. [LB1072]

SENATOR SMITH: And is the collection process, is it using a third party at all? [LB1072]

SHANNON ANDERSON: Agencies are allowed to do that. There is...we have an agency, a collection agency under contract. And again you then, the agency, is allowed to make the decision if they can do it cheaper than what the agency...that the firm that we have contracted can do. [LB1072]

SENATOR SMITH: So as we're going through each of these examples, some of these agencies may choose to use a third party and some may choose to do it internally. [LB1072]

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SHANNON ANDERSON: That's correct. [LB1072]

SENATOR SMITH: And roughly how much time has passed before it goes into write-off? [LB1072]

SHANNON ANDERSON: Each agency has a different time frame. We have not made uniform that you should come before the board within two years. Their statute...some are as old as five years, some are within, you know, two years on the collection of that. I think it comes down to, because the agencies now are looking at it case by case, they're also looking at the likelihood of collection, meaning if the vendor...if the debtor can pay. [LB1072]

SENATOR SMITH: What have you seen is the shortest period of time for a write-off to occur? [LB1072]

SHANNON ANDERSON: I don't...Senator, I can get that information for you, but we do not analyze it from that perspective. [LB1072]

SENATOR SMITH: Okay. All right. Thank you. [LB1072]

SHANNON ANDERSON: As we move on, State Treasurer's Office, this is the child support agency and these debts, they have a sophisticated system in making the collections and this is truly the worst of the worst that are uncollectible, and they're on hand today to discuss their system. We walked through their...we had a couple meetings with them on their system to collect debts and were satisfied that they had taken every means necessary. And then similarly with the Department of Insurance, this was on some funeral home insurance and it was uncollectible and they had sat on it. And I'm sorry, I can...Commissioner Ramge was just here, I don't know if he's still here, he had stopped in. But they had presented that to us that it was an agreement that was not enforceable and that they knew that they weren't going to get the money the way the setup was. But I can, like I said, I will get you the information on that one. That was pretty certain. That came in late, in fact, after our hearing. We had a subsequent hearing that they brought that up when they found out that they had made some additional efforts to collect it. [LB1072]

SENATOR LATHROP: Do you know who the debtor is in that one? [LB1072]

SHANNON ANDERSON: I do not, but I can have that information...we can get that for you. [LB1072]

SENATOR LATHROP: If you would. [LB1072]

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SHANNON ANDERSON: Uh-huh. [LB1072]

SENATOR LATHROP: You've gone through it. That's all the claims, am I right? [LB1072]

SHANNON ANDERSON: That is all, Senator. [LB1072]

SENATOR LATHROP: And it looks like we've asked all the questions we have. Maybe we'll hear from a couple of the agency heads, beginning with Department of Roads just briefly. [LB1072]

SHANNON ANDERSON: Okay. [LB1072]

SENATOR LATHROP: Good afternoon. [LB1072]

MONTY FREDRICKSON: Good afternoon, Senator, members of the committee. I am Monty Fredrickson, M-o-n-t-y F-r-e-d-r-i-c-k-s-o-n, director/state engineer for the Department of Roads. [LB1072]

SENATOR LATHROP: Can you tell us generally what your \$136,000 write-off is? [LB1072]

MONTY FREDRICKSON: Yes. There's only one over \$25,000 write-off. That's a \$55,000 write-off that we invoiced a driver that ran over our weigh-in-motion electronic devices out at the North Platte truck scale, and we invoiced that person for \$130,000, which was the replacement cost of those materials. Their insurance company argued that our devices were five years old or six years old and there should be some depreciable value, and we agreed that that was the case, that we would have a hard time proving that they should pay for the total replacement. So let me look at those totals again. That was invoiced for \$136,000 and we settled for \$74,000, so we're asking for a \$55,000 write-off. I would say 95 percent of our claims are property damage where vehicles are running off the road, either damaging guardrails, bridges, sometimes they catch fire and burn up the pavement and we have to replace that so we will invoice those people. And then there's the negotiation of fault that comes into it and are these people out of state, what's the chance of us finding them. So that the three largest ones we have, with that being the biggest, we did recover some 60 to 70 percent of the original invoice. [LB1072]

SENATOR LATHROP: Okay. So otherwise generally it's property damage to Department of Roads' assets. [LB1072]

MONTY FREDRICKSON: Yes. [LB1072]

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SENATOR LATHROP: Okay. [LB1072]

SENATOR SMITH: So the difference... [LB1072]

SENATOR LATHROP: Senator Smith. [LB1072]

SENATOR SMITH: Thank you, Senator Lathrop. So the difference would be the write-off amount is the difference between the replacement cost and whatever you're able to retrieve or recover? [LB1072]

MONTY FREDRICKSON: Not in this case. It's... [LB1072]

SENATOR SMITH: Or is it book value? [LB1072]

MONTY FREDRICKSON: ...it's the difference between depreciated cost and the replacement cost. [LB1072]

SENATOR SMITH: Okay. Okay. [LB1072]

SENATOR LATHROP: And in some cases, people just plain don't pay after they hit a guardrail. [LB1072]

MONTY FREDRICKSON: Yes, and we can't find them or, you know, there's some human thought that goes into some of these cases. If you're trying to collect \$500 from a fellow that his wife is dying of cancer, then it factors into your decision. [LB1072]

SENATOR LATHROP: Okay. Senator Wallman. [LB1072]

SENATOR WALLMAN: Thank you, Senator Lathrop. Thank you, Monty, for being here. I'd like to know how in the world you break a scale? (Laughter) [LB1072]

MONTY FREDRICKSON: No, it wasn't the scale. There's an electronic device, a couple of them, sitting alongside the road that... [LB1072]

SENATOR WALLMAN: Oh, I see. [LB1072]

MONTY FREDRICKSON: ...track the trucks that come through and then part of it tells the truck if they're overweight or not and should pull into the scale. And so all this is connected as an intelligent transportation system device. [LB1072]

SENATOR WALLMAN: Okay. Thank you. [LB1072]

SENATOR LATHROP: I see no other questions. Thank you for your help. [LB1072]

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MONTY FREDRICKSON: You bet. [LB1072]

SENATOR LATHROP: Let's take up HHS, if someone is here to talk about that \$3,600,000. [LB1072]

DAVE McMANAMAN: Good afternoon, Senator Lathrop, members of the committee. My name is Dave McManaman, last name is M-c-M-a-n-a-m-a-n. I'm agency counsel for the Department of Health and Human Services. The agency's write-off, I think Ms. Anderson pointed out, is significantly larger than we've had. There's a variety of reasons for that. Probably first and foremost is the fact that we're now working with collection agencies. We began working with NCO, a collection agency, a few years back. And maybe I should back up. The debts we're really talking about are the result, primarily, of overpayments from needs-based assistance programs to folks, so you might have an overpayment in ADC or ABD, childcare subsidies and the like. So we started incorporating the use of a collection agency that we contracted with, NCO. They tried to collect on many of these debts. When the contract ended with NCO, we went to a new contracting agency, the Affiliated Group, to try to collect and this is really the first full year after we've sent these debts through the collection process with the collection agencies. And what we found is the success that they're having with folks that we provided financial assistance to is not returning, obviously, what we'd like to have returned. Through that process of setting up a collection agency, since in 2007 we had a significantly large write-off request, we put in place a collection policy. We put in place the collection agency. The policy sets out exactly the things that Ms. Anderson testified that DAS is now doing and that is setting up time frames within which the first letters go out, the telephone calls go out, the decision to send it to a collection agency or to take it to our legal counsel and try to work the accounts that way; sets out the time frames for those to be done and I am hopeful. I believe from what I am seeing is that we'll begin now to see debts more timely presented for write off. We...I'm sorry. [LB1072]

SENATOR LATHROP: Good. That explanation is helpful. I have to say I think I've heard something like this before but we'll give you the benefit of a doubt and let's hope that next year we see a smaller amount of agency write-offs. But I appreciate the population you're working with. Can you tell us, are these all like a couple hundred here, a couple hundred there, and they just accumulate to \$3.6 million, or do we have a big claim in there somewhere? [LB1072]

DAVE McMANAMAN: There are some larger claims. I think there are four of them that involve one of our facilities, and the issue with the facilities is when someone goes into care, for instance, at a regional center or at the BSDC, either they or their parents, if they're a minor, are attributed a share of cost. And depending on what they present to us by way of resources and income, that share of cost may be significantly high. If they don't pay, as you can see, that would probably balloon rather quickly. And so we do

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have some debts that are much larger. I will say that when I calculated the debts that we have and the overwhelming majority of these debts are all relating to ADC, ABD, childcare subsidy. About 94 percent of these debts are under \$5,000 and, of those, well over half of those are less than \$1,000. Those are all significantly large in my estimation in my own budgeting,... [LB1072]

SENATOR LATHROP: Sure. [LB1072]

DAVE McMANAMAN: ...but when you look at...as a percentage of the actual resources that are going out to folks who are in need, it is a very small percent. [LB1072]

SENATOR LATHROP: Let me ask this question. Are any of these claims for personal injuries? [LB1072]

DAVE McMANAMAN: No. [LB1072]

SENATOR LATHROP: Okay. So we don't have buried in that \$3.6 million or \$3.7 million some kind of a claim for any... [LB1072]

DAVE McMANAMAN: No. [LB1072]

SENATOR LATHROP: ...any sort of a tort. They're all write-offs of overpayment of benefits. [LB1072]

DAVE McMANAMAN: Correct. These are all debts that were established either due to an overpayment or providing services that the person didn't pay us for. [LB1072]

SENATOR LATHROP: Okay. Let me see if there's any questions. I see none. Thank you. [LB1072]

DAVE McMANAMAN: Thank you. [LB1072]

SENATOR LATHROP: We're joined by Senator Carlson, to my far right, and Senator Ashford. For those of you that don't know them, they're stars on the Business and Labor Committee. And the last thing, I think, is the Treasurer's Office, last person I want to hear from unless the committee wants to hear from other agency heads. Is somebody here from the Treasurer's Office? [LB1072]

TROY REINERS: Good afternoon, Senator Lathrop. My name is Troy Reiners. I'm the director of the Nebraska Child Support Payment Center. That's R-e-i-n-e-r-s. The Treasurer's Office has a business near the Nebraska Child Support Payment Center, which has been open since about December of 2001. Since that time, we've incurred debts due to what we refer to as bank return items, people who have written child

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support checks that have bounced or we have made mistakes, whether it be applying a payment to somebody incorrectly, the funds being disbursed to a custodial parent incorrectly, or possibly an encoding error where we ran a check that's \$500 but it was \$50. And so this is the first time that we've actually come to do write-offs through Risk to the board, the Claims Board and everything, so we're requesting to write off \$101,737.13. That's broken down into a number of different categories to include, roughly, about 75 percent of it are overpayments and which are beyond six years old, less than 5 percent of it are situations where the debtor is deceased and we exhausted any opportunities to...for probate, to put a claim against the estate. Then we have essentially probably roughly about 20 percent of those are bank return items, which some of them are over six years old. The more current ones are situations where essentially we've exhausted our means. [LB1072]

SENATOR LATHROP: Okay. What period of time does this include? Are you bringing to the committee write-offs that are really the accumulation of several years' worth of these sorts of problems and mistakes? [LB1072]

TROY REINERS: Yes. We essentially process over \$1 million per day in child support payments, a lot of those coming from individuals or employers, and just nature of the business, some of those checks do not clear or some of the automated, you know, electronic things do not clear. [LB1072]

SENATOR LATHROP: Over what period of time? [LB1072]

TROY REINERS: This is from 2001. We did...I know it... [LB1072]

SENATOR LATHROP: Okay, so we have 11 years' worth of write-offs here. [LB1072]

TROY REINERS: Well, this is not, obviously, all of them. We've become debt preventative and so we're doing a lot of things to prevent debt and we're obviously not writing off everything because we're going to, you know, obviously anything more current we're going to actively pursue in order to collect. [LB1072]

SENATOR LATHROP: Okay. So this is 11 years' worth that you now want to write off. How much debt are you sitting on right now that you still hold out some hope of collecting? [LB1072]

TROY REINERS: This will reduce it to under \$500,000 for all of our debt. [LB1072]

SENATOR LATHROP: Okay. Senator Smith has a question for you. [LB1072]

SENATOR SMITH: Yeah, thank you, Senator Lathrop. How do you determine how long you keep this active before it goes to write-off? [LB1072]

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TROY REINERS: Well, we basically rewrote some write-off procedures and, with the assistance of Risk Management, we looked at obviously statute of limitations. And granted, you can pursue debt beyond that. It's just you're not likely to, you know, win in a court. So we...six years is kind of what our time period is but then when you have a debtor who's deceased or that or a case ends, so (A) we're no longer receiving payments. And this is a federal program, however, the feds will not participate in the bad debt. We do have two collections representatives which are part of our staff, so we do inhouse collections, and that's after hiring a professional collection agency that we went in and created basically applications and everything to do ticklers and letters and all these things. So we're getting a lot better at being debt preventative by making fewer mistakes and by actively pursuing bad debts more quickly, because you're more apt to collect on it if you get after it right away. [LB1072]

SENATOR SMITH: Is there any attempt to settle on any of these debts, a certain percentage of the outstanding debt, or is it all or nothing? [LB1072]

TROY REINERS: What we do is we review. And then, based upon the criteria that we wrote for our procedures, we say, okay. So like our collections representative will recommend this be written off and then management reviews it. And then from there we make a decision, do we wish to go ahead and do a write-off on it. [LB1072]

SENATOR SMITH: Okay. Thank you. [LB1072]

SENATOR LATHROP: I see no other questions. Thanks for your help. Does the committee want to hear from any other agency heads? Seeing none, those were the proponents. Any opponents to the proposed write-offs and claims in LB1072? Anyone here in a neutral capacity on LB1072? [LB1072]

KENT BERNBECK: (Exhibit 1) Chairman, members of the committee, my name is Kent Bernbeck, B-e-r-n-b-e-c-k, and I come to the committee to testify in a neutral capacity on the ACLU payment of \$275,000 for legal expenses, as Judge Bataillon overruled the petition restrictions of the residency requirement. And I guess, you know, you have my written testimony but I am going to deviate from that. Really, the only reason I am here, and if I could just take a moment to introduce myself a little bit, I was a plaintiff in 1996 in federal court that I won on an Eighth Circuit Court decision on registered voters, whether they could be petition circulators if they're not registered voters. I was involved in the Stenberg v. Moore successful suit in state court on the exact match for petition signatures. And most recently I was a plaintiff in a successful federal lawsuit related to this ACLU lawsuit. So I do have quite a bit of experience I bring forward with this, but my testimony really comes from a phone call I got from my older brother. He's aware of what I do. I mean I'm a volunteer. I guess I meddle in the petition process, and I currently have an initiative petition on file with the Secretary of State. But he called me

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and he asked me, what the hell was going on with this \$275,000 payment. Now I've explained to him that my attorney, David Domina, was going to receive \$45,000 in payment, a very modest sum on Mr. Domina's part. This \$275,000 payment to the ACLU I think should make us all take pause just for a minute because it's a huge amount of money. I mean it's kind of a small amount of money compared to all the write-offs and different stuff you guys have to look at every day, but to a farmer up in northeast Nebraska who's wondering why we're paying \$275,000 to the ACLU in New York, New York, I mean it takes a little explaining for me to do. What I have explained to him or will explain to him as we have time to sit down and visit is that the senators at the Legislature in 2008 passed this law restricting petition circulators over the contention of quite a few people, including the ACLU at that time, who issued an Opinion. It was only after the Attorney General offered a very weak, "inconcise" Opinion that it did receive final round approval. Then the Governor vetoed it. And then Senator Schimek, former Senator Schimek, was able to muster a veto of it with the help of Senator Christensen, who was called to the floor to vote. He was the deciding vote. So what I'm seeing here is that as we approach these petition restrictions, I realize your committee doesn't do that but obviously you have cleanup responsibilities for the committee down the hallway. And I did put in my testimony that the committee down the hallway, the Government Committee, did attempt to or considered passing additional restrictions on petition circulators. Thankfully, they took those items out of the bill and advanced a clean bill. But I guess the point that I want to finish with, and I don't know how much time I have left, but... [LB1072]

SENATOR LATHROP: It didn't really start on time so you're probably pretty close but... [LB1072]

KENT BERNBECK: Okay, I'll finish up because the people behind me I'm sure would like to someday have a crack at that \$275,000 that's being sent to New York, New York, for American Civil Liberties Union because senators here, including members on this committee, passed that law over the objections of a lot of people. And I'd be open to any questions. [LB1072]

SENATOR LATHROP: I see no questions. Thank you for your testimony. [LB1072]

KENT BERNBECK: Thank you. [LB1072]

SENATOR LATHROP: Anyone else here in a neutral capacity? [LB1072]

GREGG NICKLAS: Good afternoon, Senators. My name is Gregg Nicklas, G-r-e-g-g, Nicklas is N-i-c-k-l-a-s, and I didn't come to testify in regards to this bill. It's the next one I'm here to testify on. I'm really appalled as I sit here and I hear an attorney for the Department of Health and Human Services come and ask for a \$3.6 million write-off for overpayments. We periodically get overpayments and we pay every cent back. If that

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\$3.6 million was available, none of us would be sitting here today because it could be paid to providers for services that we've already provided. And so I just find it incredible that the Department of Health and Human Services can simply come and request to write off \$3.6 million and then will probably come and ask that none of us be paid, which would total less than \$3.6 million. That just is grievous to me and I'd like you to know that. [LB1072]

SENATOR LATHROP: It's noted, duly noted. [LB1072]

GREGG NICKLAS: Thank you, sir. [LB1072]

SENATOR LATHROP: And we appreciate your thoughts and your input. I see no questions and I expect we'll be getting to that denied claims bill soon. Any other persons here to speak in a neutral capacity on LB1072? Seeing none, that will close out our hearing on LB1072 and bring us to LB1073, which is generally referred to as the denied claims bill. I want to visit with you before we take this bill up. I know a number of you are providers, and I want to give you an overview of how we'd like this hearing to be conducted. The bill will be introduced by committee counsel, Molly Burton. We will then take people who support the denial of these claims, okay? So if you're a provider, that's not the time to speak if you want to get paid. (Laughter) We will hear from...by prior arrangement I'm going to hear from Kerry Winterer, who will come up and share the Health and Human Services position with respect to these claims. We will then hear from those other people who support denying these claims, if anyone. Then we will go to the opponents or the people that want to see these bills...these claims paid. Well, we'll also hear from Shannon Anderson, who has to kind of introduce them. I have sort of made an arrangement for Senator Krist to speak at the beginning of, after we hear from Shannon, in the opposition to sort of...he's on the Health Committee. He'll kind of give us his perspective and his thoughts and be sort of a counterpoint to what we probably will hear from Mr. Winterer. We have a few attorneys to get up here, and then we will hear from providers, if you want to be heard. The one thing I hope to accomplish with Mr. Winterer is that we don't need people to come up to testify that they had a contract, that they provided the services, and the balance owing. I think we'll be able to get Mr. Winterer to agree...he may not agree that the bill should be paid, but I believe we'll hear that he doesn't have a quarrel with how much the bill is, that you actually provided the service, and so on. So if you're here to do that, your testimony may not be necessary, okay? Everyone has the right to testify here. It's an open hearing. But I just want to caution you that after we have people testify, it may obviate the need for you to come up and say, I'm a provider, I did this work, my bill hasn't been paid and the balance is X. And with that, committee counsel. [LB1072 LB1073]

MOLLY BURTON: Senator Lathrop, members of the Business and Labor Committee, my name is Molly Burton, M-o-l-l-y B-u-r-t-o-n, legal counsel for the Business and Labor Committee, here to introduce LB1073, again referred to as the denied claims bill. The

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original bill contains approximately 35 claims. These are subcontractors for one of the lead agencies that Nebraska Health and Human Services contracted with, Boys and Girls Home. There's also an amendment to the bill that adds an additional 16 claims, and why there's an amendment, the original claimants were heard by the State Claims Board on December 5 and then additional claimants came forward and the State Claims Board held an additional hearing at the end of January. So that's why we have an amendment adding 16 more claims, but both will be heard at the same time, and that's AM1782. Both are in your binders, as well as the docket sheets, which are summaries provided from department (sic) of Risk Management. Shannon Anderson, the state Risk Manager, is here, as you know, and will follow me and go through the claims. [LB1073]

SENATOR LATHROP: Very good. Thanks, Molly. [LB1073]

SHANNON ANDERSON: Good afternoon. My name is Shannon Anderson, S-h-a-n-n-o-n A-n-d-e-r-s-o-n. I am the Risk Manager for the state of Nebraska in the Office of Risk Management, a division of the Department of Administrative Services. Mr. Chair, with your lead-in on the instructions, then what I'd like to do is begin where we left off last time, briefly describe what a denied claims bill means and the process, the process that the board followed in having the multiple hearings for these subcontractors, and then just some logistical information about how they came to their decision. And so as LB1073 is presented to you, it is the claims that have come through the State Claims Board that are...have been denied by the board. And some of these claims were heard first by the Risk Manager and then recommended denial, and then the board denied them. Some were over the \$5,000 threshold and were denied and some are over \$50,000 and they were denied by the board. Because they were all then filed as miscellaneous claims under the Miscellaneous Claims Act, the process is, and this is a very...it's in statute in 81-8,300, the process is, is that the board is to approve, disprove with conditions or limitations, or disprove a claim. With miscellaneous claims though, for claims under \$5,000 the Risk Manager can deny a claim if the agency head can...excuse me, the Risk Manager can only approve the claim if the agency head approves of the claim, is willing to do so. Up to \$50,000, which then goes to the board, those claims, the agency has to agree to it and have sufficient funding. Over \$50,000 the statute isn't specific as to what happens, but what is important here is that once the agency says, on a miscellaneous claim, that they're recommending denial, then the board doesn't have any authority to force the agency to pay the claim, approve the claim. For those claims over \$50,000, while it was plausible that the board could take action on them, it was felt and the board was very clear at the two hearings specifically set aside for these claims, which is December 5 and January 26, that they were not making a decision on the merits of the claim as much as they were using the process to get these claims to the Legislature, because the agency had determined they were not going to approve these claims, nor were they going to make a statement if they had the sufficient funding. The reason why we did, the board, these hearings, these matters separate was they first came to our attention in our June 27 hearing in which one

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claimant came forward with this matter. At that time, we were not informed that there were other potential claimants and it wouldn't come until later in the summer. Basically, the paperwork that we've received from HHS suggests that there's 82 subcontractors in this pool. Of that, we had the 52 that filed claims with us. We had notified...you know, the Claims Board doesn't go out and look for people to sue the state of Nebraska, so this put us in a very interesting position as to how to get the process out to people because, as you know, you cannot sue the state of Nebraska in district court without first coming through the Claims Board. And if that was where this was bubbling up into potential litigation, they had to get through this hoop first, besides the fact of getting before the Legislature requires claimants to be before the board. So through different networks and working with HHS, we were able to notify, and we had received those 34...35 claims from 34 claimants on December 5. On December 6 in the mail, we received almost \$1 million worth of claims with people who were uncertain of the process. They did not know...they knew that they had received e-mails but they didn't get it. And so the board authorized me to go out and contact and try to cast a wide net, and we were able to obtain 16 more claimants at that point. Of that 74...of the 82 then that the HHS said that were subcontractors that were similarly affected by this relationship with the Girls and Boys Home of Nebraska, 74 entered into an agreement with HHS. And what the board received on that is that the board was not part of that release. Typically, what happens in our claims is that the board handles it. You say that the state of Nebraska has harmed you. The state of Nebraska then, the Claims Board, is responsible for the investigation and the adjudication of that claim and would obtain from the party then a release of all...a determination of any damages and then a release when that payment is made, and we're only capable of...authorized to give money damages. In this particular case, parties came to us having...with a partial of an agreement document that specifically said in the document that the claimants were only agreeing not to sue the state of Nebraska pursuant to the Tort Claims Act and the Contract Claims Act, and so that's how they came in to us as miscellaneous claims. [LB1073]

SENATOR LATHROP: So these releases that we'll hear about a little bit later from people that were partially paid left open the opportunity for these claimants to make a miscellaneous claim, is what you're saying. [LB1073]

SHANNON ANDERSON: That's correct. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SHANNON ANDERSON: And you'll hear from...we did have some claimants that suggested...that disagree with what the release meant and so that's why you have some...out of that 74 you have 2... [LB1073]

SENATOR LATHROP: Who didn't take a settlement. [LB1073]

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SHANNON ANDERSON: ...who didn't take a settlement, and you have 2 out of the 82 that did not file a claim nor participate in the release. But generally, that's where you'll hear that 35 cents on \$1 and those were funds that were not...but that was not a release that the State Claims Board participated in. So with that, we had secured the documentation from each of the claims, as we do. We did keep it a very simple process in the sense that we allowed persons to come before us, come before the board, in their own words talk about it. We accepted the documentation that they had on hand. Notably and in conclusion what I want to say is that the Department of Health and Human Services made available a spreadsheet which documented a dollar amount that each subcontractor had agreed was the base dollar amount in agreement of what was owed. Those persons, those subcontractors that signed the agreement then with HHS did so based on that dollar amount, and so that was the starting dollar amount that we used with the Claims Board. So we did not independently verify a dollar amount because we accepted that the subcontractor and the department had entered into negotiations to determine that dollar amount. [LB1073]

SENATOR LATHROP: Okay. Let me...let me just ask you... [LB1073]

SHANNON ANDERSON: Okay. [LB1073]

SENATOR LATHROP: ...as far as you're concerned, this document that is sort of a spreadsheet, that in our binder it's the first page that says DAS chart, that's the chart you prepared that reflects the total amount of charges, the amount paid if they entered into a settlement, and the balance due, as best you can put that together. [LB1073]

SHANNON ANDERSON: That is correct, except I think on that we just determined, in making one final review of the documents, is that Better Living had two claims and that chart there may not have captured. We should be sitting at 51 claims and Better Living, it's in your docket sheets, it's in the bill where we need to be, but Better Living had initially...they had filed their claim back in February of 2011 and was heard in the June board meeting. And so this...I believe that captured it just for what we...for the last two board hearings, which was the December 5 and January 26. But I know that we have...I have a corrected document I'll make certain...will double-check and make certain that you have those claims on it. But that...but their claims are in the bill, Senator. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SHANNON ANDERSON: They're not...and in with the... [LB1073]

SENATOR LATHROP: Right now it's item 25 on your list and it shows a... [LB1073]

SHANNON ANDERSON: Right, they actually have two different claims. [LB1073]

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SENATOR LATHROP: ...claim amount of \$72,000, and you think that number is higher because there's another claim? [LB1073]

SHANNON ANDERSON: Right. Their exact...let's see here, okay, Better Living filed a claim. Their original claim was for \$73,407.55. During the December 5 hearing, they had a claim for \$18,283.75. So what we want to make certain we've captured is the \$73,407.55 claim and then that brings you up to your total of the 52 claims. We had one claim in... [LB1073]

SENATOR LATHROP: Wait a minute. What's the total for Better? [LB1073]

SHANNON ANDERSON: For Better is...well, it's two claims. One is \$73,407.55 plus the...excuse me, I'm...\$18,000... [LB1073]

SENATOR LATHROP: \$18,283? [LB1073]

SHANNON ANDERSON: Right, .75. Note that Occupational Health Services is a claim there that did not ask for legislative review, so they are not in the bill, but they're only \$180. [LB1073]

SENATOR LATHROP: Okay. So we would bring the total, instead of \$2,476,172, we'd add... [LB1073]

SHANNON ANDERSON: What we have...here's what... [LB1073]

SENATOR LATHROP: ...we would correct the balance for Better Living. [LB1073]

SHANNON ANDERSON: This is...that, yeah, the total claim bill amount then should be \$4,165,331.76. [LB1073]

SENATOR HARR: Can you repeat that, please? [LB1073]

SHANNON ANDERSON: \$4,165,331.76. [LB1073]

SENATOR LATHROP: That appears to be... [LB1073]

SHANNON ANDERSON: High, doesn't it? Yeah. [LB1073]

SENATOR LATHROP: ...right now the balance on this sheet is... [LB1073]

SHANNON ANDERSON: That's high, isn't it? We have...or... [LB1073]

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SENATOR LATHROP: Can you get us a revised spreadsheet,... [LB1073]

SHANNON ANDERSON: I will, because what I have is... [LB1073]

SENATOR LATHROP: ...so we know what we're talking about and we're not guessing or trying to do math? [LB1073]

SHANNON ANDERSON: Absolutely. Because the three dollar amounts, and I'm sorry that this has come out this way, because at our different board hearings we had the \$73,000 at the first meeting, then we had \$1.6 million worth of claims in December, and \$827,000 in January. So that's what we're looking closer, you're right, at about...at \$2.3 million. [LB1073]

SENATOR LATHROP: Since none of those numbers are at the bottom of the columns you gave us,... [LB1073]

SHANNON ANDERSON: Right, I will get that. [LB1073]

SENATOR LATHROP: ...it's hard to follow exactly what you're saying. [LB1073]

SHANNON ANDERSON: Exactly. [LB1073]

SENATOR LATHROP: But if you can amend this and share it with us... [LB1073]

SHANNON ANDERSON: Absolutely. [LB1073]

SENATOR LATHROP: ...I think we can still...we still get the point. We're not arguing over the balance,... [LB1073]

SHANNON ANDERSON: Uh-huh. [LB1073]

SENATOR LATHROP: ...or that the services were provided, as far as you're concerned. Is that true? [LB1073]

SHANNON ANDERSON: That is correct. [LB1073]

SENATOR LATHROP: Just the circumstances and whether the state has any obligation to pay it. True? [LB1073]

SHANNON ANDERSON: That is correct. [LB1073]

SENATOR LATHROP: Okay. Very good. Any questions for Shannon? Okay. I see none. I think that brings us to our first testifier and that would be Mr. Winterer. Good

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afternoon and welcome to the Business and Labor Committee. [LB1073]

KERRY WINTERER: (Exhibit 2) Afternoon, Senators. I do have some written testimony I can share with you. [LB1073]

SENATOR LATHROP: Because of the nature of what I've asked you to do today and the conversations we've had before, I'm not going to put you on the timer. But if you would like to start with your introductory remarks and then... [LB1073]

KERRY WINTERER: Yeah, I just have a few... [LB1073]

SENATOR LATHROP: ...walk us through the process, if you would. [LB1073]

KERRY WINTERER: I would be happy to do that, Senator. Senator Lathrop and members of the Business and Labor Committee, my name is Kerry Winterer, that's spelled K-e-r-r-y, last name Winterer, W-i-n-t-e-r-e-r. I'm the CEO of the Nebraska Department of Health and Human Services. I'm here to make some comments in support of LB1073. I want to provide you some brief comments here just to provide a background in terms of where we were coming from relative to this, so it can provide then some context I think for questions and to talk about this. As you probably know, in November of 2009 we contracted with a number of agencies across the state to provide child welfare service delivery and service coordination. Following that process, Boys and Girls Home was awarded contracts for the Central, Western, and Northern Service Areas. In the summer of 2010, DHHS grew increasingly concerned about the ability of Boys and Girls Home to meet its financial obligations, despite continued assurances that it could and would do so. In September 2010, several discussions occurred between DHHS and Boys and Girls Home regarding termination of the contracts, resulting in a verbal agreement that Boys and Girls Home would continue to perform until October 15, 2010, and that a written termination agreement to that effect would follow. Notwithstanding that verbal agreement, Boys and Girls Home ceased performance on September 30, 2010, and the families previously served by Boys and Girls were immediately transferred...transitioned back to DHHS. By this time, DHHS had determined, through inquiries to Boys and Girls Home and its subcontractors, that Boys and Girls Home owed its subcontractors approximately \$4 million. From the outset, it was our concern that the subcontractors be paid for services they had provided to Boys and Girls Home, and I want to reiterate that. One of the things we've always been concerned about is the integrity of the system of providers in the state of Nebraska and trying to do whatever we can to ensure the maximum amount of dollars get paid to those contractors. Under our contract with Boys and Girls Home, we owed them approximately \$1.6 million and were contractually obligated to pay them that amount, but we had no legal ability to pay this or any amount to the subcontractors without the agreement with Boys and Girls Home. In order to effectuate partial payment to subcontractors, DHHS, Boys and Girls Home, and nearly all the subcontractors reached

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a settlement agreement. Boys and Girls Home agreed to accept roughly \$1.6 million as full and complete payment under the contract and also agreed to a pro rata distribution of those funds. Keep in mind we did not distribute any of those funds to Boys and Girls, we're talking about the \$1.6 million that we owed to Boys and Girls under their contract and we distributed those funds under our agreement with Boys and Girls Home directly to their subcontractors. This resulted in the payment to subcontractors of approximately 35 percent of the amounts they were owed. This also resulted in the waiver by Boys and Girls Home of any potential contract claims against the state. Because subcontractors participating in the agreement would waive any remaining claims against it, Boys and Girls Home would not agree to participate in the settlement unless most subcontractors also agreed to participate. It was, therefore, crucial that the terms of the agreement be acceptable to as many subcontractors as possible; otherwise, DHHS would be left with no option but to pay the remaining contract payment directly to Boys and Girls Home, leaving the subcontractors in the position of attempting to obtain payments from Boys and Girls Home. This seemed unlikely at best, in light of Boys and Girls Home's inability to perform its contract obligations at that point. In order to obtain the necessary participation of sufficient subcontractors, a waiver of state miscellaneous claims for the remaining 65 percent of funds owed was removed from the proposed settlement agreement. Subcontractors were still, however, required to waive all state contract claims and state tort claims. DHHS's intention to recommend denial of any such miscellaneous claims was made very clear to Boys and Girls Home's subcontractors and their legal representatives on more than one occasion prior to the execution of the settlement agreements. DHHS was not a party to the agreement between Boys and Girls Home and its subcontractors, and the subcontractors were not a party to the agreement between DHHS and Boys and Girls Home. There was never any contractual relationship. There was never any contractual relationship between DHHS and the subcontractors. After thoroughly researching the legal issues surrounding the subcontractors' claims, including several legal theories proposed by the subcontractors' legal representatives, DHH concluded and continues to believe that there is no legal basis for the state to pay these subcontractor claims. Absent a legal obligation to pay subcontractors, DHH lacks the legal authority to expend state resources to make such payments. A number of the subcontractors that declined to participate in the settlement agreement are now pursuing contract claims against Boys and Girls Home. Thanks for the opportunity to testify, and I'd be more than happy to respond to questions. [LB1073]

SENATOR LATHROP: Very good. Thank you. Senator Harr. [LB1073]

SENATOR HARR: Thank you, Senator Lathrop. And thank you, Secretary (sic) Winterer, for coming here today. And I came in late so if this question has already been answered...asked and answered you can tell me to pound sand. But do you deny that or is it your belief that these subcontractors did perform a duty to the state...for the state? [LB1073]

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KERRY WINTERER: These subcontractors provided services that they were contracted with Boys and Girls to provide, yes. [LB1073]

SENATOR HARR: Okay. And they provided the services to whom? [LB1073]

KERRY WINTERER: They provided the services, under their contract, with Boys and Girls for...could have been state wards, could have been families of state wards, it could have been a variety of beneficiaries, if you will, of services for the state. [LB1073]

SENATOR HARR: So you'd agree, at the end of the day, the ultimate benefit went to the state for the work done by the subcontractors. [LB1073]

KERRY WINTERER: I would agree that the subcontractors provided a service that was in the state's interest to provide, yes. [LB1073]

SENATOR HARR: Okay. I have no other questions. Thank you. [LB1073]

SENATOR LATHROP: Senator Wallman. [LB1073]

SENATOR WALLMAN: Thank you, Chairman Lathrop. And, Director Winterer, thank you for coming here. [LB1073]

KERRY WINTERER: Uh-huh. [LB1073]

SENATOR WALLMAN: You talked about, you know, services rendered. I know on the farm if you have a contractor do something, like pour cement, and you are still, no matter if you paid the contractor for the cement, you still have to pay it again if the contractor hasn't paid his bill. So were you aware that the lead agencies were in financial trouble here earlier? [LB1073]

KERRY WINTERER: We were. As the testimony said, we became aware of the problems with the contractor, the lead contractor, Boys and Girls, and their difficulties in making payments to the subcontractors. [LB1073]

SENATOR WALLMAN: Then what... [LB1073]

KERRY WINTERER: That's what caused us then to have a conversation with Boys and Girls and effectively terminate that contract. [LB1073]

SENATOR WALLMAN: Thank you. [LB1073]

SENATOR LATHROP: Senator Carlson. [LB1073]

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SENATOR CARLSON: Thank you, Senator Lathrop. Director Winterer, in your opening statement here you talk about the summer of 2010 or 2009, November of 2009 the contracts were complete, and then the summer of 2010...so not talking much over a half a year, what happened during that period of time? You became aware in, say, six or seven months later that there's a problem. [LB1073]

KERRY WINTERER: Right. [LB1073]

SENATOR CARLSON: What happened during that six or seven months do you think? [LB1073]

KERRY WINTERER: Well, during that six and seven...during that period of time, up until the summer when we began to be concerned about it, we didn't have...we did not have strong indications that Boys and Girls was having some financial difficulties. We became aware of that in the summer. We became aware of it when certain contractors said that they were not getting paid. [LB1073]

SENATOR CARLSON: But here it says in the summer, so assume that's July and August, and then in September you know there's a real problem and asked them to perform until September (sic) 15 but they cease performance on September 30. So things went from bad to worse in a hurry, didn't they? [LB1073]

KERRY WINTERER: They fairly quickly went from bad to worse, yes. [LB1073]

SENATOR CARLSON: What do you think happened? [LB1073]

KERRY WINTERER: Senator, I don't know that I know, except for the fact that they, for whatever reason, other obligations, I don't know that I really want to speculate on what may have been happening that may have caused those problems. We do know, however, that by that summer they were having some difficulty paying the subcontractors. [LB1073]

SENATOR CARLSON: Okay. And in asking these questions, I know it's uncomfortable and I'm not really trying to do that. I'm trying to understand here. [LB1073]

KERRY WINTERER: Uh-huh. [LB1073]

SENATOR CARLSON: What's the normal procedure, when you subcontract for somebody else to provide services, the monitoring process? What does that involve? [LB1073]

KERRY WINTERER: Well, to a certain extent, I mean we talk about the normal process, these were unusual contracts. This is the first time, as I'm sure you're aware, this is the

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first time we actually tried to do this lead contract model that would in turn...the lead contractor's job was in turn to contract with other contractors to provide the services. Previously, those contractors, all the subcontractors, would have contracted directly with the state of Nebraska and we would have had a contractual relationship with them. We did spend a lot of time with each of these lead contractors, regular meetings with them, to go over any complaints, go over performance. We did go over with them many times situation in terms of complaints from subcontractors. We got many assurances and we did get some financial statements and we got many assurances that they were going to be able to meet their financial obligations. But by mid to late summer, it became fairly clear that we had...that there was a problem. [LB1073]

SENATOR CARLSON: Well, this whole process of contracting with outside agencies to provide the service was a new thing, correct? [LB1073]

KERRY WINTERER: Contracting, yes, contracting with a lead contract who in turn then contracted with subcontractors, correct. [LB1073]

SENATOR CARLSON: What kind of an initial monitoring process did you have in place, not having experienced this before and giving them, in a sense, free rein starting in November of 2009? So between then and the summer of 2010, what was your plan to make sure that things were not going to give you the nightmare that occurred? [LB1073]

KERRY WINTERER: Well, we began...in the summer we began requesting more financials from all of the contractors, including Boys and Girls, so we were requesting things such as a current financial statement, paid payables, ledgers. In other words, a aging report so we could tell how far behind they were relative to their contracts in turn. Once we began to get that, that's when we began to have more concerns about their financial circumstance and their ability to pay the contractors. [LB1073]

SENATOR CARLSON: Okay. Just one more question: If you had it to do all over again and we were back in November of 2009, between then and summer of 2010 what would you have done differently? [LB1073]

KERRY WINTERER: I would think that...well, there's probably more than one thing. One of the things I probably would have done is impose more limitations on the contractors' ability to expend funds and essentially these are...these contracts were designed, initiated back in 2009, as fixed sum contracts. In other words, the state is going to give X number of dollars to the contractor and it's their job to provide the services. There's nothing...there was nothing built into the contract in terms of limitations in terms of how they could spend the money other than the fact they were committed to provide the services. In some cases, and in Boys and Girls Home's case, I'm not sure that...they were a terrific provider of direct services. The state had used them previously to provide direct services. What we learned through the course of this is that because they were,

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that didn't necessarily mean they were good lead contractors and able in turn to manage subcontractors and delivering services through others. And that's probably what was missing in this particular circumstance. [LB1073]

SENATOR CARLSON: Okay. Well, I know it's an uncomfortable situation for you and it's uncomfortable for us, but thank you for your answers. [LB1073]

SENATOR LATHROP: Senator Smith. [LB1073]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Winterer, is it uncommon to have performance bonds or something of that nature in these situations? And if so, why wasn't that here? [LB1073]

KERRY WINTERER: In many contracts, in many procurement contracts, there are performance bonds. This...these contracts were entered into before I was on the scene, but I am told and continue to be told that it really is not possible to get a performance bond for this kind of a circumstance, for these kinds of contracts, and that that's one of the reasons it was not pursued at the time. Or to the extent that it was available, the premium of the performance bond would have been prohibitively expensive. [LB1073]

SENATOR SMITH: And that performance bond, that cost would have been paid by Boys and Girls Home. [LB1073]

KERRY WINTERER: Right, and then they would, in turn, have increased the costs of the contract, so the state would have paid for it one way or another. [LB1073]

SENATOR SMITH: But it wasn't required of... [LB1073]

KERRY WINTERER: Was not required of them because they said, my understanding was, it was looked at but determined to be not really very practical to put a performance bond in here. [LB1073]

SENATOR SMITH: Okay. Thank you. [LB1073]

SENATOR LATHROP: I do have a couple things I want to be clear on with you just so that hopefully some of the people that are here to testify and are concerned about whether they've proven up on their contract, if you will. [LB1073]

KERRY WINTERER: Sure. [LB1073]

SENATOR LATHROP: The balances that we have on the sheet, you and I looked at these the other day on what would be the DAS chart, and I expect that to be supplemented by Ms. Anderson with a little more information on Better Living

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Counseling Services, but Health and Human Services, your department, doesn't have a quarrel with the fact that the services were provided, that the charges are customary or fair and reasonable, and the balances on this sheet. Is that true? [LB1073]

KERRY WINTERER: That's right, because we did come to a settlement with the various contractors for whom we entered into a settlement, and part of the base of that settlement was an agreement between us and them in terms of the amount owed. So if the dollars that are being relied on are those dollars as would have been provided I think to the committee, we have no argument in terms of the dollar amounts. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

KERRY WINTERER: ...or the services being provided, for that matter. [LB1073]

SENATOR LATHROP: Okay. That's important just in terms of managing this hearing so that people understand there's not a quarrel with the amounts that we're talking about but just generally whether there's an obligation or not. [LB1073]

KERRY WINTERER: Right. [LB1073]

SENATOR LATHROP: I want to talk to you about a couple other things. All of the balances that we see on this document would be balances for services provided before, essentially, Boys and Girls Home was out of the picture and the state resumed contracting. [LB1073]

KERRY WINTERER: Correct. From that point forward, we were contracting with them... [LB1073]

SENATOR LATHROP: And you've paid all those. [LB1073]

KERRY WINTERER: ...and we were responsible for the payments. [LB1073]

SENATOR LATHROP: Okay. And finally, and I think you were pretty clear about this but I just want to make sure that there's no ambiguity, many of the people who...essentially what you did is you said we owe \$1.6 million to Boys and Girls Home for the balance of the contract period, and instead of paying that to them, because they're done providing the services, we're going to use that money and spend it pro rata on each of the providers. [LB1073]

KERRY WINTERER: That's correct, and that's essentially, as I tried to say in the testimony, what we've been concerned about from the beginning, is getting money in the pockets of the subcontractors. And I know 35 percent is pretty disappointing, would be disappointing to me if I were in their shoes. But the alternative to that, in all honesty,

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would we...we would have paid \$1.4 million, \$1.6 million to Boys and Girls, because that was our contractual responsibility, and then who knows where that money would have gone? [LB1073]

SENATOR LATHROP: Right. [LB1073]

KERRY WINTERER: So our effort was to try to get as many dollars in the pocket of those subcontractors as we could. [LB1073]

SENATOR LATHROP: And as you entered into those agreements to accept a 35 percent, I think it was, or something close to that, you had each of these contractors sign a release. [LB1073]

KERRY WINTERER: Yes. [LB1073]

SENATOR LATHROP: You understood that the release left open the avenue for these contractors to come before this committee and make a miscellaneous claim. [LB1073]

KERRY WINTERER: We did understand that. That was part of the deal, if you will, in order to get this...in order to get this done. From our point of view, we believe that there was really no grounds for a miscellaneous claim. [LB1073]

SENATOR LATHROP: I appreciate that. But so we're clear and we don't have the lawyers all come up here and tell us about the release, you don't have a quarrel that the release has left open the miscellaneous claims. [LB1073]

KERRY WINTERER: That's correct. [LB1073]

SENATOR LATHROP: And whether we elect to pay on those claims is, of course, up to the Legislature. [LB1073]

KERRY WINTERER: That's right. [LB1073]

SENATOR LATHROP: I think that's all the questions I have. I don't know if anybody else has any more. What you and I have agreed, do we call you Chairman or Director or what's the proper title? [LB1073]

KERRY WINTERER: Call me Kerry, that's fine. [LB1073]

SENATOR LATHROP: All right, Kerry, Mr. Winterer, we appreciate you coming here today and your cooperation in coming to sort of explain HHS's point of view. What you and I have agreed to do is to allow you to testify in a neutral capacity as sort of a follow-up so that we can ask questions and maybe you can respond to some of what

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you've heard, and we'll look forward to that. [LB1073]

KERRY WINTERER: Sure. [LB1073]

SENATOR LATHROP: Thank you. [LB1073]

KERRY WINTERER: Thank you. [LB1073]

SENATOR LATHROP: Is there anyone else here who wishes to testify in support of the denial of these claims? Seeing no one, we'll go to opponents of the denial or those people who are here to make the case for payment of these claims. And by prior agreement, that brings us to Senator Krist. [LB1073]

SENATOR KRIST: (Exhibits 3-8) Thank you, Senator Lathrop and committee members. I apologize to Senator Wallman up-front and to Senator Cook up-front, because they have been partners in this effort throughout the last year and know more than I do probably. I had 21 years in the Air Force. At that time, I participated in contracts being let and wrote, the request for quotes in almost every year that I was in the Air Force except the first three. Since retiring from the Air Force, I have been a contractor with the federal government and I can tell you, from my own perspective, the federal government has FARs that are written specifically to make sure that there is trust involved between the government and contractor. These are the worst contracts I have ever seen, so to start out and tell you that Mr. Winterer inherited the issue, I am...let me tell you, it's bad. There were five areas where there were prime contractors out there. Of those five areas, within the first four months all five, all five, notified the department that it wasn't going to work, there wasn't enough money. DHHS was notified through Mr. Todd Reckling in writing and in discussion and through the HHS Committee, which was then Senator Gay. They had many meetings. I am not the kind of guy who usually comes to a committee and gives out evidence, but I think it's important for you to see what I'm talking about. Of those five areas, within just a year we were down to two; \$105 million contract initially and, arguably, depending upon whose money you're looking at, they'll tell you that we spent an additional \$50 million to \$70 million. We're not really sure. We're not really sure because financial management oversight and management oversight were lacking. The first handout I will give you in support of my testimony is...well, actually I would invite you to look to the first one which...can I have the cover sheet on that one also? Thank you. (Section) 68-1206, social services; administration; contracts; payments: The Department of Health and Human Services will administer the program of social services in the state. The department may contract with other social agencies for the purpose (sic) of social services at rates not to exceed those prevailing in the state or cost. So they were legal in doing what they did. I will tell you that from the very beginning there was no cost-benefit analysis done, so we didn't know how much it was going to cost or whether it was going to be a savings. DHHS initiated the Family Matters reform in 2009, and as I said before a year is out we're down to two contractors.

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If you could hand the rest of these out for me. The second piece of paper you are handed, "Department of Health and Human Services shall supervise all public child welfare services as described by law." I don't think we give up our supervisory role when we contract out. We can't just throw a bunch of money at somebody and say, make this happen. In those services contracts in the federal government, what you find in services, in the FARs, is that you're given an administrative overhead fee to conduct operations. And then a variable cost allows you, allows the contractor to perform services and come back and charge the government as they go. That would have been the proper model here. So right off the bat we're a fish out of water as a state. We're throwing money at a proposal and, as I said, at the end of the day I believe that we've given away \$50 million to \$70 million, and that's two service areas. Remember, when the three contractors went out of business, indeed, we were only serving those areas. There is...one of the prime contractors, Visinet, filed Chapter 13. They didn't go through with the whole thing. I think you have that documentation in front of you. During that particular time, the state threw another \$2.5 million at Visinet. They settled out, in final, at 70 cents on the \$1. What's different about the southeastern part of the United States...or part of the state than the western part of the state? If we're going to settle out with one of those prime contractors that was going down the tubes, that told the state from the very beginning that they had financial problems, why aren't we settling out with all these folks at 70 cents on the \$1? That is my major contention in this issue. The last handout I will give you is testimony that was given during a public hearing where the director, Kerry Winterer, again, I know he's inherited this problem but he is the director, was asked by Senator Campbell, I'm hearing from many that you have not...that are not being paid, and then you can read for yourself. Let me give you an update in terms of where this is. As you know, Boys and Girls, their contract was terminated effective October 1, and I might note on that termination date, which the director was not clear on whether that was the actual date, there was no notification that went out to the subcontractors. Some of these folks didn't know that their contract had been terminated, that the contract was terminated with Boys and Girls for months afterwards. I think you'll hear that in testimony. They at that point in time did owe some of their subcontractors, period. "We do owe them, I think," is what he said. Yes, we do, because the mission of these contracts was to serve the children and families that were supposed to be served by the state of Nebraska. Just because you ask somebody to do a job doesn't mean I think you've given up your overall supervisory role in the mission. I will tell you that I am extremely happy, fortunate, and proud to be here and talk about this. If you have been as closely tied to this problem as I have over the past year, it gives me an opportunity to set the stage for what I think will come in this session. We have so badly managed children and family services and foster care in this state. I know in Executive Session that Senator Cook and Senator Wallman can give you more detail about the expectation of performance by the state. I think it is wonderful that you are going to hear from the people behind me who will all tell you that they had no expectation of being terminated, they continue to serve. And unlike my contracts with the federal government, we're not talking about widgets or gadgets. We're talking about kids, people, human beings. You

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terminate a contract with somebody and they continue? These people continue to do the job because they knew who needed the services. Again, I thank you for listening to me. I won't, unfortunately, not be able to stick around. I'm presenting in another committee. I'd be open for any questions that you have of me. [LB1073]

SENATOR LATHROP: You do have time to take questions though, is that right, Bob? [LB1073]

SENATOR KRIST: Yes, sir. [LB1073]

SENATOR LATHROP: Okay. Maybe you could tell us just from your...I know that you're on the Health Committee and the Health Committee has undertaken to study this for...oh, how long you been on that? [LB1073]

SENATOR KRIST: LR37? [LB1073]

SENATOR LATHROP: Yes. [LB1073]

SENATOR KRIST: The entire interim period and a little before. Actually, the testimony that you saw, Senator Wallman was on the committee then and...I think Senator Wallman was, you were on the committee in November of '10 when questions were asked. [LB1073]

SENATOR WALLMAN: Yep. [LB1073]

SENATOR KRIST: Since then. [LB1073]

SENATOR LATHROP: Okay. You describe for us, and this is the part that is not clear to me and I'm going to ask you to clarify it for the committee if you can, we enter into five contracts with various providers. Each provider is going to take care of a region in the state of Nebraska. They are going to become the lead contractor, and their responsibility is going to be to hire the subcontractors or the people who will provide the services, whether that's transporting kids or providing counseling services. That was the expectation. You told us that of the five contractors, all of them expressed an inability to perform within the contract terms. [LB1073]

SENATOR KRIST: Within the scope of the contract. [LB1073]

SENATOR LATHROP: How did we get to that place? [LB1073]

SENATOR KRIST: We... [LB1073]

SENATOR LATHROP: Three of them are gone, two of them we're still giving money to,

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is that right? [LB1073]

SENATOR KRIST: Yes, sir. In my estimation... [LB1073]

SENATOR LATHROP: Okay, how did we get there? What's the... [LB1073]

SENATOR KRIST: In my estimation, we got there because there weren't strong contracting principles that were used from the very beginning: identify the mission, identify the contract that should be put in place, find the right people, qualify them. If a bond is not required, then you need to show financial ability to perform a contract. That's in the FARs. I spent this morning in front of a different committee, talking to them about contract parameters. Government has four today. They all suggest that they're strong contract performances that allow for the government, for the state, to enter into a trust relationship with its contractors. That's just poor contracting. No performance indicators, no value on incentives, all those things were missing from the contract. And I think in Mr. Winterer's testimony, and if you ask him when he comes back up, I don't think he'll disagree. Those contracts are unmanageable. We are at a point right now, and I was quoted as saying that the contractor is extorting us for more money. I don't know how else to describe it. They come back on a monthly basis and say, I need another \$1.2 million, another \$1.6 million, another \$2.5 million. Right now they are trying to develop a case rate management system or a per-unit management system. That should have happened two...it should have happened at the inception of the contract so that we knew how much per unit, and I hate to use that, but how much per kid or per family we were paying. [LB1073]

SENATOR LATHROP: Bob, were the people that were chosen to lead these contractors poor managers or was the work and the undertaking more than they expected when they entered into the contracts, if you have an opinion about that. [LB1073]

SENATOR KRIST: I do. And I think my opinion is close to being fact. When you start out in a contract and you ask them to take care of 2,000 kids and all of a sudden some day over a year and a half that evolves into 5,000 with no expectation that you're going to pay them anymore, and then the contractor came back and said, you know what, we need more money because we have more kids. And in the Southeastern and Eastern Service Areas there's been money given to the contractor to continue to do what he needed to do. There was a point where Director Reckling, who has left us since, said to Boys and Girls, no more money; you're going to have to do that job with no more money, realizing that the numbers... [LB1073]

SENATOR LATHROP: And Boys and Girls Home...in the case of Boys and Girls Home, since that's the subject of our inquiry today, was there some expectation going into that contract of the number of kids that were going to need to be served? [LB1073]

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SENATOR KRIST: There was. [LB1073]

SENATOR LATHROP: And was that...where's that expectation expressed in the contracting process? [LB1073]

SENATOR KRIST: Contracting process would tell you that there were nearly 2,000 kids that were going to be serviced in the area. And within six months, that number had grown by one third. [LB1073]

SENATOR LATHROP: Did the state of Nebraska tell Boys and Girls Home to expect that they would be providing services to 2,000 kids or did they leave it open and that was Boys and Girls Home's problem to figure out before they signed the contract how many kids they were going to have to serve? [LB1073]

SENATOR KRIST: Well, it was a general contract, so the risk pretty much goes to the contractor. They signed the contract with the expectation they were going to serve a finite group of kids. That group grew... [LB1073]

SENATOR LATHROP: Where was that expectation expressed? [LB1073]

SENATOR KRIST: In the initial contract, in Amendment 1, Amendment 2, Amendment 3, Amendment 4, Amendment 5. [LB1073]

SENATOR LATHROP: And I don't have those contracts in front of me, which is the reason I'm asking this question. So did the initial contract say, you will provide services in this region and the expectation is that will be approximately 2,000 kids? [LB1073]

SENATOR KRIST: The expectation was there and it was real because every one of those cases has a number. [LB1073]

SENATOR LATHROP: Was it in writing? [LB1073]

SENATOR KRIST: Yes, sir, it was. [LB1073]

SENATOR LATHROP: This wasn't just a conversation when... [LB1073]

SENATOR KRIST: No, no. [LB1073]

SENATOR LATHROP: ...Todd Reckling or somebody sat down with somebody at Boys and Girls Home and said, should be about 2,000 people, but we really don't know. [LB1073]

SENATOR KRIST: Yeah, my... [LB1073]

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SENATOR LATHROP: You're saying it's in the contract. [LB1073]

SENATOR KRIST: My point is that how we dealt with one contractor on one side of the state and how we dealt with the other side was, we continued to throw money at the contractors that still exist. We cut off the funds and the expectation that there would be no more "fundage" but they would continue to do the job that they were asked to do with whatever number that grew to. [LB1073]

SENATOR LATHROP: And I'll ask you about why we continue to throw money at two contractors. Is that right, two? [LB1073]

SENATOR KRIST: Two, two existing. [LB1073]

SENATOR LATHROP: But I want to be clear. Somewhere in a contract the state said, you can expect to provide services to 2,000. And you say that grew by... [LB1073]

SENATOR KRIST: A third. [LB1073]

SENATOR LATHROP: ...a third. Is it that...is it the difference between the number of kids that they expected to serve versus the number of kids they actually served, does that account for the money we're talking about in these claims? [LB1073]

SENATOR KRIST: No, no. The expectation of the department, then headed up by Mr. Landry, was that they were going to privatize and outsource all these things in the reform effort and not spend one more dime than they were currently spending in the state of Nebraska. And I can tell you, that's why the five contractors came back and said, that's impossible, we can't do that, we've given it a reasonable effort. One of our contractors existing right now have spent \$14 million out of their 501 nonprofit in order to support efforts that the state should be doing. The other one is right at \$3.5 million of their own 501 nonprofit. Our expectation was the nonprofits would step up and supplement, augment what needed to be done. And that's...we've ridden on their backs as we are riding on some of these folks' backs. [LB1073]

SENATOR LATHROP: Do you have an explanation for why Boys and Girls Home was just...essentially said, we're done giving you more money, and KVC, for example, continues to get additional amendments to their contract with additional money? [LB1073]

SENATOR KRIST: This is not my committee speaking to you; this is my personal opinion. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

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SENATOR KRIST: I believe that they had better lobbyists. [LB1073]

SENATOR LATHROP: The ones that are...the two that are still going? [LB1073]

SENATOR KRIST: Yes. [LB1073]

SENATOR LATHROP: In the case of, and I'm familiar with KVC and I'm not sure why, maybe it's because they're up in Omaha, but KVC continues to get more dollars. If they had been told no more at the same time Boys and Girls Home would have said no more, would their subs have been in the same position? [LB1073]

SENATOR KRIST: Yes. Yeah, there were times when, and there are still times, well, obviously. There were times though, and it's identified in that hearing, those hearing minutes I gave you, they were 90 days behind, 90 days behind. And there were times when both... [LB1073]

SENATOR LATHROP: Who is the "they" in your comment? [LB1073]

SENATOR KRIST: Boys and Girls. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SENATOR KRIST: Right. And there was that expectation that instead of...and that goes to qualification as well. Boys Town and NFC, the collaborative, which is the broker model, as opposed to KVC, which is the prime contractor model, both of those organizations can continue to dig deep and come up with the money. They are well-funded, Boys and Girls not so much. If I was looking at letting that contract, if you asked me that question, Senator Carlson, that you asked Mr. Winterer, I'd say from the very beginning I would have changed the qualification. There wouldn't have been anybody, short of a certain range within a 501 capacity, that could not weather the storm, so to speak, and couldn't continue to pay their subs. [LB1073]

SENATOR LATHROP: You gave the example of or you identified the problem as the expectation for Boys and Girls Home was that they would be providing services to 2,000 kids. And they turned out to be providing services to more by a third. [LB1073]

SENATOR KRIST: Right. [LB1073]

SENATOR LATHROP: Was the...what accounts for the fact that they had to provide services to more than a third? Did we... [LB1073]

SENATOR KRIST: One of the... [LB1073]

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SENATOR LATHROP: Did someone mislead them into thinking it was going to be 2,000... [LB1073]

SENATOR KRIST: No. [LB1073]

SENATOR LATHROP: ...when in fact it was going to be a third more kids? Or is this just people not having a grip on the data? [LB1073]

SENATOR KRIST: Simultaneously, along with all these other things that were happening, we were making kids...we were making more kids wards of the state. We had a... [LB1073]

SENATOR LATHROP: And to what do you attribute that? Why were we doing that? And why was that not foreseen? [LB1073]

SENATOR KRIST: In the summer of '10 we forced our Medicaid program under federal guidelines, which disqualified many kids from getting programs and fees or payments for services that they needed. And as result, more of that was falling back on the contractors. And the only way to get them services, and we are dealing with this in the juvenile justice pilot bill, the only way to get those kids services were to make them wards of the state. So we were increasing the number of kids we were putting in the wards because we couldn't get services for them anyplace else. [LB1073]

SENATOR LATHROP: Okay. What was the change in Medicaid? I'm not tracking you. [LB1073]

SENATOR KRIST: The existing...Mr. Winterer can give you more detail. Vivianne Chaumont, who is the director of Medicaid here in the state, changed, and to be more compliant with the federal requirements, changed the types of services that are qualified under Medicaid. And arguably, there are some definitions that the state of Nebraska uses that are so strict that they are in place to not qualify people for services that are needed as opposed to trying to qualify those people. So we went from having services that were literally, and I don't even want to quantify it, but literally we could qualify this number of people to half. And what happens to those... [LB1073]

SENATOR LATHROP: And all the people that no longer qualified ended up wards of the state? [LB1073]

SENATOR KRIST: Exactly. [LB1073]

SENATOR LATHROP: Did we do that voluntarily or did the feds make us do it? [LB1073]

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SENATOR KRIST: There is federal...both of them can answer the question as well as I can. (Laugh) Both sides. The federal government has some stricter compliance issues that have been in place, but I will note they've been in place since 1965 or '65, I think. [LB1073]

SENATOR COOK: When Medicaid was born, pretty much. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SENATOR KRIST: And we just now are totally compliant with all those things. And it was a huge, I mean, it was a huge restriction. [LB1073]

SENATOR LATHROP: Is this a rule and regulation requirement,... [LB1073]

SENATOR KRIST: Yeah. [LB1073]

SENATOR LATHROP: ...kind of a re...a process that we're seeing happen over at...a process where we see the rules and regulations become more stringent, not because the feds are making us but because that's policy in the administration? [LB1073]

SENATOR KRIST: That's policy in the administration and it came down to one simple point. We can't afford to lose all of our Medicaid dollars, so we need to come in compliance very strictly to make sure that when we report back to them we're meeting that requirement. To answer that question a little bit more, I will tell you we have looked at other states surrounding us. And the definition for medical necessity, in other words, which is key in this discussion, has been so finely defined and strictly defined that again we're restricting services, while states around us have a more broader, liberal definition and it allows them to apply more Medicaid dollars. [LB1073]

SENATOR LATHROP: Did we limit our definition of medical necessity beyond what was required by the feds? [LB1073]

SENATOR KRIST: If you're asking my personal opinion, my personal opinion is absolutely. [LB1073]

SENATOR LATHROP: And that was deliberately intent...the intent of that narrowing is to reduce the number of people that are entitled to Medicaid benefits? [LB1073]

SENATOR KRIST: I don't know how else I would say that. [LB1073]

SENATOR LATHROP: And then, if I'm following this, those people can't access Medicaid, so now we make them wards of the state and increase the demand for the

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very services that were the subject of the contract. [LB1073]

SENATOR KRIST: Could I just share one story with the committee? [LB1073]

SENATOR LATHROP: If you'll just answer that question. Do I have it right? [LB1073]

SENATOR KRIST: Absolutely. [LB1073]

SENATOR LATHROP: Okay, go ahead, you may share your story. [LB1073]

SENATOR KRIST: Yeah, and to your point, the story: We had twins, not twins, sisters, siblings that were adopted. They were adopted with an expanded adoption plan that said that the state would take care of their medical needs. They were both sexually abused. The parents took them in. This is a permanent home. These were two kids that moved to permanency. Within six months we had different things...within the last six months we had different manifestations of the sexual abuse. They sent that young lady out of state because we don't have any female sexual programs here in the state, nobody for...none for the female side. So they sent her out of state. Stricter definition of what complies and what doesn't and how much money we can spend, you're done, you're not qualified anymore under Medicaid. She came back. Within a couple of months of being back in the state she is back at home. The doctors, by the way, in the facility said 24-hour supervision for at least another two years. No, you're done. She comes back to the state. Mother finds her cutting herself over and over and over again. She brings her to Bryan West and says, I need help. She tears apart the emergency room waiting room. She assaults an officer. She's asking for help. And you know the response of the state? You're not going to get it from Medicaid, you're not going to get it with the services, make her a ward of the state. That's the answer. The answer is, we don't have anymore money to put into programs, make them a ward of the state. You know how much more money we pay for kids who are wards of the state? I mean, it goes up exponentially once we take away...not to mention the fact that we're trying to...reform was all based around trying to get closer to our federal requirements, which was reducing the wards of the state. Holy cow, this circle just goes round and round and round. It's money, it's money. [LB1073]

SENATOR LATHROP: You've given me an explanation, which I appreciate, and this committee. Is there another explanation or is this it? [LB1073]

SENATOR KRIST: Very, very, very poor contracting measures that have put our Department of Health and Human Services in a very bad position, but they put themselves there with prior leadership. I would say that the expectation is that we need to restore management oversight of the entire program, restore financial oversight of the entire program. And if I could, the financial oversight needs to be much stronger. We have a program called 347 where there are many, many subprograms, more than 40

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subprograms. You can't transfer money from program to program, but you can transfer it inside. We're playing a shell game with the money in that program. That Program 347 is the size of most South American countries, the budget is the size of most South American countries. It's huge. We have to restore management oversight both to the program and financially if we're going to make this thing work. [LB1073]

SENATOR LATHROP: And finally, my last question, then we'll see if anybody else has any. What effect...did the Health Committee that you worked on, the... [LB1073]

SENATOR KRIST: LR37? [LB1073]

SENATOR LATHROP: Yeah, LR37, pardon me. Did that committee make a judgment about what effect, if any, not paying something on these claims would have on the infrastructure for services in that region? [LB1073]

SENATOR KRIST: Yes, sir, we did. We've had many discussions about it. And the bottom line is that we have destroyed the infrastructure in the outstate regions to the point where we have to restore them. We have to try to restore some of those programs. And we've had mom-and-pop operations, for lack of better terminology, that have had to declare bankruptcy or they've moved on to do something else. All those service providers that are out there are not there, and some of them because we haven't paid them. So it is our logical conclusion in LR37 that came from the Auditor's report, the Performance Audit report, all those surveys, that we have to do something to restore the process and the services in outstate Nebraska, and this goes a long way. My recommendation to this committee is look at what we've done in other parts of the state and make it solid and clean for all the rest. Seventy cents on a dollar is what we established, in my mind, as a precedent with Visinet, try to say that three times fast, and that is where we should be. [LB1073]

SENATOR LATHROP: Okay. Senator Harr. [LB1073]

SENATOR HARR: Thank you, Senator Lathrop. And thank you, Senator Krist. Senator Lathrop asked a number of good questions and it brought other questions to my mind. The stricter definitions that were brought forward by the state or by, yeah, by the state because we were threatened to lose Medicaid, was that self-imposed to make it stricter or was there an outside audit or why did we decide that our definitions had to be stricter? [LB1073]

SENATOR KRIST: Expectation of the director of Medicaid that we were going to lose our Medicaid money if we didn't more strictly comply with the federal guidelines. That is in the administration's viewpoint at this point. [LB1073]

SENATOR HARR: And the administration would be the state administration, not the

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federal? [LB1073]

SENATOR KRIST: The state. [LB1073]

SENATOR HARR: Okay. Was there any evidence to back that up to the best of your knowledge? [LB1073]

SENATOR KRIST: I wouldn't want to answer for Vivianne Chaumont, but I would tell you that in my mind those definitions...if I compare them, as I do with other states, our definition is much too strict. [LB1073]

SENATOR HARR: Okay. And when it's Medicaid, we pay generally how much? [LB1073]

SENATOR KRIST: Twenty/eighty, sixty/forty and twenty/eighty I think. [LB1073]

SENATOR COOK: For Medicaid I thought it was 60/40. [LB1073]

SENATOR KRIST: 60/40. [LB1073]

SENATOR HARR: We pay the 60 and the feds... [LB1073]

SENATOR COOK: No, we pay the 40. [LB1073]

SENATOR KRIST: We pay the 40, yeah. [LB1073]

SENATOR HARR: We pay the 40. [LB1073]

SENATOR KRIST: Yeah. So you can see, if you're talking about a shift from Medicaid to General Funds, if we're only paying 40 cents on the dollar, over here we're paying 100 cents on the dollar. [LB1073]

SENATOR HARR: And that was my follow-up question. So when they become a ward of the state, the state pays 100 percent? [LB1073]

SENATOR KRIST: If the services are not...again, if they're a ward or they're not a ward, it depends upon what pot of money you're taking money from. So it could be that services being provided are being provided as in the juvenile justice system or the pilot program, they're coming from all over. So some of them could be 60/40 and some of them could be 100 pennies on the dollar. [LB1073]

SENATOR HARR: Well, let's use the example you gave earlier of that girl who was tragically sexually assaulted. When she was in care outstate we were paying what

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percentage? [LB1073]

SENATOR KRIST: Sixty percent. [LB1073]

SENATOR HARR: Sixty... [LB1073]

SENATOR KRIST: I'm sorry, 40 percent. [LB1073]

SENATOR HARR: Forty percent. [LB1073]

SENATOR KRIST: Forty percent, our share. [LB1073]

SENATOR HARR: And let's say the adoptive mother gives up and says, let's make her a ward of the state. What percentage of her care would the state be paying? [LB1073]

SENATOR KRIST: One hundred percent. [LB1073]

SENATOR HARR: One hundred percent, okay. And now my next issue is paying 70 cents on the dollar, which seems reasonable. Visinet was reimbursed 70 cents on the dollar and that was just by happenstance in that that's how much the state owed Visinet? Or how did that 70 cents on the dollar... [LB1073]

SENATOR KRIST: No, there was an additional \$2.6 million, I believe is the right number and I can get that for you. It's actually in the LR37 report. But it was additional money that was paid to Visinet so they could settle out with 70 cents on the dollar. [LB1073]

SENATOR HARR: And that's what Visinet thought was equitable or the state at the time felt was equitable for the 70 cents on the dollar? [LB1073]

SENATOR KRIST: Director Reckling ran that process, so I would assume the state decided what that...how that was going to happen. [LB1073]

SENATOR HARR: Okay. And this is a little bit off of what we're here today for, but the question was asked to you, how would you make things different? And you said, stronger oversight. I agree with you 100 percent. My problem is, and I'll let you address this, is we as a Legislature set policy. We aren't in the over...we can over...I mean, we can do some oversight and control purse strings. But controlling day-to-day operations, that's not who and what the Legislature is supposed to do. That's the job of the executive branch. And my question is, how do we balance that providing oversight but not swinging the pendulum so far that we're actually controlling day-to-day operations? How do we develop that trust with an agency? And if we don't have it, how do we address that issue? [LB1073]

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SENATOR KRIST: We appropriate, they execute, and inherent to our responsibility is oversight. [LB1073]

SENATOR HARR: I would agree. [LB1073]

SENATOR KRIST: So if we are appropriating \$340 million for a particular program and at the end of the day they can't show us how that \$340 million was spent, we should either "deobligate" the money or not fund the program next year. Now that's a fine line because now you have services that are not being provided for. And our...we created an agency, Foster Care Review process, that is supposed to report to the Legislature on items like that. I'm convinced if we would have had better information earlier we may have been able to make better decisions. But this program was doomed from the beginning in terms of oversight. There were no performance objectives inherent to the contract. [LB1073]

SENATOR HARR: And I agree with you, but we can't just defund HHS. So what are we left to do? [LB1073]

SENATOR KRIST: One bill at a time this session make sure that we are exercising our oversight capability, we're restoring the services that are out there, because a lot of this is dollars and cents, and then making sure that the management oversight is put into place and we watch it for the next 18 months to three years. My projection, my prediction is the next Governor may have the next term, I'm saying two to three years out, it's going to take us that long to fix this problem. It's that serious. [LB1073]

SENATOR HARR: Thank you. [LB1073]

SENATOR LATHROP: I want to clarify one thing before we let you go. Visinet says, we're going under, and we pump more money into their contractors, their subs. [LB1073]

SENATOR KRIST: Yeah, LR37 describes the process by which they left our employment... [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SENATOR KRIST: ...in terms of termination of the contract. [LB1073]

SENATOR LATHROP: If we would have taken the money, and maybe Mr. Winterer will have an answer for this if you can't, if we would have taken the money due on the balance of their contract, when Visinet says we can't do this any longer, do you know how much money was left? [LB1073]

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SENATOR KRIST: I do not. I wouldn't hazard a guess. [LB1073]

SENATOR LATHROP: Okay. But to get those subs up to 70 percent, we didn't just give them what was left on the Visinet contract, we dumped in more money. [LB1073]

SENATOR KRIST: Correct. [LB1073]

SENATOR LATHROP: Is that right? [LB1073]

SENATOR KRIST: Correct. [LB1073]

SENATOR LATHROP: Do you know what percent of the balance to the subs they would have received if we just would have taken the balance due on the Visinet contract and paid it as was done with Boys and Girls Home? [LB1073]

SENATOR KRIST: No, sir, I don't know the number. But the State Auditor's report reflects the number precisely. [LB1073]

SENATOR LATHROP: Okay. Okay. I think that's all the questions. Senator Carlson may have one for you. [LB1073]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Krist, you brought up several things. And I'm going to try to briefly ask some things. First of all, you made some comparisons with other states. And apparently we don't compare very well. Did you find out what percentage of children in Nebraska are qualifying for benefits as compared to other states? [LB1073]

SENATOR KRIST: Yes, sir. The LR37 process, again, shows those...we have to compare ourselves at this point to the states that have gone through reform and privatization and see where we are. Privatization is a tool to reform. The two of them are not parallel tracks. So we went through a reformation or a reform process that we hoped would reduce the number of kids that were going into the foster care program and being made wards of the state and would increase different opportunities within family services and child services across the state. We did that by letting the contracts. The state of Florida did one and then the other; they did reform and then they privatized certain spots. All the other five or six states that have gone through this process at the end of the day have found it is much more expensive to go outside and privatize than it is to keep it in the state. That number is clear. Once you get to a point where it's reformed though, the process is better, less kids are going into the system, and you don't have the YRTC issues that we have right now. So in comparison to the states around us, where I was talking comparative with how many kids are eligible for Medicaid and other services, those are definitions that are in the Medicaid process. That drove some of our other problems. When I talk about comparing ourselves to other states

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like Florida, they've been at this for almost a decade. We're only in our third year. And again, they did it in parcel. They didn't jump right in and do reform and privatization at the same time. We're on the bottom...we're in the bottom five states in the country when it comes to...I believe five, five or six, when it comes to the number of kids that we put into foster care or put into the ward of the state programs. [LB1073]

SENATOR CARLSON: Well, in talking to a lobbyist, told me that we aren't going to solve this with one bill in one session and we shouldn't pretend that we're going to. And you're saying we've got to do it one bill at a time over time in order to get to where we need to be. [LB1073]

SENATOR KRIST: Yes, sir. And I will tell you that I think that we have a bill coming up that's on the agenda right now that talks about a pilot program in the juvenile justice system. That is one of the cases where we keep kids from becoming wards of state. And it's a fix that's already been identified as a good process in Douglas County. The Chief Justice talked about it in his State of the Judiciary. He wants to move it into North Platte and to other venues to make it happen. That's one part of the fix. We've got a YRTC problem. That's going to be another part of the fix and it may come in conjunction with it. We have to decide and we have to get...in Health and Human Services we are trying to find a definition of medical necessity that helps define a more liberal approach to...not liberal approach, a more open approach to getting services for kids. Those need to be...and, by the way, those are all separate subject matter. So we can't just wrap them all up into one bill. So it's going to take us...it's going to take us two and a half years of legislative action a bill at a time or two bills at a time to make sure we get to where we need to get to. [LB1073]

SENATOR CARLSON: And it's going to be interesting in the debate that we have on the floor that we don't get the message that this particular bill is a fix-all, because it's not. [LB1073]

SENATOR KRIST: No panacea. [LB1073]

SENATOR CARLSON: And I know you're not bashful, so you'll remind us of that. Great. Thank you. [LB1073]

SENATOR KRIST: Thank you. [LB1073]

SENATOR LATHROP: I think that's it. We appreciate your, first of all, the work of the LR37 committee because that kind of oversight and that kind of...I've read the report and it is very thorough and very informative. And we're all better off for the work that you've done on that committee. And thanks for coming in today, Bob. [LB1073]

SENATOR KRIST: Thank you. [LB1073]

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SENATOR LATHROP: Appreciate it. [LB1073]

SENATOR WALLMAN: Thank you, Senator. [LB1073]

SENATOR KRIST: Thank you. [LB1073]

SENATOR COOK: Thank you. [LB1073]

SENATOR KRIST: Thanks. [LB1073]

SENATOR LATHROP: Folks, we've...I've gotten two notes from staff here that want a five-minute break and so if we're going to make this thing keep going we got to provide a couple-minute break. So we'll be back at 3:30. [LB1073]

BREAK

SENATOR LATHROP: We'll take next Mary Hewitt. Is Mary here? [LB1073]

MARY HEWITT: Yes. [LB1073]

SENATOR LATHROP: Okay. Can you tell me, just by a show of hands, given what we've heard so far, how many people are interested in testifying? Okay, okay, manageable. Very good, thank you. Welcome, Ms. Hewitt, to the Business and Labor Committee. [LB1073]

MARY HEWITT: (Exhibit 9) Good afternoon, Senators. My name is Mary L. Hewitt. There's two Mary Hewitts. I'm the Omaha Mary Hewitt. There's a Lincoln Mary Hewitt. We're both attorneys and we kind of look alike, but we're not related. I'm here on behalf of Better Living Counseling Services. We have two claims in front of you. One was filed last June and then a second one in November. And the reason why there's two different ones plays into some of the reason why we believe our claims should be approved and either LB1073 amended to acknowledge approval or those or be put on LB1072, the approval bill. In June of 2011, we were well aware that the department was holding back some funds. Boys and Girls Home had been out of business since the October before. No resolution had been coming. And we had been meeting with the department since January of 2010 and I want you to realize that. And I did submit for your review a chart of our communications with the department, of our efforts to try to let them know that there was a serious breakdown in payment issues. So in January of 2010, we first met with a regional person with the department. Wanted to make sure the communication was not our fault, that we had been submitting proper documentation, we'd been using the N-FOCUS system correctly. We wanted to make sure we weren't the cause to the breakdown in payment issues. At that meeting in January of 2010 we realized you can

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go on the N-FOCUS system from the department side, see what's been submitted, see what the department has actually paid to Boys and Girls Home, and then we could see what had or had not been paid to us. And unfortunately, we learned in that January that the department had been paying Boys and Girls Home, but Boys and Girls Home was sitting on those monies and not paying them down to the subcontractor. We had some very good people at the department we worked with who were working with us to get calls to Boys and Girls Home, you know, running some interference to get us paid. Money would trickle in and then it would stop again and we'd resume our communications with the department. You'll see that by April and May of 2010 payments were getting more severe. We actually wrote to Kerry Winterer. We actually had a meeting with Kerry Winterer around June 4. And at that time we knew that they were trying to negotiate a new contract. We were encouraging them to put things in the contract to help the subcontractors. And we listed out several things in that letter--if you don't have a copy of that letter, I think Molly Burton has one and can provide that to you--that subcontractors need to be paid directly. Better Living had been a direct contractor with the department before the privatization efforts, and they're currently a direct contractor since Boys and Girls Home left. But the reason for the first claim is we now knew, from our January meeting, that you could look at the N-FOCUS system and see if Boys and Girls Home had been paid by the department for those services. That \$73,407.55, Boys and Girls Home was never paid that from the department; it had not issued a warrant to pay them. So that was one claim, we knew that money was still sitting at the department. We knew it was part of that \$1.4 million, \$1.6 million they still were holding back. And so we filed a claim and asked them to either plead that into a court or to reserve funds to pay us. The second claim, the \$18,283.75, that was submitted in November, in between those two claims there was a teleconference when we were all informed--there were the group providers and there were three people I think from the department on that teleconference--and we were informed that they were going to try to settle out the \$1.4 million among the various providers. Now we knew our Boys and Girls Home money was still sitting with the department; it had never made it to Boys and Girls Home. Yet it was clear in that teleconference that other people had no idea. Boys and Girls Home could have received the money and not flowed it through or the department could be still sitting on it. They didn't know. And so if they weren't going to have to break down the funds they were owed between what the department was still holding back and what the department had already paid out, we didn't feel we needed to penalize ourselves because we were good recordkeepers. And so we submitted a second claim. That \$18,283.75 was monies that been paid to Boys and Girls Home. Boys and Girls Home sat on it and never passed it through. But that's why we have the two claims. In my testimony, and I'm not going to read it to you, but they say that there was no...Mr. Winterer said something about there's no legal basis to pay. That's inaccurate. In both the Juvenile Code and the social services act there are provisions that say either the department shall pay for these services or they're the administrator of the social service funds and they are to pay them based on a court order. Every single one of our services we provided were by court order; that a court issued those, that's a

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legally binding order. None of those orders had been on appeal that we are aware of. When the... [LB1073]

SENATOR LATHROP: Did those orders, I'm sorry to interrupt you. The light is on and so... [LB1073]

MARY HEWITT: Sure. [LB1073]

SENATOR LATHROP: ...we're going to see if there are questions. Did those orders direct, were they orders from the district court or the juvenile court, rather, directing HHS to pay the bills? [LB1073]

MARY HEWITT: They had to be, otherwise they couldn't authorize the services to be provided by Better Living. Better Living didn't have a contract through any other subcontractor to do anything but juvenile court ordered services through the department. [LB1073]

SENATOR LATHROP: But you were a subcontractor of Boys and Girls Home? [LB1073]

MARY HEWITT: For a period of time. [LB1073]

SENATOR LATHROP: Right. And the claims that you've made are for services provided when Boys and Girls Home was the coordinator. Is that true? [LB1073]

MARY HEWITT: Correct, um-hum. [LB1073]

SENATOR LATHROP: And what you're saying is you believe the state has an obligation because the juvenile court ordered the state to pay the bill in each occasion. [LB1073]

MARY HEWITT: That's one of the legal obligations. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

MARY HEWITT: The other is the statute which says the department shall pay for these costs. And that's a, we believe, a non... [LB1073]

SENATOR LATHROP: The statute actually says that they shall pay the cost for services rendered to the juvenile, does it not? [LB1073]

MARY HEWITT: Correct. [LB1073]

SENATOR LATHROP: Were all these services... [LB1073]

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MARY HEWITT: And all of our services were for the juvenile. Okay. [LB1073]

SENATOR LATHROP: Literally. You didn't counsel Mom, Dad. It was for the juvenile... [LB1073]

MARY HEWITT: There could have been family therapy in there, but the majority of them were, and I think the most telling example to explain to you is if you remember the unfortunate incident the day after the Super Bowl out in Washington State where the visitor supervisor is calling 911, the father has locked the children in the house, he stabbed them with a hatchet and he set the house on fire. That person calling 911 is what Better Living does. [LB1073]

SENATOR LATHROP: Okay, okay. I see no other questions. So we appreciate your testimony. And we will give it fair consideration. [LB1073]

MARY HEWITT: Okay. Okay. Thank you. [LB1073]

SENATOR LATHROP: Next up will be Mr. Morgan Kelly. And I know you guys have all been in front of the Supreme Court and seen these lights before. Welcome to the Business and Labor Committee. [LB1073]

MORGAN KELLY: (Exhibit 10) Thank you, Senator Lathrop and members of the Business and Labor Committee. My name is Morgan Kelly, that's M-o-r-g-a-n K-e-l-l-y. I'm submitting a 13-page document. The first three pages was what I thought I was going to say today. And the last ten pages is more of a legal memorandum that outlines the legal basis that would support your decision to move our claim and all the other claimants' claims from LB1073 over to LB1072. And that's really what I'm here to argue, is for you to please do that. There are at least four different notions as to how you can support the concept of paying claimants legally. One, there's an obvious moral obligation. And I wanted to kind of pick up where your question I thought left off, Senator Lathrop. And that is with 43-290 it appears to be a general obligation to just pay for services that are direct to the juvenile only. And I don't think that's correct, because that's not the only statute involved. I would cite for you 68-1202; there's a long list of services that are supposed to be paid. It's on page 9 of...just, the next to the last page. And the statute says that the state's duty is to pay for foster care, childcare, family planning, treatment for alcoholism and drug addiction, treatment for persons with mental retardation, health-related services, protective services for children, homemaker services. It is extensive. And paralleling the obligation to...the moral obligation that parallels that statutory obligation is based on the fact that families...a family dynamic is wherein each family member's emotions and behaviors are tightly and psychologically interwoven. That which we individually experience as family life in fact is based upon the predictability of other family member's reactions to our comments, emotions and

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behaviors. Regardless of any outside observer's opinion about that dynamic, it nonetheless is the dynamic's predictability that gives rise to the interdependence family members naturally rely upon. Removing a youth from that equation for treatment and isolation from the family and then expecting a robust family dynamic to quickly and safely adjust and move forward upon the youth's return is naive at best and cruel at worst. In a word, it's just simply unrealistic. And the statute parallels that when you read 43-290 together with 68-1202. There's the general obligation and the specific obligation. I also wanted to address quickly, there was a question about whether or not Haman v. Marsh would be a prohibition against...go ahead. [LB1073]

SENATOR LATHROP: And that's a prohibition against extending the state's credit. [LB1073]

MORGAN KELLY: Correct. [LB1073]

SENATOR LATHROP: Okay, go ahead. [LB1073]

MORGAN KELLY: Haman v. Marsh is at 237 Nebraska 699. First of all, I would state that Haman v. Marsh expressly offered up a moral obligation by itself is sufficient to support payment of these claims. One of the elements also that's in that test is whether or not there's a sufficient and direct relationship between the legislation and the objective of the legislation. It's pretty straightforward. The objective is to make subcontractors whole. The legislation is direct and it's clear. I also wanted to bring up quickly two other theories. There's the third-party beneficiary notion. It was stated earlier that because the subcontractors didn't sign the contract with...as between the state and Boys and Girls, therefore no privity of contract, therefore no recovery. I think that's incorrect. Under the third-party beneficiary theory of liability, which I set out at page 5, there is as test. It states in order for those not named as parties to a contract to recover thereunder as third-party beneficiaries, it must appear by express stipulation or by reasonable intendment that the rights and interests of such unnamed parties were contemplated and provision was made for them. What that means is in the contract between the state and Boys and Girls, what was in that contract that made it look like, in any way, shape, or form, that the subcontractors were expressly contemplated? And there are numerous references in the operations manual that was incorporated by reference into the contract. I refer you to page 6. There is at least ten different places where the subcontractor is expressly referred to. There is discussion of what kind of insurance they have to have, when payments are due. Most importantly, in the summer of 2010, when it became apparent that payments weren't going to be made timely and properly, the department, to their credit, created a new amendment, it was Amendment 4 to that contract, wherein they said all subcontractors need to be paid within 45 days. There is no doubt about it that the contract expressly contemplated what was going to go on with contractors. In addition to those kinds of payments, there's all our obligations for our own insurance, background checks, all sort of things that show that it's just clear

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that that contract contemplated that we would be there today, tomorrow, and throughout the upcoming reform. [LB1073]

SENATOR LATHROP: Very good. I think...I want to assure you and the other lawyers that are coming up here, we will read the arguments that are in there because, not that it makes a difference, we have several lawyers on the committee that can understand the principles and the arguments that are laid out there. And they will be read and considered. Okay? [LB1073]

MORGAN KELLY: Yes. [LB1073]

SENATOR LATHROP: Senator Wallman does have a question for you. [LB1073]

MORGAN KELLY: Okay. [LB1073]

SENATOR WALLMAN: Chairman Lathrop, thank you. Thank you for coming in, Mr. Kelly. When...OMNI Health, I appreciate what they do. How long was it before you broke off the contract with Boys and Girls then, when you got paid by the state you said? [LB1073]

MORGAN KELLY: We didn't break our contract with Boys and Girls. The contract was unilaterally terminated between the state and Boys and Girls without any notice to us. We had no option but to move forward. We continued to provide services. [LB1073]

SENATOR WALLMAN: No warning or nothing? [LB1073]

MORGAN KELLY: It's not like we didn't see it coming. [LB1073]

SENATOR WALLMAN: Yeah. [LB1073]

MORGAN KELLY: Everybody knew there was a problem. [LB1073]

SENATOR WALLMAN: Yeah. [LB1073]

MORGAN KELLY: But in terms of a date certain that it's going to happen, in terms of having any opportunity to be a participant in any discussions for what a corrective action plan might look like, we weren't participants. [LB1073]

SENATOR WALLMAN: Thank you. [LB1073]

SENATOR LATHROP: Okay. I think that's it. Thank you for your testimony and your legal arguments too. [LB1073]

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MORGAN KELLY: Thank you for your time looking at this issue. It's a big one. [LB1073]

SENATOR LATHROP: Sure, thank you. Ken George or Mike Kelley. [LB1073]

KEN GEORGE: Senator Lathrop, Chairman Lathrop, Senators on the Business and Labor Committee, my name is Ken George. I'm with the firm, and Mr. Kelley, of Ross, Schroeder and George of Kearney, Nebraska. We represent four of the claimants that are involved in this dispute. We're asking that the claims that were denied in LB1073 be removed from there and that LB1072 be amended and those claims would be added to it. Now there's two or three things, and I did not present you with a brief. My understanding is there's no dispute as to the facts of the services provided or the amounts provided. Last week, we received a subcontractor's questionnaire which outlined the services that had not been paid that involved services directly to the juvenile only and services that were to others. Let me assure you that when you look at Section 43-290, that section clearly states that the services that are to be paid by the department are for the support, study, and treatment of juveniles placed in its care and custody. It says, shall be paid. It's not a permissive, it's mandatory. And when you ask, is that directly to the juvenile only, I would first suggest that you have to remember what this treatment is about. There are cases that I can provide you with clearly show when you detain a child for evaluation, to determine placement, the detention is considered treatment, the evaluation is considered treatment. Those words are not used in the statute. And that's what seems to be attempted to be here. When you look at the overall goal of the juvenile court when they place a child with the department and the child is in an out-of-house placement, the main...the primary goal is to reunite that child with the family. So if you're counseling parents so that they can deal with their children better, that's a service to the child. We can walk around that all we want. But if the main goal is to reunite the children with their families then you might have to do something with the parents. You might have to have them introduced and have visitation with the parents and have this visitation with their siblings. That's to reunite the child with their family. Those services, in my opinion, are included. The second thing I'd like to move to, the word "released" is not used in the settlement agreement with the state as to the state of Nebraska. They originally tried to use it, and during the phone conference we got several things changed. That was one of them. What was arranged for the Department of Health and Human Services was that first of all it was a full and complete satisfaction of any subcontract claims against BGH only, Boys and Girls Home, did not include the department. They tried originally to include it in the settlement agreement they proposed. That was deleted. Second, what we did on the second part was subcontractor also waives any remedy against the state of Nebraska pursuant to the State Tort Claims Act and the Contract Claims Act. Miscellaneous claims statute was definitely and intentionally left out. And when we talk about releases, we have to talk about the concept of intent, because releases in law deal with what did you intend to release or who did you intend to release. It's clear by this agreement that we did not intend to release the Department of Health and... [LB1073]

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SENATOR LATHROP: And I think it's clear from Mr. Winterer's testimony that the right to come before this committee and make a miscellaneous claim has not been foreclosed. [LB1073]

KEN GEORGE: Right. [LB1073]

SENATOR LATHROP: That part I don't see as a legal issue at all, as far as I'm concerned. Let's see if anybody has any questions for you. [LB1073]

KEN GEORGE: Yeah. [LB1073]

SENATOR LATHROP: I see none. Thank you very much for your testimony and your legal analysis. [LB1073]

KEN GEORGE: Thank you. I forgot to mention who we represent. Is that in the record or do you need that? [LB1073]

SENATOR LATHROP: We don't. You said you have four of the contractors, so we appreciate that information. [LB1073]

KEN GEORGE: Thank you. [LB1073]

SENATOR LATHROP: Good afternoon. [LB1073]

MICHAEL KELLEY: Good afternoon, Senator Lathrop and Senators of the committee. I am Michael Kelley. I'm an attorney with Ross, Schroeder and George. This afternoon we're here representing also Prince of the Road, which is R&F Hobbies, d.b.a. Prince of the Road. By your groundwork and hard work, Senator, you've saved yourself all of this. (Laugh) [LB1073]

SENATOR LATHROP: I knew I was going to. [LB1073]

MICHAEL KELLEY: So thank you, sir. (Laugh) We just want to make sure...and we are in that category of, yeah, we did the work, we billed them, and we didn't get paid, so... [LB1073]

SENATOR LATHROP: Okay. [LB1073]

MICHAEL KELLEY: But we do have a couple of differences and we want to point out to the committee, Prince of the Road did not have a contract...subcontractor agreement. It never worked under that. Its work was directly with DHHS. And the services that it provides, by the way, it's a transportation service, and the CEO, James Laudenklos, is

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here with me. And I think he would like to just have one minute with you, to thank you, if nothing else. And their services were called upon by DHHS. And each and every service was preapproved and authorized by DHHS before they performed it. When it was done they submitted a bill. Those were never questioned or denied. And then they simply weren't paid. So that's the situation we're in. If you can tolerate me for one "groundspun" comment here, you know, if you'll indulge me to that extent, a long time ago, I'm an old guy, as you can see, but many, many years ago a man I respected greatly gave me a little piece of advice. And I thought so much of it I wrote it in my Bible. And I've never seen an occasion when it wasn't correct and didn't apply. And it's never too late to do the right thing. And that's what we have here. I want to also support and applaud Senator Krist's comments. I'm sure everybody's spirit was raised and encouraged that there were people who understand and really are working on that. And the only thing we disagree with is the 70 percent on Visinet. We think that the people of Nebraska owe these providers, whose heart, soul, and spine is in this work and they want to continue, they care. They want to continue and they've fought terribly to do that. So we'd encourage you to pay these for them, please. [LB1073]

SENATOR LATHROP: Okay. I do...before you get away, though,... [LB1073]

MICHAEL KELLEY: Sure. [LB1073]

SENATOR LATHROP: ...your testimony has left me scratching my head. I see you on the list. You're the first one or the second one listed here as a claimant. It looks to me like you were part of the...when Health and Human Services spread the balance of the Boys and Girls Home contract around to providers, you guys took your pro rata share. And that would suggest to me that you were part of the...you were a subcontractor, like the rest of the people in the room. And your testimony made it sound like you don't think you are. [LB1073]

MICHAEL KELLEY: We were placed in that position by an e-mail which was kind of an ultimatum. It was, if you don't get in this and agree to take this, then we'll simply pay it to BG&H and you can go... [LB1073]

SENATOR LATHROP: But if you didn't have a contract with Boys and Girls Home, why wouldn't you say we got a contract claim against the state? [LB1073]

MICHAEL KELLEY: We're here, Senator, not on a contract basis but on the basis that we rendered these services at their request and preapproval under 43-290. [LB1073]

SENATOR LATHROP: Okay, got it. [LB1073]

MICHAEL KELLEY: And the sections that the Kelly before me... [LB1073]

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SENATOR LATHROP: So Boys and Girls Home is the person that picked up the phone and said, would you pick this kid up at point A and deliver them to point B. [LB1073]

MICHAEL KELLEY: Yes,... [LB1073]

SENATOR LATHROP: Okay. [LB1073]

MICHAEL KELLEY: ...after they had had the preapproval by the state. [LB1073]

SENATOR LATHROP: Okay. You've answered my question. And thank you for coming down today... [LB1073]

MICHAEL KELLEY: Thank you, Senators. [LB1073]

SENATOR LATHROP: ...and for your advice. You're the owner that's going to take a minute? [LB1073]

JAMES LAUDENKLOS: Less than that, sir. [LB1073]

SENATOR LATHROP: All right, very good. Welcome to the Business and Labor Committee. [LB1073]

JAMES LAUDENKLOS: (Exhibit 11) Thank you. My name is James Laudenklos, that's L-a-u-d-e-n-k-l-o-s. I'm the CEO and president of Prince of the Road Transportation. I just want to thank you for taking your time to hear these out and understand that we are here to alleviate one thing, and that is the burden of the process that's been placed before the state of Nebraska and the providers of our youth of this state. I made a promise when I took over this business, as a 26-year veteran of law enforcement for the state of Nebraska, that I seen kids in trouble, that I'm going to do everything we can to provide a service to them. When we started having a problem with Boys and Girls Home, I made a direct phone call to Sherri Haber with the department. They said, we need you, continue to provide the service, the kids love you. They said, it's not about the money, it's about let's make sure we get these kids to where they need to go. We'll take care of you on the money side of it, please help us, we need you. I do 10,000 to 12,000 transports a month. I put my 26-year law enforcement career pension, I mortgaged my house, I took a wife with cancer treatment and helped her get a part-time job so she could help fund so we could cover the monies that I wasn't paid by the state. All I'm asking you is I can't...I couldn't take 35 cents. But I was told that if I didn't participate in the 35 percent settlement, try me in district court, I'll bleed you of all your legal fees. Mr. Brad Gianakos said that directly to me. I can't afford to do that, so I took what I could, hoping that you'd look at this in the right way. I'm here today because I still do it every day. Sometimes I look at these kids and parents and they say, we can't pay you, but we got to get this child here. You know what I say, fine, I'll take you so I don't have to pay

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my employee. [LB1073]

SENATOR LATHROP: Okay. Very good. [LB1073]

JAMES LAUDENKLOS: I just want to thank you for what you're doing here, what we're going to do and how we're going to move forward. And there isn't a person behind me that wouldn't continue to do this right now because you're taking the time to look at this. [LB1073]

SENATOR LATHROP: Appreciate that. Senator Wallman has a question for you. [LB1073]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for what you do. Have your numbers went up significantly over the last couple of years or... [LB1073]

JAMES LAUDENKLOS: No, I have dwindled to less than half of what I was doing because of the Medicaid provider agreement. Now if there is a registered vehicle in the home of the family, you no longer get services. They don't ask if that vehicle is running. If there's plates on it, you don't get the services. [LB1073]

SENATOR WALLMAN: Oh, thank you. [LB1073]

SENATOR LATHROP: I think that's it. Thank you for your testimony... [LB1073]

JAMES LAUDENKLOS: Thanks for your time. [LB1073]

SENATOR LATHROP: ...and your thoughts. Camille Hawk. Good afternoon. [LB1073]

CAMILLE HAWK: (Exhibit 12) Good afternoon, Mr. Chairman, Senators. My name is Camille Hawk, C-a-m-i-l-l-e H-a-w-k. I represent Heartland Family Service, which is one of the claimants here today. You have before you Heartland's claim. You should also have in your binders two letters directly from John Jeanetta, who is the CEO of Heartland Family Service, one dated February 10, 2012, and then one that preceded that on February 8, 2012. Within those two letters most of our legal arguments are outlined. I just wanted to make a couple of comments and clarifications for this committee. Heartland Family Service only provided its services related to the wards of the state of Nebraska. All of these wards were under the direct supervision and responsibility and custody of the department. For the department to say that it has no responsibility or that it has no obligation to pay for the amounts that are due and owing to these subcontractors is just inconceivable. The department was responsible to supervise all of the services that were provided to the wards for which it had ultimate responsibility, both by statute, and you've been provided statute references here before by my other predecessors, as well as by case law indicating, and then we have the case

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law outlined for you in our letters, but indicating that the department is responsible for the costs of caring for juveniles with which it's been granted custody during the periods which the juvenile is actually placed in the custody of the department. Those are all of the services that are provided by Heartland Family Service. There was an indicator of attempts to differentiate between the services provided directly to the youth versus those that were provided in support of the youth. And I'd like the committee to consider that, but for the fact that these youth were under the care and responsibility of the department, Heartland Family Service and the other subcontractors would not have been providing services to the families. So without the youth being there, there would have been no services provided to the families. And in other words, what I'm trying to get to is that these services are directly for the benefit of the youth and regardless of whether they were incorporating the family or not or related to visitation. One last comment that I'd like to make is that the department knew, I mean, it knew from the beginning or very early on that its services...that the amounts were being paid in arrears. It should have known with Visinet, back in April of 2010, that they should have taken greater responsibility to look at the other lead agencies that it had responsibility over. And I'd like the committee to consider that 100 percent of the services were provided by these subcontractors, but only one third of the payment was provided for that. Had the alternative been true, that the department paid and the providers received 100 percent of the payment but only provided one third of the services, don't think that the department wouldn't have been standing up and down and jumping up and down, asserting their authority here. So with that, we'd like to ask that the Heartland Family Service claim be moved from LB1072 to LB1073, excuse me, vice versa, LB1073 to LB1072. Thank you. [LB1073]

SENATOR LATHROP: Very good. Okay, I think we know what you mean. Very good, we appreciate that. And I don't...oh, Senator Wallman has a question for you. [LB1073]

CAMILLE HAWK: Yes, sir. [LB1073]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, thanks for coming. Would your organization you talked to be satisfied with 70 percent? [LB1073]

CAMILLE HAWK: You know, Senator, would you be satisfied with 70 percent of your, you know, paycheck... [LB1073]

SENATOR WALLMAN: Yeah. [LB1073]

CAMILLE HAWK: ...on your...I mean, certainly if that's what is offered up it will take, you know, it's twice of what it's already received, but... [LB1073]

SENATOR HARR: We make \$12,000, so. [LB1073]

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SENATOR WALLMAN: Yeah. (Laugh) [LB1073]

SENATOR ASHFORD: I'd take \$10,500 of (inaudible). (Laughter) [LB1073]

SENATOR HARR: Yeah. (Laugh) [LB1073]

SENATOR WALLMAN: Well, thank you. [LB1073]

CAMILLE HAWK: I just...but if that's what is offered up and if that is the decision of this committee, certainly it is much better than what it has received today. I would ask the committee to consider that you're not asking for 70 percent of the services to be handled. So we would ask actually for the full amount. [LB1073]

SENATOR LATHROP: It is a mess we will try to sort out. [LB1073]

CAMILLE HAWK: Thank you. [LB1073]

SENATOR LATHROP: But we appreciate your thoughts on the subject. [LB1073]

CAMILLE HAWK: Thank you. [LB1073]

SENATOR LATHROP: Looks like somebody is going to...Tim Thompson here? Tim. We'll have you fill one out when you're done. [LB1073]

TIM THOMPSON: Okay, thank you. Senator Lathrop and other members of the committee, thank you for having me. My name is Tim Thompson, T-h-o-m-p-s-o-n. I am an attorney from North Platte and I appear before your committee today on behalf of Family Skill Building Services, which is a North Platte-based business that basically offers family support services and visitation services to families from which a child has been formally removed by the state. Most of those services are supplied out in western Nebraska, principally in Red Willow, Lincoln, Dawson, and Scotts Bluff Counties, but in all of the counties out in western Nebraska where travel is a substantial problem. It employed 35 to 40 trained employees who provided all the services that others have discussed before you today. And I don't want to rehash any of the prior arguments that have been made. I haven't had an opportunity to see some of the other memorandums that I know the other attorneys supplied to you. I would just like to talk a little bit about a point raised by Senator Wallman earlier about how on the farm when somebody shows up and pours concrete, you stand there and watch them do it, that at the end of the day you're going to have a legal responsibility to pay that. And that's another legal theory that I think lurks out here, and that is one of unjust enrichment, sometimes called implied contract or quantum meruit in the law. And I think that lurks here. When I first contemplated that I wondered, well, is that a doctrine of law that can even apply against a political subdivision. And in fact it is and has been employed against various political

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subdivisions by the Supreme Court going back years. The primary case is a case called Miles v. Holt County, which is found at 125 N.W. 527. In that case, Holt County had gotten mixed up as they tried to enforce a scavenger law, where you collected property taxes. The county treasurer published in one paper. The county board had authorized publication in another paper. And the publisher blithely went along with what the treasurer had requested, inappropriately, but did all the publication for them. The county received benefits from that. And then they made a claim for the full amount of the bill. The Supreme Court, in analyzing that, said that we're going to look at a political subdivision in the same fashion as we look at private citizens. And here, to not have paid that publisher would have been reprehensible. And I think that's the situation that this committee and the Unicameral finds itself in now, is these people in good faith provided the services, provided the services mandated by statute. They provided the services in good faith. And they provided 100 percent of the services that were asked of them. And then they weren't paid, all the while, while the state stood back, observed the fact that they weren't being paid, did little, if anything, and received the full benefit of all their participation. So I think there is that additional legal basis. Again, it may be contained in the memorandums of others. I just wanted to bring that to your attention. I appreciate your willingness to hear us today. Thank you. [LB1073]

SENATOR LATHROP: Very good. Thanks, Tim. I...Senator Carlson has a question for you. [LB1073]

SENATOR CARLSON: Thank you, Senator Lathrop. In listening to these various testimonies, I think there's two circumstances. One is that your client contracted for service, I'm going to use an example, contracted to serve 90 children, but they actually ended up serving 120. Is that the case with your client or did you client simply provide the serves for those agreed...the number agreed upon initially? [LB1073]

TIM THOMPSON: Senator, I can only say that the number of referrals to Family Skills increased over that time period. [LB1073]

SENATOR CARLSON: Okay. So you're in that category of providing more services than were contracted for with the faith that you'd be paid. [LB1073]

TIM THOMPSON: I can't tell you the exact percentage, but I know our requirements are...the requests for services increased during that time interval. [LB1073]

SENATOR CARLSON: Okay, thank you. [LB1073]

SENATOR LATHROP: Maybe I should clarify, because the question suggests that there is a misunderstanding. Boys and Girls Home thought they were picking up 2,000 kids and maybe ended up with 3,000. Your deal with Boys and Girls Home was if they called you, you did what they asked you to do, provided the services at some agreed-upon

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rate, billed them and they didn't pay you. You didn't have a contract that said, I'll only provide services to X number of kids. [LB1073]

TIM THOMPSON: Correct, Senator. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

TIM THOMPSON: But during that time period, the requests that came in to Family Skills increased. [LB1073]

SENATOR LATHROP: Okay. So the... [LB1073]

SENATOR CARLSON: Increased above and beyond what was expected? [LB1073]

TIM THOMPSON: Well, you'd have to ask Boys and Girls Home that. [LB1073]

SENATOR CARLSON: Okay. [LB1073]

SENATOR LATHROP: That's from Boys and Girls Home's perspective, though. [LB1073]

SENATOR CARLSON: Okay. [LB1073]

TIM THOMPSON: Yes. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

TIM THOMPSON: I think that Family Skills would say it increased and that perhaps surprised them. But it did increase and their workload increased and they provided the services. [LB1073]

SENATOR LATHROP: Okay. Senator Harr. [LB1073]

SENATOR HARR: Just to clarify, yours is a fee for service, not a fee for, period, just a flat retainer fee and you have to provide the service. Yours was for each time you do this you will be reimbursed X. [LB1073]

TIM THOMPSON: Yes, they get a request form... [LB1073]

SENATOR HARR: Okay. [LB1073]

TIM THOMPSON: ...that starts with the court, goes through DHS, and then ends up being referred out to Family Skills. And then they provide the service, as mandated by

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the court, by DHHS, pursuant to its regulations and goals and that sort of thing.
[LB1073]

SENATOR HARR: Fair. Thank you. [LB1073]

TIM THOMPSON: Thank you. [LB1073]

SENATOR LATHROP: Okay. Thank you. That gets us through the lawyers or at least the ones that I had on the list. So if you are an opponent of this bill and wish to be heard, this is the time. Welcome once again. [LB1073]

GREGG NICKLAS: (Exhibit 13) Thank you, sir. Good afternoon, Senators and others. My name is Gregg Nicklas, G-r-e-g-g N-i-c-k-l-a-s. I'm a cofounder and co-CEO of Christian Heritage, a nonprofit, faith-based, COA-accredited organization founded in 1980. Together with a dedicated staff team and over 100 foster families, we are currently serving 123 foster children out of offices in Lincoln, Omaha, and Kearney. I'm appearing before you today because the state of Nebraska is responsible for every ward and the state has a nondeligitable duty to properly care for its state wards, including payment for services. Mr. Winterer testified that our services were provided to Boys and Girls. Our services were provided to children who were wards or were at the time wards of the state. We're owed \$118,937 initially, we're still owed \$77,546. It was the state who decided to initiate the reform and privatize foster care. It was the state who chose Boys and Girls as a lead agency, the only agency in the Central Service Area. It was the state who had the responsibility to assure their financial viability. And it is the state who immediately reassumed responsibility for their children upon the termination of the Boys and Girls contract. We were given the following choice: either enter into a contract with Boys and Girls or discontinue providing services to children in the Central Service Area. The state acknowledges that they were responsible for these children prior to the contract with Boys and Girls and immediately following. During the subcontract with Boys and Girls, it was the state caseworkers who continued to make decisions pertaining to the children. The state worker made decisions and directed our staff on issues pertaining to the children's education, their therapy, the movement of children from one home to another, and the level of care at which children would be placed. The state was responsible for the children prior to the subcontract, during the duration of the contract, and upon the termination. Christian Heritage, a nonprofit organization, operates with very little financial margin. Because of the reform, we have had to eliminate administrative positions, freeze salaries, and cut line-items from our budget. We have a line of credit at our bank that we have had to use because we've not been paid. We also have paid our bills, even when it meant borrowing to do so. We ask that you, as representatives of the state, would please pay these bills as well. Finally, in a meeting with Senator Krist, I shared with him that we have been serving Nebraska's children for over 30 years, and frankly, we're losing our confidence and trust in the system. Senator Krist asked me to trust him and to trust the individual senators to come

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together to do the right thing to restore confidence in the system. Money is an issue, but so are integrity and trust. And we appeal to you to approve these claims and to restore confidence in the system. [LB1073]

SENATOR LATHROP: Thank you, Mr. Nicklas. I see no questions. We appreciate your testimony. It was very clear. [LB1073]

GREGG NICKLAS: And thank you to all of you. And certainly, Senator, we don't believe any of you are overpaid. (Laughter) [LB1073]

SENATOR LATHROP: Appreciate that. That won't make a difference in our decision, however. (Laughter) [LB1073]

JAMES BLUE: (Exhibit 14) Good afternoon, Senator Lathrop, members of the committee. [LB1073]

SENATOR LATHROP: Good afternoon. [LB1073]

JAMES BLUE: I will attempt to make this succinct, but certainly be happy to answer any questions that you may have. My name is James R. Blue, B-I-u-e. I am the president and chief executive officer of CEDARS Youth Services. And, yes, we were one of the original contractors. The point I would like to make is Boys and Girls Home received a \$50 million fully at-risk contract from the state of Nebraska for an initiative that had not only never been tried in Nebraska, this initiative had never been tried in the country, at a time when the combined net assets of the Boys and Girls Home Corporations--six corporations under the leadership of Bob Sheehan, the president and CEO--\$50 million fully at-risk contract, new initiative, combined net assets of \$100,000. In my opinion, the CEO of the Health and Human Services System, Mr. Winterer, knew well early about the financial condition of Boys and Girls Home. I and our representatives met with Kerry and his representatives in February, when he had been on the job for eight months, and not only informed him of CEDARS Youth Services' financial experiences with this contract but informed him that every other contractor in the state was seeing significant cost overruns from what the state projected. That was in January. April 1, we provided our formal notice of termination and again informed him and his colleagues that nearly every other organization was in this situation. It was clear to us that there was not going to be a proactive response. At that point, CEDARS Youth Services stopped taking new referrals from Boys and Girls Home. Our business is helping kids. We continue to serve the kids that were in our programs, our group homes, our program for pregnant and parenting teen mothers and their children. We were not going to discontinue care for those kids, but that certainly limited our financial exposure. It would appear to me that there is a significant moral obligation to take care of these kids, especially in light that the state was well aware from the beginning, if not in a due diligence process, that this was going to damage not only the providers across Nebraska but the providers of care

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that have developed this structure over the many years. Thank you. [LB1073]

SENATOR LATHROP: Very good. We appreciate your testimony. Are there any questions? I see none. [LB1073]

JAMES BLUE: Thank you. [LB1073]

SENATOR LATHROP: Again, thank you for coming down here today. No stranger to the BSDC Committee. [LB1073]

ALAN ZAVODNY: (Exhibit 15) No, first time here though. Senator Lathrop, I want to prove to you that I can follow your rules. I have to tell you before I start, I'm a little intimidated. Your page looks a little bit like a young Senator Flood. I thought you must have great power here if you can get him to page for you. (Laughter) So don't tell him I said that, by the way. Senator Lathrop and members of Business and Labor Committee, thank you for the opportunity to provide testimony today. For the record, my name is Alan, A-l-a-n, Zavodny, Z-a-v-o-d-n-y, and I'm the chief executive officer of NorthStar Services. NorthStar Services provides supports to people with developmental disabilities in 22 counties in northeast Nebraska. I'm going to skip most of my testimony. You would be hearing from Kirby today from our office, but she's about to have a child, which is imminent, which also could have been a first for Business and Labor if she could come today. So we tried to get her not to travel too far from home. The fundamental issue is money is tight with the developmental disability system, so not getting paid for these services we provided is a hardship to us. The fundamental issue is also that you are a court of last resort. What recourse do we have to recoup money that is clearly owed to us? We acted in good faith. At the end of the day, the confidence in the reimbursement...is confidence in the reimbursement system. How do we hold people and agencies accountable? You have many entities represented here today that have been left holding the proverbial bag. You are our last chance to be made whole. And I'll quit at that and answer any questions you might have. [LB1073]

SENATOR LATHROP: Thanks, Al, we appreciate it. I assume your story is the same as everybody else's. [LB1073]

ALAN ZAVODNY: Right. [LB1073]

SENATOR LATHROP: Okay. I see no questions. Thanks for coming down. As the next testifier comes forward, let me just see a show of hands of how many people are left to testify. One, two, three, four, five, six, seven, eight, nine, okay. Very good. Thank you. Go ahead. [LB1073]

LAURIE MILLARD: Hi, my name is Laurie Millard, L-a-u-r-i-e M-i-l-l-a-r-d, and I'm with Good Life Counseling and Support out of Norfolk, Nebraska. I was hired in 1986 by

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Health and Human Services to assist a pilot project, that was also authorized by the Legislature back then, to bring children in out-of-home residential placements out of state back into Nebraska. We developed what is now known as wraparound services. From there, I went on to be an investigator, foster care worker, supervisor, and then therapist while I worked for the state. Privatization of services started before 2000 with the state of Nebraska. The first was to get rid of all of the state therapy positions. I was one of the therapists at the time. It was a successful privatization of services and a mandate that services can be privatized but not case management. The last time I was in Lincoln for the Legislature was as an employee of the state of Nebraska for innovative and creative collaboration efforts which led to the honor of being appointed the representative from the state of Nebraska to present in Washington, D.C., at the NAPE conference. I was fortunate enough to be an employee of HHS from 1986 to 2000, during a period of time when the Legislature gave great value and attention to the prevention and remedy of abuse and neglect. Please be aware, there are two contracts at stake here--the Safety and In-Home Services, and the Out-of-Home Reform. The Out-of-Home Reform was paid the 34.8 percent. Safety and In-Home was paid zero percent. We still are owed balances, and that will attribute for the discrepancy. I've sent e-mails from Lincoln advising of that difference, that the first contract was not being considered in this settlement at all. In addition, as well as the 70 percent that was provided Visinet, as you're fully aware, Foley's report shows that Visinet was overpaid by \$4 million. So I don't think they were shorted a whole lot, and probably got 100 percent and more. I'm kind of skipping through some of this. We all know that KVC has not taken over 100 percent of case management here. They refuse to come out to our area because of the mileage costs involved. You have a letter from Todd Reckling, dated September 24, assuring payment issues were simply short-term payment delays. I was to let him know if the matter was not worked out; and if you are not able to resolve the payment issues with Boys and Girls in the near future, let me know and we'll check into it again. Other e-mails are in your packet. [LB1073]

SENATOR LATHROP: What's the date of that letter? [LB1073]

LAURIE MILLARD: September 14, 2010. [LB1073]

SENATOR LATHROP: And that was just shortly before the contract was terminated with Boys and Girls Home. [LB1073]

LAURIE MILLARD: Correct. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

LAURIE MILLARD: We were led to believe that it was going to be worked out. [LB1073]

SENATOR LATHROP: Like two weeks before, though, right? [LB1073]

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LAURIE MILLARD: Yes. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

LAURIE MILLARD: Yes. In fact, Good Life remodeled half of our building for Boys and Girls to have their case managers there. They abandoned that. We did not include any of that cost of the abandonment, the nonrent payment, the cleaning, all of that not in this bill whatsoever. [LB1073]

SENATOR LATHROP: Very good. Thank you. Any questions for this witness? Thanks for coming down. It's important that we hear from you. Next testifier. [LB1073]

JANE MEIDLINGER: (Exhibit 16) My name is Jane Meidlinger, M-e-i-d-l-i-n-g-e-r for John Meidlinger, Ph.D., clinical psychologist, six claims for psychological evaluations of adults. Have a sense we're getting cut out of the herd, so I'm here to speak to the issue of that particular thing. Children are not born into a vacuum. Their health and well-being is intertwined with the care they receive from their family. As a result, the state cannot separate the family out from the care and case planning that surrounds a state ward. No one sitting here wants to see a child returned to a family, only to have the cycle of abuse and neglect continue. To ensure that outcome, there are times that the department and/or the court determine they need an evaluation of a parent to aid in case planning and decision making so that the safety and well-being of a child are protected. These evaluations are done for the benefit and care of the child. Twelve years ago, these evaluations were secured with a service provider referral from the state ward's caseworker and signed by their supervisor. That, along with the appropriate insurance form, would be sent to state ward billing at Nebraska Medicaid. The first major change came when it was decided that caseworkers would no longer have the ability to request these evaluations, but the court could still order them. The court worked under the understanding that Nebraska Department of HHS was responsible for payment of these evaluations as they related directly to the children under their care. A procedure was set up wherein court orders were sent to Magellan, the managed care portion of Medicaid, and an authorization for services was issued to the appropriate provider. That authorization, plus insurance form, was then sent into state ward billing at Nebraska Medicaid. The second major change came when the state decided to turn the money for the care of state wards over to private contractors. Boys and Girls Home was the only agency that was willing to take this on in our part of the state. The other two agencies that were originally to be involved in a coalition backed out as they realized the funds allocated would not be enough to pay for services expected. In December of '09, at the first meeting with Boys and Girls Home, it became clear that they had no idea they might be expected to pay for the evaluation of state wards out of their funds. Their response to my inquiry was, payment for those evaluations was the department's responsibility and not theirs. And at the same time, Medicaid was telling us that they no

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longer were paying for them. We continued with the evaluations. We finally got payment or a system set up with Boys and Girls Home in February. And then, I'm just going to finish, as past and present practice shows, the state has recognized that there are times that services are needed for the adults involved with the state wards if they are to have a successful resolution to a difficult situation, that there may be barriers to successful...I'm done? [LB1073]

SENATOR LATHROP: No, you...light is still yellow. [LB1073]

JANE MEIDLINGER: Oh,...successful parenting that must be identified and addressed. These monies have been provide out of state ward funds. And although Boys and Girls Home was a third-party payor for the state wards, the ultimate responsibility for these children still rested with the state. Their guardianship was never turned over to Boys and Girls Home. So this is not just a legal matter of accounting and finances. It is about the integrity of the state and its willingness to stand behind the children in their care. [LB1073]

SENATOR LATHROP: Very good. [LB1073]

JANE MEIDLINGER: I want to say one thing. Senator Krist talked about the narrowing of medical necessity. Now when we do evaluations for state wards, if it's court ordered, it has to come out of state ward funds. We no longer, even if the adult is Medicaid eligible, can go through that source. [LB1073]

SENATOR LATHROP: Okay. Terrific. Thank you for your testimony. And if you're going to testify and you're waiting, you can move up to the front rows and we'll have a better idea who's left and probably move the process along just a little bit quicker. Welcome. [LB1073]

TOM McBRIDE: (Exhibit 17) Good afternoon. My name is Tom McBride, T-o-m M-c-B-r-i-d-e. I'm the president and CEO of Epworth Village in York, Nebraska. We've provided services to children and families in Nebraska for over 123 years. We would ask that our remaining claim of \$102,725.94 be moved from LB1073 over to LB1072, remembering that while we were providing these services that the state, regardless of Boys and Girls Home being the lead agency, the state was still maintaining case management responsibility for each one of those youth. And we were serving state wards. We were subject to significant fines and penalties if we didn't respond appropriately to...if visitations were missed or paperwork wasn't in on time. So we had significant financial responsibility in that fashion. We had no idea, as has been stated earlier, when that contract was going to be terminated and when we were going to be left holding the bag, so to speak. In fact, earlier in the year the financials of each of the lead agencies used to be posted on the HHS Web site, and those were taken down. And despite numerous requests to Mr. Reckling and promises that those financials

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would be placed back up on the Web site, they never were returned up there. It's important to remember that all of our staff during this time were paid out of our general fund and lines of credit, and cashed in some investment accounts. All of our foster families were paid. We never let anybody from our side get behind. We accrued, during this time, over \$157,000 of unpaid fees for services from Boys and Girls Home. I appreciate Mr. Winterer's efforts to retain that \$1.6 million and at least see that providers receive that much back rather than Boys and Girls Home walking away debt free from this. And I really appreciate that. We received just over \$54,000 from that, but our amount remaining is still over \$102,000. And that was submitted to the Auditor of Public Accounts on May 18, 2011. So we would really appreciate your efforts to move these claims from LB1073 over to LB1072. Thank you. [LB1073]

SENATOR LATHROP: Very good. Thank you for your testimony. I see no questions. Next to testify. [LB1073]

SCOTT DUGAN: (Exhibit 18) Thank you, Chairman Lathrop. I will be short and sweet. My name is Scott Dugan, S-c-o-t-t D-u-g-a-n. I'm president and CEO of Mid-Plains Center. I'm passing around my prepared testimony as well as several documents. In my testimony, you'll see I've...what I tried to focus on, as I understood it, is the amount is not in question, the service isn't in question; it's whether...do we have the legal obligation to pay it and at what point did we know what was going on. So what you'll see in my packet is simply a time line, e-mails, letters that have been exchanged between myself as the representative of my organization, Todd Reckling, Kerry Winterer, as well as some state senators that represent my area that I was working with all along. These start in April of 2010 and go through August of 2010. And they're just a sampling of what I could put together. There were numerous phone calls and such. So I'd just encourage you to do what's right. And I do believe that the attorneys have set out that there are several legal avenues that would give you the opportunity to make these payments correct. [LB1073]

SENATOR LATHROP: Very good. Thank you for your testimony, appreciate it. [LB1073]

SHELLY McGRATH: (Exhibit 19) Hi. I'm Shelly McGrath from the Norfolk Group Home. I've worked there 20 years. And all our girls are state wards or ordered by the court to be there. All I have is we had placement agreements with DHS, not Boys and Girls, with every one of our girls. And it basically says that we will provide the care for them and then they will pay us in return, not Boys and Girls Home. They didn't sign these; DHS did. [LB1073]

SENATOR LATHROP: Okay. I do...that does lend itself to some questions. [LB1073]

SHELLY McGRATH: Uh-huh. [LB1073]

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SENATOR LATHROP: Are you suggesting to us that you... [LB1073]

SHELLY McGRATH: We were in contract with Boys and Girls Home, but... [LB1073]

SENATOR LATHROP: You say you were or you were not? [LB1073]

SHELLY McGRATH: We were. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SHELLY McGRATH: But all of our placement agreements were signed by DHS.
[LB1073]

SENATOR LATHROP: Did your contract with Boys and Girls Home supersede those agreements? [LB1073]

SHELLY McGRATH: Well, they're all from the Department of Health and Human Services, signed... [LB1073]

SENATOR LATHROP: When were they executed in relationship to Boys and Girls Home becoming the contractor? [LB1073]

SHELLY McGRATH: These are all during the contract, a lot of them are. [LB1073]

SENATOR LATHROP: Did you leave us with copies of those? [LB1073]

SHELLY McGRATH: No, I didn't, but I can leave you with these. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SHELLY McGRATH: Okay. I just have this one, but... [LB1073]

SENATOR LATHROP: Oh, I'm sorry. Senator Wallman has a question for you. Forgive me. [LB1073]

SENATOR WALLMAN: Chairman Lathrop, thanks. Thanks for testifying. So did you get reimbursed then? [LB1073]

SHELLY McGRATH: No, we did do the settlement for the 34.8 percent. [LB1073]

SENATOR WALLMAN: Thirty-four percent only? [LB1073]

SHELLY McGRATH: Yeah. [LB1073]

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SENATOR LATHROP: And what was your group? [LB1073]

SHELLY McGRATH: Norfolk Group Home. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

SENATOR WALLMAN: Thank you. [LB1073]

SHELLY McGRATH: Um-hum. [LB1073]

SENATOR LATHROP: Good afternoon. [LB1073]

VICKI LAWTON: (Exhibit 20) Hi. My name is Vicki Lawton, V-i-c-k-i L-a-w-t-o-n. I'm with Community Action Partnership of Western Nebraska in Gering, Nebraska. We have a Panhandle Youth Shelter which was contracted with Boys and Girls Home. We provided residential shelter care to youth that needed a place to stay while they were awaiting a court date or another placement. I just wanted to speak just really briefly on the impact this has had on our more rural areas. And I understand that...I know you guys know that, but we lost so many services out in the western end of the state through this process. When we were...there used to be three shelters between Grand Island and Gering. We're now the only one. And so we are covering an area now west of Grand Island and so that is a...that's a huge area and that wasn't like that before. We also have had to...I heard somebody say they had to take out a line of credit. We have also had to do some of that in order to stay afloat. This has just really been very impactful for us. I think that's it. [LB1073]

SENATOR LATHROP: You suggested that there used to be three contractors doing what you're doing and now you're down to just you. [LB1073]

VICKI LAWTON: Three agencies. [LB1073]

SENATOR LATHROP: Three agencies. [LB1073]

VICKI LAWTON: Three...there were three shelters. There was one in Scottsbluff, one in North Platte, and one in Kearney and they have closed. [LB1073]

SENATOR LATHROP: Did we lose two of those agencies on account of this very... [LB1073]

VICKI LAWTON: They were Boys and Girls Home shelters. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

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VICKI LAWTON: And they closed. And we've also lost group home care...we lost the Nebraska Boys Ranch because of this. We've lost several health and counseling providers that will no longer see our kids because they don't get paid. [LB1073]

SENATOR LATHROP: Thank you. [LB1073]

VICKI LAWTON: Um-hum. [LB1073]

SENATOR LATHROP: Oh, I'm sorry. Senator Carlson has a question for you. [LB1073]

SENATOR CARLSON: Thank you, Senator Lathrop. As I look at the amount of unpaid claims and that's a significant amount, but in terms of having a 12-bed facility, that can't be a very large portion of your total budget. [LB1073]

VICKI LAWTON: It is not. We have several other operating funds, operating sources. And it is not...I think some of you know that the way the state is doing business as a whole is changing, and even some of the places that were paying some money up-front and then reimbursement. So it's not just this that has caused it. There are several different things that have happened all at once that are creating a great hardship. This is just the one that's relevant to this committee. [LB1073]

SENATOR CARLSON: Okay, all right. Thank you. [LB1073]

SENATOR LATHROP: Thank you. I see no other questions. Next testifier. [LB1073]

BRIAN ESSEN: Good afternoon, Senator Lathrop and Labor Committee and counsel. How are you? I'm here to just maybe shed a different light on things, and everybody says... [LB1073]

SENATOR LATHROP: Why don't you give us your name. [LB1073]

BRIAN ESSEN: Pardon me? Oh, I'm sorry. Brian Essen, E-s-s-e-n, Brian, B-r-i-a-n,... [LB1073]

SENATOR LATHROP: Okay, Brian. Thank you. [LB1073]

BRIAN ESSEN: ...with Pathfinder Support Services, Fremont and Lincoln and Hastings. People have been wondering, gee, why didn't you know what was going on with Boys and Girls Home? Well, this all started in 2009. Now actually Boys and Girls Home under a different contract had a contract that started in July of 2008 under Safety and In-Home Services. I realize that's not to be considered in this, but the state did have and DHHS did have a track record with Boys and Girls Home starting in July of 2008 so...and Boys

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and Girls Home did not have a really good track record of making payments to subcontractors through that time period. And, in fact, we're still sitting on some of those debts, be that as it may. But they had a very strong history of poor payment records in 2008, and then they got a little bit better in 2009, go figure, and then it went south again on them after that. So they did know that. I guess the frustration for me in this whole thing is we have other businesses and, you know, if our clients aren't paying those places, we, you know, we take legal action and we do other things or we'll stop the service. And when I visit with some of my friends and tell them that we're sitting on all of these outstanding debts, they say, what are you doing that for? I mean why would you do that? And I look at them and say, we do it for the kids and that's it. And it seems like that kind of a mentality is almost used against the contractors because we are in it to serve the kids, and that's what it's all about and that's every contractor. [LB1073]

SENATOR LATHROP: Very good. Thank you, Mr. Essen. Next up. [LB1073]

SUSAN BAUMERT: Good afternoon, Senator and members of the committee. [LB1073]

SENATOR LATHROP: Good afternoon. [LB1073]

SUSAN BAUMERT: My name is Susan Baumert, that's S-u-s-a-n B-a-u-m-e-r-t, and I'm here on behalf of Child Saving Institute. And if you look at your list, you'll see that we have a very, very small amount on this particular claim--\$4,461.40 to be exact. I'm not here today to speak for us so much as I am some of the other contractors, subcontractors who provided these services in good faith, as we did. Our amount was very small, but this came on the heels of taking a \$38,000 loss from the Visinet settlement, again for services that we had done in good faith. Had we had to take another \$38,000 loss, it would have substantial impact on our operations and our financials. And so these others that have \$50,000, over \$100,000 on the heels of that other loss makes it very, very difficult to do business. As noted by the gentleman a minute ago, Safety and In-Home Services was a contract that DHHS took out with contractors in July of 2008. Similar situation--a few contractors who then subcontracted out. So there was history and there was experience on working in this matter. It wasn't as large as the Out-of-Home Reform contracts, but the same type of thing happened. We were actually a contractor in that and we paid our subcontractors. We did have to go back to DHHS for more money because the amount that they gave us to work with, also based on incorrect numbers of kids and incorrect amount of money, couldn't be done. So in lieu of giving notice that the contracts couldn't be completed, they gave us more money. We would have given notice. We would have pulled out, as the current contractors are doing with the Out-of-Home Reform. Boys and Girls Home wasn't a surprise. They had precedent that they had troubled financials. CEDARS pulled out because of troubled financial, not wanting to take a financial hit. Fourteen days later, Visinet declared bankruptcy. It was troubled from the beginning. And the contractors who are sitting here today asking to be paid for the second contractor that owes them

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money deserve to be heard. And I congratulate you and thank you for giving the opportunity to do so. [LB1073]

SENATOR LATHROP: Thank you very much for coming down today. I see no questions. Next testifier. [LB1073]

CONNIE BARNES: Hello, everyone. [LB1073]

SENATOR LATHROP: Good afternoon. [LB1073]

CONNIE BARNES: (Exhibit 21) My name is Connie Barnes, C-o-n-n-i-e B-a-r-n-e-s. I am the executive director for Behavioral Health Specialists in Norfolk, Nebraska, and we were a...we have been since the entire length of time I've been with the organization, which is over 23 years, we have been a contractor with HHS. And then we did enter into a contract with Boys and Girls. And when I received the call from a local media person calling me, asking me for my commentary on Boys and Girls ending their contract with the state of Nebraska, what did I have to say about that, and I said, oh, my God, I need to make some phone calls; I don't know about this. And I never did receive anything from Boys and Girls regarding their ending their relationship with us, and I placed multiple calls to the State Office Building, as well as our local Northern Service Area, HHS administration. I did eventually four days later receive a phone call back, but during that time our primary business relationship with Boys and Girls was that of our provision of agency-based foster care services, respite care services, and emergency services. We continued, of course, to serve those children and support those foster homes, not knowing who we were doing that for, other than certainly the children that we had in our care. With something that I want to point out in terms of what I think is an area of negligence on the part of DHHS is in their entry into their contract with Boys and Girls Home, Boys and Girls Home had experience in a lot of areas of providing specialized services to children but not in the area of foster care. They approached my organization, asked if we would become their sole provider of foster care, provided we hand over our entire book of policies and procedures and we train their staff, and the moment we did that they would stop subcontracting with us. I refused. We continued with our contract. We serve the children. We're still serving the children. And we began to experience difficulties with their making payments long before the time period of...even before 2010. I placed my first calls to Senator Flood in early 2010. His office interceded, made some calls to the state, made some calls to Boys and Girls Home, had...participated in holding numerous telephone conferences with several of the providers from the northeast Nebraska area, sent multiple letters on our behalf. And so at this point, we are an organization that did participate in the 34.8 percent payment agreement between HHS, Boys and Girls, and us as a subcontractor. Our full amount owed us was \$61,086.55; we did receive the check for \$21,258.37. We are owed \$39,828.18. I am asking and encouraging strongly that you look at doing the right thing, which is, from my seat, that of approving these claims to be moved forward and to be

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paid at 100 percent. We did not provide 35 percent level of care to those children when we had no idea who was going to be paying us. We provided 100 percent care. We paid our foster parents despite our having not received payment. And I do have two additional things I want to comment on. I know my red light is going. [LB1073]

SENATOR LATHROP: It is. [LB1073]

CONNIE BARNES: One is on medical necessity. I am a member of the Nebraska Association of Behavioral Health Organizations and I'm on the executive committee. NABHO has done a great deal of work and research on the area of medical necessity. We'll be sharing that information and that research soon with Medicaid and would encourage all of you, you know, that you would find that to be helpful information that's well researched. I suppose I can leave it at that. [LB1073]

SENATOR LATHROP: Okay. Thanks for coming all the way from Norfolk to tell us what... [LB1073]

CONNIE BARNES: It was quite the trip this morning, yes. Yes. [LB1073]

SENATOR LATHROP: I came from Omaha and you're exactly right. [LB1073]

CONNIE BARNES: (Laugh) Thank you. [LB1073]

SENATOR LATHROP: I see no questions. Thanks for being here today and telling us your experience. [LB1073]

CONNIE BARNES: Sure. I do, akin to a previous testifier, have all of our child placement agreements which are signed by HHS and not by Boys and Girls Home. [LB1073]

SENATOR LATHROP: I think if it's okay with you we'll have you leave them with committee clerk. [LB1073]

CONNIE BARNES: Okay. I only brought just my own copy, I mean, but I can leave those for you. [LB1073]

SENATOR LATHROP: Well, if they're your own copies, you might want to get us copies. [LB1073]

CONNIE BARNES: I mean they're a copy. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

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CONNIE BARNES: I didn't make multiple copies. [LB1073]

SENATOR LATHROP: Oh, that's fine. The committee clerk will get us all copies. [LB1073]

CONNIE BARNES: Okay. Thank you. [LB1073]

SENATOR LATHROP: And if you haven't filled out a testifier's sheet, we'll have you do that. [LB1073]

CONNIE BARNES: I have not done that. Thank you. [LB1073]

SENATOR LATHROP: Yes. Next testifier. And I saw nine hands before and sometimes people decide they're going to at the last minute. So just by a show of hands, how many people do we have left? Oh, boy. Okay. Move up...if you wouldn't mind moving to the front row and we're going to strictly enforce the lights at this point so I can get people home tonight. Thank you. [LB1073]

TRACI TAYLOR: Thank you. Committee members, I'm going to be very brief. Senator Krist did a very good job presenting... [LB1073]

SENATOR LATHROP: What's your name, please? [LB1073]

TRACI TAYLOR: Oh, Traci Taylor, T-r-a-c-i, Taylor, T-a-y-l-o-r, and I'm from Building Blocks for Community Enrichment. We're a foster care agency that provides foster care for children in northeast Nebraska. What I would propose is letting you guys know that we have not a contract with the current providers, KVC and The Federation, but we do have kids from those organizations. And they provide us an authorization that resembles this. On the other hand, currently from Health and Human Services we get an authorization that looks like this; similarly when Boys and Girls Home was in effect, identical authorizations. So I would stand behind my many predecessors that said that the state of Nebraska was fully aware, using their system of N-FOCUS, of the situation because they had access to that at all times. I would also point out that in the current situation we continue to have problems getting paid by the contractors, KVC and The Federation, and are working with them continually because we've been hurt before. We've had to take lines of credit out. We've had to do those things in order to meet the needs of the children of the state of Nebraska. Regardless of that, we maintained seamless care, regardless of having a contract with the state of Nebraska the day after when they returned the kids back to Health and Human Services' care on October 1 of 2010. I would move or ask that you move this towards the approved claims and thank you for your time. [LB1073]

SENATOR LATHROP: Thank you, Ms. Taylor. Senator Wallman. [LB1073]

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TRACI TAYLOR: Yes, sir. [LB1073]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, right now is your reimbursement on time? [LB1073]

TRACI TAYLOR: From the state of Nebraska? [LB1073]

SENATOR WALLMAN: Yeah. [LB1073]

TRACI TAYLOR: The state of Nebraska is behind as well... [LB1073]

SENATOR WALLMAN: Thank you. [LB1073]

TRACI TAYLOR: ...and continue to work on that and I'm behind with KVC and The Federation. [LB1073]

SENATOR WALLMAN: Thank you very much. [LB1073]

TRACI TAYLOR: Thank you. [LB1073]

SENATOR LATHROP: Thanks, what you do for the kids. Next testifier. [LB1073]

TRACEY OLSON: (Exhibit 22) Good afternoon. [LB1073]

SENATOR LATHROP: Welcome. [LB1073]

TRACEY OLSON: I'm Tracey Olson, T-r-a-c-e-y O-l-s-o-n, and I'm with the Wesley Center, Incorporated, through Norfolk, Nebraska. We're licensed as a child-caring agency to provide shelter care for abused and neglected state wards, children of the state of Nebraska. I just have a couple of points, being as everybody... [LB1073]

SENATOR LATHROP: Okay. [LB1073]

TRACEY OLSON: ...has talked about some things, but I know that from January of '08 through May of '08 I had to take \$12,000 out of our money market account to actually cover some of my staff wages, and that was with the Safety and In-Home Service contract. And so we did go forward with the Out-of-Home contract as well, in which we're owed the money that we're currently speaking about. And another point I wanted to bring up is that in the contract with Boys and Girls Home that the state of Nebraska had to approve every subcontractor used by Boys and Girls Home, and so we were an approved subcontractor through the state. [LB1073]

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SENATOR LATHROP: Very good. Thank you for your testimony. [LB1073]

TRACEY OLSON: Thank you. [LB1073]

MARK BENNE: Thank you, Senator Lathrop and fellow members. My name is Mark Benne, B-e-n-n-e. I am the director/administrator of Northeast Nebraska Juvenile Services in Madison, Nebraska. We are a detention facility/staff-secure facility, meaning an unlocked shelter-type site but not a licensed shelter in the state of Nebraska. We've had a contract with the state of Nebraska for several years now prior to the contract with Boys and Girls Home, Visinet, and so on. First became aware of the contract with Boys and Girls Home when we started receiving phone calls from the Boys and Girls Home wanting to place youth at our facility. We were very hesitant at first in doing so because in the past they had no authority to call us and say we need to have this juvenile placed at your facility. So after making phone calls and finding out that the state had contracted with Boys and Girls Home, we became a little less hesitant and started taking kids. We also received service authorizations through the state for the various numbers of juveniles that came to us. I just want to ask the committee today to move our unpaid portion into the paid portion of LB1072 and out of the LB1073. It's a minimal amount. The original amount was \$12,495. After receiving the 34.8 percent payment of \$4,348.31, the remaining balance is still \$8,146.69. We're a private nonprofit organization and I hate to say it, but our budget runs off the number of kids I house. Therefore, just like other entities in this room have stated, that when times are tough you have to go to your bank and borrow money to pay your staff and continue to work with the youth. So I would just ask that you move us into the payment category. [LB1073]

SENATOR LATHROP: Thank you. Did you just say that you got an authorization for each child... [LB1073]

MARK BENNE: We did get authorize... [LB1073]

SENATOR LATHROP: ...and that authorization came from the state of Nebraska? [LB1073]

MARK BENNE: We did get authorizations from the state plus child placement agreements and detainers on some of the youth. But child placement and service authorizations came for the kids that were placed on our staff-secure site and facility. [LB1073]

SENATOR LATHROP: Did those authorizations advise you who was going to pay the bill? [LB1073]

MARK BENNE: I don't have those with me but... [LB1073]

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SENATOR LATHROP: Okay. [LB1073]

MARK BENNE: ...I could definitely go back through those and send a copy to Molly. [LB1073]

SENATOR LATHROP: Very good. Thank you. Next testifier, unless we're through them all. [LB1073]

BRIAN RADER: (Exhibit 23) Chairman Lathrop and fellow members of the Business and Labor Committee, my name is Brian Rader, B-r-i-a-n R-a-d-e-r, and I'm the program director at Grace Children's Home. I'm here on behalf of the executive director of Grace Children's Home, Charles D. Patrie, who was unable to be here due to prior commitments. Thank you in advance for listening and considering written and verbal testimony. My task today is to summarize the reasons why you, as the Business and Labor Committee of the 2012 State Legislature, should move our claim from LB1073 to LB1072 for submission. In my written testimony, I have submitted our agency's story regarding the legalities of service contracts and payment. I submit that to you today for your consideration and action. However, the real story is about the 14 youth that we served during the three different months in which we did not receive payment for those services. How do I summarize in three minutes the almost 1,400 hours per youth per staff member's time and energy that they poured into each youth that has gone unpaid? The time that the staff poured into the youth is still not even the most important thing. It is the youth that we serve, their time, their growth, their development, and their maturation that is the real story. These youth are now able to live at home with their family or with relatives or at least in a more family-like setting. Some of them have even graduated from high school and are now in college. I wish I could explain to you the growth and maturation that these youth and families experience because they are the real story. Nevertheless, we're here today to talk about finances and payment. I don't believe anyone who started down this path we call Family Matters or Nebraska child welfare reform started out with a plan to end up where we're at today. On the contrary, we all planned for better results and we continue to work at improving the system. Through a negotiated settlement with HHS that you've heard about, we did settle. Therefore, having realized payment for services that we provided, we are pursuing other means of securing the remaining balance that we are owed. I will refer you to LR37 report, page iii-7 that talks about their recommendation to pay the claims. I will refer you to the Nebraska 2010 Foster Care Review report which talks about diminished service capacity. It's about pages 32-35 that is attached to my written testimony. One last point, there is an assumption that we receive 100 percent reimbursement in our rates. That's inaccurate. For us to receive 35 percent or even 70 percent of the settlement isn't, you know...I guess is not fair. And so I would just submit my written testimony, and I would be happy to answer any questions. [LB1073]

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SENATOR LATHROP: Very good. Thank you for your testimony, both written and oral, today. [LB1073]

BRIAN RADER: You bet. [LB1073]

SENATOR LATHROP: Anyone else wishing to testify? [LB1073]

LANNIE ROBLEE: Good afternoon. [LB1073]

SENATOR LATHROP: Good afternoon, sir. [LB1073]

LANNIE ROBLEE: My name is Lannie Roblee with Midwest Special Services, and I'm a transportation company. [LB1073]

SENATOR LATHROP: Can you spell your last name for us, sir. [LB1073]

LANNIE ROBLEE: R-o-b-l-e-e. [LB1073]

SENATOR LATHROP: Okay, very good. [LB1073]

LANNIE ROBLEE: I was Frontier County Sheriff for 25 years before that and I started a prisoner transportation business. Right away I started working for Western Health and Human Services then, but it was the Department of Juvenile Justice transporting youth from Scottsbluff, Nebraska, to YRTC in Geneva and Kearney. And I've continued to serve these people since that time with a service agreement starting in the '90s when the Health and Human Services was formed and continuing through today. We do secure transportation. We go to the police departments and sheriffs' offices in the evenings and pick these kids up and take them to detention or wherever they need to go because they can't stay in an adult facility. We didn't have a contract with Boys and Girls Home, but everything that we billed had to go through Boys and Girls Home, but it was always in conjunction with the HHS caseworkers. And we had to work through them, get the paperwork through them to get these kids admitted into the facilities we were taking them. Sometimes we'd wait for hours getting that accomplished if it was late at night, but that's basically my story. We work 24/7 for the department at this time. We need paid for our work. [LB1073]

SENATOR LATHROP: Did you say in your case that your request to provide the services came directly from HHS during the contract period? [LB1073]

LANNIE ROBLEE: It was a joint request. Boys and Girls Home call center would call, but we would have to verify everything that they requested through a caseworker, and we'd have to get paperwork to get them admitted to where we were going with them. [LB1073]

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SENATOR LATHROP: Okay. Thank you for your testimony. I see no other questions. Okay, come on up. [LB1073]

JOHN BAZEMORE: Hello. My name is John Bazemore, it's B-a-z-e-m-o-r-e. I'm the director of the Mark of Honor Youth Lodge. It's an emergency shelter and group home on the Omaha Reservation. We originally were told we had to be subcontractors. We used to be direct contractors with the state and you said we cannot be subcontractors...we had to be subcontractors or not do business with the state. And then we were told with the tribal kids it didn't matter, we didn't need any contract and that the...so for most part of this time we just dealt with the local tribal kids. But we started getting referrals from Boys and Girls Home to get NFC kids and KVC kids. We get overflow when everybody else is full basically. We had...for most of that year we had no kids from Boys and Girls Home so we didn't really have any history of payment. The last two months they gave us a lot of kids and we found out the day that the contract ended that it had ended. I got a call from caseworker saying it's done, we're changing everybody tomorrow to state wards, the state is going to take over. We got no notification. The money that we lost we owe the Omaha Tribe of Nebraska. So they're floating the state ward kids for our letting the state wards into our facility. After that, after I finally got a hold of Boys and Girls Home people, which took a lot of doing, but we're near South Sioux City so I went to their office and sat there. They told me that they had repeated conversations with the state that this was not working. So apparently the state and Boys and Girls Home had many conversations this wasn't working. We found out the day it was done. So that's my story. [LB1073]

SENATOR LATHROP: Very good. Senator Cook. [LB1073]

SENATOR COOK: Thank you, Mr. Chair, and thank you, Mr. Bazemore, for coming. When the state said that you were ineligible to be a contractor and said that you were obliged to be a subcontractor,... [LB1073]

JOHN BAZEMORE: Uh-huh. [LB1073]

SENATOR COOK: ...did they offer a specific reason for that decision and did they send it to you in a letter or how did that go? [LB1073]

JOHN BAZEMORE: Yeah. Well, first they sent out the RFPs for the lead contractors and they said, we got a letter saying when your current contract runs out it will not be renewed. You can put in an RFP to be a lead contractor or...and that was it. [LB1073]

SENATOR COOK: Okay. [LB1073]

JOHN BAZEMORE: And then the lead contractor came up and they said, well, you can

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be a sub, you know, the subcontractor thing came up and (inaudible) with Boys and Girls Home. And they said, you know, basically if we wanted to do services with the state we had to do that. [LB1073]

SENATOR COOK: Okay. [LB1073]

JOHN BAZEMORE: And, yeah, that was...there was no options--either do it or don't, you know. [LB1073]

SENATOR COOK: Okay. So to clarify, you got a letter that said that your contract to be a lead agency would not be renewed. [LB1073]

JOHN BAZEMORE: We were never a lead agency. [LB1073]

SENATOR COOK: You were never a lead agency. [LB1073]

JOHN BAZEMORE: There was an RFP sent out for the lead...that's when Boys and Girls Home picked that up for that service area. [LB1073]

SENATOR COOK: And you were told that you were ineligible in some way to become a lead agency. [LB1073]

JOHN BAZEMORE: We weren't big. We're a little guy. [LB1073]

SENATOR COOK: Okay. [LB1073]

JOHN BAZEMORE: We weren't nowhere. [LB1073]

SENATOR COOK: So you never wanted that anyway. [LB1073]

JOHN BAZEMORE: No, uh-uh, right. [LB1073]

SENATOR COOK: And then you applied to become a subcontractor. [LB1073]

JOHN BAZEMORE: And then they said we didn't...with the tribal wards they said we didn't...the whole system didn't even apply to the tribal wards. [LB1073]

SENATOR COOK: Okay, but you take additional children from the area. [LB1073]

JOHN BAZEMORE: But we take, right. And then we had to be a subcontractor with...and basically we never even became a subcontractor directly with Boys and Girls Home. We just did individual placement agreements with each kid they sent us. So we never...so even the contract issue didn't work out. We just did individual placement

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agreements. But it was with Boys and Girls Home, but it was because the state said we could no longer be a contractor directly with the state for state kids. [LB1073]

SENATOR COOK: Okay. Thank you. [LB1073]

JOHN BAZEMORE: Uh-huh. [LB1073]

SENATOR LATHROP: I think that's it. Thank you for coming down. [LB1073]

JOHN BAZEMORE: Okay. Thank you. [LB1073]

SENATOR LATHROP: Next testifier. [LB1073]

RYAN STANTON: Good afternoon. My name is Ryan Stanton, R-y-a-n S-t-a-n-t-o-n, and I'm the executive director and cofounder of Compass, and we provide family support, visitation, and foster care near and around Kearney, central Nebraska. Most of what I was going to say has already kind of been said, but I just want to reiterate the fact that payment issues were noticed in the first quarter of 2010 and were noted to...by phone and e-mail to local, regional, and then state representatives of the Department of Health and Human Services, so they were well aware of issues that we were having. And I think my predecessors also stated that as well that they let people know ahead of time. I also just kind of wanted to go beyond like the legal responsibility and obligation of the state of Nebraska to pay for the services. I would go a step further and say that there's an ethical and moral responsibility as well. It's unconscionable when a parent fails to provide for their child. In fact, if a parent does not meet the needs of their child, it's tantamount to child abuse. And in Nebraska, we call it child neglect, and it's grounds for a child to be removed from a parent's care. How ironic then that the Department of Health and Human Services is guilty of exactly that. They are the legal custodial parents to children and yet they've failed to provide to ensure that payment for their needs and care were provided. When it came to providing a home, food, and family for these kids, Health and Human Services did not pay for that service and hasn't fully provided for that service. Individuals, agencies, donors, churches paid for the care of Nebraska's wards during that time. Health and Human Services refused and has continued to refuse that the full amount be paid. When questioned about their responsibility, they're quick to pass the buck and play the blame game. Health and Human Services does not want to accept responsibility for state wards, but I'm requesting that you right their wrong and add our claim to LB1072. [LB1073]

SENATOR LATHROP: Thank you very much for your testimony and your thoughts. [LB1073]

SUSAN HENRIE: (Exhibit 24) I'm Susan Henrie. I'm the CEO of South Central Behavioral Services. We're... [LB1073]

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SENATOR LATHROP: I'm sorry, your name again? [LB1073]

SUSAN HENRIE: Susan Henrie, S-u-s-a-n H-e-n-r-i-e. [LB1073]

SENATOR LATHROP: Very good. [LB1073]

SUSAN HENRIE: We provide services out of Hastings, Kearney, Broken Bow, and Holdrege. I just...what's circulating is not what I'm going to say. (Laugh) [LB1073]

SENATOR LATHROP: That's all right. [LB1073]

SUSAN HENRIE: Everything has been said before. I do want to make the point that my claim was initially \$280,000 because I served 80 kids as far west as North Platte and McCook and as far southeast as Superior. It is not unusual for my foster care workers to travel up to two hours reaching a foster parent or a foster child and that's a very expensive business. We've always been committed to the rural provision of services. I was nervous from this contract from the beginning because I was part of an organization that...they're called the Alliance for Family and Children Services that was going to receive the lead contractor along with Boys and Girls Home in the Central Service Area. We backed out of the contract because it was very clear we would be broke by the end of the year. Then we very quickly had to make the decision about contracting with Boys and Girls Home. There really was no choice. By March of 2010, I was contacting the Central Service Area administrator as to payment problems. At that time, she quickly remedied the situation, but this continued for the rest of 2010. I've provided agency-based foster care for well over 20 years, being one of the first providers in the state of Nebraska. We have never placed a kid before, during, or after reform without the prior approval of the Department of Health and Human Services and without them not approving our foster care homes. So at all times they have been the final word on who gets placed in out-of-home care. Thank you for your time. [LB1073]

SENATOR LATHROP: Did you pay all of your people? [LB1073]

SUSAN HENRIE: Yes, I did. [LB1073]

SENATOR LATHROP: All the people that provided the services that you performed to the extent...you as a sub had other subcontractors under you. You've paid them all. [LB1073]

SUSAN HENRIE: I did not have subcontractors. I had foster parents. [LB1073]

SENATOR LATHROP: Okay. [LB1073]

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SUSAN HENRIE: Because the contract specifically said we could not have subcontractors unless they were foster parents. [LB1073]

SENATOR LATHROP: But they've all been paid. [LB1073]

SUSAN HENRIE: They've all been paid, yes. [LB1073]

SENATOR LATHROP: Okay, thank you. Anyone else here to testify in opposition? Seeing none, we will go to Mr. Winterer, who will testify during that time normally reserved for neutral testimony. But I promised him an opportunity to have the last word. [LB1073]

KERRY WINTERER: Very unusual to be a proponent and neutral on the same day. I don't know what you have in mind here. I have a couple of points. I don't want to take a lot of time here because it's getting late and so on, but I have a couple points that's been elicited from the previous testimony. And then if you have questions, I can respond to questions if you'd like to do that. A couple of things: There have been a couple of comments earlier, and I just want to address this a little bit because this is one of these things that comes up and we did get into some conversations about the child welfare reform contracts earlier, which is kind of a little bit far afield from where we are. But I just want to say one thing about that and the statement was made that there were more kids in the system that the lead contractors weren't aware of and all of a sudden the 3,000 grew by 2,000 or whatever. That, as a matter of fact, is not really true. Those numbers were revealed to the contractors at the time that we went through the RFP process. Part of that misunderstanding is that once we entered into the privatization contracts and had these contracts with lead contractors, we began counting the kids in a different fashion. And so there were some other categories of kids that now were separately identified, but they were always the responsibility of the state and so there were really no new kids in the system. I just wanted to I guess set the record straight as far as that goes. There's been some comments about the 70 percent that we paid to Visinet. I want to tell you that the arrangement with Visinet in paying those subcontractors was the same arrangement as we did with Boys and Girls. The reason that they were 70 percent is because there were that many more dollars available that we owed Visinet at that time that we could pay to those subcontractors. The math just worked out such that there were 70 percent...we could pay 70 percent of those outstanding bills whereas in the Boys and Girls, unfortunately, it only worked out to 35 cents. But we did the same arrangement in Visinet as we did with the Boys and Girls contractors. Some question I think in terms of monitoring contractors and lead contractors, I'll tell you that...and that was a question that I think Senator Carlson and Senator Harr had earlier. We are doing much more of that and we meet with the remaining two lead contractors virtually all the time. We are more demanding in terms of financial reports. And we've also created an internal auditor's position which the department never had before. And that auditor's mission is to review all these financial

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statements...his responsibilities are broader than this, but in this case he reviews these financial statements regularly. And it's his job to look to see if there are problems and how we might resolve those problems to the extent that we see anything that may be a financial or economic issue, if you will. We have...our analysis by our legal counsel and our attorneys could not come up with a legal basis for paying the subcontractors, in fact, just the opposite. We could not find...in fact, we think we are foreclosed legally from essentially paying these subcontractors. I realize there could very well be different sides to that argument, and I understand that a lot of the lawyers here came equipped with arguments. I have to tell you, I think many of those arguments we've already looked at, and we still have come to the conclusion that we can't...we don't have a legal basis just simply to use state funds to pay subcontractors for services already delivered for which the state has already paid. And that's basically a quandary here when it comes to the department coming up with a rationale, if you will, to pay these claims. Now to the extent that there has been legal arguments or briefs shared with you, I'd be happy to look at those to the extent that they make some difference or there may be some change as a result of that. But I believe we've looked at the arguments, statutory and case law and such, and have come to the conclusion DHHS, sitting where we are, doesn't have the authority, if you will, to write checks to the subcontractors to make them whole. I guess I'll probably leave it at that. I'd be happy to respond to other questions anyone may have. [LB1073]

SENATOR LATHROP: I do have. The one thing that's new to me today is those folks that came up and said that they actually had DHHS authorize the service. And I guess before today maybe my assumption was that you turned it over to Boys and Girls Home and they were the only people involved. But it sounds like DHHS remained involved in authorizing some of these services. [LB1073]

KERRY WINTERER: That typically would not be the case. And we looked at some of those assertions by the subcontractors who said that you authorized the service. And typically there tended to be some...an issue there in terms of their understanding of what was coming from the lead contractor or whatever. I would say typically we would not be in the mode of authorizing specific services once the lead contractor was in place. Again, to the extent that somebody believes that that was not true, I mean, we're happy to review anything anybody ever cares to submit to us to see what the facts are. [LB1073]

SENATOR LATHROP: Okay. Senator Harr has a question for you. [LB1073]

SENATOR HARR: Just a couple of quick ones. You say DHHS does not have the authority to pay these subcontractors, but we do. So I guess my question, and I'm asking you personally, is do you think we have a moral obligation to pay these individuals? [LB1073]

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KERRY WINTERER: Well, I don't know that I...I'm not sure I'm going to answer the moral argument. I think if I were part of this committee and the Legislature, I'd have to think about what does this mean relative to other contracts the state enters into and what kind of a precedent does this set relative to the state now coming in and making subcontractors whole? And I understand this current situation, but it seems to me that you could very well be setting a precedent to the extent that there is a roads contract in which a contractor doesn't make good and doesn't pay a subcontractor. I'd just be very concerned about any precedent you may be setting as a result of that that may find its way in some other unintended consequences. [LB1073]

SENATOR HARR: Well, except we don't have precedential value here so that's neither here nor there. I guess my question is, and I'm going to...all along you guys were watching, you being the Department of Health and Human Services, you asked for the financials early on. So you knew these subcontractors weren't getting paid. Did you ever approach Boys and Girls and say, hey, you got to pay your people? And if so, what happened and did you? Yeah, I'll start with that. [LB1073]

KERRY WINTERER: Well, we had very frequent meetings. Once we...and I can't attach specific dates to this, but we could if we needed to, ultimately if you step back...ultimately the contract was ended in October. We began having very serious meetings with Boys and Girls in the spring and the summer because we had some inkling that that was happening. We had some very serious meetings with Boys and Girls to talk about specific issues and specific claims. We would continue to get assurances back from Boys and Girls about, yes, these are the contractors that we still need to pay and this is our plan to make payments and so on. And so we worked with them over a fairly significant period of time to get that to happen. Now should we have done something sooner? I don't know. In retrospect, maybe so. But we did spend a lot of time working...I was in meetings, Director Reckling at that time was involved very frequently with Boys and Girls and talking with their CEO and their finance officer to get these claims paid. We would frequently, once we would raise that issue, we would frequently see that claims would get paid, subcontractors would get paid. Once we raised the issue then, we would see the subcontractors would get paid, but, you know, some 30 days later, whatever, we'd still...there would be another problem. So that was kind of the pattern of behavior that we had. [LB1073]

SENATOR HARR: Okay. I thank you and I guess at some point I want to sit down and talk with you just because it seems as though the kids are kind of getting lost in this whole... [LB1073]

KERRY WINTERER: Uh-huh. [LB1073]

SENATOR HARR: ...bureaucratic mess. And we got to come up with a solution. And I don't know...we can make policy, but we can't enforce management and/or oversight.

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And I want to see if there's a way we can work together to solve this problem so we don't lose another year or two reorganizing again and again and again. But it seems as though nobody has been served by what has happened here today. [LB1073]

KERRY WINTERER: I'd be happy to talk with you or anyone else anytime one on one or otherwise relative to ideas about this. [LB1073]

SENATOR HARR: And I appreciate that because I do think you care. It's just it seems as though the kids are caught in the middle right now. [LB1073]

SENATOR LATHROP: Senator Carlson. [LB1073]

SENATOR CARLSON: Thank you, Senator Lathrop. Director Winterer, when the original contract was approved with Boys and Girls Home, were you in on that approval or was that before your time? [LB1073]

KERRY WINTERER: The negotiation and essential negotiation in putting that contract was in place or happened before my time. [LB1073]

SENATOR CARLSON: Okay. I'm glad that it did because now I'm going to ask a tough question. Why in the world would we contract a \$51 million contract or whatever it was with a group that's got \$100,000 net worth? [LB1073]

KERRY WINTERER: I don't...in the first place, I'm not sure that that is the case in terms of \$100,000 net worth. But the gist of the question of course is, I would think, what do we have to assure ourselves that the contractors could perform is essentially I think the question you're asking. I don't know that I have an answer to that. As I said, the die was cast before I got there. I know that there was significant time and effort spent on the part of the department working with the contractors and negotiating these contracts. And as I said, our experience...my understanding with Boys and Girls was that the department had a good experience with Boys and Girls. Doesn't necessarily mean they would be good at providing this kind of a contract. [LB1073]

SENATOR CARLSON: It sounds like when they were actually doing contract work they did good work, but somehow shouldn't have been granted this particular contract. So it's a very, very bad situation and it's not an easy answer to it. [LB1073]

KERRY WINTERER: I agree. [LB1073]

SENATOR LATHROP: Senator Smith. [LB1073]

SENATOR SMITH: Thank you, Senator Lathrop. Following up on Senator Carlson's line of questioning there, what would be done differently going forward if we were to see a

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need for a contract like that again? What would we do differently? [LB1073]

KERRY WINTERER: I think we would go about...we would have a more methodical approach, relative to qualifications for one thing, in saying, okay, if we're going to contract, if we're going to now do another lead contract, if that's the question we're talking about here, if we're going to do that again, or in another area of the state or whatever it is, the first thing we'd do is I think we'd sit down, you'd sit down and you'd say, okay, what does this contractor have to look like in order to successfully be able to perform the contract? And there's all sorts of things in there. There's experience; there's qualifications of people who are leading it; there's the financial wherewithal; there is qualifications of other people who are further down that would manage the process. There's all sorts of things that I think you'd do before you ever really started contracting with somebody or negotiating with something. I think you've got to have some idea about what are the basic qualifications to be successful as a lead contractor. That would be a first place to start, it seems to me. [LB1073]

SENATOR SMITH: Thank you. [LB1073]

SENATOR LATHROP: Okay. I do have one more question that's just kind of bugging me. If we had told KVC, when they came to us and started asking for more money, we're not paying you, you're going to live by the terms of the contract, which is essentially what we said to Boys and Girls Home at some point, if we'd have said that back in October of 2010 or September of 2010, would their subcontractors have been in the same position as the folks we've heard from today? [LB1073]

KERRY WINTERER: I don't know that. I can tell you that based on how we are watching the contractors now, the situation with the two contractors is much different in the sense that they are much more current with their subcontractors and they're paying much more timely than the previous contractors are. [LB1073]

SENATOR LATHROP: But isn't that a function of the fact that we've stepped up and given them more money than they agreed to in the first place? [LB1073]

KERRY WINTERER: I think that could very well be true, yes. [LB1073]

SENATOR LATHROP: And if we use that logic, if you just follow my argument or my question, with the KVC contract and the KVC subcontractors, we're talking about our obligation, we really had no obligation if you follow this strictly as contract law. We could have just as easily said to KVC, we're not giving you any more money, pay everybody, and everybody who didn't get paid would be in the same position as all these folks. What we did is we said, for whatever reason, we're going to keep paying you more money than the contract requires. And so when we talk about whether we have a legal duty here or we talk about precedence, in some ways we've already done what these

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people are asking us to do in the case of KVC's subs because we gave them more money. And they just did what you have expressed today you don't think we have a legal ability to do. And the difference is if we'd have just given more money to Boys and Girls Home, they could have done what KVC is doing now. I'm just kind of...I see an inconsistency there and sort of a policy... [LB1073]

KERRY WINTERER: At least in theory. And relative to the additional money to KVC, I mean those were part of other contract negotiations. We were not paying for services already delivered. We were paying prospectively relative to those services. So I think the legal basis is different in terms of the legality. [LB1073]

SENATOR LATHROP: Except that they may have been able to stay current on their bills just because they had more resources than Boys and Girls Home did. In other words, they reached into a bigger, thicker line of credit. [LB1073]

KERRY WINTERER: That's right. In the case of KVC, we know that they invested a significant amount of their own funds in this reform that probably Boys and Girls didn't have the wherewithal to do. That's probably true. [LB1073]

SENATOR LATHROP: Okay. Senator Wallman has a question for you. [LB1073]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thank you, again. Is KVC current on their payments? [LB1073]

KERRY WINTERER: We do periodic checks in terms of their...how they're doing with subcontractors, and indications are that they're doing a good job with paying their subcontractors. [LB1073]

SENATOR WALLMAN: Thank you. [LB1073]

SENATOR LATHROP: Senator Carlson has one more, the last question apparently. [LB1073]

SENATOR CARLSON: Thank you, Senator Lathrop. Because in the testimony today, KVC was mentioned as not being prompt on payments, and I believe it's true that certainly they had more assets to turn to, to be able to pay some of these and Boys and Girls Home didn't. But that should have been apparent right from the start that this was not a group that had the ability and had the resources to go through some rough times. And apparently that wasn't done. So I think that's a difficult problem. Thank you. [LB1073]

SENATOR LATHROP: Thank you. Thank you for coming down... [LB1073]

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KERRY WINTERER: Sure. [LB1073]

SENATOR LATHROP: ...and sticking around today and giving us the perspective of the administration or at least Department of Health and Human Services. [LB1073]

KERRY WINTERER: Yes. If you need anything else from me, let me know. [LB1073]

SENATOR LATHROP: (Exhibits 25-31) I will. Before we close out the hearing, I want to make a record of letters that we have received and will be received in support of payment of the claims: February 9, 2012, letter from Pamela Allen, executive director of Nebraska Foster and Adoptive Parent Association; a letter dated February 3 from Apex Therapy Services; a letter from Family Resource Center in support of payment; Indiana Development Training Center of Lafayette provided documents in support of payment; Panhandle Mental Health Center, February 7, 2012, letter in support of payment; Father Flanagan's Boys' Home sent a letter dated February 10, 2012; Donald Tuggle from North Platte sent a letter and documents in support and that's dated February 12, 2012. Those will all be received in support of payment of the claims or in opposition to the particular bill. Let me suggest to those who have come so far and been so patient through the hearing we will look at the legal arguments, we will look at the equities, and we will do our very best to do the right thing as policymakers and stewards of the state's resources. And with that, we'll close our hearing on the claims bills. Thank you for your help. (See also Exhibit 32.) [LB1073]