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Business and Labor Committee  
March 04, 2013

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[LB436 LB476 LB570 LB652]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 4, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB436, LB652, LB476, and LB570. Senators present: Steve Lathrop, Chairperson; Ernie Chambers; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: Burke Harr, Vice Chairperson; and Brad Ashford.

SENATOR LATHROP: Welcome to the Business and Labor Committee. My name is Steve Lathrop. I'm the state senator from District 12 and the Chair of the Business and Labor Committee. We will be taking up four different bills in the order that you saw outside on the post, which means we'll start with LB436. If you've not testified here before, and I see a number of people who I don't recognize from prior hearings, we operate off the light system. And what that light systems means is there is three lights out there in front of Senator Hansen. You'll begin with a green light; you'll have that green light for two minutes. That will be followed by a yellow light for one minute. And then it will turn red. When it turns...when the light turns red, we'll ask you to stop talking. Okay. So knowing that in advance, I guess what we're saying is, try to confine your remarks to three minutes. Now, you may very well be asked questions by members of the committee. That's not counted, of course, against your time. They generally follow the red light however. The order that we'll take testifiers in is the same as we do all throughout the Capitol and that is after the senator introduces the bill, then we will take testimony from those people who are here to testify in support, in no particular order. So if you're a supporter of LB436, you'll come up, just kind of...until we exhaust that group of supporters. Then we'll take opponents and those that are here in the neutral capacity. A neutral capacity is not an opportunity to talk a second time or an opportunity to oppose or support a bill. It's really someone who comes in and says, you know, I'm not really for or against but here is some things you ought to be thinking about, and maybe some ways to change it or make the bill more effective or to address certain concerns that the bill might present for you or your group. And with that we will start with...we do have, just so that you know, and if you've never been here before, again, senators will from time to time be absent. You can see some empty chairs. For the most part, we are also obliged to leave here and go introduce bills into other committees. So you may see the room get pretty thin at times. These are recorded and the senators have an opportunity to read your comments if you leave written testimony or to review the transcript. And so don't think somebody is being rude by getting up and leaving because, for example, Senator Wallman may have to get up and introduce a bill in Education or something like that. So that explains most of the absences. Otherwise, there are, generally, conflicts that we have from time to time. And with that we'll turn to Senator Hansen and let him open up on LB436.

SENATOR HANSEN: (Exhibit 1) Good afternoon, Senator Lathrop and members of the Business and Labor Committee. My name is Tom Hansen, T-o-m H-a-n-s-e-n. I

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represent District 42. LB436 is intended to clarify that franchisees are not employees, but independent contractors based on the Federal Trade Commission's definition of a franchise relationship. The three-part or commonly referred to...the "ABC" test for classifying workers that Nebraska uses--and I did pass that out to the members, if we have enough copies there--that it simply does not account for the relationship that is at the heart of franchising. This disconnect between the test and the day-to-day practices of franchise system creates an uncertainty among the franchising community. LB436 creates a clear exemption for franchisees. We have a good list of testifiers to follow me. And if you have any questions of me that I could answer, that would be fine. If not, I would just as soon you ask those who are testifying behind me. [LB436]

SENATOR LATHROP: Fair enough. I see no questions. Thanks, Senator Hansen. Those who are in favor of the bill, you can come forward one at a time. I neglected to mention you should put your phones on a vibrating mode or off. And also, if you are going to testify, we need to have you fill out a sheet. That helps us get a good record. And when you begin your testimony, please begin by giving us your name and spelling your name for us as well. Is that a cell phone? [LB436]

SENATOR MCGILL: He was turning his off. Norm was turning his off. [LB436]

SENATOR LATHROP: Senator Wallman, don't make me throw you out of here. (Laughter) No, we don't do that. [LB436]

SENATOR HANSEN: Jim's fault. [LB436]

JIM OTTO: (Laugh) Yeah. [LB436]

SENATOR LATHROP: All right, Jim, welcome to the Business and Labor Committee. [LB436]

JIM OTTO: Thank you, Senator. Senator Lathrop, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation and I'm here on behalf of the Nebraska Retail Federation to testify in support of LB436. We want to thank Senator Hansen for introducing it. It clarifies something, as he has said, that does or has the potential to cause confusion. I also have behind me a franchisee that will testify behind me, Steve Chatelain, who is a franchisee in Senator Hansen's district and also Mr. Dean Heyl of the International Franchise Association. They are an affiliate member of the Nebraska Retail Federation. So I just wanted to express our support and I'm not sure if I'm the right person to ask questions either. But they're behind me, someone will be. [LB436]

SENATOR LATHROP: Eventually we will get to somebody who is... [LB436]

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JIM OTTO: ...that knows something. [LB436]

SENATOR LATHROP: All right, all right, thanks, Jim. Next proponent. [LB436]

STEVE CHATELAIN: Good afternoon, Senators. My name is Steve Chatelain. I'm a resident of Kearney, Nebraska. And my wife and I have a business called Home Instead Senior Care in North Platte. I thank you for the... [LB436]

SENATOR LATHROP: Could you spell your last name for us, Steve? [LB436]

STEVE CHATELAIN: You bet, C-h-a-t-e-l-a-i-n. Thank you for the opportunity to testify on behalf of LB436 today. As I said, my wife, Mary Jo, and I own and operate a Home Instead Senior Care franchise located in North Platte; it serves a number of counties surrounding North Platte. And we've had the business for three and a half years. We employ about 50 employees, the majority of whom provide in-home care that enable senior citizens to safely and comfortably stay in their homes longer than they might otherwise. In this work my wife and I consider ourselves independent business operators. We've never considered ourselves employees of the franchise or organization. To that point, I would like to highlight just a few key activities that we engage in regularly that I believe that are characteristic of independent business operators; certainly not characteristic of an employee situation. We are independently incorporated. We possess our own employer identification number and pay taxes as a unique business entity. We determine requirements for hiring of staff and independently recruit, select, train, and deploy our staff. We determine on our own the marketing strategies to pursue in order to reach new clients. We make decisions on our own about the deployment of capital to sustain and grow our business. And finally, we knowingly and willingly assume the financial risks inherent in operating an independent business, while also, hopefully, anticipating the opportunity to prosper in our business and to create a lasting asset to benefit our family. That's the conclusion of my testimony and would welcome any questions. Thank you. [LB436]

SENATOR LATHROP: Okay. Senator Wallman. [LB436]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for coming, thanks for what you do. [LB436]

STEVE CHATELAIN: Sure. [LB436]

SENATOR WALLMAN: Did you start this as a nonprofit...is this a nonprofit organization? [LB436]

STEVE CHATELAIN: No, no, it's a business. [LB436]

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SENATOR WALLMAN: For profit. Thank you. [LB436]

STEVE CHATELAIN: Yes, um-hum, occasionally. [LB436]

SENATOR LATHROP: Senator Harr. [LB436]

STEVE CHATELAIN: Sorry. [LB436]

SENATOR LATHROP: No, Senator Harr has a question for you. [LB436]

SENATOR HARR: Thank you. And it's fairly simple. So you differentiate how you're an independent contractor. Obviously, there is a need for this bill because there is a feeling as though there are areas where you are similar to an employee. Do you know what those areas are? [LB436]

STEVE CHATELAIN: As I said, we have never considered ourselves an employee of the franchise. [LB436]

SENATOR HARR: And I'm not asking...maybe I'm not being clear enough. I understand you don't consider yourself an employee, but there is a reason we brought this bill, right? This wasn't brought just for fun. Is it because there is...well, the case law has developed 10 factors for testing workers' compensation and IRS uses a 20-factor test. Are you familiar with those? [LB436]

STEVE CHATELAIN: I am somewhat familiar with the independent contractor status. [LB436]

SENATOR HARR: Okay. What I'm trying to do is develop a record. [LB436]

STEVE CHATELAIN: Um-hum. [LB436]

SENATOR HARR: And so what I'm trying to show is where you are treated similar to an employee and what are those situations where you may be considered an employee. Otherwise I don't see a need for the statute. [LB436]

STEVE CHATELAIN: I can't think of areas where we would be treated as an employee of the franchisor. [LB436]

SENATOR HARR: Okay. All right, thank you. [LB436]

SENATOR LATHROP: I'm going to try a different approach to perhaps the same question. Has anybody tried to treat your relationship with the franchisor...is that an Omaha group, the franchisor? [LB436]

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STEVE CHATELAIN: Yes, it is. [LB436]

SENATOR LATHROP: Home Instead? [LB436]

STEVE CHATELAIN: Um-hum. [LB436]

SENATOR LATHROP: Okay. I think I know those people or have met them. So you buy the right to operate Home Instead in the geographical area... [LB436]

STEVE CHATELAIN: That's correct. [LB436]

SENATOR LATHROP: ...which happens to be out in Senator Hansen's district. [LB436]

STEVE CHATELAIN: That's correct. [LB436]

SENATOR LATHROP: You operate independent, they don't tell you how to do it or what to do or anything like that, that is a typical characteristic of an employee/employer relationship? [LB436]

STEVE CHATELAIN: I worked as a...in an employee/corporate relationship for 30 years prior to our ownership of this, so I have a pretty good understanding of that type of a relationship. And, no, I think we operate with a vast significant amount of independence in the business that we have. [LB436]

SENATOR LATHROP: They have some broad overarching sort of... [LB436]

STEVE CHATELAIN: Standards. [LB436]

SENATOR LATHROP: ...you'll maintain these sort of standards... [LB436]

STEVE CHATELAIN: Some standards that... [LB436]

SENATOR LATHROP: ...but beyond that you're free to operate your business as you please? [LB436]

STEVE CHATELAIN: And every ten years you have to reapply for your franchise. And so if you've operated generally in line with the standards, then you'll have an opportunity to retain your franchise. [LB436]

SENATOR LATHROP: Has anybody suggested to you, sir, that you are...your relationship to the franchisor, Home Instead, is a relationship that's more properly characterized as an employment relationship? [LB436]

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STEVE CHATELAIN: Never. It's never been a consideration at all. [LB436]

SENATOR LATHROP: Okay. And I think I share Senator Harr's concern. It's puzzling if it hasn't been a problem what the bill is intended to correct, but maybe the next testifier will have some insight into that. So, thank you for coming all the way from North Platte. [LB436]

STEVE CHATELAIN: Sure. [LB436]

SENATOR LATHROP: And good luck with your business. [LB436]

STEVE CHATELAIN: Thank you. [LB436]

SENATOR LATHROP: Welcome. [LB436]

DEAN HEYL: Thank you. My name is Dean Heyl, that's D-e-a-n H-e-y-l. And I'm the director of government relations for the International Franchise Association. And the reason I'm here today is to support LB436. And I think maybe it would be helpful if I started this kind of an overview and address possibly Senator Harr's questions that...the control aspect and why this is an issue for us. In Nebraska, like 27 other states, you use what is commonly referred to as the "ABC" test. It is a three-part test to determine the worker classification. Now in some states there is an employee presumption and in some states there is not. Nebraska does have this "ABC" test and the first portion of it is probably where most of our franchisees would fall into that realm of being looked at possibly as an employee. And that deals with the control aspect. And the control aspect comes into when...if I'm a franchisee, and when I sign my agreement with my franchisor, I agree to a certain amount of control over the brand integrity and how I operate and when I open up my business and what type of products I can sell. So under a strict construction you would say, well, I would fail that prong of section A because I have control over me. I'm not independent. I don't own...let's say I have a Dunkin' Donuts, for example. I can't sell any type of product I want. I have that control aspect. The second prong of the "ABC" test, the B part, is, is the work performed differently than like my...the business that I have the contractual agreement with? Take, for example, a McDonald's, you have corporate-owned McDonald's and you have...I can buy a McDonald's. So we're basically in the same business. They can have a corporate store; I have my own. So we would fail under that section. And then the third one is the independence aspect. And when we mean independently, I can't say "Dean's Dunkin' Donuts" without having some contractual relationship with corporate Dunkin' Donuts based out of Massachusetts. So that's why we're here, because under a strict construction we would fail, technically, under all those three tests. And that's why we are looking at the 26 other states that have the "ABC" test. The other 24 have, as Senator Harr mentioned, they use the IRS 20-factor test or there is some other...California uses

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the totality of the circumstances. And last year in Georgia we passed, both the house and senate unanimously and was signed by the governor, the language that you see before you where the exemption is as defined by the FDC regs. And that's the exemption. I know there's been some concerns about the control aspect. And I'm happy to answer any questions that the Chair or any other senators have, so. [LB436]

SENATOR LATHROP: Okay. I don't see any questions, so I'm going to take a run at you with a few. And not to belabor this, but have you run into problems in Nebraska with someone trying to treat a franchisee as an employee and then we get into misclassification and everything that flows from that? [LB436]

DEAN HEYL: Fortunately not, we have not had that problem in Nebraska. [LB436]

SENATOR LATHROP: Okay. Has it been a problem in other states? [LB436]

DEAN HEYL: It has been a problem. [LB436]

SENATOR LATHROP: In what respect? [LB436]

DEAN HEYL: In the respect of, take for example, some of the service providers that we have in Massachusetts, some of the janitorial services. There has been litigation and what's interesting about Massachusetts, they use an "ABC" test very similar to what we have here in Nebraska. We had litigation against one of our companies, almost the identical fact pattern, and in California which uses the totality of the circumstances, the individual was found to be an independent contractor. In Massachusetts that uses that strict "ABC" test, they were found to be an employee. And to paraphrase the decision that was rendered by the judge, the judge said, I am restricted by what the law says, and I have this "ABC" test that I'm going to run these individuals through and running these individuals through the "ABC" test I have no choice but determine them to be an employee. And so that's why when we face these circumstances where an individual, if a question comes up and it's using the "ABC" test, we could potentially fail the franchisees, even though they do...as the person who spoke before me, Mr. Chatelain, said, I operate as an independent contractor, I have an EIN, but under that strict construction of an "ABC" test, they would be found to be an employee. [LB436]

SENATOR LATHROP: When I looked at 16 C.F.R. part 436, that just says what needs to be in an agreement between a franchisor and a franchisee,... [LB436]

DEAN HEYL: That's correct. [LB436]

SENATOR LATHROP: ...things about disclosure and some of those things. It doesn't define an employer/employee relationship. [LB436]

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DEAN HEYL: No. [LB436]

SENATOR LATHROP: Doesn't even define the franchisee/franchisor. It just says, if you are selling a franchise to somebody, this must be in the agreement. So I'm not sure what qualifying or being in compliance with that would suggest other than you have some agreement that checks all the boxes in 16 C.F.R. part 436. [LB436]

DEAN HEYL: Yes, Senator. And the reason that we use that reference is when you stated all the things that the individuals...when they sit down and they sign, there's a financial disclosure document... [LB436]

SENATOR LATHROP: Right. [LB436]

DEAN HEYL: ...and then in addition to that, there is a franchise agreement. And that is where the parties...there's two documents that they sign. In the franchise agreement, really lays out the rights of the individuals and the responsibility. So that's why we use that reference point with the FDC. [LB436]

SENATOR LATHROP: Okay. Here's my concern, I'll just share with you. This committee dealt with misclassification of employees in the...it was primarily in the trades, I believe, and it was my bill, I should remember that, but it was in the trades and then I think in the trucking industry. And what was happening there is people were just saying to a roofer, for example, that would otherwise be an employee, an employer tells all of his employees, you're all independent contractors, and then he treats them exactly like an employee. And what I don't want to do with this bill is to give those very same people an opportunity to have a franchise agreement with all the guys that pound nails on the roof and now we're calling all of the people that used to be independent contractors franchisees and they are now...it's now the next way to get around an employer/employee relationship that carries the burdens of work comp insurance, withholding, and all those other concerns. [LB436]

DEAN HEYL: And if I may, Senator? [LB436]

SENATOR LATHROP: You may briefly respond to that. [LB436]

DEAN HEYL: Sure. And we share those concerns, you know. When...prior to my work with the International Franchise Association, I did work with the Direct Selling Association, representing folks like Avon and Mary Kay; and just the fact that somebody signs an agreement that says, I am an independent contractor, does not make them an independent contractor, obviously. And what we would be happy to do, and we understand each state is different, and we're not taking a cookie-cutter approach, we discussed my...we, actually, have an independent contractor working group within the franchise association and we would be happy to discuss, maybe, some of those ways

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that we could address those concerns. One of them, this quickly, is that we thought, maybe, instead of saying "deemed to be" or "shall not be deemed to be an employee," maybe you could say, "shall not be presumed to be an employee," or something along those lines. There are multiple alternatives, and I think, maybe, at this stage if we could just work with some of the folks that have the concerns of drafting something that would address your concern of just because you sign this agreement, you're instantly an independent contractor. [LB436]

SENATOR LATHROP: Yeah, I can tell you, I don't see anybody bothering this guy from Home Instead. [LB436]

DEAN HEYL: Um-hum. [LB436]

SENATOR LATHROP: But what we don't want to do is set up a scheme that just turns the misclassification from independent contractor to franchisee. [LB436]

DEAN HEYL: Sure. [LB436]

SENATOR LATHROP: But with that, we'll take the...I think that's all the questions we have, so thank you for coming here today and testifying. [LB436]

DEAN HEYL: Thank you. [LB436]

SENATOR LATHROP: Anyone else here in support? [LB436]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Ron Sedlacek, that's R-o-n S-e-d-l-a-c-e-k, and I'm here on behalf of the Nebraska Chamber of Commerce. We've had a couple of our franchise members who talked about this legislation previous to its introduction over the interim. And our concern was the misclassification issue. In the first draft of the bill, it was a general bill dealing with a franchisor shall not...or franchisee shall not be considered an employee. My suggestion is once you put it into the Nebraska Franchise Practices Act where it is regulated separately, at least that gives some more of a basis so there cannot be that type of argument dealing with making everyone a franchise, because we have a concern as well. And we'd be happy to work with the committee, as well as other interested parties, to make sure the language is correct. What we found is that there is significant control in some ways in a franchise or a franchisee relationship. The franchisor gives the right to the commercial logo, the trademark, the service mark, whatever it might be. There is, of course, payment and regulation provided by the Department of Banking. But what the franchisee is expected to do is to provide, you know, perhaps a site that has a particular kind of appearance. Maybe the hours of operation might be included; or there may be production techniques that...to meet standards; or accounting practices should be the same among all the franchisees; or

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there is participation in promotional campaigns; or there is training programs; there is operations manuals. Those are the types of things where it does show control, no question about it. But truly, it is truly an independent contractor operation. So with that we would be happy to work with the committee. [LB436]

SENATOR LATHROP: Very good. I see no questions. Thanks for coming down and for your thoughts, Ron. Anyone else here in support of LB436? Is there anyone here to testify in opposition? Seeing none, anyone here in a neutral capacity? Nope. And Senator Hansen to close. [LB436]

SENATOR HANSEN: I'll waive closing. [LB436]

SENATOR LATHROP: Okay. That will close our hearing on...do we have any submissions on this one? Okay, that will close our hearing on LB436. We thank the people that arrived today to testify. And that will move us to LB652. Senator Lautenbaugh I'm told is introducing bills in a different committee, and we'll have his legislative assistant introduce LB652, Mr. Smoyer. [LB436]

BRENT SMOYER: Thank you, Chairman Lathrop and members of the committee. Senator Lautenbaugh does send his regards. Unfortunately, we had kind of a packed dance ticket today in committees, so you get second string here. (Laugh) Basically, LB652, on its simplest face, would allow for corrections officers to take their complaints to the Civil Service Commission. Essentially, the reasoning behind it is right now, current...other FOPs, FOP divisions, such as sheriff's deputies, do get to take their complaints directly to the Civil Service Commission. And of course, nowadays it's getting very expensive to do what they are currently doing, which is going to the district court to fight these battles with their respective counties or cities. This would allow them, of course, to go to the Civil Service Commission, which saves cost on both sides, for the county and for the FOP. And of course, historically, corrections officers used to take complaints to the Civil Service Commission; and it's only recently that current statute has been construed to allow COs to go before...or to not allow COs to go before the Civil Service Commission with their complaints. This bill would, of course, serve as a clarification that they are, in fact, under the jurisdiction of the Civil Service Commission and should be allowed to move forward. Somebody who can help understand this issue and go more in depth would be John Corrigan, who is here to present to the committee. He can, of course, be able to outline the more detailed aspects of the bill. But that is the basics and the opening. And I forgot to state, for the record, my name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, appearing on behalf of Senator Lautenbaugh. So I do apologize I forgot that for the record. [LB652]

SENATOR LATHROP: That's okay. Thank you. I see no questions. We'll maybe quiz Mr. Corrigan when he gets done. [LB652]

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BRENT SMOYER: Excellent. That's probably a good call, sir. [LB652]

SENATOR LATHROP: All right, thanks. [LB652]

BRENT SMOYER: Thank you. [LB652]

JOHN CORRIGAN: Good afternoon, Mr. Chairman and members of the Business and Labor Committee. My name John Corrigan, C-o-r-r-i-g-a-n, and I am an attorney appearing on behalf of the Fraternal Order of Police, Lodge Number 8. And this bill, LB652, we're very thankful that Senator Lautenbaugh was willing to bring this legislation because it is a small piece of the pie in terms of number of employees. But we have a situation in Douglas County where this Legislature has created a Civil Service Commission for counties in excess of 300,000, and that commission has certain administrative authority under the law. We also have a situation where the other county employees, namely, the sheriff deputies, have a Merit Commission, very similar body in that the Merit Commission is not the Civil Service Commission but it is an administrative body authorized to, essentially, manage employment...the management...manage the employment relationship with regard to testing and hiring and promotion and evaluation, but also to act as a third-party, neutral arbiter of disputes. So if there is a dispute over whether an employee should be terminated, whether an employee should be demoted or suspended, the department...or the Civil Service Commission in the Department of Corrections is authorized by statute, currently, to hear that dispute. And the Merit Commission also, if it was in the situation where, in a different statute, a deputy was going to be disciplined, that the deputy could appeal that disciplinary decision of the sheriff to the Merit Commission. And where the two paths diverge is in the Merit Commission, in LB...in 2002, the Legislature adopted, at that time, LB22, which was an effort to codify authority in the Merit Commission, allowing it to not only hear disputes concerning disciplinary matters but contract disputes. If there was a violation or alleged violation of a contract, if there was a dispute about the application of a personnel rule or an administrative policy, the Merit Commission can hear those. And what you have before you in LB652 is simply an extension of that. And I think you'll hear...I'll give you an example of what we're dealing with now because what you have is a situation where, okay, the Merit...we have a grievance procedure. And in that contract--existing, and has for several years--there is language that says you can grieve a dispute to the Civil Service Commission. Well, the statute has been interpreted by a couple of district court judges to say, well, they only have statutory authority to hear disputes regarding discipline matters. So what we do in those cases where it's not a disciplinary matter is we have to ask the commission...file a contract claim under a different set of statutes with the county board. The county board can sit on that for as long as they want. The most recent one I filed was on January 23, 2012. They denied that a week ago Tuesday, so now we get to go to court over that, all over something that's probably worth about \$300. [LB652]

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SENATOR LATHROP: John, thank you for your testimony. Let's see if we have questions from any of the members. I do have two or maybe three. The bill appears to be limited in its scope to a particular group. Is this the...it says, corrections officers employed by a corrections facility in a city of the metropolitan class. Are we dealing with one group of guys? [LB652]

JOHN CORRIGAN: That's it. [LB652]

SENATOR LATHROP: And who are they? [LB652]

JOHN CORRIGAN: And it is Douglas County. It's the Douglas County Jail. They're employees of the Douglas County Department of Corrections. So there's about 300-plus employees, and, you know, several of them are here today and will testify. They hold positions in the jail--24-hour, 7-day-a-week facility. Outside of the state prison, that's the largest facility housing inmates in the state of Nebraska. [LB652]

SENATOR LATHROP: And, John, for those...are...is the bill directed at them because they're the only people who don't have access to this commission now? [LB652]

JOHN CORRIGAN: I think that... [LB652]

SENATOR LATHROP: Or are other law enforcement people in the same spot as the Douglas County Corrections guys? [LB652]

JOHN CORRIGAN: They're...the issue is that you have sheriff's deputies who are covered by the Merit Commission, which is a separate and distinct administrative body. The Civil Service Commission was created by the Legislature for this...counties above 300,000, and the language is a little bit different in terms of what the commission can do. For the Merit Commission it specifically says...and this basically is adopting current language from Nebraska Revised Statute 23-1734 into Nebraska Revised Statute 23-2501, the former being the Civil Service Commission statutes and the latter being the sheriff's deputy statutes. [LB652]

SENATOR LATHROP: So we're treating similarly situated people similarly if this passes. [LB652]

JOHN CORRIGAN: That's our hope. [LB652]

SENATOR LATHROP: John, what are the type of grievances? Can you give the committee an example of some dispute, that it now requires a lawsuit, where you'd like to take it before this commission? [LB652]

JOHN CORRIGAN: Well, the classic dispute...seniority provision says, if there is an

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available overtime shift to work, we're going to volunteer to work that overtime based on inverted seniority, and people can bid on those things based on their seniority. And if there's somebody who should have gotten the shift and asked to work that shift and didn't for some reason, the contract was violated. Maybe it was, maybe it wasn't, but those facts will then be brought to the director through the grievance procedure. And what he says goes, unless we want to go litigate that. Now that might be worth eight hours of work for somebody or 12 hours if it was an overtime deal. And for \$100 we have to have six...or, at least, in this most recent example, we wait around for over 13 months while they decide whether they're going to accept or deny the claim. And it's an inefficient proceeding. And we used to have...the commission did not...I've been working in front of them for 16 years. Up until about 2009 they heard all of these types of grievances, and then it dawned on someone that, oh, we don't have jurisdiction to do it. And we're simply trying to rectify that. [LB652]

SENATOR LATHROP: Okay. What are the...what's the time line for a grievance procedure if we enact this bill versus making a claim and going through the lawsuit process, if you can tell us briefly? [LB652]

JOHN CORRIGAN: Well, yeah. Under the procedure, the statute, the proposed bill says, you've still got to comply with any contractual provisions. And so if there is a ten-day grievance filing, you've got to file your grievance within ten days. That's going to go to an intermediary step and, ultimately, to the next step, the final step being the director. And then you usually have ten days from that decision to go to the Civil Service Commission. And under the statute they should have a hearing within 60 days, although it can be moved, depending on, you know, agreement of the parties or by virtue of having a special meeting. But you're going to...from the time that the grievance is denied by the director, in most cases, you would get a hearing before the Civil Service Commission within 90 days and it would be resolved. Now that commission's decision is going to get a lot of...have a lot of weight. Win, lose, or draw, it's not likely to be reversed based on the petition-in-error statutes. But that's certainly much more efficient than the current system. [LB652]

SENATOR LATHROP: And if...under the current process, do you have the make a claim with the county board, wait for that to be resolved, much like a tort claim? [LB652]

JOHN CORRIGAN: Well, it's more complicated than a tort claim in the sense that it's a shorter timespan that you'd make the claim. And then there is absolutely no language in the law that says, if they don't answer you within six months, you can walk off to court. You have to wait for them to deny the claim or the district court cannot exercise jurisdiction. And there's nothing that says that they have to deny the claim. [LB652]

SENATOR LATHROP: Then if you go to the district court, which becomes the final arbiter of these under the current process, is the winner afforded attorney fees? Or are

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you not only burning the clock but also... [LB652]

JOHN CORRIGAN: In all likelihood, no. It just depends on what the nature of the dispute is. If the nature of the dispute was a contractual dispute where money was at stake, there could be attorney's fees under the Wage Payment and Collections Act that could be ordered. But that's only to the, you know...a winning party, under the Wage Payment and Collections Act, if it's a dispute about who should have gotten what assignment. If that's, you know, created by a contractual right, there isn't going to be any fees one way or the other, win or lose. [LB652]

SENATOR LATHROP: So the guy that doesn't get the shift has to sue, hire a lawyer, pay the filing fees after they wait for the county to act, and then has to pay the cost of that out of their own pocket. [LB652]

JOHN CORRIGAN: Cost of the litigation and be patient while the court hears other matters. [LB652]

SENATOR LATHROP: Okay, I think I've got a sense of the bill and what you're trying to work on. Senator Harr. [LB652]

SENATOR HARR: Thank you, Chairman Lathrop. I just have a quick question. Is...so you go in front of the service commission and you appeal. What is the standard of review for the district court after you go in front of them? [LB652]

JOHN CORRIGAN: Well, in those cases where the Civil Service Commission can exercise jurisdiction and will exercise jurisdiction, like a termination case,... [LB652]

SENATOR HARR: Um-hum. [LB652]

JOHN CORRIGAN: ...they hear the case and they've got a very efficient system. And, I assume, you'll hear from some of them today that they decide those cases. It's not...the rules of evidence aren't necessarily applying. But usually they take no more, usually, than a day, sometimes more. But they vote. They hear the case. They have independent counsel. They're not advised by the county attorney, and that's a very good thing because it has...it is a third-party, neutral body. But once they make a decision, if you don't like that, you can appeal to the district court under the petition-in-error statutes under a standard of whether that decision was arbitrary, capricious, or unlawful. And as long as that decision was supported by some competent evidence, it's going to be upheld. The only time when they're not upheld is usually when there's some constitutional problem that is at issue. So... [LB652]

SENATOR HARR: So the service commission is a trier of fact. [LB652]

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JOHN CORRIGAN: They are, and the Civil Service Commission...it goes both ways. I mean, if the employee is reinstated, it's hard for the employer to win on those cases as well. And so, technically speaking, there's just not a lot of appeals out of the commission. [LB652]

SENATOR HARR: Okay, thank you. [LB652]

JOHN CORRIGAN: Okay. [LB652]

SENATOR LATHROP: So if the employees are spending more money, isn't the county spending more money on this process? [LB652]

JOHN CORRIGAN: Well, they're paying people salaries to handle these cases, so I guess maybe they're not. And I assume that you'll hear from the county representatives that we don't want to do it because we'll have this flood of grievances. And I should tell you that... [LB652]

SENATOR LATHROP: Oh, I get it. So the burden of the process sort of limits the nature of the claims that ever get filed. [LB652]

JOHN CORRIGAN: They don't have to have a lot of hearings if the only thing they can handle is disputes over a grievance...discipline. But if they have to handle or review disputes over nondisciplinary matters, they might incur some more administrative time, although I can't...the only extra cost might be paying their own lawyer, if they want to, to have him attend those hearings. He doesn't attend all of them. He attends ones that he's asked to, in my observation. [LB652]

SENATOR LATHROP: Okay. [LB652]

JOHN CORRIGAN: But I would like to just mention I was authorized to let the committee know that the African American Corrections Officers Association is another association within the Department of Corrections, representing African-American officers at every rank throughout the Department of Corrections, and they are in support of LB652. And I was authorized to make that statement through the union by Kenny Matthews (phonetic), who is the president of that organization. And from the employees' standpoint, we think that this is...it's sort of rectifying maybe something that didn't...that should have happened in 2002. Everybody plodded along from 2002 on until about 2009, thinking, hey, that's the deal for us too. And the county now does not accept that. The district courts have said, no, they don't have jurisdiction to hear those claims. [LB652]

SENATOR LATHROP: So we're undoing a court decision. [LB652]

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JOHN CORRIGAN: You would be undoing a court decision, simply, granting to the commission the authority that has not been granted, at least in the eyes of a couple of district court judges. [LB652]

SENATOR LATHROP: Okay, very good. Thanks, John. [LB652]

JOHN CORRIGAN: Thank you. [LB652]

SENATOR CHAMBERS: Excuse me. [LB652]

JOHN CORRIGAN: Yes, sir. [LB652]

SENATOR CHAMBERS: I wanted to wait until the discussion was over. What's the worst that has befallen one of these employees because the system is as it is now? Has a person lost a job and not been able to get a hearing on whether or not he or she would be reinstated? Was a person denied a promotion? Or, something of substance, what is the worst thing that you're aware of? [LB652]

JOHN CORRIGAN: Well, I'll give you some...a couple of the instances where...we think are bad. The first instance... [LB652]

SENATOR CHAMBERS: All you have to do is just tell me the type of action and not the whole story behind it. [LB652]

JOHN CORRIGAN: Well, you're very familiar with the workers' compensation law. We have a provision in the contract that says, if an employee is injured, they ought to get...if they're injured as a result of engaging in the dangerous work at Corrections, that they ought to get injured-on-duty pay, that is, the difference between the two-thirds that work comp pays and their full salary. [LB652]

SENATOR CHAMBERS: And if somebody says he or she was injured in that situation, there is no hearing that is granted in a reasonable period of time? [LB652]

JOHN CORRIGAN: Well, in this case, there is a dispute about whether the conduct the employee was engaged in was as a result of the dangerous activities of being a corrections officer or just the normal, daily-life activities. Now that dispute means the employer would not pay 100 percent disability. That employee then only gets the two-thirds and that, obviously, has an impact on their ability to... [LB652]

SENATOR CHAMBERS: So that dispute doesn't get a hearing, is that what you're saying? [LB652]

JOHN CORRIGAN: Well, it will get a hearing. But that is the dispute where the

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employee, first of all, under the contract, they get paid from day one. So there's a week's worth of wages that they otherwise lost because of...under work comp, and you only...the first week is gratis. [LB652]

SENATOR CHAMBERS: They never refute that if there's a decision in their favor? [LB652]

JOHN CORRIGAN: They can. If they're off for seven weeks, then they go back and they'll recoup that under the statute and work comp. But under the full salary provisions of the injured-on-duty pay provisions of the contract, that's the case where the employee filed a claim with...on January 23, 2012, and it wasn't denied until February 6, 2013, and now she can file in the district court. Now there's another incidence where I can tell you employees...there was a dispute about whether or not the employer could limit the eligibility for promotion in the...under the contract. If they change those rules, somebody who otherwise could participate for...or compete for a promotion now is knocked out of the ability to get promoted. That's a case that now goes to the district court under a different theory because we can't get it into the Civil Service Commission for a quick adjudication. [LB652]

SENATOR CHAMBERS: But the person can go to district court. [LB652]

JOHN CORRIGAN: They can. [LB652]

SENATOR CHAMBERS: And if the person wins, does the person get lawyer fees paid? [LB652]

JOHN CORRIGAN: It depends on the nature of the claim. Generally, the answer is no, unless there is some civil rights statute that will require them to pay or a...the Wage Payment/Collections Act, if it's a wage dispute. [LB652]

SENATOR CHAMBERS: Let's say they get an early hearing and the decision goes against them. They still would have to go to the district court? [LB652]

JOHN CORRIGAN: They could go to district court, if they...if the...but the standard is going to be limited because it is an administrative body, subject to the petition-in-error statutes. [LB652]

SENATOR CHAMBERS: Um-hum. Now if what you want is obtained, is there a time frame within which the hearing must be granted? [LB652]

JOHN CORRIGAN: I think the statute says that they're supposed to have a hearing within 60 days, unless they do something to not do that. Generally speaking, by agreement we have usually been able to schedule those hearings on the cases that

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they hear now under disciplinary matters in a timely manner. [LB652]

SENATOR CHAMBERS: And if they don't get the decision they want under this that you're talking about, do they go to district court then? Appeal from the Civil Service Commission? [LB652]

JOHN CORRIGAN: On occasion they do, but it's rare because...and certainly in those cases where the union or some other attorneys are involved because they know that that's an awful heavy oar in the district court out of the Civil Service Commission, for either side. [LB652]

SENATOR CHAMBERS: So the only thing that's really...we've changed is the amount of time that would pass between the event that would result in something being done and a hearing about that. [LB652]

JOHN CORRIGAN: I think that it would be accurate to say, yes, that what really would happen is the Civil Service Commission would be bound and allowed by the law to hear a grievance or dispute regarding these items that is nondisciplinary in nature. It also would probably take away the ability of the employees to go straight to district court through the claims process if it's a purely contractual dispute because it's an administrative remedy that has to be exhausted before you could go into court. [LB652]

SENATOR CHAMBERS: And the employees are willing to accept that aspect of it? [LB652]

JOHN CORRIGAN: That has been the nature of their collective bargaining agreement since I was a little, little boy. And we've...that's... [LB652]

SENATOR CHAMBERS: About eight years ago? (Laughter) [LB652]

JOHN CORRIGAN: No, about 30 years ago. [LB652]

SENATOR CHAMBERS: Okay, you've answered what I was really trying to get at. Thank you. [LB652]

JOHN CORRIGAN: Okay, thank you. [LB652]

SENATOR LATHROP: Okay, thanks, John. Anyone else here in support of LB652? [LB652]

TRAVIS SEARS: Good afternoon. Travis Sears, S-e-a-r-s. Mr. Chairman and members of the committee, I appear before you as the president of the Fraternal Order of Police, Lodge Number 8, which is the collective bargaining agency serving over 300 employees

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in the Douglas County Department of Corrections. I serve as a sergeant also down there in the Department of Corrections, and I've been employed for 15 years. Going back to the '70s, Lodge 8 has represented the Department of Corrections employees, and at least since the beginning of my tenure, the contract with the Department of Corrections and the FOP has contained a provision that allowed for grievances, which are disputes between the FOP and the employees in the bargaining unit and the Department of Corrections, to be appealed to the Civil Service Commission if they cannot be resolved through a normal grievance procedure. What LB652 tries to accomplish is simply to restore the meaning to our contract so that it is clear that the Civil Service Commission can resolve grievances that are nondisciplinary in nature. It is very costly for the FOP and the county, in terms of personnel time and attorney fees, to require litigation over nondisciplinary grievances in the courts for final resolution. LB652 simply would give to our members and the employees we represent the same right held by members of FOP Lodge Number 2, which are the sheriffs who...that they currently have the right to grieve nondisciplinary disputes before the sheriff's Merit Commission. I do not believe there will be a large wave of grievances being filed, as we normally do have a good working relationship with the department and we have a long history of attempting to resolve the disputes with the Department of Corrections, short of litigation. The Civil Service Commission is a body made up of appointed and elected officials and employees of the county, as well as one member of the community at large. They have their own legal counsel, separate and distinct from the county attorney's office, and they have an excellent system for hearing these cases in an expedited manner. The uncertainty and the expense of nondisciplinary disputes through the contract claims is something we would like to avoid; in our minds, only fair that the Legislature has conferred power on the Merit Commission to hear these types of disputes so that the same authority has been apparently given to the Civil Service Commission. With that, I would happily answer any questions. [LB652]

SENATOR LATHROP: I have just one. Did I hear you say that this is already provided for in the contract you have with Douglas County? [LB652]

TRAVIS SEARS: The verbiage in it, yes. It was taken out, I believe, in '02. It wasn't taken out of the contract; they just seen it a different way. To give you a better understanding... [LB652]

SENATOR LATHROP: I just...here's my point. Did the county already agree to this process? [LB652]

TRAVIS SEARS: Yes, yes. [LB652]

SENATOR LATHROP: And now that somebody wants to employ it they're saying, well, legally, it's the wrong process. [LB652]

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TRAVIS SEARS: Right. [LB652]

SENATOR LATHROP: Got it. [LB652]

TRAVIS SEARS: And to give you an understanding of our grievance process, now if...bringing up something that John brought up, as far as nondisciplinary, the individual argument over injured on duty and work comp, where we didn't have to right to take that through the appeal process, our appeal process is pretty simple. You fill out an appeal. It goes to what we call a grievance review board. After that point, the individual making the grievance has the right to proceed on, with or without merit. It goes to our labor management committee, which is made up of administration and labor. And then, after that, ultimately it goes to the director of Corrections. Well, normally in our process, the people that we're grieving is normally a decision that the director of Corrections has put in place. So, I mean, we're going right back to the... [LB652]

SENATOR LATHROP: Not much of a process. [LB652]

TRAVIS SEARS: Right. [LB652]

SENATOR LATHROP: Yeah, I've got it. Okay, thanks for your testimony, Travis. [LB652]

TRAVIS SEARS: Thank you. [LB652]

SENATOR LATHROP: Next proponent. Anyone else here to testify in favor of LB652? Seeing none, we'll go to opponents of LB652. Good afternoon. [LB652]

LEE LAZURE: Good afternoon, sir. Good afternoon, Chairman Lathrop and members of the Legislature's Business and Labor Committee. My name is Lee Lazure, and I'm the clerk of the Douglas County Civil Service Commission and director of human resources for Douglas County. [LB652]

SENATOR LATHROP: Lee, can you spell your last name for us? [LB652]

LEE LAZURE: L-a-z-u-r-e. And I'd like to express a few words this afternoon at the direction of the commission in opposition to LB652. [LB652]

SENATOR LATHROP: Sure. [LB652]

LEE LAZURE: To quickly give you a very brief history of the Civil Service Commission, it was created in 1971 through the efforts of several Douglas County commissioners and elected officials with the purpose of protecting county employees from the whims of politics. Prior to the commission, employees lost their jobs when a newly elected official

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in the county's ROW offices came into office and terminated existing staff and replaced them with family, friends, and election supporters. The bill went through a number of discussions and was actively supported by state Senators Carpenter, Mahoney, and Goodrich. The bill was advanced to General File with the votes of five senators and also had the support of a number of Douglas County officials. The bill was passed by the Legislature and the commission was established with five members: two elected officials, one Democrat and one Republican; two employees, one Democrat and one Republican; and one individual, a nonemployee, resident of Douglas County to be selected for the at-large position. The state Legislature basically established the commission as an official judicial process with the status of a tribunal. The commission today consists with the Douglas County Assessor, Roger Morrissey, as the Democratic Party elected official. The Douglas County Sheriff, Tim Dunning, is a Republican Party elected official. Denise Lickei, chairperson and assistant chief deputy of the register of deeds office, is a Republican Party employee. And correction officer Tom Larkin is the Democratic Party employee representative. Mr. B.J. Vicek, a construction company owner, serves as the at-large commission member. In respect to LB652, the commission voted to oppose this legislation at a February 6, 2013, meeting by a vote of 3 to 1. As well, the Douglas County Board of Commissioners voted at their February 5, 2013, meeting to oppose this legislation by a vote of 6 to 1. The current statute states that the commission is to hear appeals of suspension, demotion, and termination by the approximately 1,800 employees covered by the statute. It should be pointed out, of these 1,800 employees, approximately 1,500 employees are represented by 10 unions, with a total of 17 union contracts, representing a total of 33 bargaining units. In the time frame when I became the clerk of the commission and human resources director in 2005, I have been responsible for the scheduling of 190 appeals to the commission. When I started the position in January of 2005 there were over 48 appeals backlogged to the commission, ranging from basic grievances about promotions, written reprimands, interpretation of union contracts, operating policies and procedures, to suspensions and demotions and terminations. My predecessor had arranged for appeals by employees with a wide range of grievances and complaints which resulted in this backlog of actions to be heard by the commission. I felt compelled... [LB652]

SENATOR LATHROP: Mr. Lazure,... [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR LATHROP: Let's see if there's any questions, okay? [LB652]

LEE LAZURE: Okay. [LB652]

SENATOR LATHROP: I hate to interrupt you, but... [LB652]

LEE LAZURE: Time? [LB652]

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SENATOR LATHROP: Yep, time. [LB652]

LEE LAZURE: Okay, I'm sorry. [LB652]

SENATOR LATHROP: That's all right. Are there any questions for the witness? [LB652]

SENATOR CHAMBERS: Now it won't take you as long to answer the question as it took you to get to this point. What is the reason for opposing the bill? [LB652]

LEE LAZURE: It results in the commission hearing a great number of grievances and complaints that we're not designed to hear. They do not have the expertise, per se, to interpret union contracts and operating policies and procedures of the Corrections Department. [LB652]

SENATOR CHAMBERS: And is that because you are limited by the statute to five members of the commission? Is that what the problem is? Or you do don't have enough staff? [LB652]

LEE LAZURE: Well, it's...the members of the commission, sir, are not trained in union contract interpretation or operating procedures of the various county offices, especially Corrections. [LB652]

SENATOR CHAMBERS: Well, how much expertise do they have to deal with the complaints or the appeals that they do hear? [LB652]

LEE LAZURE: Sir, they are presented...the appeals of suspensions, terminations, demotions are presented by the respective union with, most of the time, their attorneys. And then the county side has a...the deputy county attorney representing the county side, excuse me, in this case, the Corrections. [LB652]

SENATOR CHAMBERS: Well, isn't that the way every kind of appeal would be handled? There would be a union representative and there would be a county person opposing it? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: Then I don't understand what you've said as a basis for opposing it. Is it the sheer number of appeals that you're talking about or the nature of the appeals? [LB652]

LEE LAZURE: There's the sheer number and also the nature of the appeals. [LB652]

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SENATOR CHAMBERS: And you don't have any appeals of the nature that the new appeals would bring? You don't deal with any of those kind of complaints now, is that what you're telling me? [LB652]

LEE LAZURE: The commission does not, sir. [LB652]

SENATOR CHAMBERS: Give me an example of one that you deal with now...that you don't deal with now, that you would have to deal with under this bill, that you would like the expertise to deal with. [LB652]

LEE LAZURE: Any interpretation of a union contract, especially in respect to seniority, shift bidding, vacation times, etcetera. [LB652]

SENATOR CHAMBERS: You couldn't get somebody from the county to have some expertise in those areas? [LB652]

LEE LAZURE: Well, that's not the nature of the commission to typically hear that. Yes, sir, we probably could. [LB652]

SENATOR CHAMBERS: Well, let's say that the bill passed. What would you do? Would you disobey the law? [LB652]

LEE LAZURE: No, sir. [LB652]

SENATOR CHAMBERS: How would you carry it out then? [LB652]

LEE LAZURE: We would carry out just what the law says. We would schedule those. [LB652]

SENATOR CHAMBERS: And you'd have the way to...you would be able to do it? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: Then I don't understand what your opposition is based on. I thought you were saying you couldn't do it, that you don't have the expertise. [LB652]

LEE LAZURE: The members of the commission are not expertise...do not have the expertise in union contracts or bids. [LB652]

SENATOR CHAMBERS: Well, how would this...how would our passing this bill give you that expertise? [LB652]

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LEE LAZURE: Well, we'd just have to hear it based on what was presented. [LB652]

SENATOR CHAMBERS: So you mean you would kind of muddle along somehow? [LB652]

LEE LAZURE: We would comply, sir. [LB652]

SENATOR CHAMBERS: Where does the staff come from? Because I'm sure the commission members don't do all this work themselves--or do they? [LB652]

LEE LAZURE: Well, the commission...the parties that are presenting the grievance or the disciplinary action, the county attorney's office presents their case to them, and then they... [LB652]

SENATOR CHAMBERS: And the county attorney's office would continue to do this work for the commission. [LB652]

LEE LAZURE: Yes, sir. Yes, sir. [LB652]

SENATOR CHAMBERS: And on their staff they have the expertise, among the staff of the county attorney, to deal with all issues that would come up. Who negotiates the contract on the county's side? [LB652]

LEE LAZURE: The Corrections Department and the county board. So it's... [LB652]

SENATOR CHAMBERS: And they couldn't give advice to the commission on how to handle these issues that relate to the contract that they negotiated? [LB652]

LEE LAZURE: I'd assume that they would, if it...as it came up, sir. [LB652]

SENATOR CHAMBERS: So then it's not an absence of expertise in the sense that you couldn't acquire that expertise if the law passes. [LB652]

LEE LAZURE: It could be acquired. [LB652]

SENATOR CHAMBERS: Did the commission take a vote on whether they would...you're speaking for whom, the county board or the commission? [LB652]

LEE LAZURE: The commission, sir. [LB652]

SENATOR CHAMBERS: There are five members of the commission? [LB652]

LEE LAZURE: Yes, sir. [LB652]

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SENATOR CHAMBERS: When did the commission meet to take a vote on this bill? [LB652]

LEE LAZURE: We met on February 6. [LB652]

SENATOR CHAMBERS: Okay, just roughly...okay, this month though? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: I meant last month. How many were at the meeting? [LB652]

LEE LAZURE: There were four of the five commission members. [LB652]

SENATOR CHAMBERS: And what was the vote? [LB652]

LEE LAZURE: The vote was 3 to 1 to oppose the bill. [LB652]

SENATOR CHAMBERS: Okay, so that's why you're here today. [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: And if you don't succeed, are they going to fire you? Are you an employee? [LB652]

LEE LAZURE: Yes, sir, I am. [LB652]

SENATOR CHAMBERS: Would they fire you if you don't succeed today? [LB652]

LEE LAZURE: No, sir. [LB652]

SENATOR CHAMBERS: But if they did, where would you go for a complaint? [LB652]

LEE LAZURE: I would have to... [LB652]

SENATOR CHAMBERS: You wouldn't have anywhere, would you? [LB652]

LEE LAZURE: ...would probably have to go to the court system, district court. [LB652]

SENATOR CHAMBERS: Which is what an employee now would have to go to because they don't have the opportunity to go to the Civil Service Commission, correct? [LB652]

LEE LAZURE: They do, sir, for terminations, suspensions, and demotions. [LB652]

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SENATOR CHAMBERS: But the other areas they wouldn't. [LB652]

LEE LAZURE: The other areas they don't, in respect to shift bidding, vacation time, etcetera. [LB652]

SENATOR CHAMBERS: Okay. That's all I would ask you. Thank you. [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR LATHROP: I...this process that the bill would put into place for the handling of these particular types of grievances was the law before, what, 2002? [LB652]

LEE LAZURE: No, sir, it wasn't. It was the...my predecessor basically accepted these kinds of issues to be heard by the commission. [LB652]

SENATOR LATHROP: Until what year? [LB652]

LEE LAZURE: Two-thousand seven. We looked at the statute... [LB652]

SENATOR LATHROP: So up until five years ago, these very grievances were going to this commission,... [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR LATHROP: ...whether by agreement or by statutory interpretation. Is that true? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR LATHROP: Would you agree that, under the process that's in place right now, that the employees have to file their grievance with the county board, which is not required to handle or come to any kind of a conclusion in any given time frame. I heard Mr. Corrigan say that. Do you agree with that representation? [LB652]

LEE LAZURE: Well, they...it wouldn't...I would guess they would have to go to the county board for these items, yes, and then to court. [LB652]

SENATOR LATHROP: Yeah, but the county board is under no obligation to make a decision on one of these grievances in a month, two months, or even a year's time. [LB652]

LEE LAZURE: That's my understanding. I'm not familiar with that process. [LB652]

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SENATOR LATHROP: And after an employee waits for that process or that grievance to be processed by the county board, who moves at whatever speed they care to move at, then they have to file a lawsuit in the district court of Douglas County. [LB652]

LEE LAZURE: That's my understanding. [LB652]

SENATOR LATHROP: Do those hearings in the Douglas County District Court, do they receive any particular type of preference, in terms of their getting a hearing date? [LB652]

LEE LAZURE: I... [LB652]

SENATOR LATHROP: Or do they get in line behind all the criminal matters and the civil cases and the divorces and everything else? [LB652]

LEE LAZURE: I think the latter. They get in line, in terms of how the cases come forth to the court. [LB652]

SENATOR LATHROP: Okay, and you would agree that the process that this bill would propose or suggest might be done in 60 to 90 days, where the process that requires one to go through the county board, followed by a lawsuit in the district court, is probably a year-and-a-half undertaking? [LB652]

LEE LAZURE: It...this definitely would be shorter than that, sir. [LB652]

SENATOR LATHROP: Okay, I think I get the point of the bill. And I appreciate your testimony and your candor today. [LB652]

SENATOR CHAMBERS: I have one more question. [LB652]

SENATOR LATHROP: Senator Chambers. [LB652]

SENATOR CHAMBERS: And Senator Lathrop's line of questioning made it occur to me. Have you heard of the word attrition? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: And in your mind, without necessarily dictionary definition, what would that entail? Just kind of wearing your opponent out, isn't that about what it means? If it's a battle of attrition, you're not attacking. You're just holding. Your opponent cannot hold but you're in a better position than that one, so you just wait that person out until they either give up or die. [LB652]

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LEE LAZURE: I think that could be one definition of the word attrition, sir. [LB652]

SENATOR CHAMBERS: Okay, and without saying that anybody is going to die...or though they could in a year and a half. I may be gone in a year and a half, and that would bring great joy to many people in Nebraska, but I'm too mean to give them that kind of satisfaction. But at any rate, the amount of time that could elapse between when a grievance, a complaint arises and the time that you get a hearing is unreasonable, in my opinion. And I think if it applied to you and you lost your job under circumstances where, if you got a hearing, you'd get your job back, you had to wait a year and a half...would it be consoling to you to be without a job for a year and half, knowing that, at the end of the year and a half, you will get your job back? Would that be enough consolation for you to patiently wait the year and a half? [LB652]

LEE LAZURE: No, it wouldn't. [LB652]

SENATOR CHAMBERS: So can you at least understand why people are dissatisfied with the amount of time it takes to get a hearing? [LB652]

LEE LAZURE: Sure. Yes, and... [LB652]

SENATOR CHAMBERS: And maybe, after they heard you, they can understand why the commission would be opposed to the bill. But when we're looking at justice, we have to first establish the principle that we're talking about and not say, we won't even get to the principle, because, if you reach that point, then it's going to be so hard to actualize it. Do you think--and I'm trying to ask the question so you can answer any way you want to, not a leading question--do you think that a person should be entitled to a timely hearing on a grievance? [LB652]

LEE LAZURE: Yes, sir. And to respond back, as a clerk of the commission, it is my job to, in matters involving a termination or suspension or demotion, to get that employee's case heard in front of the commission as quickly as possible. And that involves getting the attorney representing the employee available, the attorney representing the county department, and the commission members. [LB652]

SENATOR CHAMBERS: Okay, I understand that. And I'm not saying you're not doing what you should. I'm looking at those who have grievances of the kind that can't go before the commission. Is it the commission's feeling that the grievances are, by comparison, trivial and not entitled to a more prompt consideration? [LB652]

LEE LAZURE: They're not of the same magnitude, sir, of a suspension or termination or demotion. [LB652]

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SENATOR CHAMBERS: But if the bill passed, do you, as a commission, have any contact of a formal nature with the members of the county board, either individually or operating as a board? [LB652]

LEE LAZURE: Periodically I am asked to present items to them. I do have contacts with them because I do support, as the HR director, the various county offices and county departments that are under the county board. [LB652]

SENATOR CHAMBERS: Is it the board that provides you with your staff? [LB652]

LEE LAZURE: The Civil Service Commission does. They appoint and establish the human resources department. [LB652]

SENATOR CHAMBERS: The Civil Service Commission? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: So what is the source of the Civil Service Commission, I mean, the Civil Service Commission's money? [LB652]

LEE LAZURE: It is provided by the Douglas County Board, per statute. [LB652]

SENATOR CHAMBERS: So there is some contact between the board and the commission, in terms of the money needed by the commission to carry out its duties? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: And if this bill would pass, the commission would then go to the county board and say, these are now statutory duties placed on us, we cannot properly carry them out as envisioned under the law, we need more staff. Then it puts it on the county board, who are partly responsible for this bill being here, because they might bottle up the kind of complaint they can hear but you might not hear. So ultimately the responsibility is on the county board. [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR CHAMBERS: And if this bill passed, it wouldn't really be putting a burden on the commission directly. It would be placing it in the lap of the Douglas County Board. [LB652]

LEE LAZURE: There would be a burden to the members of the commission because they have...they are employees of the county, the two elected officials, two employees.

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[LB652]

SENATOR CHAMBERS: Well, here's what I mean. Do you think the county board would refuse to provide more staff if more statutory duties are made mandatory on the Civil Service Commission? [LB652]

LEE LAZURE: It's...we think it would be a struggle because of the financial situation Douglas County is in. [LB652]

SENATOR CHAMBERS: Okay, thank you. [LB652]

SENATOR LATHROP: I...while Senator Chambers was asking questions, I flipped over to the fiscal note. Can you tell us who John Hubbard is? [LB652]

LEE LAZURE: John Hubbard is a deputy of the...let's see, he's deputy director of the Corrections Department. [LB652]

SENATOR LATHROP: Okay, and he's predicted that if this bill were to pass, you'd have ten more hearings. [LB652]

LEE LAZURE: I am not aware of that, but... [LB652]

SENATOR LATHROP: Yeah, that's his prediction. And I...and so he turns that into two-and-a-half hours, times seven staff per hearing, and says it may cost the county \$6,000 more. I suspect, however, that there is some savings because you would have fewer of these things ending up in the district court. [LB652]

LEE LAZURE: Potentially. I'm not sure how many of the current grievances that come forth go to the district court. There may be one a year at most, but I'm not sure that very many currently go to district court at all. [LB652]

SENATOR LATHROP: Once it goes to the district court, you're turning a lawyer loose on it though, are you not? [LB652]

LEE LAZURE: Yes, sir. [LB652]

SENATOR LATHROP: Okay. And so if this costs \$10,000...or, pardon me, \$6,000 to deal with ten more grievances in this way, is that cost offset by having fewer cases in the district court and not tying up the time of a county-paid lawyer? [LB652]

LEE LAZURE: It's difficult for me to answer that, sir, because I don't know...once...I am not involved and the commission is not involved in the cases that are taken to district court over grievances, etcetera. [LB652]

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SENATOR LATHROP: Okay, okay. It just seems to me that the...from a money point of view, that this is probably a wash and it's just about where do we want these things to be decided. But I appreciate your candor and the fact that you came down today and your willingness to answer all the questions that were presented to you. [LB652]

LEE LAZURE: Um-hum. [LB652]

SENATOR LATHROP: I see no more questions, so we'll go on to the next opponent. Thank you. [LB652]

LEE LAZURE: Thank you, sir. [LB652]

SENATOR LATHROP: Anyone else here in opposition? [LB652]

DIANE CARLSON: Good afternoon. My name is Diane Carlson, D-i-a-n-e C-a-r-l-s-o-n. I am the deputy county administrator to the Douglas County Board, and I am here on behalf of Douglas County to testify in opposition to LB652. As Mr. Lazure touched on, the amount of volume that...the concern that the volume might increase, I won't go into that any further unless you have questions for me. But I do want to touch on a couple of observations I have that I think the...is problematic about the bill. First of all, LB652 greatly expands the definition of a grievance to include not just violations of contract provisions but also violations of departmental policies, personnel rules, and even state and federal law. [LB652]

SENATOR LATHROP: Can you direct us to the line and page that you're taking that from, if you don't mind, Ms. Carlson? [LB652]

DIANE CARLSON: Sure, if I can find the copy of my bill here. [LB652]

SENATOR CHAMBERS: Page 3. [LB652]

DIANE CARLSON: Okay, I'm looking at the bottom of page 2, where it specifically states that a... [LB652]

SENATOR LATHROP: Oh, I... [LB652]

DIANE CARLSON: ...personnel rule, a state or local law, or provision of the contract can be grieved. [LB652]

SENATOR LATHROP: Okay, and... [LB652]

DIANE CARLSON: Now, in contrast, we have a collective bargaining agreement with

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this particular union. And that contract has its own definition of grievance, which states, it's limited to matters of interpretation or application of the expressed provisions of the collective bargaining agreement. So LB652 has basically expanded what a grievance is. And presumably this would mean that the Civil Service Commission would even be able to hear such things as violations of state discrimination laws, I suppose, worker compensation laws, wage and hour issues. And if that's truly the intent, again, that would really expand what this body is here to hear. And that's the state and the federal law. If the departmental policies as well is included in here as something that can be grieved...and I think Mr. Lazure spoke about those types of things, as far as we have seniority issues; there might be overtime issues; even personnel evaluations could be grieved under the way that this is written. Currently there is an extensive grievance procedure that's in place in the collective bargaining agreement that Officer Sears, I believe, alluded to, that goes through several steps. What this law will do is just add another layer to that process that's already in place so that, between the director's finding and the district court, you would go to Civil Service. Now, remember, even if this bill is passed, either party could still go to district court. So this is just adding a step, with the final remedy being district court. [LB652]

SENATOR LATHROP: Do you agree with Mr. Corrigan that the standard of review in the district court is arbitrary and capricious... [LB652]

DIANE CARLSON: It is currently. [LB652]

SENATOR LATHROP: ...or a violation of the law? [LB652]

DIANE CARLSON: The way the law is written now, the statutes say it is a petition in error that you would take on, but... [LB652]

SENATOR LATHROP: Okay, and would you agree that's a difficult burden to overcome? [LB652]

DIANE CARLSON: It is. [LB652]

SENATOR LATHROP: And, as a consequence, it's rare when somebody will appeal a decision from a grievance? [LB652]

DIANE CARLSON: Yes, but we've only been dealing with grievances that deal with terminations and suspensions. So I'm not sure how the court would handle that review when it's a contract claim. [LB652]

SENATOR LATHROP: It would still be under an arbitrary and capricious standard of review. [LB652]

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DIANE CARLSON: I would think so. But the other question is, do they still have to file a claim with the county board under the contract claim statute at the same time? And then I'd just... [LB652]

SENATOR LATHROP: My take from the discussion today is they're trying to avoid that, trying to avoid the two-step, which is county board, not satisfied, new cause of action, de novo review, and a trial in the district court, versus this process that would start out with a claim before the commission... [LB652]

DIANE CARLSON: Yeah, that's what they're trying... [LB652]

SENATOR LATHROP: ...with the right of either party to appeal. [LB652]

DIANE CARLSON: Yeah, I agree that's what they're trying to accomplish. What I'm saying is there is that other statute out there that requires people to take their contract claims to the county board. So I just don't know how the two of those would, you know... [LB652]

SENATOR LATHROP: Before 2007, how was that handled, if you know? [LB652]

DIANE CARLSON: Oh, you know, I believe people did it. I think they did both. I think they filed a claim, just to be safe, with the county board under...and the statute is 23-135. And then they would go to the Civil Service Commission and perhaps appeal on. [LB652]

SENATOR LATHROP: Would you... [LB652]

DIANE CARLSON: You know, how many times that happened, I don't know. [LB652]

SENATOR LATHROP: If we embrace this approach, would you favor eliminating the requirement that grievances go first to the county board? [LB652]

DIANE CARLSON: Well, it's not just grievances. It's a general contract claims statute that has been interpreted by the Supreme Court as being necessary, even when you're dealing with union labor agreements. [LB652]

SENATOR LATHROP: Okay. [LB652]

DIANE CARLSON: So I'm just saying it needs to somehow be figured out to make sure that it makes sense to have the two statutes that way. [LB652]

SENATOR LATHROP: Okay, and then the other question I had for you was...you've identified, at the bottom of page 2, lines 22 and 23, a list of things that would be the

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subject of this process before the commission. In what way do you believe that list needs to be narrowed? [LB652]

DIANE CARLSON: Well, you know, like I said, we...well, there's not just this union that's affected, perhaps, by these laws because there's other employees in the county that are covered by Civil Service that also have union agreements. And I would...you know, if it would at least parallel with those contracts--say a grievance is--that would be one thing. I just wanted to point out that this is contrary to what their own contract says. [LB652]

SENATOR LATHROP: Okay, so you wouldn't necessarily eliminate anything from this list of things that could be the proper subject of a grievance before the commission, but the contracts would need to reflect this list. [LB652]

DIANE CARLSON: Well, I would look at it the other way, I suppose. But really... [LB652]

SENATOR LATHROP: Okay, but we're making policy and it shouldn't depend upon what the contract is this year up in Douglas County though, would you agree with that? [LB652]

DIANE CARLSON: Well, you know, I suppose, if you called it a grievance and didn't go in and expand it to state and federal law and other rules, that would be helpful. But again, we have other reasons why we don't favor the legislation. [LB652]

SENATOR LATHROP: Okay. [LB652]

DIANE CARLSON: If I have time, I'd like to just mention a few. [LB652]

SENATOR LATHROP: I did interrupt you while you were still on your yellow light. [LB652]

DIANE CARLSON: Okay, do I have time? [LB652]

SENATOR LATHROP: So if you can...you can take a couple of seconds to wrap up. [LB652]

DIANE CARLSON: I'll be very quick, just a couple more items. The bill limits this or amends statutes that deal with counties with a population of over 300,000. But then within that section of statutes that we're amending, that it's proposed to amend, it's limiting it even further to correctional facilities that are also situated within the city of a metropolitan class. And that...I just wanted to point out that there's another specific category, if you will, that's being created within this group of statutes. [LB652]

SENATOR LATHROP: We do that all the time, by the way, right or wrong. (Laugh)

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[LB652]

DIANE CARLSON: I know you do. (Laugh) [LB652]

SENATOR LATHROP: Okay. [LB652]

DIANE CARLSON: Okay. And then, just lastly, I wanted to again reiterate that the Civil Service rules or the statutes do pertain to over 1,700-1,800 employees. It's not just this group. And so this statute is only limiting it to that one group. But there are other people in the county that are similarly situated to this group that are...that's not reflected here. And the Merit Commission statutes that were spoken about earlier, that commission does just deal with the one group, the sheriff's department. [LB652]

SENATOR LATHROP: Okay. Anybody have questions for Ms. Carlson? [LB652]

SENATOR CHAMBERS: Just one or two. [LB652]

SENATOR LATHROP: Senator Chambers. [LB652]

SENATOR CHAMBERS: When you mention the number and variety of other employees, having looked at this list on page 2, do you feel that these types of grievances--and I'll use that as a term of art, just so we can discuss it--would differ markedly, when you're dealing with corrections officers, from the types of grievances that the other employees would have? [LB652]

DIANE CARLSON: I don't think so. There are other, 24-hour facilities, for instance, in the county that are civil service employees that would have the same type of shift bid/seniority-type issues. So, no, I'm not sure that their issues, in categories, would be different. Obviously their departmental policies would be different. [LB652]

SENATOR CHAMBERS: Do you think...oh, excuse me. Do you think, practically speaking, that the Civil Service Commission could deal with matters that might involve a violation of a state or local law and a local...if it's local, it wouldn't be a law, it would be an ordinance, but, you know, in article drafting... [LB652]

DIANE CARLSON: I think that there's other avenues, legal avenues, that are better suited to deal with many of those topics. [LB652]

SENATOR CHAMBERS: Is that what you're suggesting? [LB652]

DIANE CARLSON: Well, I think it's already in place. [LB652]

SENATOR CHAMBERS: And you had mentioned something about federal. Is that in

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here? [LB652]

DIANE CARLSON: Well, I thought so. [LB652]

SENATOR CHAMBERS: At any rate, if...let's say you have a pool of employees.  
[LB652]

DIANE CARLSON: No, I'm sorry. [LB652]

SENATOR CHAMBERS: And let's not call them Corrections employees or any of this, first of all. And the total number in the pool, for ease of reference, would be 100. And ten would say, we want this kind of a situation. If you took that ten, that would constitute a classification, under the law. And in order for the classification to be valid under the constitution, it has to be reasonable and rational. So if there is not something that sets apart these 10 from the other 90 so that, if you review their situations, there is such a distinction between the 10 and the other 90, then it could qualify, perhaps, as a valid classification. But if it didn't, then the classification, even if the Legislature created it, would be invalid. Do you think, from the position that you hold and the work that you've done, that the types of grievances that we've heard discussed would differ markedly from the types of grievances that other employees may have who are employed by the county? [LB652]

DIANE CARLSON: No. I mean, I think many of these contracts/labor agreements have similar issues that need interpretation from time to time. So, no, I don't. [LB652]

SENATOR CHAMBERS: Okay. And that's all I have. I won't drag it out. Thank you.  
[LB652]

DIANE CARLSON: And I do want to clarify: If I said federal law, I didn't...it's not a new statute. [LB652]

SENATOR LATHROP: It does say state and local. [LB652]

DIANE CARLSON: No, it's just state and local. [LB652]

SENATOR LATHROP: And it should be state law or local ordinance, I agree. [LB652]

DIANE CARLSON: Correct. [LB652]

SENATOR LATHROP: Okay. And I see no other questions. Thanks for coming down, Ms. Carlson. [LB652]

DIANE CARLSON: Okay, thank you. [LB652]

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SENATOR LATHROP: (Exhibit 1) Anyone else here in opposition to LB652? Seeing none...wait a minute, somebody is moving. Okay. Anyone here in a neutral capacity? I see none. And we do have a letter which will be made part of the record, dated March 4, 2013, from the Nebraska Association of County Officials. And that letter is in opposition to LB652 and signed by Larry Dix, the executive director of that organization. With that, that will close our hearing. [LB652]

SENATOR CHAMBERS: Just one thing before the hearing is closed, for the sake of the record. [LB652]

SENATOR LATHROP: Oh, pardon me, sir. Yes, sir. [LB652]

SENATOR CHAMBERS: Since the introducer was not here, there are questions I have about the bill that I was not able to ask. And I would never put them to a staff member... [LB652]

SENATOR LATHROP: Yes, sir. [LB652]

SENATOR CHAMBERS: ...because it's up to the introducer. So I do have questions that I did not ask because I didn't think even those who favored the bill would have been in a position to answer. It wouldn't have been fair for me to put the questions to them, in other words. [LB652]

SENATOR LATHROP: Okay. [LB652]

SENATOR CHAMBERS: Okay. [LB652]

SENATOR LATHROP: And with that, we'll close the hearing. Thank you. And that will bring us to the next bill, which is Senator Carlson, a former member of this committee, and LB476. Welcome, Senator Carlson. Welcome back. [LB476]

SENATOR CARLSON: Thank you. It looks like I know how to thin a crowd too. (Laughter) [LB476]

SENATOR LATHROP: Looks like Senator Chambers is sitting in your old chair. (Laughter) [LB476]

SENATOR CARLSON: Yeah, that's right. Well, good afternoon, Senator Lathrop. [LB476]

SENATOR CHAMBERS: I feel right at home. I feel fire and I smell the scent of brimstone, so I feel right at home. (Laughter) [LB476]

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SENATOR LATHROP: Okay. [LB476]

SENATOR CARLSON: Senator Lathrop and members of the Business and Labor Committee, I am Tom Carlson, T-o-m C-a-r-l-s-o-n, representing the 38th District, here to introduce LB476. And it is good to be back in this room with this committee. The Department of Economic Development has asked me to introduce this bill which amends the Intern Nebraska Program. LB476 would increase students eligible for internships by allowing first- and second-year students to participate in the program. The bill would also eliminate the minimum week and hourly requirements and focus on quality internships. We're proposing to: define "student" to include freshmen and sophomores; eliminate the minimum week and hour requirements; focus on quality internships in technical and professional areas; allow funding for the program to come from the job training subaccounts, and that's really the Job Training Cash Fund; increase the maximum reimbursement amount up to 75 percent of the cost of the internship, or \$5,000; and require the department to prepare an action plan. There is no A bill with this bill. The program started in the spring of 2011 and, as of the end of December, there were 229 companies taking advantage of the program. And I think the internship program has worked very well. I believe this is a reasonable adjustment to that program. And that concludes my introduction. I'll try to answer questions that you may have. [LB476]

SENATOR LATHROP: Senator Harr. [LB476]

SENATOR HARR: Thank you. Thank you, Senator Carlson, for bringing this. I just have a couple of questions. And when this was originally passed, I...this was Senator Hadley's bill, and I think I prioritized it. And I think it's a very good bill. And I guess I have a couple of questions that worry me a little bit. On page 6, line 9, it says, the internship will be for a duration sufficient to allow the students to gain sufficient or significant valuable work experience and knowledge. What the heck does that mean? [LB476]

SENATOR CARLSON: I don't know. [LB476]

SENATOR HARR: Okay. [LB476]

SENATOR CARLSON: I think I would say it means what it says. But just from what I believe is the success of the program to this point, in trying to refine it a little bit and take it a little bit further and open it up for some more students and then increase the amount of dollars that can go into it, with positive results, I think that's good. That doesn't really answer your question here, and I would ask you to ask somebody that follows me. [LB476]

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SENATOR HARR: Okay. [LB476]

SENATOR CARLSON: I don't...I can't answer that. [LB476]

SENATOR HARR: And maybe I should ask the person that follows this as well. But originally it was, I think...and I should know the amount. I think it was \$3,000 to \$5,000. Is that right? [LB476]

SENATOR CARLSON: It's \$3,500 to \$5,000. [LB476]

SENATOR HARR: Thirty-five hundred, okay, so...and this was one of the problems I had with it was if you had a business that had office space in downtown Omaha that was considered a substandard area or...I can't remember the standard. [LB476]

SENATOR LATHROP: Distressed. [LB476]

SENATOR HARR: Distressed, thank you. And if you had it at 114th, one person...two people doing the exact same job, one got \$3,500 and the other one got \$5,000. So I'm glad that we eliminated that. But what I suggested all of so long ago, two years ago, is this program is most valuable...internships are most valuable to those who don't normally have an opportunity or don't belong to...well, let me give you an example. I grew up in west Omaha. And I was given a number of opportunities that a kid from north Omaha or south Omaha would not have, merely through my parents' connections. And so I really like the idea that...and I'd like to see it maybe kept in here that if you come...instead of where the business...because I always thought, if this was an internship program, the emphasis should be on where the student is from. So if a student is from a distressed area, I think that should be given greater weight and they should receive more than a person who comes from a less-distressed area. And so, while I'm glad we got rid of it for businesses, I think we do want to keep...I think it's good public policy to keep an emphasis in there for if a student is from a distressed area because, quite frankly, they just don't have the opportunities that some others do. And I don't know if that's more of a...I don't know if that's a question, but I'll let you reply. [LB476]

SENATOR CARLSON: Well, I think...no, I think this helps clarify that because my understanding of the original program...it was the location of the business that classified it as distressed or not. [LB476]

SENATOR HARR: Um-hum. [LB476]

SENATOR CARLSON: And there could have been a student that came from what might be a distressed area to work for a firm that...in a not-distressed area, but then that...they were limited in what they could receive. This makes it all the same. [LB476]

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SENATOR HARR: And they could only receive \$3,500, yeah. And whereas, vice versa,... [LB476]

SENATOR CARLSON: I think it eliminates the possibility of prejudice, if you will. [LB476]

SENATOR HARR: Yeah. Do you think we should put an emphasis on students from distressed areas? [LB476]

SENATOR CARLSON: I think that would be fine. [LB476]

SENATOR HARR: Okay. [LB476]

SENATOR CARLSON: Yeah. Good students from wherever they come should have an opportunity in the internship program, and it appears that the results are that many of them are being offered permanent positions. [LB476]

SENATOR HARR: Okay, and then one... [LB476]

SENATOR CARLSON: And, therefore, they're going to stay in Nebraska, at least for a while. [LB476]

SENATOR HARR: That's right. And then, finally, we amended this also to add other institutions of higher education in Nebraska. I'm assuming that applies mainly to community colleges. Is that the intent of that language? [LB476]

SENATOR CARLSON: I don't know the exact intent of that. Again, I'll try and defer that to somebody behind me. [LB476]

SENATOR HARR: Okay. Thank you very much. I appreciate it. [LB476]

SENATOR CARLSON: Okay. [LB476]

SENATOR HARR: Sorry for cross-examining you. [LB476]

SENATOR LATHROP: Senator Carlson, I see no other questions. [LB476]

SENATOR CARLSON: Okay. [LB476]

SENATOR LATHROP: Are you going to stay to close? [LB436]

SENATOR CARLSON: Yes, I intend to. [LB476]

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SENATOR LATHROP: Very good. [LB476]

SENATOR CARLSON: Thank you. [LB476]

SENATOR LATHROP: All right, we will take the first proponent. Good afternoon. [LB476]

CATHY LANG: (Exhibits 4-6) Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Catherine Lang, C-a-t-h-e-r-i-n-e L-a-n-g. I'm the director of the Nebraska Department of Economic Development and the Commissioner of Labor. I appear today as the Director of Economic Development in support of LB476. LB476 amends the statutes that authorize the internship program administered by DED, called Intern Nebraska. I want to thank Senator Carlson for introducing this legislation on behalf of the agency. I'm excited to have the opportunity to share information about the internship program with you today because it has proven to be a valuable resource for retaining talent within the state of Nebraska. We believe the changes proposed by LB476 will allow this program to have an even greater impact. The department has been administering the program for about a year and a half now, and in that time we have had a great deal of success with the program. And we have started a new Web site which allows Nebraska students and Nebraska businesses that are providing internship opportunities to connect with one another. After having many conversations with businesses and students utilizing the program, we have determined that certain modifications should be made to the program to make it more accessible. I wanted to state that you have been provided with a copy of my testimony, a copy with a report that we prepare on a monthly basis. This is a report, as of the end of January 2013, that shows a lot of different programs, but specifically I'm going to highlight the Intern Nebraska Program today. You've been provided with some letters from other businesses in Nebraska supporting the changes and then a map that shows the awards of the internships, by distressed and nondistressed areas, to the companies. I want to state for the record that if it would be of interest to see the internships themselves, the interns, on a map that we'd be happy to provide that. I'm just going to quickly go through the proposed changes and the justification. The first bill proposes to change from the type of business that provides the internship to the quality of the internship provided. We believe that this change will enable us to focus on internships that are in the professional and technical fields. It also opens the door to a variety of businesses, including nonprofits, that would have their internships qualify. It eliminates the minimum hours and weeks required because several of the internships that we have provided support for, especially related to technical internships for community colleges, are very short. And so to have those hour requirements has really been a difficult requirement to impose. We are increasing the contribution of the cost up to 75 percent, for a maximum of \$5,000, instead of having a distressed and nondistressed area. Part of that is it goes to the questions that were

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being asked earlier about whether or not we are incenting the business and where their location is or are we really incenting the quality of internship that we want to support. And we really want to focus on the quality of the internship that we are supporting. And as far as removing the distressed area, we believe that it will allow us to just look at all businesses equally, all internships equally, and then focus on the quality of those internships, which is the reason that we want to have a required plan, so that we can articulate, every time we go through the planning process, what are we focusing on in terms of the internships that we will be supporting. And then I just want to walk back to let you know that we are expanding it to include freshmen and sophomores. Before, it was restricted to the second year in a community college or the third and fourth year in a four-year institution. We heard from a lot of businesses that hire their interns early. They want to keep them during the entire duration of their college career and then, hopefully, hire those individuals into permanent positions. And so we believe that there really is not a need to have a differentiation between first-, second-year student, and third- and fourth-year students. With that, my time is up. I'm going to be happy to answer any questions that you may have. Or if there's additional information that we can provide you, we would be happy to do that. [LB476]

SENATOR LATHROP: Very good. Senator Harr. [LB476]

SENATOR HARR: Thank you, and thank you, Director. This has a zero fiscal note because there's a balance on the Job Training Cash Fund. What is that? [LB476]

CATHY LANG: Well, it has a zero fiscal note because we've included it as part of the biennial budget submission. So these changes we do not believe will create a greater fiscal impact because we're going to be limited by the amount of funds that we can expend, which is \$1.5 million per year. [LB476]

SENATOR HARR: Okay, so previously it looks like 41 out of the 42 were in distressed areas. So those 41 would go up to...from \$3,500 to \$5,000. So, based on that, less students would probably receive funding then. [LB476]

CATHY LANG: Say that one more time, the last part, if you would. [LB476]

SENATOR HARR: Well, because it's...it looks like 41 of the 42 previously...no, already...41 of the 42 already received the \$5,000, so only one business would really change, is that right? [LB476]

CATHY LANG: Are you looking at the report there at the bottom? [LB476]

SENATOR HARR: This...yeah, or am I looking at the wrong...? [LB476]

CATHY LANG: For the intern program? [LB476]

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SENATOR HARR: I don't know. I'm looking at one you pointed at, and I'm looking at the top, where it says, "Prototype." [LB476]

CATHY LANG: Oh, okay. You want to look on page 2 of that report; at the bottom of the page is the intern data. [LB476]

SENATOR HARR: Ah. [LB476]

CATHY LANG: And so right now...and what we're showing you is open contracts. Those are the contracts that we're still in the process of paying for the interns on. And the closed contracts are the contracts that are completely closed; the internship is over with. [LB476]

SENATOR HARR: So what percentage right now are from distressed areas and nondistressed areas, if you know? [LB476]

CATHY LANG: You know what, I don't know that, and we would be happy to get that for you. [LB476]

SENATOR HARR: Okay. I just want to know if we're just getting...by doing this, are we giving less internships than if we raise it? [LB476]

CATHY LANG: I guess we don't believe that we are necessarily giving less internships. I suppose in a perfect world, if we had utilized all the funds in a single year, then that could be possible. But we also believe that it's going to focus our attention on higher quality and better internships. And it's also going to allow for the ability for especially our rural entities to be able to have resources to be able to attract more internships into the rural sector. [LB476]

SENATOR HARR: Okay. And I asked this earlier of Senator Carlson: Institutes of higher education in Nebraska, those are community colleges? [LB476]

CATHY LANG: Yes, sir, that's correct. [LB476]

SENATOR HARR: Okay. And what was the policy reason for asking for the elimination of distressed areas, just so more kids...? [LB476]

CATHY LANG: Our focus is so that we can...as you look at the map and you look at the distribution, most of the...this is a map of the businesses. Most of the businesses, you will see, are in distressed locations, as well as the example that was raised earlier about you could have a location in a nondistressed area and a location in a distressed area and have differentials. And it...now you had asked a follow-up question about, well,

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where are the interns from, should we be focusing on interns from distressed areas. The only thing that I would want to caution on...and we could certainly consider that and we do have data to show where the interns are from. But it's a question of I could be an intern who may come from a nondistressed area, might be living in a distressed area, and how are we going to differentiate between...I mean, how would we use that as the criteria for differentiating between which kind of interns we want to support? So I think that we might want to at least discuss those issues, if we were going to go down that direction. [LB476]

SENATOR HARR: That's a fair, fair point. Thank you. I have no questions. Thank you very much. Appreciate it. [LB476]

SENATOR LATHROP: I would like to ask a question. If we're going to eliminate the distressed areas as a criteria--and I understand what you've told me--in the end, what's the purpose to be served by the internships? What do we hope to accomplish with our \$1.5 million and these internships? [LB476]

CATHY LANG: Create opportunities for students to understand the job opportunities in our state, to think that they don't have to leave Nebraska to find a good job, and to then connect our business community with young people who are interested in exploring careers in Nebraska. [LB476]

SENATOR LATHROP: Okay. Can you give me a typical internship? [LB476]

CATHY LANG: Well, actually, right after me are going to be three businesses, with interns, testifying on exactly that. [LB476]

SENATOR LATHROP: Can you...for purposes of creating a hypothetical, are we talking about engineers or accountants or...? [LB476]

CATHY LANG: We are...they...right now, because the program was focused on the type of business that was providing the internship, they mirrored, in a way, the type of businesses that would qualify for Nebraska Advantage, including all headquarter locations. What we... [LB476]

SENATOR LATHROP: So somebody in banking, for example, that might be an internship. [LB476]

CATHY LANG: Yes, yes. [LB476]

SENATOR LATHROP: All right, here's...I asked that because I want to make a point or ask a question. Are we taking students who are already interested in banking and exposing them to a Nebraska bank? Or are we trying to take students that have no idea

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what they want to do with their life and show them what it's like to be a banker? [LB476]

CATHY LANG: We probably, in our database of students who are applying for internships, have both. They are looking to figure out...I am headed down this educational path, what kind of job does it lead to, I'd like to see what it looks like. And we probably have some students that are saying, I know I want to be a banker, I want to get out there and find out what it's like to be a banker in Nebraska. I think it runs the gamut. [LB476]

SENATOR LATHROP: And here's my point, and it occurred to me when Senator Harr was saying about why he didn't need an internship when he was a young man because he had a lot of opportunities. It occurs to me that if the idea is that there is good policy reason to expose somebody whose family members have never done banking to what it's...what opportunities there might be in banking. If we have the son of a banker and we're giving him an internship, he's probably going to go into banking anyway and probably going to stay in Nebraska. Is there any way to target this so that we are taking kids who, or students, who might not ever know the opportunities in accounting and banking and engineering, whatever those things are, and introducing them to them, versus spending money on the son of an engineer to have him work an internship? [LB476]

CATHY LANG: Well, remember we are fund... [LB476]

SENATOR LATHROP: Does that make sense? [LB476]

CATHY LANG: Yeah, I do understand your concern, yes. [LB476]

SENATOR LATHROP: Because, look, their...my dad was a lawyer and four of us ended up being lawyers. We didn't need an internship to show us what being a lawyer was about. [LB476]

CATHY LANG: We are supporting the business to expand their use of internships. So really, our resources are driven towards the business. We want you, businessperson, to expand the number of internships you have, whether you have zero right now and you go to 1 or you have 10 and you want to go to 15. To reverse it, to the, in a sense, reverse engineer it to focus on trying to get young people who may have never had this opportunity exposed to it, what we're doing is all of the work that we are out doing with our college community, being at fairs. I mean, we, ourselves, as the internship program are at those job fairs promoting the Web site, working with our college campuses to continue to support the...having internships, having...offering them to students, getting them interested, using the Web site to try the...to match them up. I mean, I think we could consider that, but it really would be a reverse of the way we're administering the program, in terms of the financial support, because it is going to the business now.

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[LB476]

SENATOR LATHROP: Okay. [LB476]

SENATOR CHAMBERS: So this is a business program really. The interns are just "tack-ons," just incidentals. You're more concerned about what is beneficial to the businesses, aren't you? [LB476]

CATHY LANG: Oh, no, absolutely not, because we definitely want to offer great opportunities to young people who are in our... [LB476]

SENATOR CHAMBERS: Then what kind of outreach do they have? And I'll tell you what I'm talking about. [LB476]

CATHY LANG: Sure. [LB476]

SENATOR CHAMBERS: Now I'll...I'm so tired of these kind of things I'm not even going to ask a question. But I'm going to tell you something. [LB476]

CATHY LANG: Yes, sir. [LB476]

SENATOR CHAMBERS: People thought that because a black man was President, all of our problems as black people would be solved. I pointed out that every President before him was white. And white people had all these problems, so our problems...we shouldn't complain now because there's a black man there. Well, why do white people still complain? Why do white businessmen still complain? Why didn't the white President, merely being white, in the White House, solve all the white people's problems? White people put impossible things on us because we don't count. So when I look at how President Obama is even putting his Cabinet together, they can say, well, we can't find a black person for this position because none are qualified. And at the stage where you're getting qualification and being taught and...to learn, you don't get the shot at it. Then they say, you don't know enough to go here, so you can't go here. And the ones who are favored continue to be favored. These programs don't impress me at all. They're talking about how low the unemployment rate is in Nebraska. But among us, double digit is par for the course. We wish that our unemployment rate were down to 9 percent. And nobody cares about that, and they're not going to care. So when we make up not 5 percent and when we...I say we...minorities don't make up 5 percent of the total population in Nebraska, then this racist state is going to say, we're going to do away with affirmative action and education employment and all these other areas when black people are not a threat to white people's jobs in any place, at any level. So it's just a way of showing the contempt that white people have for us. Then they say, no, it has nothing to do with that, we just don't think you ought to base anything on race. Everything is based on race, and they've got everything now. They don't make up a

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significant part of the unemployment rate. It's as high as it is in Nebraska because of our excessively high unemployment rate. And none of these programs even touch us. So I'm going to leave this for you all to talk about, and I will do some research and see what I come up with in terms of supporting the bill. But I just don't even want to hear any more of it. So I'm leaving before these gentlemen come up here so you won't think I'm walking out on you. I'm walking out on the whole thing because I think it's waste of time. It is an insult to me. And you may have had black people in the Legislature before I came here, but they let you get away with too much and think that what was being done was helpful to us. And it's not at all. It doesn't touch us. It's always aimed at what the businesses want and what they can...how they can profit. I don't even know if they can get tax write-offs for what they're doing. I don't know if they get tax credits. But they're getting something, other than just saying, here's a chance for you to spend some time here. But it's like Senator Lathrop pointed out with reference to his father being a lawyer, that I thought Senator Harr was going to go along with the line of questioning with you that he did with Senator Carlson but he didn't. And I don't...I can't do that today. It's a waste of my time. So you all can have your hearing and your society the way you want it. I'll have my opportunity if this bill comes on the floor. But I'm through with it for today. [LB476]

SENATOR LATHROP: Okay. Any other questions? Seeing none, thank you for your appearance before the Business and Labor Committee. [LB476]

CATHY LANG: Thank you. [LB476]

SENATOR LATHROP: We always enjoy having you here... [LB476]

CATHY LANG: Thank you very much (inaudible). [LB476]

SENATOR LATHROP: ...when you had your DED hat on. (Laughter) Just kidding. Okay, next proponent. Welcome to the Business and Labor Committee. [LB476]

BEN VU: Thank you. [LB476]

SENATOR LATHROP: You're free to start your testimony. Pardon me for my distraction. [LB476]

BEN VU: (Exhibit 7) Thank you. It's okay. Thank you very much, Chairman Lathrop and senators. My name is Ben Vu, B-e-n V-u. I am the cofounder and CEO of SkyVu Entertainment. We are a startup games-development studio based in Omaha. We started in 2009 when it was just my brother and I in our dad's basement in Bellevue. We have quickly grown into a leader in the mobile games industry, with over 24 million downloads, and currently have 35 employees, of which 95 percent are from Nebraska. We chose to participate in the Intern Nebraska Program because we've seen great

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success in growing our core team from recruiting talented interns, who otherwise would not have opportunities to work in the games industry, from the local universities and colleges in Omaha. We have five interns right now who are part of the Intern Nebraska Program. Each have made an immediate impact on our business because of their talent, education, and dedication from learning from our experienced artists and game developers. Today, over 2 million people play our games every month. These loyal players oftentimes experience the valuable work that our interns contribute to the games. I am proud to have one of our former interns who is now a full-time employee with us now. His name is Jeffrey Brooks. He'll be testifying after me. And he's now a full-time employee, and he's one of our best team members. And he'll tell you more about his experience. Competition continues to grow in the mobile games industry, and we could use every advantage we can to get...to compete with the larger companies on the coasts and overseas. My company supports all of the measures and the proposed changes in LB476 because it will help us continue to grow our team through an active internship program that attracts some of the brightest students in Nebraska. And I was one of these students back when I was in college. But I ended up going to California to get my education and experience, and I didn't have these opportunities. And my company today provides those opportunities. And I'm seeing the fruits of those opportunities because we have a team of 20...I mean of 35 young people in Omaha who are competing head to head with the top games companies in the world in a span of just under four years. And we're on track to grow our team to over 100 in the next three years. So that's all I have to say. I appreciate your time, and I'll be happy to answer any questions. [LB476]

SENATOR LATHROP: That's pretty impressive. [LB476]

SENATOR MCGILL: Awesome, yeah. [LB476]

BEN VU: Thank you. [LB476]

SENATOR MCGILL: Holy cow. [LB476]

SENATOR LATHROP: You said you have five interns right now, currently? [LB476]

BEN VU: Yes, four, minus Jeffrey, because Jeffrey is no longer an intern. So he's... [LB476]

SENATOR LATHROP: So you turned him into an employee. [LB476]

BEN VU: Yes. [LB476]

SENATOR LATHROP: So five is the total number you've ever had? And four of them...one you hired and four you still have working with you? [LB476]

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BEN VU: Yes, yes. [LB476]

SENATOR LATHROP: Are you going to hire the four? Do you know? [LB476]

BEN VU: Yes, I am, um-hum. [LB476]

SENATOR LATHROP: Okay, I was going to say, I might be putting you in a spot. [LB476]

BEN VU: It's okay. [LB476]

SENATOR LATHROP: There might be an intern that's thinking you're going to hire them and you're not. [LB476]

BEN VU: As of...yes, absolutely. As of May we're going to hire them. [LB476]

SENATOR LATHROP: Where do you...do you use any kind of criteria? I asked this question before. Are they people that want to do this work that are looking for a place to see if they can stay in Nebraska and do this kind of work? Or are they people that, you know, don't really know what they want to do and they land at your place and get exposed to something and develop an interest? [LB476]

BEN VU: It's not one or the other. It's a combination of both. There are driven individuals that want to make these games that they've played their entire lives, but they just don't know exactly how to go about it. So they do what I did when I went to college. I...they would make their own course curriculum and somehow piece it together within the local university systems. And then they would just throw their resumes in the...you know, out to California or to Canada or wherever and try to get this experience. And now we get, you know, inbound, you know, requests all the time for internships. So I wish I could offer more than five. So it's a combination of both. And then you also have talented artists and engineers who have thought about it but just never thought that it was even a possibility to make a living making entertainment out of the Midwest, and we provide that opportunity. And when they come in and they see the drawings on the wall or they see that 2 million people are playing it every month, when they see that they contribute a line of code that goes out to 150,000 people per day, it really changes the way they see things. [LB476]

SENATOR LATHROP: Do you think you'd be hiring these people if we didn't have the internship program? [LB476]

BEN VU: I wouldn't have been able to back in 2011 when this started. Our cash flow, as a startup, I was only able to raise a bit of money from the Nebraska Angel group. And

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our cash flow was razor-thin every month. And this program actually allowed me to take that step into giving more people an opportunity to come learn. [LB476]

SENATOR LATHROP: Great. Well, that's, yeah, a great story. Senator Wallman. [LB476]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for coming. [LB476]

BEN VU: Thank you. [LB476]

SENATOR LATHROP: Now you said you went to California to school? [LB476]

BEN VU: Yes. [LB476]

SENATOR WALLMAN: Which university, may I ask? [LB476]

BEN VU: I went to CalArts, which was the school started by Walt Disney. And from that I was able to have an opportunity to intern on my first film, which was Coraline, which was nominated for an Academy Award. [LB476]

SENATOR WALLMAN: And I have relations on the West Coast. Do you feel that California has a good program for students, for entrepreneurs, universities in California? [LB476]

BEN VU: In terms of entrepreneurship? [LB476]

SENATOR WALLMAN: Yeah. [LB476]

BEN VU: I don't know of many schools, in general, that have...that offer that. The things that I have learned starting up a business here over the last four years I don't know where I could have got that experience. I really don't. [LB476]

SENATOR WALLMAN: Okay, thanks for coming. [LB476]

BEN VU: Thank you. [LB476]

SENATOR LATHROP: So what brought you back to Nebraska? [LB476]

BEN VU: My wife would like to say her, so that's the answer. (Laughter) [LB476]

SENATOR LATHROP: So that's going to be the answer. Okay, that's as...that's the politically correct answer to... [LB476]

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BEN VU: Yeah, but my family was...my family, after they escaped from Vietnam, this is where they put us, thanks to the Catholic Social Services. They found us a sponsor here. And all my life I thought, you know, once I achieve my dream of making my first movie, I am going to stay in California and just, you know, live it up out there and do my thing. And after seeing the wizard behind the curtain, I realized that you don't have to be there to make these amazing things. There's talent right...all around us and great stories all around us. And you just have to believe and put the right pieces together to make it happen. [LB476]

SENATOR LATHROP: Yeah, that's great. Senator Hansen. [LB476]

SENATOR HANSEN: Thank you. Ben, you've got a great story and we really appreciate your coming today. How do you know you're competing head to head with people around the world? How do you accumulate that type of information? [LB476]

BEN VU: Yes. When you turn on your iPhone or turn on your Android phone and you look at the top charts, you'll see our game sitting right next to companies such as Electronic Arts, Activision, Zynga. These are multibillion dollar companies and our games are, oftentimes, ahead of theirs. That's how we know. And we build games that are in similar genres as they are, but we always add that extra-special creativity that puts us over the top. [LB476]

SENATOR HANSEN: Great. Thank you. [LB476]

BEN VU: Thank you. [LB476]

SENATOR LATHROP: That's great. Thanks for coming. [LB476]

BEN VU: Thank you. [LB476]

SENATOR LATHROP: Next proponent. [LB476]

JEFFREY BROOKS: (Exhibit 8) Good afternoon. My name is Jeffrey Brooks, J-e-f-f-r-e-y B-r-o-o-k-s. When I began going to school I had just one thing in mind, and it was to be a working professional video game developer, and it wasn't really clear how I was going to accomplish that. But I began going to college and taking the best classes I could to fit what I needed to succeed. And when I first heard about SkyVu Entertainment, I really wasn't sure how I was going to be a part of it. But it wasn't until I started going to the University of Nebraska at Omaha and started the internship program through the appropriate channels that it all came together. The Intern Nebraska Program has been one of the most valuable experiences of my career. After completing the internship program through the University of Nebraska, my transition

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from college student to full-time employee has been natural and fulfilling. I now work on projects that I am very excited to be a part of every day. The internship process has been a very important tool to jump-starting my career, so I support the changes and continuation of LB476 for the benefit of Nebraska's students and future workers.  
[LB476]

SENATOR LATHROP: Very good. I can't help but ask, there...at some point somebody had to tell you, you were wasting a lot of time playing those video games, didn't they?  
[LB476]

JEFFREY BROOKS: You know, my father raised me playing computer games. [LB476]

SENATOR LATHROP: Did he? [LB476]

JEFFREY BROOKS: And I thank him for that. I really do. [LB476]

SENATOR LATHROP: You never know. [LB476]

JEFFREY BROOKS: Yeah, I really do. [LB476]

SENATOR LATHROP: That's great, that's great. Well, thanks for coming down. It is beneficial to the committee to hear the successes of the program, so we appreciate your testimony. [LB476]

JEFFREY BROOKS: All right, thank you. [LB476]

SENATOR LATHROP: Thanks a lot. I see no other questions, so we'll.. [LB476]

JEFFREY BROOKS: All right. [LB476]

SENATOR LATHROP: Yeah, thank you. [LB476]

JEFFREY BROOKS: Thank you. [LB476]

SENATOR LATHROP: Next proponent. [LB476]

LANCE RALL: (Exhibit 9) Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Lance Rall, L-a-n-c-e R-a-l-l. I'm the senior director of quality assurance with Xpanxion in Kearney, Nebraska. And I'd like to tell you today about why I support this bill and its proposed amendments by highlighting how this program benefits our company, university students, and the state of Nebraska. Regarding the benefits for our company, we're a rapidly growing, high-tech company developing software solutions for Fortune 500 companies in rural

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Nebraska. Quite frankly, one of our biggest challenges in meeting that continued growth is in finding qualified candidates for employment. Expanding this program to accept freshmen and sophomores not only makes the internship program more inclusive and attractive to applicants but effectively creates a four-year training track for these candidates, greatly mitigates the risk to our business, and provides a method for our interns to become familiar with our organization and for us to become familiar with them. The number of internships that our organization provides is directly proportional to the funding that's offered through this program. In the coming year we're hoping to offer a total of seven open internships with this assistance in 2013. The continued growth of our company is due in part to the effectiveness of this internship program. Two, regarding the benefits for students, these internship opportunities provide high-quality and professional experience in a field that can really take them anywhere. A multiyear internship provides the duration of training required to ensure that these college students have indeed found a good fit for their skills and interests. Freshmen and sophomores who are working in the industry while learning in the classroom is reinforcing the lessons that they're learning with actual, real experience. Early exposure to real-world work experience can help hone the student's choice in major, resulting in a better fit, higher success rate between the student's educational degree and their true interests and capabilities. When it's all said and done, we've hired probably over 95 percent of all interns that we've had in this program into our organization. Finally, regarding the benefits for the state of Nebraska, employment with Xpanxion after these internships keeps graduating students in this state, not neighboring Denver, Des Moines, or Kansas City, places that I was considering a number of years ago. Students are finding high-quality professional employment close to home with a company that they know and trust. And the extended internship program time line can provide a four-year connection with a local organization, which avoids leading our students into a regional job search upon graduation that can take them out of state. The funds utilized by this program no doubt benefit the local and state economies several times over due to that effect alone. So thank you again for your time and consideration, answer any questions that you have. [LB476]

SENATOR LATHROP: Very good. I don't see any questions, but thanks for coming down. [LB476]

LANCE RALL: Great. Thank you. [LB476]

SENATOR LATHROP: Appreciate hearing of the success of the program. Go ahead. [LB476]

RICHARD BAIER: (Exhibit 10) Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Richard Baier, R-i-c-h-a-r-d, last name is B-a-i-e-r. And I'm here today representing the Nebraska Chamber of Commerce as a registered lobbyist; also have submitted a letter from the Nebraska Cable

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Communications Association and am testifying in support of the Greater Omaha Chamber as well. I thought it might be helpful to tackle, Senator Lathrop, your question about why did this occur. I was sort of involved in the creation of this program a few years ago. It started on the back of a napkin, to be honest with you, at a social event and went from there. But what I would tell you is it's really designed to tackle two things, and you heard that from a couple of testifiers. And one of them was this issue of brain drain. You know, we're seeing the best and the brightest leave. Well, how do we go about connecting them with employers in Nebraska? Because many times we heard from our college kids, saying, we can't find that next training opportunity, and so we saw them leaving for opportunities in Chicago or Denver. That's really where Ben and folks like that come in. I'll also tell you, from our perspective, we've had a great deal of use among our chamber members, and it's been in all skill sets. And so I don't want you to think it's just on the software side. We see the manufacturing side as well. We've got companies who are hiring in north Omaha right now, who are hiring welders and doing internships that are very technical in nature. So not only were we trying to tackle the brain drain issue, but we were trying to give folks who maybe aren't going to go to that four-year college to give them a career path, some real-world life experiences, so that they have vision for their future, that they really say, look, I can have an impact with my career. And so that's really how this process got there. Again, we've had great use by our members. We just had an intern panel at our annual meeting. I know, Senator Lathrop, they were just finishing up as you were getting to our annual meeting, and the energy of those young people was amazing. And I think it bodes well because what we're doing...we really are creating that environment and that support structure for the next generation. And I think it's important for us to do that. I would tackle one other question, your question about the change in the college language. You might see things like an ITT Technical Institute, for example, may not have fit the original definition. And I think most of the folks behind me also talked a little bit about that. How do we incent the person versus the company? And I'll tell you that was a big debate when we put this together originally. What you would have found is any student that went to Creighton that had a Creighton address would have been in a distressed area. So it got to be a little complicated, and that's really why we went to the business. Right or wrong, I think it's a policy consideration, but it's good for conversation. So with that, I'd be happy to take any questions. And I would encourage you to move this bill out to the floor so that we can get it passed and continue to let this program make a difference for Nebraska. [LB476]

SENATOR LATHROP: You know, it seems to me that we have two things, two objectives this program can provide. [LB476]

RICHARD BAIER: Um-hum. [LB476]

SENATOR LATHROP: And one is to keep some of the people that we've heard testify here today in Nebraska, and that's certainly an important objective. [LB476]

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RICHARD BAIER: Um-hum. [LB476]

SENATOR LATHROP: And it sounds like the program is doing that and exposing kids to jobs that they thought they had to go to California to find. [LB476]

RICHARD BAIER: Um-hum, um-hum. [LB476]

SENATOR LATHROP: So in that respect it's doing well. The other seems to be getting enough people into the technical positions so that businesses have the employees they need because what I'm hearing from business isn't just about tax climate. [LB476]

RICHARD BAIER: Um-hum. [LB476]

SENATOR LATHROP: It's about we need skilled workers, and this provides that opportunity. So here's the question: Do we need to set aside some portion of this program for one or the other objective? Or do we just turn it over to DED and hope they strike the right balance? [LB476]

RICHARD BAIER: Well, I think the balance is going to change every year, Senator, and that's a challenge. By putting it in statute, I think you create some long-term challenges by putting those walls up. The fact that they're going to put in their annual plan I think is a good thing. I will tell you we're pushing really hard with our technical members. You know, 40-some percent of our members are manufacturers. We're pushing them very, very hard to try and get engaged in this program so that we can tackle that very skills issue because one of the other challenges we have is a lot of kids come out with a degree in welding and they come out of that first-year program and go, I've got a degree and a certificate, what am I going to do with it? And this will give them an opportunity to make sure it's really the career path that they're looking for before they get out the other end of that pipeline. So I would encourage you maybe not to think about the walls but you have to leave it in the DED plan and maybe move from place to place, year to year. [LB476]

SENATOR LATHROP: Do we need to apportion this geographically? I saw that 34 percent of them have been in, I think it described it as, rural Nebraska. [LB476]

RICHARD BAIER: Yeah. And from a population breakdown...I looked at the map. I didn't look at it today. I looked at it a while back. From a population percentage, it's pretty accurate, I mean, if you look at where the populations and the jobs are, it's for self-selection. But it seems to be working through the process. And again, the kinds of companies are vastly different, so it kind of depends a little bit on what you're seeing, whether you're maybe in a Mitchell, Nebraska, or in a Sydney, as opposed to somebody like Ben in the basement in Bellevue. [LB476]

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SENATOR LATHROP: Okay. Senator Harr. [LB476]

SENATOR HARR: Thank you, and thank you for coming and thank you for this program. I do think it is a valuable program and provides a good asset to the state of Nebraska. Let me ask you this though. [LB476]

RICHARD BAIER: Um-hum. [LB476]

SENATOR HARR: To follow up on what Senator Lathrop asked about the portion to the state and to follow up with, you know, your comment earlier about the Creighton kids, would it make sense to reserve a certain portion for our Pell grant recipients? [LB476]

RICHARD BAIER: Yeah, I mean, I think that's an interesting dialogue. I haven't thought a lot about it. I actually thought about it sitting there in the (inaudible). That's one way to look at it and try and target some kids. And that's really where the original distress criteria came from was trying to get a handle around it because it's so hard to administer, that idea or that concept. [LB476]

SENATOR HARR: Um-hum. [LB476]

RICHARD BAIER: I mean, it's a little bit like violence on TV. We know what it is when we see it, but we're not quite sure how we put a parameter around it to make it work. And so I'd have to rely on the DED folks that are running the program to know how difficult that might be. [LB476]

SENATOR HARR: Okay. [LB476]

RICHARD BAIER: You know, what do you get from the kids to prove that they're Pell Grant recipients? Do they ever get it submitted? Do they have to submit it to DED or does the company submit it? You know, there's a lot of those kinds of things that would have to be worked through. [LB476]

SENATOR HARR: Okay, thank you very much. [LB476]

RICHARD BAIER: Interesting conversation. [LB476]

SENATOR LATHROP: Okay, thanks, Richard. [LB476]

RICHARD BAIER: Thank you. [LB476]

SENATOR LATHROP: Next proponent. Good afternoon. [LB476]

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LEON HOLLOWAY: (Exhibit 11) Thank you, Senators, for having me today. And I want to talk a little bit about this legislation and the importance of it for Duncan Aviation. My name is Leon Holloway, L-e-o-n H-o-l-l-o-w-a-y. I am the HR manager for Duncan Aviation here in Lincoln, Nebraska, and also in Provo, Utah. In 2009, Duncan Aviation had a significant reduction in work force to our indirect departments. In efforts to restrengthen our work force, we partnered with Intern Nebraska in 2011 to hire these young people in professional and technical positions as a means to close the gap on our hiring needs and those individuals leaving the state of Nebraska. I have the pleasure of working with the interns that we bring at Duncan Aviation. Because of the resources that the state provides, I am privileged to spend time with the young people and witnessing their development, both professionally and personally. I am able to have the interns work on short-term business goals for the organization and provide them practical work experience. The best part is that we get to bring the brightest and the youngest people from our core schools here in Nebraska to visit our facilities and to hopefully stay in the state of Nebraska. You will hear from Cory Scott. He's one of our interns that we brought in, in 2011, and he'll talk about his experience. At Duncan Aviation we've brought in eight interns so far. And again, our contract says we're allotted five. Out of the eight we've hired two. One has left the company but is still in Nebraska, and we still have the remaining at Duncan Aviation as well. This program is very important to us, again, making for sure that we keep our students here in Nebraska, first and foremost. But for companies that are...that currently went through those kind of work force reductions, it allows us that opportunity to continue to be profitable and giving opportunities to our students here in Nebraska. [LB476]

SENATOR LATHROP: Very good. [LB476]

LEON HOLLOWAY: Open for any questions for you. [LB476]

SENATOR LATHROP: Anyone have questions? Senator Hansen. [LB476]

SENATOR HANSEN: Thank you. Thank you for coming in today. One quick question I have is, is this on the technical side or all on the business side? [LB476]

LEON HOLLOWAY: Well,... [LB476]

SENATOR HANSEN: The technical, the hands on, the mechanics, and design? [LB476]

LEON HOLLOWAY: Sure. It's both. It's both technical and business side as well. Our IT department we have some technical folks working, interns working in that department as well. And our engineering department, obviously, it's not been opened up for them but for, like, marketing and human resources, things like that. These interns are very smart young people that are coming in, utilizing their skills to perform real-life work. It's definitely giving them some exposure to what it is to mean, you know, to work in a

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business like Duncan Aviation, for example. [LB476]

SENATOR HANSEN: Thank you. [LB476]

SENATOR LATHROP: Very good. Let me ask a question,... [LB476]

LEON HOLLOWAY: Sure. [LB476]

SENATOR LATHROP: ...just kind of a follow-up to Senator Harr's question or the idea that we might try to carve out a certain percentage for Pell Grant recipients. Does that seem to have any merit, from your point of view? [LB476]

LEON HOLLOWAY: I think there's opportunities there. I currently...I'm on various committees throughout Nebraska. If Senator Chambers were still here I would tell him that I am at Central High School, talking to more African-American students about the program. There are opportunities out there for disadvantaged students, but it's two ways. You...they have to want to really be engaged themselves and really look for these opportunities as well because, this program, it's not a (inaudible) program just for Lincoln, Nebraska, or Omaha. It's all over the state of Nebraska, so there are some opportunities for that to be discussed, I would say. [LB476]

SENATOR LATHROP: Okay, great. I see no other questions. Thanks for coming down. [LB476]

LEON HOLLOWAY: You're welcome. Thank you. [LB476]

SENATOR LATHROP: We appreciate your testimony today. [LB476]

CORY SCOTT: Good afternoon. [LB476]

SENATOR LATHROP: Good afternoon. [LB476]

CORY SCOTT: (Exhibit 12) Senator Lathrop and members of the Business and Labor Committee, my name is Cory Scott, spelled C-o-r-y S-c-o-t-t. I am testifying today on behalf of Duncan Aviation in support of LB476. I am an executive apprentice for Duncan Aviation currently. Prior to that position I completed eight months as a student intern with the professional development and training department at Duncan and through the Internship Nebraska Program. During the internship I had the chances to oversee multiple departments and work closely with those managers to coordinate, facilitate, create curriculums for both technical and soft-skilled training. I also coordinated aviation career events for high school and college students to gather more interest in Nebraska aviation programs. I was also given opportunities to attend both technical and professional training to improve myself and explore areas of my interest. I benefitted

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from the internship with Duncan Aviation by gaining in valuable work experience and professional skills that simply are not available through time spent in a classroom. This opportunity provided me an edge in the job market, which was essential for setting myself apart from my graduating peers, allowing me networking opportunities with Nebraska professionals. Upon graduating from Nebraska Wesleyan University I was offered three opportunities for employment. And two were out of the state, and a third was with Duncan Aviation. My employment decision to remain in Nebraska was based primarily on my internship experience with Duncan Aviation, which would not have been possible without the internship program. I'd also like to mention that I am from a middle-income family. I am the first of my family to go to college, and I do not see myself having the exposure to these kind of opportunities without programs like Internship Nebraska. [LB476]

SENATOR LATHROP: Very good. [LB476]

CORY SCOTT: I'm open to any questions. [LB476]

SENATOR LATHROP: That's exactly what we want to hear. Senator Wallman. [LB476]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, thanks for coming. [LB476]

CORY SCOTT: Absolutely. [LB476]

SENATOR WALLMAN: And the boss let you off today? [LB476]

CORY SCOTT: Oh, yeah. [LB476]

SENATOR WALLMAN: Okay. (Laugh) [LB476]

SENATOR MCGILL: Oh, this is paid. [LB476]

CORY SCOTT: Say, one of them was back there, so. (Laughter) [LB476]

SENATOR WALLMAN: Thank you. [LB476]

CORY SCOTT: Thank you. [LB476]

SENATOR LATHROP: I don't see any other questions. Thanks, Cory. [LB476]

CORY SCOTT: Yep. [LB476]

SENATOR LATHROP: Appreciate you coming down today. [LB476]

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CORY SCOTT: Thank you. [LB476]

SENATOR LATHROP: Anyone else here to testify in support? Let me see, by a show of hands, how many else is...how many other people are here to testify today on this bill. Okay, well, this could be our last testifier. Welcome. [LB476]

ABBIE DAVIS: (Exhibit 13) Good afternoon. My name is Abbie Davis, A-b-b-i-e D-a-v-i-s, and I'm voicing my support of LB476. I'm currently a senior at the University of Nebraska-Kearney and an intern at Xpanxion, where Lance was from. Xpanxion has given me very valuable internship experience. I get to do things that actually matter to the success of the company rather than the stigma of some internships where you are cleaning out the filing cabinets. And I get to work with technology professionals as well as be mentored by them. As Xpanxion does have Fortune 500 clients, I have gotten to create marketing materials related to that, write press releases, draft proposals for companies such as ETRADE and The Weather Channel. I will be reaching one year with Xpanxion in about a week and will continue into a full-time position after my graduation in May. And I do have friends that are going out of state regionally--Denver, Chicago--to find jobs after graduation. So I feel fortunate to have found an internship and a job in Nebraska. I would like to speak in support of the elimination of hour and week requirements of the internships. As a college student, it can be very hard to find...fit hours in to meet those requirements, especially at an organization like Xpanxion that operates on an 8:00 to 5:00 basis. I'm also involved in campus organizations, and eliminating these hour requirements allows me...would allow me to remain more involved in campus organizations. They also allow the opportunity for internships to be extended longer where the hours don't have to be fit in within a certain amount of time. So the longer internships are really great. Mine had...my internship was originally a three-month internship, but there was an underlying assumption that it would continue on, even after the funds expired. The longer internships correlate with stronger relationships at the employer and the expectation or a better chance of the internship lasting after the funds expire. So that is my piece on this, and thank you for letting me speak today. [LB476]

SENATOR LATHROP: Certainly. [LB476]

ABBIE DAVIS: Any questions? [LB476]

SENATOR LATHROP: I don't see any. Are you from the Kearney area originally? [LB476]

ABBIE DAVIS: I am. I'm from Wood River. I grew up on a farm. [LB476]

SENATOR LATHROP: Did you? So staying in the area works perfectly for you. [LB476]

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ABBIE DAVIS: You know,... [LB476]

SENATOR LATHROP: You've got family and a job. [LB476]

ABBIE DAVIS: ...I do. It's really great. [LB476]

SENATOR LATHROP: Good, good. Well, we're glad you're staying too. [LB476]

ABBIE DAVIS: Thank you. [LB476]

SENATOR LATHROP: Thanks. I think that's our last proponent. Is there anyone here in opposition to the bill cares to testify? Anyone in a neutral capacity? Seeing none, Senator Carlson to close. [LB476]

SENATOR CARLSON: Well, thank you, Senator Lathrop and members of the committee. I think that the testifying here speaks for itself. And something that's been in effect for a year and a half, I...there's an article in the Lincoln Journal from February 9, and Mr. Holloway and Mr. Scott are both featured in this article about Duncan Aviation. But just reading some things out of it that really, I think, are impressive, listening to the testimony that we've heard so far: 229 companies have taken advantage of the program and filled 361 permanent positions. Now the poll found that more than 50 percent of the students who graduated at the completion of their internships were offered full-time position with the companies with whom they interned, and another 25 percent were offered positions with other companies. So that's 75 percent of those that went through the program received permanent positions, were offered permanent positions, and I think that speaks pretty highly. I was told today that 95 percent of the businesses in the internship program...internship were in distressed areas. Now I think that figure needs to be substantiated, but I'm not sure what else could be done to make this a better program. And I think, obviously, it's available to students that have the self-motivation that they really want to get into something and go. But it looks like those that do receive the benefit. And so I would ask you to support this bill. [LB476]

SENATOR LATHROP: Very good. Thanks. That was a good hearing. [LB476]

SENATOR CARLSON: Thank you. [LB476]

SENATOR LATHROP: (Exhibits 1, 2, and 14) Yeah, appreciate it. We do have two...we have some letters here with respect to this bill, all in support: Amy Prenda with the Nebraska Cable Communications Association in a letter dated March 4; NEDA, in a letter dated March 4, signed by Paula Hazlewood; Nebraska Bankers Association, signed by Hallstrom, February 4; MetalQuest, in a letter dated February 6, 2013; Omaha Henry Doorly Zoo, February 26, 2013; Northeast Community College, February 28, 2013; and finally, Werner Trucking, in a letter dated March 1, 2013, all letters of

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support for this program. And they'll be made part of the record. And with that, we'll close the hearing on LB476 and move directly to LB570 and our own Senator Harr. [LB476]

SENATOR HARR: I should grab my script. Well, I don't...I... [LB570]

SENATOR LATHROP: The Employee Certainty Record Act (sic). [LB570]

SENATOR HARR: (Exhibit 1) (Laugh) I know how to clear a room myself, or at least the senators. Chairman Lathrop, member of the committee (laugh), my name is Burke Harr, and I represent Legislative District 8. LB570 does seven...several things. It adopts the Employers Certainty in Records Act. It defines electronic monitoring. The bill provides training and educational opportunities for employers...for their employees. It creates an opportunity to educate employees on the employer's implement practices. And LB570 will provide an opportunity for employers to purge their records after 180 days, if not otherwise required to maintain those records. LB570 creates the Employers Certainty in Records Act. The bill defines electronic monitoring as the collection of information on an employer's premises or property owned by the employer concerning employees' activities or communications by any means other than direct observation, including but not limited to the use of computers, telephone, wire, radio, camera, electromagnetic, photoelectronic, or photo-optical systems, but not including the collection of information which is prohibited under state or federal law. Any employer who engages in electronic monitoring shall give prior written notice to all employees, informing them of the type of monitoring which may occur. Each employer shall post in a conspicuous place a notice concerning the type of electronic monitoring which an employer intends to engage in. The bill includes language that allows employees to contact the Department of Labor if they believe an employer is improperly monitoring them. When an employer has reasonable grounds to believe an employee is engaged in conduct which either violates the law, violates the legal rights of the employer or another employee, or creates a hostile workplace environment, and electronic monitoring may produce evidence of this misconduct, the employer may conduct such monitoring without giving prior written notice. LB570 allows for a hearing to be conducted by the commission determining if the employer has violated this section. If the employer is found to be in violation, the commissioner shall assess a fine of \$100 for the first violation and a \$500 civil penalty for each additional and subsequent violation. This act provides...does not apply to criminal activity. Any information obtained in the course of a criminal investigation through the use of electronic monitoring may be used in a disciplinary proceeding against an employee. Information not obtained in the course of a criminal investigation may only be used by the employer or an employee in a disciplinary action proceeding if done so within 180 days after acquiring the information. Information obtained through electronic monitoring may be used for training and educational purposes or for implementation of employee best practices after that 180-day period. The commissioner shall remit all penalties collected under this for distribution in accordance with Article VII,

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Section 5, of the Nebraska Constitution. This is a bill that was...it's currently in other states. We...this is similar to the Facebook bill that we had in that we're living in a different world than we did 10, 15, 20 years ago. And so it's up to us as policymakers to decide where we want that boundary to be, how much monitoring of employees by employers do we want. You know, the Facebook brought up a lot of interesting issues, but that wasn't limited to the work space. This bill takes that same concern, and what we tried to do is define it and refine it to the workplace so that we don't have a lot of the other issues brought up with the Facebook bill by Senator Larson. With that being said, I do have amendments. If you look on the bill, on page 3, line 5, if you strike, "of the employer or," and insert "policies of the employer or legal rights of." And so I have it here. I can hand it around. I just wanted to make Evan get up and down. And with that, I would entertain any questions. [LB570]

SENATOR LATHROP: Basically, you're trying to regulate what employers can do with surveillance. [LB570]

SENATOR HARR: I wouldn't use the word regulate, but I think the proper word would be "to put on notice" so an employee...or an employee knows what is being watched and what isn't. So, for instance, if I have a cell phone that my employer pays for, are they watching what I text or not? Are they monitoring the phone calls I make or not? And it just...what it does is it puts the employer, excuse me, employee on notice as far as what they should...could expect to be watched. Are...you know, is my employer monitoring what I watch on my computer? I don't know. Do they have a right to? Certainly, but I think there should be proper notice given. Are we watching video? There's video surveillance all over this building. How long and how often is that used? I don't know. So what it does is it creates some certainty so both sides know what's expected of them. And on the other side is, you know, in this cyber world that we live in, how long is an employer required to keep records? So that if I turn around and say, hey, I have a...I sue my employer, saying, I have a hostile work environment, well, the question is, how long do they need to keep those records? Is it five years? Ten years? Twenty years? One-hundred eighty days? I don't know. We're starting the conversation at 180 days so that, after 180 days, they can purge that information and aren't required to, you know, keep that information, unless otherwise required by other statutes or rules, federal rules and regulations. But the idea is we need to have some certainty so that we know what the rules of the game are. And that's what we're trying to establish here. I know Connecticut, Alaska, and I think there's another state, that has a similar bill to this. And it's being introduced in other states. It's not an ALEC bill, but...and I don't know if I'd call it a model bill. But it is definitely a bill that, I mean, it's addressing a concern that other states have and other policymakers. [LB570]

SENATOR LATHROP: So the employer would have to tell an employee if, in fact, the employer was keeping track of what they're looking at on their computer? [LB570]

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SENATOR HARR: Um-hum, yes. [LB570]

SENATOR LATHROP: If they have a surveillance camera that's watching shoplifters and watching the till,... [LB570]

SENATOR HARR: Yes. [LB570]

SENATOR LATHROP: ...make sure that they're charging people for everything that they're getting? [LB570]

SENATOR HARR: Similar to how most break rooms have a board that has all of the fair labor, what minimum wage, all of that information, this would be just one more component to add. [LB570]

SENATOR LATHROP: I know that some surveillance happens for shoplifters in retail, right? [LB570]

SENATOR HARR: Yes. [LB570]

SENATOR LATHROP: That might also afford an employer an opportunity to catch an employee stealing stuff at a retail establishment. [LB570]

SENATOR HARR: Yes. [LB570]

SENATOR LATHROP: A lot of those places just have the 20...the surveillance tape on a 24-hour loop, or that's what they tell me when I'm trying to subpoena that stuff. [LB570]

SENATOR HARR: Yes. [LB570]

SENATOR LATHROP: And this would require that they hang onto it for six months. [LB570]

SENATOR HARR: Yes. And then the other side of that also is criminal activity you could use for longer than six months. If it's for...to, you know, fire someone, that would be a six month. But if you wanted to go criminal activity, you could go more than six months. [LB570]

SENATOR LATHROP: Nothing makes them get rid of something, does it? [LB570]

SENATOR HARR: Nope, no. [LB570]

SENATOR LATHROP: So they can keep it as long as they want. [LB570]

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SENATOR HARR: Yes. [LB570]

SENATOR LATHROP: You're just saying, this is the minimum amount of time you have to keep it. [LB570]

SENATOR HARR: Yes, if you're using this for a civil action. [LB570]

SENATOR LATHROP: A year ago we had a bill that said, if you want to discipline somebody for something that was evident on a surveillance or some electronic monitoring, you must do it within some certain period of time. [LB570]

SENATOR HARR: Um-hum, ten days. [LB570]

SENATOR LATHROP: This bill doesn't address that, does it? [LB570]

SENATOR HARR: No, it does. It says you have to do it within 180 days. [LB570]

SENATOR LATHROP: So if I catch somebody sleeping at work on some surveillance, I either have to do something about it within six months or it may not be the subject of a disciplinary proceeding. Is that the intent? [LB570]

SENATOR HARR: That is correct. [LB570]

SENATOR LATHROP: Okay. [LB570]

SENATOR HARR: That is correct. You could use it on a training video and probably embarrass that person and say, this is what you shouldn't be doing. But as far as actually going after that individual and disciplining them, no. [LB570]

SENATOR LATHROP: Okay. You told us that two other states have similar bills. [LB570]

SENATOR HARR: I think that... [LB570]

SENATOR LATHROP: Has anybody passed something like this before? [LB570]

SENATOR HARR: They are passed, yes. I think there are three other states. [LB570]

SENATOR LATHROP: Okay. [LB570]

SENATOR HARR: And I can get you that information. I know those two had it previously, and I think a third one has been added. [LB570]

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SENATOR LATHROP: Very good. Okay, Senator Wallman has a question for you. [LB570]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Senator Harr, Senator Harr, boy, now this here thing, you're going to set up the guidelines? Are we going to set up the guidelines? Are we going to use federal guidelines? Different state guidelines? To me, this is going to be terribly hard to enforce. [LB570]

SENATOR HARR: Well, it's up to the Department of Labor to enforce, similar to misclassification. [LB570]

SENATOR WALLMAN: Yeah. [LB570]

SENATOR HARR: But I'm sure, if someone filed petition and said, hey, you can't do this, and went to file the petition with the Department of Labor, they would look into it. [LB570]

SENATOR WALLMAN: Thank you. [LB570]

SENATOR LATHROP: Okay. That's the enforcement mechanism. Okay. [LB570]

SENATOR HARR: Thank you. [LB570]

SENATOR LATHROP: We'll take the first proponent. [LB570]

DAVE ENGLER: Good afternoon. I'm Dave Engler, E-n-g-l-e-r, president of the Nebraska Professional Fire Fighters Association. We support this bill. There are a lot of devices out there nowadays that are tracking various things that employees are not aware of. I've been involved in many cases where we didn't know that a computer hooked up to something and that those things were being monitored. It may or may not make a difference, but it's nice to know that those things exist. And, furthermore, what we're concerned about--and I think there was just discussion on that--is if you have an employee that you're looking to discipline for reason A and you just want to build a bigger case against him and pile on, then you can go back six, ten years and try to look through these records and just find more excuses to do more damage in a disciplinary manner, even though it didn't matter for those many years. So that's why we think that this is a forward-thinking bill that keeps up with the current times in technology and addresses some issues that just aren't being addressed out there. And, of course, I'm not saying if an employee is doing...is involved in wrongdoing that there shouldn't be some type of way of taking care of that. But to go way back and way back and try to just dig stuff up to pile on is unfair. And it happens, and that's why I'm here testifying on this bill today. If it didn't happen, it wouldn't be necessary. But it does happen and, therefore, I think it's important that we set some parameters as to what we do. [LB570]

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SENATOR LATHROP: Okay. Senator Hansen. [LB570]

SENATOR HANSEN: Thank you. So we set up those parameters. And then are you willing to live within those parameters, I mean, to operate and to be employed under those parameters? [LB570]

DAVE ENGLER: Certainly, yes. [LB570]

SENATOR HANSEN: Okay. So you just tighten up the parameters and the monitoring continues. [LB570]

DAVE ENGLER: Yeah. And the bill does say, I believe, that there's training opportunity. If you go back and find examples of areas where things didn't go well or something to that effect, there are training opportunities. But to actually discipline an employee and, like I say, you know, just find more and more and more stuff, you know, that's...there's got to be a limit to that. [LB570]

SENATOR HANSEN: But Senator Harr did say that if it was a criminal activity that it could be kept longer than the six months,... [LB570]

DAVE ENGLER: Absolutely. [LB570]

SENATOR HANSEN: ...so possibly indefinitely. [LB570]

DAVE ENGLER: Definitely, yes. [LB570]

SENATOR HANSEN: Thank you. [LB570]

DAVE ENGLER: You bet. [LB570]

SENATOR LATHROP: How specific do you think an employer has to be if they're going to give notice? And here's the question. It seems to me that if the employer...and I don't know why I'm thinking retail, just maybe because I worked in retail before I got into law school. But if you're working retail or if you own a bunch of stores and you tell your employees, we may have cameras that are watching for people who are doing something fuzzy with the cash register--you know, letting their friends come through and selling them liquor that they shouldn't be buying or they're not old enough to get or they're not paying for everything or maybe they're putting money in their pocket--the employer shouldn't have to disclose how they're doing it, it seems to me, where they lose their advantage or make it easier for someone to steal. Would you agree with that? [LB570]

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DAVE ENGLER: I would agree. [LB570]

SENATOR LATHROP: So the warning, to the extent there's surveillance undertaken, does the employer just have to say, you're also advised that we do surveillance at various places within the facility and that that's for purposes of monitoring not just shoplifting but our employees as well? That's enough? Or does he have to say, you know, I have a...some cameras in the back room and we have some by the cash registers and we have some, you know, back by the...in the back of the store and out in the parking lot too? [LB570]

DAVE ENGLER: I wouldn't say it's got to be specific on where it's at. I mean, my thought...and, of course, I'm not the introducer. But my thought would be that, you know, electric monitoring or surveillance cameras on-site is an indicator that there is surveillance. If you're an employee and you're driving a company vehicle and we have a GPS in this and we're tracking your movements, I've heard numerous employees--not on our company but in others--that they'll get a phone call all of a sudden saying, hey, why are you over here, and didn't even know that there was some sort of tracking device on their automobile. [LB570]

SENATOR LATHROP: So I'm sure, because I see Ron Sedlacek here, that we're going to get a, hey, listen, if you're honest, you don't need to be told. So maybe I'll give you a little rebuttal opportunity we don't normally afford witnesses. (Laughter) And you can answer Ron Sedlacek, who I presume is going to say, hey, look, if you're honest, why do we have to tell you that we're watching what you're getting on...what you're looking at on the computer or whether you drive straight to someplace or you detour past your girlfriend's house? [LB570]

DAVE ENGLER: And I would say, if a business is honest and they have no issue with putting it out there that they're doing that, I think it goes both ways. And, you know, these things is part of technology, and it's...I don't think it's any different than Facebook or all these different technological advances. [LB570]

SENATOR LATHROP: Dave, I can't disagree that it's a different world. And the analogy to the Facebook, which is, you know...and we had this...Senator McGill's down there in Judiciary Committee. We started talking about these little...I thought Senator Schumacher lost his mind when he introduced a bill on drones. And we're sitting in Judiciary Committee and you can buy a little \$300 thing that will go look in people's windows. And it...you know, where the right to privacy and the employment relationship...where the line should be is an interesting question with all the various types of monitoring ability employers have and the employee's duty to, you know, work a full day for his pay. [LB570]

DAVE ENGLER: Um-hum. [LB570]

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SENATOR LATHROP: So, okay, well, interesting bill. Any other questions for Dave? I don't see any. Thanks for coming. [LB570]

DAVE ENGLER: All right, thank you. [LB570]

SENATOR LATHROP: Anyone else here in support? Seeing none, anyone here in opposition, against? Huh. (Laugh) [LB570]

SENATOR MCGILL: Hmm. Well, then. [LB570]

SENATOR LATHROP: So I used Sedlacek and he's not in opposition. [LB570]

RON SEDLACEK: Neutral. [LB570]

SENATOR HARR: Neutral. [LB570]

SENATOR MCGILL: (Inaudible) neutral. [LB570]

SENATOR LATHROP: (Exhibit 3) Oh, he's neutral, okay. (Laughter) Well, we do have a letter from the NFIB, dated February 4, 2013, in opposition. That will be made part of the record, and then we'll hear from Mr. Sedlacek in a neutral capacity. [LB570]

RON SEDLACEK: Thank you, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k, here on behalf of the Nebraska Chamber of Commerce. Our labor relations council did discuss this legislation, and there are some positives and negatives. You know, that gives a little bit of parameter, but then there are some unintended consequences as well...not totally opposed. There is certainly...and so that's why we'd like to come in, in a neutral capacity. There is some regulation on the federal level. The Wiretapping (sic) Act is...does have a little bit of an effect on employee notification. Also, the U.S. Patriot Act does get into that area just a little bit as well. So there's really no other federal prohibition, however. Now, as Senator Harr said, there's a number of states that are doing this. And essentially, the idea is just to put people on notice that you're being...there is some surveillance. The question becomes, what are the unintended consequences and how does it work? In particular, situations where you don't necessarily have, like, one establishment and you've got the notice in the break room, so you have remote employees, you have employees who are on the computer all day. Do they...where do you put the notices? Like, in this little office where the server is? Or do you put it in each employee's home? Do you they have to post the notice by their computer? It just...the notice provision is a little interesting as to how that might apply. Also, there is some speculation that legislation of this kind, generally, which is...it can be...is a subject of collective bargaining--and it's considered a separate subject--to just

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foreclose that and, essentially, take that off the table. So that's another issue to consider. Probably where we had a little bit of concern deals with the 180 days. It says 180 days. You have to take disciplinary action within that time period. There are employers that have policies that, you know, they may not do surveillance unless there is an issue that arises and then they look back. And that could be a year or two, and then they find out there's activity. They've given everybody a break, but it's only when it's questionable then they look back to find any other...the evidence of it. The other is where you might have a three-strike-and-you're-out rule. So you commit infractions, so to speak, or work rules, 180 days begins at that point. The next one occurs a second time, let's say, 100 days down the road. Well, you've got 80 days to do something. And you may say, we're not going to do anything. But then the next one occurs right after the...on the 81st or 82nd day, let's say. Well, then you can't go back and use those other two. You may have documented them, but you can't use them. So you've got to start at square one. And the other unintended consequence is it says it only applies in a disciplinary proceeding. So if the employer can't use the information, well, then instead of disciplining him, this really just gives him incentive to terminate because it doesn't apply to terminations whatsoever. So they'll say, well, heck, we can't use it, so we'll just terminate the person. And we know it went on, but...so I think that is something that the commission consider as well. [LB570]

SENATOR LATHROP: Okay. Senator Wallman. [LB570]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thanks for coming, Ron. [LB570]

RON SEDLACEK: Thank you, Senator. [LB570]

SENATOR WALLMAN: I've got a question. [LB570]

RON SEDLACEK: Um-hum. [LB570]

SENATOR WALLMAN: Couldn't I...say I'm a bad employer, harass my employees. Could the employees get the tape of a retail establishment? [LB570]

RON SEDLACEK: Let's see, I believe there is information on line 19 through 22. If you read that, on page 3, it says, information not obtained in the course of a criminal investigation may only be used by the employer, it says, or employee. I mean, it's kind of interesting the word is "or employee." [LB570]

SENATOR WALLMAN: Yeah. [LB570]

RON SEDLACEK: But then it goes on and it says, in a disciplinary, and I'm not sure the employee is going to use it in a disciplinary... [LB570]

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SENATOR LATHROP: It would be kind of hard for an employee to discipline the employer. [LB570]

RON SEDLACEK: Yeah. [LB570]

SENATOR WALLMAN: Yeah. [LB570]

RON SEDLACEK: So I'm not sure how that really works out, but... (Laughter) [LB570]

\_\_\_\_\_ : (Inaudible.) (Laughter) [LB570]

SENATOR LATHROP: But it's a good point. [LB570]

RON SEDLACEK: Yeah. [LB570]

SENATOR LATHROP: I mean, if you're a female employee and the boss is... [LB570]

RON SEDLACEK: Um-hum. [LB570]

SENATOR LATHROP: Well, I suppose it could go either way. [LB570]

RON SEDLACEK: Well, then you'd want... [LB570]

SENATOR LATHROP: But hypothetically, yeah, it... [LB570]

RON SEDLACEK: You would want the monitoring and the availability. [LB570]

SENATOR LATHROP: Yeah. Then you'd say, hey, I need the tape because this guy was cornering me in the break room, or something. [LB570]

RON SEDLACEK: Um-hum. [LB570]

SENATOR WALLMAN: Um-hum. [LB570]

SENATOR LATHROP: Okay. [LB570]

SENATOR WALLMAN: Thank you, Ron. [LB570]

RON SEDLACEK: You bet. [LB570]

SENATOR LATHROP: I see no other questions. Anyone else here in a neutral capacity? Seeing none, Senator Harr to close. [LB570]

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SENATOR HARR: Thank you, Senator Lathrop, members of the Business and Labor Committee, and thank you for the...this legislation is a work in progress obviously. It could use some fine-tuning. I appreciate that's why we have the hearing committee, to help bring out some of these issues. I would note though that the NFIB negative letter in opposition, if you really look at it, they don't object to the 180 days. But most of what they're objecting to is criminal in activity, in nature, and so this wouldn't apply to that. Now as far as, "Surveys indicated that peak patterns for pornographic Web sites and other on-line Web sites such as retailers, brokerages, and auctions occur during normal working hours," I would think you would want your employer...employee to know, hey, I'm watching you, okay, so don't be looking at the porn. That's why you want to have this out there. I'm not saying...this bill does not say, hey, we are watching, you know, we aren't going to give away the procedure, we have eight cameras in here. But what it says is we have...we are monitoring, we are watching you at all times. And that's not a bad thing. And most of the situations that you brought up, Senator Lathrop, again, were criminal in nature. But we can definitely apply them for disciplinary action as well. But that's what we're going to find is a lot of what this monitoring and watching of employees is, is within the workplace, and that's fine. But, you know, the question is, again, you give your employee a phone, are you watching who they call and when they call? Are you watching to see that they're calling their wife, their mistress, or someone else? Are you watching their Facebook page and saying, hey, we want to fire you because of something you did on the weekend and we saw you posted a picture. I mean, extreme example: We saw you kissing someone of the same sex and that's against our policy as a company. Well, if you're watching my Facebook, I'm going to be--and I know you are--I'm going to be a lot more careful than if I don't know that. So we've got to draw the line somewhere. You know, there's a meshing between work and home, and that's fine and it's good. But it could also be dangerous, and so I think we have to be very careful in how we do that and where we draw the line. As far as notice, you know, there's more than just the break room. When you start any job, you have to sign, saying that you've read the policy and handbook. And we could just have this...again, where and how you're monitored and watched is in the handbook and in the policy. And that's part of what this amendment does that I introduced today. But I think it's time we have a serious conversation about how much and where we're going to allow this in this world, this cyber watching. Are we going to say, hey, yeah, I've got a little camera outside your bathroom. And we can do it. Or do we want our employers to be put on notice? And maybe I'll say, if you're going to watch me at home, I don't want to work here, I want to go somewhere where they trust me. But there has to be some notice so that I know what is being watched and what isn't. With that, again, work in progress. I would continue to work with the chambers and with anyone else who has any comments to make this bill better. [LB570]

SENATOR LATHROP: Okay. We do have a letter from the NSEA, the teachers, in support of LB570. And that will be made part of the record as well. And with that, we'll

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close the hearing on LB570 and end our day. [LB570]

SENATOR HARR: Thank you. [LB570]

SENATOR LATHROP: Thanks. [LB570]