

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

Executive Board Committee
February 11, 2013

[LB242 LB620]

The Executive Board of the Legislative Council met at 12:00 p.m. on Monday, February 11, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB242 and LB620. Senators present: John Wightman, Chairperson; Bob Krist, Vice Chairperson; Greg Adams; Bill Avery; Kathy Campbell; Ernie Chambers; Mark Christensen; Russ Karpisek; Steve Lathrop; and Heath Mello. Senators absent: None.

SENATOR WIGHTMAN: Welcome to the Executive Board Committee hearing. My name is John Wightman. I am from Lexington and represent the 26th Legislative District. I serve as Chair of the Executive Board. We will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceeding, I ask that you abide by the following procedures. First, please turn off your cell phones or silence them. The order of the testimony will be, first, the introducer, then proponents, opponents, those testifying in a neutral capacity, and a closing. Testifiers shall sign in. Hand your sign-in sheet to the committee page when you come up to testify. Spell your name for the record before you testify. Please be concise. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand it to the page for distribution to the committee and staff. We will need 13 copies, and you can get help getting the 13 copies. If you have written testimony but do not have 13 copies, please raise your hand so the page can make copies for you. If you do not wish to testify but would like your position to be part of the record, you can sign the form found at the testifier's table by the testifier sign-in sheets. By way of introduction, to my immediate right is the committee counsel, Janice Satra. To my left is the committee clerk, Natalie Schunk. And further over here, to my right, also is our committee page, Tess, that will be acting today. The Executive Board members with us today, I'll let them have self-introductions, starting on my far left.

SENATOR AVERY: I'm Bill Avery, District 28, here in Lincoln.

SENATOR WIGHTMAN: And then we...

SENATOR LATHROP: Steve Lathrop, District 12, Omaha.

SENATOR KARPISEK: Russ Karpisek, District 32, Wilber.

SENATOR WIGHTMAN: And I'm John Wightman, Committee Chair. We'll start to my far right.

SENATOR MELLO: Heath Mello, District 5.

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

Executive Board Committee
February 11, 2013

SENATOR CAMPBELL: Kathy Campbell, District 25.

SENATOR ADAMS: Greg Adams, District 24.

SENATOR CHAMBERS: Ernie Chambers, District 11.

SENATOR KRIST: Bob Krist, District 10.

SENATOR WIGHTMAN: Thank you. Absent at the present time is Mark Christensen, who may be joining us later. I'm not sure.

SENATOR KARPISEK: He was here.

SENATOR WIGHTMAN: What?

SENATOR KARPISEK: He needed his glasses.

SENATOR WIGHTMAN: Oh, okay. We'll take up today's bills in the following order: We'll start with LB242 and then take LB620. So with that, Senator Howard, I think.

SENATOR HOWARD: (Exhibits 1 and 2) Good afternoon, Senator Wightman and members of the Executive Board. My name is Sarah Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. I am introducing LB242 to ensure that regulations are promulgated in a timely manner. LB242 is a follow-up measure to LB617, which was a bill that was introduced by Senator Mello and passed into law in 2011. As most of you probably know, Senator Mello's bill required agencies to report to the Legislature all regulations pending, their status and progress in process, and how any appropriations have been spent. LB617 also required that all regulations be promulgated within one year of a public...of the public hearing and, by all accounts, his bill has been very successful. But what LB617 did not do, however, is apply to regulations that should have been written before it went into effect. This means that regulations that had been languishing for years before its passage may still be languishing somewhere in the administrative ether. LB242 seeks to address these regulations and any regulations where the reporting requirement may not be sufficient inducement to convince the agency to promulgate in a timely manner. To that end, LB242 would automatically trigger a public hearing before the committee with jurisdiction over the enacting legislation if the regulations have been delayed for three years or more after the effective date of that legislation. So essentially, if they haven't promulgated the rules in three years after the legislation has been passed, they need to come to the committee with jurisdiction and tell them why. The reasons it's important to have a public hearing on these issues is threefold. First, it's pointless for this Legislature to make policy if we can't trust that the agencies responsible for effectuating this policy

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

Executive Board Committee
February 11, 2013

will do their jobs. We must be able to hold those agencies accountable when they fail, especially when appropriations are involved. Secondly, there may be a justification for failure to promulgate these regulations, and the law may need to be adjusted. The Legislature cannot respond if we cannot get a complete picture of the barriers to enacting these regulations. Finally, businesses and industries who are subject to regulation need stability and predictability in their regulations. An industry who is aware of legislation, is involved in the process, and relies on the knowledge that changes are coming cannot be made to wait for ten years for an agency to do its job. The good news is that there appears to only be a handful of regulations that are more than three years overdue. I believe that Senator Harms has asked Martha from Performance Audit to appear in a neutral capacity to give you a sense of where we are with those regulations. Additionally, you'll hear from a number of testifiers who have been affected by delays in promulgation. I believe that LB242 is essential to an effective Legislature, and I appreciate your attention to this bill. We have passed out two letters of support: one from Joni Cover with the Nebraska Pharmacists Association; and one from Jerry Stilmock with the Nebraska Volunteer Firefighter Association and the Nebraska Fire Chiefs Association. I appreciate your time and I would be happy to answer any questions you have. Thank you. [LB242]

SENATOR WIGHTMAN: Thank you, Senator Howard. Yes. [LB242]

SENATOR KRIST: Hi. Thank you. Thank you, Chair. Why three years? [LB242]

SENATOR HOWARD: You know, three years seemed...you know, I would be happy to defer to the recommendations of the committee if there was a time period that seemed more reasonable. It just seemed that three years gave them enough time, if there was...if there were budgetary issues or something along those lines that prevented them from promulgating those rules. [LB242]

SENATOR KRIST: Except as...my point, I guess, would...except for the two-year biennium cycle that, potentially, they couldn't effect changes within. But it seems to me that we've gone from one now to three, and I was just checking the logic in terms of where you were. So thank you for your answer. [LB242]

SENATOR WIGHTMAN: Thank you, Senator Krist. Any other questions? If not, it sounds like there are other people going to testify. Thank you. [LB242]

SENATOR HOWARD: Thank you. [LB242]

SENATOR WIGHTMAN: Good afternoon. [LB242]

TERRY WERNER: Good afternoon, Chairperson Wightman and the Executive Board. My name is Terry Werner, T-e-r-r-y W-e-r-n-e-r, and I am here representing the

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

Executive Board Committee
February 11, 2013

Nebraska Chapter of the National Association of Social Workers in support of this bill. I first want to thank Senator Howard for bringing this. And I'm going to tell our story, and then you'll understand why I'm thanking her. In 2007, the Legislature passed independent licensure for mental health professionals, which included social workers. And of course, rules and regulation were to be promulgated by the Board of Mental Health Practice, which governs our...governs therapists. The board is made up of professionals from each of the various professions affected: social work, marriage and family therapists, professional counselors, and so on. They did their job and in 2008 had their first public hearing, at which time a group that represented a small number of therapists throughout the state--I'm guessing less than 1 percent--came and had objections to the regulations. Then for a couple years it was a roller-coaster ride, up and down, the board going back and forth, wanting to do the right thing. But in July of 2010, they unanimously passed the regulations and, by the way, regulations that most all of the professions could support. Since that time, the administration has not advanced the regulations to the next step which, in this case, would be the Board of Mental...or the Board of Health and then on to the administration for ultimate signature by the Governor. Our hope in supporting this bill, as I bring it to the Legislature: that we can see movement. And I know you're going to hear later from Martha Carter about the success of the LB617 in the past. But I want to quickly make three points. Number one, professions should not be asked, under rules and regulations or under legislation, to compromise their code of ethics. Every profession has a code of ethics, and the premise of their code of ethics is, generally, do no harm. And I think that's a very important point. Also, rules and regulations, once it gets passed in the Legislature, should not be a political process. In our case, it was sent to the people who are expert in the field, and they unanimously passed something that is going nowhere. And then, finally, I'd like to make the point that when legislation or rules and regulations become about the provider and not about the client, that is not in the...that is not promoting the safety and well-being of Nebraska citizens; and I think it's unfortunate when it gets to that point. So in closing, I would ask that you not get drawn into the debate about our rules and regulations. They have been debated by...for six years by all of the associations that are involved and by the professionals on the board. So this is really about the process, and so we're hoping that that's what this continues to be about--the process--and not about our individual regulations. So with that, I would take any questions. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

SENATOR LATHROP: I do have a question, if I may? [LB242]

SENATOR WIGHTMAN: Yes. [LB242]

SENATOR LATHROP: So we just had a lesson on this subject this morning about bills that...and having a point to them. So here's my question. If we are...and I know the fight

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

Executive Board Committee
February 11, 2013

you're engaged in with...and the groups that are on either side and what the issue is because we've met about it over the summer or this fall. But specifically, or more generally, perhaps, if they won't pass the rules and regulations--and let's say it's the Department of Health or whoever is supposed to do the rules and regulations and they don't--and now we have them in front of the Health and Human Services Committee, what do you want them to do about it? Do they break the tide? Do they promulgate the rules themselves? What do we do? What's the solution? Because if they're not going to...in how many years? Five? If they're not going to pass any regulations that we've told them to pass in five years--or three, as the bill says--and we now get them in front of the committee of jurisdiction, what's that committee to do? Because... [LB242]

TERRY WERNER: Well, that's an excellent question. And I'm hoping just the process or the fact that it has to go before the committee puts some pressure on the agencies--or the administration, in this case--to do something about it. It affects human beings. These...you know, the regulations are boring and thick and so on, but there are consequences to this. And I think that if the Legislature were able to hear what these consequences are...and I know there's someone from the board who is going to testify later that could tell you what the consequences are. But I think, if a legislative committee heard that, it might...you know, I don't know that it would be legislative action. I'm not exactly sure what would happen. [LB242]

SENATOR LATHROP: I agree. [LB242]

TERRY WERNER: I think it just keeps the pressure on. [LB242]

SENATOR LATHROP: I agree, Terry, with the principle or the point that if we tell the executive branch or the agencies they need to do something and promulgate regulations and they have a year to do it that, if they haven't done it in three, that they ought to be accountable in some respect. I don't know if this is accountability. I know it's dragging them there. It might be a little embarrassing, but if you think of something that we can add to this that's consequences. The other thing is--and this is a point of irritation for me--we get a fiscal note. So whatever we do, we get a fiscal note around here, part of which is the cost of coming up with the regulations. And if they don't go through that process, they have encumbered a bill with an appropriation and not done what they were supposed to do, which is a problem in two respects. [LB242]

TERRY WERNER: No, I understand your question, and I would leave it to the legislators to figure out. You've done a lot of great work over the last couple of years of trying to take control of some of the processes in child welfare and other places. And where are we to go, is my question. I mean, we're stuck, been since 2007, since when this bill was passed, and it just doesn't seem logical to me. [LB242]

SENATOR LATHROP: Okay. [LB242]

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

Executive Board Committee
February 11, 2013

SENATOR WIGHTMAN: Thank you, Senator Lathrop. Senator Mello. [LB242]

SENATOR MELLO: Thank you, Senator Wightman, and thank you, Mr. Werner, for your testimony. I think, to some extent, maybe it's to provide some clarification, I think, with your exchange with Senator Lathrop. The existing law that the Legislature passed, LB617, in 2011 provided these remedies to be able to hold executive agencies accountable. If they didn't promulgate these rules, they'd come back to the Legislature. They would provide information--it's on page 2 of the bill--in regards to the reasons why they didn't...have chosen not to adopt the rules and regulations, what have they done with the appropriated money that was given to the enactment of the bill. But if I'm not mistaken, LB242 essentially extends that period in time because of the way the bill was drafted in LB617, as part of a compromise with the Exec Board at that time, was to only allow it to be regulations moving forward and those that had been, essentially, not previous rule and regulations that we knew were caught up in limbo. [LB242]

TERRY WERNER: Right. [LB242]

SENATOR MELLO: And so this goes back to try to address, if I'm not mistaken, the rules and regulations that were left in limbo when we came up with the compromise and just--with both the former Speaker, Speaker Flood, as well as the Governor's Office--just to try to set a new stage moving forward. So this kind of applies the bill we passed a couple years ago to these past rule and regulations, which there is only still a handful of them left. But they're still...they're essentially caught in a quandary, so to speak, because there is no remedy left for them to move forward and, ultimately, LB242 allows them to follow the remedy the Legislature passed a couple years ago. Would that be... [LB242]

TERRY WERNER: That... [LB242]

SENATOR MELLO: Trying to answer some of Senator Lathrop's questions on your testimony, is that kind of...? [LB242]

TERRY WERNER: That's exactly how I see it, yes. That's exactly how I see it and, as you've heard, Senator Howard is willing to discuss the time period, so. [LB242]

SENATOR MELLO: Okay, thank you. [LB242]

SENATOR WIGHTMAN: Thank you, Senator Mello. Any other questions? I guess I would ask: We talked about the three years, do you consider three years to be a... [LB242]

TERRY WERNER: Well, the process does take time, and I think it's important that

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

Executive Board Committee
February 11, 2013

people be heard. And I think it's a good process. [LB242]

SENATOR LATHROP: I suppose we could. [LB242]

TERRY WERNER: You know, from the time the bill was passed, it took...it's been so long ago, I'm not exactly sure, but it seems like about a year before the regulations were there because it's an extensive process for a volunteer board to revise entire regulations. So I'm thinking it's a year before it gets to public hearing, and then I...you know, the process, you know, it probably is too long. But it... [LB242]

SENATOR WIGHTMAN: But you could live with it for three years? [LB242]

TERRY WERNER: Well, you know, we're kind of desperate, so. [LB242]

SENATOR WIGHTMAN: Okay, thank you, Mr. Werner. Anyone else that...? [LB242]

TERRY WERNER: Thank you. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

ANNE BUETTNER: (Exhibit 4) Okay. I have 12 copies here, now it's 13. But when I am done testifying, you can have my original. Okay. My name is Anne Buettner, A-n-n-e B-u-e-t-t-n-e-r. I represent the Nebraska Association for Marriage and Family Therapy. Good afternoon, Senator Wightman and all the other senators. And first of all, thank you, Senator Howard, for introducing this bill. And on behalf of my association, we support LB242, along with all the other esteemed mental health professionals from other disciplines, okay, of all mental health, actually, in Nebraska. The bill would have moved forward the proposed rules and regulations of the Mental Health Practice Board and the Psychology Board. Further, to give you a little bit more detail but not too much detail of what my colleague, Terry, has testified, the Mental Health Practice Board has held three--three--public hearings, and the last public hearing was in 2010. And the board had unanimously voted to approve the proposed rules and regulations. Now the credentialing board, just like any credentialing board, are selected by the State Board of Health as experts to protect the public. They know what they are doing. So there is one focus that...of the proposed rules and regulations which is the reason of the holdup for three years. It is about the nondiscrimination of clients of alternative sexual orientation. And according to our code of ethics of all the mental health professional associations, if the provider is unable to provide treatment, appropriate referrals have to be made, and all the action and the intention has to be in the best interest of the clients, not the provider, okay? So our position has steadfastly been the same, and the proposed regulations are held up because there is political pressure and political distraction. So I do not need to belabor here. Mental health, certainly, is a precious component of our health. And without rules and regulations, the promulgation of them, how can the public

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

Executive Board Committee
February 11, 2013

be protected? So we hope this board...please, you know, forward this bill. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

ANNE BUETTNER: Okay. Any questions? [LB242]

SENATOR WIGHTMAN: Anyone have any questions? Seeing none, thank you for testifying. [LB242]

ANNE BUETTNER: Thank you. [LB242]

RON JENSEN: Chairman Wightman, members of Executive Board of the Legislative Council, my name is Ron Jensen. I'm a registered lobbyist. And that's J-e-n-s-e-n, registered lobbyist, appearing before you this afternoon on behalf of the Nebraskans with Intellectual Disabilities Service Providers--and those are the community developmental disability providers in Regions 3, 4, and Mosaic--and in support of LB242. I realize that this, to a certain extent, bats cleanup, and I'm pleased to know that LB617, prospectively, is intended to solve this issue. It is important, and I'm always struck by the casualness that some of the executive agencies occasionally take toward implementing the will of the Legislature. I was involved for many years with a major program of the Division of Public Health. It was originally enacted, I believe, in 1986, and they never did adopt regulations for it. And I asked...and they did a pretty good job with it, absent the regulations. And I asked one of the staffers one time why they had never done this. And the response was, we started once but we realized it was going to be a huge task, and we did not feel we had the resources to do it, so we haven't done it. And as I said, they did a pretty good job but did that with kind of a loose-leaf rule book that, trust me, changed from time to time over those years. And because all of those changes took place well outside of the Administrative Procedure Act, it sometimes came as quite a surprise to folks who had to operate under the, in quotes, rules of that program. I don't know, Senator Lathrop, what the answer to your question is. I do know, as a one-time state agency head, if I knew that I was going to have to come down to the Legislature and justify why my department, in a period of three years, had not been able to promulgate a set of regulations, keeping in mind the fact everyone is busy, it would be a strong motivation, to me, to get somebody on it, even if I had to do it myself. So we think this is important legislation. We certainly think it's worthy of your support. We hope you'll advance it to General File and support it. I would be happy to try to answer questions if there are any. [LB242]

SENATOR WIGHTMAN: Thank you, Mr. Jensen. Senator Christensen. [LB242]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess I look at it, maybe, a little bit different. I'm tired of people not implementing it. I guess I've looked at two different thoughts on it. One is either a 10 percent reduction in the budget of the department, if

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

Executive Board Committee
February 11, 2013

not implemented with 12 months, or 10 percent reduction to the director's pay. [LB242]

RON JENSEN: See, I would favor option B. (Laughter) I think option A punishes people that might not have had anything...my recollection is, from my days in state government, that if the agency did not submit its budget by September 15 to the Governor, that that agency director's pay was docked a day for every day that that was late. I don't know if that recollection is accurate, if that's still on the books. But I can tell you, we always had that budget in by the 15th of September. And I'm not here to recommend that. But if you were to choose between those two, I guess I'd favor option B. [LB242]

SENATOR CHRISTENSEN: Because the other thought I had was, if rules aren't implemented in 12 months, the director is fired. I'm sure you'd see implementation. [LB242]

RON JENSEN: Or public whipping. (Laughter) No, I... [LB242]

SENATOR CHRISTENSEN: (Laugh) That might go too far. [LB242]

RON JENSEN: Yeah, I don't know how far you'd go with this, is my point, but that would be a motivation. [LB242]

SENATOR CHRISTENSEN: Thank you. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

SENATOR LATHROP: I don't know if the legislative branch can publicly whip anybody in the executive branch. [LB242]

RON JENSEN: That would be a violation of separation-of-powers doctrine. [LB242]

SENATOR LATHROP: Might be. (Laugh) [LB242]

RON JENSEN: And, you know, I assume that's the thing you've got to work around and in a punitive provision on, yes. [LB242]

SENATOR LATHROP: It is the challenge,... [LB242]

RON JENSEN: Sure. [LB242]

SENATOR LATHROP: ...because this is the executive branch not cooperating with a directive of the legislative branch. [LB242]

RON JENSEN: Of course, of course. [LB242]

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

Executive Board Committee
February 11, 2013

SENATOR WIGHTMAN: Thank you. Senator Krist. [LB242]

SENATOR KRIST: Having been a witness of activities at "Chop-Chop" Square in Saudi Arabia, I can tell you that one beheading ends all the bad action. But given that we're not going to have that option, I find it unusual--and we will Exec, I'm sure, but I'm going to say it publicly--that we are reluctant to use our subpoena power to bring people in and hold them accountable for the things that we have asked them to do. I have, in this session, had three directors who have not testified at public hearings that should have been there testifying and sharing information because the spirit of the public hearing is to make sure that the people hear the debate. And if the director, the expert in the situation, is not there to hold them accountable from the beginning, then how do we expect to hold them accountable throughout the process? I think this bill is a good start. I don't think it is a fix to the situation of the executive branch withholding either the ability...just this session, I've had, as I said, two directors, one of them who supported activity all the way through two years of preparing the piece of legislation, who was advised, restricted, not available. He wasn't there at the public hearing, and that's wrong. It starts there. I really believe it starts there. So I've said what I need to say. You're welcome to respond to that if you need to. [LB242]

RON JENSEN: Well, I hate to talk about the old days, all of it, when I was in state government. And you are busy. We're all busy. There's a lot going on. I had a staffer who did some testimony for the department. I thought it was working okay. Then Senator Wesely took me aside one day and said, Ron, we need you to speak to this, we want somebody who works at your level and exercises your level of authority and is dispositive on this to come and be the witness. He was Chairman of the Health and Human Services Committee at that time, and I started showing up, okay? I think, sometimes, that can be handled in that manner. [LB242]

SENATOR KRIST: Thank you, Mr. Jensen. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

RON JENSEN: Thank you, Mr. Chairman. [LB242]

PETE McClymont: (Exhibit 5) Chairman Wightman, members of the Exec Board, for the record, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for the Nebraska Cattlemen. My board approved support of LB242. Obviously, the issue at hand is not nearly the level of the serious issues that the HHS Committee and the agency deal with. But we had a bill that Senator Hansen brought in 2008. The affected individuals and businesses wanted it. From the passage of the bill in April of 2008, it took over three, less than four, years for the bill and the regulations to be implemented. So in support of Senator Hansen and the issue at hand, my board

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

Executive Board Committee
February 11, 2013

voted to support it. So I'd be happy to answer any questions if there are any. [LB242]

SENATOR WIGHTMAN: Thank you. Do we have any questions? Senator Avery. [LB242]

SENATOR AVERY: Thank you, Chairman Wightman. Any ideas on how we could stiffen our spine and actually compel the executive branch to comply? [LB242]

PETE McCLYMONT: And that's a fair question. What we did, Senator Avery, was that we, being the Cattlemen, would call the affected agency to find out where it was, and there were times we didn't even get a call back. So then we had Senator Hansen and his staff call the agency. And it got to the point they were calling about every six months, and then it was a year. So, I guess, you're accurate. I mean, what hammer do you have that we can give you as a Legislature to help this, you know, have more teeth? So I'm sorry. I'd like to bring solutions, and I can't give you one, sir. [LB242]

SENATOR AVERY: Well, we had a case a couple of years ago where an agency was supposed to notify the executive and the Legislature if they were to terminate a program. They terminated a program and completely ignored the statute for notification until my phones were lighting up and others around here, too, and we had...we dragged them into a hearing. And the attitude was: Oops. That was about it. [LB242]

SENATOR WIGHTMAN: Thank you, Senator Avery. Any further questions? Thank you. [LB242]

PETE McCLYMONT: Thank you, Chairman. [LB242]

WILLIAM SPAULDING: (Exhibit 6) Good afternoon, Senator Wightman. Senators, I am Will Spaulding, S-p-a-u-l-d-i-n-g. I am the chair for state government affairs of the Nebraska Psychological Association. I'm here to communicate our support for the bill under consideration. Our story is, essentially, the same as Mr. Werner's. Our licensing regulations have been held up for three years, and that's three years after completion of the process. Our regulations have been approved by the State Board of Health, the board of examiners, and are ready to go, save for the final approval of Dr. Schaefer as the Chief Medical Officer. There are some more details in the letter that I am distributing to you. What I would like to emphasize, in just a couple of minutes, is the degree to which the public's interest is truly undermined by these holdups and by the politicization of professional regulatory process. The process of regulation development that you've been talking about is an ongoing thing. Healthcare is evolving really rapidly. And our Board of Examiners is constantly reevaluating the licensing regulations, updating them to accommodate changes in training programs, in the way practice is regulated at the national level, reimbursement mechanisms, all kinds of complexities. It's an ongoing process. The day in which a set of regulations is approved is the next day the work on

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

Executive Board Committee
February 11, 2013

the next set of updates has to start. It's an ongoing process. Falling behind on this process has serious consequences, and I'll just give you one example that's illustrative and completely unrelated to the reasons that the regulations are being held up. One of the things that we've had to do in psychology is update for the increased amount of clinical training that happens before the doctoral degree is conferred in graduate school. The old regulations don't recognize that, and we're basically operating with regulations that grossly underestimate the amount of clinical training that new doctors have when they begin practicing. So we require new doctors to undergo a protracted period of supervision after that. Well, that's obsolete now. Our new regulations adjust for that and allow for all kinds of alternative ways of new doctors establishing their credentials. One particular problem has been with academic psychologists because, if you're in academia--you have research and teaching responsibilities--that takes away from accumulating the amount of clinical practice that you can do toward earning your licensure. That is exactly the one provision that we have adjusted. And until we make that adjustment, where I work, at UNL, in the psychology department, we are at a serious recruiting disadvantage. Right now, today, we are attempting to recruit a brilliant, young, child psychopathologist to come to this state, to join the university, to do her research and her clinical practice here. And it doesn't look like that's going to be possible, unless we can get these new regulations implemented, because it would be a fatal disincentive for her to work in a place where she would not have the opportunity to get the licensure that she needs. So that's one example of how things get undermined and, for reasons like that, I would urge you to move this with alacrity. Thank you. [LB242]

SENATOR WIGHTMAN: Thank you, Mr. Spaulding. Are there any questions? Thank you. [LB242]

MATTHEW MIMS: Good morning. Thank you for having me here. My name is Matthew Mims, and I'm from the Nebraska Counseling Association. I would like to speak in support of LB242. And thank you for allowing us to share our opinions. To help put it into... [LB242]

SENATOR WIGHTMAN: Could you, before going on, spell your last name? [LB242]

MATTHEW MIMS: Yes, I'm sorry. Mims, M-i-m-s. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

MATTHEW MIMS: I thought it was great when Senator Howard mentioned administrative ether, because that's sort of what we're talking about. We've lobbied hard, in fact, the board has debated this longer than I've been a resident here in Nebraska. This is my fifth year. And what's interesting: Over 50 changes are proposed, and we are all in agreement that those changes need to go forward. A number of my

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

Executive Board Committee
February 11, 2013

colleagues, in their letters and the testimony before mine, illustrated some of those examples. We have a licensed independent mental health practitioner where the law was passed, and they have no policies or rules that have been passed since then. So we have this logjam that is being held back by one log, and it's starting to affect all our professions in not only recruiting new teachers into the profession but, also, as our administrative and licensure requirements on a national level change. So we'd like to support this law, to move it forward because, in a way, we are being held political hostage on this one issue, whereas, we have 50 behind it that need to be passed and moved forward. So on behalf of school counselors, mental health counselors, rehab counselors, and alcohol and drug counselors, I encourage you to pass LB242. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

MATTHEW MIMS: Questions? Thank you. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

SUSAN FEYEN: Hello. My name is Susan Feyen, S-u-s-a-n, last name F-e-y-e-n. I'm a licensed independent mental health practitioner and also a clinical social worker. I've been practicing in the state of Nebraska for about 20 years, and I'm employed at OMNI Behavioral Health. I'm here representing myself today. I also do some other various duties related to mental health practice. I am one of two social work representatives on the Nebraska Mental Health Practice Board through the Division of Public Health. I'm also in a...on a committee, through public health, called the Nebraska Women's Health Advisory Council. It may have surprised you to know that there is a subset of mental health practitioners practicing without regulations since 1998. This subset of independent mental health practice is a specialization for practitioners providing treatment of major mental illness. You should know the reasons why this is so, as you represent the taxpayers and the practitioners who are acting without specific regulations for this specialization. There are regulations to support mental health practice. However, the specialization of independent practice is still unsupported by regulation. The proposed and stalled regulations for independent mental health practice have increased standards for continuing education to include training for diagnosis and treatment, as well as increased requirements for ethics, which includes referral to qualified healthcare professionals. Citizens should be offered the protection provided by regulations in the treatment of major mental illness. There may be legitimate reasons as to why these regulations have stalled. These reasons, however could be legitimate, have impaired the ability to protect citizens against independent mental health practitioners who fail to meet the minimum standard. Everyone has a job here. If regulations are stalled at some point in the process, then the party responsible for the stall needs to articulate the reason. With the new regulations being stalled, there are several other issues that are delayed as part of our new regulations. This includes important issues with technology, updating standards with regard to accredited education programs. For example, current

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

Executive Board Committee
February 11, 2013

regulations indicate social workers must have a minimum score of 75 percent on their exam. However, changing this to a minimum cut score is a far better means of determining competency, based upon a national average. This is just one of many necessary changes for the new regulations. I have mentioned stalling several times in my testimony, and the stalling is ultimately caused by interested parties at times being very unreasonable and expecting the Board of Mental Health to at as a mediator to help them resolve their issues when, at times, they are not being reasonable. This is really an unrealistic expectation and is not the role of the board. However, all of those issues aren't necessarily for you to sort out. But it is something that I think that is interesting to you and you should know about. Because of this, I support the bill, because it will bring a bright light on the rule-making procedure in Nebraska that needs to be examined. [LB242]

SENATOR WIGHTMAN: Thank you. [LB242]

SUSAN FEYEN: Thank you. [LB242]

SENATOR WIGHTMAN: Do we have any questions? Thank you for being here. [LB242]

SUSAN FEYEN: Um-hum. [LB242]

SENATOR WIGHTMAN: Just a show of hands, how many other testifiers do we have? Not on this one. Thank you. Okay, we have two letters of support, maybe more than that. Two letters of support: one from the Nebraska State Volunteer Firefighters Association and Nebraska Fire Chiefs Association, which we'll make a part of the record, and then one from Nebraska Pharmacists Association, which we will also make a part of the record and will be made part of the record, yes. No one else to testify in favor. Do we have anyone else, anyone here to wants to testify opposed? Yes. [LB242]

SENATOR KRIST: Neutral. [LB242]

_____: Neutral, neutral. [LB242]

SENATOR WIGHTMAN: Or you're neutral. We'll...go ahead and sit down, so in the neutral capacity. [LB242]

MARTHA CARTER: (Exhibit 7) Thank you, Chairman Wightman, members of the board. My name is Martha Carter, C-a-r-t-e-r, and I'm the Legislative Auditor. There's a handout you should have received--and I'm just going to hit the high points of that--having to do with what we know right now on the implementation of LB617 from a couple of years ago, and then I'll be happy to answer any questions you might have. Just to be really clear about the requirements of LB617, there are two deadlines in there that agencies have to meet in terms of the promulgation of their regulations. They're

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

Executive Board Committee
February 11, 2013

required to hold the public hearing within one year of the statutory effective date, and then they're required to actually complete the promulgation process within one year of the public hearing. So generally, that's going to be a two-year deadline, although, if you have an agency that misses the first deadline, then it's going to push out that second deadline beyond two years. So they're two...they're individual, one-year requirements, so I just wanted to clarify that for the record. So what...our office receives the reports that are required to be submitted and, as of last July 1, we had 25 sets of regulations from 8 different agencies to which LB617 requirements applied. So those are regulations that are required by a legislative bill that went into effect after the effective date of LB617. And that effective date was in May of 2011, so it's a different pool than the bill that you're considering today would impact. Of those...so the bottom of the page shows you the hearing deadline. Of the 25 applicable regulations: 13 met the one-year hearing deadline; two--and they were both related to the same bill--did not meet the one-year deadline; and the other 10 had not yet reached the deadline at that point. The second page shows the number of those that have completed the process. All of...there are none that have reached the second year deadline and missed it. There are many that have not yet reached that because the effective date was May of 2011, so May of 2013 is really when you're going to start seeing that potential. There were 4 of the 25 that had appropriations bills that were affiliated with them. We didn't find any of those where there was a lag time so that there was a concern about what has happening with the funds while the regs were being promulgated. And then, for regulations that were enacted prior to LB617, we noted that agencies are not required to report these to the committee but some do. I will say, we have had good cooperation from the agencies in getting information to us. So what we did was looked at what we got from July of 2012, took a quick look just last week at what's on the Secretary of State's Web site and, based on that, I would say, there are about a half a dozen sets that are older than LB617. So they are several years old now, and those, the current requirements, do not apply to those, so. And we have definitely seen some of those that were older that have gotten through the process in the last couple of years. So I believe that LB617 is having an impact and encouraging agencies to get those regulations done, that there are still a few outstanding that have...that are older than that, that the current bill doesn't get to. So with that, I'd be happy to answer any questions if you have them. [LB242]

SENATOR WIGHTMAN: Thank you. Do we have any questions? [LB242]

MARTHA CARTER: Thank you. [LB242]

SENATOR WIGHTMAN: Thank you for... [LB242]

SENATOR CAMPBELL: Senator Wightman. [LB242]

SENATOR WIGHTMAN: Yes. [LB242]

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

Executive Board Committee
February 11, 2013

SENATOR CAMPBELL: I'm sorry. I apologize, I was thinking and didn't get my...get your attention. Ms. Carter, could you provide to the board those agencies, the four agencies where they are longer,... [LB242]

MARTHA CARTER: Yes, I would be happy to do that. [LB242]

SENATOR CAMPBELL: ...so that we have an idea of...and how long they have been? [LB242]

MARTHA CARTER: Um-hum, yes. I'd be happy to do that, um-hum. [LB242]

SENATOR CAMPBELL: Because those agencies would be required to keep in touch with you, or do they just...are those four, as a courtesy, they're not under any... [LB242]

MARTHA CARTER: I would say the latter. I mean, we...generally, what...most of the agencies seem to be just giving us whatever regulations they have pending. They're not going through and separating out which are the LB617, necessarily,... [LB242]

SENATOR CAMPBELL: Okay. [LB242]

MARTHA CARTER: ...which we appreciate, because it just gives us that much more information. So those are not ones though...like, with the ones that are...that LB617 applies to, if they miss the deadline for when the regulations have to be promulgated, then they've got to notify the Executive Board and the standing committee. But those that are older, I don't think they're really required to report to anybody, so. [LB242]

SENATOR CAMPBELL: Thank you. [LB242]

MARTHA CARTER: But we'd be happy to get that to you. [LB242]

SENATOR WIGHTMAN: Thank you, Senator Campbell, and thank you. [LB242]

MARTHA CARTER: Um-hum. [LB242]

SENATOR WIGHTMAN: Do we have anyone else in a neutral capacity? If not...did you wish to enter closing? [LB242]

SENATOR HOWARD: No, I'll waive it (inaudible). [LB242]

SENATOR WIGHTMAN: You had a lot of support. (Laugh) [LB242]

SENATOR HOWARD: (Inaudible). [LB242]

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

Executive Board Committee
February 11, 2013

SENATOR WIGHTMAN: (See also Exhibit 3) With that, we'll close the public hearing on LB242 and take up LB620. Senator Harms. [LB620]

SENATOR HARMS: Senator Wightman and colleagues, for the record, my name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District, and I am presently serving as the Chair of the Performance Audit Committee. The committee introduced LB620 to continue legislative oversight of the state and the University of Nebraska in response to problems raised in a 2012 report on state employees' health insurance cost. As you may remember, at the Performance Audit Committee's request, the State Auditor conducted a performance audit of the state employees' health insurance costs. That report was released last May, and it contained a number of concerns about management of the state employees' health insurance programs. One concern was the reserve balance maintained by DAS and the university were much higher than they needed to be. Everyone agrees that there needs to be sufficient funds to pay for the claims and a cushion in case of something unforeseen happening. However, if those reserves continue to grow unchecked, you may reach a point where you are charging your employees, as well as the state or university, more in premiums than you actually need to be. When DAS and the university disagreed...while DAS and the university disagreed with some of the Auditor's analysis, they did agree, on the meetings last fall with myself and our Audit Committee Vice Chair, that the reserves were too high. And in fact, in November and December 2012, DAS gave the state employees a holiday from paying premiums in order to bring their reserves down. One thing that both entities have made clear to us is that there is no single industry standard that tells you exactly how large your reserves should be. So our committee hasn't asked them to reduce their reserves to a particular dollar amount. Instead, we asked them to develop written policies for how they would set the necessary reserve level and how they would handle the situation if the reserves significantly exceeded those targeted amounts. We have those policies and believe that it is important now for the Legislature to follow up on how they are going to be implemented, what's going to happen to the fund balances in the next few years and, under LB620, the Appropriations Committee would have the opportunity to review this information annually, as the bill would require that both DAS and the university make an annual presentation before the Appropriations Committee to discuss their plans for managing their health insurance programs. Under this bill, the presentation would include the amount of reserves in the health care trust fund. We did not include other specific items to be covered in the annual presentation, as we believe the Appropriations Committee needs the flexibility to pursue whatever they want to pursue. So I'd be happy to answer any questions if I might. [LB620]

SENATOR WIGHTMAN: Thank you, Senator Harms. Yes, Senator Mello. [LB620]

SENATOR MELLO: Thank you, Chairman Wightman, and thank you, Senator Harms. First off, thank you again for your leadership, as well as the Legislative Auditor, Martha Carter's, leadership over the last couple of years on this health insurance audit. I think

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

Executive Board Committee
February 11, 2013

with Senator Krist, myself being members of Performance Audit Committee last fall as this...these recommendations came forward, this seems like it's a...LB620 seems like it's a fairly straightforward requirement of DAS and the university. And it provides, I would say, the Legislature flexibility but also that needed transparency and oversight in regards to seeing the fiscal impacts of the health insurance fund, as well as the ongoing budget-related issues of increasing costs of health insurance premiums. So I really do applaud your leadership. I know this was a difficult, difficult audit for you and the staff over the last couple of years, and I think this is the first of many proposals that the Legislature, hopefully, will get to consider. So thank you. [LB620]

SENATOR HARMS: You're welcome. One of the things that will happen out of this, Senator Mello, will be that the Performance Audit Committee...not the committee, the...our analysts will work with your people in the Appropriations Committee to begin to design the kinds of questions and making sure that we go after the issues that we want to go after. So it's really pretty flexible. We were afraid to put anything into too much detail because then it hinders where you might want to go with this. [LB620]

SENATOR WIGHTMAN: Thank you, Senator Mello. [LB620]

SENATOR HARMS: Thank you. [LB620]

SENATOR WIGHTMAN: Do we have other questions? If not,... [LB620]

SENATOR HARMS: Mr. Chairman, I'm going to probably waive on my closing for this. [LB620]

SENATOR WIGHTMAN: Okay. [LB620]

SENATOR HARMS: I know that Senator Krist and I both have a bill coming up fairly soon, so. [LB620]

SENATOR WIGHTMAN: Thank you. [LB620]

SENATOR HARMS: Okay. All right, thank you. [LB620]

SENATOR WIGHTMAN: Do we have any other party here who wants to testify in favor of the bill? Yes. [LB620]

DAVID LECHNER: Senators, good afternoon. My name is David Lechner, L-e-c-h-n-e-r. I'm senior vice president/CFO for the University of Nebraska, and I am here to speak in support of LB620. One of the duties falling under my purview is the oversight of the university's health insurance health plan and trust. The plan currently has 10,000 members from across the state and covers 23,000 lives. It provides competitive,

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

Executive Board Committee
February 11, 2013

affordable health insurance. It helps us attract and retain talented faculty and staff. While I say the plan is under my purview, I have the advantage of the consultative wisdom and gain approvals of President Milliken, the campus chancellors, and others in executing decisions regarding the health plan and trust. Benefits colleagues from across all our campuses provide input. Lastly, a panel of experts, the independent actuarial firm of Milliman, the healthcare and pharmaceutical expertise of Blue Cross/Blue Shield and CVS/Caremark, and the financial wherewithal of Wells Fargo, the plan's trustee, all share in making our plan a success. We're proud of our plan and have regularly shared and exchanged practices with colleagues at the state, including forums initiated by Chairman Wightman, to all put us in a better position to serve employees in this very important and highly valued area of benefits. Our plan operates favorably by virtually all measures when compared to other plans at the state and other agencies. Part of the genesis for this bill was a performance audit of our health plan. We offered, from the beginning of the performance audit, to share a meaningful report with legislators that analyzes and reports on the status of our plan. Our people work with the plan, and our expert partners welcome the chance to share the whys and wherefores of our plan's annual performance. Many times we find ourselves faced with solutions in search of a problem. That's not the case with this bill. I want to personally thank Senator Harms for this elegant solution to moving us forward in a mutually beneficial approach to sharing the performance of our health plan and trust. [LB620]

SENATOR WIGHTMAN: Thank you, Mr. Lechner. Yes. [LB620]

SENATOR KRIST: Thanks for coming, David. I know you and I are going to have an opportunity to debate on a couple other issues regarding this plan, that I have some legislation addressed with where it's being invested. But I'm just curious, the same question I've put to DAS--they're not here today, as usual--the same question I would put to DAS if they were here: How in the heck did this get from, in the case of the state, \$4 million of reserves to \$90 million? [LB620]

DAVID LECHNER: Um-hum. [LB620]

SENATOR KRIST: In a case...in an era where we have had a hard time investing money and getting dividends back, it seems to me that this was either completely neglected or it was an intent to grow a reserve. And when you answer that, I want you also just to talk a bit about, I guess...no, I would that you address, although there is no industry standard,... [LB620]

DAVID LECHNER: Um-hum. [LB620]

SENATOR KRIST: ...we all know, in asking those insurance companies, that the normal reserve for a third-party situation like you have are three to four months' worth of reserves, and you have over a year's worth of reserves. And you're clear to, please,

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

Executive Board Committee
February 11, 2013

comment on anything. [LB620]

DAVID LECHNER: Well, there's a whole lot there to choose from. And I heard about the beheading earlier, and so I'm glad I showed up today. So I'm very, very grateful. First of all, our plan is not at that large, in terms of reserves. We will spend somewhere between \$135 (million) and \$150 million this year. The plan's reserves are just north of \$110 (million). You've got to be a little bit careful when you look at that audit report too. It uses the term "reserves" a couple/three different ways and, depending on how you analyze that number, it tends to validate or take the thinking the other direction. I believe, when the question of reserves was posed to others in the audit, it was more of an incurred but not reported, is what one of the reserves was used as a benchmark; in other words, bills that were yet to come in to Blue Cross and Blue Shield, where our folks had gone to the doctor, gone to the hospital, gone to the pharmacy, and the bills hadn't come in. That's typically a one-or-so month reserve. Ours, at \$100 (million), as opposed to about \$150 million, will be about a nine-month reserve at this point in time. Let's go back to the reasons it grew to where it did. First of all, there was interest earnings. There was a pricing of dual spouses. This would be a person whose spouse works at the university also. These were factors we've teased out in tearing our plan apart over the past couple of years, but that's among the other reasons it had grown. It wasn't through neglect. It was factors that, perhaps, weren't built into the actuarial pricing, Senator. I offer that as a reason. [LB620]

SENATOR KRIST: Okay, thank you. [LB620]

SENATOR WIGHTMAN: Thank you. Any other questions? Thank you. [LB620]

DAVID LECHNER: Thank you very much. Pleased to be here. [LB620]

SENATOR WIGHTMAN: Anybody else who wants to speak in favor? If not, is there anyone here that wants to speak in opposition to the bill? Anyone that wants to speak in a neutral capacity? If not, we'll close the public hearing on LB620. [LB620]

SENATOR KRIST: I make a motion to go into Exec. [LB620]