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Business and Labor Committee  
January 26, 2015

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[LB83 LB270 LB271 CONFIRMATION]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 26, 2015, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB83, LB270, LB271, and a gubernatorial appointment. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Ernie Chambers; Sue Crawford; Laura Ebke; Jerry Johnson; and John McCollister. Senators absent: None.

SENATOR HARR: Well, I think we're going to go ahead and begin. Welcome to the Business and Labor. Going to go over some housekeeping first and then I'll introduce all the members, give some of them time to come in here. I would ask that you please turn off your cell phones. If you are testifying, we ask that you fill out a green sheet, which is right over...it will be behind the door in the entryway now. Bring it up with you. And if you are going to have any exhibits, we ask that you have ten copies. If you do not have ten, just notify one of the pages and they can make copies for you. I would also ask that when you introduce yourself you state your name and you spell your last name. Each testifier will be allotted five minutes before the committee. We use the light system here. So green indicates go, yellow indicates you have a minute left, and red indicates it's time for your testimony to end, so if you can just wrap up your sentence or your thought. We don't want to cut you off, but we do want to honor the time of the others who have taken the time to come down here and testify. We do have an agenda for today. We're going to start with the confirmation of acting Commissioner John Albin. We have three bills. As a general rule in this committee, if you are not a member of the committee, we generally have that senator go first. And then if you are a member of this committee, we'll have you go next. I think that's about it. I am...oh, we have two pages. We have Drew from Broken Bow and Stefani from Kansas City. I am Burke Harr. And I'll let everyone else go around and introduce themselves. I know some of the other members are introducing bills right now. They'll be making their way in. So it is in no way a...have anything to do with Mr. Albin. You want to go ahead.

SENATOR JOHNSON: Senator Jerry Johnson, District 23, which is Saunders, Butler, and most of Colfax County.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, Dakota, Thurston, and Wayne Counties.

MEGHAN CHAFFEE: Meghan Chaffee, legal counsel.

JAMISON WYATT: Jamison Wyatt, committee clerk.

SENATOR HARR: I forgot about that. I apologize. And here come two more members on their way in. And I'll let them introduce themselves as soon as they're seated.

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SENATOR EBKE: Laura Ebke, District 32.

SENATOR CHAMBERS: Ernie Chambers, District 11, and I will be back.

SENATOR HARR: All right.

SENATOR CHAMBERS: We just came from an Exec Session that went over a little. But it'll be not too long that I'll be gone.

SENATOR HARR: Okay. Thank you. I appreciate that. Commissioner Albin, the floor is yours.

JOHN ALBIN: (Exhibit 1) Thank you, Chairman Harr, members of the Business and Labor Committee. For the record, my name is John Albin, A-l-b-i-n, and I'm appearing here this afternoon to ask for your support in recommending my confirmation as Commissioner of Labor to the full Legislature. I'm excited for this opportunity to serve the people of the state of Nebraska as Commissioner of Labor, and I'm grateful to Governor Ricketts for providing me with this opportunity. By way of a quick personal background, I grew up in rural Richardson County near Humboldt and received both my undergraduate and law degrees from the University of Nebraska-Lincoln. I'm married. My wife and I have four children, three grown and out on their own and one who's a freshman at UNL. I worked for the Legislature while attending law school and for the Government Committee and Bill Drafters Office following my graduation. I was then in private practice for seven years before going to work for the Department of Labor as a hearing officer in 1990. I moved over to the legal division in 1992 and became general counsel in 2000. When Commissioner Lang resigned last summer, I was appointed as acting commissioner by then-Governor Heineman on June 28, 2014. As some of you know, approximately 97 percent of the department's appropriation is federal grant funds, which means that the federally funded programs have an additional layer of statutory and regulatory compliance provisions that must be adhered to. As general counsel, I've worked with the department's programs for many years and so I have a good knowledge of the department's programs and requirements. When you talk about a department of over 400 employees, successes are always shared successes. However, I think it's fair to say I had a lead role in achieving some of the department's most recent accomplishments such as the rewrite of the unemployment tax system in 2005, electronic payment of unemployment benefits, electronic tax filing, an increased emphasis on the recovery of fraudulent benefit overpayments. Other states have used Nebraska as a model for resisting the discharge of fraudulent unemployment claims in bankruptcy. The department is faced with many opportunities in the near term. The Workforce Investment Act of 1998 Job Training Program was repealed by Congress last June and replaced by the Workforce Innovation and Opportunity Act with most of the new provisions taking effect on July 1, 2015. The department is working hard to ensure

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that there will be a smooth transition to the new program on July 1. Although we are not there yet, we will be ready to implement those new provisions on July 1. Among the goals I have for the department is that we will better assist unemployed individuals in returning to the workforce. Through early intervention, we believe we can help individuals assess their skill sets, match those skills to the jobs that exist in the job market, and return to work sooner. Another goal is to better leverage our federal funds by increasing the use of technology in administering our programs. Congress and U.S. DOL are requiring more and more coordination between the programs that the Department of Labor administers, particularly unemployment benefits, unemployment insurance, employment services, and the work job training programs. That coordination requires a regular exchange of information between the four programs. When those major programs reside on multiple computer platforms, communication between the respective computer systems can be expensive and inefficient. The department has already begun work to determine ways to reduce the number of platforms these programs reside on and allow them to share information more efficiently. In addition, we need to find ways to have employers and claimants make better use of the Internet applications that the department has created, providing better service to the public and reducing cost to the department. Thank you for your time, and I would be happy to answer any questions that you have. [CONFIRMATION]

SENATOR HARR: I'll open the floor. Anyone have any questions? Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: New to the committee. And I don't know if it...what the new wage and hour law that was passed the last election, how does that affect...what do you have to do and how does that affect where you're at? [CONFIRMATION]

JOHN ALBIN: Our Labor Standards Division at the Department of Labor has always enforced the state, Nebraska state minimum wage, which up until this last year, has applied usually only in those cases of employers who happen to be exempt from the federal provisions. We will be implementing...we are already implementing and enforcing the new wage requirements. We're crossing our fingers and hoping we can do it without increasing staffing. We've had extensive conversations with U.S. DOL and their Wage and Hour unit. And they seem to think that even though for the first time in Nebraska's history at least, the Nebraska minimum wage is higher, that they can continue to provide a significant amount of wage and hour enforcement. Most of their claims are resolved through a resolution process, just negotiation, discussion. And they think that will be able to continue. For lack of a better way of describing it, they're going to act like the federal minimum wage is \$8 per hour and will enforce it accordingly except for, you know, obviously you can't go to a hearing. But they have assured me that they don't have very many cases that actually go to hearings. So we've obviously fielded a lot of calls. We've had to put out some new posters. But so far, so good because I think the employer community was very proactive in getting to us and saying,

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okay, what does this mean, and when does this apply? So I haven't noticed any major hiccups yet. I guess it's awful early. We're still the first month in. [CONFIRMATION]

SENATOR JOHNSON: Thank you. [CONFIRMATION]

SENATOR HARR: I guess I'll ask a couple of questions. What is the mission of the department, or mission statement for the Department of Labor? [CONFIRMATION]

JOHN ALBIN: Mission statements are one of the things I'm worst at remembering. But the mission... [CONFIRMATION]

SENATOR HARR: Oh, then don't worry about it. Okay. Well, I guess then it kind of follows up, and you talked about it a little bit, can you name all the...the Department of Labor has 700 employees. So you oversee unemployment insurance, workforce investment,... [CONFIRMATION]

JOHN ALBIN: Yes, we have over 400 employees right now. [CONFIRMATION]

SENATOR HARR: Oh, 400, okay. [CONFIRMATION]

JOHN ALBIN: A majority of our employees are in the unemployment program, probably a little over half at least, over half are in the unemployment program. Most of those are involved in the unemployment benefit program, the remainder in the tax program. We also have the Labor Standards Division, which at last count I think had 14 different programs that it's supposed to administer--I shouldn't say "supposed to;" it sounds like we don't--that we administer. But there's only 12 people there. The thirteenth position we're going to get filled here in the next biennium, we hope. They do Wage and Hour, Contractor Registration, the Employee Classification Act, the lunch period law which maybe some of the newer senators don't even realize is there. But there is a Nebraska lunch period law that applies. You have to give them 30 minutes of uninterrupted time to eat lunch. We also have our Wagner-Peyser program, Employment Service. Some of us that are older remember them as the Nebraska Job Service. Their job is to provide a clearinghouse and a labor exchange system for employers who wish to list positions with them and individuals who wish to go to work or find a new job. The employment services program is open to both those who are already working but want to find something different or better, and to those that are unemployed and looking for work. We've made a considerable effort in the last few years to make the information available to both employers and claimants more robust. We have implemented what I think they refer to as a "spidering" program where we go out and actually pull into our data set the job listings from employers' Web sites and that sort of place. So it's kind of a one-stop shop for people who are looking for work that we think we're doing a pretty good job. I'm not saying it's 100 percent. But we pull employment information for available positions even when the employer doesn't list with us so that when our people come in and look

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for work they've got a more robust than just those who come to the Job Service and list...Employment Service office and list with us. We also have the WIA program, now WIOA, Workforce Innovation and Opportunity Act. We have a twofold role in regard to the job training provisions. We have one where the state administrator for the WIOA program and also in greater Nebraska, which is 88 of the 93 counties, we also are the administrator of the local program. The other two local programs are in Lincoln, which is Lincoln and Saunders County, and then Douglas, Sarpy, Washington, and the city of Omaha are the third areas. So we have a twofold role there. We also have a significant number of inspection programs that we perform. One is the voluntary OSHA 21(d) program, where if an employer wants to know if they are in compliance with federal OSHA requirements, they can apply to us to have an inspection done of their work facility. Those are free. So they're real popular. We also have large boiler inspection and elevator/conveyance inspections. We'll inspect I think around 10,000 to 12,000 boilers and about 6,000 roughly elevators throughout the state. And I think I covered them all. [CONFIRMATION]

SENATOR HARR: All right. Well, thank you. I appreciate it. Thank you for your time. Anyone here to speak as a proponent for Mr. Albin? Opponents? Neutral testimony? Do we have any letters? All right, that closes the hearing. Thank you very much. I appreciate your time. Thanks for coming down. Look forward to seeing you here more often too. [CONFIRMATION]

JOHN ALBIN: All right. I look forward to it. [CONFIRMATION]

SENATOR HARR: Thanks. Moving on, next on our agenda is LB83, Senator Cook's bill. And, Senator Cook, the floor is yours. [CONFIRMATION]

SENATOR COOK: Thank you, Mr. Chair, and thank you, colleagues. Honorable members of the Business and Labor Committee, my name is Tanya Cook; that is spelled T-a-n-y-a C-o-o-k. I appear before you today as the state senator representing Legislative District 13 and as the introducer of LB83. The bill as introduced would prohibit any employer from taking adverse employment action against an employee for voluntarily disclosing their own wages. Advancement of LB83 will recognize the importance of the personal freedom of an individual employee to fairly negotiated salary, to help cease wage discrimination in our state, and aid enforcement of existing antiwage discrimination laws. Recently, the Institute for Women's Policy Research conducted a survey of workers to ask whether there were policies at their workplaces that discouraged or prohibited sharing information about their pay. Among private sector employees, more than 60 percent answered that discussion of their own wage information is either discouraged or prohibited and could lead to punishment. Allowing employees the freedom to discuss their own wages and disallowing a culture of secrecy and control over an employee's personal information signals a positive change in the workforce. Allowing employees to discuss their own wages without fear of retribution

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can build trust between employer and employee. Dissolving the veil of secrecy on the potentially sensitive issue of pay will make employees believe that management can be trusted about other workplace issues. The perception, and ideally the reality, that an employer is fair and equitable benefits all workers. LB83 preserves the employee's right to privacy because the legislation does not mandate wage disclosure but merely prohibits the silencing of an employee that makes the personal choice to disclose his or her wages. And I should correct that sentence. LB83 preserves the employer's right to privacy with that provision. Here's the problem I'm hoping to address with this legislation: Women are only earning 77 cents on the male dollar in the workforce. Over the course of a working lifetime, 77 cents for every dollar that a male makes equates to more than \$1 million in reduced earnings. Although this figures...this figure varies with industry, age, geographic region, level of education, and position held, this is the 2010 U.S. census median figure for full-time year-round workers aged 15 and more of all races throughout the United States. The work of a woman is no less valuable than the work of a man. We live in a world where women are often the primary breadwinners in their homes. Most two-parent households are two-income households. So wage discrimination impacts nearly every working Nebraskan. Also, with the number of single mothers in our state, their compensation for women is crucial for the support of our state's children, too many of whom live in poverty. The United States Department of Labor's Women's Bureau proposes moving towards an open-pay policy and makes a case for more wage transparency. According to their work, wage disclosure stops speculation about pay. Workers will know they're being paid fairly. It will make it clear that top performers are rewarded which creates an incentive to work harder. It will stop meritless complaints about unequal pay and will identify pay disparities so that they can be fixed. I want to thank the committee for its thoughtful consideration of LB83. This legislation will allow for balanced policy of preserving privacy when privacy is sought, and discouraging secrecy when secrecy is desired. I look forward to working with you to address any concerns. Thank you, Mr. Chair. [LB83]

SENATOR HARR: Thank you, Senator Cook. Any questions for Senator Cook? Senator Bloomfield. [LB83]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Senator Cook, I believe you said there was 60 percent that were working under some restriction. [LB83]

SENATOR COOK: When they were surveyed by the Women's Policy Research, surveyed whether or not they would be punished if they were to share their own salary or wage, that was where the 60 percent came from. [LB83]

SENATOR BLOOMFIELD: Okay. I spent 50 years in the private sector and I've never once had an employer tell me, don't discuss what you make with your fellow employees or anybody else. [LB83]

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SENATOR COOK: Unfortunately, it's a law in the state of Nebraska. So I want to change that. [LB83]

SENATOR BLOOMFIELD: Is there a certain group where it is more prevalent? [LB83]

SENATOR COOK: I haven't researched group by group. The information that I'm able to gather, we don't have any state of Nebraska specific information, but the national information that I've been able to gather is that it is across kinds of work, whether or not it is a wage or a salary, and across industry type. [LB83]

SENATOR BLOOMFIELD: Okay. Thank you. [LB83]

SENATOR HARR: Just a follow-up, I know when I worked for--well, I won't say who but it was a public sector job, the information was readily available and we had to check out the information. We'd have to go to the county commissioner. Anyway, we had to go and ask for that information. And my boss knew everyone who signed that to get that information. Of course, once it was out it was freely disseminated. But that was always...someone each year drew the short straw as to who had to get the information. [LB83]

SENATOR COOK: How about that. [LB83]

SENATOR HARR: Now it's all on the Internet. [LB83]

SENATOR COOK: Yes. [LB83]

SENATOR HARR: So it does exist to a certain degree, and I do agree. Any other questions? Senator Johnson. [LB83]

SENATOR JOHNSON: Yeah, thank you. Thanks for bringing it. The spread between the value of a female job paid and male, is that same spread whether it's salaried, you know, the higher pay, or hourly? Do you know any of the numbers? [LB83]

SENATOR COOK: The aggregate information as I understand it through the policy research institute was aggregated whether it was wage or salary. I could follow up and see whether or not there is a differential. My sense is that, yes, there would be a differential. [LB83]

SENATOR JOHNSON: Okay, I'm assuming it kind of follows the same pattern. [LB83]

SENATOR COOK: I would assume so, too, Senator. [LB83]

SENATOR JOHNSON: Okay. Thank you. [LB83]

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SENATOR HARR: Anyone else? Follow-ups? Seeing none, thank you very much, Senator Cook. [LB83]

SENATOR COOK: Thank you. I will stay to close. [LB83]

SENATOR HARR: Okay. Thank you. Proponents? [LB83]

MIKE MARVIN: (Exhibit 1) Good afternoon, Chairman Harr, members of the Business and Labor Committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees/American Federation of State, County and Municipal Employees Local 61. We represent the vast majority of state employees who work for the state of Nebraska. Our statement on LB83 is quite simple. This bill doesn't affect state employees, but we at NAPE believe the bill will be a step towards ending the veil of secrecy out there that perpetuates wage inequality between men and women. That inequality also happens to fall under racial lines too. A black woman has a much higher level of wage inequality than a white woman does even. So those statistics are all out there. The Pew Foundation, in their most recent data that I looked at, said that a white woman would make about 84 percent of their white male counterpart while a black female would make about 66 percent. So the inequality is there not only on a sex or gender but also on a racial basis. Again as I said, this doesn't affect the state of Nebraska employees and it doesn't affect most public sector employees. We just believe that it is a matter of fairness that an employee has the right to disclose. Senator Bloomfield, you asked about private sector a little bit ago. And in between my last stint at NAPE and down in Kansas and back to NAPE, I worked for two different hotels in the Omaha area. And both of those hotels had policies against wage disclosure simply because they didn't want to make sure everybody was making equal wages. We would urge you at this point in time to move this bill out of committee. And we support it strongly. If you have any questions of me, I'd be happy to answer them. [LB83]

SENATOR HARR: Thank you, Mr. Marvin. Anyone have any questions for Mr. Marvin? Senator Johnson. Thank you. [LB83]

SENATOR JOHNSON: Thank you. The trend in...I was in private business 40 years. Is there...whenever we would give increases in wages, sometimes it would be kind of blanket and everybody got it at the same time and it was always the buzz. How much did you get? How much did I get? There's other times in other situations where we have staggered that. People didn't know when others got wages. Do you know if that prevails today, or what is the practice now? [LB83]

MIKE MARVIN: Senator, most of my experience in my work life has been in the public sector. And in the public sector, that is not necessarily true, very rarely true. The several

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stints that I have had in the private sector, the wages did vary at different times. There was often, as you said, an across-the-board increase that everybody else received. But there were other wage increases during that time, too, for other people. [LB83]

SENATOR JOHNSON: Okay. So it's still out there. [LB83]

MIKE MARVIN: I have limited experience in the private sector. But we do know that it happens. And I personally haven't experienced it, yes. [LB83]

SENATOR JOHNSON: Yeah, okay. Thank you. [LB83]

SENATOR HARR: Any other questions? Seeing none, thank you for coming, Mr. Marvin. [LB83]

MIKE MARVIN: Thank you very much. [LB83]

SENATOR HARR: Any other proponents? Welcome to Business and Labor Committee. [LB83]

MARY HERRES: Hi, I'm Mary Herres, M-a-r-y H-e-r-r-e-s. I'm here representing the Nebraska Democratic Women's Caucus and also the Center for People in Need here in Lincoln. Pay confidentiality policies are widespread in the private sector and the negative impact on women's earnings is significant. If a woman does not know how much her male colleague earns, it's difficult to determine whether she's a victim of pay discrimination. Such pay secrecy policies enable employers to discriminate against women employees without their knowledge. The Supreme Court of the United States has recognized that the fear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination. After nearly two decades of employment, it took an anonymous note for Lilly Ledbetter to find out that she was earning significantly less than her male colleagues performing the same job. Had an antiretaliation bill been in effect, Ledbetter might have discovered the wage discrimination far earlier and she could have sought remedy at that point. I know just from my own personal experience in the 40 years that I've been in the workforce. I've worked in both the private and the public sector. And I have probably, in five different positions, had to sign a nondisclosure agreement. It's very difficult to be able to start a new position when you've started behind in your previous positions. So when you go in to negotiate as a woman, you're starting already behind the wheel because you think, okay, if I go in and I've been making \$32,000 and I negotiated \$36,000, wow, I'm getting a big pay increase. But then you find out, you know, a year later that your male colleagues that you're sometimes even over them are making more than you are because they simply started out at a higher wage. Women...that has been where the women have been with wages. I know that with union wages, it's out there. It's transparent, negotiated. You're paid according to the position. It doesn't matter if you're

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a male or a female. But when you go into the private sector, women are behind. I am encouraging you to take a close look at this. I think it's very, very important. I think this will be one of the big steps. I've been working on this with the National Women's Law Center out of Washington, D.C., for five years on trying to get legislation to close this very important. And I thank Senator Cook for introducing this legislation this year. [LB83]

SENATOR HARR: Thank you very much. For the record, we have been joined by Senator Crawford. I guess I'll ask the first question. How many other states, do you know, have this type of legislation? [LB83]

MARY HERRES: Not very many. They've been trying to work on...I know that there currently are three different states that are introducing nondisclosure legislation. And it has been a big piece of the Fair Wage Act in Congress the last four years. [LB83]

SENATOR HARR: Okay. Thank you very much. Anyone else have any...Senator Bloomfield. [LB83]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Ms. Herres, thank you for coming in today. It's always a bit of a struggle to come in and do these things. But we appreciate you being here. What type of companies...you said in your private employment you ran into it frequently. What types of companies? I don't want you to name companies, but are we talking restaurant? Are we talking motels? Are we talking manufacturers? What type of businesses did you run into this in mostly? [LB83]

MARY HERRES: Well, one of the businesses that I personally ran into it was a development district. I work in economic development, housing. I've been a housing builder, part of large-scale development. [LB83]

SENATOR BLOOMFIELD: So is it the construction portion? [LB83]

MARY HERRES: Construction and administrative. [LB83]

SENATOR BLOOMFIELD: Okay. Thank you. [LB83]

SENATOR HARR: Anyone else have any? Senator Johnson. [LB83]

SENATOR JOHNSON: Thank you. Job descriptions, if the job description is gender neutral, so male or female can take that job, is there any way...how can people prove that this person is worth X and this is worth minus one X somehow and try and justify that it is not gender issue but it's qualifications? Can that be tried anywhere? Or what's the rights of somebody to argue that? [LB83]

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MARY HERRES: It's very difficult. If your job...I mean, I just know that like from my own personal experience, I was hired as a community development specialist. And everybody, there were ten of us and we were all community development specialists and we all did basically the same type of a job. Some of us did a little bit more in a different capacity, you know, worked on streets and roads for instance, instead of working...and there was pay discrepancy. [LB83]

SENATOR JOHNSON: It was obvious. [LB83]

MARY HERRES: The two women...it was very obvious. And the thing about it was, was when my...when we realized it and we brought that to the attention of our boss, he did make...he did bring us up. But most people don't have the ability. Most women don't have the ability to be able to find out that information. And that is the problem is that they can say, well, this person is doing this. It's worth more money to us or something. And I don't know. You know, they can come up with great reasons. [LB83]

SENATOR JOHNSON: Okay, thank you. [LB83]

SENATOR HARR: Thank you, Senator Johnson. Any other questions for Ms. Herres? Thank you very much. I appreciate it. Thanks for your time. [LB83]

MARY HERRES: Thank you. [LB83]

SENATOR HARR: Any other proponents? Welcome. [LB83]

THERESA SHEPARD: Thank you. Good afternoon to Senator Harr and to the committee and thank you for listening to me. My name is Theresa Shepard, and it's T-h-e-r-e-s-a S-h-e-p-a-r-d. I ask for your support of LB83 because it reinforces Sections 7, 8 of the 1935 National Labor Relations Act. All employees, union and nonunion, federal contractor or not, do have the right to discuss their terms and conditions of employment with each other. According to the National Labor Relations Board, employers may not prohibit employees from discussing their pay and benefits and any attempts to do so violate the National Labor Relations Act. I ask for your support of LB83 because it provides clear commonsense guidelines and employers should follow that will not prohibit an employee from voluntarily discussing wages with others. Those guidelines are listed under Section 2(1) of LB83. The guidelines are no or low cost and should not be a burden to employers. I ask for your support of LB83 because it is pro employer. It does not require employers to disclose wages. It does not relieve an employee of his or her obligations to protect proprietary company information. For example, I am director of human resources of my company and I also process biweekly payroll. I would violate both the Labor Relations Act and LB83 if I shared wage information because that's proprietary information. I ask for your support of LB83 because it requires an employer with an employee handbook to include in the handbook

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a notice of employee rights and remedies. This again, is a low- or no-cost requirement for an employer. The notice will communicate to employers...employees their rights already in existence but unknown to most. Still, I encourage you and the Legislature to provide concise suggested wording that Nebraska employers can use in their handbooks should the bill be passed. Thank you. [LB83]

SENATOR HARR: Great. Thank you, Ms. Shepard. Any questions? Seeing none, I appreciate your time. Thank you for coming to take the time to testify. [LB83]

THERESA SHEPARD: Thank you. [LB83]

SENATOR HARR: Any other proponents? [LB83]

RODNEY D. VLCEK: Good afternoon, Chairman Harr and members of the Business and Labor Committee. My name is Rodney D. Vlcek, spelled R-o-d-n-e-y D. V-l-c-e-k, and I am president secretary/treasurer of the Nebraska State AFL-CIO. I want to thank Senator Cook for bringing LB83 in front. I'll be real brief. When it comes to wage inequality through race and gender, that is wrong. And we are in full support of LB83. And I'll be happy to take any questions. [LB83]

SENATOR HARR: Great. Thank you, Mr. Vlcek. Any questions? [LB83]

RODNEY D. VLCEK: Thank you very much. [LB83]

SENATOR HARR: Seeing none, thank you. Proponents, any other proponents? Opponents, anyone in the negative? Good afternoon. [LB83]

RON SEDLACEK: (Exhibit 2) Good afternoon, Chairman Harr and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek; that's R-o-n S-e-d-l-a-c-e-k, and I represent the Nebraska Chamber of Commerce and Industry here today. The two questions that are often...I shouldn't say often, but once in a while they're raised and particularly in labor law seminars that we sponsor. And we may be getting questions like, for example, my employer tells me...told my coworkers my salary information. Can she do that? And the answer typically is, yes. There is no law that requires your salary to be confidential and your employer is allowed to share it with others if he or she wants to. In fact, some companies share everyone's salary as a matter of course and some people argue that doing so...that confidentiality...that releasing that confidentiality actually promotes more nondiscrimination in the workplace as far as sharing the information together. And so the concern is privacy rights of the employee. On the other hand, the other question then...and it's encouraged actually to have employment policies where that information is available. They say that often helps with the morale in the workplace as well. Secondly, the question is, well, then can my employer prohibit me from discussing such information with coworkers? And the answer

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is definitely a, no. Despite the fact that you may see some of these policies in the workplace, they are in fact prohibited, and they're prohibited by an 80-year-old law, the National Labor Relations Act, or the Wagner Act. In Section 7, and also reference Section 8 of the NLRA, and for 80 years the law has been and there's a lot of interpretation to this law that employers cannot restrict such a discussion in the workplace. Now certainly there are some limitations. For example, an employer can stop a discussion when it's taking away from the work time, so that if the workforce were to say, well, we're going spend this morning sharing wage information, no. The NLRB recognizes that you can do so but when it's not necessarily required work time to do so. Secondly, the NLRB has protections against disclosing such information by surreptitious means, for example, accessing private payrolls where you may be dealing with HIPAA rights or Americans with Disabilities rights and so forth. So how you get that information is regulated, as well as sharing that information with...as a proprietary information with other employers or competitors. They certainly recognize that as well. So those are essentially the exceptions, and certainly the remedies are reinstatement, also back pay maybe, as well as other damages may be assessed by the NLRB. You don't have to go all the way to Washington in order...as an employee to file a complaint. You can do so at the regional NLRA office. They take the case up for you. They make the investigation. The employer pays for that defense as opposed to the legislation here where the employee essentially has to initiate civil litigation for the same rights and remedies. The bill, however, goes a little bit further as mentioned in proponent testimony. It does apply to...it does make a little bit of a modification in regard to placing that information affirmatively in an employee handbook. And we feel there's some inconsistencies with the federal law at this point in which you'd have a dual track where you may be free under state law but subject to NLRB ruling or vice versa. Certainly, we want that inconsistency to be addressed in any legislation that would be passed so that we'd have some sort of consistent format. Certainly, one aspect, and that was also talked about in proponent testimony, this bill that was introduced as well as the NLRB law only applies to the private sector. And so the previous testimony by government interests is certainly relevant in the sense that that still remains unprotected no matter what, under this bill or under federal law. Now I'm not encouraging the Legislature or even suggesting that you should just apply this to state and local workers or political subdivision employees and so forth, but those are the only class really outside of seasonal ag workers if I recall. There may be a couple small exceptions, but for the most part, the private sector is covered already by those laws. And then just for your own I guess self-edification, if you'd like to look at a fairly recent Law Review article from the University of Pennsylvania Journal of Labor and Employment Law, there is a fairly balanced article I guess I would say in regard to pay secrecy or confidentiality rules. But that's up to your judgment to see if you think it's valid or not. The author does caution about going further than what the NLRB already does because it's been so well tested with the interpretations and there's a balance there. President Obama also has signed an executive order to make sure that everyone is aware of the NLRB rules and the NLRA and has issued an executive order that says if you violate and you're a federal

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contractor, you lose that contract. So put a little bit more teeth in it in that regard. That certainly will get more and more people's attention. But with that, I see red light. And I'll stay here for questions. [LB83]

SENATOR HARR: Great. Thank you, Mr. Sedlacek. Senator Chambers. [LB83]

SENATOR CHAMBERS: Welcome, Mr. Sedlacek. [LB83]

RON SEDLACEK: Thank you. [LB83]

SENATOR CHAMBERS: Do I understand you to say that you're here to make sure that the employees' rights are protected, and that's why you're opposing this bill? [LB83]

RON SEDLACEK: No, not at all. The employee has, under current law, has the right to share that information. [LB83]

SENATOR CHAMBERS: So here's what I want to know. What in this bill specifically does the Chamber object to? [LB83]

RON SEDLACEK: I think that they're erring on the side of caution, so to speak, in regard to coming in on the legislation in oppose mode because there's already a federal law that applies to employers. [LB83]

SENATOR CHAMBERS: That has nothing to do with my question. And you say, as a caution. They're cautious about what? [LB83]

RON SEDLACEK: That there's not duplication or inconsistencies between a state act and a federal act. [LB83]

SENATOR CHAMBERS: Well, they don't care about that on other matters. [LB83]

RON SEDLACEK: We come in here generally on most legislation that deals with a repetitive nature and point out when there are inconsistencies. [LB83]

SENATOR CHAMBERS: If they think it's going to affect them. [LB83]

RON SEDLACEK: That's correct. [LB83]

SENATOR CHAMBERS: And you are a lawyer, right? [LB83]

RON SEDLACEK: Yes, I am. [LB83]

SENATOR CHAMBERS: And you're representing the Chamber. [LB83]

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RON SEDLACEK: That's correct. [LB83]

SENATOR CHAMBERS: They are your client. [LB83]

RON SEDLACEK: That's correct. [LB83]

SENATOR CHAMBERS: And you are to represent your client's interests zealously, correct? [LB83]

RON SEDLACEK: I am, yes. [LB83]

SENATOR CHAMBERS: And that's what you're doing right now. [LB83]

RON SEDLACEK: Yes. [LB83]

SENATOR CHAMBERS: Okay. So I can take that for what it's worth, correct? [LB83]

RON SEDLACEK: That's right. [LB83]

SENATOR CHAMBERS: Okay. Now if this bill were enacted into law, what difference...if this bill were to become law today, what difference that's of a detrimental nature will it make in companies that comprise the Chamber of Commerce tomorrow? What problems will they encounter tomorrow? [LB83]

RON SEDLACEK: There's a potential of two track, essentially a complaint and then civil litigation. That would be certainly a difference. [LB83]

SENATOR CHAMBERS: Yeah, but that's not a reality. That's speculation and you know it, and I know it. And if you can't come up with anything better than that and that's the only thing you have, then I don't see a problem for those you represent. [LB83]

RON SEDLACEK: And I can...and the second would be potential inconsistencies in rulings between a state court looking at a new statute versus the time-old, 80-year-old rulings of the National Labor Relations Board. [LB83]

SENATOR CHAMBERS: If an employee reveals his or her salary, you don't see anything wrong with that, do you? [LB83]

RON SEDLACEK: It's the law, says that you can't prohibit them from doing so right now. [LB83]

SENATOR CHAMBERS: So if this were to become law, the practical impact is zero,

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isn't it? [LB83]

RON SEDLACEK: I wouldn't say it's zero, no. [LB83]

SENATOR CHAMBERS: Nearly zero. [LB83]

RON SEDLACEK: But certainly it's probably that remaining 5 percent to 10 percent, someplace. And I'm just saying those numbers. I know that it would be more the minority of cases. [LB83]

SENATOR CHAMBERS: Would you like to have had a stronger case if you had to present something in defense of the Chamber's position of saying, well, there might a conflict in how courts look at it? Wouldn't you like to be able to show something concrete that is going to be detrimental to the existing interests of your client instead of everything being speculative and highly hypothetical? Every lawyer would like that, right? [LB83]

RON SEDLACEK: Well, the people that have advised us on this are pretty practical labor law attorneys. And that's what they pointed out to me. [LB83]

SENATOR CHAMBERS: Who do they work for, the Chamber? [LB83]

RON SEDLACEK: Various Chamber companies. [LB83]

SENATOR CHAMBERS: Okay. [LB83]

RON SEDLACEK: That's correct. [LB83]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB83]

RON SEDLACEK: With that, I will ask this be circulated. [LB83]

SENATOR HARR: Yeah. Thank you, Senator Chambers. Senator Crawford. [LB83]

SENATOR CRAWFORD: Thank you, Senator Harr. And thank you for your testimony. [LB83]

RON SEDLACEK: Yes. [LB83]

SENATOR CRAWFORD: So I just want clarify, as I understand what you're saying is the national labor law provides a protection for private employees against having to sign a waiver. And if someone in a private company is being asked to do that, that is a violation of federal law. [LB83]

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RON SEDLACEK: That's absolutely correct. [LB83]

SENATOR CRAWFORD: Okay. So now does the federal law require the employer to tell the employee this, to put it in the handbook or post it visibly? [LB83]

RON SEDLACEK: No, it does not. [LB83]

SENATOR CRAWFORD: Okay. So that is still a remedy that this bill provides for employees, is to make sure they know their rights because if somebody tells you to sign something, you don't know that you're not supposed to be asked to do that, you might do it not knowing your rights. [LB83]

RON SEDLACEK: But it would only be for, under the bill, it would only be for those employers that fall under the Wage Payment and Collection Act. [LB83]

SENATOR CRAWFORD: Okay. Thank you. [LB83]

SENATOR HARR: Thank you, Senator Crawford. Senator Bloomfield. [LB83]

SENATOR BLOOMFIELD: Thank you. Mr. Sedlacek, my understanding of your testimony is that what we would be doing with the passing of this bill is already covered under federal law. Would that be pretty close to accurate? [LB83]

RON SEDLACEK: The bill...there's differences between the federal and the state if this were to pass. But the essential components in that is allowing and making sure that employers do not have a policy to prohibit that conversation, that it's invalid. That's all the same, okay? [LB83]

SENATOR BLOOMFIELD: I don't understand how in the world an employee would ever enforce...employer would ever enforce such a thing anyway. What Joel and Marvin and... [LB83]

RON SEDLACEK: Well, you know, and I'll have to be, as I say, I've attended these seminars before. And sometimes it's a new thing for some of these people to understand, that that's already the law in that regard. And I think, I believe Senator Cook had a survey. And I know there's other surveys around, that it seems like there can be some misunderstanding or blurring, particularly when they think, well, it's proprietary information. They don't want somebody talking to the outside. That's usually most of these policies. Another thing they think about is sharing with competitors. [LB83]

SENATOR BLOOMFIELD: Okay. Thank you. [LB83]

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SENATOR HARR: Thank you. Senator Johnson. [LB83]

SENATOR JOHNSON: Thank you. If this bill were to move forward, what I heard in the opening and heard since then is the discrepancy between male and female wages, in general. [LB83]

RON SEDLACEK: I didn't address that at all but... [LB83]

SENATOR JOHNSON: I know. (Laugh) Do you feel that the passage of this legislation would fix that? [LB83]

RON SEDLACEK: We have a federal law, 80 years old, has essentially, as I say, 90 percent-plus of the same concept here. I mean, certainly equal pay for equal work is I would hope a value of all the members of the Chamber, if not a majority at least. And I'm not here on that issue, and I commend the senator for pursuing that concept. But I mean this is already law for many years. What has it done... [LB83]

SENATOR JOHNSON: Okay, thank you. [LB83]

RON SEDLACEK: ...that this would change? [LB83]

SENATOR HARR: Thank you. Seeing no further questions, thank you, Mr. Sedlacek. Any other opponents? [LB83]

BOB HALLSTROM: (Exhibit 3) Chairman Harr, members of the committee, my name Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the National Federation of Independent Business in opposition to LB83. I am circulating my written testimony which is relatively brief. And without being duplicative or redundant, we, too, have some concerns about the potential scope of LB83 in light of the fact that employers are already subject to very similar provisions under federal law, under the National Labor Relations Act. Ms. Shepard, in her testimony indicated that this bill was designed to reinforce the provisions of Section 7 of the National Labor Relations Act. And our concerns would simply be that it may do more than just reinforce the act and it may go further. Some examples that are not automatically incorporated into the state law on the face of LB83, Mr. Sedlacek alluded to some of those. The nondisclosure is limited to other workers. And there are restrictions on outside parties. There are some attempts or efforts in the bill to limit the disclosure to other competitors, which probably is a little bit vague and probably isn't exactly the interpretation that's come about from the National Labor Relations Board. We have situations not during work hours, as you might expect, to not disrupt the workplace in that regard. And there are other situations where obtaining information, for example, from the HR department would be confidential or proprietary, and you're not allowed to recirculate that type of information. Again, there's an effort with regard to disclosing proprietary information, but will that be

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interpreted the same as the National Labor Relations Board has done over the years? With regard to Section 2(c) of the bill, it talks about nothing in the act diminishing any existing rights under the National Labor Relations Act. Again, the issue would be those rights are granted I believe to the employee. There are protections or parameters within which the employer can place certain restrictions on this information that have been developed not under the act but under the National Labor Relations Board decisions or interpretations of that act, and so those types of things. The bill doesn't say, diminish or expand any existing rights. So it clearly could be used to expand the existing rights under the National Labor Relations Act. And that would be what we would be concerned about with the bill as drafted. I believe it does create a new obligation for employers with regard to the handbook provisions that are not available under the federal act. I think there's a poster requirement that relates or refers to the employer can't prohibit the disclosure type of issue. And it does create I believe a new civil action under Section 2(4) of the bill. So for those reasons, we would express our opposition to the bill. [LB83]

SENATOR HARR: Thank you. Senator Chambers. [LB83]

SENATOR CHAMBERS: Mr. Hallstrom, who enforces the National Labor Relations Act? [LB83]

BOB HALLSTROM: I assume the National Labor Relations Board enforce. [LB83]

SENATOR CHAMBERS: And that's not a judicial body, is it? [LB83]

BOB HALLSTROM: That is correct. [LB83]

SENATOR CHAMBERS: Who would enforce this law? [LB83]

BOB HALLSTROM: The courts of Nebraska with respect to the civil actions that can be brought for violations. [LB83]

SENATOR CHAMBERS: So it creates a state court action, which currently is not the case, is that right? [LB83]

BOB HALLSTROM: I believe that's correct, yes. [LB83]

SENATOR CHAMBERS: So that would be an advantage. If you view the ability to bring an action in state court as an advantage, that would be an advantage which employees don't currently enjoy, correct? [LB83]

BOB HALLSTROM: Correct. [LB83]

SENATOR CHAMBERS: And you and I would probably differ as to whether employees

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should have that right. Is that where we are? If I think they should, are you telling me you think that they should not and your clients, the bankers, say they should not have the right to go to court to enforce these rights? [LB83]

BOB HALLSTROM: I'm, Senator, just for correcting the record, I'm here for the National Federation of Independent Business today only. [LB83]

SENATOR CHAMBERS: Oh. But you do represent the bankers on... [LB83]

BOB HALLSTROM: I... [LB83]

SENATOR CHAMBERS: Excuse me, who was that, that fella who just preceded you, who was he representing? [LB83]

BOB HALLSTROM: That was the State Chamber, I believe. [LB83]

SENATOR CHAMBERS: And you fellas can't get together and have one organization? (Laughter) [LB83]

BOB HALLSTROM: Not yet, not yet. I think there was a question somewhere in there before we started getting off course here. We probably would. Our disagreement would be that we feel there's sufficient remedies under the National Labor Relations Act at this time. [LB83]

SENATOR CHAMBERS: That's all I have. Thank you. [LB83]

BOB HALLSTROM: Thank you. [LB83]

SENATOR HARR: Thank you, Senator Chambers. Senator Crawford. [LB83]

SENATOR CRAWFORD: Thank you, Senator Harr. So if I hear you correctly then, you're talking about...your major concern is confusion between the state protections and the federal protections. So if the bill were drafted to carefully clarify the new state protections such as the handbook, would that be something NFIB could support because it would not be creating confusion with federal law? [LB83]

BOB HALLSTROM: Well, I think we certainly could look at that, Senator. I think the issue is the inconsistencies. The question then would be...I think you're suggesting that we can remove the inconsistencies to a certain point, but we may develop some new rights or remedies. We'd want to make sure we know what those new rights or remedies are and whether or not they're burdensome to employers to comply with. [LB83]

SENATOR CRAWFORD: Thank you. [LB83]

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SENATOR HARR: Thank you, Senator Crawford. Mr. Hallstrom, would NFIB have a problem if this were merely a notice, requiring notice in a handbook, requiring notice be posted in a place of employment of the federal guidelines that already exist? [LB83]

BOB HALLSTROM: I haven't looked at that, Senator. That's certainly something we could consider. [LB83]

SENATOR HARR: Okay. Thank you very much. I appreciate your time. [LB83]

BOB HALLSTROM: Thank you. [LB83]

SENATOR HARR: Look forward to seeing you. [LB83]

SENATOR CHAMBERS: Excuse me. Excuse me. [LB83]

SENATOR HARR: Senator Chambers. [LB83]

SENATOR CHAMBERS: Would what the Chairman suggested be deemed objectionable by your client? [LB83]

BOB HALLSTROM: I haven't visited with them. It would appear to be less burdensome perhaps than some of the other requirements or potential inconsistencies. [LB83]

SENATOR CHAMBERS: What objection might they have because we're speculating now. What objection might they have? [LB83]

BOB HALLSTROM: Well, he suggested something in the handbook or a notice. The notice might be less objectionable than something in the handbook... [LB83]

SENATOR CHAMBERS: Why would it be objectionable? [LB83]

BOB HALLSTROM: ...if there's something specific in the statute that tells us exactly what we need to do. [LB83]

SENATOR CHAMBERS: Why would it be objectionable in the handbook? [LB83]

BOB HALLSTROM: Because you probably have more...with the bill, for example, Senator, when it says that we have to provide all of their rights and remedies in the handbook, again, I'm not sure exactly what all of their rights and remedies are under this particular act. [LB83]

SENATOR CHAMBERS: Well, if they can send you here and you can find all of the

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problems with a bill and the things they object to, then couldn't that same expertise be put to work to determine what rights and remedies people would have under this bill, or you think that's beyond your pay grade? [LB83]

BOB HALLSTROM: That's probably not what I do for those small businesses, but I'm certainly sure somebody... [LB83]

SENATOR CHAMBERS: Oh, that's right. You're here for the little people today. My last question. You do represent the bankers. [LB83]

BOB HALLSTROM: I do, Senator. [LB83]

SENATOR CHAMBERS: And bankers are people. Not every one of them...bankers are people who could be considered wealthy, some of them, correct? [LB83]

BOB HALLSTROM: I imagine that's in the eye of the beholder. [LB83]

SENATOR CHAMBERS: In your eye. (Laughter) [LB83]

BOB HALLSTROM: In my eye, there's wealthy people in a lot of different industries, yes. [LB83]

SENATOR CHAMBERS: I'm going to call you "eel man" because you're very slippery. By the way, for the people who don't know, he and I have been bantering for how many years, you don't even have to say. But that's all that I have. Thank you. [LB83]

BOB HALLSTROM: Thank you, Senator, I think. [LB83]

SENATOR HARR: Mr. Hallstrom, thank you very much. I appreciate it. Any other opponents? [LB83]

KATHY SIEFKEN: Senator Harr and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I represent the Nebraska Grocery Industry Association as their executive director and registered lobbyist. We are here today in opposition to this bill, LB83, because the National Labor Relations Act, Section 7 actually addresses and prohibits employers from requesting or requiring their employees not to share information. Section 8 of the same act protects their privacy. And so we believe that this bill is redundant and not really necessary. The other thing that we're concerned about is the handbook. Nebraska law doesn't require that every employer have an employee handbook. And I do represent the little people. I represent the small, tiny grocery stores that are located throughout this state. And not all of them do have handbooks. Some of them are run by family, family members, and it's a family enterprise. And so this would be burdensome because it would require them to place this language. They don't have

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attorneys. Where would they go to get the language that would, as you were talking to Mr. Hallstrom about? They would have to hire attorneys. They would have to put a handbook together. That's a major undertaking for a small family business that's just trying to sell groceries and help out their community. And I really wanted to start my testimony with the fact that wage and hour discrimination based on race and gender is wrong. And we as an industry believe that and we live that. So with that, if you have any questions, I'd be happy to try to answer. [LB83]

SENATOR HARR: Senator Crawford. [LB83]

SENATOR CRAWFORD: Thank you, Senator Harr, and thank you for coming to testify. I just want to clarify for the record as I read it, it says on page 2, "An employer that provides an employee handbook." So I don't believe that the bill creates a duty to someone who doesn't already provide a handbook. It says, if you already provide a handbook, then this should be in the handbook. [LB83]

KATHY SIEFKEN: Okay. [LB83]

SENATOR HARR: Thank you, Senator Crawford. For the record, Senator McCollister has joined the committee. Any other questions? Just one then, I'll ask, would you have an objection of, currently your employers have to post minimum wage in their break room. Would you have an objection if we required next to that or right below that on the same board the same statement saying that you cannot discriminate by sharing this information? [LB83]

KATHY SIEFKEN: If you could put that on that three-in-one poster so that's all together because we... [LB83]

SENATOR HARR: I like that. [LB83]

KATHY SIEFKEN: ...we order those posters for our members because they want them because they want to be in compliance with all state laws. And when you go to the Web site and you print off each poster and then someone takes it down, you're out of compliance. So my point is, we just ordered a ton of those posters because of the minimum wage initiative. And now we would have to reorder posters if that changes again. And if we could keep those posters current for a number of years, make all the changes at once, I don't know how you could that. But it is an additional expense to all of the small businesses out there every time you change that poster. [LB83]

SENATOR HARR: And who prints those posters? Is that Department of Labor? Or where do you order those? [LB83]

KATHY SIEFKEN: No, we order them through one of our members that has a big print

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press. And so while we charge our members what it costs us and then the postage, so our price is really low, there are other people that send letters to people across the state and they sell them the same posters for sometimes as much as ten times higher than what we do. So again, we try and stop our members from being taken advantage in that way too. [LB83]

SENATOR HARR: Okay. Thank you very...oh, sorry. Senator Bloomfield. [LB83]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Ms. Siefken, I've had the opportunity to be in the back room of quite a number of your...the people that you represent. And these signs are posted. But employees will come in and put a "I need a baby sitter" sign on top of it. (Laughter) [LB83]

KATHY SIEFKEN: Over the top. [LB83]

SENATOR BLOOMFIELD: They are provided by the employer because the law says they have to. But they're...I would say 70 percent are ignored by the employees. I don't know where I want to go with this. But putting that on that, putting more information on the bulletin board in the back room of a grocery store does not get it out to people, or anywhere else. The bulletin boards of most places of employment are overcrowded with junk that the federal government requires we put on there and the state government requires we put on there. People just don't read it. So I don't know that this is a...doing what Senator Harr suggests is really the answer either. Would you have any comment on that? [LB83]

KATHY SIEFKEN: Between the federal posters that are required, there are six posters there. And there are three that are required by the state of Nebraska. And they all have minimum sizes. And they will take up a good section of the wall. They do. They would take up...between the two, they take up a large section of space and people do have a tendency to put things over the top of them. And you can't stop employees from doing that. You spend all your time cleaning up boards. So we do try to comply. That's why they like the three-in-ones and the six-in-ones, so it's all together. [LB83]

SENATOR HARR: Seeing no other questions, thank you, Ms. Siefken. [LB83]

KATHY SIEFKEN: Thank you. [LB83]

SENATOR HARR: Always a pleasure. Any other opponents? Anyone in the neutral capacity? [LB83]

HOWARD FOX: (Exhibit 4) Chairman Harr, members of the Business and Labor Committee, my name is Howard Fox, H-o-w-a-r-d F-o-x. I'm the manager of labor relations at the Omaha Public Power District where I have the responsibility for all

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interactions between the district and our three bargaining units, including the leadership in collective bargaining. As a member of the human resources leadership team, I'm also knowledgeable of all human resources, including the compensation practices and philosophy of exempt, non-bargaining unit employees. As a public employer, the wages and salaries of district employees are a matter of public record. Because of this, we are of course very transparent about salary and wage rates, including when we post jobs that are vacant both internally and externally. As they are subject to public record laws, our wages and salaries have, in fact, been posted at a Web site by our local newspaper so that any of our employees or our customer owners can see what our employees are paid. To be certain, some of our employees are disconcerted by this fact. We believe, however, that nearly all of them have accepted the fact and know that our pay systems are market based or a result of a collective bargaining process with one of our three bargaining units that represent many of our employees. On the other side of the coin, we can understand that employee morale can be impacted by a comparison of their pay to others. Additionally, we know that information regarding our pay philosophies and practices can be used by competitors and that we can become a training ground for them. We compete regionally and nationally and have, in fact, lost critical talent to our competitors. To counteract this, we rely on a strong succession plan to make certain that we can fulfill our needs in critical jobs and positions. Thank you for the opportunity to address the committee. [LB83]

SENATOR HARR: Thank you, Mr. Fox. I appreciate your taking the time to come down here. Anyone have any questions for Mr. Fox? Senator McCollister. [LB83]

SENATOR McCOLLISTER: Mr. Fox, is the practice with the utility employees fairly standard for public employers? [LB83]

HOWARD FOX: We believe it is, and we believe it's becoming more so. [LB83]

SENATOR McCOLLISTER: Thank you. [LB83]

SENATOR HARR: Any other questions? Seeing none, again, thank you for taking the time to come down to your Nebraska Legislature. Anyone else in the neutral capacity? Seeing none, Senator Cook, would you like to close? [LB83]

SENATOR COOK: Yes. [LB83]

SENATOR HARR: Excellent. [LB83]

SENATOR COOK: Yes, I would, Mr. Chair. [LB83]

SENATOR HARR: Thank you. [LB83]

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SENATOR COOK: Thank you very much. And thank you very much for your insightful questions and for carefully considering this proposal. In my role as the state senator from Legislative District 13 and in my role as a human being who lives in Legislative District 13, I find myself reviewing and introducing policy proposals that address the practices within organizations versus the stated written policy. We're all aware of the federal statute. It's been brought out through your questioning that it does not duplicate those, I would say, paths to being heard and being considered. It does not mandate the creation of a handbook or a poster. What it does, quite simply, is take a step toward equal pay so that folks, somewhat ironically, can buy their own groceries from those family-owned grocery stores and from those independent businesses, buy, seek services and goods. What it does is take a step toward equal pay for women in the state of Nebraska. And I ask you to also consider that among the opposition testimony, from my listening, there was not one of the testifiers that offered a specific opposition to the policy that is outlined here in the green copy of LB83. So with that, I thank you for your careful consideration and I look forward to your advancement of LB83 from committee. Thank you again. [LB83]

SENATOR HARR: (Exhibits 5-7) Thank you, Senator Cook. Anyone have questions? All right. For the record, we have a letter from Fatima Goss Graves, National Women's Law Center; from the ACLU of Nebraska in support; in neutral we have Michelle Zych of the Women's Fund of Omaha. Thank you. With that, that closes the hearing on LB83. Next up is LB270 with Senator Ebke. Give a couple minutes for the room to clear out. Senator Ebke, the floor is yours. [LB83]

SENATOR EBKE: Chairman, thank you. Senator Harr, members of the Business and Labor Committee, for the record, my name is Laura Ebke, L-a-u-r-a E-b-k-e. I'm from Crete and I represent the 32nd Legislative District. I'm opening today on LB270. This bill is one of two today that I have on behalf of the Department of Labor. Both of these bills simply clean up some issues in current statutes. The first one, the one we're talking about right now, is LB270. LB270 seeks to combine three separate cash funds for three programs administered by the Department of Labor into one single cash fund. The Farm Contractor Registration Act (sic) was passed in 1987 through LB344. The contractor registration program was passed in 1994 through LB248. And the Professional Employer Organization Registration Act was passed in 2010, LB563. Currently, each of those programs has its own cash fund. The programs are all administered by approximately six staff of the Department of Labor. The intent is to combine the three cash funds so staff is not required to separately administer three separate cash funds. I don't really have an in-depth understanding of the technical aspects of these funds; but when the Department of Labor brought this to me, I thought it made sense given the relatively small number of transactions. And I believe that Commissioner Albin is here to testify and provide you with more details. [LB270]

SENATOR HARR: Excellent. Any questions for Senator Ebke? Senator Bloomfield.

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[LB270]

SENATOR BLOOMFIELD: Thank you. Senator Ebke, and I'll probably end up asking Mr. Albin about it as well, is there any chance that we could possibly reduce the number of employees by maybe one to save the state a few bucks in this process? [LB270]

SENATOR EBKE: I will defer to the commissioner on that. (Laugh) [LB270]

SENATOR BLOOMFIELD: Okay, thank you. [LB270]

SENATOR HARR: Seeing no other questions, thank you, Senator. No? Okay. Thank you. Commissioner Albin, go ahead. [LB270]

JOHN ALBIN: (Exhibit 1) Good afternoon, Chairman Harr and members of the Business and Labor Committee. And for the record, my name is John Albin, A-I-b-i-n, Commissioner of Labor. I'm appearing here in support of LB270. I'd like to thank Senator Ebke for introducing this bill on behalf of the Department. LB270 is intended as the first step in a two-part process of changing the way that program services are delivered by the Division of Labor Standards at the Department of Labor. The first step is to consolidate the three cash funds administered by the division. The Labor Standards Division has only 12 staff, but has to divide its costs between three cash funds and its General Fund appropriation. LB270 will reduce the administrative burden by consolidating the three cash funds into one. An example of the economy to be achieved is that although there are only four contractors registered under the Farm Labor Contractors Act in 2014, it had its own separate cash fund that had to be separately administered. The second step in the two-part process is to get a better handle on the actual costs of administering the many programs administered by the Labor Standards Division and then adjust the fees accordingly. At least one of the fees appears to be too high. When the professional employer organization registration program was enacted, it was estimated there would be three PEO organizations required to register in the state of Nebraska. In 2014, there were 100 PEOs registered with the department and the program appears to be generating more funds than are needed to administer its provisions. However, the time records kept by staff do not reflect actual hours worked on each program. I have recently revised the way that these staff are to record their time worked so that by 2016 I'll be in a position to recommend any needed changes in the fees. With accurate time records, it will be possible to assess fees in accordance with the statutory record without the administrative inefficiency of maintaining three separate cash funds. That concludes my testimony and I'm happy to answer any questions. [LB270]

SENATOR HARR: Thank you, Commissioner Albin. Senator Crawford. [LB270]

SENATOR CRAWFORD: Thank you, Commissioner. So I understand the pooling the

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funds together for that purpose of making it easier to manage it. Are there any implications in terms of where that money goes? So right now it may be that different funds pay for different things, and if you compile them then it might impact where funds were directed. [LB270]

JOHN ALBIN: That's not our intent at all. Our intent is to put the funds together. We still will...I say, still will. We started it last week because I found out we weren't doing it. We will be tracking time in accordance with what the people actually do. And we also will track the income sources so that we can match them up and match time versus expenses. We did a similar move with the amusement ride and elevator inspection programs a few years back where we consolidated the two programs and now are able to track both the time spent and the income that comes in so that the programs stand on good stead financially. So it's not our intent to have one program end up subsidizing the other. We just...my poor accounting division has to run three different separate sets of books in the E one system to track the expenditures. And that just seems like a not very good use of their time. It's not quite as bad a burden on our Labor Standards staff other than they have to make sure that when the checks come in, that the checks that are for contractor registration go...get deposited to that account. And they have to make a separate deposit when we get those occasional farm labor contractors, all four of them, and then the hundred PEOs that register. It just isn't a very efficient way of doing business. [LB270]

SENATOR CRAWFORD: Thank you. [LB270]

SENATOR HARR: Thank you. Senator McCollister. [LB270]

SENATOR McCOLLISTER: Thank you, Commissioner. I'm curious to know, are there any inherent cost advantages to this approach? You know, you're going to have to maintain three subaccounts I would think. Why is that different than maintaining three accounts? [LB270]

JOHN ALBIN: Well, we won't maintain three subaccounts. We will just track income and expenditures. It's similar to a store that has a clothing department and also has an appliances department. They don't keep a separate cash fund for each one of those businesses. They track the expenditures and the costs and the income for each of those sections. But they don't maintain a separate bank account. And that's what we're trying to avoid is maintaining these three separate bank accounts. [LB270]

SENATOR McCOLLISTER: Using your analogy, is that every cash transaction will identify a source or at least where the money is coming from, correct? [LB270]

JOHN ALBIN: Yes. [LB270]

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SENATOR McCOLLISTER: So I think it's a good idea to consolidate things if you can, but I'm starting to...I'm not sure I understand where the savings are. [LB270]

JOHN ALBIN: It's not a significant financial savings for the agency. I think Senator Bloomfield asked, would we be reducing any employees? No, I don't see that it's going to be that much. It's just kind of a good business practice. It's worked very well with the elevators and amusement rides, to consolidate those two inspection funds. You got...keeping a separate set of books for...I shouldn't say separate. A separate checking account for both of them just doesn't make a lot of administrative sense. [LB270]

SENATOR McCOLLISTER: Thank you. [LB270]

SENATOR HARR: Thank you, Senator McCollister. Senator Bloomfield. [LB270]

SENATOR BLOOMFIELD: Thank you, Mr. Albin. I think you pretty well answered my question. Number one, we're not going to save any money by getting rid of any employees. Are we going to save any money by the efficiency of bringing the three together, even a few dollars, or are we just simply doing away with two checking accounts? [LB270]

JOHN ALBIN: Well, any time you have to have your financial office maintain and track three separate bank accounts, there's time spent. And we do...you know, our controller's office does incur overtime over the year. Can I give you a direct cost? I don't think it'll be a huge savings. I think it will be a small savings. It will be a convenience of operation. In terms of, you know, big dollar savings, no, it's not there. That's why our fiscal impact statement says, no fiscal impact. It's just an efficiency. [LB270]

SENATOR BLOOMFIELD: Okay. Thank you. [LB270]

SENATOR HARR: Senator McCollister. [LB270]

SENATOR McCOLLISTER: I'll just mention that when we consolidated checking accounts at home, I found out there was some inherent disadvantage to that approach. (Laughter) [LB270]

SENATOR HARR: Commissioner Albin, I guess I would question how much money is in each one of these three accounts approximately? [LB270]

JOHN ALBIN: The cash income of the Farm Labor Contractor bill last year was \$6,750. The PEO fund brought in over \$100,000. And the contractor registration brought in like, I believe the number is \$500,000; it's a much...well, it depends upon how you want to count it. The ones who pay for the contractor registration, there's about 10,000 of those and there's about 5,000 that are exempt from the fee for one reason or another. So the

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contractor registration fund is far and away the biggest of the three funds. [LB270]

SENATOR HARR: Okay. And you described the professional employer organization. And you said there were more than you thought. Who are these individuals who pay into it? [LB270]

JOHN ALBIN: A professional employer organization, I don't know, some people have described them as outsourcing your personnel office, your human resources function. They usually handle the payroll and benefits for an employer. They don't actually employ the individuals. The employer just outsources its entire HR function. When the bill was first introduced, the sponsors of the bill told us there would be they thought three. And so we set our fees according to what we thought it would cost. And now that there's a lot more, I'm pretty confident we're bringing in too much money. But until I get my time records going like they should have been going, it's hard to tell how much. But that fee is too high. But I don't want to...it's one that I can cut by regulation, so I don't have to come back to the Legislature for an act. But I don't really want to slash the fee until I figure out exactly what the program is costing on a fair basis and then we can reduce the fee accordingly. [LB270]

SENATOR HARR: Okay. Thank you. I appreciate your time. Seeing no other questions, thank you very much. Any other proponents of LB270? Opponents? Neutral? Senator Ebke, the floor is yours. She will waive closing, which gives us to...which will close the record on LB270. And we will open it now on LB271. Senator Ebke. [LB270]

SENATOR EBKE: Good afternoon again. My name is Laura Ebke, L-a-u-r-a E-b-k-e, represent the 32nd Legislative District. The second bill that I have this afternoon is LB271. It's another bill brought to me from the Department of Labor. Again, it's a very simple bill that deals with revisions in statutes involving the Employment Security Law and eliminating some obsolete sections I believe. I will once again defer to the Department of Labor to answer any of the technical questions that you might have. [LB271]

SENATOR HARR: Short and sweet, I appreciate that. Any questions, however, for Senator Ebke? Seeing none, thank you. Commissioner Albin. [LB271]

JOHN ALBIN: (Exhibit 1) Good afternoon again, Chairman Harr, members of the Business and Labor Committee. Again, for the record, my name is John Albin, A-l-b-i-n, Commissioner of Labor and I'm appearing here in support of LB271. And I'd like to thank Senator Ebke again for introducing this bill on behalf of the department. LB271 removes outdated references in the Employment Security Law and updates and corrects other references. There was an amendment that Senator Ebke's office provided to the committee members. The amendment specifies a date certain for the incorporation of provisions of federal acts by reference in order to comply with

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constitutional requirements. In addition to the date changes that are in the bill and the amendment, on page 15 of the bill, page 14 of the amendment, I propose to remove obsolete language regarding the payment of an additional stipend to the Commissioner of Labor for the duties performed in the administration of the Employment Security Law. For at least the last 25 years, the Commissioner of Labor has received only the salary set by the Governor under Section 81-103 which includes compensation for services rendered by the Commissioner of Labor in administering the Employment Security Law. A considerable portion of the commissioner's salary is paid from the Employment Security Administration Fund. So the legislative intent of Section 48-609 is being accomplished, just not by a separate payment. Finally, on page 23 in both the amendment and the original bill, I propose to remove a reference to the State Treasurer in Section 48-663.01. This section incorrectly refers to the State Treasurer making deposits into the Unemployment Compensation Fund. The State Treasurer does not make deposits to the Unemployment Compensation Fund as Section 48-618 provides that the Treasurer of the Unemployment Compensation Fund must be a merit staff employee of the Department of Labor. The incorrect reference was a result of a 2012 enactment error that the department now seeks to correct. That completes my testimony and I ask the committee to advance LB271 with the suggested amendment to General File. And I'm happy to answer any questions. [LB271]

SENATOR HARR: Questions? I guess I would ask, this updates the CFR. Are there any major changes that occur with these updates? [LB271]

JOHN ALBIN: None that I'm aware of. It's just one of those things where if you're going to put dates certain in there, and your laws needs to remain dynamic, you just need to update them once in a while. There haven't been any major changes. [LB271]

SENATOR HARR: Senator McCollister. Thank you. [LB271]

SENATOR McCOLLISTER: Commissioner, none of these changes are related to our new Governor, are they? [LB271]

JOHN ALBIN: No. [LB271]

SENATOR McCOLLISTER: Okay. [LB271]

JOHN ALBIN: No, this was proposed back last September, long before the election was held. [LB271]

SENATOR McCOLLISTER: Thank you, sir. [LB271]

SENATOR HARR: Any other questions? Seeing none, thank you, Commissioner Albin. [LB271]

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JOHN ALBIN: If you're bored after the hearing, I'll give you the full mission statement of the Department of Labor. I looked it up. (Laughter) [LB271]

SENATOR HARR: I'm sure it's very exciting. [LB271]

JOHN ALBIN: It is. [LB271]

SENATOR HARR: Sorry, I did not mean to catch you off guard. Any other proponents? Opponents? Anyone testifying in a neutral capacity? Seeing none, Senator Ebke indicates she will waive closing. With that, we will close LB271. Thank you very much. [LB271]