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Business and Labor Committee
February 22, 2016

[LB1029 LB1044 LB1045 LB1110]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 22, 2016, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1110, LB1029, LB1044, and LB1045. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Ernie Chambers; Sue Crawford; Laura Ebke; Sara Howard; and Jerry Johnson. Senators absent: None.

SENATOR HARR: Hello. And welcome to your Business and Labor Committee. My name is Burke Harr. I'm the Chair of the committee. I see a lot of fresh faces and some young faces, excited to have some young guys here or young...and girls. I see one over there. Thanks for coming. We have four bills today and so we're going to go ahead and begin. I'm going to do introductions. Well, I'm going to go over policies first since we do have some young faces. Please turn off your cell phones. Testifiers should have the appropriate number of copies in handouts and exhibits. If you are going to use them, to distribute, the Business and Labor Committee requires ten copies. Each witness appearing before the committee must sign in using the green forms which are up here. Where are they? Right there. And just bring them up, hand them and one of our pages will take them for you. Because of the number of testifiers today, we are using the light system. Each testifier will have five minutes before the committee. We use the light system, as I stated. Green means go ahead. Yellow means you're nearing the end of your time, start wrapping up, you have about a minute. And red indicates it's time to end your testimony, preferably that sentence but maybe that thought. Please begin your testimony by stating your name clearly into the microphone and spelling both your first and last name to ensure accuracy of the record. Introducers of the bill do not have the light system so they're given a little bit more time and leeway, although Senator Mello isn't here so I'll say he needs to be brief. (Laughter) And with that...oh, then our...we have, to my left, we have our committee clerk, Lauren Williams, and to my right we have Meghan Chaffee. And we have two pages today. We have Brenda and Jordan, and they will be willing to help if you need anything. They can make copies. And with that, I would start with introducing the senators. Start with the Vice Chair of the committee, Senator Bloomfield.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, the northeast corner of the state--Dixon, Thurston, and Wayne County.

SENATOR JOHNSON: Senator Jerry Johnson, District 23--Saunders, Butler, and most of Colfax Counties.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45--eastern Sarpy County, Bellevue, and Offutt.

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SENATOR EBKE: Laura Ebke, District 32--Jefferson, Saline, Thayer, Fillmore, and the southwest portion of Lancaster County.

SENATOR HARR: Excellent. And we have a couple senators missing and it's because...not because of the subject matter in here but because they're testifying in other committees. I, myself, will have to leave for a little while to go to Banking, Commerce and Insurance. So with that, we will be in pause mode while we wait for Senator Mello. So talk amongst yourselves. Thanks.

BREAK

SENATOR HARR: All right. Chairman Mello has joined us now. [LB1110]

SENATOR MELLO: I apologize, Mr. Chairman. Had to get our committee started and get on my way. So good afternoon, Chairman Harr, members of the Business and Labor Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB1110, the Nebraska Workforce Innovation and Opportunity Act, would establish principles and definitions to guide the state's work force investment system, particularly in carrying out requirements of the federal Workforce Innovation and Opportunity Act. On July 22, 2014, President Barack Obama signed into law the Workforce Innovation and Opportunity Act, commonly referred to as WIOA. As the first federal reform of the public work force system in more than 15 years, WIOA has set a new course for state work force systems nationwide. The United States Department of Labor has outlined a number of key objectives in achieving the goal of modernizing state work force systems such as aligning federal investments to support job seekers and employers; strengthening the governing bodies that establish state, regional, and local work force investment priorities; helping employers find workers with the necessary skills; aligning goals, and increasing accountability and information for job seekers and the public; fostering regional collaboration to meet the needs of our regional economies; targeting work force systems to better serve job seekers; improving services to people with disabilities; and supporting better access to job services. A key component of modernization to the federal law through replacing the Workforce Investment Act was to allow flexibility for certain responsibilities as states focus on the actual implementation. Last session I introduced to this committee and the Legislature passed LB334 to repeal the outdated Nebraska Workforce Investment Act in response to it no longer being in compliance with the federal Workforce Innovation and Opportunity Act. I subsequently introduced LR239, an interim study to examine issues surrounding the implementation of the federal act in the state of Nebraska. According to NCSL, in 2015 states considered more than 130 bills on WIOA implementation and 51 of those bills were enacted. And state legislation to comply with WIOA has targeted a number of topics, including implementation of sector strategies and sector partnerships, career pathway initiatives,

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adult education, career and job training, state plan and/or governance issues, and general modifications to various states' work force systems. I bring before you today the first bill, LB1110, which includes legislative language surrounding all the items I just listed above, as well as other references to evidence-based policy; and a second bill afterwards this afternoon, LB1029, to support sector partnerships. I'll address the second bill after we're done with this first one. This past fall I met with the Department of Labor to review an initial draft of the Nebraska Workforce Innovation and Opportunity Act and to discuss the best way to complement the work that has already been completed on the combined state plan, minimize duplication, and set overarching goals for both the Legislature and the state. As committee members may be aware, the 407-page combined state report was approved by the Nebraska Workforce Development Board recently on Friday, February 12, 2016. I serve as a member of the Nebraska Workforce Development Board on behalf of our legislative branch and believe that LB1110 complements the state's combined state plan for WIOA by codifying overarching principles and guidance from the Nebraska Legislature. The language is a result of the research of other state actions, as well as discussions with the Nebraska Department of Labor. Additionally, you should have received an amendment, AM2052, that makes several changes to LB1110, requested by the Department of Labor. LB1110 essentially codifies our legislative intent for the future of our work force system by including language surrounding elements such as our global economy and the connection to career and technical education, regional labor markets, upward mobility training, and labor union involvement, adult career education, apprenticeships, county-based social and employment services, sector partnerships, accessibility, and data-driven evidence and outcome-based programming across our state work force system. I believe it's important for the Legislature to establish these overarching parameters for the state work force system found in LB1110. Additionally, putting this statutory language in place allows it to be referenced in the future or potentially modified in response to our future work force needs. I'd like to acknowledge all the extremely diligent work that's been put into the WIOA implementation process in Nebraska, and it's my intent that this legislative directive will be a piece of this historic modernization of our state's work force system. With that, Mr. Chairman, I'd be happy to answer any questions you or the committee may have. [LB1110]

SENATOR HARR: Thank you, Senator Mello. It's always a pleasure to have you here. Are there any questions for Senator Mello? I noticed you forgot to mention we prioritized this for you, but we haven't. [LB1110]

SENATOR MELLO: We are very appreciative that the Business and Labor Committee has prioritized this very important bill on behalf of the entire Legislature. [LB1110]

SENATOR HARR: There we go. All right. Thank you. If you want, there's a chair right there. You can just sit there. We're a little crowded. I screwed up. I should have probably got an

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overflow room or a bigger room, so I apologize. Anyone here to testify in favor of LB1110?
[LB1110]

JOHN ALBIN: (Exhibit 1) Good afternoon, Chairman Harr, members of the Business and Labor Committee. For the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I am the Commissioner of Labor. The department appreciates Senator Mello's interest in work force issues and his active participation on the current state Workforce Development Board. While the originally introduced LB1110 has issues that could affect the ability of the department to properly administrate the federally funded Workforce Innovation and Opportunity Act, the amendment which Senator Mello has presented to the department would alleviate those concerns. With that amendment, the department would support LB1110. The WIOA implementation process is on track. Technically, the new federal legislation went into effect July 1, 2015, but as a matter of practicality, the most important changes will take effect on July 1 of 2016. Most notable of the July 1, 2016, changes will be implementation of the new WIOA state plan, and changes to the Eligible Training Provider Provisions. A draft of the new state plan was submitted to stakeholders and interested parties for comment on January 15 of this year, and the comment period ended on February 18. A public hearing was held on February 5, and the department is currently reviewing both written comments and the comments of those who attended the public hearing. And I note that I said "department," singular. That's really inaccurate. It's departments, plural, because Department of Education, the Adult Basic Education and Vocational Rehab Programs are a part of that plan, and the hearing was actually held there. So it's not just Department of Labor and I stand corrected on that. While the green copy of the bill would have conflicted with portions of the draft state plan, the amendment removes those conflicts. Employers across the state are in need of additional workers with technical skills and training. Many employers who would like to expand their operation cannot because they cannot find an adequate number of workers with the necessary training and skills. Establishing career pathways and encouraging career technical education, as proposed in LB1110 and the state plan, are key elements to providing workers with the skills to attain good paying jobs and meeting employer work force needs. That concludes my testimony, and I would be happy to answer any questions. [LB1110]

SENATOR HARR: Any questions for Commissioner Albin? If I could just quickly, I just want to say first of all I sent you some comments addressing some of my concerns, and they are as mine personally. But I do want to thank you for your work on this and your ability to work with Senator Mello on this. This is something very important as we go forward. Work force development, as we have low unemployment, it's going to be more and more important--knock on wood we have low unemployment--that we develop those workers that we do have to their highest capacity. So I want to thank you for your work on this... [LB1110]

JOHN ALBIN: Oh, you're welcome. [LB1110]

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SENATOR HARR: ...and for the department's work in general. [LB1110]

JOHN ALBIN: It's been an interesting process and we've enjoyed working with you and Senator Mello both. [LB1110]

SENATOR HARR: Great. Thank you. Anyone else here to testify in favor of LB1110?
[LB1110]

BRAD MEURRENS: (Exhibits 2-5) Good afternoon, Senator Harr, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the Public Policy Specialist with Disability Rights Nebraska, the designated protection and advocacy organization for people with disabilities in Nebraska. I'm here obviously in support of LB1110. WIOA represents a significant shift in policy and priority that will work to benefit adults and youths with disabilities to develop their skills and access opportunities for employment. As my attached Employment Policy Brief from the Nebraska Consortium for Citizens with Disabilities demonstrates, there is significant room for improvement regarding the employment of persons with disabilities here in Nebraska. For example, unemployment rates were higher for persons with a disability than for those with no disability among all educational attainment groups. People with disabilities had an unemployment rate of 10.8 percent in 2014, increasing to 12.1 percent in 2015. Correspondingly, people without disabilities enjoyed a 5.3 percent and 4.5 percent rate for those years, respectively. The participation rate for people with disabilities was 19.7 percent in 2014 and dipped to 19.2 percent in 2015. Corresponding rates for people without disabilities were 68.7 percent and 68.3 percent, respectively. For all age groups, the employment population ratio was much lower for persons with disabilities than for those without. Only 17.6 percent of people with disabilities were working in 2014. In 2015, this percentage drops to 16.8 percent. For people without disabilities, these ratios were 65 percent in 2014 and 65.2 percent in 2015. And finally, almost 24 million people across the country with disabilities were not participating in the labor force in 2014 and 2015. We support efforts on the state level to implement, harmonize, and access funds flowing from the federal WIOA legislation. We also support efforts to increase and prioritize competitive and integrated employment opportunities for people with disabilities here in Nebraska to replace the sheltered workshop model that we currently attach ourselves to. As my attachments demonstrate, the passage of WIOA holds promise for people with disabilities regarding employment, skills, training, education, and opportunity. The federal government has taken a significant step towards increasing the competitive and integrated employment of people with disabilities with the passage of WIOA; now it is Nebraska's turn. However, I would caution, for the efforts of LB1110 to be maximized for people with disabilities in Nebraska, the Legislature must also address internal policy and regulations that act to dissuade people with disabilities from entering or advancing in their chosen careers. One example is the Medicaid Insurance for Workers with Disabilities Program, which allows individuals with disabilities who already utilize Medicaid to earn above poverty-

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level wages and still retain their Medicaid insurance, with a sliding scale premium, of course, for the best intentions, in this case WIOA and LB1110, can be thwarted and undermined by other internal state policies, specifically targeted at people with disabilities, that act, in reality, to maintain forced dependency and poverty. Disability Rights Nebraska would welcome any opportunity to engage in discussions regarding employment for persons with disabilities and any further refinements of LB1110. And I have not seen the amendment but I'm going to look at it this afternoon. We recommend that LB1110 be advanced. I'd be happy to answer any questions that you may have. [LB1110]

SENATOR HARR: Great. Thank you very much. Do we have any questions for Mr. Meurrens? Senator Johnson. [LB1110]

SENATOR JOHNSON: Thank you, Senator Harr. I probably should know this. Training for persons with disability and businesses trying to adapt their business to allow those in particular training, what's the biggest challenge out there between those two there is? [LB1110]

BRAD MEURRENS: Well, I think there's quite a few barriers, I think. I think a lot of times there's a disconnect between the expectations of employers and what people with disabilities can do and how they can meet those expectations. I think there's a mental barrier or a philosophical barrier that, you know, there are assumptions made about people with disabilities that may not necessarily be true, about their ability to do work or to do that. A lot of times there's educational and skills training efforts. You know, people with disabilities want to go back to work, want to get a raise, want to get a promotion, but they may not have and were not offered training, skills, education to meet those advancing steps in their current or historical educational path. And so I think it's a mixture of a lot of different things, but I think attitudinal barriers are very heavy, very present. I think it's the lack of training and opportunities to get the skill sets, to build those skill sets and to get the education that's going to be required to be a successful employee. And I also think another sort of mix is that people with disabilities who want to go back to work are often dissuaded because if they go back and they make 25 cents more an hour, if they're already employed, or if they go and they have a pay that's going to put them above the eligibility limits for Medicaid, whether that's 1 cent above or \$100 above, that is then people with disabilities are often, in that situation, are often dissuaded from taking a job and staying unemployed. Because if they leave their employment, they'll lose their Medicaid, which for a lot of folks with disabilities that is an untenable arrangement because people with disabilities often utilize Medicaid, because it provides a better array of services to meet their needs than what may be offered in some plans, either on the marketplace or through a private employer. So I think you have some, you know, disincentives for that. And then awareness about the need for some flexibility in terms of Medicaid eligibility and wages, so I think there's that attitudinal barrier as well. So it's a mixture of a lot of different things but I don't think it's impossible. It's not an insurmountable goal. [LB1110]

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SENATOR JOHNSON: Thank you. [LB1110]

SENATOR HARR: Great. Thank you. Any other questions? Seeing none, thanks for taking the time to come back. [LB1110]

BRAD MEURRENS: You're welcome. [LB1110]

SENATOR HARR: Anyone else here in support of LB1110? [LB1110]

SARAH MOYLAN: Good afternoon, Mr. Chairman, members of the committee. I am Sarah Moylan, that's spelled S-a-r-a-h M-o-y-l-a-n, and I am the senior director for talent at the Greater Omaha Chamber. I am also authorized to speak in support on behalf of the Nebraska Chamber of Commerce and Industry. I'm here today to offer the chamber's support for LB1110, legislation to authorize the Nebraska Workforce Innovation and Opportunity Act. Thank you for the opportunity to testify. And thanks to Senator Mello for bringing this to the committee. Talent is obviously a top concern for businesses in our state. What the WIOA legislation does is it helps provide a clear, relevant, and updated vision for our work force partners to do the work they do to train individuals and prepare them for the work force. This moves us closer to having a work force development system that functions at a very high level, meeting the needs of businesses on a regular basis. This legislation provides a clear vision and updated relevant guiding principles, particularly in the area of career pathways. Also, it requires sector groups, which is a key piece of this legislation, and the sector groups require our work force partners to listen to business and industry and form groups of industry partners that would work to align training and work force programs for individuals that are needing assistance finding employment and even moving up in employment. It helps ensure that as we train and educate there are jobs for those individuals, and so we have business at the table as we're designing these programs to meet people's needs. So I am pleased to be here to testify in support of this bill and I would be open to any questions that you might have. [LB1110]

SENATOR HARR: (Exhibits 6-11) Thank you, Ms. Moylan. Any questions? Thank you for your testimony. Appreciate it. Thanks for coming down. Anyone else in support of LB1110? Anyone in opposition? Anyone in a neutral capacity? Seeing none, okay, Senator Mello waives closing. I will read into the record, we have letters of support from Kristin Mayleben-Flott from the Nebraska Planning Council on Developmental Disabilities, Kelly Thompson from the National Utility Contractors Association of Nebraska, James Grotrian from Metropolitan Community College, Kevin Hilton from the North Central States Regional Council of Carpenters, Kim Quick from the Teamsters Local 554, and Ken Smith of the Nebraska Appleseed. And we have no letters neutral or in opposition. Senator Mello, you are open to...available to open on LB1029. [LB1110]

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SENATOR MELLO: (Exhibit 1) Good afternoon, Chairman Harr, members of the Business and Labor Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB1029 would adopt the Sector Partnership Program Act to be administered by the Nebraska Department of Labor. This legislation, as introduced, is a companion to LB1110, more specifically as a mechanism for using existing dollars to accomplish one of the data and research components of the Workforce Innovation and Opportunity Act. One of the goals listed in LB1110, Nebraska's WIOA Act we just had a hearing on, is aligning employment programs, resources, and planning efforts regionally around industry sectors that drive regional employment to connect services and training directly to jobs. Sector partnerships are a proven strategy for engaging employers in key industries; helping workers train for and access good-paying jobs; and coordinate education, training, and work force development activities in response to industry-specific needs. The green copy of LB1029 was modeled after the National Skills Coalition national language and was introduced as the result of multiple conversations with various stakeholders and state agencies this past fall about the value of sector partnerships, or commonly referred to as sector strategies. The Nebraska Department of Labor and the Nebraska Department of Economic Development have a history of working with different industries across our state to build structures around sector partnerships. LB1029 would codify the Sector Partnership Program into statute and provide funding for the creation of a data foundation for sector analysis. The original green copy of the legislation provided funding for what would essentially be a grant program for the Nebraska Department of Labor to administer grants to secure research and fund planning around sector partnerships across the state. In light of the existing ongoing work and coordination between the Nebraska Department of Labor, the Department of Economic Development, and the Department of Education with industry and community partners in the areas of sector strategies and sector partnerships, I'm bringing an amendment for this committee's consideration, AM2228. Since the introduction of LB1029, the Nebraska Department of Labor and the Nebraska Department of Economic Development worked together to propose an alternative funding mechanism and suggested a more sustainable data analysis process for the underlying copy of LB1029. The amendment before you, AM2228, was informed by their conversation and request for the legislation to support more internal development and a publicly available data foundation to support sector partnerships and Nebraska's existing work force development system. As outlined in AM2228, there would be a \$250,000 transfer from the Nebraska Customized Job Training Cash Fund and a \$250,000 cash fund transfer from the Nebraska Training and Support Cash Fund to the newly established Sector Partnership Program Fund. The amendment language states that the Nebraska Department of Labor and the Nebraska Department of Economic Development may contract with other entities to conduct additional labor availability, skills gap, and sector partnership studies. I'd like to personally thank the Department of Labor and the Department of Economic Development for their diligent work to help us draft and form the amendment before you. And again, I'd like to recognize Commissioner Albin and his team at the Department of Labor for their thoughtful work and engagement in complying with the federal Workforce Innovation and Opportunity Act

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and setting the future of Nebraska's work force system on a path that's data driven and focused on data-driven outcomes. With that, Mr. Chairman, I'd be happy to answer any questions you or the committee may have. [LB1029]

SENATOR HARR: Any questions for Senator Mello? I guess I have a couple questions. First of all, so what is the new fiscal note approximately? [LB1029]

SENATOR MELLO: The fiscal note would be \$250,000 from the Department of Labor and \$250,000 from the Department of Economic Development, utilizing two existing cash funds. If you look at the green copy of the fiscal note, it was considerably higher. And so in working with both the agencies, there obviously we came to kind of an agreement in regards to wanting to make what the concept I think everyone agrees with, was more of trying to make it work in light of the existing amounts we had in the green copy of the bill from those cash funds. So it narrowed it down pretty dramatically to a quarter of a million dollars from each agency over the next year. [LB1029]

SENATOR HARR: So approximately a half a million. [LB1029]

SENATOR MELLO: Half a million dollars over the... [LB1029]

SENATOR HARR: Okay. Nothing from General Fund. [LB1029]

SENATOR MELLO: No. [LB1029]

SENATOR HARR: Okay. Senator Bloomfield. [LB1029]

SENATOR BLOOMFIELD: Thank you. Senator Mello, will there be expenses to the General Fund going forward after this year? [LB1029]

SENATOR MELLO: That actually would be left up to the agencies of whether or not they choose to make this part of their ongoing budget request, Senator Bloomfield. But as the bill is written, no, there's no ongoing General Fund requirement as part of the bill. They're utilizing cash funds to get this established in statute and if they choose to come forward in future Legislatures to ask for an appropriation, they could do that through the budget process. [LB1029]

SENATOR BLOOMFIELD: Okay. Thank you. [LB1029]

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SENATOR HARR: Any other questions? I'm still confused what a sector partnership is. Can you please explain. [LB1029]

SENATOR MELLO: Best way to describe it, Senator Harr, and hopefully just some of you may have had the opportunity to meet or have conversations with NEMAC. It's the Nebraska Manufacturing Advisory Council in the Department of Economic Development. Essentially, sector partnerships bring businesses to the table from a specific industry or a specific sector of an industry to work with Workforce Development Partners to help craft the needs to help fill those gaps in that specific industry or that specific sector. A lot of times, obviously, and it's laid out in the bill as well, that you bring in obviously those Workforce Development partners, include your community partners, include labor unions, include community colleges, your K-12 and other postsecondary institutions to collaboratively work with a specific industry to be able to provide what's needed, so to speak, both on a certification level but also on generally curriculum level and/or career readiness standard level moving forward to meet that industry's needs to fill their existing skills gaps. [LB1029]

SENATOR HARR: All right. Seeing no other questions, I appreciate it. [LB1029]

SENATOR MELLO: Thank you. [LB1029]

SENATOR HARR: And as you exit, I am going to turn the chair over to Senator Bloomfield. [LB1029]

SENATOR MELLO: And, Mr. Chairman, is it... [LB1029]

SENATOR BLOOMFIELD: Are you testifying now? [LB1029]

SENATOR HARR: No, I got another (inaudible). [LB1029]

SENATOR MELLO: Yeah, I'd like to waive closing so I can get back to Appropriations Committee, if possible. [LB1029]

SENATOR HARR: Great. Thank you. [LB1029]

SENATOR BLOOMFIELD: We're at this time open to proponents of LB1029. [LB1029]

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KEN SMITH: (Exhibit 2) Good afternoon, Senator Bloomfield and members of the committee. My name is Ken Smith, that's K-e-n S-m-i-t-h, and I'm a staff attorney with the Economic Justice Program at Nebraska Appleseed. I appreciate this opportunity to testify in support of LB1029. In Nebraska we have a growing problem. It is estimated, by the year 2020, 71 percent of the jobs in our state will require postsecondary education. Yet, there are nearly 100,000 Nebraskans who do not have a high school degree or the equivalence, 10 percent of our state. Many of these 100,000 are in their prime working years, between the age of 25 and 54. And I want to clarify that that 10 percent is Nebraskans aged 18 to 64, so it's not 10 percent of the total state population but of that population. LB1029 would create sector partnerships that could make significant progress towards addressing that skills gap. These partnerships would engage high demand sectors of Nebraska's economy to ensure that our work force development programs are listening to the ever-changing needs of our state's key industries. LB1029 also establishes the Sector Partnership Program Fund, which will function to provide grants to eligible partnerships for planning and implementation activities oriented toward closing the skills gap, either by identifying the causes of the gap and plans to address those causes, or by implementing educational or job training programs. I realize that the amendment that was just discussed does make changes to the funding stream within the bill. We have not had the time to look at it. So these comments speak towards the underlying bill, not the amendment. But I don't believe that the changes are such that it would change our analysis. By organizing multiple employers and other key stakeholders in a particular industry cluster into working groups, partnerships can focus on the shared goals and human resource needs of that industry and work together to develop career pathways that are aligned with those needs. This would translate to more Nebraskans getting employed and staying employed, which would grow local and statewide industry and foster statewide economic growth. LB1029 is a solid step towards bridging the divide between Nebraska's work force and gainful employment in high-need industries. In light of this, we would respectfully request this committee to consider this bill favorably. And with that, I would answer any questions you may have. [LB1029]

SENATOR BLOOMFIELD: Are there any questions for Mr. Smith? Seeing none, thank you, sir. [LB1029]

KEN SMITH: Thank you. [LB1029]

AMBER HANSEN: (Exhibits 3-4) Good afternoon, Senators. My name is Amber Hansen, A-m-b-e-r H-a-n-s-e-n. I am the executive director for Community Action of Nebraska, and Community Action is a national network of nonprofits, over 1,000 agencies strong across the United States, dedicated to helping people achieve economic stability. There are nine Community Action agencies in Nebraska, each having served their respective communities for 50 years or more. So they know the communities very well and their needs. On the report that's being passed around you can see on page 17 there is a map of the state and the different service

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areas of each of those nine Community Action areas. Our programs are wide-ranging, just as poverty touches a number of aspects of a person's life--housing, food programs, disaster relief, and of course most relevant today is our employment programs. These include the Southeast Nebraska Community Action Partnership Job Skills Program, which provides financial assistance to those seeking certification in healthcare. The Community Action Partnership of Mid-Nebraska partners very closely with their local community colleges to offer a similar program. For them, in addition to healthcare, they also help people obtain CDLs, certified (sic--commercial) driver's licenses, because that is a job that, like truck driving, that's one of those requirements and it's very in demand in that area, so it's one of the reasons they invest there. We have a number of our agencies that participate in asset development programs which create matched savings accounts or individual development accounts so that people can save toward purchasing a home, getting an education, which we know is pivotal toward long-term economic stability, or starting a small business. And throughout every step of that process, the Community Action agency is there to support and provide guidance to the individual, whether writing a business plan or helping them budget so they can get through school while working fewer hours to make time for school. We also have a wealth of supportive services that people need to be gainfully employed, whether it be food pantries to help a family make a budget go further; they incur a large, unexpected expense like with their vehicle. We have childcare through Head Start that frees Mom up to work during the day, thrift stores that help individuals buy clothing for a new job or an important interview. So I emphasize these programs and supports--because you'll notice I do for both LB1029 and LB1110--because both of those are similar and complementary and include participation by community-based organizations like ours. I think that is one of the most significant aspects of this legislation. We're often the missing piece in discussing work force challenges and opportunities. I sat through a career pathway stakeholder meeting that Senator Crawford had within the last year, and as I sat around the table listening to educators and the like talk about the challenges that they've seen people deal with, I remembered just wanting to jump out of my seat and being like come to Community Action. You know, your car breaks down and it's a major expense. It doesn't mean you have to drop out of school. I understand that's really expensive but we have programs that can help free up some of your budget, again, food pantries or that asset development program so they can save to get that education. So I think that too often we work in our silos. We all have, every sector, every industry has its own language and culture, and this legislation attempts to sort of break down those silos and encourage collaboration and better alignment of goals and resources. Also, LB1029 we appreciate and support because of the emphasis on data, data, outcomes, and assessment tools. What I passed around was some of the data that we do for this purpose. We believe, Community Action, in evidence-based approaches as the most efficient way to utilize scarce resources and determine the most effective programs and services. And that's why we do the statewide community assessment, which I'll explain is something we do every year. We send a survey to 10,000 randomly selected households. In 2012 and '15 we asked about their employment barriers. On page 7 you can see the top ten barriers. We also found 38 percent of full-time employed people

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report being unable to meet their basic needs. And I bring this up because I think it speaks to the need for the types of jobs that this legislation supports, which is good-paying jobs that help people on the trajectory of upward mobility instead of providing themselves in stagnant jobs where they don't have any mobility. So in conclusion, Community Action of Nebraska supports LB1029 and LB1110 because it uses data as a key component for driving decisions, and we support it because it recognizes and includes participation by community-based organizations and nonprofits like ours. I do welcome any questions if you have any for me. [LB1029]

SENATOR BLOOMFIELD: Thank you, Ms. Hansen. Are there any questions from the committee? Seeing none, thank you again for coming in. [LB1029]

JUSTIN DOUGHERTY: (Exhibit 5) Good afternoon, Senator Bloomfield, members of the Business and Labor Committee. My name is Justin Dougherty, J-u-s-t-i-n D-o-u-g-h-e-r-t-y. I am here representing Goodwill Industries in Omaha, Nebraska. Our Goodwill has been providing work force development services in eastern Nebraska and western Iowa for over 80 years. In that time we have developed an expertise in needed elements to create a healthy work force system. One of the key ingredients of this system is an invested employer presence. For years this simply meant hiring qualified candidates as they exited the work force system. However, as employer needs have become more technical and unemployment rates have reached historic lows, employer presence in the work force is needed earlier. It is needed to help design the system. Sector partnerships are an increasingly utilized method for gaining employer buy-in within the development of a healthy work force system. As stated in LB1029, a sector partnership allows for work force development agencies to gain a keen understanding of the requirements of unique sectors. This understanding is used to develop programing and define career pathways for job seekers in order to qualify them for partnerships...for positions within given sectors. Furthermore, identifying local sectors with current and projected high demands for labor increases the return on investment of this strategy. I am here today to voice my support and Goodwill's support for LB1029 as a means to create a pool of qualified job candidates for high-demand sectors in Nebraska. This will work to help meet the needs of current employers in our state and may even help to draw new businesses to Nebraska. Thank you very much. Any questions? [LB1029]

SENATOR BLOOMFIELD: Thank you, Mr. Dougherty. Are there any questions? Seeing none, thank you again. Further proponent testimony. Welcome. [LB1029]

MARK McDONALD: (Exhibit 6) Thank you. Good afternoon, Senators and members of the Business and Labor Committee. My name is Mark McDonald, M-a-r-k M-c-D-o-n-a-l-d. I'm a program coordinator for the Center for People in Need's Tackling Recidivism and Developing Employability, or TRADE, program which serves Lincoln and the greater Lancaster County,

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Nebraska, area and focuses on decreasing recidivism through job training and by equipping those recently released from incarceration with case management, soft skills, certifications, service referrals, and employer contacts they need to build their lives. The Center for People in Need supports LB1029 as the funding would invest in programs whose successes we have experienced firsthand. In 2015, Nebraska Department of Correctional Services, NDCS, granted funds to the Center and also our partner, Christian Heritage, to build out the TRADE program. Currently, our TRADE program almost perfectly fits within the parameters of the Sector Partnership Program Act. We help clients grow their employability by partnering with employers in the community to identify demand sectors, and providing clients with daytime vocational training and certifications for construction, janitorial/building maintenance, event planning and food service, and forklift and warehouse operations, as well as curriculum on interpersonal skills, computer, domestic violence, and financial literacy, just to name a few. Data gathered over the course of the TRADE program is being analyzed by professors at the University of Nebraska-Lincoln as well as NDCS, and will be useful not only in improving current services but also improving the state's approach to reentry. We have served almost 200 clients that meet our grant requirements with nearly a quarter of those finding employment despite their criminal histories. TRADE is lauded by many of our partners as a model for how to increase employability in program (sic--problem) populations. And while these services offer a clear, data-driven approach, our biggest challenge at this point is the limited scope of our program. With additional dollars, our successes could be expanded to include any in the work force looking for employment, excuse me, looking to increase their skills in high-demand sectors. Not only could we serve more people, we'd also have the ability to add more vocational training modules, such as welding and metal fabrication or office administration and customer service, as well as extend our follow-up services, offer evening classes, and further on-the-job training. I hope this committee recognizes the importance of job training programs like those that will be funded under LB1029 and that you will support further funding by passing it out of committee. Thanks for your time. [LB1029]

SENATOR BLOOMFIELD: Are there any questions for Mr. McDonald? Seeing none, thank you, sir, for coming in. [LB1029]

MARK McDONALD: Thank you. [LB1029]

SENATOR BLOOMFIELD: Is there further proponent testimony? Seeing none, is there testimony in opposition? Seeing none, any neutral testimony? Welcome back, Commissioner. [LB1029]

JOHN ALBIN: (Exhibits 7-8) Thank you, Senator. Vice Chair Bloomfield, members of the committee, for the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I'm the Commissioner of Labor. Department appreciates Senator Mello's interest in sector strategies that can help to

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grow Nebraska. I also have a letter from the director of Economic Development that DED would like to have included in the record and the page is passing around. While the department has concerns about LB1029 as originally introduced, the amendment which Senator Mello has presented to the department and now the committee was prepared in consultation with the Departments of Labor and Economic Development, and would lay the groundwork for establishing effective sector partnerships in Nebraska. The key to effective sector strategies is gathering the underlying data that measures both employer needs and the skill sets of existing workers. Departments of Labor and Economic Development and the University of Nebraska have partnered on a series of ad hoc labor availability and skills shortage studies in recent years using one-time funding. The first was in Norfolk. More recently, studies have been done in Omaha and Lincoln. And one is nearing completion in Scottsbluff. They have been funded through a variety of one-time funding sources. Employers, economic developers, and educational institutions have all found these studies to be quite useful. However, the value of these studies has a limited shelf life as the data quickly becomes stale. In order to move Nebraska forward and establish effective sector partnerships, the surveys need to be regularly performed so that there's always current data available. In determining sector strategies and work force training, current data on labor availability and skills shortages is an absolute must. Whether it's assisting employers in finding skilled workers or working with training providers to provide in-demand skills training in our job training programs, there's a need to have current data. As introduced, LB1029 provided two-year seed money for establishing effective sector partnerships but did not provide for the constant flow of updated information that would allow those sector partnerships to achieve maximum impact. Working with Senator Mello, the Departments of Labor and Economic Development have identified existing fund sources that we can use in collaboration to make the labor availability and skills gap studies that we have done on an ad hoc basis in the past an ongoing program. Rather than fund a study here and a study there, the amendment proposes to establish an ongoing series of studies so that underlying data is continually being refreshed and never more than two years old. As publicly created studies, the studies will be available not only to our two departments but to employers, economic developers, and educational institutions. These studies are not inexpensive, but both Economic Development and Labor believe existing funds can be used to perform these studies on a regular basis. The Department of Labor has a limited amount of available unappropriated cash funds in the Worker Training Program. Under the amendment, \$250,000 of those unappropriated cash funds will be transferred to the Sector Partnership Cash Fund for labor availability and skills gap studies in FY '17. In addition, there are statewide federal funds available under the Workforce Innovation and Opportunity Act which can be used to help administer and encourage sector partnership activities. That concludes my testimony. I'd be happy to answer any questions. [LB1029]

SENATOR BLOOMFIELD: Are there any questions? Senator Crawford. [LB1029]

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SENATOR CRAWFORD: Thank you, Senator Bloomfield. And thank you, Commissioner. I just wondered if--you heard the testimony of some of the service providers--if you see how that fits into this sector partnership planning and implementation. [LB1029]

JOHN ALBIN: I think it fits in very well, Senator. If you're identifying skills that you want to put...that are on short...let me start over. I'm having my tongue is tangled this afternoon. You want to identify industries where there is a skilled worker shortage. You have to have statistics to support that. And this will allow the providers to look at where the jobs are and what they pay so that they can identify where they want to put their training efforts. Again, this is an ongoing plan as opposed to a two-year, one-shot proposal that was in the original bill. If you look at Director Dentlinger's letter, she talks about some educational institutions that have looked at the data from the studies that we have done in the past, and said, oh, that's why that's not working. So we need to redirect our efforts there. In addition, the studies would help employers to say, okay, this is where...there really are workers out there; this is what it takes to get them. And so they can make that decision then, an informed decision, as to how to get those workers. So I think it fits in very well with their programs. It's a little different direction, I agree, but on the whole I think it's good. And, plus, both Economic Development and Labor have been approached by foundations saying, we want to help, but foundations, as much money as they give away, don't give it away without some thought in the process and they want to see some data as to, okay, if you do this, what's the basis for it? And this data gives us that information. This data will give us that information so that we can go to those foundations and hopefully fund some of those, more sector partnerships through those, that funding source. [LB1029]

SENATOR CRAWFORD: Thank you. [LB1029]

SENATOR BLOOMFIELD: Any further questions? Seeing none, thank you, Mr. Commissioner. [LB1029]

JOHN ALBIN: Thank you, Senator Bloomfield. [LB1029]

SENATOR BLOOMFIELD: Is there any more testimony in the opposition...or in the neutral position? Seeing none, that will conclude the hearing on LB1029. Oh, I do have some letters to read into the record. [LB1029]

LAUREN WILLIAMS: (Exhibits 9-12) In support from Kelly Thompson, National Utility Contractors Association of Nebraska; James Grotrian of Metropolitan Community College; Jean Petsch, Associated General Contractors, Nebraska Building Chapter; and a letter, a neutral letter from Deb Cottier, Nebraska Economic Developers Association. [LB1029]

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SENATOR BLOOMFIELD: Thank you. And that will conclude the hearing on LB1029. Senator Ebke, I believe you're up next. [LB1029]

SENATOR EBKE: Are we doing LB1044 or LB1045 next? We have talked about switching.

MEGHAN CHAFFEE: LB1044.

SENATOR EBKE: LB1044, okay.

SENATOR BLOOMFIELD: LB1044 as far as I know.

SENATOR EBKE: Okay.

SENATOR BLOOMFIELD: Did you have a desire to switch or...?

SENATOR EBKE: No, Chairman Harr had made mention of the possibility of a switch earlier, but...

SENATOR BLOOMFIELD: Okay.

SENATOR EBKE: ...I'm fine with this. Thank you, Vice Chairman Bloomfield and fellow members of the Business and Labor Committee. For the record, my name is Senator Laura Ebke, L-a-u-r-a E-b-k-e. I represent District 32, which consists of Jefferson, Thayer, Fillmore, and Saline Counties, as well as the southwest portion of Lancaster County. Today I bring you LB1044. LB1044, as written, would terminate the Commission of Industrial Relations, also referred to as the CIR, as of July 1, 2017. Since this is a noncontroversial subject (laughter), let me give you a brief background of the CIR and my motivation for introducing this bill. The creation of the Commission of Industrial Relations, as it is now known, was authorized, although not mandated, under Article XV, Section 9 of the Nebraska Constitution, although one Supreme Court case back in the '70s held that Article XV, Section 9 was not necessary for the creation of a CIR but, rather, that those powers could be derived from the general legislative authority under Article III, Section 1 of the Nebraska Constitution. Regardless, the existence of the CIR is not constitutionally mandated but merely allowed and so it rests with the Legislature to continuously assess the wisdom, structure, and depth of its existence. The Commission of Industrial Relations was created, in part, to avoid the loss of critical public services in the case of strikes and to assure a fair way of resolving labor disputes without strikes. The most recent numbers I could find show that 39 states have some mechanism to ban public sector union strikes, while 11 states do not. And yet, even in states where public sector employees can strike, those strikes are quite

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rare. To the extent that the CIR has prevented strikes in a state where we don't currently allow strikes, it's been a smashing success. Of course, as a right-to-work state where union membership isn't required, CIR might not be needed to prevent strikes. Not all employees are union members even though the unions bargain on their behalf. Nonmembers might cross the proverbial picket lines and report to work and government work might go on. For most of us in this body, at least those of us in rural areas of the state, the thing we hear about the most is property taxes and the demand that we do something to fix the property tax problem. Now follow along with me here for just a few minutes, please. Property taxes provide the funding for about 60 percent of the costs of our public schools. Of course in rural districts that are nonequalized, that's much higher. City and county governments are funded in large part by property taxes as well. And in most, if not all, instances within governments and private businesses, the biggest expenses for employers are related to personnel wages and benefits. As a 12-year member of a school board negotiating team, I saw firsthand the way that CIR is used. While it may certainly force resolutions to labor disputes, it does little for the taxpayers who must pay the bill for pay raises and benefits for public employees which may be in excess of what they themselves are able to get in the private market. CIR is about numbers. When bargaining units and management or elected boards sit down to negotiate agreements, the first thing that happens, at least in the public school sector that I'm familiar with, is the comparability study. Sometimes each side does their own study; sometimes they work together. But this is a tedious process that requires research and the placing of employees on the pay schedules of comparably sized schools. The usual rule for comparable, unless it's changed in the last couple of years, is no less than half the size, no more than...nor more than two times the size, and then circles are drawn around the midpoint in increasing size until you get 8 to 12 schools that fit that criteria. So you'd put a...if you had a protractor, is that what it's called, and you put the point of the pro...is it a protractor? [LB1044]

SENATOR CRAWFORD: Compass. [LB1044]

SENATOR EBKE: Is that right? [LB1044]

SENATOR CRAWFORD: Compass. [LB1044]

SENATOR EBKE: A compass. A compass. There you go. See, I wasn't very good at geometry. If you put a compass in the middle on Crete and you draw a circle around it, you might do 50 miles first. If you get...if you could get enough schools that are comparable, good enough. If you don't, then you make it a little bit bigger and go a few more miles out. So you go far enough out until you get enough schools that are of comparable size. The situation works similarly, although not identically, for other public sector bargaining units. So you place employees on the pay schedule of other schools, for instance--requires knowing what the pay schedules look like, knowing how much education and experience different employees have--placing them on schedules that may

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be different from the one that they actually work in, and then doing the calculations to see how their placement on someone else's schedule compares to their placement on their own schedule. Once the schools to be compared are determined, it's really just math, putting employees on the pay schedules of different schools and determining the ranking with what becomes the array. The goal was to avoid going to CIR, which meant that you needed to make sure that you tried to be at or above the midpoint in the array. Remember, because of geographical considerations, everyone has a somewhat different array. A school at the bottom of Crete's array, for instance, could be at the midpoint of Fairbury's array and at the top of their own array, because everybody has a different midpoint. It all depends on geography and size. Agreeing on the arrays is very important, and if there isn't agreement there's much more likely to be a trip to the CIR where the commission will decide on the array. I am led to believe, although haven't been directly involved, that the negotiations process for other governmental subdivisions work similarly. Of course, the circles might have to get bigger in order to find comparables. Indeed, if you're talking about negotiations for cities like Lincoln or Omaha, you would find no comparables inside the state of Nebraska. Those comparables can be virtually anywhere in that instance and, historically anyway, the half to twice-as-big rule hasn't always been applied in cities. Lincoln was once compared in a CIR case to Minneapolis, which is ten times as large. Some have suggested that the CIR should look at Nebraska cities first and then move to closest matches in neighboring states for comparables. Some have suggested that the Legislature needs to provide more direction and oversight to the CIR. Some have suggested, and I think this is something that should be considered, that the CIR should take into account the ability to pay by government subdivisions when making its determinations. How to determine, however, that is something that would need to be discussed. But the question becomes this: At some point, when tax levies have been maxed out or when nonequalized smaller school districts end up in the same array as larger equalized school districts, does increasing salaries and benefits start to have a negative effect on other public services--roads, school buildings and supplies, number of employees--because CIR doesn't determine how many employees the government units have, just how much they need to be paid in order to be comparable to similar governmental units? We've also heard anecdotally that CIR may work to the disadvantage of good government. During the LR34 interim study hearings this summer, we heard that one of the problems with Corrections officers' salaries was related to comparability where Nebraska employees were compared with similar workers in other states. Different circumstances, I'm not sure how many CIR equivalents there might be around the country, but I don't believe that there would be very many, so lower paying states are compared to Nebraska, making us look like we pay wonderfully in CIR but leaving local conditions out of the mix. Likewise, in the instance of schools or communities, while CIR will, for some, result in higher rates than the management would necessarily feel comfortable paying, it also has the effect of holding down salaries in places where there may be a real need or an unusual set of circumstances which might otherwise justify higher wage rates. The peer pressure of a raise is significant. Once your array is set, once you figure out what your array is, it stays pretty stable unless there are schools within your geographic district that are growing or

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declining rapidly. As other districts in your array start to settle, you can see where you'll need to be in order to maintain your position in the array. The worst thing that could happen would be to have one of those in your array negotiate a large increase because then it moves the midpoint of the array up, forcing you to move your salaries up accordingly in order to maintain reasonable position on the array. And this is one of the problems that this brings us, that there's a continuing inevitable spiraling upward regardless of circumstances around the state or around your array. The real problem with this is that if one or two schools in your array happen to raise their salary packages significantly one year, it forces you to raise yours, perhaps beyond what you and the taxpayers in your district can really afford. And if a school board can't afford to pay all of the current members of the staff at the new rate and make bond payments on buildings and pay support staff who aren't usually covered under collective bargaining agreements and keep the lights on and buy new books, then choices have to be made: eventually decrease the staff, decrease the services, buy new books later, etcetera. Typically, the increase in salaries and benefits that schools, anyway, feel obliged to give in order to avoid CIR are in excess of the inflation rate and usually in excess of the raises given to most employees in private businesses in the area. Several times while I was on the school board, local business folks would talk to me after they had seen in the paper how much of an increase on the base that teachers were getting, and they'd say something like, I could only give my employees half of that; or, my employees didn't get a raise at all this year because we couldn't afford to raise their salaries and keep the group insurance plan in place. Contrary to what some may believe, I do not dislike unions or union members. I believe that they have played historically vital roles and that they can provide an important support role for those who choose to voluntarily be a part of the organization. But public sector union members would be well-advised to remember that they are working for the public. They should remember that small businessmen who don't have a guaranteed monthly paycheck and farmers who are at the whim of the weather and current commodity prices are still paying their salaries through their property taxes, especially, but also through their income taxes. And our public policy should, in my view, recognize that as well. The upward spiraling effect on public sector wages as a result of the CIR process, even when wages in the private sector have stalled, is something we should be concerned about as the policymaking body in this state. So all of that being said, members of the committee, let me just say one more thing. I look forward to hearing from those behind me, both those in favor of the bill and those against. But I will also do, as Senator Chambers did with a bill in Judiciary the other day, and ask that this bill be held after this hearing. I will also ask that we take up an interim study on CIR, which will include conversations with a diversity of people who are here today to testify. And I will be happy to talk with the committee and determine whether the committee would like me to do that or would like to do that as a committee interim study. I think we should get as many things on the table as we can, get a full picture of both the good and the bad in CIR, and we should look at how other states are managing some of these issues. And when we can make a good decision for both public sector employees and for those who supervise them and for the taxpayers in both the private and public service sectors, we need to do that. We need to look at who pay us all and

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fund all of the services that government entities provide. And one last thing: I do intend to waive closing. [LB1044]

SENATOR BLOOMFIELD: Thank you, Senator Ebke. Are there any questions from the committee? Senator Howard. [LB1044]

SENATOR HOWARD: Thank you, Senator Bloomfield. Thank you, Senator Ebke, for bringing this bill today. This is...I'm new to the committee so this is my first CIR hearing. And so my only understanding of the CIR is what I learned from my mother, who was a social worker for 34 years, was around when the CIR was first created. And her understanding was that they gave away the right to strike in order...with the CIR. So it was a trade-off. So we get the CIR; we're not going to strike, because as a social worker she really understood there...striking of the social worker means that there are kids who aren't getting their cases managed, they're missing court hearings. And their intention was never that they wanted to strike but they also wanted to have a mechanism to bring everybody to the table so that when they did reach an impasse they could find a common ground. And so was your intention to start a conversation or was your intention to truly terminate the CIR? [LB1044]

SENATOR EBKE: My intention is to start a good conversation. [LB1044]

SENATOR HOWARD: Okay. Thank you. [LB1044]

SENATOR EBKE: Uh-huh. [LB1044]

SENATOR BLOOMFIELD: Any further questions? Seeing none, thank you, Senator. Are there proponent testifiers? Welcome. [LB1044]

DEB ANDREWS: Thank you, Chairman Bloomfield. Senators, my name is Deb Andrews, D-e-b A-n-d-r-e-w-s. I am here today in support of LB1044 to terminate the Commission of Industrial Relations, CIR. The CIR mission is often at odds with the fully functioning of government services to citizens. Basic services to citizens in an efficient and accountable system is contrary to union priorities of expansion of jobs, wages, and benefits. Union hierarchy embedded at all levels of our government has created political powers that at times, according to Friedrich Hayek, is scarcely distinguishable from slavery. Opposition may be met with retaliation. Having worked 20 years as a student learning advocate, I have learned union control is perhaps most evident in our schools. Costs and learning failure have expanded over the decades. Today just 38 percent of Nebraska 8th grade students score at proficient or above in reading. While on the New York City Council, Bill de Blasio acted in favor of an international union. Then one of de

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Blasio's first acts as mayor was to move against charter schools. Prior to learning about the international union involvement with our elected politicians, it never occurred to me that union organization is international. Recently, I was not allowed to testify on the new math standards during public comment time at the State Board of Education meeting. However, the teachers union president was welcomed to the microphone after I had been silenced. He shared information about his grandchildren during the public comment time. Who's sovereign? Margaret Thatcher referred to the union as the enemy within. Competition is the only method which does not require coercive intervention of authority. I urge you to support termination of the Commission of Industrial Relations. It's a start to remove the union boot from the neck of citizens, taxpayers, and particularly small children who I advocate for that are not being taught how to read well in school. I agree with your mother, Senator Howard. Children should not go without services. But to me, that means that government should not be unionized. It doesn't work. It impairs services to citizens. Glad to answer any questions. [LB1044]

SENATOR BLOOMFIELD: Thank you. Are there any questions for Ms. Andrews? Seeing none, thank you for your testimony. Further proponent testimony. Welcome. [LB1044]

COBY MACH: Thank you. Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h. I am the president of the Lincoln Independent Business Association, an organization with 1,300 members here in Lincoln. We're testifying in the support category; however, we did think about coming in neutral simply because we wanted to bring some various issues to light. We talked with officials from the city of Lincoln, from Lancaster County, and Lincoln Public Schools. They really are the three largest branches of local government that serve our city and we routinely hear from them about difficulties they face in controlling their budget due to negotiating under the structure of the CIR. Whether any of those government officials are here to testify today I don't know. If they're not, I'm not sure why they are not, because we continually hear from them that it is an issue. The wage comparison provision is a problem because we're not always able to compare places like Lincoln with public employee salaries in Nebraska. For example, the most recent array structure resulted in Lincoln Public Schools comparing its wages to those of a much larger metro--Omaha. But we also had to look to Kansas City; Des Moines, Iowa; Madison, Wisconsin; and Shawnee Mission, Kansas, as part of our array. There are also concerns about calculating wages and benefits to obtain complete and accurate picture of comparability. Lancaster County reported this last fall that Lincoln has estimated the actuarial cost of calculating the comparable benefits is \$60,000 to \$70,000. That's their cost just to put together the actuarial cost and the calculations. Now just last week in a hearing before the Revenue Committee there were city officials opining that it was expensive to put bond issues before voters, so just allowing the city council to make decisions on bond issues was fine because a bond initiative was expensive and could cost as much as \$30,000. The CIR structure is much more than a bond initiative, and that includes taxpayer funds. In a CIR decision from December of 2015, just a few months ago, the Public Association of Government Employees v. the City of Lincoln, case number 1398, the

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CIR ruled the city of Lincoln could not adjust the schedule for snow removal workers to meet city snow removal needs. Instead, the CIR said that the city must first negotiate the snow emergency schedule until the parties reached impasse and then take the case to the CIR. What this means is the city of Lincoln snow emergency could not be addressed as a result of the structure of the CIR, and this has a real impact on taxpayers' daily lives. In the last 18 months, the last 18 months, the CIR in this case and another case involving Lincoln mechanics said that past practices was the reason to rule against the city of Lincoln. Even if it's not in a city and union contract, just the past practice was reason enough to give the union the power to hamstring an entire community regarding snow removal. How does that foster innovation or allow cities to improve past and outdated practices? We cannot do what's in the best interest of the citizens who need to get to various places, whether it's a doctor's office or grocery store, during a snow event. In another CIR decision, the CIR required Scottsbluff to have health insurance that includes coverage for police officers to participate in ultimate fighting. Yes, the CIR told Scottsbluff that their taxpayers have to pay for health insurance premiums to cover any dangerous hobby, including ultimate fighting. There are other cases very recent that demonstrate how the CIR unreasonably ties local government hands. In the Fraternal Order of Police Lodge v. Gage County, the local sheriff--now this is May of 2015, just last summer--the local sheriff tried to save taxpayer dollars by changing a policy regarding whether or not police officers drive their patrol cars to and from work. The CIR held that such a change could not occur even though the collective bargaining agreement between Gage County and the union did not include any provisions related to the issue. In Lincoln County they attempted to make a payroll change so employees would no longer be paid on the last business day of the month but would, instead, be paid after all hours were actually worked. Even though Lincoln County was attempting to follow a new state law passed in 2013, the union took Lincoln County to the CIR and the CIR held the negotiations would have to be opened before the changes could be made. I see I'm out of time. And I thank you for your time. [LB1044]

SENATOR BLOOMFIELD: Are there any questions from the committee? Seeing none, thank you, Mr. Mach. [LB1044]

COBY MACH: Thank you. [LB1044]

SENATOR BLOOMFIELD: Further proponents for LB1044. Those in the opposition. [LB1044]

NANCY FULTON: (Exhibit 1) Good afternoon, members of the committee. For the record, I'm Nancy Fulton, N-a-n-c-y F-u-l-t-o-n. I'm a 34-year elementary teacher. I'm president of the 28,000-member Nebraska State Education Association. I also was a local negotiator for over 30 years. NSEA is strongly opposed to LB1044. The Nebraska Commission of Industrial Relations, or the CIR, is an important part of the orderly and predictable system in which the CIR

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determines wages in Nebraska public labor disputes. This dispute resolution process has worked well for decades to provide stable labor relations in the public sector. Educational institutions in the public sector, including state colleges, community colleges, public schools K-12, education service units, and the University of Nebraska, are all served by the CIR. One of the myths of the CIR is that public unions are very willing to go to the CIR instead of settling a contract through any negotiations. The fact is that unions are usually very reluctant to seek resolution from the Court of Industrial Relations. For the public schools, the commission resolves wage disputes by finding a wage that is in the midpoint of those in comparable school districts--their array. Schools that are ranked above the comparable wage are hesitant to seek help from the CIR. And even schools that are somewhat below comparability must be careful because they could possibly use wage structures or fringe benefits that are above the comparability. The real story is that unions do not frivolously go to the CIR. The standard of comparability can cut both ways, and that's an important part of the success of the system. This is what critics often overlook. The success of the CIR rests on the objective and predictable nature of the process. The midpoint wage can be mathematically determined and reasonably estimated by both parties before even going to the CIR. That feature acts as a curb against exploiting the system and is a major reason why the number of CIR cases are so low, especially for the public schools. We respectfully ask that you oppose this bill and leave this important dispute resolution tool in place. Thank you for your time and your consideration today. [LB1044]

SENATOR BLOOMFIELD: Thank you for your testimony. Are there any questions? Seeing none, thank you, Ms. Fulton. [LB1044]

NANCY FULTON: Thank you. [LB1044]

SENATOR BLOOMFIELD: Further testimony in opposition. [LB1044]

SENATOR HARR: Mr. LeClair. [LB1044]

STEVE LeCLAIR: Good afternoon, Chairman Harr and members of the committee. My name is Steve, S-t-e-v-e, LeClair, L-e-C-l-a-i-r. I am president of the Omaha Professional Fire Fighters Association. I'd like to thank you for the opportunity to be present here today for the committee hearing on LB1044, a bill to eliminate the Commission of Industrial Relations. Formerly known as the Court of Industrial Relations, under authorization of the state constitution, the CIR was established by legislation in 1947. Initially, it was just covering utility workers. In 1969, that was changed to cover all public sector employees in the state of Nebraska. In '79, the name was changed to the Commission of Industrial Relations and things remained relatively unchanged for 40 years. I was very heartened to hear Senator Ebke's comments about wanting to spur some discussion and potentially having a hearing on this, an interim hearing...study, excuse me. I

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would be very...while I feel we've had this discussion in recent years, I would be pleased to have that discussion again. In 2011, significant reforms were made to the CIR through a collaborative approach. Former Senator Steve Lathrop introduced LB397. His working group brought members of the labor-management group together, all working toward a common goal, the Nebraska way. We reached that goal and collectively made adjustments to the CIR through sound legislative practices. It was par for the course. There was give-and-take. The overarching theme though still was CIR equals average pay. I was personally involved in the process. I can tell you from experience it was difficult, very cumbersome at times. But the resulting legislation, LB397, while met with mixed results and reaction, did accomplish in restoring labor peace. The years leading up to 2011 there was considerable unrest in the city of Omaha where, as I've said, I'm from. The police...the city of Omaha and the police had gone to impasse two consecutive years resulting in two CIR filings. The city of Omaha and the fire negotiations broke down repeatedly, which resulted in four consecutive filings, three final orders reached before we were able to finally reach a comprehensive agreement. But since 2011 and LB397 there has been one wage case tried to final order in the CIR. So from one perception, the CIR and its corresponding legislation is doing what I think it was intended to do--maintain industrial peace. Parties are staying at the negotiating table to reach fair-minded resolutions to their issues. They are working it out between themselves before rushing into protracted and expensive litigation in the CIR. LB1044 proposes to wipe out 69 years of labor-management history. It seeks to undo the work of this very committee and this legislative body, a body that induced organized labor to work with you a few short years ago to reform the CIR. I don't believe that it is somehow a better proposition and to the good, effective management of the state of Nebraska and its municipalities that police officers, teachers, state troopers, firefighters, and utility workers should now strike their employers in the event that there is a negotiations breakdown and the parties reach impasse, rather than take that dispute to a state-commissioned body for dispute resolution. Working while resolving our issues in an orderly fashion would seem to me to be the better and desired path to walk, and it is what we have done for over 60 years. I would like to just mention, you know, as I conclude, as I conclude here, the bill has a bit of a feel to me, and I don't know if it's just a perception or some intuition, but it doesn't seem fair to the public, to the dedicated working men and women of the state of Nebraska. We are leaders in our communities. We're actively involved in religious, cultural, and philanthropic events. Our members are Little League coaches, youth mentors, National Guard members when not working as those public servants. We're also a significant tax base. We're your neighbors. We're neighbors who vote and pay close attention to the goings on of this state. And I would ask that LB1044 not make it out of committee, but I would welcome the opportunity to spend some time with Senator Ebke and whoever the committee may determine to have some of that conversation that, while I did feel we had in '11, I'd be more than happy to have that conversation again. [LB1044]

SENATOR HARR: Thank you, Mr. LeClair. Any questions for Mr. LeClair? Senator Crawford.
[LB1044]

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SENATOR CRAWFORD: Thank you, Chairman Harr. And thank you for being here and for your experience with these conversations previously. I just wondered, one of the discussions that was made during the proponent testimony was about the cost to the city. And so you had mentioned in passing that you felt it saved litigation costs. I wonder, if you expand on that answer, what do you see in terms of the cost to the city in terms of having the CIR versus not having it? [LB1044]

STEVE LeCLAIR: Well, thank you, Senator. It's not just a cost to the city. Whatever cost the city has, that cost is...there's a mirror of that cost on the side of the public sector bargaining agent. [LB1044]

SENATOR CRAWFORD: Yes, that's true. [LB1044]

STEVE LeCLAIR: And I have found, especially in light of LB397, I have found that both parties are...seem more amendable to working towards a resolution towards success or agreement, because there is...it is expensive, you know, especially with some of the things that we did with LB397 in now calculating an hourly rate valuation. Yes, that's an expensive prospect. But it is...I think part of that cost is what is I think driving folks to stay at the table and to work their issues out at their negotiating tables. [LB1044]

SENATOR CRAWFORD: I guess absent that, the cost would be, I'm assuming, like full-out lawsuits and strikes and other costs. So there are costs of not having that mechanism. [LB1044]

STEVE LeCLAIR: Absolutely. And you know, from a public safety standpoint, a lot of people that enter into the field of public safety because of the nature of the work we do, we're not interested in striking. It's not good public policy, I don't think, to say to somebody now today you can strike. One, I don't think many would. I think that there would be some and I think there would be declination of services that have been provided to the citizens. But, yeah, it's not...a strike is not something, from a public safety standpoint, that you know we've grown...we're fond of the work while you resolve your dispute issue, that approach. [LB1044]

SENATOR CRAWFORD: Thank you. [LB1044]

SENATOR HARR: Excellent. Any other questions for Mr. LeClair? Seeing none, thank you for coming to testify. [LB1044]

STEVE LeCLAIR: Thank you for your time today. [LB1044]

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SENATOR HARR: Any other opponents. [LB1044]

SUSAN MARTIN: (Exhibit 2) Good afternoon, Senator Harr and members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n. I am the president of the Nebraska State AFL-CIO, representing 23,000 union members across the state of Nebraska. I'm testifying today in opposition to LB1044. The Commission of Industrial Relations was designed to resolve public sector labor controversies with jurisdiction over state and local government employees, including public utilities. The purpose is to provide a way for public sector organizations to dispute claims over wages, representation cases, and other items such as bargaining orders, mediation fact-finding, and other similar issues. Terminating the Commission of Industrial Relations is not a good decision to either public sector employees or public sector employers. The system is working, after much effort and revisions made as a result of LB397 during the 2010-2011 Legislative Session. Also, language in LB1044 states that the termination of the commission does not eliminate or in any way restrict the right of employees to strike. The following is taken from LB397, which discusses reasons on why public employees are not allowed to strike and need the CIR for dispute reconciliation. The continuous, uninterrupted, and proper functioning and operation of the governmental services, including governmental service in a proprietary capacity, and of public utilities engaged in the business of furnishing transportation for hire, telephone service, telegraph service, electric light, heat, or power service, or any one or more of them to the people of Nebraska are hereby declared to be essential to their welfare, health, and safety. It is contrary to the public policy of the state to permit any substantial impairment or suspension of the operation of LB397. It's the duty of the state of Nebraska to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities, or catastrophes which would result therefrom. For these reasons, I ask you to oppose this legislation. I thank you for your consideration. [LB1044]

SENATOR HARR: Thank you, Ms. Martin. Any questions? Seeing none, thank you very much. [LB1044]

SUSAN MARTIN: Thank you. [LB1044]

SENATOR HARR: Mr. Corrigan, welcome back. [LB1044]

JOHN CORRIGAN: Good afternoon, Mr. Chairman, members of committee. My name is John Corrigan, 1411 Harney Street, Omaha, Nebraska. I'm an attorney in Omaha from Dowd, Howard and Corrigan, and we serve as counsel to the Nebraska AFL-CIO; here to testify in opposition to LB1044. And just to clarify some of the comments that we heard earlier, the Commission of Industrial Relations does a couple things. One, it resolves labor disputes in the public sector, but

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it also administers the Industrial Relations Act. This bill is very simple in its approach. It says...there's one provision, Section (48-)803, and it proposes to eliminate that provision. There's a lot of other provisions. There's (48-)802, which right now, Section 48-802, specifically says that employees don't have a right to strike. If you take away (48-)803, you have a lot of other rights and obligations on the part of the state or on the part of political subdivisions that don't go away. And I harken back to some, you know, first-year law student class, Marbury v. Madison. When you have a remedy...when you have a right, there has to be a remedy. And eliminating the CIR will encourage us to have to seek that remedy somewhere else and I'm not sure exactly where that would be, but the commission is a consistent depository for resolving these disputes with people who understand the labor law. And the labor law, the Nebraska Supreme Court has said, is essentially a balance between the power of management and the power of labor in the labor-management relationship. That's what the labor law tries to do is to balance those interests out in the economy and it's an important driving force behind a fair and just society. And eliminating the CIR in Nebraska doesn't solve the problem of how you deal with organized labor because there will always be organized labor because there is a need for collective action in the work place to secure fair compensation and safe working conditions. The...I think Mr. Coash (sic--Coby Mach) mentioned earlier, talked about these cases that they thought were nonsensical from the CIR. And you have to understand that those cases, almost all of them, dealt with the duty to bargain. The duty to bargain is ongoing. It exists before, after, and during a contract. And particularly he talked about a case involving the Scottsbluff police officers. I want to tell you that that dispute was not about whether or not the employer would be required to provide coverage for people engaged in ultimate fighting. The union actually conceded that they would not agree...or they would allow the employer to let...or to exclude coverage for those types of injuries. But they excluded coverage not only for that but for a lot of other things. And the Nebraska Supreme Court agreed with the union and said, no, you cannot eliminate the types of things that you'll cover without negotiation because the coverage becomes worthless at some point once they decide, if they can eliminate it without negotiation, well, what's the next thing we're going to eliminate? We're not going to provide coverage for cancer, for pregnancy, or emergency visits. That's exactly what the duty to bargain does, is it makes the employer discuss these important economic items with the organized work force before they make unilateral changes. And it makes sense to do that and the CIR has consistently operated efficiently in order to maintain the duty to bargain. So the employer engages in that duty, the employees engage in that duty. When the employees don't engage in that duty fairly, the CIR will find so and take appropriate action to see that the union is sanctioned for not doing so. So I hear Mr. LeClair. I'm very close friends with Steve and I appreciate his comments about saying, well, we're interested in having that conversation. We'll talk till our faces are blue about why the CIR is not an absolute evil and it's something that's necessary if we're going to have a fair and just employment relations with public sector workers. But talking about alternatives, after going through LB397 and imposing really stringent requirements upon the labor movement to secure their rights in going to the CIR through the hourly rate value process, that doesn't seem too appealing to me

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considering what was given up just four or five short years ago. We made a deal. We're willing to stick with that deal. But to have the Legislature suggest that deal wasn't good enough for the employers just five short years later when you see there's no...it has limited the litigation, it's working, that's just not very palatable to me. But again, we'll talk with anybody that wants to talk about why the CIR is necessary and relevant as we go forward. Thank you. [LB1044]

SENATOR HARR: Great. Thank you, Mr. Corrigan. Any questions? Seeing none, thank you for your testimony. Mr. Salerno. [LB1044]

MARK SALERNO: (Exhibit 3) Good afternoon, Senator Harr and Senators of the Business and Labor Committee. My name is Mark Salerno, M-a-r-k S-a-l-e-r-n-o. Public sector utility workers are committed to providing a valuable service to Nebraska ratepayers. Electricity is an essential commodity and is indispensable in modern life. Public sector electrical workers perform a variety of jobs that enable Nebraskans to enjoy reliable electrical service at reasonable rates. For example, customer service representatives provide a variety of customer service functions to customer owners. Linemen build the distribution system that serves customers and they restore power in storms. Nuclear operators are responsible to generate the electricity that energizes the grid. Nuclear security officers provide a safe environment for all Nebraskans, while protecting all of us from those who would do harm to Nebraskans as well as others. History has shown public sector electrical workers have continually demonstrated their steadfast commitment to Nebraska ratepayers by supplying electricity at rates below regional averages. As you know, Nebraska is exclusively served by public power. Nebraskans have recognized the value of public sector workers providing this essential service. I believe it is fair that workers that are committed to providing this essential service have the protection necessary to earn a decent living and provide for their families. The Commission of Industrial Relations allows for public sector workers to receive average compensation in the event an agreement cannot be reached during collective bargaining. It is exceedingly unusual that the CIR is actually needed. History has shown that most collective bargaining agreements are overwhelmingly determined without going to the CIR. However, the CIR is necessary to resolve any disputes so that there is no interruption of providing these essential services to Nebraska ratepayers. Substituting labor strikes for the CIR is inconsistent with Nebraska values that have served ratepayers and taxpayers for many years. Public sector electrical workers are interested in serving the public while receiving fair wages and benefits. It is only the rare occasion that an agreement cannot be reached and the dispute is taken to the CIR. Strikes are an inferior substitute for the orderly resolution of disputes that can only be done through the CIR. Fairness in employment and public service are not only compatible with one another but each actually complements one another. Eliminating the CIR and substituting labor strikes is inconsistent with the longstanding commitment public service utility workers have provided to Nebraska ratepayers. In short the CIR works and it is in the best interest of Nebraska ratepayers. LB1044 is a solution in search of a problem and would result in harm to Nebraska ratepayers and taxpayers. And that concludes my testimony. [LB1044]

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SENATOR HARR: Great. Thank you, Mr. Salerno. Any questions? Seeing none, thank you for your testimony. Welcome. [LB1044]

MIKE MARVIN: (Exhibits 4-5) Good afternoon, Senator Harr, members of the committee. Thank you for the opportunity to appear here today. 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 are the union representing the majority of state employees. I'm here today to testify in opposition to LB1044. Many reasons to oppose this bill and you've heard a lot of them already. I'm going to keep my testimony, for the most part, on the unique nature that it plays for state employees in the CIR with the State Employees Collective Bargaining Act. I do want to deviate from that for a minute to tell you we have heard about the contract resolution. We have heard about prohibited practice resolution that were filed. The CIR serves another function, too, that has not been touched on today. If a public sector group of employees that is not unionized right now chooses to be unionized, wants to be unionized, the CIR is the entity that certifies those people, holds the election and determines the bargaining units, those types of things. So that is also there. I have also, in addition to my testimony, handed you from Senator Harr's last year resolution LR228 where he asked for input from the stakeholders on the CIR. All the letters that were sent in from the stakeholders are there. Overwhelmingly, they say that the CIR seems to be working since the last go-around in 2011. So that's there for you to look at. I hope you would take some time. Now the unique nature that the CIR plays with state employees in the legislative body and in the executive branch relates to the budget. We are under a constricted time line to do our negotiations, submit to the CIR. And the CIR in our case is under a restricted time line to issue that decision in that case. Those two things are there for a reason. You have a budget that you have to put out. They don't know what's going to happen if this continues on and on. In 2006, when we went to what was then the special master, before revisions; and after the special master, the CIR; and then possibly in to the Supreme Court afterwards, the legislative budget hearings were well over by the time that issue was resolved. So in order to streamline that, in order to make it so that the Legislature could form their budget without having to, as we did in 2006, set aside a bunch of money just in case the CIR ruled in the union's favor, which they did, you are able to make decisions informed on what is really happening. And with that, I would conclude my testimony and I would be happy to answer any questions you have. I was going to urge you to keep this in committee, but Senator Ebke has kindly decided to do that on her own. So thank you, Senator Ebke. And I'll be happy to answer any questions. [LB1044]

SENATOR HARR: Any questions for Mr. Marvin. Senator Johnson. [LB1044]

SENATOR JOHNSON: Thank you, Mr. Chair. In your report here of the LB397, what it did, I was mayor at the time when this was being discussed and our legal counsel was also on the committee of CIR. And I'm familiar with a lot of these changes, kind of recalled right there. Are

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there some things that were changed there that would warrant another study? Or are there some things that we need to maybe tweak with what happened in 2011? [LB1044]

MIKE MARVIN: At this time, Senator Johnson, I don't think there's been enough tests of it to see how the CIR rulings would come down and what was happening to justify another in-depth go-around like that. I wasn't here during that time. I kept tabs of it during that time because I was here before that. And I had left and then during that time I just kind of watched. So I couldn't tell you exactly what happened in there. I know it was long and drawn out and I know several times it came to almost not happening, so. [LB1044]

SENATOR JOHNSON: Thank you. [LB1044]

SENATOR HARR: Great. Any other questions? Seeing none, thank you for testimony (inaudible). [LB1044]

MIKE MARVIN: Thank you very much. [LB1044]

SENATOR HARR: Anyone else here to testify in opposition? [LB1044]

RON KAMINSKI: Chairman Harr, members of the committee, my name is Ron Kaminski, last name is K-a-m-i-n-s-k-i. I am here on behalf of the Laborers International Union of North America, the Omaha and Southwest Iowa Building and Trades, and the Omaha Federation of Labor to testify in opposition of LB1044. And that's all I have. [LB1044]

SENATOR HARR: Thank you for not being repetitive. Appreciate it. (Laughter) Any questions? [LB1044]

RON KAMINSKI: Thanks. [LB1044]

SENATOR HARR: Seeing none, thank you very much. [LB1044]

RON KAMINSKI: Thank you, guys. [LB1044]

SENATOR HARR: (Exhibits 6-9) Anyone else in opposition? Anyone here in a neutral capacity? Seeing none. Senator Ebke waives. I think we have some letters regarding LB1044. We have a letter of support from Matt Litt, L-i-t-t, from the Americans for Prosperity; in opposition there's a letter from Metropolitan Utilities District, Mr. Rick Kubat; Liz Rea of the American

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Association of University Women of Nebraska in opposition; and finally, a letter on behalf of 125 interested labor interests...125 interested...labor interests across both the public and private sectors. With that, that will close LB1044 and we'll move on to LB1045. Senator Ebke, you are back in the seat. Thank you. [LB1044]

SENATOR EBKE: It's Mello and Ebke day. [LB1045]

SENATOR HARR: Better than Larson. (Laughter) [LB1045]

SENATOR EBKE: There you go. [LB1045]

SENATOR HARR: Yeah. [LB1045]

SENATOR EBKE: Thank you, Chairman Harr and fellow members of the Business and Labor Committee. For the record, my name is Senator Laura Ebke, L-a-u-r-a E-b-k-e. I represent District 32, which consists of Jefferson, Thayer, Fillmore, and Saline Counties, as well as the southwest portion of Lancaster County. This hearing is for LB1045. I can sum it up, LB1045, as this: It's about promoting innovation and economic growth by protecting flexible work arrangements in the on-demand economy. I am carrying this bill on behalf of an organization known as the New Economy Alliance. And before I go too much farther I want to let you know that there is an amendment proposal, which you should have received, AM2235. They were supposed to bring it up to your office. You have it? Okay. [LB1045]

SENATOR HARR: Maybe. I apologize. [LB1045]

SENATOR EBKE: Okay. And that should replace the current bill as written. Matt Schaefer, who represents the New Economy Alliance, will follow with testimony and he can address why the amendment was needed. As to the issue we're addressing with LB1045, many marketplace platforms are designed to connect independent contractors with new business opportunities, but the contractor relationship that underpins the marketplace model is at risk because of outdated and vague rules governing when workers can be classified as independent contractors. LB1045 solves this problem, clarifying how the current classification criteria should apply to on-demand platforms by creating a bright-line test to determine when an on-demand contractor is properly classified as an independent contractor. The real issue here are current rules governing the classification of contractors are outdated and do not offer clear guidance for companies and contractors in the on-demand economy. When I talk about the on-demand economy, I'm talking about apps and things like that. LB1045 attempts to clarify these rules. In a climate of sluggish job growth, the on-demand sector is booming. Jobs in the on-demand economy are projected to

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grow by 18.5 percent a year over the next five years from the current total of \$3.2 million to an estimated \$7.6 million by 2020. The people who are providing services in the on-demand economy are drawn by the higher incomes they can make as well as the flexibility and independence that the platforms offer, flexibility and independence that was traditionally very hard to find. Many marketplace platforms were designed to connect independent contractors with new business opportunities, but the contractor relationship that underpins the marketplace model is at risk because of outdated and vague rules governing when workers can be classified as independent contractors. As a result, no matter how hard a company tries to ensure that it is doing things the right way, it cannot ensure that it will not be sued or find itself the subject of a regulatory investigation based on the alleged misclassification of the contractors. This situation not only threatens the marketplace companies. It also threatens the millions of contractors who have flocked to the platforms because of the opportunity for flexibility, independence, and increased income the platforms provide. The lack of clarity also has created perverse incentives that can harm consumers and contractors. For example, many on-demand companies would like to provide additional support and benefits to the contractors and to take additional steps to ensure the safety of the contractors and consumers, but they are hesitant to take these steps because doing so could increase the risk of a misclassification claim. The bill clarifies how the current classification criteria should apply to on-demand platforms by creating a bright-line test to determine when an on-demand contractor is properly classified as an independent contractor. It also requires a written contract to ensure that the contractors understand the nature of the contractor relationship. The New Economy Alliance represents a group of leading companies in the emerging on-demand economy. The alliance supports policies that foster innovation and economic growth. Enacting this bill will foster continued growth of the on-demand sector by attracting new on-demand participants and ensuring that the on-demand marketplace platforms will remain available to the thousands of contractors in the state who have chosen the platforms as the best solution. Again, Matt Schaefer will follow behind me to explain some more of the details, what the ideas were behind this, and should be able to answer many of the questions which I may not be able to answer. And I thank you for your consideration. [LB1045]

SENATOR HARR: Thank you, Senator Ebke. I need to clarify what I said earlier about Larson. It's just that we've had so many Larson days. It's nice to have a little change. [LB1045]

SENATOR EBKE: Oh. Switch it up a little. [LB1045]

SENATOR HARR: So it's nice to have a Senator Ebke day. Any questions for Senator Ebke? Seeing none, thank you. We will now take testimony of people here in support of LB1045. Welcome. [LB1045]

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NIKHIL SHANBHAG: Thank you, Mr. Chairman and members of the committee. My name is Nikhil Shanbhag, that's spelled N-i-k-h-i-l, the last name is S-h-a-n-b-h-a-g, and I'm the general counsel of Instacart, which is a start-up based in San Francisco but with operations throughout the country. Let me start briefly by explaining a little bit more about what Instacart is. To consumers, Instacart is an on-demand grocery delivery service. Users go on-line to our Web site or our mobile application and quickly and easily order all of their groceries from their local favorite shops. These groceries can then be shopped and delivered to their doors in as little as an hour. To retailers, Instacart is an e-commerce solution that helps stores expand their markets and sales. By partnering with these retailers, Instacart allows them to easily sell their products on-line in the local community and adopt a same-day delivery solution to get those products to their consumers' hands. For example, one of Instacart's partners is Target. Target's grocery and home goods merchandise is offered on-line through the Instacart e-commerce site and mobile applications. A consumer can go to the Instacart Web site, choose to shop from Target, select those items that he or she wants to purchase, and an Instacart shopper will get those items and deliver them directly to the consumer. But beyond Instacart's specific model, we are just one of many companies that are working to grow the availability of, quote unquote, on-demand services to consumers through better technological solutions, whether that be a reliable car ride, the services of a home professional, or having these groceries delivered to your door. These services have been incredibly attractive to consumers. The consumers have flocked to these platforms because of the unprecedented efficiency and convenience they provide. But these services are also extremely attractive to the workers who provide services on these platforms. They are also joining the on-demand economy in droves. These independent workers are, in large part, attracted to the incredible flexibility and independence these platforms provide in earning income. Workers can set their own schedules and do not have a boss telling them where and when they need to work. They can work when they want. They can work 2 hours a week, 20 hours a week. They can take a week, a month, or six months off and then pick up right where they left off without permission from anyone. They can fit the work they do around their other commitments, whether that be child or elder care, education, healthcare issues, or anything else. This flexibility and independence is a tremendous advantage for a large number of workers who need the flexibility that these platforms provide. The number one piece of feedback that we get from our workers on our platform is that they love the flexibility that Instacart gives them. For example, parents with school-age children at home find they can work in the middle of the day but be home in the morning and afternoon. Many students find this type of work attractive and are participating on these platforms so they can fit work around their own schedules, their other schedules, including their studies. People who need supplemental income for a certain goal, such as saving for a down payment on a house, are also finding that the on-demand economy is a great resource for this. These are just a few examples. There are many more types of people who find the independence of the on-demand economy attractive. However, the on-demand sector and the benefits that they offer to consumers and workers alike are at risk because the current rules governing the classification of workers are outdated and don't fit these innovative on-demand

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models. The laws were developed decades ago and simply don't provide clear guidance for how workers in the new on-demand economy should be classified. One federal judge in San Francisco recently said that answering this question is like being given a square peg and being given the choice of two round holes in which to place it. This puts the companies at risk of lawsuits and prevents us from growing and expanding into new markets as quickly as we would like. LB1045 represents a solution to this problem by creating a clear test for worker classification in the on-demand sector. The bill replaces the current vague tests with specific objective criteria that all parties can understand. Notably, LB1045 also requires that this on-demand relationship be spelled out in a written contract so that the workers are clear up-front that they are independent contractors and what that relationship entails. By providing this clear, objective framework for everyone in the on-demand space to follow, LB1045 will bring needed clarity to the law and enable the on-demand economy to continue to grow, innovate, and bring new income opportunities to the workers in this state. I'd be happy to answer any questions you might have. [LB1045]

SENATOR HARR: Great. Thank you very much. Senator Bloomfield. [LB1045]

SENATOR BLOOMFIELD: Thank you, Chairman. Mr. Shanbhag, I am going to have a couple questions. You regulate or control these so-called free-enterprise people or private contractors. If one of them goes into a home to deliver groceries and creates mayhem, is there any liability back to your group at all? [LB1045]

NIKHIL SHANBHAG: Sir, I think you're asking a question about sort of public safety. [LB1045]

SENATOR BLOOMFIELD: Yes. [LB1045]

NIKHIL SHANBHAG: So one of the things that we do and which many of these platforms do is engage in background checks to sort of...to make sure that the workers that are on the platform are qualified and are less likely to sort of have those types of problems. [LB1045]

SENATOR BLOOMFIELD: Similar to what Uber does at this point (inaudible)? [LB1045]

NIKHIL SHANBHAG: I'm not sure what their practices are. I think maybe Matt Schaefer might be able to answer more about that. [LB1045]

SENATOR BLOOMFIELD: But if they pass your background test, then go in and rob the home, do you have any liability whatsoever? [LB1045]

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NIKHIL SHANBHAG: I'm not sure on how the liability would break down. I will say that our workers drop the groceries off at the front door and only when someone is home. They don't have access to a home that no one would be at home at. It's very similar to someone who's delivering a package or delivering anything else to the home. [LB1045]

SENATOR BLOOMFIELD: Okay. It sounds like you regulate your group pretty well. It's the next group that comes along that might concern me. But thank you. [LB1045]

SENATOR HARR: Senator Crawford. [LB1045]

SENATOR CRAWFORD: Thank you, Chairman Harr. And thank you for being here, for testifying. I just wondered if you'd help clarify this freedom of schedule. So both in the green copy and in the amendment, talks about the fact that a contractor shall be permitted to work any hours or schedules he or she chooses. And then it says, provided, then there's a provided section that if the contractor elects to work specified hours or schedules, the contract or other written arrangement may require him to perform work during the selected hours or schedules. I'm having trouble seeing how that is not a pretty fine line that somebody is choosing those required schedules. [LB1045]

NIKHIL SHANBHAG: Uh-huh. [LB1045]

SENATOR CRAWFORD: I wonder how that works for your firm in terms of how you are saying that the contractor is electing to work these specified hours if you're requiring them to work those specified hours. [LB1045]

NIKHIL SHANBHAG: Sure. So I think I would maybe...I can speak a little bit to the intent of that language, which is really to sort of say who's in the driver's seat on setting the schedule. I think it is to say though that we would, under this bill, the bill would require that the contractor be in the position of setting that schedule to start and say these are the hours or this is the time or this is the job I'm going to do. However, once they commit to providing that service, that there is then an agreement that they provide that as an independent contractor. So...but it would not allow sort of the entity to sort of start by saying, contractor, we're going to have you work Monday from 10:00 to 5:00 and then Wednesday from 10:00 to 6:00 without the contractor being in the position of first being the one to say that those are the hours that they would want to work. [LB1045]

SENATOR CRAWFORD: And what does that legal format or enforcement format look like to make sure the contractor is the one choosing those hours? [LB1045]

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NIKHIL SHANBHAG: I think it could take a number of different sort of avenues. I think we didn't want to sort of limit how the technology might be set up or how the specific interactions might be set up but to make clear that it's sort of that first mover requirement, that the contractor is the first mover in setting that schedule or deciding what jobs that they're going to do. [LB1045]

SENATOR CRAWFORD: In your own company, you have some process or procedure you use to protect that contractor first right? [LB1045]

NIKHIL SHANBHAG: Right. We always...we only schedule or only would assign work once the contractor is the one that sort of uses their app to say, hey, these are the jobs I want, these are the times I want to work. [LB1045]

SENATOR CRAWFORD: Thank you. [LB1045]

SENATOR HARR: Thank you, Senator Crawford. Any other questions? Seeing none, thank you very much. [LB1045]

NIKHIL SHANBHAG: Thank you very much. [LB1045]

SENATOR HARR: We much appreciate it. Welcome. [LB1045]

MATT SCHAEFER: Good afternoon, Chairman Harr, members of the committee. My name is Matt Schaefer, appearing today on behalf of Uber in support of LB1045. Uber is part of what is commonly called the on-demand economy. As Senator Bloomfield alluded to, Nebraska has already taken steps to help grow the on-demand economy with the passage of LB629 last year, which created a regulatory framework, set out the background check requirements, the insurance coverage requirements, and similar requirements for Uber and other services to facilitate ride-sharing services in Nebraska. Unfortunately, obstacles still remain to the shared economy. As you have heard, the laws that govern how workers are classified as independent contractors or employees are a challenge because of their vagueness. LB1045 would provide a solution for that problem with the requirements in the bill that I want to touch on. Senator Ebke mentioned, and in the amendment, a couple of the notable changes would be eliminating the term "digital application" to try to work on narrowing the bill's language. And then the second set of changes would be in the contract requirements. The written contract must include language that the marketplace contractor must supply its own tools and is responsible for tax on the contractor's own income. So again, those are kind of putting the contractor on notice that you're not an employee, that this is indeed a contractor relationship, just so that there's no misunderstanding on

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that front. To summarize, the new framework would eliminate a significant burden for the on-demand sector and help us track new businesses in Nebraska. Also want to conclude by sharing with you that we've been contacted by several businesses and organizations worried a little bit about the language and its broadness, and we're certainly happy to work with them to make sure that we're really only affecting the on-line platforms in this case. That's all I have. [LB1045]

SENATOR HARR: All right. Thank you, Mr. Schaefer. Senator Bloomfield. [LB1045]

SENATOR BLOOMFIELD: Thank you again, Chairman. Mr. Schaefer, my local grocery store delivers around town. If they have an issue, they're liable. If they run over the lamppost turning into the driveway, they're liable. [LB1045]

MATT SCHAEFER: Uh-huh. [LB1045]

SENATOR BLOOMFIELD: As Uber works, do you anticipate this working the same way, that that contractor is going to be liable for whatever damage he may do or...? [LB1045]

MATT SCHAEFER: Yeah. As you might remember, one of the big discussion points on LB629 last year was insurance and when there's insurance coverage available and who's providing that. And as I recall it, when there's a trip going on, when there's a passenger in the car or even driving to pick up a passenger, there is a \$1 million commercial liability policy in place in case of an accident or injury, if that happens. [LB1045]

SENATOR BLOOMFIELD: Do you see those same regulations following down to the...what we're talking about here today? [LB1045]

MATT SCHAEFER: I think each service might be a little bit different and I don't know how it would work in other delivery models. But certainly those are questions that regulators and lawmakers will have to adapt to as we see different business models and new people come up with new, cool ideas. [LB1045]

SENATOR BLOOMFIELD: Okay. Thank you. [LB1045]

SENATOR HARR: Senator Crawford. Thank you, Senator Bloomfield. Senator Crawford. [LB1045]

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SENATOR CRAWFORD: Thank you, Chairman Harr. And thank you for the heads up just about being careful and not including people that we may not be meaning to include. [LB1045]

MATT SCHAEFER: Yeah. [LB1045]

SENATOR CRAWFORD: So I wondered if you could just give us a couple of...give us a sense of what that...what those parameters are so we're attentive as we discuss this further, or the kinds of businesses that we might be most concerned about inadvertently pulling in. [LB1045]

MATT SCHAEFER: One example I heard from was a brokerage firm that might connect truck drivers with potential truckloads. And if that brokerage firm used software to make that happen, would they be under the definition of this bill? And if they didn't follow the requirements of the bill, does that affect how those truck drivers might be classified? And our intent wouldn't be to affect any other classification test that the court, the Supreme Court, has used. It would just kind of be a specific test for this specific new economy. [LB1045]

SENATOR CRAWFORD: So one of the types of independent contractors we hear about quite a bit in Health and Human Services are the in-home... [LB1045]

MATT SCHAEFER: Uh-huh. [LB1045]

SENATOR CRAWFORD: ...personal assistant workers who might work for a registry entity. [LB1045]

MATT SCHAEFER: I don't think that would fall under the current language of the bill. I think what we're contemplating is a consumer going on to their phone or the computer and using software to connect with a person who is offering a professional service for a limited basis. I don't think it would be a longstanding home healthcare aide situation. It would be more like a paint my fence in the afternoon or deliver my groceries. [LB1045]

SENATOR CRAWFORD: Thank you. [LB1045]

SENATOR HARR: Thank you, Senator Crawford. Any other questions? I just have a quick...is this amendment meant to address the issue in the fiscal note for the Department of Revenue about the severability clause? [LB1045]

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MATT SCHAEFER: I don't think that was the intent but if it helps, we'll take it. (Laughter)
[LB1045]

SENATOR HARR: Okay. Do you want to address that issue about the severability, about the issue? [LB1045]

MATT SCHAEFER: Yeah. I mean in the fiscal note there was a question from the Revenue Department about guidance that they've given in terms of how to structure a transaction to obtain software from temporary employees. And to me, I read LB1045 to provide a test or a safe harbor, if you will. If you include the items under the bill in your contract, it will be an independent contractor classification. And for the companies that are desiring to obtain software from temporary employees sales tax free, there's other elements you need to put into a contract to obtain that designation, which is the opposite of independent contractor. They're looking for an employee designation in that instance. So I don't tend to see how LB1045 would overrule or negate the revenue ruling on that issue, but perhaps someone can explain how there might be a worry on that concern. [LB1045]

SENATOR HARR: Okay. Great. Thank you. Any other questions? Seeing none, thank you for your testimony. [LB1045]

MATT SCHAEFER: Thank you. [LB1045]

SENATOR HARR: Proponents. [LB1045]

JESSICA HERRMANN: (Exhibit 1) Good afternoon. Chairman Harr, members of the Business and Labor Committee, my name is Jessica Herrmann, J-e-s-s-i-c-a H-e-r-r-m-a-n-n. I'm the director of legislative outreach, testifying on behalf of the Platte Institute for Economic Research. Thank you for the opportunity to speak in support of LB1045. We'll see if you've heard of any of these. I had only heard of one before I wrote the testimony draft for this. Postmates, Zipments, TaskRabbit, DoorDash, Pinch, Caviar, Seamless, GrubHub, Wunwin--not sure what that one was, Exec, Handy, HomeJoy, Curbside: These are the names of technology-based service platforms that facilitate new work opportunities for independent contractors. And being a millennial and only having known one of these, I feel woefully not hip, so. LB1045 would add Nebraska to the list of states, including Arkansas, Florida, Indiana, Ohio, and North Carolina, recognizing that an economic benefit exists for states to adapt rather than reject this transformation in the American labor force. Workers in Nebraska and nationwide are shifting toward more independent, self-directed employment outside the bounds of the traditional office environment. The rise of the sharing marketplace has provided a crucial support structure to meet this changing mentality, allowing millions of people to seek out alternative work lifestyles that

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provide for their families but on their own terms. However, many of our current labor laws were developed decades ago before society could contemplate how technology would revolutionize the economy, i.e., before smartphones and the Internet. As such, IRS labor classification guidelines do not address the unique relationship between platform and marketplace contractors. Consequently, any debate about the nature of this relationship under the current guidelines is fruitless. Instead, the shared economy needs clear rules that take into account this distinct relationship. Unlike a traditional employee or independent contractor, these shared workers may work for only one platform each week from 9:00 to 5:00, or they may contract with multiple companies at once, performing a variety of services with a variety of their own tools, only on weekends or for a very short overall duration. They are all different and the flexibility to pursue their own working arrangement is precisely why we cannot easily fit this unique business model into one box. What really matters is that regulators do not stop this transformation. Instead, policymakers must ensure there are greater opportunities and mobility within this growing economy. Nebraska should be encouraging and inviting economic climate for people exercising their own property and tools to make their own choices about employment. LB1045 does just that, and we urge the committee to advance this bill. Thank you for this opportunity to testify today, and I'm happy to answer any questions. [LB1045]

SENATOR HARR: Thank you, Ms. Herrmann. Senator Bloomfield. [LB1045]

SENATOR BLOOMFIELD: Thank you. I probably should have asked Mr. Schaefer this question, but I'm going to ask you. [LB1045]

JESSICA HERRMANN: Sure. [LB1045]

SENATOR BLOOMFIELD: I see the opportunity for these private contractors to cherry-pick who they're going to deliver to and kind of take the cream off the top and leave the people that are already doing this with the harder to deliver and less profitable areas to deliver into. Do you see that as being a problem at all? [LB1045]

JESSICA HERRMANN: Let me make sure I understand your question. The folks who have these app-based services, they would get the bulk of that. [LB1045]

SENATOR BLOOMFIELD: They would get to pick and choose what they take, leaving the more difficult or less profitable deliveries to the people that are doing it now. [LB1045]

JESSICA HERRMANN: You know, I can only speak to my personal experience using some of these apps. I know that Uber, for instance, if, you know, if I...I have a rating on Uber depending

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on how good of a customer I am. I may...and I'm not sure what my rating is. I should ask an Uber driver next time, but it might be 3.7 or whatnot. And so an Uber driver could look at it and say, oh, she was really loud and obnoxious, according to this other driver, and I'm not going to pick her up, decline. And so we wouldn't be matched, just like how those drivers have a rating as well. So I'm not really sure on some of these other ones if the...if you're a TaskRabbit and you...how you would be able to decline doing a task for somebody. I think if the opportunity to make money is there, is that kind...am I getting to the heart of it or am I... [LB1045]

SENATOR BLOOMFIELD: I think we're probably, both of us, waltzing around the outside of it. [LB1045]

JESSICA HERRMANN: Yeah. [LB1045]

SENATOR BLOOMFIELD: But if there's someone that is a good tipper and they want their drugs delivered from your local downtown drugstore, this contractor is going to take that and get the \$10 tip or \$15 tip, and leave the Yellow Cab driver taking the ones that he has to deliver whether he gets a tip or not. That's the question I should have asked someone else. [LB1045]

JESSICA HERRMANN: Sure. [LB1045]

SENATOR BLOOMFIELD: And we'll discuss it. I'll get to Mr. Schaefer after... [LB1045]

JESSICA HERRMANN: Sure. [LB1045]

SENATOR BLOOMFIELD: ...after we're done here. Thank you. [LB1045]

JESSICA HERRMANN: Yeah. I would say with that I have a trick that I employ, which now everyone will probably do, and that's when I order Jimmy John's, I tip \$5. And I found that they immediately come and deliver my sandwich. And I think that's the power of the free market. I think when you're doing that, other companies, you know, need to innovate and find other creative ways to go after a customer base. [LB1045]

SENATOR BLOOMFIELD: Thank you. [LB1045]

JESSICA HERRMANN: And that trick does work. [LB1045]

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SENATOR HARR: Any other questions? I guess I have one. So a couple of questions. First of all, let's do pizza delivery. It's something I'm familiar with. So pizza delivery guy, and this happened when I was in the county attorney's office, company hired a driver and he went on his second delivery and brutally raped a woman. I read this and it would appear to me that the liability would be on the driver if this were, for instance, the first or...yeah, the first testifier's company, and that person may or may not have. And so now we have this woman out here who's been brutally raped. The company has profited from it and she's left with nothing. How does this address that issue? [LB1045]

JESSICA HERRMANN: You know, I... [LB1045]

SENATOR HARR: Because you can't go back after the original company under this because it says the contractor shall provide all the market, own expenses, all or substantially all the necessary equipment, tools, and other materials to perform the services. [LB1045]

JESSICA HERRMANN: I would say that every company would be different in how they kind of structure that insurance, if you will, or where the liability would be on. From our standpoint, these types of...you know, we look at these types of services and we understand that concern and that that needs to be sorted out. But we look at it from, you know, the economic benefit standpoint and... [LB1045]

SENATOR HARR: More than the rape victim. [LB1045]

JESSICA HERRMANN: No. (Laugh) [LB1045]

SENATOR HARR: Sorry, that was too easy. All right, now... [LB1045]

JESSICA HERRMANN: No, definitely not, definitely. As a female, you know, I am very, very much...my husband does not allow me to Uber by myself anymore and I find that ridiculous. [LB1045]

SENATOR HARR: Yeah. [LB1045]

JESSICA HERRMANN: But that being said, I understand the concern. [LB1045]

SENATOR HARR: Now my other question is you have...let's just pick on Domino's for a second. So Domino's has you can order on the phone or you can order through an app. As I read this, if

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the driver orders through the phone, they're more the traditional and they'd be an employee. But on the next delivery, the person let's say ordered off an app. Domino's, now that driver would be an independent contractor. Is that correct or not correct? I don't know how I differentiate what's an app-based one and which one isn't an app-based. [LB1045]

JESSICA HERRMANN: The app-based ones, and the way I understand it, if we really want to get into it, the IRS definitions of independent contractor and an employee are intentionally very, very vague. When I was reading them on the Web site, I chuckled and said, yep, some attorneys definitely wrote this so that there could be some wiggle room. And I'm an attorney, I know you are, Senator, so I get that. [LB1045]

SENATOR HARR: Okay. [LB1045]

JESSICA HERRMANN: I think honestly the overall definitions are woefully vague and ambiguous and you could argue...I bet I could make an argument that a Domino's driver on a set delivery schedule is an independent contractor, just as I can make an argument that he's a full-time employee. I think we need some clarity overall with the terms, but that's...it's the IRS. [LB1045]

SENATOR HARR: Are you saying there's misclassification? [LB1045]

JESSICA HERRMANN: What did you say? [LB1045]

SENATOR HARR: Are you saying there's misclassification? [LB1045]

JESSICA HERRMANN: I know, it's shocking. It's shocking. [LB1045]

SENATOR HARR: (Laugh) All right. Excellent. Thank you, Ms. Herrmann. [LB1045]

JESSICA HERRMANN: Thank you. [LB1045]

SENATOR HARR: Any other follow-up questions based on that? Seeing none, thank you very much for coming. [LB1045]

JESSICA HERRMANN: Thank you. [LB1045]

SENATOR HARR: Always a pleasure to have you. [LB1045]

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JESSICA HERRMANN: Thank you so much. [LB1045]

SENATOR HARR: Anyone else here to testify in support of LB1045? Seeing none. Is there anyone here in opposition? [LB1045]

RON KAMINSKI: Thank you, Senator Harr and members of the committee. My name is Ron Kaminski, K-a-m-i-n-s-k-i; address is 8040 Chicago Street, Omaha, Nebraska. I am here to testify on behalf of the Laborers International Union of North America, the Omaha Federation of Labor, Omaha and Southwest Iowa Building and Trades Council, against LB1045 for one reason in this legislation, and it says that the qualified marketplace contractor shall be engaged as an independent contractor, not as an employee, and shall be treated as such for all purposes, including, but not limited to, federal, state, local taxation, withholding, unemployment benefits, and workers' compensation. We believe that this is just an attempt to circumvent the misclassification legislation that was passed here by the Unicameral and we're opposed to this. That's all I've got. [LB1045]

SENATOR HARR: Okay. Thank you. Any questions for Mr. Kaminski? Seeing none, thank you for your testimony. [LB1045]

RON KAMINSKI: Thank you. [LB1045]

JOHN CORRIGAN: Good afternoon, Mr. Chair, members of the committee. My name is John Corrigan, C-o-r-r-i-g-a-n. I'm an attorney in Omaha, Nebraska. I appear today on behalf of the Nebraska AFL-CIO and I testify in opposition to LB1045. And I guess to open my comments, I think the easiest thing to question right now is, who are they kidding? Are you kidding me? You're going to say because we've got some new economy we want to change the law so we can make more money and not have to worry about paying things like taxes and Social Security and maybe...you know, it is hard because we'd like to get into these other markets, but we can't really be competitive because we can't offer people traditional employer-based benefits like healthcare or other arrangements. Why? Because we're trying to say, on one hand, these are employees and we'd like to pay them more and give them fringe benefits, which you get if you're an employee maybe. But the whole contest of stating, well, these laws are outdated and they're really vague and we can't follow them so will you please change them so we can make more money, should be offensive to this committee, who did adopt the misclassification statute. But, more importantly, the underpinning of federal law, federal employment law, there's all this law that deals with who can be hired, whether there can be discrimination in the work place, how we pay people under the Fair Labor Standards Act. Those benefits flow to employees. If you want to bargain and you think you want to join a union and organize a union because your employer is being difficult in either compensation or some other working condition matter, if you believe that

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people have the right to collectively join together to improve their status in life with respect to their employment, then that's great. We have those rights under the National Labor Relations Act and, of course, those only apply to employees of employers. So if these guys want to come in and say, well, all of our people are going to be independent contractors, guess what. Independent contractor runs a red light on the way to deliver that pizza. If he's an employee, the employer will be vicariously liable for the negligence of that employee. But if he's also an employee, he's going to enjoy benefits under the Workers' Compensation Act to treat the medical conditions that were caused even by his own negligence. That's the system we have and it works. Now do we have fights about whether people are employees or independent contractors? Yes, we do. We have those in the Workers' Compensation Court on a weekly basis because it's nice for employers. Some people like to cut corners to not provide workers' compensation insurance for their employees. They like to cut the corners and not pay overtime because they think they have an independent contractor and they can skirt the Fair Labor Standards Act. Particularly in the roofing industry, we see that all the time. Are we going to see a HireARoofer.com and that's a new app and we have to hop on there and get your roofer and he'll come out? And if he falls off the roof he's fired before he hits the ground and the public is responsible for those medical costs and the family costs that have been escaped by unscrupulous employers. I'm not saying these guys are unscrupulous. They're smart. They're going to come to the Legislature and ask you to change the law so they can make more money. You have to ask yourself whether that's a good idea for Nebraska. On behalf of working people in Nebraska, I will say it is not a good idea and ask you to be opposed to LB1045. [LB1045]

SENATOR HARR: Great. Thank you. Let me see if we have any questions. Any questions for Mr. Corrigan? Seeing none, now you can walk away. Thanks. (Laughter) [LB1045]

DON WESELY: Mr. Chairman, members of the Business and Labor Committee, for the record, my name is Don Wesely, D-o-n W-e-s-e-l-y, representing the trial attorneys, Nebraska Association of Trial Attorneys. I'm going to give you five reasons why NATA strongly opposes LB1045 and encourages you to oppose it as well, with the exception of Senator Ebke. But LB1045 excludes workers in the rapidly growing sharing or gig economy from workers' compensation coverage, wage and hour law, unemployment insurance, and protections from discrimination. LB1045...and I know there's an amendment and I'm not sure what it does. I haven't seen it, so it may make some changes in this. But LB1045 would exacerbate the problem of shifting workers' compensation costs on to private health insurance and other social safety net programs which would cause problems for Medicaid and increase costs for private health insurers. LB1045 would also reduce tax revenue, make tax and insurance compliance more difficult for workers who normally would be employees. LB1045 would formalize and sharpen differences in a two-tier economy where professionals enjoy increased protections and benefits from employment status, but blue collar laborers would be contractors with minimal protections beyond what would be afforded through federal law and the common law. And lastly, LB1045 is

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part of a concerted national effort to rewrite labor and employment laws as well as to reshape the social safety net on a state and federal level to benefit not just new companies like Uber but really any company with high labor costs. And as was mentioned, just six years ago LB588 was passed on misclassification. This would certainly make that situation far worse. So we ask your opposition to the bill. [LB1045]

SENATOR HARR: Great. Thank you, Mr. Wesely. Any questions? Seeing none, thank you for your testimony here today. [LB1045]

DON WESELY: Thanks. [LB1045]

KIMBERLY BONHART: Good afternoon, Mr. Chairman and members of the committee. My name is Kimberly Bonhart, K-i-m-b-e-r-l-y, Bonhart, B-o-n-h-a-r-t. I am vice president of state government affairs with UPS, or United Parcel Service, and I thank you for the opportunity to speak on the bill. Language in the bill establishes a brand new definition of worker, called the qualified marketplace contractor. This portion of the bill essentially establishes a new bright-line definition for an independent contractor that falls outside of the well-established criteria used by the state and businesses in the state to make determinations regarding whether an individual is an employee or an independent contractor. The bill states that a QMC is to be treated as an independent contractor for all purposes, including federal, state, and local taxation withholdings, the existing criteria being the IRS 20-factor test, ABC test, and other common law tests that are used on federal and state levels to determine what defines an employee versus an independent contractor. The language in the bill regarding the qualified marketplace contractor, or qualified marketplace platform, are essentially it's a "carve-out," are exempt from all the normal conditions and regulatory requirements which all other businesses in the state must abide by. The basis for the exemption is the simple use of a digital platform or application being used to facilitate the provisions of services. Interestingly enough, the new terminology used in this legislation has never been used before in either public or private sector. It is doubtful that most of us in the world of business or the Legislature would have heard this terminology prior to this amendment or this bill being introduced. The amended bill contains a new category called a qualified marketplace contractor, which is not clearly understood by anyone outside of the bill's creator. The key question: Why should a business or service provider which uses a digital platform to facilitate the performance of services be treated differently from well-established businesses that may use more traditional forms of communication, or dispatch or assign work or services to be performed? What makes the existing test for determining employment or independent contractor status irrelevant...status irrelevant because a digital platform is being used versus an oral or written assignment? Currently in the state of Nebraska, the employee-employer relationship for workers' comp, unemployment compensation, and the Department of Revenue is determined by using the Internal Revenue Service common law factor work comp...for work comp and tax, and the ABC test is used for unemployment. Currently the entire private sector

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industry must comply with these laws. Why should a traditional established business be treated differently? In addition, we have grave concerns that there are many unintended consequences which haven't been fully vetted with the substantive language changes that are being requested. This is clearly evident by the fiscal note, which doesn't take into account any changes to the unemployment or to work comp. The LB1045 would also create exceptions for only those that use a digital platform even though the work and services to be performed are the same performed by those who actually complete the work. The state of Nebraska has hundreds of thousands of businesses and several million workers who all operate under well-established guidelines or rules of business. The business models are well-established, and a level playing field exists between its participants. All have the same responsibility when it comes to payroll taxes, work comp, and unemployment insurance. However, deviating from the current practices in business by providing a "carve-out" for those competing in the same business with only difference being the use of a qualified digital platform creates an unlevel playing field and also diminishes the revenues that the state will see from payroll...from payroll taxes and unemployment insurance withholdings. This bill also states that a QMC is not to be treated as an employee for federal, state, or local taxes obligations. In addition, it will put those following these proposed changes in jeopardy of not complying with IRS regulations for federal tax and unemployment withholdings, which also happens to be followed by the Nebraska Department of Revenue. All of this raises one simple question: Why is it necessary to make a distinction for businesses that use a qualified digital platform versus all other business who provide the same work or provisions of services? What is driving the compelling need for change? Weakening the definition of what constitutes an employee only opens the door for worker misclassification issues and potentially...and basically it will allow bad players into our industry...into the industry. The federal government, numerous state agencies, and courts have determined there is a serious problem caused by employers that attempt to avoid or misuse workers' compensation premiums and avoid paying unemployment taxes by treating workers as independent contractors rather than employees. UPS believes that states should enforce existing rules which define employees and independent contractors. These rules are intended to protect workers and the state revenue base. Worker misclassification creates a problem on many levels, on multiple level. It cheats government out of revenue. It cheats law-abiding businesses that are disadvantaged by properly classifying their employees. UPS has 40 facilities here in the state of Nebraska; 20 of those are what we call our small package deliveries. We have over 6,000 customers that are currently here also. And we would just ask the committee to stop the progress of this legislation. Really, we don't know what the compelling issue would be based on what is currently in place. [LB1045]

SENATOR HARR: Great. [LB1045]

KIMBERLY BONHART: And I'm... [LB1045]

SENATOR HARR: Thank you, Ms. Bonhart. [LB1045]

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KIMBERLY BONHART: Thank you. [LB1045]

SENATOR HARR: Appreciate your time. Any questions? Is this your first time here? I don't think I've seen you here before. [LB1045]

KIMBERLY BONHART: I've seen you before. (Laughter) [LB1045]

SENATOR JOHNSON: You're recognizable. [LB1045]

SENATOR HARR: I haven't changed. [LB1045]

KIMBERLY BONHART: But I'm just one person. You have to meet a lot of people. [LB1045]

SENATOR HARR: I have a twin. I'll blame him. Well, thank you for coming today. [LB1045]

KIMBERLY BONHART: Thank you. [LB1045]

SENATOR HARR: Anyone else here in opposition? Anyone here in the neutral state? [LB1045]

RON SEDLACEK: Good afternoon, Chairman Harr and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. We're testifying neutral in the sense that our labor relations council did review the legislation. We weren't sure exactly what the aim was of it. We were trying to analyze it to apply it and at that time decided to just continue to study and find out more information. It's been kind of like a little bit of drip, drip, drip over the past few weeks now as the hearing approached. And would have normally talked with you, Senator Ebke. You were busy this morning and didn't have the opportunity, as well as this afternoon, to let you know of our concerns. We have talked with Mr. Schaefer as to a number of our concerns, however, and be willing to work to see if there was something that was there to accommodate. However, what we are finding is that, number one, we have a number of businesses that are very concerned of the fact that it applies on all these services and individuals and also to entities, which include all business entities. We are very concerned about what is noted in the fiscal note and we were made aware of that late last week and began to study that. Towards the last on the Revenue Department side it says: To the extent LB1045 eliminates the capacity of taxpayers to obtain software using temporary employees, the bill would result in an increase in General Fund revenues they can't determine at this time. It's not an increase in revenues we're concerned about. And by the way, the Fiscal department disagrees with the Revenue Department in that analysis. But the Revenue Department is going to interpret the regulation, not the Fiscal Office, so that's why we continue

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to have concerns no matter what. What it does is when Mary Jane Egr was Tax Commissioner there was ability for Nebraska businesses who employ...use custom software...it's almost everywhere now. We're one of the few states in the nation that tax, have a sales tax, on custom software. Most consider it a business input. It's not taxable, not only the application but also software as a service. There's an ability, however, for a business to hire temporary employees. You have to go through a number of steps, including not guaranteeing the outcome of the software. So if it fails, tough luck. But you can get the exemption by going through those steps. Most companies that we talked to do go through those steps to try to avoid the additional 7 percent charge--you know, it could be that--and to compete with others in other states. Secondly, we've had some concerns by a number of individual businesses who believe this could result in some unfair competition. We've had some contractors who say, you know, there's...we have competition out there already. Roofing was mentioned, interestingly enough. But that we believe that this type of situation is going to provide another foothold or an ability for them to compete unfairly with an established, responsible business. There is a question, because this really looks like an SAMP program, a business opportunity or seller-assisted marketing plan. It uses qualified marketplace but it really looks like an SAMP, which is already regulated by the Department of Banking with disclosures. The question becomes, are these platforms now disclosing under SAMP? Because we had a lot of problems with fraud, not necessarily those who are mentioned here at all, but there are business opportunities. Every state in the nation I believe now has SAMP regulation. The question becomes, are they filing with the Department of Banking disclosures? For example, independent contractor but with a noncompete provision, they can only work exclusively for them. And then...but yet the legislation says you can work for anybody. Those are the questions, should they...you know, whether they should be disclosed or not. So those are the reasons we have concerns with the legislation. We're still neutral. As we study this further we may have a position. But we're willing to work with the proponents as well as the committee. [LB1045]

SENATOR HARR: Great. Thank you very much for that testimony. And I, sitting on Revenue, am very familiar with that issue and I'll try to work with the parties on that issue as well. So thank you. [LB1045]

RON SEDLACEK: Thank you, Senator. [LB1045]

SENATOR HARR: (Exhibits 2 and 3) Any questions? Seeing none, thank you. We have two letters in opposition from Kevin Hilton from the North Central States Regional...what's that? [LB1045]

SENATOR BLOOMFIELD: Anybody else in neutral? [LB1045]

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SENATOR HARR: Oh, neutral, excuse me, neutral, neutral? I have a letter from Kevin Hilton from the North Central States Regional Center (sic--Council) of Carpenters, and Kim Quick of the Teamsters Local 354. I see Senator Ebke is waiving. With that, that will end the hearing on LB1045. Thank you. [LB1045]