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Appropriations Committee  
February 13, 2018

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[LB716 LB861 LB871]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, February 13, 2018, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB716, LB871, and LB861. Senators present: John Stinner, Chairperson; Kate Bolz, Vice Chairperson; Rob Clements; Robert Hilkemann; John Kuehn; Mike McDonnell; Tony Vargas; Dan Watermeier; and Anna Wishart. Senators absent: None.

SENATOR STINNER: (Recorder malfunction)...and welcome to the Appropriations Committee hearing. My name is John Stinner. I'm from Gering and I represent the 48th Legislative District. I serve as Chairman of this committee. I'd like to start off by having members do self-introductions, starting with Senator Clements.

SENATOR CLEMENTS: I'm Rob Clements from Elmwood. I represent Cass County and parts of Sarpy and Otoe, District 2.

SENATOR KUEHN: John Kuehn, District 38.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR STINNER: John Stinner, District 48, all of Scotts Bluff County.

SENATOR WISHART: Senator Anna Wishart, District 27, west Lincoln.

SENATOR STINNER: Assisting the committee today is our committee clerk, Jennifer Svehla. I'm going to get this right before I (laugh)...Svehla. At each entrance you'll find green testifier sheets. If you are planning to testify today, please fill out a green sign-in sheet and hand it to the committee clerk when you come up to testify. If you will not be testifying at the microphone but you want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phone. Move to the reserve chairs when you are ready to testify. Order of testimony is introducer, proponents, opponents, neutral, closing. When we hear testimony regarding agencies, we will first hear from the representative of the agency. We will then hear testimony for anybody who wishes to speak on the agency's budget request. We ask that you spell your first and last name for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes. Written materials may be distributed to

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committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will begin today's hearing with Agency 5, Supreme Court.

(AGENCY HEARINGS)

SENATOR STINNER: We will now hear and open the hearing for LB716, Correctional Services. Senator Howard. [LB716]

SENATOR HOWARD: Don't worry. I'm here. [LB716]

SENATOR STINNER: (Laugh) Okay. Good afternoon. [LB716]

SENATOR HOWARD: (Exhibit 1) This is the most I've ever spent time with the Appropriations Committee. So good afternoon, Senator Stinner and members of the Appropriations Committee. My name is Senator Sara Howard, H-o-w-a-r-d. I always look that way so I remember to spell my own name. And I represent District 9 of midtown Omaha. Today I'm here to introduce LB716, a bill that appropriates money to the Department of Corrections for the purposes of electronic health records. So I actually haven't typed out my introduction because I'm really excited about this and I didn't need to. So in the winter, in December I think, I was invited to visit the Omaha correctional facility and get a feel for how they're providing medical services there. It was fascinating. It was the first time I'd ever been there and...well, technically, the second time I'd ever been there, but never for a crime. And I...and they took me back to look at their medical facility and it is. It's a full-service clinic in a correctional facility. They had two dental chairs. They have got pharmaceutical carts--they're locked--with two pharmaceutical windows. They had a room for an optometrist. They had a room for telehealth. They had a room for a PT fellow who comes through. And they have all of these great services in one place. But what they do not have is an electronic health records system so they are doing paper charting so...and that's remarkable, right? Most healthcare providers in the state of Nebraska are on electronic health records now. If you go to the doctor tomorrow I guarantee your doctor is going to have a laptop, your nurse is going to be putting your information into a laptop or a computer. And in the state of Nebraska that's particularly useful because we have a Health Information Exchange, right, or NeHII where if your medical records are in Omaha and you allow them to be shared in NeHII and you get into a car accident in Kearney, your medical records from Omaha can be accessed by that ER doctor in Kearney and they can provide you with better care. So it's more than just an electronic health record. It can also be a highway for information for wherever you decide to go when you leave the correctional institution. But the paper records are actually remarkably inefficient. It's really hard to coordinate care. And I look at Senator Hilkemann

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because he knows about the importance of coordinating care between providers. It's really hard to coordinate care when you're looking at a lot of pieces of paper. And so, in my opinion, setting aside a small amount of money to allow for an electronic health record or at least a pilot in one correctional facility would be a great investment. It would save a lot of time and I believe it would save a lot of money in terms of staffing as well. The great news is that we already have a lot of wonderful electronic health record providers in this state. And in a lot of states what they've done is they have combined the electronic health records licenses with, like for instance, a large university medical system, which we also have one of those. And so it would be easy to facilitate training for staff members, licensure, acquiring those licenses on a system that's already being used. And then, in the instance of somebody who's in the Omaha correctional facility, if they left, most likely one of their providers would potentially be at the Medical Center and they would already have their medical records. So I think this would be very advantageous in terms of not just for staff--but, believe me, staff would be ecstatic if they were able to have an electronic health record--but also for folks when they're leaving. So one of the challenges we see with recidivism is that if you need some type of substance abuse/substance use counseling or if you need some sort of medical follow-up, those records don't actually follow you. So I brought, I thought this was so interesting, I actually brought the health services discharge. Sorry, Cadet. I should have told you. I actually brought the health services discharge summary that you get when you're leaving the correctional facility and I thought for sure that when you left the correctional facility you would just get your medical records, right? That doesn't actually happen. You leave the medical facility and then you have to contact, and the numbers are very small at the bottom, you have to contact the medical records clerk. So all of your paper files get sent to a central location and then you have to contact that central location and get your paper files. This is really inefficient and this is probably not a good utilization for the medical records clerk's time and it's certainly not a good utilization of our resources as a state. And so an electronic health records system, whether you piggyback off of the university or whether you have your own system that you contract for exclusively, I think would save a lot of time and money. With that, I will close and I will be happy to try to answer any questions you may have. [LB716]

SENATOR BOLZ: Thank you, Senator. Any questions from the committee? Go ahead, Senator Hilkemann. [LB716]

SENATOR HILKEMANN: Are you talking about doing this on a systemwide basis for all of our correctional institutions? [LB716]

SENATOR HOWARD: I would love to do it for all of our correctional institutions, but I recognize that you would most likely need to pilot and make sure that...and sort of work out the kinks, because this is an area where you don't see electronic health records utilized, at least not yet in this state. In a lot of other states they have transitioned to them. [LB716]

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SENATOR HILKEMANN: Now when you were on your tour, did you talk to the physicians about the electronic health record? [LB716]

SENATOR HOWARD: I did. I did. So it was both physicians and nurses, and then the feedback was resounding that we need to move to an electronic health record. And I admit it was four nurses who were there charting, just charting, but it was also the physician who was walking me through. They have carts of paper charts that are the active charts. And then if you go into a closet they have boxes for specific people with maybe a chronic illness and it's just boxes and boxes of charts for that person. And can you imagine how much easier it would be to get a better understanding of, maybe, medication history if it was all in one place on a computer? [LB716]

SENATOR HILKEMANN: Okay. I have to...you mentioned that. I happen to be a fossil so...at my practice, so. (Laughter) [LB716]

SENATOR HOWARD: And everybody works to their own. I've seen...I've seen providers come in with a laptop. I've seen providers say I'm going to have my nurse chart it up on the computer. But the access and the speed in which you can help people and make sure that you fully understand their medical history, I mean that's very meaningful for a patient, even if you are a fossil. [LB716]

SENATOR BOLZ: (Laugh) Very good. Thank you, Senator. [LB716]

SENATOR HOWARD: Thank you. [LB716]

SENATOR BOLZ: Do we have any proponents for LB716? Hi, Doug. [LB716]

DOUG KOEBERNICK: (Exhibit 2) Hi. Good afternoon, Senator Bolz and members of the Appropriations Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I work for the Legislature as the Inspector General for Corrections. Today I'm testifying in support of LB716. First, I want to thank Senator Howard for introducing this, I think a very important piece of legislation. Not long after I started my position in the fall of 2015, I visited a prison and I was very surprised that the medical records of the inmates were not in an electronic format. They had...Senator Howard did a good job of describing what I saw also. I began to ask questions about this, visited with department medical staff and leaders and also visited with leaders of the Nebraska Health Information Exchange to learn more about this. I had done some work on NeHII earlier before I took this position so I knew a little bit about that. In my 2016 annual report, I shared that when I conducted a survey of correctional staff in August 2016 regarding what one change or process improvement they would make within the department,

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many people shared there was a need for additional resources for the department. Included in these responses were suggestions from various staff about the need to have electronic medical records. In that report, and I have copied a few pages out of that report for you, I shared that health information technology has assisted correctional agencies across the country by increasing communication among providers, enhancing coordination of healthcare, and also leading to some cost savings as well. I think Senator Howard did a really good job and that I don't think I need to share the rest of my testimony, but I'll give one quick example. I was out at the State Penitentiary. I was talking to a man that lives there and we were talking about medical care, and he said, yeah, you know what, I had...I'd gone out for a test at one time about a month or so ago and then they sent me out again for that same test. And I knew I didn't need that test, but I figured they just screwed it up because they didn't...they don't keep track of that stuff very well, and I didn't want to turn down the opportunity to go outside for the day so I went ahead and went out there. And I would think the electronic health records and increased medical technology would assist with the duplication of efforts and all sorts of other things that we could see that would benefit the staff, like Senator Howard said, the population that lives there, and the state as well. So I think that the department has a number of medical needs and LB716 is a good start. And I ask for your support of this legislation. [LB716]

SENATOR BOLZ: Thank you. Any questions from the committee? Go ahead, Senator Hilkemann. [LB716]

SENATOR HILKEMANN: How...you know, my concern with electronic medical records is, number one, security, and number two is that it's the thing that keeps on giving. You just have to constantly...it's very, very costly. And is that...you mentioned the...I don't know how, it might be, I'm just sitting here thinking, in your...within the prison system... [LB716]

DOUG KOEBERNICK: Uh-huh. [LB716]

SENATOR HILKEMANN: ...maybe, but these systems don't talk to one another like they should be talking to one another. And theoretically, we should be having...you should, but in practicality or in actuality it doesn't seem to be happening. Do you...are you convinced that these systems are going to get to the point where they will talk to one another, that they will indeed be doing what they're claiming that they're going to do? [LB716]

DOUG KOEBERNICK: Well, I don't work in that field so I can't give you a good answer to that. I think...I don't see him here. I was hoping Dr. Deol, who's the chief medical officer for the department, would be here. He has experience in this in the state of Iowa and he might be able to better answer that question for the committee and I would...I'd suggest that you reach out to him and maybe he could give you a much better answer than I could. [LB716]

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SENATOR BOLZ: Okay. [LB716]

SENATOR HILKEMANN: I just think they've taken a lot of the personalization of medicine away. Thank you. [LB716]

SENATOR BOLZ: Thank you. Any further questions from the committee? Thank you. [LB716]

DOUG KOEBERNICK: All right. Thank you. [LB716]

SENATOR BOLZ: Further proponents for LB716? Anyone in opposition? Hi, Director Frakes. [LB716]

SCOTT FRAKES: (Exhibit 3) Senator Bolz, members of the Appropriations Committee, good afternoon. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition of LB716. LB716 appropriates \$500,000 to NDCS in fiscal year 2019 to implement an electronic health records system. I appreciate Senator Howard's passion for the subject and interest in helping the department acquire an electronic health records, EHR, system. NDCS is currently in the process of acquiring an electronic medication administration record system, referred to as EMAR, which will update our pharmacy system and provide...and improve the administration and distribution of medication within our NDCS facilities. We are also in the process of acquiring an electronic health records system. We requested and received funds during the current biennium to begin this process. Our medical director and his staff are working to identify suitable products and developing a proposal for inclusion in our budget request for the upcoming biennium. As a result of these current efforts, an additional appropriation of \$500,000 for fiscal year 2019 will not speed up the process for NDCS to acquire an electronic health record or improve the quality of the product we ultimately acquire. Thank you for the opportunity to testify today. And I'd be happy to try and answer questions. [LB716]

SENATOR BOLZ: Thank you. Any questions from the committee? Go ahead, Senator Hilkemann. [LB716]

SENATOR HILKEMANN: So, thank you, Director Frakes. So what you're saying is right idea, wrong time. [LB716]

SCOTT FRAKES: Yes, but just a little bit wrong time. [LB716]

SENATOR HILKEMANN: Okay. [LB716]

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SENATOR BOLZ: Okay. Oh, Senator Clements. [LB716]

SENATOR CLEMENTS: Thank you. Thank you, Director. And I was wondering in your investigation of the medical health records, how long do you think it would be before you would implement those if you keep on your time line? [LB716]

SCOTT FRAKES: Well, we have a couple different good systems that we've looked at. I want for my staff, my medical director actually, to connect with Senator Howard and talk about...she mentioned UNMC. We had had some conversation with them in the past. That didn't lead us in the direction that we wanted to go, but we want to explore that again and see if there's an opportunity. So my plan would be that we have a good, solid proposal that's part of my budget, biennial budget request that moves forward, that I convince all the different people that need to be convinced that it's the right move, and we would then be able to move towards implementation, contract process and implementation in the summer of 2019. [LB716]

SENATOR CLEMENTS: And you have clients that come from other states and move to other states. Would this medical information be able to be shared between states? [LB716]

SCOTT FRAKES: I...yes, you know, which we do today as well, and it has the potential to simplify that process. We find, though, that much of our clientele doesn't arrive with any electronic healthcare records because of their lack of access to care or the systems they come from. [LB716]

SENATOR CLEMENTS: But states...other states are willing to cooperate if they can get, I'd guess, compatible systems then. [LB716]

SCOTT FRAKES: If that potential is there, yes. [LB716]

SENATOR CLEMENTS: Thank you. [LB716]

SENATOR BOLZ: Thank you, Director. [LB716]

SCOTT FRAKES: Thank you. [LB716]

SENATOR BOLZ: Any further opponents to LB716? Anyone in a neutral capacity? Seeing no further testifiers, Senator Howard, would you like to close? [LB716]

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SENATOR HOWARD: I'll be quick. Isn't it fun when somebody comes in and opposes your bill when you thought they were coming in, in support? So, Senator Hilkemann, I wanted to address some of your questions around security and cost and whether some of these systems talk to each other, because those are really good questions. Some of the cost estimates that we see in terms of a license per person is about \$10,000 per provider annually, depending on which type of system you decide to utilize. And the cost is really something that is based on the provider license, so however many providers you have is usually how much your license will cost. In terms of security, there's actually been a lot of work on the federal level in terms of ensuring that patient health information that is utilized in an electronic health record is secure and safe. And so the best expert that we have in the state is Deb Bass, who runs the Health Information Exchange or NeHII. Which leads me to your third question, which was do they talk to each other. And so while no Epic, the electronic health record Epic, does not necessarily speak to NextGen, which is a different kind of electronic health record, what they can do is they can upload that information into the Health Information Exchange, which is an innovative system in the state of Nebraska. And then all of your...it's sort of a highway for information. It doesn't house the information. The information is housed in the electronic health records system, but it can be shared up into NeHII and it's sort of a highway between providers. And all types of providers are actually putting their information into NeHII or sharing their information with NeHII so that medical providers can get a full understanding of a patient's history. It's really exciting that Corrections is already doing it but I would think that you, as my colleagues, are in a unique position to hold their feet to the fire and make sure that this actually happens. Whether or not a half a million dollars does it, I don't care, but I think the most important thing is that there are patients in our correctional facilities who deserve quality, comprehensive care, and the best way to provide that is with an excellent recordkeeping system. And this is a great opportunity for that. Senator Clements, you asked about state-to-state sharing. That's actually a really interesting question and a bigger question than this committee can really consider. NeHII does not share in an interstate way. However, there are...if there's a medical system like, for instance, CHI, because they have multiple hospitals across the country, they're all on the same electronic health record system. And so if you go to a CHI clinic in California you will most likely...your provider there will most likely be able to access your records in Nebraska because NeHII is very state-specific. When we talk about states sharing between, it's really just for interstate providers, not providers across state lines. [LB716]

SENATOR CLEMENTS: Thank you. I was wondering about that. [LB716]

SENATOR HOWARD: Yes. I'm very invested in this subject because I do think that there are a lot of opportunities to improve patient outcomes when providers have the...a wealth of information about what's going on with that patient. And the best way to do that and the speediest is to make sure that we have electronic health records across the state. (Inaudible) thank you. Any other questions for me? [LB716]

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SENATOR HILKEMANN: No questions; just a comment. That's the future. I know that.  
(Laughter) [LB716]

SENATOR HOWARD: I know. I know. I know. And the problem was is we had that rollout of "Meaningful Use" dollars from the federal government for all of these healthcare providers to have electronic health records, and a lot of folks took them up on it. So I mean there are just not very many providers who are not using them anymore. But, yes, you're wonderful and I bet you were the best podiatrist ever sans computer. [LB716]

SENATOR HILKEMANN: Thank you. [LB716]

SENATOR BOLZ: Very good. Thank you, Senator Howard. [LB716]

SENATOR HOWARD: Thank you. [LB716]

SENATOR BOLZ: That closes the hearing on LB716. Do we have any letters for the record? No letters, okay. Very good. We'll close that hearing and open the hearing on LB861. Hi, Senator Watermeier. [LB716 LB861]

SENATOR WATERMEIER: (Exhibit 1) All right. Thank you, Vice Chairman Bolz and fellow members of the Appropriations Committee. I am Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, and here today to introduce LB861. LB861 would require the state to pay a county's prosecution costs arising from a single correctional institution incident if it exceeds the threshold amount for such county. The threshold amount is the amount of property tax revenue raised by the country from a levy of 2.5 cents per \$100 of taxable valuation. The state would pay the prosecution costs that are in excess of the threshold amount. Under the bill, costs of prosecution includes the cost of defense for indigent defendants, which would cover attorney's fees and expert witness fees. A correctional institution incident is defined as an incident in which a crime is allegedly committed by one or more inmates confined in a state correctional institution. As an example, in Johnson County, 2.5 cents of their levy would amount to approximately \$225,000. In Lancaster County it would amount to approximately \$5.8 million. Everyone is aware of the Mother's Day riot, as well as several other incidents that have occurred at the Tecumseh State Correctional Institution and other facilities since 2015. After the Mother's Day riot, the Department of Corrections worked with Johnson County and paid for the autopsies and some other claims. However, they have since made it clear that the state won't pay any more miscellaneous claims. Now comes the cost of the prosecution. Counties cannot fail to prosecute a murderer just to save the money. The county must bear the cost, even though since 2007 the county attorney is not aware of even one person in TSCI that is from Johnson County that has been charged with a crime. The public defender and the Commission on Public Advocacy, which

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was created to help in situations just as this, will assist the county. The court can appoint up to two attorneys per defendant. If there are more than two codefendants per incident, this is where it can get pricy for a county as the county will have to pay the fees of additional attorneys. The Johnson County Attorney stated that they will strategically file the cases in order to avoid additional cost, but some will include a number of codefendants and they won't be able to avoid hiring additional attorneys. To require Johnson County residents to pay more than \$225,000 per incident to defend inmates who are not from their county does not seem fair and should be the responsibility of the state. However, this bill does not just apply to Johnson County. Since they are a smaller county and have a facility located there that holds the most dangerous criminals from throughout the state, they seem to be the county most affected. I hope you can understand their plight and support this concept that would authorize the state to assist when prosecution costs are extreme for an individual county. The county...the Johnson County Attorney had a scheduling conflict and couldn't attend today's hearing, as he had submitted a letter which I will take a minute and just read it into the record. I need one of those, Cadet. Sorry. Oh, I do have one here. And I do want to get it into the record because he has some good, compelling issues right here, so: Johnson County is home to the Tecumseh State Correctional Institution, TSCI, a maximum security prison housing approximately 1,000 inmates. On May 10, 2015, and March 2, 2017, separate riots at TSCI left the prison badly damaged and left four inmates dead. The Nebraska Attorney General's Office and my office are involved in the investigation of these crimes and the prosecution of the men responsible. Prosecution of a state prison inmate brings costs to the county in the form of defense counsel fees, expert witness fees, discovery fees, and the like. In most cases, the costs of defense are manageable. Johnson County has contracted a public defender, and on high-level felonies the Nebraska Commission on Public Advocacy will represent defendants at no cost to the county. The defense costs become high when multiple inmates are involved in a serious crime, such a murder. Courts appoint cocounsel for defendants charged with first-degree murder, so the costs of providing defense can skyrocket quickly when multiple defendants are charged. For example, if as few as two inmates participate in a murder, our public defender may represent one codefendant, the Commission on Public Advocacy may represent the other. That leaves the court appointing two total attorneys, one as cocounsel on each defendant's case. The county then pays those two attorneys' fees. In the prison environment, this can multiple quickly. During a riot where multiple homicides take place, each with multiple suspects, it is easy to foresee a situation where the county would pay more attorneys' hourly fees to defend these complicated, time-consuming cases. An attorney may not represent codefendants, so in any situation where more than two suspects are involved, the court must look to attorneys other than the public defender and the commission. Paying two attorneys per murder case, plus other costs of defense, will quickly overwhelm our small county. These multiple-victim, multiple-defendant riots do not appear to be isolated incidents. Two have occurred here within the last three years, and the investigations and prosecutions from both incidents continue. Johnson County has no control over whether there will be another riot, and we have no ability to mitigate the harm done during a riot. We are, however, required to pay to ensure that these

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persons involved in causing such harm receive due process. These are costs that we cannot afford to bear alone. Some states, such as Michigan, California, and Arizona, reimburse counties for all costs of prosecuting state prison inmates. The bill before this committee is significantly less costly to the state than full reimbursement would be. This bill sets up a cap on the county's liability for payment of such costs. For Johnson County, under current valuations, this cap amounts to \$228,000 per incident. Thus, if LB861 would become law, it would only be used in extreme circumstances. Most of the costs of prosecuting inmates would continue to rest with the counties containing correctional facilities. The costs of providing state prisoners with legal defense in criminal cases should be the state's, and LB861 seems to be a modest proposal towards that end. Therefore, on behalf of Johnson County, I ask you to consider advancing it to General File. Richard Smith, the Johnson County Attorney. I mean I'd be glad to answer any questions. I mean you understand the situation. We think it's reasonable. And if you look through the bill, I won't ask you to look through it right now, we do the definition of "incident," we define the 2.5 cents. And the 2.5 cents was really hard to come up with. At least basically could be potentially 5 percent of a county's budget if you figure 2.5 cents off a 50-cent levy. So it could be up to 5 percent. It's a serious dollar amount for Johnson County with a very small budget. And so you could keep in mind as well that the state's liability, you have to keep in mind, is just past the 2.5-cent levy. We don't back down to zero. So if an incident is defined as, say, \$300,000, the state would be on the hook for \$75,000. The county would still be on the hook for that 5 percent or the \$225,000. So we're not asking for the entire amount. We think it's reasonable. But there certainly are, what we believe, are costs to come from the state. With that, I'll stop and allow the proponents. I have one county commissioner here with me today but the prosecutor...or the county attorney could not be here today. [LB861]

SENATOR STINNER: Thank you. Questions? Senator Bolz. [LB861]

SENATOR BOLZ: Thank you, Senator Watermeier. A couple of questions for the record and then one question about process. Honestly, partly just for the record, the way I read this correctional institution would mean any of the institutions. So it might mean Kearney or Geneva. It might mean McCook. And it obviously means Tecumseh. That's your intention? [LB861]

SENATOR WATERMEIER: Correct. [LB861]

SENATOR BOLZ: Okay. And then just for clarification, would it apply to an incident that occurs when an individual is incarcerated in a community corrections setting but the incident occurred out in the community? And I'm thinking of there was a car accident in Lincoln a couple of years ago... [LB861]

SENATOR WATERMEIER: Uh-huh. [LB861]

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SENATOR BOLZ: ...with an individual who was a community corrections inmate and just wondering if you think it applies to that sort of circumstance. [LB861]

SENATOR WATERMEIER: I'm going to defer that. I don't know. I have to go back and look at how we define that, if that would cover that or not. It's a good question, obviously. I wouldn't want to answer that right now. [LB861]

SENATOR BOLZ: Okay. I'll ask it of somebody else just... [LB861]

SENATOR WATERMEIER: Okay. [LB861]

SENATOR BOLZ: ...to help build the record for what the intentions of the bill (inaudible). [LB861]

SENATOR WATERMEIER: It's a good point, though, because certainly there's a liability there that we want to be covered. [LB861]

SENATOR BOLZ: Right. And then just for my sake, the way I'm thinking about this would...it would work sort of like our claims against the state bills, right? [LB861]

SENATOR WATERMEIER: It would. [LB861]

SENATOR BOLZ: That they would sort of bring that bill to us and we'd process it... [LB861]

SENATOR WATERMEIER: Yes. [LB861]

SENATOR BOLZ: ...as it is. Okay. Thank you. [LB861]

SENATOR WATERMEIER: That's exactly how it would work, yes. [LB861]

SENATOR BOLZ: Okay. [LB861]

SENATOR STINNER: Other questions? Senator Hilkemann. [LB861]

SENATOR HILKEMANN: Senator, I know it's not...you read the letter, so it's not actually in your testimony. It says some states, and you talk about Michigan, California, and Arizona. How

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many states...those are three states that were mentioned. How many, do you know how many states actually paid for all of the...for those state prisons? [LB861]

SENATOR WATERMEIER: I don't know that, Senator. I could find out and dig into that a little bit further. [LB861]

SENATOR HILKEMANN: Yeah. I mean but I'm sitting here thinking, you know, actually that would be...that would seem to me to be the fair way to do it for this, for these counties. [LB861]

SENATOR WATERMEIER: I mean certainly they're not residents of the county and we... [LB861]

SENATOR HILKEMANN: Right. [LB861]

SENATOR WATERMEIER: ...clearly made that known, so. [LB861]

SENATOR HILKEMANN: Right. So it's an interesting discussion. [LB861]

SENATOR WATERMEIER: Uh-huh. [LB861]

SENATOR HILKEMANN: Thank you for bringing it. [LB861]

SENATOR WATERMEIER: If you notice, there isn't a fiscal note on it. And we debated and talked about that quite a bit. It is certainly a liability or potential liability to the state. But I think it's a good opportunity for us to have this discussion and I really think it ought to be in statute. I do. [LB861]

SENATOR HILKEMANN: Uh-huh. [LB861]

SENATOR STINNER: Additional questions? I think don't we have something out there in law that says if something along the line of a suit, and I'm thinking of the Rulo situation where the county ran out of money, they could actually come to the state and approach our Treasurer, who then would come to Appropriations to approve some kind of an appropriation? [LB861]

SENATOR WATERMEIER: There was a process on that. I'm drawing a blank, too, but there was a process that happened in Richardson County at that point in time. I'd have to think back how that worked. [LB861]

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SENATOR STINNER: I did some research on it when Gage County was... [LB861]

SENATOR WATERMEIER: Okay. [LB861]

SENATOR STINNER: ...out there with their \$29 million or so. [LB861]

SENATOR WATERMEIER: All right. [LB861]

SENATOR STINNER: Okay. Thank you. [LB861]

SENATOR WATERMEIER: Thank you. [LB861]

SENATOR STINNER: Good afternoon. [LB861]

TED EVANS: (Exhibit 2) Good afternoon, Senator Stinner, members of the Appropriations Committee. My name is Ted Evans, Commissioner of Johnson County, District 2, and that's where TSCI is located. And obviously I'm here in favor of LB861. And some of these things that I'd talk about might have already been mentioned, but I want to mention that the current population of Johnson County is 5,217 people, which about 1,000 are in the prison. So that's some of the figures that we're at. Now on the back of your sheet you'll see some of the costs, and these costs are not horrendous but this is what we paid this year in prison cost. A couple...we did hire a second attorney, deputy county attorney, because we could not handle the...all the legal efforts coming out of the prison. And the other thing that's unusual on here is, of course, we pay for all autopsies and transportation for anybody that dies in the prison, which I always felt was very interesting. [LB861]

SENATOR STINNER: We do need you to spell your name, by the way. [LB861]

TED EVANS: Sorry about that. Ted Evans, T-e-d E-v-a-n-s. [LB861]

SENATOR STINNER: Sorry to interrupt you. [LB861]

TED EVANS: Thank you. And the other thing pointed out is that over 70 percent of our taxable valuation is derived from ag land, machinery, milling sites equipment, etcetera. And here once again the farmers are getting stuck with some of the, far as we're concerned, state expenses. The...I think some of these other things have already been mentioned. I would say that the money that was mentioned earlier, the 2.5 cents per \$100 taxable valuation, actually amounted

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to, this last year, 10 percent of our tax request. (Inaudible) maybe 5 percent of the total budget, that's 10 percent of the money we requested in taxes. So it is a fairly large sum for our budget. And you know we like to think of this as kind of sandbagging the river before it rains rather than waiting for the floods. And hopefully, you know, you people look at this kindly. Thank you very much. Are there any questions? [LB861]

SENATOR STINNER: Questions? Seeing none, thank you. [LB861]

TED EVANS: Thank you. [LB861]

LARRY DIX: Good afternoon, Senator Stinner and members of the Appropriations Committee. My name is Larry Dix, L-a-r-r-y D-i-x. I'm executive director of Nebraska Association of County Officials, appearing today in support of LB861. Certainly, Senator Watermeier covered the numbers that I had prepared, the almost a quarter of a million when you look at the valuation in Johnson County. You know, in the years that I've been doing this, this is a unique approach to compensating something by looking at the tax levy. It actually gets to sort of the ability to pay, and it also talks about sharing of that expense. Many times, you all have seen bills that come in front of here, it's either pay on this side or pay on this side 100 percent. This is...this sort of opens the door and I found it a very unique approach as to how we share for something that is located specifically in Johnson County. Johnson County, the valuation base certainly is not that of where we have other state correctional facilities located. Certainly I think when we do the numbers it would be so, so extremely rare that we would ever see that instituted of the magnitude that it would impact a Douglas or a Lancaster. For that fact, we have facilities in York and some other parts of the state, but the base is just there. But in this unique instance, it isn't. Senator Stinner, I think...or someone had asked the question about there's something on the books where they could come in front of the committee, and that did happen in Richardson County a number of years ago. There was significant floods and bridges went out and the Rulo murders, and they all sort of happened really at the same point in time. That law was really on the books for about a two-year period and has since been removed. It's been repealed. And so that, to my knowledge, to the best of my knowledge, that's no longer there, that we can't really go back to that. But again, it's a unique idea. I think it's a very fair idea so I would ask the Appropriations Committee to take a look at it. Even by the way of fiscal note, there's nothing that says that you can say it will cost the state anything. We really don't know that. But in those rare instances, we know those expenses can mount very, very rapidly. So with that, I'll try to answer any questions anybody may have. Thank you. [LB861]

SENATOR STINNER: Questions? Senator Clements. [LB861]

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SENATOR CLEMENTS: Thank you. Thank you, Mr. Dix. Have you heard from any other counties what they think about this proposal? [LB861]

LARRY DIX: The NACO board took a look at this, and when I say the NACO board, that's a 20-member board that represents all 93 counties. And on that board there happens to be representation, Douglas County has representation on it, Lancaster County has representation on it. I'm trying to go through the places that have facilities--Banner County, Kimball County--so we get out to the western part of the state. Red Willow has a representative on there so we get to the work camp in there. Buffalo County has a representative on it. So it almost hits...and York County. So we almost hit, luckily, our board members almost, the 20 members, actually do come from those and they all support. They unanimously supported this concept. [LB861]

SENATOR CLEMENTS: Thank you. [LB861]

SENATOR STINNER: Thank you. Senator Bolz. [LB861]

SENATOR BOLZ: It seems to me that this bill is making a unique argument related to correctional institutions because of the unique nature and dangerous nature of correctional institutions. So I guess partly for the record and partly trying to think through the concept a little bit, you wouldn't necessarily think that other...that counties would come and ask the same for other kinds of state entities or agencies that are working at a county level. So, for example, this isn't necessarily opening the door to claims against...to the state for some...for a boating incident that would happen in a state park, right? This this a unique...a response to a unique circumstance, in your point of view. I don't mean to put words in your mouth. I'm just trying to think through the bill a little bit. [LB861]

LARRY DIX: Right. Yeah, and, Senator Bolz, I'm glad for that question. I've been doing this for 16 years and the uniqueness of Johnson County is something that has come up many, many times but we have not had anything that I can remember in any of the other counties that ever would ask for that specifically for a county like that. So I believe it is very unique to Johnson County in this situation. [LB861]

SENATOR BOLZ: Thank you. [LB861]

LARRY DIX: Yeah. [LB861]

SENATOR STINNER: Additional questions? Seeing none, thank you. [LB861]

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LARRY DIX: Thank you. [LB861]

SENATOR STINNER: Any additional proponents? Any opponents? Anyone in the neutral capacity? Seeing none, would you like to close, Senator? [LB861]

SENATOR WATERMEIER: Thank you, Chairman Stinner. You know, maybe just the one thought and the idea, what Senator Bolz is getting at there, is this is...it is unique in the fact that we're willing to put up our 5 percent of the total possible 50 cents of the levy, right? That's what that adds up to. It's a partnership with the state, obviously. We're not running away from that responsibility. But just imagine, as Director Dix had mentioned the uniqueness of Tecumseh, what may have happened in an incident, you could have two murderers but you could almost bring in a hundred codefendants because they don't know who caused it. They may have, theoretically, have a hundred codefendants on each one of those murder cases. So you can imagine what that would be. And we're still plowing through those expenses. We're not clear through all those. And so this is something to protect us in the future for future incidences which may happen. And so that's what we sense in the county, it's a problem, and we just felt like this was a way to partner with the state on some of the responsibilities. [LB861]

SENATOR STINNER: I look at it as the state is really providing catastrophic insurance. [LB861]

SENATOR WATERMEIER: Underlying insurance, and that's a good way to describe it. [LB861]

SENATOR STINNER: You guys get to pay it. [LB861]

SENATOR WATERMEIER: It's the way I thought of that as well. So with that, I'll close. So thank you, Chairman. [LB861]

SENATOR STINNER: Any additional questions? [LB861]

SENATOR CLEMENTS: I guess one more. [LB861]

SENATOR STINNER: Senator Clements. [LB861]

SENATOR CLEMENTS: Excuse me. Thank you. I didn't see, when would be the effective date of this that you're asking for? [LB861]

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SENATOR WATERMEIER: I'm pretty sure we had it as the...not an E clause in it but it would start the next fiscal year or September 1. I can't remember for sure which it is, honestly. Senator, I can't remember. [LB861]

SENATOR CLEMENTS: Yeah, I don't believe it specifies, so that would be whenever it (inaudible). [LB861]

SENATOR WATERMEIER: The next...after the Governor signs it, 90 days after. [LB861]

SENATOR CLEMENTS: Thank you. [LB861]

SENATOR WATERMEIER: Yeah. [LB861]

SENATOR STINNER: (Exhibits 3 and 4) Thank you. I do have letters of support for LB861 from Scotty Gottula, Johnson County Board of Commissioners; and Larry Dix, National Association of County Officials. That concludes our hearing on LB861. We will now open our hearing on LB871. Senator Wishart. Good afternoon. [LB861 LB871]

SENATOR WISHART: (Exhibits 1 and 2) Well, good afternoon, Chairman Stinner and members of the Appropriations Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent District 27 in west Lincoln. I am here today to introduce LB871, a bill that would provide funding for the Nebraska Department of Correctional Services to develop a longevity pay program for the front-line staff in our state correctional facilities. First, I want to thank the brave staff members of the Department of Correctional Services. We owe them a deep gratitude and respect for working in one of the toughest jobs that help keep our community safe. Additionally, I want to thank Doug Koebernick, Nebraska Inspector General of Corrections, for working with me and being a resource on this important issue. This summer my office worked on an interim resolution, LR172, to review staff recruitment and retention efforts that are currently or could potentially be undertaken by the Department of Correctional Services. My office research included visits with correctional officers, tours of correctional facilities, a survey from my office to all correctional staff in which we received 623 responses, and I did hand that out to you. And, yes, I will acknowledge, Senator Kuehn, I hear you're very tough on surveys but...so I do want to say it's not scientific, it's anecdotal. But it does give you kind of an idea of...and some good commentary from our corrections staff officers and an idea of kind of where...what their feelings are right now about the Department of Corrections. I also had a meeting with management and a public hearing with the Judiciary Committee. From my research, it is clear to me that the Legislature must prioritize staff retention to address high staff turnover, the increasing costs of overtime in our state budget and on the health of correctional employees, and the need to retain an experienced work force in order to protect the public's

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safety. That is why I introduced this legislation to create and adequately fund a system of longevity pay across the Nebraska Department of Correctional Services. While I commend the intentions of Director Frakes to tackle staff turnover and vacancies at Tecumseh and to pay for it through overtime savings, our problems with staff retention are not confined to one or two facilities. This is a systemic issue that will need a systemwide solution. For example, the starting salary for a corporal is \$18.16, which is about \$37,772 annually, which is also the salary for a corporal who's been on the job for ten years. In some cases, with a \$2,500 bonus to new hires during the course of their first year, a newly hired employee could be getting paid more than a seasoned officer. Currently, we have 112 vacant positions in protective services across our department, and I did hand out to you recent numbers and want to thank the department for getting me that on overtime and on vacancies. As you can see as well with the charts that I've provided you, overtime expenses also continue to rise. If the department is able to retain employees through longevity pay incentives, then common sense tells us that they don't have to recruit as many employees and, therefore, won't consistently be struggling with vacancies, the high costs of overtime, and operating perpetually in training mode. And I want to address the lack of a fiscal note. I understand that there are labor negotiations involved with determining state employee salaries, but I wanted to show that this body values the Department of Corrections' front-line employees. And my goal with this legislation is to work with the Appropriations Committee to determine an amount that we could set aside and show in good faith to Department of Corrections and to the state employees union that we would be willing to support for a longevity pay plan. Creating and adequately funding a system of longevity pay across the Department of Corrections is one step in the right direction to reward correctional officers who have dedicated their careers to the department. I look forward to working with the Department of Corrections and my colleagues here on the Appropriations Committee and in the Legislature to implement this important public safety initiative. And I would be happy to answer any questions. [LB871]

SENATOR STINNER: Questions? Seeing none,... [LB871]

SENATOR WISHART: Okay. Thanks. [LB871]

DOUG KOEBERNICK: (Exhibits 3 and 4) Good afternoon, Senator Stinner and members of the Appropriations Committee. My name is Doug Koebernick, K-o-e-b-e-r-n-i-c-k, and I work for the Legislature as the Inspector General for Corrections. Today I'm testifying in support of LB871, not because I believe longevity pay is the magic bullet but because I believe it would give the Department of Correctional Services an additional tool when it comes to retaining staff. In my time in this position since the fall of 2015, I heard Director Frakes on several occasions talk about the need for merit pay or longevity pay, things like that. I heard staff talk about it when I'd go out and visit the facilities. I did a couple of surveys that showed over 60 percent of the staff each time said that this would be the best incentive to keep people on the job. And as a

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result, my 2016 annual report made the following recommendation to the department: Present salary proposals to the Department of Administrative Services that would either result in longevity pay or the establishment of a tiered plan system where an employee can be rewarded for reaching certain goals, achievements, or certifications. For example, positions of Corporal I, Corporal II, and Corporal III could be created. To move from one tier to the other, the individual would have to be in that position for a certain period of time, take outside classes, gain a special certification, or accomplish goals established by the department. Health Services staff could achieve something similar if they receive a form of health professional certification, which is available on the national level. My 2017 annual report stated that the staffing crisis identified in my previous report had not been resolved. In fact, the report stated that should the current trends continue on overtime, vacancies, and departures, NDCS will only find itself in even more of a staffing crisis and may witness what took place at the Beatrice State Developmental Center a few years back, only on a much larger scale. The report also shared an assessment of the staffing situation that was done by the Vera Institute of Justice. This report by Vera was provided to the department regarding restrictive housing in 2016. I've provided an excerpt for you from that report that shares their insight on staffing, including having a pay structure that is uncompetitive and does not reward longevity. Finally, I've shared three charts with you using data on department turnover, overtime, and vacancies. And this might be a little redundant with what Senator Wishart shared with you, but the top one has turnover rate of department correctional officers, corporals, sergeants, and caseworker positions. In 2010 the turnover rate was 18 percent. It grew over time until 2017 it's at 34 percent. Overtime hours is for protective services workers, which are the correctional officers, corporals, and caseworkers, are in the second chart. You can look back. About four years ago it's just slightly under 20,000 hours of overtime a month for those positions. It peaked around 50,000 hours when there was the May 2015 riot. Then it went back down but then has climbed since then. In December it was over 40,000 hours. So in that four-year time period overtime hours doubled. And then the third chart just lists the vacant positions that are provided in the state of Nebraska vacancy report that's provided to the Appropriations Committee. And you can see over time that has gone from back in December of 2014 there were 156 vacant positions to 307 in December of 2017. So with that, I want to thank Senator Wishart for introducing this bill. But more importantly, I want to thank the employees of the department, many who put in long hours and every day on the job in kind of high-risk situations, and they keep coming back. Some leave but some keep coming back and they really do put a lot of work in and I really appreciate all that they do. So with that, I'd ask for your support of LB871. [LB871]

SENATOR STINNER: Questions? I have questions. How did this all get started? Who thought this was a good idea,... [LB871]

DOUG KOEBERNICK: The... [LB871]

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SENATOR STINNER: ...the way we pay people at the prisons? [LB871]

DOUG KOEBERNICK: With the longevity pay or not doing longevity pay? [LB871]

SENATOR STINNER: Without it, without the longevity pay. [LB871]

DOUG KOEBERNICK: Well, that goes back to about 2001-2002, and there was negotiations between the union and what was then the Johans administration. I don't know the entire history on it but I believe...it's my impression that it was a...they kind of struck a deal for a year or two to delay longevity pay and then they would go back to it. And it never was negotiated back into the contract. [LB871]

SENATOR STINNER: I just don't know of any business that has people that stay around for that long a period of time without a pay raise just because they are at a classification level. I don't get it. [LB871]

DOUG KOEBERNICK: Yeah. I mean I was in Tecumseh last week talking to some staff that had been around for quite a while and they were, number one, they're tired and stressed just because of all of the hours that they're putting in, but they were also talking about how they have new people that are coming in who got the \$2,500 bonus and they're corporals and the people coming in are corporals and those people will now get paid \$2,500 more than them over the next year. And so that was discouraging for them. [LB871]

SENATOR STINNER: So is this...is this something new? [LB871]

DOUG KOEBERNICK: But they do...they did implement kind of a longevity pay plan at Tecumseh so it's not quite \$2,500 difference, but there still is the message. [LB871]

SENATOR STINNER: I know there's been some efforts to put something in place that rewards people over a period of time, and...but it's just hard for me. Is this a union question? I mean why can't we get this solved? [LB871]

DOUG KOEBERNICK: I would ask. I think the union is going to be testifying in a neutral capacity. They would be able to address that. [LB871]

SENATOR STINNER: Okay. So I can ask them that. But I just read an article by Harvard Business Review about burnout; that what happens in a career and you burn out if you spend too

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much time at work and now you should have work-life...work balance, those types of things. But that doesn't happen in our prison. We're just burning people out. We're in a constant training mode. [LB871]

DOUG KOEBERNICK: I would agree with that. And also you see nationally there are studies that show suicide rates for correctional officers are rather high as well. And if you look at some of the counties, like Lancaster, Douglas, Sarpy, York County, they do have step pay plans as well. So if I'm working at the women's prison in York, I get...it's my understanding I could go work in the York jail and make more money. [LB871]

SENATOR STINNER: Is there anybody that goes in and surveys the workers as to their mental health? [LB871]

DOUG KOEBERNICK: Not that I'm aware of. [LB871]

SENATOR STINNER: Okay. [LB871]

DOUG KOEBERNICK: It's something that in one of my surveys I know there was a nurse at the State Penitentiary who had sent a recommendation that they have like a wellness nurse that goes and works with staff on not only physical health but talks to them about mental health or something. She thought that would be a very positive thing for the department to implement. But as far as I know, nothing like that has taken place. [LB871]

SENATOR STINNER: Well, somewhere along the line we got to stop this nonsense and really get some kind of plan put together that we can retain, attract and retain quality people. This might be one of the answers or at least a step (inaudible). [LB871]

DOUG KOEBERNICK: I mean the biggest thing for recruitment is retention. I worked as the staff person for the Developmental Disabilities Special Investigative Committee for about six years and they were looking at what's going on at the Beatrice State Developmental Center where we lost \$50 million of federal funding. We had people dying, all sorts of things were going on down there. And they were having staff...it became this downward spiral where staff were working more hours in more stressful conditions, so more people would leave. And then there's more overtime, more stress. And it just...everybody kept leaving. And the leaders there, I mean they really did, at least the staff, they felt like they were just replaceable cogs in the machine, if you will. And a lot of them would go across town to work at Mosaic, which is a provider of developmental disability services, where the clientele was really very similar and the job was very similar and everything. And they would go over to Mosaic where they didn't work

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overtime, where they got less pay and they got less benefits, but they were very happy over there. [LB871]

SENATOR STINNER: I understand. Additional questions? Seeing none, thank you. [LB871]

DOUG KOEBERNICK: Thank you. [LB871]

SENATOR STINNER: Any additional proponents? Any opponents? Good afternoon. [LB871]

WILLIAM WOOD: (Exhibit 5) Good afternoon, Chairman Stinner. I apologize, my voice isn't the best today, but I'll get through this. My name is William J. Wood, W-i-l-l-i-a-m J. W-o-o-d. I serve as the chief negotiator and the administrator of the Department of Administrative Services, Employee Relations Division. I'm here today to testify in opposition to LB871. And I'm not here to create an adversarial environment. I just want to raise some issues. LB871 provides for pay increases for all Nebraska Department of Correctional Services, NDCS, employees employed at a correctional facility based on longevity. Longevity pay increases are considered wages and wages are set through the collective bargaining process. When the Legislature enacted the State Employees Collective Bargaining Act, it did not reserve for itself the right to alter contracts entered into under the act. In fact, when the Legislature created the Collective Bargaining Act, it affirmed that the executive had the power to set wages by drafting the act such that the executive branch is the branch charged with negotiating wages with state employees. The act states that the DAS Employee Relations Division shall be responsible for negotiating labor contracts entered into by the state of Nebraska. Under the act it is the chief negotiator who has the authority over all mandatory bargaining topics and may adjust or change rates of pay and other terms and conditions of employment that are mandatory topics. Because the negotiation of wages, including longevity pay increases, is assigned to the executive branch, this bill presents a separation of powers issue. The Constitution of the State of Nebraska provides, in Article IV, Section 6, that the supreme executive power shall be vested in the Governor. The Legislature cannot, through appropriations, exercise or invade the constitutional rights or power of the executive and that the Legislature cannot administer appropriations once made. Finally, this bill as drafted provides that the appropriations will be used to fund a longevity plan for all employees of the Department of Correctional Services who are employed at a correctional facility beginning no later than January 1, 2019. All employees at that time would be eligible, whether they worked in security or were staff assistants, administrative assistants, accountants, facility maintenance technicians, etcetera. The nonsecurity positions may also be used in the Correctional Services Central Office, and those Central Office employees performing similar work would not receive the longevity increase. Thank you for the opportunity to testify and I'll answer any questions you have. [LB871]

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SENATOR STINNER: Any questions? Seeing none, thank you. [LB871]

WILLIAM WOOD: Thank you for the opportunity. [LB871]

SENATOR STINNER: Director Frakes, how are you? [LB871]

SCOTT FRAKES: (Exhibit 6) I'm well, Senator Stinner. Good afternoon, Chairperson Stinner, members of the Appropriations Committee. My name is Scott Frakes, F-r-a-k-e-s, the director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition to LB871. LB871 appropriates an undetermined amount to NDCS in fiscal year 2019 to fund a longevity pay plan for all NDCS employees who are employed at a correctional facility as of January 1, 2019. Nebraska Revised Statute 48-837 gives public employees the right to collectively bargain the terms and conditions of their employment. As a result, developing a longevity pay plan for all NDCS employees requires negotiations...negotiating through the collective bargaining process and it's not something that can be accomplished through an appropriation to NDCS alone. If an agreement is negotiated regarding compensation and longevity pay, I will include that in my budget request for the upcoming biennium. Staffing and compensation continue to be priorities for NDCS, along with engaging team members through professional development, resiliency education, and safety initiatives. The Governor also recently introduced a pay for performance plan for team members covered by rules and regulations. Thank you for the opportunity to testify today and I would be happy to answer any questions. [LB871]

SENATOR STINNER: Thank you. Questions? Senator Bolz. [LB871]

SENATOR BOLZ: Director Frakes, what are your future intentions with the pay for performance plan? [LB871]

SCOTT FRAKES: To implement it consistent with the plan that we rolled out. [LB871]

SENATOR BOLZ: (Laugh) So you...forgive me for not knowing the details off the top of my head, but is that a plan that you expect to be implementing in 2019 and 2020 and 2021 and 2022? [LB871]

SCOTT FRAKES: Starting 2019, yes. [LB871]

SENATOR BOLZ: Starting 2019 into the future? [LB871]

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SCOTT FRAKES: Yes. [LB871]

SENATOR BOLZ: It's an ongoing thing? [LB871]

SCOTT FRAKES: Yes. [LB871]

SENATOR BOLZ: So your appropriations request in front of this committee will include aspects of the pay for performance plan in our next biennial budget. [LB871]

SCOTT FRAKES: Correct. [LB871]

SENATOR BOLZ: Thank you. [LB871]

SENATOR STINNER: Additional questions? Senator Clements. [LB871]

SENATOR CLEMENTS: Thank you. Thank you, Director Frakes. How often do you negotiate the contract with correctional facility employees? [LB871]

SCOTT FRAKES: Every two years. [LB871]

SENATOR CLEMENTS: And when will be the next...start of the next contract? [LB871]

SCOTT FRAKES: That process will start again this year. Conversations start in the summer and negotiations begin the late summer, early fall. [LB871]

SENATOR CLEMENTS: And the new contract would begin then what date? [LB871]

SCOTT FRAKES: Would go into effect July 1 of 2019,... [LB871]

SENATOR CLEMENTS: Thank you. [LB871]

SCOTT FRAKES: ...if I have that correct. I think I do. [LB871]

SENATOR CLEMENTS: So until then, you don't really have ability to make structural changes in the compensation? [LB871]

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SCOTT FRAKES: Correct. Let's see if we've got this right. So...yeah, I think I've got the right dates. And, yes, that's correct. We're operating under the contract that's currently in effect and the wage that was negotiated through that process. [LB871]

SENATOR CLEMENTS: Thank you. [LB871]

SENATOR STINNER: Questions? Senator Hilkemann. [LB871]

SENATOR HILKEMANN: So if I understand this, Director, a little bit like the last testimony we had on the EMRs, you're saying thank you but we're already handling this. [LB871]

SCOTT FRAKES: I think it is a little bit different but it is...there is certainly an awareness of these issues, a recognition that we need to continue to look at compensation as part of our answer to recruitment and retention, and there's a process to get us there. [LB871]

SENATOR HILKEMANN: Okay. Thank you. [LB871]

SENATOR STINNER: Questions? I will say this and I'm hoping that this pay for performance works, but we continue to see lots of overtime, lots of turnover. Numbers aren't getting any better and I hope somewhere along the line we can have something put together that you're able to attract and retain the folks that you need to attract and retain. So that's all I have to say. Thank you. Additional questions? Seeing none, thank you. [LB871]

SCOTT FRAKES: Thank you. [LB871]

SENATOR STINNER: Any additional opponents? Anyone in the neutral capacity? [LB871]

JOHN ANTONICH: (Exhibit 7) Good afternoon, Chairman Stinner and members of the Appropriations Committee. My name is John Antonich, J-o-h-n A-n-t-o-n-i-c-h. I am the executive director of the Nebraska Association of Public Employees, otherwise known as NAPE/AFSCME, Local 61. I'm here to make a neutral statement on LB871. Senators, our members of NAPE wish to thank you for your concern for our state employees working within the state corrections system. We also thank you for your acknowledgment and concerns over the issues that plague our Geneva and Kearney Youth Rehabilitative (sic--Rehabilitation) Centers and our regional centers. The issues of overcrowding shadow the issues of basic medical care and rehabilitation of inmates in all of these facilities. The issue of retaining staff in all state facilities, and dare we say in all of state government, are crucial and have been at a critical area of distress for all. All Nebraska state employees and their families deserve a pay plan that values their

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public service. We have found that the step pay plan approach is a sound method of reflecting that value, provided that it is administered in a uniform manner across all job categories. It has been our union's position that this issue of retention of staff is the most critical of the management crisis that drive our concern for the operations of state government. Salaries and benefits for state employees need to include an avenue for promotions and a career path. The crisis within the state's correctional system, the Youth Treatment Centers, and the regional centers demands an assertive response. Sentencing structure for crimes in Nebraska need to be addressed. More trained and compensated probation and parole officers need to be found with a management principle that respects the longevity of a person's public service. A real longevity step pay plan based upon annual adjustments has been a component of our negotiations with the last three administrations during our biennial bargaining sessions. The Johanns administration refused our request to continue a step pay plan that had been developed in the '90s, and until our last recent negotiation, our contract did not include any longevity pay component. We have negotiated in our contract for this biennium a very limited longevity pay plan. That said, we have entered into a contractual agreement with the state of Nebraska based upon the statutory authorization found in Sections 81-1369 to 81-1388, also known as the State Employees Collective Bargaining Act, which purpose and legislative findings are reprinted below. And I'll let you all look at that. I'm not going to read that bold print but it does tell you that...declare that it is the public policy of this state and the purpose of the act is to promote harmonious, peaceful, and cooperative relationship between state government and its employees. Because the issue of longevity pay is a mandatory subject of collect bargaining, and given that our union has entered into a contractual agreement on behalf of 12,000 state employees with their employer, it is our opinion that the spirit of good faith bargaining, of which we conduct our contractual obligations, should give us pause to pursue a shaping of this legislative proposal. Therefore, as an organization, we have taken this neutral position on LB871. We have always encouraged our members to fully exercise their constitutional rights and responsibilities in communicating with their elected senators, and we continue to do this. That said, the Legislature's responsibility to manage the government of all correctional institutions and the youth development facilities is clearly articulated in Article IV, Section 19 of the Nebraska Constitution. State institutions: it says management, control, and government; determination by the Legislature. The general management, control and government of all state charitable, mental, reformatory, and penal institutions shall be vested as determined by the Legislature. This is in the Nebraska State Constitution, Article IV-19. You have correctly identified a management practice with regard to our state employees that has proven to be wrong and contributes to the ongoing, long-term crisis in our correctional institutions, youth treatment facilities, and regional centers. Again, while we are neutral on LB871, we are not neutral on the urgency of the issues that face Corrections and the possibility for policy or funding that could help rectify these problems. Again, we want to thank you, Senators, for your public service and we thank you for your commitment to the women and men that serve Nebraska as employees of the work force of the Nebraska state government. I'll be happy to answer any questions. Thank you. [LB871]

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SENATOR STINNER: Questions? Senator Bolz. [LB871]

SENATOR BOLZ: You heard the Director's intention to continue the pay for performance plan. I'm curious, how have your members responded to that plan and what would your members say about seeing those initiatives moving forward? [LB871]

JOHN ANTONICH: The plan that came out a couple of months back, a couple of months ago, the longevity or the recruitment for the one facility has caused nothing but angst with our union members. Again, you've heard testimony. I don't have to keep repeating it. But if you're new, you get \$2,500. If you've been there for a long...for six weeks or six years, you get nothing. The merit pay, I've just recently had Director Frakes send me a little publication of that. The union had nothing to do with that. That was Director Frakes and the department. And so I am really in a blind on a lot of that. And I don't like that, but it's not my purview. They have the right to do merit pay. I think with a little bit of professional courtesy, they could have shared it with us. And again, our position would have been all ten institutions around the state deserve something, not just two correctional facilities. And again, you've heard some testimony, Senator Bolz. Some of our workers feel that a lot of these county institutions they're competing against, some of them quit and go to work there and make more money. That's a sad indictment on the whole situation. [LB871]

SENATOR BOLZ: I don't want to put words in your mouth, but is it a fair thing to say or to think that the pay for performance plan doesn't negate the need for or request for longevity pay in terms of the interest of your members? [LB871]

JOHN ANTONICH: Well, I think they deserve longevity. I would like to see the pay for...I'm really not...I'm not up on it. Again, the union had nothing to do with the recent merit pay and the recruitment bonus, so I really don't know enough to answer your questions on that. I wish I could. [LB871]

SENATOR BOLZ: Uh-huh. But you haven't heard from your members that they think... [LB871]

JOHN ANTONICH: Oh yes, I've heard from our members. They don't like either one of them, particularly the \$2,500 recruitment bonus. That is just a sore subject, especially at Tecumseh. Early on we had members who had six weeks, seven weeks, eight weeks say, where's mine? How come I don't get it? As of late, we've had people with three years, four years, five years say, where's mine? How come I don't get it? [LB871]

SENATOR BOLZ: Uh-huh. [LB871]

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JOHN ANTONICH: And I hate to say this but I have to tell them, I don't know, call the Department of Corrections and ask them. I just think that's a wrong way to do business on that particular issue. [LB871]

SENATOR BOLZ: Okay. What I'm trying to ask is, even with the pay for performance plan, you're still hearing interest from your members in longevity pay? [LB871]

JOHN ANTONICH: Oh, absolutely. And again, I think Senator Stinner asked a while ago, I mean we have people in all agencies across the state who feel left out because there's people with 10, 12, 15 years in Health and Human Services, with 25 and 30 years, and a new person coming on makes just about the same salary. And most businesses don't operate that way, to my knowledge. [LB871]

SENATOR BOLZ: Thank you. [LB871]

SENATOR STINNER: Let me ask you this. Have you...has anybody looked at other states and what the pay scale is and if they have the same type of turnover we had, the same vacancies we have? Or is there other states that don't have that and why can't we take a look at what they're doing correctly? [LB871]

JOHN ANTONICH: Well, that's an excellent question, Senator. Let me say this: Before we start our negotiations, by the collective bargaining statute, we're required to do an array. And the union and the state go to other states that they select as their array and we use those for comparables, and we've been doing that for a long time in this state. And I'm sure the hard job that these folks do in corrections is unique around the country, but I know there are states that seem to retain a little bit more. Again, I haven't done a state-by-state analysis. Maybe Doug Koebernick could speak to that and he would be probably the expert that I would defer to on that question. But again, retaining people is tough to do. It's a hard job, the pay is low, the hours are long, and the stress is just unbelievable. [LB871]

SENATOR STINNER: I'm still concerned about not only the pay side but the mandatory overtime. [LB871]

JOHN ANTONICH: Oh, I am too. [LB871]

SENATOR STINNER: There isn't any way I'd work under those conditions. [LB871]

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JOHN ANTONICH: No. And, Senator, I've been here since October and I've gotten calls every week from the media, whether it be the TV stations in Omaha, the newspaper in Lincoln, and what I've told them all is I'm not going to negotiate, in reference to Mr. Wood and Mr..., I'm not going to negotiate my contract with the media. But I've also told them a person working 8 hours...and they don't work 12 hours anymore. It's 14, 16. The person working 8 hours versus the person working 16 or 18 is, in my mind, is going to be safer for that institution. He's going to be...he or she is going to be sharper mentally and physically. And quite honest with, I don't know how people can work 16, 18 and just keep doing it and doing it. It's really a wear on them mentally and physically. [LB871]

SENATOR STINNER: Well, especially when you consider the fact they're probably driving an hour to get there and an hour to get home. [LB871]

JOHN ANTONICH: That could be. That could be, yes. [LB871]

SENATOR STINNER: So we've defined a problem. The union is obviously...they've got a contract. They're going to go two years, is what I hear. So if we defined a problem in the middle of the contract, is there a way of opening that contract back up (inaudible)... [LB871]

JOHN ANTONICH: There is. Both parties would have to agree to it. And when I first testified before Senator Ebke's study group several months ago, she insisted that I open the contract with...especially with Corrections, with Director Frakes, and I assured her I don't have that power. I cannot take a bungee cord and put it around Mr. Woods' neck or Director Frakes and make them do something that by contract they don't have to do till July 1 of 2019. Now... [LB871]

SENATOR STINNER: I thought the Governor actually tried to do that. [LB871]

JOHN ANTONICH: Well, what you all do with the Governor is your purview. I mean that's not mine. [LB871]

SENATOR STINNER: I thought the Governor had tried to do this with the union and the union did not want to negotiate. [LB871]

JOHN ANTONICH: I'm not aware of that. I've been here since October, sir. [LB871]

SENATOR STINNER: Okay. Well,... [LB871]

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JOHN ANTONICH: Thank you for your questions. [LB871]

SENATOR STINNER: Yeah. It's very...this has been very frustrating and has been over a four-year period of time that I've been here, continuing. It's just a continuing saga and nobody wants to stand up and do something that I think could be proactive in this. But anyhow, any other questions? Thank you. [LB871]

JOHN ANTONICH: Thank you, Senator. [LB871]

SENATOR STINNER: Anybody in the neutral capacity? Seeing none, Senator, would you like to close? Senator waives her closing. This concludes our hearing on LB871. [LB871]