

Transcript Prepared by Clerk of the Legislature Transcribers Office
Business and Labor Committee December 12, 2019

M. HANSEN: Welcome, everyone. I think we're going to go ahead and get started as soon as I get the thumbs up. Perfect. All right. Good morning and welcome to the Business Labor Committee. My name, Senator Matt Hansen and I represent the 26th Legislative District in northeast Lincoln. I serve as the Chair of this committee. We're going to start off today having members of committee and committee staff do self-introductions, starting my right with Senator Crawford.

CRAWFORD: Good morning. Senator Sue Crawford. I represent District 45, which is eastern Sarpy County, Bellevue and Offutt.

TOM GREEN: Tom Green. I'm legal counsel for the committee.

SLAMA: Julie Slama, District 1, which is southeast Nebraska.

KEENAN ROBERSON: Keenan Roberson, committee clerk.

M. HANSEN: Thank you. This afternoon, I'm sorry, this morning we will be--

TOM GREEN: Nope.

M. HANSEN: Thanks, Tom. [LAUGHTER] This morning, we will be hearing three interim studies starting with Senator Bolz's LR192 to examine work force development initiatives. Then Senator Cavanaugh's LR130 examining-- to examine existing antidiscrimination employment-related laws, and wrapping up we'll have a brief update by the State Fire Marshal and our legal counsel on the occupational licensing review process on boiler inspectors as part of our LR106. If you plan on testifying today, we ask that you fill out one of the testifier sheets and hand it to Keenan when you come up to testify. We ask that you begin your testimony by giving us your first and last name and spelling them for the record for our transcribers. We'll ask that you limit your testimony to 5 minutes and we'll be using the light system. So when you see the yellow light, that means you have one load-- one minute left. And then when the red light comes up, that'll be time for you to wrap up your testimony. I would like to remind everyone, including senators, to silence your cell phones. And with that, we will invite Senator Bolz up to introduce her LR.

BOLZ: Good morning. Happy to be here this morning to present LR192 to the very best members of the Business and Labor Committee. Glad to see you all this morning. We introduced LB-- LR192 in part to have an

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opportunity to tell you a little bit formally and on the record in a hearing format about some of the work of the Economic Development Task Force. And Senator Hansen has been a valuable member of the Economic Development Task Force. Senator Crawford chaired the task force before me and its important work to continue an important conversation to continue to have across committees and in the next legislative session. In fact, the Nebraska Chamber of Commerce President Bryan Slone has called work force development as the gorilla issue in the-- in the state in terms of growing and sustaining our economy. So a couple of quick facts and then a very brief report out from the Economic Development Task Force before I turn the microphone over to some of our invited testifiers today. A couple of quick statistics to set the framework. One of the important statistics I'd like to share with you is that the state of Nebraska is ranked number 39 in-- 39 in the country for a low growth rate for the population of people ages 20, 25 to 29. And that's a really important indicator because it's an indicator of those young professionals who are going to grow and sustain our communities. In addition to not attracting and retaining young professionals, we also have difficulty finding workers in some of our most important industries. According to the Department of Labor, 78.5 percent of construction companies report having difficulty finding workers; 77.5 percent of transportation companies; 76.3 percent of business management companies; 74.8 percent of manufacturers; and 74.2 percent in healthcare. So across some of the industry drivers in our state, we're identifying a real challenge in finding the people we need to grow our businesses. Why? What are those challenges? Again, according to the Department of Labor, those challenges include not enough application, simply not enough interested people applying, a skill mismatch, a lack of experience, and then a poor work history. And so how do we move the dial on those issues? How do we change that scenario for our state? The Economic Development Task Force is still finding-- they're finalizing our recommendation. I won't speak for the task force as a whole until we've got those recommendations on paper and agreed to, but I think it's fair this morning to report out some of those ideas and themes and then turn the microphone over to some of the experts who can talk about those ideas and themes in more depth. So the four things that we're talking about from a work force development perspective in the Economic Development Task Force are first a longitudinal data system so that we can work across systems and over time to identify where the gaps are in our education and skills training initiatives statewide and to build on our strengths. So that's the first issue or item. The

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second is supporting apprenticeship programs. And what we discovered in the Economic Development Task Force was that those apprenticeship programs are really nice match between the skills that employers need and the skill sets that people have and need to improve in order to contribute more to the manufacturing or business economy. The third is looking at scholarship programs for what we call H3 jobs: high demand, high skill, high need jobs. Those scholarship opportunities can help open the doors to more students, especially nontraditional students or returning students, students who are low income who might not otherwise have the opportunity to pursue those H3 jobs that are really going to contribute to the economy. In particular, if we are able to support some of those jobs at the community college level, we know that the community colleges across the state tend to keep those students in the community in which they attend on their higher education program. And the last is how do we retain workers and students once we've educated and trained those folks? And we're going to have some folks reflect on that more broadly and more generally, but I think we can look at some initiatives like student loan repayment, building on the Rural Health Opportunities Program, and other strategies like childcare to try to help folks, especially young professionals, stay in our communities. So I'm-- I've already talked more than I should. I did do invited testimony this morning and I do have a couple of folks who have other obligations, so we'll hear from President Fritz from the university system, Sue Martin from the AFL-CIO, Greg Adams from the Nebraska Community College System, and Sarah Moylan from the Omaha Chamber. Happy to take your questions.

M. HANSEN: Thank you. Are there questions for Senator Bolz? All right, seeing none, thank you. We'll invite up our first testifier and I'll note our Vice Chair, Ben Hansen, has joined us. Would you like to introduce yourself.

B. HANSEN: Senator Ben Hansen, District 16, which includes Washington, Burt and Cuming Counties. Sorry I was late. I blame Omaha completely.

M. HANSEN: Welcome.

SUSAN FRITZ: Thank you so much, Chairman Hansen, Senator Bolz and members of the Business and Labor Committee. Good morning. I'm Susan Fritz, S-u-s-a-n F-r-i-t-z, and I'm interim President of the University of Nebraska. I'm pleased to be here to update you on our collaborative efforts to create a statewide longitudinal data system that will help us track student outcomes from pre-kindergarten to the

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work force. Senator Bolz, let me first thank you and the committee for your leadership and attention to the critical work force development issues facing our state. I think all of us in this room share a goal of growing a competitive economy for Nebraska. We appreciate your forward thinking in this area and your recognition that higher education is an important part of the conversation. A key part of this goal, in my opinion, is building a rich and robust data system that would give us reliable, accurate, real time information about our students progress throughout the educational continuum. The thinking is simple. With good data, we can make good decisions. With a statewide comprehensive set of data about what's happening to our students we will be better informed about how to spend our time and energy in improving outcomes for our public education system, and successfully transitioning our young people into Nebraska's work force. And that is a win for students, policymakers and our state. A key reason why a longitudinal data system was a major recommendation of the blueprint Nebraska Task Force that represented diverse sectors across the state. I don't mean to suggest that good data doesn't exist today. Nebraska's public education institutions have shared data informally for quite some time. We are close partners with any number of efforts to improve student experience and to help meet your objectives for efficiency, effectiveness and economic growth. But recently we have put more teeth behind our collaborations. The University of Nebraska, Nebraska State College System and Nebraska Community Colleges, together with the Department of Education and Department of Labor, have agreed to work together to create a Nebraska Statewide Workforce and Educational Reporting System. NSWERS is envisioned as a comprehensive, sustainable, robust data system serving the needs of the people of Nebraska. It would give you, as policymakers and those of us in education, the information we need to assess what we're doing well, where we need to improve, and what's happening to our students as they move from pre-K to elementary school to middle and high school and through college and into the work force. I could not be more pleased to be working hand in glove with our partners in public higher education and state government on this important initiative. NSWERS will ensure that we're all working from the same set of facts as we gauge the student experience and assess work force development. For example, a statewide longitudinal data system would allow us to provide work force outcomes data to postsecondary institutions to drive program improvement and tailor student recruitment efforts. To guide students on what courses to take in high school and college in order to be successful in specific jobs.

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Provide comprehensive data about student and work force results to policymakers to inform decisions and resource allocation. To track work force outcomes. In order to better align our program of demands in the labor market and to track student outcomes by race and ethnicity, gender and income in order to identify and close educational attainment gaps. And the list goes on. We have talked extensively with the Governor and the Legislature about the shortfall of workers to fill high skill, high demand, high wage jobs in our state. There will be 34,000 annual openings in those H3 jobs in Nebraska alone. A longitudinal data system would paint for us a clearer picture of what majors lead to H3 careers and help us tailor our pipeline programs accordingly. We envision that NSWERS will be hosted at the University of Nebraska, overseen by an executive council and staffed by a small team of researchers, data analysts and other support staff. An advisory committee of external individuals will help guide the team's work ensuring that NSWERS is meeting the data needs of the diverse stakeholders we serve. While statewide longitudinal data systems are generally considered a best practice, only a handful of states have successfully stood them up for the long term. Shortages of staff and lack of sustainable funding are common challenges, and there is certainly a conversation we would have with you going forward. But even though a data system would require hard work, a clear strategy, an investment of time and resources by a variety of partners, including the philanthropic community, we believe it's well worth it. We have the responsibility to give our elected leaders the very best information possible to help inform their decisions. And we owe our students nothing less than our best efforts and rigorously measuring our work so that we do everything we can to prepare them to be successful. On behalf of the NSWERS partners, we thank you again for your engagement on these issues and we look forward to working together on behalf of students and our state. I would be pleased to answer questions.

M. HANSEN: Absolutely. Thank you. Further questions from committee members. All right, seeing none, thank you for your testimony.

SUSAN FRITZ: Thank you.

M. HANSEN: Hi. Welcome.

SUSAN MARTIN: Good morning. Good morning, Senator Hansen and members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, and today I'm testifying on behalf of the

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Nebraska State AFL-CIO regarding LR192. Ask any construction contractor or CEO what keeps them awake at night, and the answer more often than not is whether they will have enough workers to staff their jobs. In draft our construction trades say the biggest issue they're dealing with is a lack of workers to meet the demands of the jobs. There's plenty of work, but there's not enough workers. Barriers we have identified begin at the high school level. The lack of information on options for students is a major contributor. More focus at the high school level or even the junior high level for options other than college should be a greater focus. For so long college degrees have been the push of high school counselors, and it is increasingly apparent that a college degree and debt isn't the only option available to our students. By going through an apprenticeship program, these young people do not only earn while they learn, but they come out of these programs with a higher earning job and no college debt. Apprenticeship programs can be life changing, helping individuals to start a pathway to careers with good wages, benefits, and opportunities for advancement. Apprenticeships not only benefit workers, but they're also a proven model for businesses to train and retain highly skilled workers and enhance the diversity of their work force. Women have the skills to perform and excel in nontraditional jobs, but also face barriers such as fear of acceptance on the job, fear of discrimination in the form of stereotyping or sexual harassment. Single mothers face challenges and obtain quality childcare if they're working through the day and attending classes at night. Partnering with organizations that provide a broker affordable childcare resources would be valuable. Another issue we have is language barrier. Many times employers were not-- will not allow employees to work on a job site if they're unable to communicate. For example, our asbestos workers have a hard time finding people for their particular trade who speak English. A contractor won't employ those who cannot speak English because it is, of course, a safety issue. Although classroom training and on the job training are provided-- or are provided-- are provided to our apprenticeships, in many cases, the tools of the trade is the responsibility of the apprentice. This can get costly depending on the trade and can be a burden or a hindrance for completing the program. We would like to see legislation implemented to assist in recruitment of young workers into apprenticeship programs. Last year, Senator Morfeld introduced legislation to give a tax incentive to businesses to develop apprenticeship programs, which is a good thing, but we would like to see some type of legislation to assist in providing financial

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assistance to those in current registered apprenticeship programs. Although they are working, it is typically at 50 percent or less pay than a journeyman and they are required to purchase their own tools. Some registered apprenticeship programs have day school and the time that apprentices are required to be in school is not paid by their employer. Providing a stipend to supplement that income or to assist in purchasing tools required by the trade would be an excellent recruitment tool. We would like to see the public schools develop more partnerships with our construction trade apprenticeship programs. I think a lot of the effort has been with community colleges, which I'm not saying isn't a good thing, but our construction trades also have programs in place that lead to high paying, successful-- successful career pathways for students. We would be happy to work together to promote more partnership in this area. Finally, we thank Senator Bolz for being so diligent in promoting work force development. Several pieces of legislation have been introduced in the past, particularly by Senator Bolz, and it goes nowhere. I think our legislators need to have a better understanding from its business and work force on what we can accomplish together. A good educated work force not only helps our employers, but our community and our economy. Our role will be concentrating on the future of our work. We, as a state and a nation, should be focusing on improving the lives of our workers, which in turn benefits the employer and the economy. Providing access to training and educating our students on options other than a college education should be a priority. Not everyone wants to go to college or can afford to go to college, and knowing that there are other options available to them will ensure a skilled work force. Business and labor should be working together on policy, not against each other. So again, we have the need. We have the programs we need to concentrate on recruitment and sustainability. Thank you for your time today. I would be happy to answer any questions if you have any.

M. HANSEN: Thank you. Are there questions from committee members? All right, seeing none, thank you for your testimony. While our testifier is coming up, I will note that Senator Lathrop has joined us. Would you like to give an introduction.

LATHROP: Yes. Sorry I was late. Steve Lathrop, District 12. I got held up in my previous meeting in here.

GREG ADAMS: I'm glad you made it.

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LATHROP: Glad I didn't miss that.

GREG ADAMS: Good morning, Senator Hansen, members of the committee. My name is Greg Adams, G-r-e-g A-d-a-m-s, executive director of the Nebraska Community College Association. Senator Bolz has asked me to speak a bit about H3e occupations and potential of scholarships here. Let me begin in this way. And it's probably with information that you've heard over and over again but I think it's-- it's-- it's worth repeating. We're in a knowledge-based economy and the Lumina Foundation Georgetown Center tell us that in the year 2020, nationally, about two-thirds of our workers are going to need to be educated beyond high school. I didn't start listing specific things, but to have education beyond high school, they're going to be necessary. That leads us into what we call these H3 positions. High wage, and the way that we calculate that in Nebraska, we say that if the annual wage of the occupation pays better than the average in a region, on a regional basis of the same occupation, then it's-- it's [INAUDIBLE]. It's-- it falls into the H3 category. High demand, if there is an increase in openings on an annual basis within that occupation. And high skill. And high skill means education to do the job beyond a high school diploma. Now it may be a certificate in welding. It may be a credential to drive a semi. It may be a doctoral degree or something beyond that, or it may very well be long-term training that's provided by apprenticeship, but something beyond high school is going to be necessary. I did a quick look before I came over at the Nebraska Department of Labor's Web site and looked at the top 10, H3 jobs and I say 10, but believe me, the list is much longer than that. And by quick calculation, I estimated nearly 200 different occupations in Nebraska that could be qualified as H3. The ones I was looking at were-- met that requirement primarily because the number of openings. So I looked at the top 10 and currently in Nebraska in those top 10 occupations, there is a little over 12,000 openings, job openings. Average salary, as I put them together very quickly, ranged over \$62,000 annually in those jobs. And they all required education beyond high school, beyond that high school diploma. Digging just a little bit deeper, if you look at the Lumina Foundation data and they look at Nebraska, currently in Nebraska, if you look at our 25- to 65-year-old potential work force, about a little over 48 percent, 48.3 percent of that work force currently has some education beyond a high school diploma and can fit into those H3 jobs. Now, if you stop for just a second, think about that. And by the way, that's been increasing in Nebraska. There's-- there's been an increase which-- and

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we do top the national average, but not by much. The fact remains we're going to have to make that 48 percent continue to grow to fill these kind of jobs. And those jobs are the ones that are growing and are good for the state. But that leaves that 51 percent out there and not educated to the level that's necessary, maybe to a ninth grade education, maybe nothing more than ninth grade, and a little bit beyond that, maybe a high school diploma or its equivalent, a GED. Now, I'm not going to sit here and tell you that there's a silver bullet to this. I don't believe there is. There may be silver bee bees to getting more people into these H3 jobs. It's guidance counselors. It's parents. It's employers themselves talking to prospective employees and students, whether it's from college right on down into the high school, probably even the junior high about the potential experience that's there. The other silver bullet, or silver baby, might be scholarships. We currently have two scholarship programs in Nebraska. One of them, the Nebraska Opportunity Grant. It is not targeted to the H3 jobs. It's for low-income students, all of our higher education institutions, but it's not targeted to H3. We also have the GAP program and the GAP program is potentially very successful. What the GAP program is, very simply, currently if-- if-- if you qualify for Pell Grant, that means your-- your income qualifies you for Pell. Under the federal Pell program, you have to be a full-time student. You have to have a degree out there that you're-- that you're aiming for. And you have to be taking 4 credit classes and so much per semester. Well, that doesn't always fit. You know, we look at our community college students. We've total headcount throughout all 6 community colleges, about 60, little over 60,000 students. Two-thirds of those are part-time, average age 27. We have a lot of part-time students who are trying to upscale and they're not going to qualify for Pell money. The GAP program tries to catch that group, tries to catch it. Now, the GAP program, I would tell you, is more directed at the H3 world. I'll give you two examples how the GAP-- how the GAP is-- has worked. We had a lady here in Southeast Community College, 70 years old. Her husband passed away of cancer, left a lot of medical bills to be paid. She was a registered nurse, but had let her license lapse. She needed to go back to school to get her license so she could go back to work and pay the bills. She didn't have the money. GAP financing stepped in. It pays for licensure. And she was able to get back-- back on the-- on-- on the work rolls as a nurse. In the Hastings, Kearney area there's a program out there for parolees and people out on probation. And they use, through central community college, use some of the GAP finance money for those persons to learn

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some construction skills, specifically in concrete. So there's that GAP. But I'm not sure that, you know, you can sit here and say, well, we've got opportunity grant money and we've got GAP money, but there still may be opportunity for scholarship opportunities that's more directed at the H3 jobs and maybe even-- even intentionally directed at trying to catch some of those students that are not Pell eligible that just fall over the line. Parents make a little too much money or they make too much money. I think there's opportunities out there. I really do. I'd take any questions. I've already expired my time, which is not unusual.

M. HANSEN: Absolutely. Are there questions from committee members? Seeing none, thank you for your time.

GREG ADAMS: Thank you.

M. HANSEN: We'll invite our next testifier. Hi.

SARAH MOYLAN: Good morning. Chairman Hansen and members of the committee, I am Sarah Moylan, that' S-a-r-a-h M-o-y-l-a-n, senior director of talent at the Greater Omaha Chamber, and I am here today representing not only the Greater Omaha Chamber, but also the Lincoln Chamber of Commerce, as well as the Nebraska Chamber of Commerce and Industry. Good morning. First, let me say how much the Chambers have appreciated the leadership of Senator Bolz on work force issues. Her support has been tireless and she's been an advocate for work force and talent throughout her legislative career and we are very grateful that she has always included us in her efforts. We are pleased to join the other testifiers today as part of a working group on talent and work force issues during this interim. As you may-- as you have already heard, there are many different components to our work force challenges and no shortage of solutions. Our goal today is to emphasize two policy considerations and then offer a business community list of work force initiatives that we are prioritizing and hearing from our members on a regular basis. The first consideration is that as employers, we are always focused on making sure our efforts and thus the efforts of the Legislature are targeted enough so that we can actually effect change that we need to see happen. So there's a lot of options out there, but we're pretty aligned on being focused on what's going to actually effect some change. It also seems like work force generally takes a position a few items down on the priority list. There's a lot of priorities, but we are here today to tell you that we need to address these challenges with an urgency that we

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haven't before. Fewer people available combined with low unemployment have created almost a crisis scenario. There is not a business in Nebraska who would not say today that availability of a skilled work force in some way or another is their greatest challenge. As legislatures, there's always a growing list of priorities and options available for proposals. And so beyond focusing policies and instilling a sense of urgency, we would like to highlight a few priorities of ours for you. First, scholarships. And you've heard a little bit about this, but ensuring Nebraska's best and brightest can attend postsecondary institutions in our state is an important competitive advantage in meeting our work force challenges. Our postsecondary institutions are an asset in our state and their growth means we grow. The Nebraska Opportunity Grant is a successful model in connecting scholarships more broadly to work experiences with a focus on high wage, high skill, high demand is another aspect that the Chambers do support. We need to incentivize these young people to continue their lives and their studies within our state. Second, customized job training. This is really popular in our businesses. Love customized job training. You know, I've never worked in a setting where I'm responsible for a large work force that needs to be consistently up-skilled in order to meet the ever-changing demands of the environment that they're placed in as well as the changing demands of technology and innovation. But that's what many of our businesses face on a regular basis, and they use customized job training. Nebraska has seen success with skill development through this program. This fund is fully utilized every year and makes a significant impact. It up-skills our workers. That is a very good thing. The Chambers hear repeatedly more resources allocated to this fund would be a critical step in addressing work force challenges and we do support this. This fund will get used and used in the right ways that see an impact in our businesses. Apprenticeships. As we just heard about, in the same vein there are excellent examples of apprenticeship programs and we're seeing a lot of advancement across our own state in apprenticeships with community colleges as our partner in this. Funding for apprenticeship programs, initiatives that aggregate training opportunities and efforts to maximize outcomes are a priority of ours. Apprenticeships work because they give people experiences. They put little tentacles inside of their lives so that they stay in that industry. They get skilled in that industry and they go to work for employers that have invested in them. Last but not least, childcare. Personally, I care a lot about this. Childcare expenses are high. I have two little kids and my husband and I spend about \$3,200 a month

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on childcare. We heard some interesting feedback from employ-- from an employer this fall, an employer that is homegrown, Sojourn. It's a company out of Omaha. They have offices now across the globe. A big presence in the Bay Area in San Francisco and over 200 jobs still in Omaha, and they were talking about how childcare impacts their Nebraska work force. This is a-- this is an asset and this is a really big strength in our state because we have a high birth weight-- rate and we have a lot of people who choose to start a family and at times are working as they're supporting their family. That is an asset of ours where we, you know, have this work force and we have this kind of pipeline of talent that is in our state, but that increases the costs for our employers to support this work force in Nebraska, because we have a higher birthrate than in other places. So Sojourn was talking about how they have 200 workers in their Omaha office and last year they had over 30 births within that work force. And that childcare is a big issue they talk about with their employees. So this is another concept that we have supported is moving-- excuse me. This deserves to be considered as part of any work force solution, incentives and tax credits that support businesses to assist employees in this area is really helpful. And it is, again, a strength of ours as Nebraskans. Another concept we've supported is moving public benefit cliffs to a more gradual step down in assistance, as well as modifying qualification of these programs too. This affects our workers and it affects our employers as well. So thank you for the opportunity to testify and I'd gladly answer any questions.

M. HANSEN: Absolutely. Are there questions from committee members?
Senator Hansen.

B. HANSEN: Thank you, Chairman Hansen. Sounds weird saying that, but thanks for coming, Sarah. I appreciate it.

SARAH MOYLAN: Yeah.

B. HANSEN: I've just got a quick question for you. Are you familiar with the ImagiNE Act, the new incentive program that's trying to get it through Legislature currently to replace the old one?

SARAH MOYLAN: Yes, sir.

B. HANSEN: LB720. What are your thoughts about-- could we talk about work force development? The one kind of beef I have with the ImagiNE Act is the fact that it incentivizes larger companies and we tend to

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forget about kind of the smaller businesses that are going to hire a lot of these people for work force development, a lot of the plumbers, steam fitters, electricians, the startup companies who are trying to get going like the ones you just talked about that have offices all over the globe. They at once started maybe with a couple of employees. What are your thoughts about incorporating some kind of work force development into the Imagine Act that says if you hire 1 or 2-- because I think right now, apparently it's like 5 employees. You have to at least hire 5 employees to get any kind of incentive from the state, but what about those companies who hire only maybe 1 or 2 employees and happen to be electricians or some kind of work force development that we're looking for in the state? What are your thoughts about incentivizing them into the Imagine Act to maybe facilitate some of this, you know, growing need that we're kind of looking at?

SARAH MOYLAN: Yeah. Well, I would say I'm most definitely in support of that, and I think the Chambers are in support of that if we can figure out a way to fund that. I think that we see not only small business support as helping our economies and rural communities and urban communities, but it's also a work force retention opportunity. So you give people an opportunity to start and grow a small business in a real community and that hopefully keeps some of that work force in communities of which they've started that business and helps then attract potentially new workers there as well. So I think that that's an important part of the discussion. We invest a lot in startups and we invest a lot in making sure that small businesses can grow and so that's a part of the LB720 discussion and should be.

B. HANSEN: Okay. I appreciate it. We think about needs versus wants.

SARAH MOYLAN: Right.

B. HANSEN: We all want a big Google here. We all want a Facebook company. We all want-- somebody is going to hire on employees, but we'd look at our wants as well. And I think sometimes we kind of forget about the wants and actually kind of stuff that we actually-- are needs, excuse me, and we actually need. I think that kind of gets lost in this discussion when we talk about incentive programs in the state of Nebraska. So I appreciate you coming here and testifying and talking about that. Thanks.

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SARAH MOYLAN: Absolutely.

M. HANSEN: Thank you. Thank you, Senator. Oh, Sarah, I had one for you. Thanks-- thanks for coming back. You mentioned the cliff effect as one of your priorities. Can you just-- kind of walk through what some of your businesses are seeing in terms of how that impacts their employees?

SARAH MOYLAN: Yeah, and the cliff effect is a complex issue, as you all know. But the challenge that we face, and other states face this as well, is that employees when they're on public assistance yet working and start maybe increasing their salary or increasing-- or even just stabilizing their lives in one way or another, sometimes they're faced with a complete elimination of those public benefits. And so it leaves them almost in a worst-case scenario than if they were still receiving that public benefit. And so that is a challenge for employers as well, because we hear from a lot of employers who provide opportunities for front-line workers and those front-line workers at times can be a pretty unstable work force. Faced with the challenge-- faced with transit challenges or maybe healthcare challenges, one of the first things that can at times happen is they maybe have unexcused absences from work and then might jeopardize their employment situation altogether. So how public benefit cliff really plays into employers is, you know, as they do training for employees, as they help these employees sometimes stabilize their lives through the AP programs or we have a program at the Chamber where we place workplace navigators within a lot of front-line work forces. If these employees are improving their lives and stabilizing their lives, at times the public benefit cliff can completely kind of derail that positive pathway because they kind of have the rug pulled out from underneath them if they reach certain thresholds of, like, salary increase. So we've heard from employers that say they've had increases turned down by employees because simply the cliff, they would hit the cliff or they would hit the max of what they would be able to earn and lose all their benefits. So it's something that needs to be addressed because it's not really a solution that's working for very many and probably perpetuating the problem.

M. HANSEN: All right. Thank you. All right. I think you're off the hook now.

SARAH MOYLAN: Oh, thank you. Thank you for your time.

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M. HANSEN: All right.

BOLZ: Should we call [INAUDIBLE] testimony?

M. HANSEN: Sure. Was there any uninvited testimony? All right. Perfect. Welcome back, Senator Bolz.

BOLZ: Thank you. I'll be very brief. I just want to make a brief request to the Business and Labor Committee. The Economic Development Task Force report will be completed by the end of the year. I know you get a lot of paper. I know you get a lot of reports. If I could just make a personal request to take a look at that report when it comes out. It's a bipartisan cross-committee report. I think it's making some excellent recommendations. If we can get the Business and Labor Committee on the team with some of those initiatives, I think it will help move the tide.

M. HANSEN: Thank you.

BOLZ: Thank you.

M. HANSEN: Are there questions for the senator? All right, seeing none, thank you very much.

BOLZ: Thank you.

M. HANSEN: All right. I will note we did get two letters to the committee on LR192, one from Terry Streetman with Alzheimer's Association of Nebraska, and one from Elizabeth Everett from First Five Nebraska we've just passed out. And with that, we will close the hearing on LR192 and we're going to move over to LR113. This is by Senator Cavanaugh. She had a conflict and was not able to attend today so we're going to let Brandon, her legislative aide, to open.

BRANDON LANGLOIS: Good morning, Chairman Hansen and members of the Business and Labor Committee. My name is Brandon Langlois, B-r-a-n-d-o-n L-a-n-g-l-o-i-s. I'm introducing LR113 on behalf of Senator Cavanaugh, who represents District 6, west central Omaha. LR113 is an interim study to examine the effectiveness and scope of Nebraska's employment antidiscrimination laws. Senator Cavanaugh extends her gratitude to Chairman Hansen and the Business and Labor Committee for taking time to take a closer look at our state's existing laws that prohibit employment discrimination on the basis of race, gender, religion, nationality or any other protected class. It

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is Senator Cavanaugh's intent to gather information about the effectiveness of current antidiscrimination laws and examine if there's a need to strengthen the language of those laws to be more extensive. Today, you'll hear from several individuals who will speak about Nebraska's current protections and the experiences of minorities seeking employment in our state. Thanks for your time this morning.

M. HANSEN: All right. Thank you, Brandon. With that, we will invite up our first testifier for LR113.

ABBY SWATSWORTH: Thank you, Chairman Hansen, members of the committee. My name is Abby Swatsworth, A-b-b-y S-w-a-t-s-w-o-r-t-h. I am the executive director of OutNebraska, a statewide organization celebrating and empowering gay and transgender Nebraskans. Whoops.

_____ : We have a little thing back here.

ABBY SWATSWORTH: That's OK. OutNebraska believes that all hardworking people, including those who are lesbian, gay, bisexual or transgender, should be treated fairly and equally and should have the opportunity to earn a living and provide for themselves and their families. The Movement Advancement Project estimates there are 55,192 gay and transgender adults living in Nebraska. Despite the growing social acceptance regarding gay and transgender identities, gay and transgender people still constitute a stigmatized group and as such face discrimination and marginalization at multiple levels. In a study by the University of Nebraska Omaha researchers, a majority of study participants reported they had experienced at least some discrimination because someone perceived them to be gay or transgender. According to the Williams Institute, 1 in 4 LGBTQ employees report experiencing employment discrimination in the last 5 years; 52.8 percent of LGBTQ employees report that discrimination negatively affected their work environment. I have provided some additional statistics in the workplace equality fact sheet. As you know, the laws protecting Nebraska employees from discrimination does not include protection for gay and transgender employees. I wish I had more Nebraska specific data to share with you. However, without protection, most gay and transgender employees who experience discrimination do not feel they have anywhere to report it. Therefore, accurate data is difficult to gather. What we have are anecdotes. In one instance, a couple living in the Panhandle reached out to us. They were married and working at food service in a franchise of a national chain. They'd been employees in good standing for a number of years.

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While their jobs were not high paying, the work was steady and they managed to make ends meet. The restaurant hired a new staff member who began to harass the men after learning that they were married. The men did not want to leave their jobs, but were unsure what their standing was, and the treatment by the new staff member was only escalating. We recommended they contact the federal EEOC. We hear on a regular basis that gay and transgender people, especially those living outside the metro areas of Lincoln and Omaha, are living in fear of being outed in their communities. One person contacted us to share that they had organized a private face script group of gay and transgender people in their rural community, but the group had not advanced because they were afraid to meet in person. What these anecdotes illustrate for us is this, in smaller communities where jobs are scarce and without protection successfully hiding your identity can be a matter of meeting your most basic needs for food and shelter. Multiple studies have shown that the stress of hiding can lead to poor health outcomes for gay and transgender people. Community members experiencing poor health are less productive, which impacts the economy of their communities and of our larger state. As a result, it is clear to us that current antidiscrimination statutes in Nebraska are not sufficient. Most Nebraska employers want to do the right thing. The problem is that there will always be employers who only do what's right when the law requires it. For those times when good judgment breaks down, we need clearly stated statutes so that all employees are hired, fired, or promoted based on their qualification, professionalism and job performance. Nothing more or nothing less. We know hard work is important to Nebraskans, including gay and transgender Nebraskans. Like you, their paychecks help put food on the table and help to build a good future for their families. It is time to hold Nebraska businesses to the simple standard of nondiscrimination so that gay and transgender people have a fair chance to work hard and provide for their family. Finally, 51 percent of gay and transgender people have considered moving to a new location to live in a community more accepting of all social-- sexual orientations and gender identities. We have a multitude of stories involving younger workers leaving the state. We agree with the newly released Blueprint Nebraska, that Nebraska must do more to retain and attract the best and brightest young work force. We believe that updating nondiscrimination statutes is one tool that can make a difference. Thank you for your time today. I'm happy to answer any questions.

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M. HANSEN: Thank you, Ms. Swatsworth. Are there any questions? Senator Slama.

SLAMA: I just have a quick clarification question. First of all, thank you so much for coming out and testifying today. That last statistic you reference, the 51 percent of gay and transgender people considered moving to a new location. Is that Nebraska based or is that nationwide?

ABBY SWATSWORTH: That's nationwide.

SLAMA: OK, I just wanted to clarify that.

ABBY SWATSWORTH: Yeah, there's very little research on Nebraska specific LGBTQ communities. No one is currently funding that. And so it's been difficult to get Nebraska specific, although we have no doubt that the national statistics they hold true for Nebraska.

SLAMA: Thank you.

M. HANSEN: Senator Lathrop.

LATHROP: I do have a question for you. I-- it's interesting that this bill would follow the last one when we're talking work force. And I'm curious, we watch a lot of our high ACT students leave the state and go someplace else. Not all of them stick around and go to the University of Nebraska or Creighton or some of the university opportunities in state. Can you talk about when these-- when these young people leave to go to college and whether they consider coming back to Nebraska or go into a different state or staying in a state where they've been in school, to what extent is this a consideration in their decision to move back? And is it-- so Omaha has this ordinance, is that enough, or tell us why, why that isn't enough in terms of the young people because when I talked with the Chamber of Commerce folks, they talk about the necessity of keeping the 18- to 34-year-olds or getting them-- getting the ones that have been educated someplace else back to Nebraska, To what extent is this a consideration-- statewide policy a consideration, if you know?

ABBY SWATSWORTH: Yeah. Thank you for your question. So there's been some really good studies about the attitudes of millennials and Gen Z workers. They believe that everyone should be treated equally. And it is a consideration when they're considering where to begin their careers. Omaha statutes are wonderful, but they really do very little

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to uplift the brand of the entire state as inclusive and welcoming, and I think that is something that younger workers are looking at. There is an expectation that everyone will be treated equally. And I think young workers are looking at that issue overall.

LATHROP: It to me-- I look at this, I have four daughters, they're all-- the oldest is 35, the youngest is 25. They've gone to college-- in some cases, 3 of them outside the state. And that-- those-- that age group, this is like why are we worried?

ABBY SWATSWORTH: Right.

LATHROP: This is a big deal to them. How their friends that are gay or LGBT, how they're treated, whether they're welcome, whether they're discriminated against is a big deal because they don't understand how that can even happen.

ABBY SWATSWORTH: Right. A lot of them believe it's already law and that's one of the reasons why it can be difficult to help the laws get changed because they just think it's a non-issue. And why are we even talking about this? Of course, everyone should be.

LATHROP: But this really is-- I'll say this and then I'll get off my soapbox.

ABBY SWATSWORTH: Okay.

LATHROP: This really is what Blueprint Nebraska was talking about, which is young people need to see this as part of the culture in the state if they're going come back here or stay here.

ABBY SWATSWORTH: We think so.

LATHROP: And it's not enough to have Omaha isolated. Omaha, big city Omaha, relatively speaking, big city Omaha on board, but that it is a statewide reputation thing that can affect people's willingness to come back to Omaha.

ABBY SWATSWORTH: Yeah, back to Nebraska. Yes, Senator, we agree.

LATHROP: All right, thank you.

ABBY SWATSWORTH: You're welcome.

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M. HANSEN: Thank you. Any other questions from committee members? Seeing none, thank you for your testimony.

ABBY SWATSWORTH: Thank you.

M. HANSEN: We'll invite up our next testifier. Hi. Welcome. Go ahead.

MARNA MAUNN: Good morning. My name is Marna Munn, M-a-r-n-a M-u-n-n. I'm the executive director of the Nebraska Equal Opportunity Commission, the agency that is responsible for compliance and investigation into allegations of discrimination into 5 different laws, 3 of which are relevant to employment, the Fair Employment Practice Act, the Nebraska-- the Age Act, we basically call it. But the Age Discrimination in Employment Act and the Equal Pay Act and I'm basically just here, I was-- I didn't prepare any remarks, but considering that this resolution falls squarely in our house, I just wanted to be available for any questions that you may have today or as the threads of this continues on past the hearing today. That's it.

M. HANSEN: Thank you. Senator Lathrop.

LATHROP: Thank you for being here. You're a-- an important resource for this conversation, I think. I'd like to ask just maybe two questions or two lines of questions. Is there federal protection at this point in time?

MARNA MAUNN: You're talking specifically with regard to gender identity or sexual orientation.

LATHROP: Yes.

MARNA MAUNN: It's a complicated question. And so I think the best thing that I could say is that we work through a work share agreement with the Equal Opportunity Commission on the federal level and they had decided at two different times, I believe technically 2012 and 2015, to extend protections to-- to this-- this group. I mean, we're talking specifically about the-- anyone who would fall within sexual orientation and gender identity by taking the approach that the word sex in the law, in our state law mirrors the federal law, but that-- the approach by the EEOC is that the word sex does cover those very-- those, I want to say variations. I think of it similarly too in our state law, pregnancy is now an explicitly and specifically protected status, but it used to be treated somewhat similarly in that it was

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under the the auspices of sex and then eventually moved into its own protected status. So I just want to give you a basis for [INAUDIBLE].

LATHROP: Yeah, you were answering my second question which is, does the protection against discrimination based upon sex protect these same individuals in their workplace?

MARNA MAUNN: I'm not really explicitly. I mean, the 8th Circuit in which we sit they've interpreted Title VII to not-- to not necessarily include those. And I think that you guys are probably aware, at least on some level, that the Supreme Court this fall or late this fall heard arguments on whether the word sex under Title VII would-- should be interpreted to include those. Otherwise, what you have is a real patchwork of places where the decisions are that it doesn't. Court decisions are in certain circuits that it does. Other places where-- not waiting to rely on interpretation of whether the word itself covers, states, municipalities, other entities have explicitly included those as protected statuses in the law. Just like pregnancy, for example, is now kind of broken out into its own. So you have places that do. In Nebraska, specifically the city of Omaha, has an ordinance that says everywhere in the city, all employers, that's a protected status there. In Lincoln, as you may have become aware in the last-- was it just 2 weeks ago, 3 weeks ago, they extended it to city employees. And then, if I'm remembering correctly, I believe Grand Island also--

LATHROP: I think Grand Island does too.

MARNA MAUNN: --has the ordinance that protects the employees of the city not all employers. Omaha, as I understand it, is the only one that has one extend beyond the employee.

LATHROP: So this case that was argued before the Supreme Court will determine whether sex includes the LGBT population.

MARNA MAUNN: I believe that's the hope. It's my understanding if things progress in their normal case, I understand they have some unique things they're facing which might bump their normal time frame, but either in February or June they would render a decision. They consolidated three cases. One-- two sets of cases were very similar in that they involved in those cases factually, particularly gay males who lost-- you know, lost their jobs or had an adverse employment action occur and they alleged on the basis of the fact that they were

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gay. The other case, the third case that got consolidated was a transgender individual who had been hired, I believe, in 2007 at a funeral home and identified as a male at that time. And somewhere around 2013 just informed the employee-- employers that they-- that she was now identified as-- identifying as a woman and that she would comply with the dress code that they had and then got fired after-- after that communication. So these-- so these cases are all combined for consideration in front of the court and under the interpretation, whether the word sex as it stands and was written in the '60s, shouldn't-- does-- is essentially, the argument is sex plus. Does it mean more than just the-- maybe the intent at the time?

LATHROP: OK. So depending on how that decision goes, we either don't need to legislate or if we want to do something about it, we'll have to if it's a-- adverse to the plaintiff.

MARNA MAUNN: That's my reading of the situation. You know, it-- it's kind of a wait and see if they-- if they interpret it to mean that, then it's decided, I think, for all of us, and no further action. If they decide the other way, or they-- they have some more nuance to decision, then yes. I think that the action would [INAUDIBLE] I think if there was anything else we would want to do as a state to ensure protections existed, then that would probably take an affirmative action on the part of the Legislature.

LATHROP: OK. And one last question. Currently, the 8th Circuit would be on the-- we're not going to expand the interpretation of sex to include making these a protected class of individuals.

MARNA MAUNN: That's-- yes, that's correct.

LATHROP: And there are other circuits around the country that say yes.

MARNA MAUNN: Yes, as I understand the history and this-- you know I should have said I'm an attorney, but it doesn't mean I'm giving out legal advice to explain my understanding of it. Seems that, I think nine circuits maybe explicitly had weighed in on this, you know, sometime in the '80s and '90s. And like things-- like other things, the trend started to go back the other way. So you had other circuits who had even ruled in that way, starting to come back the other way. And you had like the Second Circuit and I think the Sixth Circuit-- Seventh Circuit start to expand and go back the other way. And then you still have other circuits, like what comes to mind is the Eleventh

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Circuit still holding the line. So what you have is that kind of trend. So we were in the middle of a trend where things were starting to come back the other way and circuits were starting to go a different way, which is, of course, makes it right for the Supreme Court to resolve.

LATHROP: Yeah, it's a perfect case, isn't it?

MARNA MAUNN: Yes, it's perfect.

LATHROP: Thank you for your explanation.

M. HANSEN: Thank you. Senator Hansen.

B. HANSEN: Senator Lathrop brought up some good points. I just want to play off that a little bit being more for my clarification. So with this whole decision with the Supreme Court 8th Circuit stuff, would that pertain mainly just to sexual orientation or be sexual orientation and gender identity?

MARNA MAUNN: Well, before the Supreme Court are both issues.

B. HANSEN: Both issues. OK. And so that--

MARNA MAUNN: So they could consolidate, when they took all three cases up it-- it-- yeah, they have the gamut.

B. HANSEN: Okay. So would that include then-- I'm trying to think of the word like-- I always have a hard time with gender identity, I guess. I'm still trying to figure out-- figure it out. Would that include like-- would there be a protected class of speech then if you use the wrong pronoun or if you mentioned something? I think of myself as an employer, as a fellow employee about how to like if we're even thinking about doing something like this in the state of Nebraska, would there be like protected speech at all by chance? Like if you used the wrong pronoun, would that be viewed as discrimination-- in your expert legal advice?

MARNA MAUNN: Sure. I think the best way to answer that is it would just fall in line with the exact same issues we see in any other protected bases. So you have-- you could have an allegation of harassment on the basis of race. We have that right now. It would be the same. And so harassment would be whether the conduct is severe or pervasive enough. And so if it were-- so that would just be a fact

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that went into it. And so you would look at whether, for example, if someone was deliberately misusing the pronoun in an insulting and continuous way on a daily basis, could that rise to the level of pervasive enough? It might, but that's the exact kind of analysis we do for any protected class. It would fall into, I think, that standard model that we use. You also have things like terms and conditions of employment that can come up with regard to any of the protected, you know, bases. So it would just be a fact-- a very highly fact dependent and so it would just-- it basically would just slot right in with the other investigations we can-- we conduct.

B. HANSEN: OK. Fine.

MARNA MAUNN: And-- and, you know, the Supreme Court, when I was talking about them making a nuance thing, they may decide one and not the other. You know, I don't know. It's up to them. But you do have your questions insightful and that there are states that have passed explicit laws for one, but not-- not the other. So they may explicitly say sexual orientation is protected, but they either weren't considering at the time or made a conscious decision and didn't include gender identity. I think it's more likely that it's just what was before them was one or the other. And then some have done both. So you-- those are-- they don't necessarily go hand in hand, but the Supreme Court could render a decision which would say that, you know, sex includes that whole thing and then it would get covered or they might do something more nuanced.

B. HANSEN: OK. I think that answers my question where it comes from because I think gender, pregnancy, race tend to be a little more-- for the most part, black and white, like, you know, but when you start getting into gender identity, which is sometimes a little more of a fluid concept, sometimes. And I think as an employer and fellow employees it's sometimes hard to wrap our head around it sometimes when we start making laws about how we're gonna address certain people or do certain things. I'm always curious to see what happens on the federal level what other states have done, what has worked, what hasn't worked. So if we ever do address something like that in the state of Nebraska, we can make sure we're approaching it the right way, I guess, you know.

MARNA MAUNN: Right. I mean, I think that in this case the good news is there are a number of other jurisdictions which have and they've figured out a way to navigate those questions. I think, you know, just

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personally and reaching a certain age in life, I think it's anything that's new, you know, just takes a little bit of time to figure out where those lines are. We just had a new cause of action added to our FEPA law wage retaliation claim that went live in September. Same thing we have to figure out, and some of that's going to be what gets alleged. You know, someone who walks through the door when they say this is what happened, we have to just work our way through it. And then the respondent always gets a chance to say, you know, that's not how it is. And so anytime we get a new cause of action, there is always a little bit of play in how and where you define those lines. But it's not-- it's not a process we fear, you know, being able to figure out. There are other models and other places that have dealt with the issues, so.

B. HANSEN: Good. Thanks. Appreciate it.

M. HANSEN: Senator Lathrop.

LATHROP: So just to make sure we don't get too concerned about the speech part of it, maybe we can illustrate it with the-- with the person who changed their-- how they identified themselves at the funeral parlor. So at some point a person decides to go from-- or-- or shares with other people that they no longer identify as a male and they now identify as a female. And they may have some name change or if the boss says-- let's say they're Joe, and now they're going to be Karen after they choose to identify as a female. Calling that-- calling Karen, Joe, for a couple of days after that happens is one thing, doing it in front of other people to ridicule them would be actionable, but not some inadvertence or something that happens as the employer's community gets used to it.

MARNA MAUNN: Right. And I think that's an accurate articulation of anything. I mean, I could change my name. You know what I mean? I could go legally change my name, and so you're-- what we have to look at is part of our investigation is the circumstances that surround the situations and if it's a couple of slip-ups and, you know, close in time, the people who have worked with someone calling them one thing for a long time, you know, as you-- as you say, that may play into that, you know.

LATHROP: But it shows some-- it shows some intent to be disrespectful or some intent to embarrass somebody.

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MARNA MAUNN: Right. And we have that in other cases, we-- we process right now. One thing I should note is we try to update our fiscal note to Senator Pansing Brooks LB2-- LB627, where we-- where she was adding those protected classes explicitly. And I will just-- I'll-- since we looked at the numbers through our work share agreement with the EEOC, because they interpret sex to have that broader meaning, we do sometimes have folks who come to our agency and do allege discrimination on that basis, which case we do the intake and then we refer it to the EEOC when we know about it. And so for the last 3 years, we've had 35 of those that have come in. I just want to give you that number, but I want you to understand that number doesn't necessarily represent the number we would have if it were an explicitly protected class and people knew they could come to us. But I want you to know that it does happen right now and when they come-- when someone comes and alleges discrimination on that basis, we do what we can through our work share agreement to connect them to the EEOC who does have-- then they will investigate it with their interpretation because they're not as constrained. We may have their interpretation, they're not constrained by the EEOC.

LATHROP: The EEOC it's a federal and they have one interpretation across the country and currently they interpreted to mean these folks are protected by the-- the--

MARNA MAUNN: That sex is an expanse of reading of the word sex.

LATHROP: OK. Thank you.

MARNA MAUNN: So.

M. HANSEN: Thank you, Senator Lathrop. I would have a question.

MARNA MAUNN: Sure.

M. HANSEN: So-- so kind of expanding to other protected classes along share, I guess the work share of the EEOC, are all of the protected classes we currently have expressly in statute just mirroring federal law then?

MARNA MAUNN: No.

M. HANSEN: OK.

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MARNA MAUNN: You know, we of course, in order to maintain substantial equivalency with our federal partners, we have to have the federally protected classes. But like a lot of things in the law, we can always-- there can always be greater protections in a variety of ways. Additional protected classes is one. I'm gonna-- we've marital status that we protect on the state level. Marital status isn't a federally-- isn't one of the EEOC federally protected status designations. So, that's an example. The other way you can do it is you can change-- you can-- there are greater protections for statute of limitations. You know that we can-- we can give more time to report something that the fed-- than the feds, just not less. And that's why you see to the end-- to that end, you see Lincoln or Omaha being able to create even greater protections or greater classes than, you know, because their laws also mirror both the Lincoln Commission on Human Rights and the Omaha Human Rights and Relations Department also work with the EEOC. So we always kind of have triple jurisdiction. There's a triple concurrent jurisdiction for an allegation of discrimination in the city of Omaha, for example. They could file with OH-- HRD. They could file with us. They could file with the EEOC. And so that's why all three agencies try to work together so instead of having three investigations open that only one actually investigates. And so that's kind of-- that's kind of where we are. But like-- for the-- our FEPA law, an employer has to have 15 employees, for example. But in Lincoln, the employer only needs to have 4. So you can always create the greater protection as you go down. You just can't-- if we remove one from the feds, then it messes with that substantial equivalency of the law.

M. HANSEN: OK. So for example, our marriage-- marriage status protection, we have Nebraska that only applies to above 15 and--

MARNA MAUNN: If they ever file it with us then the allegation is on the basis of marital status, yeah. That's a jurisdictional issue. The employer could always allege-- in any of our cases under the FEPA law, they can allege they didn't have 15 employees. Sometimes if we can tell that when they come into intake, we might -- and they-- they operate in Lincoln. We might refer them to LCHR. Likewise, in Omaha. Omaha's 10, Lincoln's for-- were 15.

M. HANSEN: OK. Thank you very much. Are there questions from committee members?

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LATHROP: No, thanks for being here.

MARNA MAUNN: Of course. And I just want to, you know, reiterate that if questions come up after this, we're always happy to try to resolve those answers and be a resource.

M. HANSEN: All right. Thank you very much for your testimony. We'll invite up our next testifier.

SPIKE EICKHOLT: Good morning, Chairman Matt Hansen and members of the Business and Labor Committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying on this interim study. I should not have let Ms. Maunn go first because she was very, very good. Hope I don't underwhelm anyone here. You've got a copy of my written testimony and I'll maybe just summarize it. This interim study looks to examine whether Nebraska's anti discrimination laws are protecting employees from denial of equal employment or discrimination. And as you've heard, one area in which our employment nondiscrimination laws are lacking is in extending protections for LGBTQ [INAUDIBLE] and employees. And we would argue that such protection is consistent with our core, Nebraska and American values of fairness and equality. Legislation to protect LGBTQ workers would modernize and update already familiar provisions and concepts founded existing civil rights laws that have served our society well, and LGBTQ people deserve the same workplace protections as others based on race, color, religion, sex, national origin, age and disability. The reality is you've heard from Ms. Maunn and earlier from Ms. Swatsworth there is a patchwork of protection across the state. The Omaha city ordinance does protect employees on the basis of LGBTQ. There is a protection for Lincoln city employees pursuant to the mayor's executive orders. And there are various strong nondiscrimination policies for many of our larger employers, including the University of Nebraska and others across the state. And I think someone did mention earlier that it's our protections for public employees in the city of Grand Island. But we would argue that it would be a lot simpler and a lot more clear and consistent and uniform for the Legislature to ensure protection across the state. There's been strong public support for extending this employment protection. I stited-- cited statistics from 2013 in which 74 percent of Nebraskans support laws protecting LGBTQ people. Senator Lathrop mentioned this earlier and I cited in my testimony, July 2019 report from Blueprint Nebraska, which was an organization of business industry, civic leaders to develop a statewide plan, if you will, for

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the next 10 years in part for how to recruit and attract workers, identified 15 high priority initiatives. One of their recommendations is attracting those who are young and interested in prosperous careers, a certain targeted growth sectors. And I'm quoting from page 17 of the report itself that was issued in June 2019-- or July 2019. One of the initiative toward the goal of attracting workers is to, quote, promote diversity and inclusion to retain and attract talent, connect communities across the state and make Nebraska the most welcoming state in the Midwest, end quote. Extending protection for LGBTQ workers is consistent with that. And I'm like Senator Lathrop, you know, I work-- I'm older. Right? For the 18- to 34-year-olds, this is a big issue. It's an important issue. And I know that when we're working with people and what I do here day to day, it does matter. It matters where they decide to go or what they decide to do for a living and that would be a very welcome sign to attract that targeted group of people. We talked a little bit about before-- you did talk a little bit before about the cases that are under advisement by the United States Supreme Court. There's two cases where the two people were fired for being gay, or at least a group of employers-- employees were fired for being gay, and a transgender woman worked at a funeral home. If that case-- if the Supreme Court decides that the term sex does not include sexual orientation or gender identity, then we will continue to have people live in the state without that protection. So we would encourage the committee to look at that decision. If it's a split decision, what have you and or if it somehow decides-- the Supreme Court decides not to read sex as protecting sexual orientation and gender identity, then we would encourage the committee and this body to act. And I'll take any questions if anyone has any.

M. HANSEN: Thank you. Senator Slama for a question.

SLAMA: Thanks, Spike, and thank you so much for coming out and testifying today. As the only person on this committee who is in fact, an 18- to 34-year-old in that target range, I just wanted to ask, is there any data that's Nebraska specific to say that our young people, yes, are leaving the state or choosing not to come back specifically because we do not have these protections in place or even because they fear discrimination based on sexual preference or gender identity?

SPIKE EICKHOLT: I think what Ms. Swatsworth said when you asked that question or a similar question, there isn't a lot of Nebraska specific data. But I would go back to the Blueprint Nebraska base. That's not-- that wasn't an ACLU production, right? That wasn't an Outlink Nebraska

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production. That was a group of business and civic leaders and they looked at-- they had 2,000 participants at over 60 events. They had a 5,000 participant sort of community survey poll that identified this issue. And I know they don't exactly explicitly say pass an anti-LGBT discrimination law, but I think if you read that it's consistent with sending a message that all applicants are welcome regardless of whether you're gay or not.

SLAMA: Did that survey break down by chance by age to see what kind of responses we got from that target range of 18- to 34-year-olds?

SPIKE EICKHOLT: On that, I'm not sure.

SLAMA: OK.

SPIKE EICKHOLT: I mean I've done so many surveys on-line for other things. They always seem to ask that.

SLAMA: Sure.

SPIKE EICKHOLT: So I'm guessing they probably do try to index it so it's representative, but that would just be me speculating.

SLAMA: Thank you.

M. HANSEN: Thank you, Senator Slama. Senator Lathrop.

LATHROP: Maybe I'll make this point. Thanks for being here, Spike. There's kind of two ways to look at this. And we've talked about it in terms of protecting the employees just as a basic fundamental dignity of the individuals who work in the-- in the businesses across the state affording them some protection so they're not hassled or harassed or lose a job because of, for example, being gay. The other thing that's become a part of this conversation, though, is work force development. Whether we're going to get people to come to the state or whether we're going to get our young college educated kids to return here after they've completed their education or when they're looking for employment opportunities. And it occurs to me, again, because I have daughters that are-- fall squarely within this age group and cover the spectrum, most of them have grown up in a place where their friend groups include someone who is gay and out, not-- not trying to keep it a secret from anybody. They are accepted in their friend groups. And then when they make a decision about whether they're going to be employed, they're going to interact with a-- typically the

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employer's going to be someone who's older. The managers, the-- the person that owns the company or the people that are higher up are gonna be people that are older, and the fear is that while their friends accept them and they're perfectly comfortable in their own social circle, that may not necessarily be true with an older generation who didn't grow up seeing people who were out in people who were accepted by their friend group. And that where-- that's where it becomes a work force development, or can we get the 18 to-- that-- the recent college grads to come back to Nebraska and start their businesses and work for the employers who are desperately looking for-- to fill the high skilled positions?

SPIKE EICKHOLT: And I think you're absolutely right. That's very well stated.

LATHROP: Thanks.

M. HANSEN: Thank you, Senator Lathrop. Any other questions from committee members? All right, seeing none, thank you, Spike, for your testimony. Are there any other testifiers on LR113? All right. With that and Senator Cavanaugh is not here to close, I don't believe we have any left-- letters. So with that, we'll close the hearing on LR113. Just a point of order to Senator Slama's comment. I'm also under 34. [LAUGHTER] So, so thank you and thank you to all of the testifiers so far today. With that, we're gonna move on to LR106, which is an interim study that I introduced on-- on-- as the Chair Committee under our-- and I'll just introduce it briefly from up front from here. But it's a-- under our recent LB299 each standing committee is required to review occupational licenses under its jurisdiction. And this year being the first year of that process because of some legislation passed earlier this year, I chose boiler inspectors to be our first occupational license to review and we introduced LR106 to facilitate that. Today we're going to invite the State Fire Marshal's Office up to testify first and kind of summarize as the oversight agency and then our committee counsel, Tom Green, has a draft report that he was going to present to the committee. So with that, please come on up. Hi. Welcome.

CHRISTOPHER CANTRELL: Thank you. Good afternoon, Senator Hansen and the members of the Business and Labor Committee. My name is Christopher Cantrell, C-h-r-i-s-t-o-p-h-e-r C-a-n-t-r-e-l-l, and I am the State Fire Marshal. I'm here today to provide information about the Boiler Safety Code Advisory Board. This board was created in 1988

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and advises the State Fire Marshal Agency on the adoption of rules and regulations for methods of testing equipment and construction and installation of new boilers required to be inspected by the Boiler Inspection Act, and for inspection and certificate fees for such boilers. And that comes under Nebraska Revised Statute 81-5-- 5188. As stated in 81-5185, the membership of the board shall consist of one member who represents owners and users of boilers and has experience with boilers; one member who represents sellers of boilers; one member who represents the crafts involved in the construction, repair, operation of boilers; one member who represents the insurance industry; one member who is a licensed professional engineer with experience with boilers; one member who represents the interest of public safety; and one member who represents the public. The state boiler inspectors shall be a non-voting member of the board. The board provides valuable advice and insight regarding the regulations which contain the adopted codes, but has no occupational license authority. The State Fire Marshal Agency employs the state-- state boiler inspectors and can also issue special inspector commissions to individuals who are the employee of an insurance company authorized to insure boilers in the state against loss from explosion or those that are employed by authorized inspection agencies. These individual-- individuals must have already passed an examination prescribed by the National Board of Boiler and Pressure Vessel Inspectors. These commissions are issued on an annual basis and have a \$20 fee associated with them. In 2019 there were 133 of these commissions issued. The board meets annually in July and elects a chairperson from their membership to conduct the meeting. Each member is eligible for a \$50 per diem and actual expenses when performing the business of the board. The average cost of the board meetings for the last 5 years has been approximately \$435 per year, which is mostly related to the publication of meeting notices. Thank you for your time and attention to this matter. I'd be happy to answer any questions that you may have.

M. HANSEN: Thank you, Mr. Cantrell. Are there questions from committee members? So, in kind of the day-to-day inspection, the boiling inspectors are people going out inspecting boil-- boilers functioning, all either employees of your office or working on behalf of your office?

CHRISTOPHER CANTRELL: No, we-- predominance of boiler inspections are conducted by insurance company inspectors. There was a time when we did not have a state commissioning process. And this setup that we do

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now, when we wouldn't go and inspect a boiler and then persons similarly qualified, employed by insurance companies would go and inspect that same boiler. So we passed a change to the law quite some time ago to authorize the insurance company inspectors, if so similarly qualified to what our statute requires, that we would accept reports of their inspections to eliminate the duplication of inspections caused by such a system.

M. HANSEN: OK. Thank you. Thank you. That was the clarity I was looking for. I appreciate it. Any questions from other committee members? All right, seeing none, thank you for your time and joining us here today.

CHRISTOPHER CANTRELL: Thank you for your time.

M. HANSEN: Thank you for all your work on this. With that, as I said before, our legal counsel has prepared a draft report for LR106. We are required to provide a report and I'd like him to present it to the committee.

TOM GREEN: Good morning, Chairman Hansen and members of the Business and Labor Committee. My name is Tom Green, T-o-m G-r-e-e-n, and I serve as legal counsel to this committee. I'm here to give you an update on the LR106, which is the interim study on the occupational license review process that is required by the Occupational Board Reform Act. You should all have a copy of the LR106 report and I have copies if anyone in the audience would like to look at that as well. To start, I'd like to give you a-- first a brief graph found on the process and the requirements of the Occupational Board Reform Act. The Legislature passed the Occupational Board Reform Act in 2018, with an operative date of July 1, 2019. The act requires each standing committee of the Legislature to annually review and analyze 20 percent of the occupational regulations within the jurisdiction of the committee and prepare a report to the Clerk of the Legislature by December 15 of each year. The Business and Labor Committee has 5 such occupations, and as such the committee selects one occupation to review each year. For this year as Chair Hansen said, we selected the Boiler Pressure Vessel inspector and to help gather the-- help the committee gather information the Executive Board created a survey to send out to the appropriate agency. And as you recall, as we just discussed, the boiler inspectors were transferred from the Department of Labor to the State Fire Marshal. The State Fire Marshal responded to the survey, and I want to thank them for their help in this

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process. And the server-- survey results are published in the legis-- Legislature's Web page. After reviewing the survey results, it is my conclusion that the boiler inspectors are not a regulated profession and then fall outside of the scope of the Occupational Board Reform Act. The state currently employs 2 boiler inspectors and 5 inspections and work with the state insurance, the insurance agents that review those boilers. Therefore, based on-- of the report, it is my recommendation that the Boiler Pressure Vessel inspectors be removed from the list of occupations to be reviewed as required by the Occupational Board Reform Act. That concludes my testimony on this and be happy to answer any questions you may have.

M. HANSEN: Thank you. Are there questions for Tom? Senator Crawford.

CRAWFORD: Thank you, and thank you, Tom, for your work on this report. So I just want to clarify, there is no license required, but there's some kind of commission is that-- is there-- is there a requirement that you pass a test or something?

TOM GREEN: I think that--

M. HANSEN: Do you want me to come up there and provide a little backup for you? [LAUGHTER]

TOM GREEN: There is-- recall the State Fire Marshal to explain exactly their-- like their requirements with the equivalency.

CRAWFORD: OK. I apologize.

TOM GREEN: No, that's fine.

M. HANSEN: We welcome back the State Fire Marshal.

CHRISTOPHER CANTRELL: Thanks again, Chairman. So what we do in our-- in our statute in the Boiler Inspection Act, we require all boiler inspectors to have a national commission from the National Boiler-- Boiler and Pressure Vessel inspectors. And this organization certifies or commissions boiler inspectors worldwide. There's 7,000 boiler inspectors in the world. We-- they issue commissions for people inspecting boilers in China, Argentina, and as well as North America. What we have done in the state of Nebraska is we say to inspect boilers in the state of Nebraska, you have to have that national board commission. In addition, we will issue with simply showing us that and giving us the \$20, remitting a \$20 fee, we will issue a Nebraska

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commission to you. And the reason we do that is that Nebraska does have-- we adopt all the national standards. But as talked about before here in this day, we also have certain standards that are more stringent. So we issue those commissions. So in the event that people need to, you-- we don't have a test for them. But I do. I'm also the chief boiler inspector in addition to being the Fire Marshal. I do talk to the individuals prior to getting those just to make sure that they know where to find our statute, know where to find the regulations. And we issue those commissions. And in my 12 years in that position, you know, I've had to pull commissions from people either for, you know, malfeasance, whatever. But that's really our hook is the state commission.

CRAWFORD: Thank you.

M. HANSEN: And so-- thank you, Senator Crawford. And just while you're back on the stand, so to clarify-- so like, is there-- I guess, to just to clarify the rules. So-- so people-- so the people who are commissioned by your office who are primary from insurance companies, that is to avoid the duplication because the insurance company is already inspecting the boiler. And we also have a requirement that the boiler is inspected under state law.

CHRISTOPHER CANTRELL: That's correct.

M. HANSEN: All right.

CHRISTOPHER CANTRELL: That's correct. That's why we have the predominance of boiler inspectors in the state are privately employed by insurance companies.

M. HANSEN: And in lieu of that process, it would be a requirement that somebody from your office went and inspected or somebody from the state went and inspected a boiler.

CHRISTOPHER CANTRELL: The state statute, the Boiler Inspection Act, requires that the state boiler inspector inspect or cause to be inspected all boilers installed in the state, not unless otherwise exempt. Right. So that is my-- is my, as the chief boiler inspector my statutory duty is to make sure that 100 percent of the boilers are inspected on an annual basis without having the exception allowing similarly-- similarly qualified individuals. All of my staff, including myself, have national board commissions, boiler inspector commissions as well. Without having that provision, then the sole

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burden of inspecting those boilers would fall back on the State Fire Marshal's Office and the state boiler inspection program. So there are currently active insurance inspectors. You see that we issued 133 licenses last year. So the case could be made that we-- a certain percentage of that would be needed to be hired by the State Fire Marshal's Office.

M. HANSEN: All right. Thank you.

CRAWFORD: Thanks.

M. HANSEN: All right.

CHRISTOPHER CANTRELL: Any other technical questions? I'll stay here for the--

M. HANSEN: I-- no, but maybe stay nearby.

CHRISTOPHER CANTRELL: I will. I will stay nearby. Thank you, again.

M. HANSEN: All right, thank you very much. All right.

TOM GREEN: If I-- if I can explain a little bit as well, I think you can understand why this was included in our review process because it looks like a occupational license. But we-- my understanding is that the State Fire Marshal grants these to allow us to fulfill state law, but these insurance company inspectors are not. They would still have their job. They aren't required to get a license from the state to do boiler inspections. They're just required to get approval that their inspections-- also for the insurance company also account to [INAUDIBLE] to satisfy state law, because insurance companies want to make sure that if the boiler has a problem that they aren't going to have to pay liable. And we won't have similar issues under state. So it's kind of parallel track, but it's not a-- it doesn't really fall into, in my opinion, in my recommendation of an occupational license in the state. But I think the process was very helpful to help us understand this process that it looks like an occupational license, but I don't believe it is under what we generally think of when a-- you have to get a certification from the state to work in this job. You need a certification from the state in this regard to satisfy the requirements of statute to help the state out, not for insurance companies. Is that correct?

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CHRISTOPHER CANTRELL: We need to know-- I believe we need to know who is working in the state. We require them to submit copies of their national work card and then we have a reciprocal card that we will issue and charge for them. We are a cash fund program, so we are going to charge for just about anything. So the overarching theme in this is safety. And again, as we were discussing before, all of this does not come from-- there is no occupational board. The boiler-- boiler safety code advisory board does not recommend rules for inspector qualifications or inspectors certifications to the State Fire Marshal. They recommend rules for the instruct-- for the installation, construction and for certificate by design and for certificate inspection fees only. They do not regulate an occupation.

TOM GREEN: Thank you. I guess that is clear, so--

M. HANSEN: I don't mind. We don't need to worry about this.

TOM GREEN: That's my recommendation.

M. HANSEN: Got it. Perfect. Any further questions from committee members?

CRAWFORD: So I just want to clarify, so the-- there is a commission you have to get to to work in this field, but we don't have a state organization that regulates that commission. It's just reci-- we just recognize the national.

TOM GREEN: Correct. So it's not a state law issue on the occupational licensing. There are requirements that are, I guess, international, actually. We do have a board, though.

CHRISTOPHER CANTRELL: You have a board but it does not speak to the commissioning process either nationally or-- or locally.

TOM GREEN: The board more or less reviews our state regulations, not the licensure. It's not like a board issue that regulates the profession, like the cosmetology boards and like that.

LATHROP: I like your recommendations.

TOM GREEN: Thank you.

M. HANSEN: With that, seeing no further questions, we'll consider that the close of our LR106. We'd like to thank the Fire Marshal and

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committee counsel for their work on that. And with that, we'll close hearings for the day.