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B. HANSEN: All right, good afternoon and welcome to the Business and Labor Committee. My name is Senator Ben Hansen, and I represent District 16, which includes Washington, Burt, and Cuming Counties, and I serve as Chair of the Business and Labor Committee. I would first like to invite the members of the committee to introduce themselves-- selves, starting on my left with Senator Gragert.

GRAGERT: I'm Senator Tim Gragert from District 40 in northeast Nebraska.

BLOOD: Senator Carol Blood, representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

LATHROP: Steve Lathrop, state senator from District 12, which is Ralston and parts of southwest Omaha.

M. HANSEN: Matt Hansen, District 26: northeast Lincoln.

B. HANSEN: Also assisting the committee is our legal counsel, Benson Wallace, and our committee clerk, Ellie Stangl. And our committee pages for today are Erin and Mason. Thank you. All right. So just a couple of quick notes about some of the policy and procedures pertaining to COVID-19 for this hearing. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bills-- bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We-- we request-- request that everyone utilize the identified entrance and exit doors to the hearing room, which are marked appropriately. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clear-- in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by the sergeant at arms to allow

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people to enter the hearing room, based upon seating availability. Persons waiting to enter a hearing room or ask to observe social distancing while waiting in the hallway or outside the building. And we ask that you please limit or eliminate handouts best that you can. And a few notes pertaining just to our committee here. Please turn off or silence your cell phones. This afternoon we'll be hearing a-- this morning we'll be hearing a total of five bills, and we'll be taking them in the order listed on the agenda outside the room. On each of the tables near the doors to the hearing room, you will find green testifier sheets. If you were planning to testify today, please fill out one and hand it to Ellie when you come in to testify. This will help keep us an accurate record of the hearing. If you are not testifying at the microphone, but 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. Also, I'd like to note, if you are not testifying but have a position letter to submit, the Legislature's policy. Is that all letters for the record must be received by the committee by noon the day prior to hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you do have any handouts, that you please bring ten copies and give them to the page. Just for your note, we do use a lighting system for testifying. Each testifier will have five minutes to testify. When you begin, the light will turn green. When the light turns yellow, that means you have one minute left. And when the light turn-- turns red, it is time to end your testimony, and we ask that you wrap up your final thoughts. When you come up to testify, please begin by stating your name clearly into the microphone, and then please spell both your first and last names. The hearing on each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then from those in the opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. We do have a strict no-prop policy in this committee. And so with that, we will begin today's hearing. I think we're starting with actually three committee bills, and we'll start off with LB665. And I will be introducing these bills myself. And with that, I will hand over the microphone to our Vice Chair, Senator Carol Blood.

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BLOOD: Well, welcome to your committee, Senator, Business and Labor. Let's open the hearing on LB665.

B. HANSEN: Thank you, Vice Chair lady, Senator Blood. These next two bills are yearly bills that we typically hear in front of Business and Labor, which has to do with the acceptance or denial of state claims. And so with that, I will start with LB665, which is just-- talks about the state claims that are in denial. And so then I will hand over the reins to Mr. Allen Simpson to describe them as best that he sees fit. So with LB665, these are just the denial claims the state brings in front of the board-- of the committee every year. And that is the-- the most of my opening statement for that one. I'll take any questions the best I can. If not, the testifier next will answer all of them.

BLOOD: Do we have any questions? OK, if you would step aside.

B. HANSEN: Thank you.

BLOOD: Any proponents?

ALLEN SIMPSON: Senator Hansen, members of the Business and Labor Committee, good afternoon-- good morning. My name is Allen Simpson, A-l-l-e-n S-i-m-p-s-o-n, and I am the Risk Manager for the state of Nebraska. We have no plans to review under LB665. These would be miscellaneous claims that would be denied-- that would have been denied by the State Claims Board and appealed by the claimant. But at this time we have no to report.

BLOOD: Thank you. Do we have any questions? Thank you for your testimony. Do we have any additional proponents for LB665? Any opponents to LB665? Anybody in the neutral for LB665? With that, Senator Hansen-- Senator Hansen waives closing. We'll move on to the next one, LB666. And the hearing is officially closed for LB665. Welcome again, Senator Hansen.

B. HANSEN: Thank you, Vice Chair lady, Senator Blood. Of course, our committee gets the dreaded LB666, and so of course, these are the state claims that are going to be settled by the state of Nebraska in excess of \$50,000, as well as agency write-offs. And with that, I will turn it over to Mr. Simpson to kind of describe in further detail for your review. I'll take any questions.

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BLOOD: Does anybody have any questions for Senator Hansen?

B. HANSEN: Thank you.

BLOOD: Thank you, Senator Hansen. Now we'll move to proponents of LB666. Welcome to the Business and Labor Committee yet again.

ALLEN SIMPSON: Senator-- Senator Hansen and members of the Business and Labor Committee, good morning. My name is Allen Simpson, A-l-I-e-n S-i-m-p-s-o-n, and I am the Risk Manager for the state of Nebraska. LB666 provides for the payment of claims against the state. I am here to discuss the claims listed within the bill and to provide an overview of the claim process. Tort, miscellaneous, indemnification, and contract claims are filed with the Office of Risk Management. Claims in the amount of \$5,000 can be approved directly by the state Risk Manager. Any claim over \$5,000 and up to \$50,000 must be approved by the State Claims Board. Claims totaling more than \$50,000 must be approved by the Legislature and, thus, are added to the claims bill. Agency write-off requests for uncollectible debts and the payments of Workers' Compensation. settlements and judgments greater than \$100,000 must be approved by the Legislature and also included in this claims bill. That's a quick summary of how the claims make it to the claims bill. We will now go through the process and provide a brief description of the tort claims, Workers' Compensation claims, state self-insured liability, and miscellaneous claims listed within the bill, which have been settled by the Attorney General's Office. Dennis DeRossett will speak on the first miscellaneous claim, Number 2021-20829 for the Nebraska Press Advertising Services. After Mr. DeRossett, Stephanie Caldwell, from the Attorney General's Office, will discuss miscellaneous claim CI 18-2161, Workers' Compensation claims, and tort claim 2019-18480. When they are complete, we will have a representative to speak on each agency write-off request. The following agencies have provided written testimony on their write-offs: Board of Education Land and Fund [SIC]; Legislation-- Legislative Council; the Supreme Court; the Department of Insurance; State Treasury; and the Nebraska Public Employees Retirement Sys-- System. Cindy Kehling-- Jeremy Elder will represent the Department of Correctional Services; Stephanie DeGroot, the Commission for the Deaf and Hard of Hearing; Michael Greenlee, the Department of Health and Human Services; Tamra Walz, Department of Veterans' Affairs; John Albin, the Department of Labor; Patrick Cole, Game and Parks; Regina

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Shields, the State Fire Marshal; Kara Valentine, the Department of Environmental [SIC] and Energy. And with that, Senators, do you have any questions?

BLOOD: Do we have any questions? None? All right, thank you.

LATHROP: You know what, maybe I do.

BLOOD: OK.

ALLEN SIMPSON: Yes, sir.

LATHROP: We have a letter here from the Treasurer's Office. They want to write off whatever the number is that's found in here. And apparently they're not coming in. Is that the case?

ALLEN SIMPSON: Yes, sir. We were instructed that they could provide written testimony at this hearing.

LATHROP: OK. Do you know anything about the-- it-- it suggests that they submitted some paperwork to explain what they're-- what they want to have written off?

ALLEN SIMPSON: As part of the claim process, they do-- they come to the State Court. They provide a tort claim with all of the write-off information that is then reviewed by the State Claims Board. I could provide that to you, sir.

LATHROP: So it says in this communication from Jason Walters, the Deputy Treasurer, "Additional items include payments that errantly paid out to incorrect recipients." Do you have the detail on who they paid incorrectly?

ALLEN SIMPSON: We do have that in the Risk Management Office so that [INAUDIBLE].

LATHROP: Do you know how much it-- it amounts to?

ALLEN SIMPSON: The amount of the write-off for State Treasury was \$172,318.19.

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LATHROP: That part I understood. I saw that in the bill. This suggests that some portion of the \$172,000 was payments they errantly paid to the wrong recipient and couldn't get back.

ALLEN SIMPSON: I do not have that information, but I can get that for you.

LATHROP: Please do. Thank you.

BLOOD: All right. Anybody else have questions? OK. We're going to see if there's any other proponents for LB666. Thank you for your testimony. Any other proponents? Welcome to Business and Labor.

DENNIS DeROSSETT: Good morning. Thank you. Chairman-- Senator Hansen, Vice Chair-- Senator Blood, members of the committee, good morning. My name is Dennis DeRossett; that's D-e-n-n-i-s D-e-R-o-s-s-e-t-t. I am the executive director of the Nebraska Press Association and the Nebraska Press Advertising Service. I'm here to speak to and answer any questions regarding LB666, specifically the miscellaneous claim number 2021-20829, in the amount \$318,140.37. This claim represents the publishing cost to fulfill the constitutional and statutory publishing requirements for the constitutional amendments and the initiative measures that were on the ballot November 3, 2020, general election. There were two constitutional amendments, LR1CA and LR14CA, and four initiative measures proposed by the people, 428, 429, 430, and 431. The notices were published in all 156 legal newspapers in Nebraska for three consecutive weeks in the month prior to the election. The weeks of publication were October 12, 19, and 26, 2020. In nine of those newspapers, the constitutional amendments and initiative measures were also published in the Spanish language. NPAS compiled actual tear sheets, which is the physical page containing the notice, from each of the three weeks of publication, from each of the 156 newspapers, along with notarized affidavits of publication from each newspaper. This ensured that full legal publishing requirements were met. All documents were then indexed, boxed, delivered by NPA staff-- me personally-- to the Office of the Nebraska Secretary of State, as required, which completed the legal process for the proof of publication and fulfillment of state statutes. Through this process, the full ballot language for each constitutional amendment, an initiative measure was made available to citizens across Nebraska, which made for a better informed electorate on issues important to

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them and to the future of the state. Thank you, and I would be happy to answer any questions from this committee.

BLOOD: Thank you. Are there any questions for our witness? No?

DENNIS DeROSSETT: OK.

BLOOD: All right. Thank you very much for your testimony.

DENNIS DeROSSETT: Thank you.

BLOOD: Any additional proponents? Welcome to the Business and Labor Committee.

STEPHANIE CALDWELL: Good morning, Senators and members of the Business and Labor Committee. My name is Stephanie Caldwell. I'm an Assistant Attorney General with the Nebraska Attorney General's Office in our civil litigation section. I also serve as legal advisor to the Risk Manager and State Claims Board. I'm here today to present on four claims that Mr. Simpson talked about, and I will go through each claim for the committee. Section 1 of the claims bill relates to miscellaneous claims. And we have one claim and the bill in that, and that's claims arising out of miscellaneous items of indebtedness owed by the state of Nebraska. The first claim begins with-- or my first presentation is the second claim on page 2 of the bill, and this is for \$101,143.68 made available to the claimant, Mr. Aljanabial-Janabi, and his attorney, Joyce Shiffermiller. This claim involved an employee at the Nebraska Department of Correctional Services, Nebraska State Penitentiary, who filed a lawsuit in Lancaster County District Court, alleging discrimination, retaliation, and constructive discharge based on his religion, and the department's alleged failure to accommodate his sincerely held religious beliefs. Parties entered into a settlement agreement in which the state of Nebraska agreed to pay Mr. Aljanabi the amount that is stated in the bill-- or, I'm sorry, \$151,143.68. The amount of \$50,000 has already been paid by Risk Management, and the remainder is in the bill before the committee. And this is for complete settlement of any and all causes of actions in suit. Now I'll move on to claims under the Workers' Compensation Fund, and this is Section 2 of the claims bill, which relates to payment of Workers' Compensation claims, which have been settled by the Attorney General's Office and the Nebraska Workers' Compensation Court and/or

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which include judgments which have been entered and require the approval of the Legislature for payment. The first claim on page 2 of the bill is for \$115,000. The first \$100,000 has already been paid by the Office of Risk Management, and this is to be made payable to the claimant, Natalie Sieber, and her attorney, Christa Binstock. This claim involved an employer [SIC] of the YRTC, who-- or the youth-- yes, YRTC-- who sustained injuries on two separate occasions from youth at the YRTC, one in which she was trying to break up a fight. The claimant sustained injuries to both her ankles and her brain with a total brain injury. The Attorney General's Office negotiated and settled into-- settled the case for \$215,000 for indemnity, and have asked that the committee approve this. The second claim, on page 3 of the bill, is for \$150,000, the first \$100,000 already being paid as well by the Office of Risk Management. This is made payable to Jeanene Gieser and her attorney, Roger Moore. This claim involved an HHS employee who slipped and fell on ice outside of the Nebraska State Office Building. The plaintiff was diagnosed with visual defects, including a condition where her eyes had difficulty working together. Plaintiff alleged she was permanently and totally disabled. Parties mediated the lawsuit and agreed to settle the matter for a lump sum in the amount of \$250,000. The Workers' Compensation Court approved the settlement, and Ms. Gieser and her attorney have already received, again, as I said, the \$100,000 of the settlement amount. That concludes the items in LB666. There is also an amendment to the bill that has been offered: amendment number-- it's number-- oh, it's an amendment to LB666. There we go, oh, AM58. And so this is in-- for the amount of \$70,000, made payable to Annette Marking and the firm representing her. This is a tort claim to be paid from the State Insurance Fund. This claim involves a motor vehicle collision that occurred in 2017, in Stanton County, Nebraska, involving Ms. Marking's vehicle and a state of Nebraska Department of Transportation employee. As a result of the collision, Ms. Markings sustained injuries to her ankle, requiring surgery. She was also diagnosed with arthritis as a continuing condition. The parties entered into a settlement in the amount of \$120,000; \$50,000 was previously paid to Ms. Marking, and the remaining balance of \$70,000 has been brought forward for legislative approval. That concludes the claims I will be presenting on today on behalf of the Attorney General's Office. If there are any questions, I am happy to answer them.

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BLOOD: Thank you for that very comprehensive testimony. I do have a quick question for you. In reference to the amendment, has that been provided to the staff to distribute to the other senators on the committee yet? I believe we--

STEPHANIE CALDWELL: No, I don't think so.

BLOOD: --receive that amendment. We will look into that afterwards then.

STEPHANIE CALDWELL: OK, Senator.

BLOOD: Are there any questions? Senator Lathrop.

LATHROP: I do have one. Do you expect any more? So this bill usually comes up on the floor during the-- during the period of time that we take up the budget or immediately after, right Do you expect more tort claims or other claims to be resolved? And do you expect to amend this bill again before we go to the floor?

STEPHANIE CALDWELL: I believe there's a slight possibility of a settlement that's being worked out right now. But I can't-- I believe it should be coming, but it is possible to maybe come as a committee amendment or a floor amendment.

LATHROP: OK, thank you.

BLOOD: Any other questions for our testifier? All right, thank you very much. Are there any additional proponents, LB666?

JOHN ALBIN: Tried this without the-- with a mask last time and it didn't work very well, so this time we're going to go without it.

BLOOD: Well, welcome to the Business and Labor Committee.

JOHN ALBIN: Thank you, Senator Blood. Chairman Hansen and members of the Business and Labor Committee, Senator Blood, sitting in for Senator Hansen, my name is John Albin, J-o-h-n A-l-b-i-n, commissioner of labor on behalf of the Nebraska Department of Labor. I'm appearing here today in support of LB666. The Nebraska Department of Labor has two separate claims for write-off this year. NDOL is seeking to write off both unemployment insurance benefit and tax debt. As you may

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recall, NDOL first started writing off debt in 2018, and promised to go forward on an annual basis. We did UI benefits in 2018, UI tax in 2019, and are covering both programs in 2020. For 2021-20745, the Department of Labor is seeking to write off \$37,379.32 in unpaid unemployment insurance taxes and payments in lieu of contributions, also known as reimbursements, and \$49,700-- \$49,478.13 in penalties and interest[-- and accrued interest. Unemployment tax debts accrued interest at 18 percent. The total tax write-off is \$86,827.45, and this consists of 72 separate employer accounts the department has determined uncollectible. For claim 2021-20749, the Department of Labor is seeking to write off \$637,508.42 in unemployment insurance benefit overpayments. This number consists of 702 separate overpayments the department has determined uncollectible. There's no statute of limitations on any of the aforementioned debts. The Department of Labor is seeking to write off this uncollectible debt. NDOL actively pursues delinquent tax payments. When a business fails to pay unemployment taxes, NDOL makes several attempts to collect on the overpayment. NDOL has statutory authority to collect through civil action, setoff against any state income tax refund, and setoff against federal income tax refunds. Further, NDOL may place a state tax lien on the business and a personal liability is established, may pursue personal liability of an individual employer, partner, corporate officer, or a member of a limited liability company or a limited liability partnership. To put the unemployment tax write-off of \$37,379 in perspective, in 2019 alone, NDOL collected \$1,049,423.70 in delinquent unemployment tax benefits. NDOL goes through similar lengths for unemployment insurance benefit overpayments. Before an unemployment insurance benefit payment is determined uncollectible, the overpayment has gone through several collection attempts. NDOL has statutory authority to collect through civil action, offset against future benefits, setoff against any state income tax refund, and setoff against federal income tax refunds if the overpayment is due to the fraud or misreported earnings. If a claimant has filed for benefits since the debt was established, the department has attempted to recoup the overpayment. Some may have had levies placed on their wages. Of the 702 overpayments proposed for write-off, collection for all that has been attempted through the Nebraska Department of Revenue state income tax offset program, and 260 of the debts were run through the IRS income tax refund offset program to attempt collection against federal income tax refunds. Sixty-seven of the benefit-- excuse me--

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the debts were discharged in bankruptcy. NDOL makes every effort to collect all outstanding debts and has litigated collection efforts in both state and federal courts. To put the benefit write-off of \$637,508 in perspective, in 2019 alone, NDOL collected \$2,288,769.13 in benefit overpayments. All the debts proposed for write-off have been the subject of multiple collection efforts. NDOL is seeking to write off all debts over five years old that have not had repayment of any kind in the last three years, debts that have been written off through bankruptcy, and debts of businesses that have closed. That concludes my testimony, and I'd be happy to answer any questions.

BLOOD: Thank you. Are there any questions for our testifier? No? Any questions? All right. Thank you for your testimony.

JOHN ALBIN: Thank you.

BLOOD: Any additional proponents on LB666? Welcome to the Business and Labor Committee.

REGINA SHIELDS: Thank you. Good morning, members of the Business and Labor Committee I am Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s, the agency legal counsel and legislative liaison for the State Fire Marshal agency. The agency is requesting to write off \$18,350.50. The majority of this debt is from the Mechanical Safety Division, which was transferred to the agency from the Department of Labor on July 1, 2019. This request includes \$10,310.50 in unpaid boiler inspections for the period of 2001 through 2017, and \$6,985 in unpaid elevator conveyance invoices from 1993 to 2011. The remaining \$1,055 of this request come from the healthcare, grain elevator, and inspection divisions: \$625 is to write off invoices for instances where the inspection fees were not paid after multiple attempts at collection were made and, in four cases, where the facility closed prior to the-- being finalized; the remaining \$430 is associated with annual registration fees of grain elevators that are no longer in operation. The agency has exhausted all cost-effective methods of collection and respectfully requests to write off the \$18,350.50. Thank you, and I'll be happy to answer any questions.

BLOOD: Thank you for your testimony. Are there any questions for the testifier? I do have one question, the boiler inspection fees. So when

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you inspect a boiler, do they know you're coming out to their-- to their business?

REGINA SHIELDS: Yes.

BLOOD: And so we collect that after the inspection, not before the inspection?

REGINA SHIELDS: Correct.

BLOOD: Interesting. And what, do we bill them or do we leave them a check?

REGINA SHIELDS: Yes, because there's a basic inspection fee that would be paid up-- that could be paid anytime. If we have to come back for various things, then the inspection fee goes up. And so until we finalize all of the process, we don't send out the invoice saying this is the total amount you need to pay.

BLOOD: So they know, as a business, that that's something that's going to be expected of them. And--

REGINA SHIELDS: Yes, they're aware of the annual inspection requirements.

BLOOD: --they just refuse to pay it. All right. Thank you very much.

REGINA SHIELDS: Thank you.

BLOOD: Any additional proponents, LB666? Welcome to the Business and Labor Committee.

PATRICK COLE: Thank you. Good morning, Chairman Hansen, Vice Chair Blood, and members of the committee. For the record, my name is Patrick Cole, P-a-t-r-i-c-k C-o-l-e. I'm the budget and fiscal administrator for the Nebraska Game and Parks Commission. Our claim number, which was 2021-20746 in your bill, is a write-off of \$4,758.79. The submission in our packet included three types of collection issues. The first group involved 59 uncollectible or insufficient fund checks, received at various parks through the state, totaling \$4,151.29. The checks ranged in size from \$6.00 for a daily park permit, up to \$350 for a multnight camping stay. The second

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issue involves \$121, which was an uncollected activity fee from one of our parks. And lastly, \$486.50 that was uncollected from two external permit agents who sold permits and did not remit the monies. Multiple attempts were made to collect these debts, either by park staff at the original purchase location or by budget and fiscal staff in the Lincoln office. Documentation of the attempts are maintained and were submitted with our claim. None of the claims presented here were deemed sufficient enough to warrant involvement of the agency legal counsel or assistance from the Attorney General. And that would conclude my testimony.

BLOOD: Very concise. Are there any questions for our testifier? With that, thank you.

PATRICK COLE: Thank you.

BLOOD: Any additional proponents, LB666? Welcome to the Business and Labor Committee.

JEREMY ELDER: Thank you. Good morning, members of the Business and Labor Committee. My name is Jeremy Elder, J-e-r-e-m-y E-l-d-e-r. I'm testifying on behalf of the Nebraska Department of Correctional Services, where I serve as the deputy director for industries. I'm testifying in support of LB666, specifically for permission to write off an uncollectible debt in the amount of \$23,325.75, under claim number 2021-20735. This debt arose from the operation of Cornhusker State Industries, known as CSI, which is a self-sustaining program within the Nebraska Department of Correctional Services. Since 2001, CSI had a partnership with a nonprofit organization to teach vocational homebuilding skills to incarcerated individuals. This organization was originally known as Bar None Housing. In 2009, they rebranded as Prairie Gold Homes. CSI paid wages for incarcerated individuals working for Prairie Gold and provided construction space. Prairie Gold reimbursed CSI for wages and paid an administrative fee. In February, 2018, CSI learned that Prairie Gold had ceased operations and, in April, 2018, CSI received notice from the law firm representing Prairie Gold, that Prairie Gold had liquidated its assets to pay a secured lender. They indicated that debts to many unsecured creditors would left-- be left unpaid. Attempts to collect payment from Prairie Gold were unsuccessful. This debt is now considered

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uncollectible. Thank you for your time, and I'd be happy to answer any questions.

BLOOD: Thank you. Are there any questions for the testifier? Seeing none, thank you very much.

JEREMY ELDER: Thank you.

BLOOD: Any additional proponents, LB666?

STEPHANIE DeGROOT: Good morning, members of the Business and Labor Committee. My name is Stephanie DeGroot, and I'm with the Commission for the Deaf and Hard of Hearing. That's S-t-e-p-h-a-n-i-e; last name DeGroot, D-e- G-r-o-o-t. I am here to testify on behalf of-- we are requesting \$306.70 be written off. We were-- the APA's office audited us in the spring of 2020, and it revealed some minor items which were noted as uncollectible. And we are requesting a write-off of these items that date back to 2011. Again, they are \$306.70. Do you have any questions for me?

BLOOD: Thank you for that. Do we have any questions? Any questions?

STEPHANIE DeGROOT: Thank you.

BLOOD: All right. Thank you so much.

STEPHANIE DeGROOT: Have a great day.

BLOOD: Any additional proponents, LB666? Hello, and welcome to the Business and Labor Committee.

TAMRA WALZ: Good morning. Thank you, Senator Blood. Good morning to all of you this morning. My name is Tamra Walz, T-a-m-r-a W-a-l-z, as in zebra. I am deputy agency legal counsel for the Nebraska Department of Veterans' Affairs. I'm here to speak on behalf of this bill, to discuss our agency's write-off requests. We have two members who passed recently in our homes. One was at the Eastern Nebraska Veterans' Home. The other was at the Norfolk Veterans' Home. Both of these members, when they passed, left some debts for their maintenance fees, which are the cost that the members are charged for their care while they live with us in a veterans' home. Numerous attempts were made to try to collect the debts. Unfortunately, those were not

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fruitful. At this point, we do consider them not collectible. We feel any further efforts to try to collect them would not be fruitful at this time. The total of the two debts together is \$10,340-- pardon me-- \$10,347.76. I'm not a math person. We respectfully request that the committee advance this portion of the bill that includes our write-off. I'd be happy to answer any questions that you have, and I thank you for your time.

BLOOD: Thank you. Senator Lathrop.

LATHROP: So sit--

TAMRA WALZ: Good morning.

LATHROP: Good morning. Sitting on Judiciary Committee, and Business and Labor and Ag, I never have a chance to talk to anybody about the Veterans' Affairs.

TAMRA WALZ: OK.

LATHROP: And I do have a question for you. So we established a veterans' home in Kearney, and that was probably four years ago.

TAMRA WALZ: Yes, sir. I don't recall the exact date, but approximately.

LATHROP: I remember in my first term,--

TAMRA WALZ: Sure.

LATHROP: --Governor Heineman tried to figure out where it should go, and-- and then it landed and was built in Kearney. Can you tell me what-- where we're at in terms of filling that particular veterans' home? Is it full of-- full of veterans, each of the units or--

TAMRA WALZ: Yeah.

LATHROP: --of the beds [INAUDIBLE]?

TAMRA WALZ: Each of the neighborhoods. Yes, I know what you're asking, sir. I don't know. Unfortunately, that's beyond my purview. I can

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certainly find out and we can get that information for you, if you would like.

LATHROP: I would like to know two things about that facility in Kearney.

TAMRA WALZ: OK, sure.

LATHROP: One, what percentage of capacity is-- it is at and, two, what the waiting list looks like.

TAMRA WALZ: OK.

LATHROP: OK?

TAMRA WALZ: Yes, sir.

LATHROP: And you have two, did you say?

TAMRA WALZ: Yes, sir, we have two: one from Eastern Nebraska Veterans' Home, which is Senator Blood's territory, and the other is from Norfolk Veterans' Home.

LATHROP: What about the Kearney-- the Veterans' Home in Kearney?

TAMRA WALZ: We have no write-offs from that facility or from our facility out in Scottsbluff, the Western Nebraska Veterans' Home.

LATHROP: But all of those are within your-- the Veterans' Commission or wherever you account from?

TAMRA WALZ: Yes, that's correct, sir. We have the four Veterans' Homes, and then we also have the Veterans Cemetery out in Alliance.

LATHROP: OK. So if I could get the percentage of capacity that each one of those are at,--

TAMRA WALZ: OK.

LATHROP: --along with a waiting list for each of them,--

TAMRA WALZ: Sure.

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LATHROP: --that'd be great. Thank you.

TAMRA WALZ: And would you like that sent to your office, sir, or to the committee? Or--

LATHROP: No, to my office.

TAMRA WALZ: OK.

LATHROP: It really doesn't have to do with the Business and Labor Committee.

TAMRA WALZ: OK, but we're happy to help if we can, sir.

LATHROP: All right. Thank you.

TAMRA WALZ: Thank you.

BLOOD: Thank you, Senator Lathrop. Are there any other additional questions? Thank you so much.

TAMRA WALZ: Thank you, Senator.

BLOOD: Any additional proponents, LB666? Welcome to the Business and Labor Committee.

KARA VALENTINE: Thank you. Good morning, Senator Hansen, Senator Blood, and members of the Business and Labor Committee. My name is Kara Valentine, spelled K-a-r-a V-a-l-e-n-t-i-n-e. I'm a deputy director with the Nebraska Department of Environment and Energy. I'm here today to testify in support of LB666, which would authorize the department to write off claims totaling \$37,054-- \$37,056.74. These claims represent nine individuals and businesses who applied for and received Dollar and Energy Saving Loans over the past several years. These are low interest loans for home and building improvements that save energy. An example of a typical loan is a homeowner who wants to replace old windows and exterior doors with Energy Star windows and doors. The loans are made by local banks who participate in the loan program, and then approved by the department. These nine loan recipients subsequently filed Chapter 7 or Chapter 13 bankruptcies and have been discharged from their debts, including the Dollar and Energy Saving Loan, by the U.S. Bankruptcy Court. The lending banks have

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deemed the loans uncollectible, with no further recourse available. The unpaid portion of the nine loans ranges from \$507 to \$11,288. These loans have been discharged over the past six years. Despite these nine defaulted loans, the Dollar and Energy Saving Loan Program is an extremely successful program over the years. We currently have over \$33 million out in loans across the state. We make between 300 and 400 loans every year, and our default rate is less than .5 percent. The Department of Environment and Energy supports passing LB666 to authorize NDEE to write off these uncollectible debts. I'd be happy to answer any questions you might have regarding our claims.

BLOOD: Thank you. Are there any questions? Seeing none, all right. Thank you so much.

KARA VALENTINE: Thank you.

BLOOD: Any additional proponents, LB666? Welcome to the Business and Labor Committee.

MICHAEL GREENLEE: Thank you. Good morning to Business and Labor Committee and Senators. My name is Michael Greenlee; that is M-i-c-h-a-e-l G-r-e-e-n-l-e-e. I'm an attorney with the Department of Health and Human Services. Specifically, I deal with collections matters. I'm here to testify in support of LB666, specifically Section 4, which would permit the Department of Health and Human Services to write off certain debts owed. The purpose is for fiscal and accounting reasons. The total debt which the department is requesting written off is in the amount of \$783,188.12. The requested write-off amount relates to debts owed to the department by way of assistance provided through 17 different programs within the department. The debts are due to overpayments made for services provided, which we have not been reimbursed. Prior to submission of these debts for write-off, the agency pursued recovery through one or more of the following efforts: sent by regular billing statements; through recoupment; demand letter signed by the program, by one of the agency directors, and/or by one of the agency's attorneys; and finally, litigation. By dollar amount, approximately 99.9 percent of the total amount we're requesting for write-off falls into one of three categories: the debtor has either passed away with no probate; because the debtor had a debt discharged in bankruptcy; or because the applicable statute of limitations has passed to include money owed for persons who remained on needs-based

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assistance. The majority of this year's submission, nearly 96.9 percent, fall within the third category, which is a statute of limitations has passed and it is now legally uncollectible. The remaining half percent of this year's total write-off requests involve 117 individual accounts of less than \$100, averaging approximately \$33 each, where we have sent billing statements, mail demand letters, and made telephone calls to no avail. Both the amount and the program composition submitted for write-off this year is very similar to recent years. This is in large part due to the absence of any new programs submitted-- submitting debt for the first time. So thank you for the opportunity to be here today. I'm happy to answer any questions you may have.

BLOOD: Thank you. Are there any questions for the testifier? Seeing none, thank you very much.

MICHAEL GREENLEE: Thank you.

BLOOD: Any additional proponents, LB666? Any proponents? Any opponents for LB666? Anybody in the neutral for LB666? All right. With that, we do have four letters of support: Cindy Kehling with the Board of Educational Lands and Office [SIC]; Jody Schmidt with the Supreme Court; Teresa Zulauf with Nebraska Public Employees; Jason Walters with the Nebraska State Treasurer-- Treasurer's Office. With that, would you like to close? He waives closing. We'll move forward to LB567, and the hearing is officially closed. Welcome again, Senator Hansen. Go ahead and open the hearing.

B. HANSEN: Thank you. Looks like I know how to clear a room, so that's nice.

BLOOD: I was going to say it's kind of nice, not so many testifiers this time.

B. HANSEN: OK. LB567 is the third committee bill you'll be hearing today. And I'm just briefly going to--

BLOOD: Senator Hansen, can you please tell us your name?

B. HANSEN: Oh, yes-- sorry. I'm Senator Ben Hansen, B-e-n H-a-n-s-e-n, and I represent District 16, which is Washington, Burt and Cuming Counties. Thank you. This is the third committee bill that we will be

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hearing today. And I'll briefly introduce it because I'm sure there'll be testimony after me to answer any questions that you might have in more detail. So LB-- LB567, in-- in essence, will require the Department of Labor to only look at an applicant's most recent separation from employment when determining maximum unemployment benefits and reductions. Right now, the Department of Labor is required to look at an employer within the base period, when determining applicants' maximum unemployment benefits. And a base period is typically the first four of the five completed calendar quarters. LB567 would remove the base period requirement and, instead, only require the department to look at the individual's last employer. A lot of this comes from the previous year, due to COVID-19. An Executive Order that was signed on in June of last year was the intent-- was to streamline the process for unemployment benefits, to make sure that people can get their unemployment benefits sooner and also make it a little more efficient for the department to process these claims. With that, I will close and do my best to answer any questions. If not, there'll be testimony after me to answer them better.

BLOOD: Senator Lathrop.

LATHROP: Senator Hansen, will this result in any individuals who qualify receiving less benefit? I understand it'll streamline things and we'll only look at the-- the last employer, but will some individuals who are entitled to unemployment receive a smaller benefit as a result of this change in procedure?

B. HANSEN: I-- I can't say with 100 percent certainty. So I think their testimony after me would probably answer that better.

LATHROP: OK, thank you.

B. HANSEN: Sorry.

BLOOD: Any additional questions? All right. With that, are there any proponents for LB567? Welcome once again to the Business and Labor Committee.

JOHN ALBIN: Good morning once again. Vice Chair Blood, members of the Business and Labor Committee, my name, for the record, is John Albin,

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J-o-h-n A-l-b-i-n. And I'm appearing here for you today as commissioner of Labor, in support of LB567. I want to thank Senator Hansen and the members of the Business and Labor Committee for introducing this legislation on behalf of the department. In response to the COVID-19 pandemic, Governor Ricketts took action through Executive Order 20-22 and Executive Order 20-26 to create efficiency in Nebraska's unemployment eligibility determination process for requiring the Nebraska Department of Labor to only adjudicate the most recent separation from employment on a person's unemployment claim. LB567 makes this executive action permanent. To help you understand the impact of the legislation, I think it would be beneficial for me to provide a brief explanation of-- of Nebraska's unemployment process. When a person files for unemployment insurance benefits, their initial eligibility is established to their base period earnings and adjudication of the base period separations from employment. Typically a base period is the first of the most recent five calendar-- completed calendar quarters. Prior to the COVID-19 pandemic, the Nebraska Department of Labor reviewed all separations that occurred during a claimant's base period, whether or not a particular separation was the one that made them unemployed. Based on the review, the department would issue a determination on eligibility for each separation. A person with five separations would receive five separate determinations and may have a separate disqualification and/or reduction in benefits for each separation. In addition to determinations as to eligibility of the claimant, the department determines if an employer should be charged for benefits based on the claim. Pursuant to EO 20-22 and EO 20-26, for all claims filed on or after March 15, 2020, the department only reviews the separation that actually made a person unemployed. The department still makes determinations to determine if base period employers are chargeable on the claim. This has proven to be a great efficiency for the department. Adjudication drastically sped up after EO 20-22 was signed. I've included a news release with a chart demonstrating the sharp increase in the number of individuals paid after EO 20-04 was enacted. Nebraska is one of the few, if not the only state that adjudicates all base period separations from employment. The overwhelming majority of states only indicate-- only consider the most recent separation because that is the separation that made the individual unemployed. By only looking at the most recent separation, we are making a more equitable decision for the individual. An

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eligibility determination is only made upon the separation that made a person unemployed. Because the department will still make a charging determination for all based period employers on the claim, the unemployment system remains the same for employers. And I'd be happy to answer any questions that you might have.

BLOOD: Yes, Senator Hunt.

HUNT: Thank you. Mr. Albin, I'm going to try and like say this in a clear way. I'm thinking about how this may affect employees if we're only thinking about the last job that they had in the base period. Is that right?

JOHN ALBIN: Yes.

HUNT: OK. If another separation or being fired or let go from a job previous to that in the same base period would make them eligible for unemployment, but maybe their most recent separation doesn't, would they then receive fewer benefits under this bill than the system we currently have?

JOHN ALBIN: No. That is not the case because, in determining an individual's eligibility for benefits, we consider all wages during that base period in determining and setting that benefit amount and setting that maximum amount of benefits to which they're eligible. We would consider to include all of those wages. So-- so this would not adversely affect any employee or any worker's claim in terms of the amount of benefits that they would receive.

BLOOD: Senator Lathrop, do you still have a question?

LATHROP: I think you answered my question just now, which is: This bill will streamline the process. We'll only look at the last employment to see if they had a good reason for leaving or they were let go, whatever disqualifying event there might be, if any. And then the amount won't change.

JOHN ALBIN: That's correct.

LATHROP: Got it. That's what I needed to know. Thanks.

JOHN ALBIN: Um-hum.

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BLOOD: Any other additional questions? Yes, Senator Gragert.

GRAGERT: Thank you, Vice Chair-- Senator Blood. I just want to clarify that Senator Hunt just asked you then. So if-- if you look at the last year, the previous employment, and they should be not qualified for unemployment, you do go back four more years or-- or however many years that, you know, the second employment may have qualified them for unemployment?

JOHN ALBIN: Well, Senator, that's a common misunderstanding of our system, is that you file a claim based upon a particular employer; you really don't. Even under the current system, what you do is we determine on each employment whether or not you had a qualifying or disqualifying separation, and then there's a reduction in benefits and a time disqualification, and all of that applies. But you-- you never actually apply for benefits against a particular employer in your base period. And we never look at a particular employer except for-- in the sense that if there's a disqualification, if your most recent employment was that you were fired for misconduct, you're going to be disqualified from benefits for 14 weeks, no matter what happened in the other employment in your base period. And that doesn't change under this bill. The same way if you quit without good cause, you're going to be disqualified for benefits until you earn four times your weekly benefit amount and then requalify for eligibility. The import of this bill was, if you tried a job early in your base period and you figured out it wasn't working out for you and you didn't-- or you didn't like it or whatever, and you quit and you went ahead and got another employment, our question was: Why should we spend your time and the employer's time relitigating whether that was a good-cause quit or not? Now, what we will continue to do in this bill, as we do in current, is-- let's say there was that employer where you quit for no good reason or for-- not-- for a nongood-cause quit-- you probably had a reason. But we will go ahead and determine whether that employer should be charged on the benefits because, as I said, we look at all the wages that you earned during your base period and determine your benefit amount from that. And then some of those employers are charged and some are not. You know, the employer where you quit without good cause, they're-- they're-- they're not charged. The employer who quit you-- or fired you for no good reason, they do get charged, and we-- I don't want to get too weedy here-- but anyway, we charge those benefits in reverse chronological order during the claim. What would

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happen under this claim is, we would really look at that last employer and determine whether or not you're immediately eligible for benefits. As to those others, we would continue to make the charge/noncharge decisions, but there wouldn't be an appealable document on the separation. And actually it worked a little bit to the claimants' benefit; there wouldn't be a reduction. So for that first good-cause-- or nongood-cause quit, right now we would reduce those benefits by 13 weeks, but not less than 1. And under this new bill, we would just make a simple determination as to whether that employer should be charged for those benefits or not.

GRAGERT: Thank you.

BLOOD: I have a question, as well. So since the pandemic, would you say that the definition of good cause has changed at all?

JOHN ALBIN: I think the cause has always been an evolving standard. The pandemic absolutely added new issues to the equation. I mean, there were issues like, you know, if your children's daycare closed, your children's school closed, and you suddenly had to be home with your kids, in the past, that would have been a personal-purposes quit and you would have been disqualified. We have certainly loosened up that standard considerably under the current. In fact, there's a --if I remember right-- a specific guidance out there on that, that-- that would in this case be a good-cause quit because you had the compelling family reason.

BLOOD: Would compelling family reasons also be if you had a loved one that had contracted the virus and you needed to care for that loved one?

JOHN ALBIN: Yes, I believe it would.

BLOOD: Thank you. Are there any other additional questions? All right. Thank you very much.

JOHN ALBIN: Thank you.

BLOOD: Any additional proponents, LB567? Any opponents to LB567? Any in the neutral of LB567? We do have two letters of support: Kristen Hassebrook with the Nebraska Chamber of Commerce; and Bob Hallstrom with the National Federation of Independent Business. Senator waives

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closing. With that, we'll close the hearing on LB567, and welcome back our Chair, Senator Hansen.

B. HANSEN: Thank you. All right. So we'll move on to LB450. Welcome, Senator McKinney when he gets here to open up on his bill. Or is somebody else doing [INAUDIBLE]? OK. All right. Well, while we're waiting for Senator McKinney, we'll actually take a break here for about five minutes and we'll come back. And then we'll kind of-- we'll continue on with LB450 then.

[BREAK]

B. HANSEN: We'll start the hearing back up here, and we'll open it up again with LB450. So welcome, Senator McKinney. The floor is yours.

McKINNEY: Thank you. Good morning, Chair Hansen and members of the Business and Labor community. LB450 acknowledges that to maintain a healthy-- healthy state economy and a community's innovation and entrepreneurship, tech-based small businesses must be stimulated and supported. This bill intends to meet this need by implementing innovation hubs to serve as a vital resource to aspiring business owners, and address issues with the vitality of communities across Nebraska. Innovation hubs that we-- the innovation hubs that we're seeking to implement will, at minimum, provide counseling and technical assistance, either by direct or indirect services, in the areas of entrepreneurial business planning and management, financing, and marketing for small businesses. In consideration of this bill, we must view it through the lens that fostering entrepreneurship innovation can: 1) promote economic growth; 2) enlarge opportunities; and 3) help communities thrive. I'll briefly address each component. First, economic growth. The spark of entrepreneur-- entrepreneurship or a business idea typically serves to answer an unmet need or market demand. Here there are numerous opportunities to generate a product that is not currently in existence or not readily available. The benefits here for Nebraska communities are endless. Moreover, it is a natural flow of events that new and improved access to goods and services prompt consumerism and productivity. Second, creating opportunity stated plainly, establishing new businesses will, one, hire-- hire more employees and bring more opportunities for investment for our state. These created employment opportunities and incomes can then get put back into other businesses and services that will

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ultimately help and increase our communities' vitality. Third, innovation hubs will serve as a catalyst to helping communities thrive economically and esthetically. New businesses, understandably, will need material-- will need materials and products to run their businesses. Technology has made it easier for small businesses to utilize local, state, regional, national, and global markets. While these will help Nebraska businesses receive the goods and services they need to run successful businesses, thereby helping economically, it will also promote interstate and intrastate commerce. Additionally, many businesses in District 11 have-- haven't still recovered from racial unrest in the 1960s. Boarded up buildings and foreclosed businesses do not draw individuals to our community. New businesses need to be equipped with new-- with marketing tools and direction to cater to their city communities and attract individuals to those communities. It is important to emphasize that the benefits mentioned above are the building blocks for a good life for all Nebraskans. Our state can achieve these benefits by working to remove barriers that many prospective and current entrepreneurs and business owners face. This includes, but is not limited to, providing resources for marketing, access to capital, and strategic planning. Legislation like this can increase the number of successful entrepreneurs our state produces and ensure better likelihood for success for anyone who charts the entrepreneurial course. In closing, the Innovation Hub Act will foster entrepreneurship and innovation that will: 1) one promote growth; 2) enlarge opportunities; and 3) help communities thrive. I ask that you move this bill beyond committee on to General File. Thank you, and I'm happy to answer any questions.

B. HANSEN: Thank you, Senator McKinney. The committee is open to questions. Yes, Senator Blood.

BLOOD: Thank you, Chairperson Hansen. And thank you for LB450. I do have a quick question, and I'm scanning through the bill again. Can you kind of walk through for me how they will measure success when it comes to LB450 and where that's at in the bill?

McKINNEY: So how you would measure success is: 1) by, you know, how-- how many people are utilizing the I-hubs; 2) how many jobs you are creating; and 3) the type of business that it-- that, you know, businesses that come to I-hub, get help, start to see the success of

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businesses and entrepreneurs that utilize I-hubs. So I think you would measure success by that.

BLOOD: Who-- whose responsibility would that be to measure that?

McKINNEY: The Department of Economic Development.

BLOOD: Thank you.

B. HANSEN: Thank you. Any other questions from the committee? I just have one question. You-- when you're talking about like location of the I-hubs, there-- it-- I think there can be multiple in a certain area, but as long as they're going to have different--

McKINNEY: Different--

B. HANSEN: --aspects to them, I guess?

McKINNEY: Yes, different focus areas,--

B. HANSEN: OK.

McKINNEY: --so they could be-- it-- there could be multiple.

B. HANSEN: OK. Thank you.

McKINNEY: No problem.

B. HANSEN: All right. Will you be staying to close?

McKINNEY: If nobody--

B. HANSEN: OK. All right. Well--

McKINNEY: I'll waive.

B. HANSEN: I'll check just to make sure here. Are there any opponents [SIC] for LB450? All right. Are there any opponents to LB450? Is there anybody testifying in a neutral capacity? If not, close or waive? All right.

McKINNEY: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Business and Labor Committee February 1, 2021
Rough Draft

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B. HANSEN: Senator McKinney waives closing, and that will end the hearing for LB450, and end the hearing for this morning. And we come back and resume at 1:30 with our next set of bills. Thank you.

B. HANSEN: Good afternoon and welcome to the Business and Labor Committee. My name is Senator Ben Hansen. I represent the 16th District and Washington, Burt, and Cuming Counties and I serve as Chair of the Business and Labor Committee. I would like to invite the members of the committee to introduce themselves, starting on my right with Senator Hansen.

M. HANSEN: Senator Matt Hansen, District 26, northeast Lincoln.

BLOOD: Good afternoon. Senator Carol Blood representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

HALLORAN: Good afternoon. Steve Halloran representing District 33, which is Adams County and southern and western Hall County.

GRAGERT: Good afternoon. Tim Gragert, District 40, northeast Nebraska.

B. HANSEN: Senator Hunt, do you want to introduce yourself too?

HUNT: I'm Megan Hunt. I represent District 8 in midtown Omaha.

B. HANSEN: Thank you. Also assisting the committee is our legal counsel, Benson Wallace, and our committee clerk, Ellie Stangl, and our committee pages for today are Emily and Kennedy. Just a couple notes concerning COVID-19 hearing procedures. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social-distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and exits-- exit doors to the hearing room, which are so marked. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages

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will sanitize the front table and chair between testifiers. Public hearings for which attendees-- attendance reaches seating capacity or near capacity, the entrance door will be monitored by a sergeant at arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing while waiting in the hallway or outside the building. And if we could, we could ask that you please limit or-- eliminate or limit the handouts that you have if you could. A few notes about our policy and procedures as a committee. Please turn off your-- please turn off or silence your cell phones. This afternoon, we'll be hearing a total of five bills and we'll be taking them in the order listed on the agenda outside the room. On each of the tables near the doors in the hearing room, you will find green testifier sheets. If you're planning to testify today, please fill out one and hand it to Ellie when you come up to testify. This will help keep us an accurate record of the hearing. If you are not testifying at the microphone, but want to go on record as having a position on a table [SIC] being heard today, there are white sign-in sheets at each entrance where you may leave your name and your other pertinent information. Also would note if you are not testifying, but have a position letter to submit, the Legislature's policy is that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you do have any handouts that you please bring ten copies and give them to the page. And also of note, we do use a light, a light system for testifying. Each testifier will have five minutes to testify. When you begin, the light will turn green. When the light turns yellow, that means you have one minute left. When the light turns red, it will-- it is time to end your testimony and we will ask that you wrap up your final thoughts. When you come up to testify, please begin by stating your name clearly into the microphone and then spell both your first and last names. The hearing on each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then from those in the opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. And we do have a no-- a strict no-prop policy in this committee. With that, we will begin this afternoon's hearing

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with LB407 and we welcome Senator McDonnell or somebody representing Senator McDonnell. Welcome, Tim. Thanks.

TIM PENDRELL: Thank you, Chairman Hansen and members of the Business and Labor Committee for hearing from us today. My name is Tim Pendrell, T-i-m P-e-n-d-r-e-l-l, and I am filling in for Senator McDonnell from Legislative District 5 who could not be here today. I'm reading his opening testimony into the record. Senator McDonnell should be back on Wednesday to answer any of your questions. This bill adds county correctional employees working in high-population county correctional facilities to the provisions of the Nebraska Workers' Compensation Act that concern mental injuries and mental illness. Correctional work is regarded as a stressful occupation. Like first responders, correctional officers are constantly at significant risk of bodily harm or physical assault while they perform their duties. On a daily basis, they are potentially susceptible to emotional and behavioral impacts of job-related stressors while they keep themselves, their coworkers, the community, and the population they oversee safe. Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance abuse disorders and even tragically, suicide. It is important to recognize these potential occupational injuries related to post-traumatic stress and for workers to promptly seek diagnosis and treatment. Because of the risk to county correctional officers, it is important to include their potential risk for mental injury into the Nebraska Workers' Compensation Act. Also testifying today and to answer any questions you may have is John Corrigan. Thank you, Senator McDonnell.

B. HANSEN: Thank you. All right and with that, we will take our first testifier in support of LB407. Welcome.

JOHN CORRIGAN: Good afternoon, Mr. Chairman, members of the committee. My name is John Corrigan, J-o-h-n C-o-r-r-i-g-a-n. I'm a lawyer with the firm of Dowd and Corrigan in Omaha and I represent a lot of first responders, either through the fire service, police service, but most importantly today, through the FOP or Fraternal Order of Police Lodge 8 and the Lodge 8 represents over 300 employees at the Douglas County Department of Corrections, which on any given day, is at least the second-largest jail or penitentiary in the state. I'm going to give you some statistics. The average-- Douglas County average daily count is a little over 1,100 people a day; 3.7 miles away is the Omaha

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Correctional Center, which has a capacity of about 712 people. Tecumseh is 960 at capacity. Senator Lathrop may be able to tell us where they're at in terms of being above or below that. But the average daily population, Lancaster County as of December 1, 2020, was 623 inmates. Given that Lancaster and Douglas County are dealing with not only the same class of inmates that are in the penitentiary facilities, they are also dealing with people right off the street, usually in very traumatic situations in the intake process. Now we have had about 10 or 12 years of experience now with the first responders' bill the-- in the trade. It's called the mental-mental bill that is prior to that law, if a worker suffered a mental condition without a injury to the structure of his or her body, that was not a compensable injury in the workers' compensation laws. The Legislature, through a lot of efforts and, and cooperation, passed what we call the first responder bill to recognize that those traumatic injuries that weren't accompanied by a physical injury were real and they should be treated. And my own experience in my work is that you-- if those are met with the seriousness with which they should be and the stigma is overcome by prompt and supported treatment, then people can get back to work and maintain their careers and get to a point where they can retire with the, the benefit and the health that we want them to have in exchange for protecting us from our, our worst elements over the years of their working life. The reason this bill is in front of you is because some changes were made in 2017 to expand the mental-mental bill from police and fire to frontline workers. So if I work at the Omaha Correctional Facility, I don't have to deal with people coming in and out off the street. Those are people that are most likely coming from the Douglas County Jail, although maybe other jails around the state, after being sentenced to the State Penitentiary system. And they're going to have-- you know, three miles away from the Douglas County Jail, they're going to have coverage under this law. There's no valid policy reason not to cover the Corrections employees in these, in these jails that are high-volume jails. Now I wouldn't be opposed to covering other jails and, and people that have the duty as a certified Corrections officer, but we have seen these situations where maybe there isn't an injury to the person who had to go in and try to save somebody from killing themselves or holding the body up as it hung from the rafters because somebody committed suicide for the third time in a week on their shift and those create mental conditions that deserve treatment. They create

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temporary and permanent disability that deserve benefits. And if, if-- we think that this effort to get that treatment and to reduce the stigma for mental conditions can allow people to continue their employment because they will have the ability to access that treatment, one, without any cost, as opposed to under a group health plan where there may be a, you know, a few thousand-dollar deductible. And the, the idea that mental injuries aren't real or it's a sign of weakness and that's something that the unions in the police and fire system and in the Corrections system is-- are, are working to overcome, but we think that this-- these efforts in trying to recognize those injuries and bring the workers' compensation system in line with the medicine. And the medicine is that these injuries are real. The Department of Veterans' Affairs, they know it. Anybody who experiences working in these fields, they know that they're real and the stress that people are under is significant. And recognizing that in our workers' compensation laws is an evolution that we see in all walks of the, you know, the first responder world. We think it's time for these Corrections officers to be provided that same benefit. If you have any questions, I'd be happy to answer those.

B. HANSEN: Yes, thank you. Any questions from the committee at all? Yes, Senator Blood.

BLOOD: Thank you, Chairperson Hansen, and thank you for your testimony today. I'm going to ask you a question because I want to have this on the record. So I worked maximum security for the prison system and I think lots of times people that don't have a clear understanding of the difference between the jail and the state prison. And we're talking about jails, is that correct?

JOHN CORRIGAN: Yes.

BLOOD: So would you say that it's correct that in a jail, which makes it different than the prison, is that it's even more so of a fishbowl in the fact that you do have people coming in off the street who don't necessarily have anything to lose because they haven't been sentenced yet and in some ways, even though they may not all be there long term, they're more-- they let-- they lack better judgment--

JOHN CORRIGAN: Well, I--

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BLOOD: --because they don't, they don't understand, they might be new to the system, they might still be under the influence? I just-- I really want to paint a picture of how it's actually, in some ways, more dangerous in a jail than the state prison.

JOHN CORRIGAN: Bryan Laux is here. He's the president of the FOP Lodge 8 and he can certainly describe that difference. But one of the things that we see-- I've represented employees of the jails since 1997 and one of the things that you notice is that people come off the street, they're ready to commit crimes to prevent their conviction.

BLOOD: Um-hum.

JOHN CORRIGAN: That involves threats, that involves fights, that involves escape attempts, and a lot of times, that those-- I mean, I'll be very frank. We have a lot of cases of people that have traumatic injury in the jail that is-- mental health conditions that are caused because of those physical injuries and those are already covered and that's not necessarily the problem.

BLOOD: Right.

JOHN CORRIGAN: The problem is, is that when we recognize that in that dangerous situation, even though somebody themselves may not have been hurt when they were applying-- let's say, you know, beating somebody to stop them from killing somebody else, they walked away without a scratch on their body, but they now have an injured mental condition and that's what we're trying to capture. And, and it is because it is off the street-- it is really in our minds, you know, it-- the, the police officer drives the car through the sally port, he or she is covered if they suffered a mental injury as a result, some altercation that takes place there without physical injury. But the person who has to come clean up the mess from the correctional department, they're not and that just doesn't make sense to us.

BLOOD: Well and law enforcement will have a weapon, while--

JOHN CORRIGAN: Precisely.

BLOOD: --people in the jails and prisons, unless they're in the towers, do not, is that correct?

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JOHN CORRIGAN: No weapons in the county jails--

BLOOD: Right.

JOHN CORRIGAN: --other than their training. And in there might be some, you know, extraction teams that have the ability to, to use certain devices, but there's no lethal so-- you know, lethal force.

BLOOD: And then one last question. So now you compound that with the overcrowding, which is in both the county jails and the state prison system, and you look at the lack of programming that's available, even though there is some programming available, and then you have inmates with a lot of time on their hands who have nothing to do but try and figure out how to screw a staff person over. Would you say that's accurate?

JOHN CORRIGAN: Yes, absolutely.

BLOOD: Which causes additional mental stress?

JOHN CORRIGAN: Absolutely and I-- Bryan can shed further light on it, but I appreciate those points because the, the fact that our folks are on a 24-hour, seven day a week facility means they're oftentimes working forced overtime--

BLOOD: Right.

JOHN CORRIGAN: --because people, you know-- for whatever reason, someone else couldn't show up to work so now they've got to stay in 16-hour shifts. And it, it is not easy under the best of circumstances, but this is one thing I think that we can do. There may be a hue and cry about its expense because of the workers' compensation benefits. They're already covering the mental conditions caused because of the physical injuries. This will-- I'm sure there will be some claims, but they will be-- the experience that we've had in the police and fire side is there are not that many more. And it is a rare claim that results in total disability, but we've also had claims that have resulted in death and those are the ones that we're trying to capture. So when someone is contemplating suicide, that they're actually going to get treatment and, and see a way through it rather than self-medicating and self-treating to the point we, we don't have control of them anymore.

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BLOOD: And so would it be the hope-- and this is my last question. And so would it be the hope that also this would help retention because we would have people who were able to deal with the mental health issues maybe with better tools?

JOHN CORRIGAN: Absolutely. That's, that-- and retention is a big deal just because when we have somebody at the-- and at least from my perspective with-- that I've seen in the jail, we get really good people and this is a hard job and it's people you can rely on. They want to keep them because they make everybody safer.

BLOOD: Thank you for your honest answers.

JOHN CORRIGAN: OK.

B. HANSEN: Any other questions from the committee? All right, seeing none, thank you. We'll take the next supporter to testify.

BRYAN LAUX: Good afternoon.

B. HANSEN: Welcome.

BRYAN LAUX: Bryan Laux from FOP Lodge 8, L-a-u-x.

B. HANSEN: Hey, Bryan, can you spell your first name just make sure?

BRYAN LAUX: B-r-y-a-n.

B. HANSEN: Thank you.

BRYAN LAUX: I came here this afternoon mostly to try and paint a picture for you of what we do deal with in the-- at the Douglas County Corrections Center in Omaha. Just a quick, simple story. Recently, we had a inmate who came in. She's in and out most of the time. People know her by her first name generally. It turned out that she got a bad phone call one day and decided to take-- make the ultimate decision to end her life. She leaned over the top tier, the top rail in the tier, and just fell backwards. She did it right next to the officer's desk, right next to the officer's podium. The officer actually claimed that she made eye contact with the inmate as she fell. It took a little bit, but the inmate did expire and it still haunts that officer to this day. She is a-- the officer is a very good person, a very good

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officer. She comes to work every day, but now she's having trouble sleeping. She's had to take some medications to get sleep at night and to even come to work in the morning. She has to go into these housing units, the same particular housing unit, and stare at that rail every day. We don't feel-- I don't feel that the help is there for her that she needs. There are other first responders that came in that day and saw the aftermath of, you know, a 30-foot fall and landed on your head. So we are here today to help-- to ask for help to get, to get our fellow staff members what they need.

B. HANSEN: Thank you for your testimony, appreciate that. Is there any questions from the committee at all? OK, thank you again. We'll take the next supporter.

JIM MAGUIRE: Get my eyes on. Afternoon, Chairman Hansen, senators of the Business and Labor Committee. Thank you. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police and I'm also here on a dual-role representing the Omaha Police Officers Association. We're here in support of this bill. I won't bore you with repeating everything that's been said up here because I'd-- that's what it would be is repeating. But I think the one thing that we need to keep in mind is that this bill basically harmonizes what the intent was a couple of years ago. A frontline state employee is somebody that works for Corrections, at the State Department of Correctional Services, whose duties involve regular and direct interaction with high-risk individuals. That's exactly what Douglas County and Lancaster County correctional officers do on a daily basis. So all we're doing is, is asking you just to include them in a bill where-- my personal view-- is that the intent was to do. So it was just an oversight when, when that-- the original bill was introduced and I didn't, I didn't-- I forgot to include them. So all we're doing is asking for them to be included. Thank you very much.

B. HANSEN: All right, thank you. Any questions from the committee? Yes, Senator Blood.

BLOOD: Thank you, Chairperson Hansen. Thank you for your testimony. So you heard me talk a little bit because I really want to make sure we get stuff into the record on this because, again, unfortunately, even though I know you are constantly educating people, people don't always know the difference between jail and prison. Would you say, especially

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since you represent police, that it's a different type of-- and in some ways, more intense type of attack on the psyche when you are locked in with the, the inmates all day long?

JIM MAGUIRE: I can give you firsthand knowledge of that. My career in, in law enforcement started way back in August of 1990 when I started working as a correctional officer for Douglas County. And then I got hired on with the sheriff's office in January of '92, so I had a little under a year and a half. As a street cop, you deal with a lot of things, but when the call is over, the call is over.

BLOOD: Right.

JIM MAGUIRE: When you're working in a correctional setting and you've got somebody who is acting up, there is no place to go. They're being housed there and the, the constant threat and stress that you endure day after day after day is, is never ending and that-- partially that's why we have such a hard time retaining those employees. So if this is a way to retain quality employees, it's, it's a worthy investment. You hope you never have to use it, but if you do, help is available.

BLOOD: And would you say that that would also benefit the community as well if we have staff, people who aren't going home stressed? And I know-- I mean, the honest truth is we have people that end up acting out with domestic violence, alcohol, drugs. Do you feel that this could also be a way to better serve our community as well if we are getting these people the mental health help, help that they needed?

JIM MAGUIRE: Yes, without a doubt, yes.

BLOOD: Thank you.

B. HANSEN: Any other questions from the committee? All right. Seeing none, thank you.

JIM MAGUIRE: Thank you very much.

B. HANSEN: We'll take the next testifier in support.

JON REHM: Good afternoon. Jon Rehm, J-o-n R-e-h-m, with the law firm Rehm, Bennett, and Moore here in Lincoln, testifying on behalf of the

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Nebraska Association of Trial Attorneys in support of LB407. The trial attorneys support LB407 because it expands the class of who is eligible for mental-mental benefits to a, to a, to a deserving class of people. It also expands their ability to get workers' compensation under kind of an alternative method of recovery or another way to recover benefits that was passed last year. We like the-- we like that legislation and expanding it to Corrections guards because it explicitly recommends-- recognizes microtrauma or overuse within the language of the statute, which is really good. And it also expands the class of experts who can testify. Like, mental health professionals can testify in-- under this method of recovery as well, so we think it's a good bill. Nebraska has been a leader in expanding mental-mental benefits to first responders and I think the state's done a very good job of incrementally expanding the class of employees-- deserving employees who can get this. I mean, just-- and like Mr. Corrigan, I represent a lot of employees for frontline responders, maybe not as-- maybe as many corrections and, and law enforcement officers as Mr. Corrigan, but, yeah, the trauma that they go through is unbelievable. I had a client of mine got-- she had something thrown in her eyes by a relative of Nikko Jenkins and another client of mine-- I'm dealing with this case right now-- who's a frontline worker, may not be within the class of this bill, though, was assaulted by somebody with a serious behavioral impairment. And there's all sorts of this, all sorts of this going on, so, I mean, this bill is, this bill is good. I think it should ply-- apply to more employees, but that's my personal opinion, not that of the Nebraska Association of Trial Attorneys. Thank you.

B. HANSEN: All right. Thank you. Any questions from the committee? All right, thank you very much. We'll take the next testifier in support. Any others wish to testify in support of LB407? If not, we'll move on to anybody wish to testify in opposition to LB407? Seeing none, any wish to testify in a neutral capacity? All right, Tim, I'm assuming we're not closing, so we'll, we'll end the hearing on LB407 and we do have a couple letters for the record, one for Marcia Blum from NASW Nebraska and one from Susan Martin from the Nebraska State AFL-CIO. With that, we'll move on to LB256. Welcome back, back, Senator Matt Hansen.

M. HANSEN: All right. Good afternoon, Chair Hansen and fellow members of the Business and Labor Committee. My name is Matt Hansen. For the

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record, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here to introduce LB256 that clarifies a release of a lump sum settlement for indemnity benefits only, need not contain allegations regarding eligibility for Medicare if the employee's right to receive future medical services is specifically excluded from the settlement. This bill was brought to me by the Nebraskans for Workers' Compensation Equity and Fairness. Some background on why this bill was brought to me: under current law, a lump sum settlement is required to be submitted to the Workers' Compensation Court for approval under a variety of circumstances. The Workers' Compensation Court reviews those settlements to make sure that they in the best interests of the employee. If an employee, at the time of the settlement, is eligible for Medicare or has a reasonable expectation of becoming eligible for Medicare within 30 months after the date the settlement is executed, the settlement must be submitted for review and approved by the Nebraska Workers' Compensation Court. This is the case even if the right to medical benefits is not the item being settled. This process seems to be unnecessary and there are situations in which workers' compensation claims are settled with respect to indemnity benefits only with future medical benefits subject to subsequent resolution. Therefore, under LB256, if an employee is a Medicare beneficiary, but is not settling the right to future medical benefits to be played [SIC] by the employee insurer, the need for the court review process would be eliminated and the parties may settle the, the benefits claim under the release waiver process. With that, I will close and be happy to take any questions.

B. HANSEN: Thank you. Any questions from the committee at all? Seeing none, thank you.

M. HANSEN: Thank you.

B. HANSEN: All right and we'll take the first person who wishes to testify in support of LB256. Welcome.

DALLAS JONES: Good afternoon. My name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I'm an attorney with the Baylor Evnen law firm and I am appearing on behalf of Nebraskans for Workers' Compensation Equity and Fairness today. Let me try to simplify this as much as I can because there's a lot of moving parts, it sounds like, I'm sure. But the

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simple purpose of this bill is to enable an employee who is represented and may have an entitlement to Medicare benefits to pay his or her medical expenses to resolve only the disability part of that employee's workers' compensation claim with a release. As opposed to what, you might wonder? As opposed to the process of submitting a settlement to the Workers' Compensation Court for approval, which tends to be a lengthy one, a fairly involved one, and an expensive one. I believe that this bill is once again supported by both business and labor and the reason for that is principally because of the, the fact that this enables parties to move through the process and resolve a claim quickly. Again, I emphasize this involves an employee who is represented by counsel, not an employee who is fighting the battle by him or herself. So how do we get here? Why-- what are the circumstances that give rise to the need for this? I'll give you a quick example of the typical case. The employee has a claim for disability benefits, for medical benefits, and the employee's counsel and employer reach an agreement to try to sell it. What happens typically is-- in those cases where the employee may be entitled to, to Medicare-- either is or will be at some point-- Medicare has a process that requires the parties to jump through a lot of hoops to ensure that Medicare doesn't believe that all you're doing is shifting liability for future medical to Medicare. That's a no-no. In that process, what will often happen is that you-- we will be told the employer will fund this fund, put money in a fund that's going to pay for future medical. Because of the way that Medicare values the future medical, it oftentimes is very, very expensive and the employer says it's unlikely the employee is going to incur that much money. We'll pay as we go, but we'd still like to settle the disability piece, says both the employee's counsel and the employer. Well, so why can't you do that? Well, you can, but you have to go through the court-approved process. What the parties would prefer to do, where the employee is represented, is settle just that disability piece with a release and be done with it and then the employer's liability for future metal [SIC] is not impacted by what this settlement is. Whatever obligations the employer has to continue paying for future medical, those obligations remain. The-- that's really about it. So what we're looking for is to, to shortcut the process a bit with the, the protections that are in place that were expressed last year when-- I believe it was LB1107 [SIC]. I may be wrong on that, but the same bill was presented last year and Senator Lathrop and the court had raised

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some concerns. Those have been dealt with in this language of the bill, which were essentially we're not going to do this and leave the employee hanging with unpaid medical bills. We can't do that. The language of the statute precludes that or the bill precludes that. And if Medicare has paid some bills, we can't use a release unless those bills have been reimbursed by the employer. Thank you.

B. HANSEN: Thank you for your testimony. Is there any questions from the committee? I got one quick question.

DALLAS JONES: Yes.

B. HANSEN: Is there any, like, legitimate claims that would need to go in front of the court that-- when someone's medical-- eligible for Medicare?

DALLAS JONES: Well--

B. HANSEN: I guess the reason why, like, someone would need to go there?

DALLAS JONES: The present statute just says if the employee is a Medicare beneficiary or has a reasonable expectation of becoming one, you have to have a court-approved process. Our point is we're not, we're not impacting future medical and that's all, that's all Medicare cares about. So if we're not dealing with the future medical piece in one of these settlements like this, that statute, which prevents using a release, shouldn't do that and, and that's what we're trying to change, plain and simple.

B. HANSEN: All right, thanks. All right. Thank you. We'll take the next person wishing to testify in support.

BOB HALLSTROM: Chairman Hansen, members of the committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska-- or for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business to testify in support of LB256. I've also been authorized by Ron Sedlacek of the State Chamber to express their support for the bill as well and have signed in on their behalf. I don't think I need to belabor the point of the substance of the bill. Senator Hansen did a nice job and was followed up by Dallas Jones. But

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I just do want to note LB103 was before this committee last session. At the committee hearing, the Workers' Compensation Court and Senator Lathrop had raised some concerns regarding conditional-- past conditional medical bills that may have been paid by Medicare. The language of the bill as introduced has, we hope, addressed that satisfactorily. This is one of those bills I hope I'm going to be followed by the Association of Trial Attorneys so the planets have aligned where we have the-- both parties on the, on the same side of the page here on this bill supporting it. And I'd be happy to address any questions that the committee may have.

B. HANSEN: All right, thank you. Any questions from the committee at all? All right, thank you very much.

BOB HALLSTROM: Thank you.

B. HANSEN: Welcome back.

JON REHM: Thank you, Senator. I feel like we're asking-- Jon Rehm from the Nebraska Association of Trial Attorneys in support of LB256 and-- oh, sorry.

B. HANSEN: Just spell your name again one more time just for the record.

JON REHM: Rehm, R-e-h-m, Nebraska Association of Trial Attorneys.

B. HANSEN: Thank you.

JON REHM: Feel like since Mr. Jones testified before me, we're trying to get a settlement approved here. We have a stipulation here. Anyway, Nebraska Association of Trial Attorneys clearly supports LB256. The bill allows for faster compensation in disputed workers' compensation cases where, you know, there's an issue as to was the injury caused by work? Did the action happen at work? What's the wage benefit? How disabled is the person? There's so many factors that go into it and this allows parties to settle cases and not have to worry about Medicare, not have to worry about Medicare and be able to get cases resolved quickly and people compensated fairly in a fast manner as well. I think the deeper reason of why we're here is there's a conflict between state and federal law, state law-- workers' compensation laws, obviously our state laws and they're state laws

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because when they were passed in the 1910s, the definition of interstate commerce as defined by the Supreme Court was pretty narrow. So federal government couldn't do something like workers' compensation back in the 1910s. As law changed-- as federal law changed, in the New Deal era, you had more social programs like Medicare, unemployment that, that arose and so workers' compensation needs to coordinate with federal laws like Medicare. So essentially, we don't want to shift the costs of work injuries for under a state law on, onto the federal government broad Medicare. And this bill does a really good job of that, I think, by ensuring that either the medical care stays open to allow a settlement by release, which means you can get a check almost right away, or that if Medicare has paid something under what's called conditional payments, that those conditional payments are paid back. And what-- I think what the bill does is further encourages the defense bar, Mr. Jones, plaintiff's bar, me, Senator Lathrop, John Corrigan, all the rest of the people that are, that are here today, to work together to get these cases resolved in a quick manner. Take any questions.

B. HANSEN: Thank you. Any questions at all? Seeing none, thank you. Is there anybody else wishing to testify in support of LB256? Is there anybody wishing to testify in opposition to LB256? Seeing none, anybody wish to testify in the neutral capacity? Welcome.

JILL SCHROEDER: Good afternoon, members of this committee. I'm Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r, and I'm the administrator of the Nebraska Workers' Compensation Court. The purpose of my testimony today is to provide this committee with a bit more information about the process of court review. The primary points that I want to express to you today are first, that court review of settlements is a meaningful process because it identifies inaccuracies in the settlement documents. And second, that one of the issues this committee will need to consider as you review this legislation is who should bear the risk if Medicare's past interest is not adequately protected? People have told you about the two types of settlement; settlement releases and lump sum settlement. Both are final and binding forms of settlement. When a lump sum settlement is submitted to the court for review, the presiding judge determines two things: whether it is in the best interest of the injured worker and whether the provisions of that settlement are in conformity with the Workers' Compensation Act. Almost all states within the United States have

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settlement review of all settlements because of the final and binding nature of these agreements between employers and workers. In applying the best interest standard, the court identifies benefits owed to injured workers, including indemnity benefits, which might be for lost time or permanent injuries. The court reviews attorneys fees and how those will be provided for within a settlement and then medical bills, whether those bills are paid or unpaid, whether they're disputed or undisputed. This is to make sure that injured workers have received the benefits to which they are entitled and there are not-- the injured workers are not left with any unanticipated medical expenses after the settlement. In fiscal year 2020, lump sum settlements compromised or represented 44 percent of the settlements that the court reviewed. The court identified more than \$211,000 in benefits owed to injured workers or their medical providers in order to bring the provisions of the settlements into conformance with the act. Over the past seven fiscal years, that amount is \$1,361,000. So far this fiscal year, the court has identified more than \$198,000 in underpayments to injured workers. Court review also identifies errors that might occur in employers' terms of settlement. Within recent days, we've identified a settlement where it was \$25,000 higher than the employer had in fact agreed to pay. LB256 would eliminate court of approval of indemnity-only settlements when Medicare either hasn't paid any medical expenses or Medicare has been reimbursed for medical expenses at the time the settlement is executed. I understand that the intersection is that many workers' comp bene-- claimants may be, may be eligible for Medicare by virtue of their age of 65 or older or because they are receiving disability benefits. And in those cases, if a Medicare beneficiary is injured in a workplace accident, then the workers' comp carrier or employer is primarily liable for accident-related expenses and Medicare is secondary to workers' comp for accident-related expenses. It's been the court's experience that in indemnity-only settlements, there may not be sufficient attention paid to whether someone is eligible for Medicare or as to the amount of Medicare's past conditional payments. We submit that it is more likely if court approval is required, that claimants and their attorneys will pay attention to the coordination of benefits with Medicare prior to submission of settlements to the court for approval and the approval process itself will confirm whether the settlement is indeed in the best interest of the claimant. If an injured worker signs binding indemnity-only settlement documents in which it's

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alleged that Medicare hasn't paid medical expenses or Medicare has been properly reimbursed and that's not true, it is the worker who will bear the risks for that error. Those risks include that Medicare may seek to directly collect the conditional payment amount from the injured worker or it may offset the amount owed against charges for ongoing medical treatment the worker is receiving. If the past Medicare issues are not properly taken care of at the time of settlement, the claimant then may have to turn to the indemnity portion of the settlement to repay Medicare. That's why this category of cases was included in those that require settlement approval. We leave the policy decision concerning workers' compensation settlements to the Legislature, but we hope this explanation of the court's role in the settlement process might be helpful to you as you consider this legislation. Any questions?

B. HANSEN: Thank you for that explanation. Is there any questions from the committee? All right, thank you.

JILL SCHROEDER: Thank you.

B. HANSEN: Anybody else wishing to testify in a neutral capacity? All right, well with that, we will welcome back Senator Hansen if he wishes to close.

M. HANSEN: Yes, thank you, Chairman Hansen, and thank you, members of the committee, and I would like to thank all the groups that have worked with us on this bill over the past year. As was referenced, we did submit a different version of this and we have touched on some of the-- kind of some of the edges and technical issues since then. I will say for those of you new to this committee, having a workers' compensation bill with no opposition testimony stands out and so I think this is an important area to keep working on. Just kind of as a close and a reminder, this would still only apply in situations in which both parties, including the employee as represented by counsel to any situation in which the employee is not represented, they're going to pro se, those submissions would still go up to the court regardless for that double-check. With that, I'd be happy to take any questions.

B. HANSEN: Are there any questions? Thank you, Senator.

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M. HANSEN: Thank you.

B. HANSEN: And that will close our hearing on LB256 and we will open it up for LB463. Welcome, Senator Arch.

ARCH: Thank you. Good afternoon, Senator Hansen and members of the Business and Labor Committee. My name is John Arch, J-o-h-n A-r-c-h, representing District 14. Today, I'm bringing to you LB463. Currently under the Nebraska Workers' Compensation Act and Statute 48-134, when an employee is injured, the employer can request that employee submit to examinations paid for by the employer or their insurance company. At these examinations, also referred to as DMEs or defense medical exams, the employee may provide and pay for a physician of their choosing to be present as well. LB463 would extend this presence to include remote attendance by electronic means. LB463 is intended to incorporate telehealth services into the DME process and to create efficiencies for employees whose physician would otherwise have to travel to attend the examination and be reimbursed for that time. The only change LB463 makes to the current process is to add technology. The employee's physician is still the only person given the authority to attend the examination and the employee still must provide and pay for their physician to attend. This bill is not intended to place any burdens on the employer or their physician. I understand there have been some concerns raised and, and there is language that may still need to be worked out. I believe there are supporters behind me who can answer more detailed questions. And thank you and I ask that you vote LB463 to General File.

B. HANSEN: All right, thank you, Senator Arch. Are there any questions from the committee? All right, seeing none, are you sticking around to close?

ARCH: I am.

B. HANSEN: Thank you. All right, we'll take our first testifier in support of LB463.

JON REHM: Jon Rehm on behalf of the Nebraska Association of Trial Attorneys. This bill is a common-sense update to our rules about and-- about defense medical examination to account for vast improvements in videoconferencing technology over the last five to ten years. As

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Senator Arch already mentioned, the Workers' Compensation Act already allows for treating physicians to participate in defense medical examinations and that, that is at the cost of the plaintiff as well. And this language does not change the fact that the plaintiff is still responsible for the, for the cost of the-- of having their treating doctor participate in this examination. You know, oftentimes there's concerns about privacy brought up as well, but in workers' compensation, privacy-- since the rules of discovery apply in workers' compensation, the claimant or the plaintiff gives up a lot of their right to, to privacy here. I mean, you're basically an open book when it comes to your medical history and your employment history when you file a workers' compensation claim. The Workers' Compensation Act already allows for hearings by video with the consent of the party and we already allow for video depositions. And in discovery, defense medical examinations are really more part of the-- are as much a part of the discovery process as they are the examination progress. And I think particularly LB63-- LB463 assists rural injured workers who are-- live outside of Omaha or Lincoln because typically in a disputed claim where you have somebody who lives out-- you know, well outside a major metropolitan area, that person is-- you know, maybe they treat in Kearney or they treat in North Platte or Grand Island or, you know, or Scottsbluff and they get shipped either to Lincoln or Omaha depending on how far east they are or they get shift to Grand-- they ship to Denver. I think the, the line is like Lincoln/Dawson County, like, North Platte, go to Denver, everything east of North Platte, go to Lincoln, Omaha. So, you know, this is something that's going to benefit workers-- injured workers in rural areas as well. So I would entertain any questions from the committee about this.

B. HANSEN: Thank you. Are there any questions from the committee? All right, thanks again.

JON REHM: Yep.

B. HANSEN: And we will take our next testifier in support. Is there anybody else wishing to testify in support of LB240-- LB463? If not, we'll take our next testifier in opposition.

DALLAS JONES: Good afternoon, Mr. Chairman, members of the committee. My name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I'm an attorney with the Baylor Evnen law firm here in Lincoln and I appear on behalf of

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Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB463. There are several questions regarding the language of the bill, which I understand may be underway to bring some resolution, but I will list those and then get to the heart of the opposition of my organization that I'm representing. While the language purports to suggest that all the costs associated with the attendance of another physician via the proper technology is going to be borne by the employee, that does not necessarily cover what the actual cost may be. And for example, what I'm talking about is I don't know what technology is going to be brought into the examination room. There is very sophisticated technology, which requires set up, and if that technology is in fact what's going to be used, which enables the remote attending physician some control over what he or she sees and hears, zoom in, zoom out, that requires setup time. And the physician who's conducting the evaluation may well not be particularly happy with the prospect that the setup time and the takedown time is going to limit access to his or her examination room for other patients. I don't know whether a third party may be in the room to operate the technology. If it's the more sophisticated technology, it's-- just not a simple iPhone, may someone else be in the room to be the operator of that top technology? I don't know. May it be recorded? It shouldn't be. May others on the receiving end of the signal, other than the physician who is watching the evaluation, participate and also watch? They should not. That would be an expansion of what the act presently provides, assuming all those concerns are, are raised. I will tell you the primary concern that we have is that the added hassle, if I can use the term, from the perspective of the examining physician causes some physicians-- and there are not many who are willing to do this already-- to not be willing to be involved as an examiner. We have taken the process backwards, not forwards. If they're still willing to do it, but the cost has gone up because the hassle is such that they don't want to have to deal with the technology in the room, then we have taken this backwards, not forwards. Lastly, let me make a suggestion. If we take this step and we take advantage of the technology that is available, I would ask why don't we make that then a two-way street? Here's what I mean by that. The references to defense examinations, those are when an employer or its insurer has the employee evaluated by a physician, but the exact same thing occurs the opposite way. In claims where employees are represented with some frequency, there will be physicians retained not for purposes of

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treatment, but for the very same purposes that the insurer is retaining the physician and that is to answer a host of medical questions that the insurer or plaintiff's counsel wants to ask. It seems to me that if we're going to take this step, it ought to be a step where we have a two-way street and the employer or insurer ought to have the same rights to have a physician observe or attend tele-- with telemedicine technology that evaluation that the employee is scheduling, just as the employee wants to have that technology used so that the employee's physician may attend and observe the evaluation. I'd be happy to answer any questions.

B. HANSEN: Thank you. Yes, Senator Blood.

BLOOD: Thank you, Chairperson Hansen, and, and thank you for your testimony. So I actually have two questions for you and, and, and I hear your concerns and I'm noting your concerns, but I have a concern now listening to you talk about telehealth. So for example, are you familiar with how telehealth works for Nebraska Medicine?

DALLAS JONES: Well, generally, yes. I guess you'll need to be more specific about what you're talking about.

BLOOD: So--

DALLAS JONES: I understand the technology.

BLOOD: OK, so as a consumer, I can download the app, correct?

DALLAS JONES: Um-hum.

BLOOD: And that provides me with a secure resource--

DALLAS JONES: Um-hum.

BLOOD: --to utilize telemedicine through Nebraska Medicine, which is throughout the state of Nebraska.

DALLAS JONES: Correct.

BLOOD: CHI, CHI Health has something similar--

DALLAS JONES: Um-hum.

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BLOOD: --right? So there is nothing that prevents the, the employer from utilizing it as well because telehealth now, especially since the pandemic, is available and secure for everybody, is it not? What prevents them--

DALLAS JONES: If the, if the technology is used, correct. Yes, I'm not talking--

BLOOD: Right.

DALLAS JONES: --about security, but yes.

BLOOD: So not necessarily setting up anything, but already available through most health systems?

DALLAS JONES: It depends on what's used. There is technology, telehealth technology, that is in place in the examination rooms. There are some examination rooms who have none of it. And there's telehealth technology that could be imported into examination rooms.

BLOOD: But most, because of the pandemic, can be corrected with simply downloading the app, is that not correct?

DALLAS JONES: Well, it depends on what the technology is on the-- in the examination room and that's, that's my point. If it's--

BLOOD: The, the concern I have is that-- with most of our major health systems in Nebraska is that-- I'm going to disagree with you and I'm not here to, to, to say that you've said anything wrong, but I just want to make sure that we have a clear understanding that telehealth is readily accessible through most major care systems here in-- healthcare systems in Nebraska, is that correct?

DALLAS JONES: I, I would hesitate to, to go there. I'm not taking issue with you, Senator. I will tell you, I'm in a lot of examination rooms and there are no-- there is no telehealth technology that's sitting there and available to be used.

BLOOD: Lots of times, it needs to be done upon request. I, I guess the concern that I have-- and again, I'm going to research this-- is that you're saying that the same thing should be available to employers and, and it is. Anybody who requests telehealth, if it's available

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within the area that they live, are allowed to utilize telehealth and it doesn't require extra equipment.

DALLAS JONES: Yes. What, what I am suggesting in making it available to employers is allow employers not just access to the technology, but access to see what's happening in the examination room. Somebody has to, to turn it on, if you will, so that the physician retained by the employer can observe just like the physician retained by the employee can observe.

BLOOD: So again-- and this is the point that I'm kind of stuck on and I'm still confused-- is how does this statute disallow that?

DALLAS JONES: I'm sorry, I missed the last--

BLOOD: How does the statute as written disallow that?

DALLAS JONES: How does the statute as written disallow the employer to have the same access as the employee?

BLOOD: To, to have anybody utilize it in an easy fashion?

DALLAS JONES: The statute, as it presently reads, says the employee may, at the employer's cost or something to that effect, have a-- retain a physician to attend--

BLOOD: Right.

DALLAS JONES: --the examination, which, you know, when it was written, obviously that meant physician--

BLOOD: Physically, yeah.

DALLAS JONES: --physically attend this-- the appointment. So the amendment allows for that attendance to be done via telehealth technology. I may not be answering your question.

BLOOD: Yeah, I, I may reach out to you after the hearing. So I'm--

DALLAS JONES: Sure.

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BLOOD: --I'm reading this and I'm not seeing the same concerns based on what I know about telehealth, so there may be a miscommunication, so thank you.

DALLAS JONES: Yeah.

B. HANSEN: Any other questions from the committee? I got just one question.

DALLAS JONES: Certainly.

B. HANSEN: And I'm a little-- maybe a little unfamiliar about-- I understand how, the, the exam works, but maybe more the process about how it works when we have-- when we get attorneys involved, workmen's comp. Are there certain, like, physicians then-- like the, the representatives of the workmen's comp might say we have, like, this list of physicians where we send our, you know, the people we're claiming for workmen's comp, we send them to? Is that typical--

DALLAS JONES: Yeah.

B. HANSEN: --or does that-- we can go to anybody within a certain region?

DALLAS JONES: There's basically two things. The Workers' Compensation Court has independent medical examinations, which is a creature of statute, and a list of physicians who have indicated they're willing to serve on that. And they've been-- I presume there's been some approval process from the court to ensure that are qualified. But there's that list and what this is dealing with is not that independent medical examination list. This is a-- more of a private arrangement where an insurer or an employer retains an expert who is willing to evaluate somebody at that insurer or employer's request and answer questions. So it is simply which physicians are willing to do it and my point was there are not a lot of them who are willing to do it. My concern is to the extent that this becomes more of a hassle than they may perceive it to already be, are we going to limit that number of physicians who will actually answer those questions?

B. HANSEN: OK, but there are some currently who do use telehealth to do state examinations such as this that might be--

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DALLAS JONES: There are.

B. HANSEN: OK, so this would permit-- just open it up for those to say, look, we have a-- you have a choice between those who would do it and those who don't, but now-- or at least we're allowing it now for those who do have access to telehealth or already have the room set up for someone to push the play button. They can also go to them. It might save somebody who lives in North Platte having to drive all the way to Denver for something so they-- that-- this bill--

DALLAS JONES: Yeah.

B. HANSEN: --kind of does is kind of at least opens it up a little bit for some to, to allow--

DALLAS JONES: Yeah.

B. HANSEN: --for telehealth?

DALLAS JONES: It would. There-- I will tell you, there is a very prob-- I don't know the percentage of these evaluations that are done using telehealth technology, but I would venture to guess that it's far less than 10 percent.

B. HANSEN: Thank you.

DALLAS JONES: Yeah.

B. HANSEN: Any other questions? OK, thank you--

DALLAS JONES: Thank you.

B. HANSEN: --appreciate it.

BOB HALLSTROM: Chairman Hansen, members of the committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business to testify in opposition to LB463. I think Dallas Jones has set forth the same types of issues and concerns that I've raised in my testimony. What I would like the committee to know, I reached out to Senator Arch early on after the bill was introduced, brought these

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issues to his attention. Since that time, we have been working with Randi Scott with the Nebraska Association of Trial Attorneys and have put together some amendments that address most of the issues that we have raised as concerns: no recording, no third-party presence, and clearly the cost of the electronic means to be borne by the employee. I think the current statute, as was testified to by Mr. Rehm, talks about the current law having the cost of the physician borne by the employee. This would be if there is any additional or incremental cost associated with conducting this examination and the observing thereof by electronic means, that that would be borne by the employee as well. I think that has been acceptable to the trial lawyers. Senator Blood, with regard to your question, I think we may have had two ships passing in the night in terms of the, the issue. What we're looking at is not the issue that's involved with whether-- under the current process where the employer's physician is conducting the examination and the employee has the right to have a physician physically present or under LB463, participate by electronic means. It's not the issue that the employer wouldn't be-- have access to the electronic means in that context or that setting. What's missing in the statute is specific authorization that when the tables are turned and when the employee [SIC] is having an independent examination of, of the injured worker, that the employer should have the opportunity to be physically present or to be present by electronic means for that same purpose. So there's two separate settings. One is the employer conducting the examination of the injured worker. The second one is the attorney for the injured employee is having a separate independent examination of that same injured worker and the current law-- current-- does not allow for the employer to have that same right. And it's, I guess for lack of a better term, the goose and gander. What's good for the goose is good for the gander. I think the telehealth opportunity could expand the ability and the situations in which the physician is observing. Obviously, one of the impediments right now would just logically be the cost if the employee has to pay for the physician to physically transport him or herself to a separate site to take part in that. It may not happen very often. It will happen with more frequency, I would presume, with the electronic-means opportunity. The employers presumably have not had much interest in this issue because of the cost basis, but if electronic means is going to be an option, they would certainly have a, a willingness and an interest in having

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that same, same right. I'd be happy to address any questions of the committee.

B. HANSEN: All right, thank you. Any questions from the committee? Thank you.

BOB HALLSTROM: Thank you.

B. HANSEN: We'll take our next testifier in opposition. Is there anybody wishing to testify in a neutral capacity? Seeing none, Senator Arch.

ARCH: I think that the, the obvious motivation for something like this is to, is to allow for, for a full understanding of these workers' comp claims. There are obviously technical issues involved in it and you've heard the discussions are, are ongoing right now and with, with that, I'd close.

B. HANSEN: Any other questions from the committee? Yes, Senator Blood.

BLOOD: Thank you, Chairman Hansen. Just a real quick question because you are the Chair of the HHS Committee, is that correct?

ARCH: I'm sorry?

BLOOD: I just have a really quick question. You, Senator Arch, are also the Chair of the HHS Committee?

ARCH: I am.

BLOOD: And so would you say that you're pretty well informed when it comes to telehealth?

ARCH: Fairly well, yeah.

BLOOD: Would you say that telehealth is used, especially since the pandemic, quite successfully across Nebraska?

ARCH: We saw that, we saw that go up exponentially during the pandemic, yes.

BLOOD: And is telehealth always video?

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ARCH: I'm sorry?

BLOOD: Is telehealth always video?

ARCH: Well, that's under discussion. It is not. It is-- audio, audio only is, is also being permitted in certain, in certain situations.

BLOOD: And so the ability to select multiple ways to utilize telehealth are actually quite varied?

ARCH: Yes.

BLOOD: Thank you.

B. HANSEN: Any other questions? Yes, Senator Lathrop.

LATHROP: I know very little about telehealth, so I'm going to wade into this maybe to be educated. When a physician provides care by way of telehealth-- and a lot of times that's over some version of Zoom or something like that, isn't it? So they can go, show me your wrist or whatever your complaint is?

ARCH: Currently, right.

LATHROP: Are they doing this in an exam room or are they doing it in their office?

ARCH: Well, it, it depends. It depends on the, it depends on the specialty. It depends on the physician's professional judgment as to, as to what's the best location for that, so I, I can only say it, it depends.

LATHROP: OK, well, I'll take the most common physician involved in treating work comp patients. In my experience, probably an orthopedic surgeon or a sports medicine or a physiatrist, somebody like that, do they do these-- telemedicine in an exam room or are they sitting at their desk, if you know?

ARCH: If, if you're talking about-- you're, you're talking about treating of patients now, you're not talking about workers' comp?

LATHROP: Yes, I am.

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ARCH: Yeah, it, it would, it would vary. Now in the case of orthopedics, in the case of orthopedics, I am, I am assuming they would probably would be a later adopter of telehealth because of the need to manipulate the joints and so, and so doing it in the exam room would probably be their preference. They may do a follow-up visit post-discharge or something like that, post-surgery where, where there be a follow-up visit, but as far as the actual examination, that probably would be done in person.

LATHROP: Well, I guess this is the point. We're talking about the technology and on the, on the defense examining doctors end of things. Looking down the road where telehealth is headed, are we going to have the, the ability to do tele-exams from exam rooms? In other words, is the equipment going to be in an exam room or is it on the doctor's desktop?

ARCH: Oh, I see what you're asking. OK. Yeah, I-- right now, early adopters, early adopters, the, the physician is sitting at a, at, at a desk, not an exam room. They're, they're sitting at a desk. There-- and so it would be-- I mean, we know that behavioral health is about 50 percent of utilization. They're sitting at a desk. Primary care, they're sitting at a desk. And so as you get further on down, as technology increases, not only for, for the, the teleconferencing aspect of it, but for instrumentation and telemonitoring and those types of things, you may find that in the exam room at some point.

LATHROP: Are we, are we headed in that direction if you have--

ARCH: We'll-- we've-- we'll move there.

LATHROP: OK.

ARCH: I, I would-- that would be my prediction. We'll move there.

LATHROP: So in other words, pretty soon these doctors are all going to have this capability in their exam rooms--

ARCH: Right.

LATHROP: --but it isn't there yet.

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ARCH: And I would say, for instance, you know, if you're using scopes in an exam room, ear, nose and throat, otolaryngology, you, you may, you may find already that, that the physician will have an otoscope or some-- or myringoscope where they'll have a, they'll have a monitor and the patient will watch as the scope goes up and goes down. And, and, and the doctor will say now this is, this is, this is where your issue is. It's in this sinus. It's, it's this type of an issue. And so that is already in process.

LATHROP: OK, thanks, John.

ARCH: Yeah.

B. HANSEN: All right, any other questions? All right, thank you. All right, that will close the hearing for LB463. We do have one-- before I forget-- one letter for the record from support, Michelle Walsh with the Nebraska Medical Association. And now we will move on to LB122 and welcome Senator Hunt. We're ready whenever you are.

HUNT: All right, good afternoon, Chairman Hansen and fellow members of the Business and Labor Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8, which includes the neighborhoods of Dundee and Benson in midtown Omaha. Today, I'm presenting LB122. This bill would eliminate the tipped minimum wage for Nebraskan workers. The current wage paid to our tipped workers is \$2.13 an hour and this provision of our state law has not been updated for 30 years. I have tried over the past couple of years to find a solution to this issue that would be acceptable to the body, including increasing the tipped minimum wage gradually, indexing it to the state minimum wage, or placing it at a fixed amount. Each measure has been killed by the influences of the industries who oppose it, so this year I am introducing LB122 to eliminate the tipped minimum wage altogether. I think that it's time for us to take modern reality seriously by saying that \$2.13, a wage that the state found acceptable in 1991, is not fair or realistic to Nebraskans in 2021. I can start by providing some background. In 1966, an amendment to the Federal Fair Labor Standards Act established a unique subminimum wage for workers who customarily receive tips with the legal provision that these workers' hourly earnings, combined with tips, would equal the standard minimum wage. At that time, the federal tipped minimum wage was tied to the standard minimum wage at 50 percent, but that ended at the federal level in

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1996 under pressure from the restaurant industry. The creation of the two-tiered wage system fundamentally changed the practice of tipping, shifting the responsibility of compensating servers from business owners to customers. Today, that responsibility has continued to shift, moving from patrons and business owners to taxpayers. Restaurant servers, the group that stands to benefit most from this legislation, are three times more likely to live in poverty than the general workforce and two times more likely to be on SNAP or Medicaid. So the responsibility to support these workers has shifted to the taxpayers who subsidize the services these workers rely on, when really it should be on the business owners. Due to their low wages and higher poverty levels, about 46 percent of tipped workers and their families rely on public benefits, compared to 35 percent of nontipped workers and their families. While it's a good thing that workers who face challenging circumstances can access these programs for assistance, the committee and the body needs to understand that these programs were never meant to serve as permanent wage subsidies or part of a business strategy for low-wage employers. The truth is that we are all paying for these low wages. It's been 30 years and every year that we let pass without raising the subminimum wage passes more responsibility to taxpayers to support the people who work for this poverty wage and need government and nonprofit services to fill in the gaps. So I ask how many years are we going to let this balance pile up? This bill comes up every year. It's been passed down through the generations. I'm carrying it now. Senator Nordquist brought it many times before. Senator Matt Hansen introduced this before. I'm introducing now for the third time, so we will hear a lot of the same opponents making the same opposition arguments. And we all know those arguments, but these arguments also aren't supported by the numbers. Nationwide, restaurants that increase the subminimum wage saw higher growth in employment than those who didn't. Some may argue that this bill is unnecessary and point to labor laws requiring employers to supplement wages up to the state minimum wage. However, this system doesn't work. It hasn't worked for 30 years. Noncompliance with these provisions are rampant and they're really, really hard to enforce. Sweeps done by the United States Department of Labor showed that 84 percent of restaurants were noncompliant with these provisions. Many employees are wary of reporting violations for fear of retaliation. And when employees do muster up the courage to report wage theft or other abuses, they find that the response is underwhelming because

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Nebraska doesn't have the proper investigatory mechanisms or human power in place to ensure these labor laws are actually enforced. Our Labor Department only has seven employees that perform these investigations, but there are 1,033,800 employees in Nebraska, so that's 147,400-- 147,700, excuse me-- employees per investigator. We have made efforts to increase the Department of Labor budget in Nebraska so that they can hire more investigators to look into these wage theft cases, but those proposals don't go anywhere either, so it's clear that the wage just needs to increase. Since the tipped minimum wage last increased in 1991, Nebraska has increased the standard minimum wage seven times. So I want us to consider is why do we as a culture think that the general workforce deserved a raise seven times in the last 30 years, but tipped workers don't deserve a raise? As anyone who's ever been a service worker knows, income based on tipped work is very volatile because not all customers tip well, not all restaurants consistently have a lot of business, and even if you give really great customer service, tips aren't always guaranteed. We also know that wage theft is common and that the laws protecting tipped workers are very difficult to enforce. The stagnation of the federal minimum wage has left the decision to raise tipped minimum wages up to the states and Nebraska has fallen significantly behind our neighboring states and the rest of the country. Iowa currently pays tipped employees \$4.35 an hour. Colorado is at \$9.30 and that went up in the last year. South Dakota is at \$4.73. That went up in the last year. Missouri is at \$5.15. That went up in the last year. Nebraska, \$2.13, has not gone up since 1991. Seven states have abolished the tipped minimum wage altogether, including, including the conservative states of Montana and Alaska. If we do not develop a culture of support for our tipped workers who are often women, who are often mothers and students-- 73 percent of tipped workers are women-- we will continue to see an outward migration of hard workers to neighboring states. We've tried the incremental approach. We've tried small raises in several different ways. We've tried indexing it. We've tried just raising it a little bit. None of it has worked. The opposition remains the same. This is a surprise to nobody. And this year, I, I am prepared to take this fight much more seriously, though. If this fails, if this bill fails in this body, we will bring it to a vote of the people and I assure you that the people of Nebraska, the workers, they do want this. Thank you and I'd be happy to answer any questions.

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B. HANSEN: Thank you. Are there any questions from the committee? Yes, Senator Gragert.

GRAGERT: Thank you, Chairman. Senator Hunt, if we went to minimum wage \$9 an hour, could the employer keep all tips then?

HUNT: I'm not sure. I think tipping would work the same. The, the laws around tips wouldn't change, so employers could continue to handle tips the way they already handle them.

GRAGERT: But they would--

HUNT: It would just, it would just raise the base wage of those workers.

GRAGERT: But they would have to let the employee have the tips if they're already paid a minimum wage, right? You're-- is that correct? That-- I'm not--

HUNT: I'm not familiar enough with the laws around tipped-- like, the, the compensation of the tip, but it would raise the base wage. And we know from, from testifiers in past years that the way that workers are required to break up their tips, oftentimes they have to pay out a percentage of their tip based on the sale, so-- or they have to pay out a percentage of the sale to, like, the chef or the busboy or the front post. And so if these workers don't get any tip at all, they have to pay that out of their own paycheck. And we have workers in Nebraska who have reported they come home and they don't have any money at all or they don't have enough money to pay their own taxes. So the laws around what employers are able to do would stay the same. It would just raise that base wage.

GRAGERT: Thank you.

B. HANSEN: Other questions? Yes, Senator Halloran.

HALLORAN: Thank you, Chairman Hansen. Senator Hunt, what you just described where tipped servers would be required to pay a certain percentage of their tips to what we commonly might refer to the back-of-the-house staff that aren't tipped, that's illegal.

HUNT: Well, it happens.

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HALLORAN: Well, I don't know how you know that happens, but, but it's illegal and I'm going to pose a scenario for you. So we, so we draw the conclusion of passing eliminating tip credit. And restaurants then would or could choose to have a policy of no tipping for their, their customers. They can simply put it on the, the front window of their restaurant or on the menu saying tipping is not required. And trust me, if they did that, most people-- a lot of people wouldn't tip. So then-- the option then for the employee is-- that wants-- may want to work for that establishment with no tip credit, no tipping, would be they could work for no tips at \$9 an hour or if they had the option to do it as they do now with tipped credit and take all the tips they get and deserve from good performance. What do you suppose that employee's choice would be?

HUNT: I think that you're describing a scenario that's not like-- likely to happen under this bill. That's not what's going to happen. It's not going to eliminate the ability to tip and in other states that have a tipped minimum wage higher than \$9 an hour, customers still tip. When I go visit those states and I go out to eat, I still tip 20 percent on my bill. And furthermore, businesses do have the choice already to eliminate tips. For example, the Grey Plume in Omaha, they did not allow any tipping and they pay their workers a living wage and they talked about this in their menu. And there's several other restaurants that already do that and so there's nothing preventing, already or under this bill, a restaurant from making a rule about tips and there's nothing this bill would do to prevent workers from being able to receive tips.

HALLORAN: You don't, you don't believe it would incentivize businesses to have a no, no-tip policy because they we increasing--

HUNT: No because we haven't seen that in other states. Nebraska has the lowest tipped minimum wage in the country and other states are doing fine, so there's no reason to believe that Nebraska wouldn't do fine.

HALLORAN: Under the circumstances with restaurants being under duress, with the restrictions, with the pandemic, and a high percentage of them having gone out of business, in the balance of those restaurants hanging on by their teeth, do you think that this isn't potentially a,

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a burden that will drive the nail in the coffin for a lot of those businesses?

HUNT: I'm really sympathetic and empathetic to the strain that small businesses are under right now because of the pandemic. Two things; I think the federal government needs to act to protect these small businesses pronto, as they have, and they need to continue to give relief to these businesses and two, under the law already, restaurants have to compensate workers up to \$9 an hour, even if they aren't making tips up to that amount. And so, you know, if you think about a business during this pandemic, maybe there's a restaurant, they don't have a customer all day, revenue's way down, they still have workers there in the restaurant, servers who are making \$2.13 an hour and they have to pay them up to \$9 an hour. And so in the case that you're kind of describing, which is, like, what if the business is really bad, those businesses should already pay-- be paying their workers up to \$9 an hour.

HALLORAN: Which drives home the point that it is required of a restaurant, businesses now up to \$9 an hour if the tips are insufficient and don't rise to the level of \$9 an hour, is that correct?

HUNT: That's correct. That is the law, but we know that that's not what's often done in practice--

HALLORAN: OK.

HUNT: --and that it's very hard to enforce.

HALLORAN: Thank you, Senator.

HUNT: Thank you.

B. HANSEN: Any other questions from the committee? Seeing none, thank you.

HUNT: Thank you, Senator.

B. HANSEN: I'm assuming you're going to close, right?

HUNT: Yes.

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B. HANSEN: OK and we will take our first testifier in support of LB122. And just on a side note, we'll make sure we'll-- we observe the entrance and exits appropriately if we can. Thank you.

SUSAN MARTIN: Good afternoon, Chair Hansen and the members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and all working families in the state of Nebraska in support of LB122. I admire the perseverance of Senator Hunt, who once again is trying to pass meaningful legislation to raise the wages of tipped workers. I believe this bill is a fair solution for those workers who have suffered the most throughout this pandemic. Through no fault of their own, many are not working enough due to business cutbacks, and some, unfortunately, have lost their job due to closures. Workers in the hospitality industry have been hit the hardest throughout this pandemic. For the past three legislative sessions, I've testified in support of raising the minimum wage of tipped workers from the meager \$2.13 per hour. By eliminating the tipped minimum wage, we're recognizing their worth and the job that they do and the benefits to their employer. I understand many employers are struggling during this pandemic. However, the biggest difference is there's the pandemic-relief assistance for employers, but there's nothing for the employee. By implementing the minimum wage for all workers, it gives these hardworking employees a wage that could support a family, take them off social safety nets, and allow them to invest in the local economy. Employers are required to make up the difference if a worker's base wage plus tips does not add up to the full minimum wage. This complex system is both difficult to comply with and largely unenforceable. It requires tracking and accounting of tip flows, which is burdensome for the employers. The employer is allowed to average tips over the course of the entire workweek and required to top-up only if an employee's average hourly earnings are less than the full minimum wage. Tips are allowed to be pooled among various types of restaurant employees, allowing a portion of the tips that a server receives to be allocated to other employees and tipped workers have experienced tip stealing or other forms of wage theft and are reluctant to demand what they're owed out of fear of reprisal. The rules for tipped workers are complicated and can be confusing for employers and employees. One of the most prevalent violations is the failure to keep track of employee tips and therefore the failure to

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top-up employees if their tips fall short of the full minimum wage. Providing tipped workers a stable base income paid directly by their employers is a key step for improving the economic security and working conditions of low-paid tipped workers. Raising the guaranteed wage to minimum doesn't mean the employee won't give good service. This employee is working to make as much money as they can, especially during this pandemic. Workers who make tips typically are doing more in their position and are expected to do a variety of other work for their employer. Also, they are and should be considered essential workers who are risking their health while providing a service to the public. According to the National Employment Law Project, over 87 percent of workers in predominately tipped occupations are adults age 20 or older and nearly 63 percent are 25 or older. Nearly 52 percent of tipped workers have had some amount of higher education. Over 25 percent support families and over 30 percent of female workers are parents. Tipped workers serve in several occupations. Waiters and bartenders make up 58 percent, but there's other types of tipped workers, including bellhops, parking attendants, nail salon workers, car washers, and food delivery. All workers deserve a fair wage for their work and tipping, tipping oftentimes comes up short. For these reasons, I ask you support LB122 and I thank Senator Hunt for bringing this legislation.

B. HANSEN: Thank you. Any questions from the committee? Senator Halloran.

HALLORAN: Thanks for your testimony. So you made some comments about the-- that it's been particularly a challenge to keep track of tips on the part of the employer.

SUSAN MARTIN: Yeah and that's in that document that I handed out. The Employment Law Project talks about that.

HALLORAN: So how did they draw that conclusion? I mean, how, how-- I-- I'm just looking at it from the perspective of someone that's done that and it's not hard to track--

SUSAN MARTIN: OK.

HALLORAN: --particularly with credit cards being the predominant form of payment. And there's two reasons for tracking it. It's the-- part

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of it is the wages so that they, so that they make sure that they do bring the employee up to the minimum wage. The other part is for tax purposes. So there's, there's two reasons that they have to track tip and, and it's not particularly onerous. It's more paperwork, yes, but it's all part of the business. And if an employee doesn't get enough tips to bring them up on an average hourly wage of \$9, the employer is responsible, correct, for, for--

SUSAN MARTIN: Yes, they, they are.

HALLORAN: All right.

SUSAN MARTIN: And so can I ask you a question about the credit card-- you brought up the credit card?

B. HANSEN: Oh, we wouldn't mind, but typically questions are reserved for committee members.

HALLORAN: We can talk afterwards.

SUSAN MARTIN: OK, sure, sure.

HALLORAN: That would be fine.

B. HANSEN: Thank you. Are there any other questions from the committee? All right, thank you. We'll take our next testifier in support. Any others who wish to testify in support of LB122? All right, we will move on to our next testifier in opposition to LB122. Welcome.

ZOE OLSON: Hi, Senator Hansen and members of the committee. My name is Zoe, Z-o-e, Olson, O-l-s-o-n, and I am the executive director of the Nebraska Restaurant Association and we are in opposition to LB122. We're the bad guys that are always in opposition, so I will own that. I have attached copies of emails sent from Kelly Vail, Nicole Jesse, and Tammi Friesen, and I'd ask that those were included in the record. Kelly and Tammi are both the servers and Nicole is a-- an owner and operator, OK? And as I'm sure you are aware and as we've spoken before, the COVID-19 pandemic has devastated the Nebraska restaurant industry, which is a driver in the state economy, a major employer in Nebraska, and the main collector and remitter of occupation taxes in communities throughout the state. Restaurant meals are the number one

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item the visitors to this state spend their money on and so we're important to tourism as well. And with all due respect, we believe that LB122 is a bill of unintended consequences. Unlike past attempts to raise the tipped wage, LB122 would eliminate the tipped wage entirely and in-- at one time. This would bring-- and this would be reported in the press that tipped wages-- and it's a complicated issue and it would be reported that servers got an-- almost a \$7 an hour raise. And I know my fellow Nebraskans and while I would like to think that they would still continue to tip, I don't believe that would be the case. This would result in an unprecedented decrease in hourly pay for some of the most highly compensated employees in our industry, those servers. They're the highest-paid workers in our industry and average well over \$15 an hour in tips alone on top of the current tipped wage. In fact, no restaurant employee in Nebraska makes less than \$9 per hour currently. And if you know of a restaurant that is paying less than \$9 an hour, please let me know because I will tell you, my members are-- when they hear that, they're very upset about it and we will report them. We have reported members who have not paid attention to DHMs and we have no problem reporting people who don't pay their employees. As you are aware, in the rare occasion that a-- that the server's wage is under \$9 an hour when combining the tipped wage with tips earned, the restaurant employer already pays the difference up to at least \$9 an hour. And many of our members pay more than that, having set up merit wages and merit raises. I know of Lazlo's here in Lincoln and Fireworks, they make up to \$10.50 to \$11 an hour if wage-- if tips are not included. The professional servers in the restaurant industry prefer tipping as part of their compensation because it allows them to earn more based on the quality of the service they provide. Restaurant owners like tipping because it ensures excellent service and a good customer experience. It provides a direct link between the customer, performance of the server, and server compensation. The average verifiable credit card tip for waitstaff is over 20 percent of the meal cost. Credit card sales account for over 90 percent of total sales in Nebraska, so this provides an accurate representation of the current tipping percentage in a typical full-service restaurant or sports bar in Nebraska. No restaurant employee makes less than \$9 per hour and many servers are bringing over-- in over \$25 an hour. As a matter of fact, last night at 8:30 p.m., I got a call from a server who said hey, I made \$40 an hour today and that's why I do this job. I can spend time with my

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family and I can work fewer hours than I had to when I was working a 50-hour a week job. In 2019, one of our member restaurants with three locations reported paying out over \$2.2 million in credit card tips to servers in their three locations and this does not include cash tips, which are difficult to track. This employer reports all credit card tips on the employees' W-2s. This practice gives employees proof of their earnings, thus qualifying them for mortgages and car loans, which many have purchased. If LB122 would max out a server's income at \$18,720, that server-- and, and that's only if the server worked 40 hours per week and 52 weeks a year. How would you qualify for a mortgage with only \$18,720 in verifiable income? Cost of labor ranks with cost of goods as one of the two-- of the major expenses for the restaurant industry and our restaurants operate on a-- operated a small margin pre-pandemic, averaging under 10 percent. And now with the added requirements that we need to do to handle COVID-19, those costs have gone up dramatically. So there are a lot of options out there, yes, hiring fewer employees, raising menu prices. And I thank you and I'd take any questions you have at this time.

B. HANSEN: All right. Thank you for testifying. Are there any questions from the committee at all? Yes, Senator Hansen.

M. HANSEN: Thank you, Chair Hansen, and thank you for testifying. One of the things I want to dive into a little bit is-- and this has come up in some of the emails your members have sent us and your testimony now, but kind of this-- what do-- what does a, a waiter, what does a waiter or waitress actually make? And so you're kind of saying that the industry average is well over \$15 an hour?

ZOE OLSON: Um-hum. That's what our members are reporting now. Do we have every restaurant in Nebraska as a member? No.

M. HANSEN: Well, that's why I wanted to pop up and I appreciate-- I couldn't necessarily find this year's statistics, but I'm looking at statistics from just a couple of years ago that said the average was \$10 and the median, so the fiftieth percentile, was \$9.34.

ZOE OLSON: OK.

M. HANSEN: Well, that's what I want to bring up. So we hear this, like, everybody's making over \$15 an hour, but then I look at the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Business and Labor Committee February 1, 2021
Rough Draft

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Department of Labor data and it's kind of a drastically different number and so I wanted to dive into that.

ZOE OLSON: And is that in Nebraska or are you looking at Nebraska's--

M. HANSEN: I'm looking at Nebraska, granted from a few years ago, but--

ZOE OLSON: Well and we're dealing with more current information. For example, I know some of the response-- some of the information that this bill was, was based on--

M. HANSEN: Um-hum.

ZOE OLSON: --was from 2015 National Restaurant Association surveys.

M. HANSEN: OK.

ZOE OLSON: I've included a National Restaurant Association survey for just Nebraska. You'll find it in your packet. It looks like this. It was conducted November 17 through November 30, 2020, so it's much more current.

M. HANSEN: Sure. I guess-- but let me put this-- let me put it this way. I've worked on this bill enough and I know--

ZOE OLSON: Sure.

M. HANSEN: --that what is often purported from the industry does not line up with labor market data. And I apologize. I didn't study and do my homework ahead and have the numbers exactly in front of me.

ZOE OLSON: That's OK.

M. HANSEN: --but I--

ZOE OLSON: I'm not going to have all the numbers either.

M. HANSEN: Right. I, I would, I would, I would, I would expect-- fully expect the Department of Labor data to back up that a significant number of waiters and waitresses make well less than \$15 an hour. And I guess-- is my under-- is-- what I'm trying to find out, is that just

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because your industry only represents a certain type of restaurant or--

ZOE OLSON: No, we represent fast food. We represent casual dining. We represent fine dining. We represent full service.

M. HANSEN: I got you.

ZOE OLSON: So we represent everybody.

M. HANSEN: OK, thank you.

B. HANSEN: All right, any other questions from the committee? Thank you.

ZOE OLSON: Thank you.

B. HANSEN: All right, we'll take our next testifier.

JIM OTTO: Senator Hansen, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation and I appear before you today in opposition of LB122 on behalf of the Nebraska Retail Federation, the Nebraska Grocery Industry Association, and the Nebraska Chamber of Commerce and Industry. Instead of exercising the new and attractive option of submitting written testimony, I am testifying in person today on behalf of all three associations to emphasize as strongly as possible the negative impact advancing this bill at this time would have. We all know the devastation that the pandemic has caused to the restaurant industry. As more and more restaurants shut their doors, retail developments and shopping centers face more vacant space. Rural communities have more abandoned buildings. Banks face more and more foreclosures. The ripple effect is huge. Given the crisis that restaurants are already facing as a result of the pandemic, this would almost certainly cause even more restaurants to close their doors, further threaten the future of those entities I already mentioned. One of the things that I also want to mention is the figure of 84 percent and if-- as I-- maybe I didn't understand this correctly, but I heard it mentioned that 84 percent of restaurants are out of compliance with paying up to \$9. We checked into that a couple of years ago because that-- something similar to that was at-- and as I understand the actual statistic, 84 percent of those reported to be out of compliance

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were out of compliance. So I don't think it's a-- welcome to be stand corrected on that, but I'm pretty sure that the statistic is of the restaurants that were ratted on because they weren't doing it, 84 percent were guilty, not 84 percent of restaurants. With that, I would just simply say that this is not the time for this legislation to advance and we would ask that you do not advance LB22-- LB122. Thank you.

B. HANSEN: Thank you. Are there any questions from the committee at all? All right, seeing none, thank you for your testimony. We'll take the next testifier in opposition.

ERIC UNDERWOOD: Thank you, Chairperson Hansen, members of the committee. My name is Eric Underwood, E-r-i-c U-n-d-e-r-w-o-o-d. I'm here to represent the Nebraska Restaurant Association as a board member. I'm also on the Haymarket Board of Directors and I am the general manager of Rodizio Grill down in the Haymarket. So I've been here now three years as well to bring testimony and discussion in hopes that also there has been a chance to have a Q&A session with an actual restaurant owner. To give you a perspective, as I've said before, I am the current general manager of Rodizio Grill. I've been there for six years. I've also been the general manager of Perkins, Wilderness Ridge-- I was the food and beverage director there after Martin Stone [PHONETIC]-- Hidden Valley Golf Course, Skeeter Barnes, when it was still here in Lincoln, as well as worked at Granite City. Perkins as well, I worked from the assistant manager up to the general manager. So I've been across pretty much all the industries and that's what's the great thing about Lincoln and Nebraska is that all the industries are represented here and I have a good spectrum to them. My challenge is understanding, as you decide whether you're going to move this forward to the, to the floor, is the work that you're being-- that you're going over here being the same conversation over and over again. We need to have some proof, some facts to say is this reality or not? When it comes to the discussion about wages and what tipped employees earn, we talk about this every year that it's \$2.13 up to \$9, but how much more? We've had discussions whether or not the work industry is a horrible work environment and it's interesting because up until that point, I didn't want to create that dichotomy. Up until this year, I didn't want to have the discussion of whether or not these were horrible work conditions and horrible employers to these \$2.13 an hour servers. And I've been a \$2.13 an hour server, but this

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year it's been interesting because it's brought together more businesses with their employees and created more families, as you would call it, because of them coming together. You go talk to The Other Room and Tavern on the Square, Matt Taylor, and you read his posts and how much he fights for his employees. You go talk to Stephen over at-- Stephen Engel over at the Buzzard Billy's and his other entities, how much they fight for their employees. So the question is whether or not you're going to believe the representation that this industry has, entities, and how many of them that are against their employees or how many of them actually support their employees. In all of my years, my average turnover, once I've gotten my process started there, my average turnover is three years. My average tipped employee stays with me for three years. Why? Because I invest time in them. I don't believe that just because they're a tipped employee or a service industry that they should be treated any differently. I'm very blessed to have a lot of people that have come from a lot of parts of this country to work for me; New Yorkers, Pennsylvanians. I have people from California and they've gone back and gone back out into the industry because they were able to go to school while they were here, support themselves, paid for their college, and then move off because of the life skill sets that they learned working in the industry and hopefully with the recommendations that I've given them as well. But in the end, we're talking about some sort of proof to say that this industry needs some sort of assistance up to that \$9. This year gives you exact improvement. I'll tell you why. Nebraska was the number one benefit of the PPP loans. PPP loans stipulated that we had to ensure that the employee, whoever it was, made what they made before in the previous quarter, including for tipped employees, their tips-- their wage plus tips. When I did the math for my staff, as I've documented on the paperwork in front of you, my average tipped employee made over \$16 an hour and some of them, because of their part-time status, which is a choice because they go to school or they have homework or whatnot, because they just worked the weekends, made over \$20 an hour. In fact, the balance came-- what did I do with kitchen staff that made less than that? While we were trying to get the business back up and running, we're all going to just clean the restaurant, do some painting work. Do I pay everybody different wages based upon what they worked? The service staff brought up the average wage of the kitchen staff because of how much money they made previously. I ended up paying a unilateral rate of \$14 an hour and that is verified and will

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have to be verified by the auditors when we produce our PPP statements to have that loan forgiven. If not, we obviously are liable for that loan. When ADP did that process for us and we printed those documents, only one employee I missed by \$100 dollars of not paying them what they made in the previous quarter that we've since compensated for. Everybody else made what they were or more including all of the tipped employees. So if we're looking for proof, this year gives us a unique entity with the PPP loans to show that all stiff-- tipped staff were making at least \$14 an hour, previous years. And I've asked around to some of my colleagues and a lot of them who have benefited from the PPP loans had the same scenario, roughly choosing between the \$13 to \$16 range to pay their tipped staff to equal what they were making before. High volume, low volume, we had to do it or we don't get that forgiven. Thank you for this opportunity to speak again this year.

B. HANSEN: Thank you. Are there any questions from the committee at all? Yes, Senator Halloran.

HALLORAN: Thanks for your testimony, Eric. It's a, it's a tough business, isn't it?

ERIC UNDERWOOD: It's been extremely tough this year.

HALLORAN: Well, even before this year, I mean, it's-- generally, it's a, it's a hard business.

ERIC UNDERWOOD: Well, I'll tell you what, we were feeling really good going into January and February for us, five to six years into this-- in this town, and me having a, a, a lot of following throughout this town. We had finally been up 40 to 50 percent. In January and February, we were looking great and then March hit. We would have hit probably \$1.3 million by the end of this year. Right now, we'll hit about \$600,000. Now we did lose half of our staff members. Some of them went home. Some of them decided to go back to school, but what we did was, of course, balance the work that they did so that their-- the labor there, the business that was coming in still made them money. And at this point now, January-- I'm knocking on wood-- January been a night and day difference. For the past eight months-- I've averaged for the last eight months, roughly \$50,000 to \$60,000 a month. I was doing \$100,000 to \$120,000. This month, I'll hit \$65,000. I heard we just finished January 31 with \$65,000. That's a night and day

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difference. I don't know where it came from, but I'm very happy that it's here. My staff is still averaging \$15 to \$16 an hour and I do have a tip pool. In this environment, because of the fact that our gaucho service and servers are all one entity that provide the service, it is allowable by law to do that tip pool. It's done across the country in all Rodizio Grills and most Brazilian steakhouses. The server's name is technically attached to the ticket, ticket there, but I can then split that money up. We base it upon how many hours that they work. Even in that average environment there, where they're all working for the same concept together, they're all back to making roughly \$14, \$16 an hour. I don't overstep. It's not worth it to me. Why would they stick around if I did? And I don't understaff because then I give bad service. So at this point, they have-- a majority of my staff has still stayed with me. My kitchen manager has worked with me for 11 years across three different restaurants and some of this-- one of my gentlemen has worked for me for seven. He was on the track team. There's a reason for this and this happens in a majority of the restaurants that are out there. It's happened in all the ones that I've worked at. Am I an anomaly, the way I manage? I don't think so. I don't believe so and it-- I think it is something to say that with my testimony, without having that written into the bill of going to restaurants and actually seeing what's going on, I think you're getting the wrong reflection of what's happening in this industry. Sorry if I took that longer than it was supposed to.

HALLORAN: No, that's fine.

ERIC UNDERWOOD: I'm passionate about this industry and I'm passionate about my staff and so are most general managers.

HALLORAN: And it, and, and it shows. Turnover is an expensive process for, for restaurants and so I commend you on, on, you know-- team and family is kind of overused sometimes, but in effect, that's what it seems as though you're doing it. You created a family there and so--

ERIC UNDERWOOD: Most years, it's about \$4,500 to \$5,000 of, of training. Last year, I hit \$2,000 because we had finally hit the peak of just getting volume and staff in the state.

HALLORAN: Is compliance, is compliance reporting the hourly wage or-- including tip? Is that, is that onerous? Is that--

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ERIC UNDERWOOD: There's no difficulty to it whatsoever. Most payroll processing companies charge you roughly \$45 a month to do your payroll processing. I enter in their tips, I enter in their hours, and it does itself. I have my own secondary spreadsheet so it-- I can do the math if I miss somebody. What I usually miss is a busser, some 16-year-old or 17-year-old that is not able to survive yet because they can't do alcohol, so I'm not going to put them in that position. They can't be in the kitchen because they're not ready to use knives yet. It's part of the health codes that are with it. So a busser that I already pay \$5 an hour might miss out on that night. That might happen on a rare occasion, but as a 16-year-old, I was making \$4.25, so I understand there's a balance there. But we make sure that they make \$9 and you better believe as soon as they're 19, they want to be a server. I wonder why that is. And when I do ask the best ones out there, hey, I'd like you to become a supervisor now, it's a set wage of about \$11 or \$12 or \$13 an hour, most of them say no. Why would that be? Because I'll make more money as if I'm serving. So my supervisors are trained to close after me. So they'll serve and then they'll close after me for one hour, one and a half hours after the service is gone.

HALLORAN: That's an important observation. I have experienced that myself when we had good, excellent servers and I wanted to promote them to management or assistant management and they turned it down because they get paid more with, with the tips. Thank you, sir.

B. HANSEN: Yeah.

B. HANSEN: Any other questions from the committee? Yes, Senator Blood.

BLOOD: Thank you, Chairman Hansen. Just a real brief question because I'm not sure I heard this-- sometimes when I type and I take notes, I don't always hear everything.

ERIC UNDERWOOD: That's fine.

BLOOD: I'm a noisy typer. So if, if I'm a server and I get tipped on a credit card, did I hear you say that, that I get charged something from that as a server?

ERIC UNDERWOOD: Get charged? No, you don't get charged for that. That's the way that's the easiest way for a payroll processing to

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occur, that all of that is documented. So that is part of-- I can pull the report that has your name attached to that ticket there and if it was a \$100 ticket, we'll say, and the person tipped 20 percent, that's \$20, that's easy for the computer program to go their name gets that tip to it. I apply that to their payroll and that's what gets taxed.

BLOOD: So if they tip me \$100, I get \$100.

ERIC UNDERWOOD: If they--

BLOOD: Not that you would ever get \$100 unless it's--

ERIC UNDERWOOD: In the credit card you're saying?

BLOOD: If they tip me 20 percent, I get 20 percent. That's put on my document.

ERIC UNDERWOOD: Um-hum.

BLOOD: There's no additional fees.

ERIC UNDERWOOD: Oh, no.

BLOOD: OK.

ERIC UNDERWOOD: Nope.

BLOOD: I just want to make sure I heard that correctly.

ERIC UNDERWOOD: Minus, obviously, your taxes at your tax bracket, whatever it would be--

BLOOD: Yeah, I'd definitely--

ERIC UNDERWOOD: --just as if it was part of it.

BLOOD: --get taxed on it.

ERIC UNDERWOOD: Yeah, just as part of it would be your wages, which brings, of course, to the white elephant in the room, that we all know that cash is not taxed. I didn't bring this up in years past and I have-- never have because I don't want to create that dissonance, but

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if we're looking at finding more tax dollars and regulating the industry, there are other ways to do that than this.

BLOOD: Thank you.

B. HANSEN: All right, any other questions? Thank you for coming to testify.

ERIC UNDERWOOD: Thank you so much.

B. HANSEN: Take our next testifier in opposition.

BUD SYNHORST: Good afternoon. My name is Bud Synhorst. I'm the president and CEO of the Lincoln Independent Business Association. LIBA represents over 1,000 businesses primarily located here in Lincoln and Lancaster County and a significant part of our mission is to--

B. HANSEN: But before you go too far, can you spell your name?

BUD SYNHORST: Oh, crap, I forgot. I'm sorry.

B. HANSEN: You're fine. Thank you.

BUD SYNHORST: B-u-d S-y-n-h-o-r-s-t.

B. HANSEN: Thank you.

BUD SYNHORST: Some of the committees have a little thing here that reminds me and I-- otherwise I forget. I apologize. Part of our mission is to communicate the concerns of the business community to elected and appointed officials at all levels of local government. Chairman Ben Hansen and members of the Business and Labor Committee, thank you for your time to hear testimony today and for your service to the great state of Nebraska. I'm here to testify in opposition of LB122 relating to the change to the minimum wage for tipped waitstaff. Generally, minimum wage hikes bring about winners and losers; the workers whose pay increase will benefit, but the money to pay for the increases will come from somewhere. Advocates for minimum wage hikes often argue that, that somewhere means profits. Thus, a minimum wage increase acts as a redistribution of wealth from business owners to low-wage, low-wage workers. However, reality does not always follow

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that theory. Businesses that are faced with the minimum wage hikes often pass along those additional costs to the consumer. In the context, in the context of this bill, the minimum wage hike will directly impact full-service restaurants, an industry with an already low profit margin. The article that was distributed provides anecdotal evidence, I believe, from the TGI Fridays CEO. Higher food prices will hurt restaurant customers who wish to go out and eat on the weekends. It "disincentivizes" customers to eat at full-service restaurants. They may instead turn to fast-casual, quick-serve restaurants or choose to eat at home. The higher menu prices, coupled with higher labor costs, will drive restaurant owners to slim down their tipped wage staff to account for a drop in business. During a time when restaurants are struggling to pay to stay in business, the substantial increase in labor costs could prove to be a catalyst for many to call it quits. Furthermore, tipped staff rely on tips to make a vast majority of their wages. With waiters and-- with waiters making the same as other employees, patrons will choose to potentially no longer tip 15 to 25 percent and will instead tip very little to none. What will incentivize waiters to offer customers excellent service above and beyond what is expected? The range of pay between poor service and good service will decrease and so will the average quality of service. Advocates for a minimum wage hike often argue that their proposals will lift low-income individuals out of poverty. However, most of the minimum-wage employees of businesses this bill will affect work for small businesses with low profits. These small businesses can only afford higher wages by raising prices. Customers, not the business owners, pay that cost. Accounting for higher prices shows that minimum wage increases transfer few resources to low-income families. I urge the Business and Labor Community-- Committee to not pass LB122 out of committee. Thank you for your time.

B. HANSEN: All right, thank you. Any questions from the committee at all? All right, seeing none, thank you.

BUD SYNHORST: Thank you very much.

B. HANSEN: Are there any others who wish to testify in opposition? All right, are there any that wish to testify in a neutral capacity? Seeing none, we'll invite Senator Hunt back up to close and I will mention that we did have some written testimony; three in support from Abbi Swatsworth with OutNebraska, Robert Sanford with the Nebraska

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Coalition to End Sexual and Domestic Violence, and Scout Richters from the ACLU of Nebraska, and one written testimony in opposition from Bob Hallstrom with the National Federation of Independent Businesses and we did have one, two, three, four, five, five letters of support for the record.

HUNT: Thank you, Chairman Hansen. Thank you, members of the committee. I want to thank everybody who came here to testify today in support and in opposition because I do think it's a good conversation to have and I completely respect the restaurant industry. Everybody who knows me will tell you that I am one of the biggest supporters of restaurants, as I do not cook. So I've been really enjoying a lot of restaurants in the past 11 months, especially during this pandemic, and tipping very high because I appreciate those workers who are doing these services so that other people who have other jobs can, can support their families too. I want the committee to understand that the lack of in-person testimony on this bill in support does not indicate a lack of support for the bill. As is the case every year with this bill, the people who could come and testify in support are people who have shifts during the day a lot of times. A lot of times they're, they're much more likely to be single parents. They're more likely to have transportation issues coming to Lincoln to testify. And every year, I hear so much support for this bill and I want you to understand that it's definitely out there. We also heard a lot of anecdotal evidence and that's on both sides, right? Opponents can come and tell all of these stories about tipped workers who make tons of money and I can come in and tell all these stories about tipped workers who don't make very much money at all. And all of us know people individually like that too. I have server friends who make tons of money. A lot of times, it's because they're really experienced or they work at restaurants that have higher minimum wages than the \$2.13 minimum wage. And I also have friends who are servers and they don't make very much money at all. They have two or three jobs that they rely on to support themselves. So I don't think that the anecdotal evidence is what the committee should consider when moving forward this bill. We should think about what the research says and what the statistics say and what we know from research is that people who work for \$2.13 an hour who are servers and tipped workers, they're more than twice as likely to live in poverty. They're more than three times as likely to take advantage of things like Medicaid and SNAP. And when

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those workers are doing that, the cost of subsidizing-- the cost of supporting those workers is going to the taxpayers, us. And what we're essentially doing when we do that is subsidizing these businesses with our tax money that should just be paying a wage to these workers so they don't have to rely on these government services. We know that workers, who are state and our federal government have deemed as essential, are less likely to have health insurance. And now they're serving customers all day long who fight about masks, who come in and they don't want to wear a mask in the restaurant. They don't tip. And there's some customers that are wonderful, but this is a dangerous job right now, during this pandemic. These workers are put at great risk and they aren't front in line for the vaccine either, but we're still asking them to come into work for \$2.13 an hour to deal often with very belligerent customers during the pandemic. And I, I would say that there are two sides to the coin of when is the right time to bring this bill. Yes, businesses are struggling right now, but workers are struggling right now too and we have to care about them too. Another opposition point that was made was that passing a bill like that would raise prices in restaurants. We aren't even at that level. We're not talking about a living wage here. We're talking about \$9 an hour. One opponent even said, you know, if you make \$9 an hour, that's not enough to get a mortgage. That's exactly right; \$9 an hour is not a living wage. That's not even the conversation that we're having and in all of the other states that have a higher than \$2.13 subminimum wage, how is it that the sky has not fallen? They're all doing fine. They still have McDonalds. They still have the dollar menu. They still have Applebee's. They still got TGI Fridays. And of course, they still have a robust community of locally owned restaurants as well. They are fine. In Nebraska, we too, will be fine. The fact, actually, that so many states can set their own wage, their own subminimum wage and that, you know, they've set wages all over the map from \$2.13 to \$5.15 to \$6.06 to \$8.50 to \$9.50, it kind of creates a natural experiment in the country so that we can see what does happen to these workers who earn these different wages? There is no evidence to support the claim that tips will go down. It's been studied for decades. We can see that in all the states where the minimum wage is higher than \$2.13, the tips do not go down, so that's not a realistic argument either. It's time to raise both wage floors, the \$2.13 and the \$7.25 or the \$9 federal minimum wage, the state minimum wage. But given the dramatic differences in standards, just living standards and the cost of living

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for tipped workers versus nontipped workers, I would question whether we should have a two-tiered wage system at all. In-- there's seven states where-- we call them equal treatment states-- where there's no subminimum wage, where, where all the workers get the same minimum wage. And in those states, they're noticeably better off than their counterparts in terms of poverty, in terms of average wages. And at the same time, industries that employ tipped workers in those states are thriving. Raising the tipped minimum wage up to a higher percentage of the regular minimum wage would be a step in the right direction, but so would just eliminating the tipped minimum wage altogether and giving these workers the same protections that are afforded to other workers. Thank you.

B. HANSEN: All right, thank you for that. Are there any remarks or comments from the committee? All right, thank you.

HUNT: Thanks.

B. HANSEN: All right, that will close our hearing on LB122 and we are going to continue on and finish with LB660.

TIM PENDRELL: Thank you again, Chairman Hansen and members of the Business and Labor Committee for hearing from us today. My name is Tim Pendrell, T-i-m P-e-n-d-r-e-l-l, and I am filling in for Senator Mike McDonnell from Legislative District 5, who could not be here today. I'm reading his opening testimony into the record. Senator McDonnell should be back on Wednesday to answer any of your questions. This bill amends the State Employees Collective Bargaining Act to clarify that certain employees in the university and certain employees at state colleges are able to petition the Commission of Industrial Relations for certification of exclusive bargaining representation-- representatives with bargaining units that are based on the campus where those employees are employed. Also, we received a potential amendment from the Nebraska State College System that we will be working with them on. The State Employee Collective Bargaining Act was adopted in 1987 after the Nebraska Supreme Court issued a ruling that led to the Commission of Industrial Relations having jurisdiction over the state of Nebraska as an employer. The Unicameral wished at the time to establish broad state or system-wide bargaining units for state employees to reduce fragmentation of bargaining units. The law did grandfather in existing bargaining units to remain unchanged. The

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changes in LB660 will clarify that those units and to that extent, any new units that may include adjunct faculty, are provided the same rights to bargain based on the campuses where their work is performed. Since 1987, the unique functions of faculty at each campus have to deliver, deliver-- developed different working conditions applicable to each campus and we also believe the law should be clear that adjunct faculty are afforded the same rights as those bargaining units that existed prior to 1987. Also testifying today and to answer any questions you may have is John Corrigan. Thank you, Senator Mike McDonnell.

B. HANSEN: All right, thank you, Tim. With that, we will take our first testifier in support of LB660.

JOHN CORRIGAN: John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, and I'm an attorney with the firm Dowd and Corrigan and I'm here to testify on behalf or on-- in, in favor of LB660. And the concern was brought to us-- as Tim said, you know, you have-- the State Collective Bargaining Act took place in 1987 where the Legislature created for these broad-based units, bargaining units, where employees of the state had to bargain based on the type of work they did. There's-- I think the number is about 12 or 13 different groups of units that exist. But the professors at the University of Nebraska, University of Nebraska at Omaha and Kearney had preexisting bargaining relationships that preexisted that legislation. So they've had a long history of-- and 40, 50 years of history of negotiating terms and conditions of employment by campus. And it's effective, they have good relationships, there's not a lot of litigation that's involved with those relationships. And in fact, there's not any lawyers that are really involved in those bargaining relationships because you have some very sophisticated people involved in that type of work. They're able to bargain and agree on working conditions on their own behalf and are pretty effective. The reason this bill is in front of you is because the addition of adjunct faculty, the suggestion is made to the professors. Well, they would have to be system wide. And there was a case a few years ago with law enforcement involving university police where the Lincoln police officers who are kind of unique in the university system in that they are certified law enforcement officers walking around with the obligation to carry a firearm, want to have their own bargaining unit. And the, the CIR said no, you guys can't do that. Even though you had a really stupid lawyer, John Corrigan, you

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have to bargain through UNL, UNO, and Kearney, all three together and UNMC. And so it was this broad-based unit that was required that-- with the unique aspect of the teaching faculty, both adjunct and professional. The concern is, is just not there because they're already doing it. It's just to run off the attempt to, to push this to a system-wide basis as opposed to as the, as the law refers to it as an administrative unit of the university. I know there's some objection that I learned about today from the State College System and, and I just don't know enough to say that we're going to be in agreement with that amendment or not, but I can assure you that with the professors, the American professors-- it's a group out of UNO that has been assisting me-- will work with them to make sure that their concerns are met if, if we can all compromise because there are obviously differences between the functions of the university system and state colleges and the places where they do that work. I'm happy to try to answer your questions that you might have.

B. HANSEN: All right, thank you. Are there any questions from the committee at all? All right, thanks for coming to testify. We will take anyone else who wishes to testify in support of LB660. Seeing none, are there any who wish to testify in opposition to LB660? Are there any wishing to testify in a neutral capacity to LB660? Well, that will close a hearing for LB660 and before I forget again, we do have one letter for the record from Susan Martin from Nebraska State AFL-CIO in support and one neutral from Heath Mello from the University of Nebraska. And that will close our hearing for today and--