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Business and Labor Committee
March 12, 2007

[LB88 LB89 LB495]

The Committee on Business and Labor met at 1:30 p.m. on Monday, March 12, 2007, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB88, LB89, and LB495. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Ernie Chambers; Steve Lathrop; Norman Wallman; and Tom White. Senators absent: Amanda McGill.

SENATOR CORNETT: Good afternoon and welcome to the Business and Labor Committee. Briefly, before we get started, I'd like everyone to turn off their cell phones or place them on vibrate. The proceedings will be recorded and that gets picked up on our recording. Plus, it interrupts the hearing. I'd like to introduce the members of the committee: Senator Wallman, on my right, from Cortland; Senator Lathrop next, from Omaha; Senator Rogert, from Tekamah, correct?

SENATOR LATHROP: Sure.

SENATOR CORNETT: Sure (laugh). Legal counsel, Lori Thomas; committee clerk, Tessa Warner; and on my far left is Senator Tom White, from Omaha. People that are going to be testifying need to fill out a testifier's sheet. They'll be right next to the box. Before they testify, place it in the box. When you testify please start out by spelling your first and your last name for committee clerk. I'd like it if people could move up as people testify so we don't have a delay time or wait for the next testifier. And not on the first bill, but on the next bills, I'm going to see how many testifiers there are and limit testimony to three minutes per person. Okay, that pretty much takes care of it. Senator White is here to introduce LB495. [LB495]

SENATOR WHITE: (Exhibit 1) Good afternoon, Senator Cornett and members of the committee. Thank you for allowing me to introduce this bill. LB495 is a fairly straightforward bill as originally drafted. It provides that an employee would have the right to coordinate the use of unpaid Family and Medical Leave Act with paid leave, in order to best effectuate the purposes of the Family and Medical Leave Act. Currently, many companies require that the paid leave be exhausted before Family and Medical Leave Act rights can apply. We have, however, handed out to the members of the committee an amendment that we would offer to the committee, which basically changes the entire thrust of the bill and now will provide that an employer who is bargaining with a collective bargaining agent, a labor organization or others, has to put this issue on the table so at least it can be discussed. It would remove the requirement for all employers to use the Family and Medical Leave Act, or allow it to be used, ahead of vacation time and just make that a matter for negotiation between the employer and the employees. That's the essence of the act. If anyone has any questions I'd be happy to try to answer them. [LB495]

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SENATOR CORNETT: Seeing none, thank you, Senator White. [LB495]

SENATOR WHITE: Thank you. [LB495]

SENATOR CORNETT: Can we please have the first proponent? [LB495]

KEN MASS: Senator Cornett and members of the committee, my name is Ken Mass, M-a-s-s, with the Nebraska AFL-CIO and here today in support of LB495 as amended. I think Senator White has given you all the terms but anything...nothing should be left off the table when there is a collective bargaining agreement there dealing with this, and it shouldn't be left off the table to be put in a company policy. So everything needs to be on the table when negotiations are going on, so that's all I have. Thank you. [LB495]

SENATOR CORNETT: Thank you. Any questions from the committee? Seeing none, thanks, Ken. [LB495]

KEN MASS: Thank you. [LB495]

SENATOR CORNETT: Next proponent? Opponents? [LB495]

MICHAELLE BAUMERT: Good afternoon, my name is Michaelle Baumert, and I am testifying on behalf of the Nebraska Chamber of Commerce, the Greater Omaha Chamber of Commerce, the Lincoln Chamber of Commerce, and the National Federation of Independent Business-Nebraska. First of all as amended--and I just got this amendment this morning, obviously most of us did--as amended the new statute would be preempted by federal law. Initially, the leave periods and all of that sort of thing, are all obviously mandatory subjects of bargaining. Those are not things that an employer can refuse to bargain about. And if, during the course of the negotiations, say for example, there's a zipper clause introduced into the agreement which is a common provision in labor agreements, and the union, there's some issue that comes up during the course of the life of the agreement which is usually three years, then the union could, I suppose, potentially try and force the employer to negotiate about those issues during the life of the agreement pursuant to the statute. If they did so, it would be preempted by federal law. The National Labor Relations Act provides that employer can introduce clauses like...or employers and unions can agree to zipper clauses in the agreement itself, and you really can't legislate--I suppose you can--legislate about what are mandatory subjects of bargaining and what are not, but it'll likely be overturned by the federal courts. And in its initial form, just to speak on that as well, we would also oppose that. There are federal protections for an employee. You cannot force an employee to exhaust his paid leave before he or she can be entitled to take his or her unpaid FMLA leave. If an employee is, for instance, forced to take their vacation before they'll start their FMLA rights, the employee has every right to go to the Department of Labor to sue, to pursue their rights under the FMLA. What the regs say is that, on the

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federal level, is that both can run concurrently. And that may be what was originally discussed here. But in effect what this statute would do--I'm having twins in August--and what this would mean to me, my employer provides me with 12 weeks of paid leave. I would be allowed to take my 12 weeks of FMLA leave under this statute, and then I would also be able to force my employer to give me my paid 12 weeks of leave after that. I'd be gone for six months plus--plus my vacation leave, plus my sick leave, plus all that time, and I'm sure that that wouldn't be a provision that my employer or many others would keep in place for very long. Thank you. [LB495]

SENATOR CORNETT: Are there any questions from the committee? Seeing none, thank you. Next opponent? Anyone to testify in a neutral capacity? Senator White, would you like to close? Senator White waives closing. That closes the hearing on LB495. We will now move to LB88, payment for claims against the state. [LB495 LB88]

LORI THOMAS: (Exhibit 2) Good afternoon, Chairperson Cornett and members of the Business and Labor Committee. For the record I'm Lori Thomas, T-h-o-m-a-s, and I'm here to introduce LB88 which is the annual approved claims bill. LB88 is brought to the committee by the Department of Administrative Services. By statute the committee is required to review these claims. LB88 contains the following types of claims: miscellaneous, tort claims, and agency write-off requests. The first two pages of the handout that Matt is handing out are a brief summary of each of the approved claims. Behind those two sheets there is a docket sheet for each claim that states the disposition of the claim, including the agency's recommendation and the risk manager's recommendation, as well as the facts of the case. Laura Peterson is the state's risk manager, and she will be following my testimony and can provide detailed explanations of each of the claims proposed under this bill. [LB88]

SENATOR CORNETT: May I see how many people are here to testify on LB88?
(Inaudible) [LB88]

_____: If we have questions, would be the only reason I'd... [LB88]

SENATOR CORNETT: Okay, that will be fine. [LB88]

_____: Thank you. [LB88]

SENATOR CORNETT: First testifier, please? [LB88]

LAURA PETERSON: Good afternoon, Senator Cornett, members of the Business and Labor Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n, and I'm the state risk manager. I'm here in support of claims approved by the State Claims Board as they are represented in LB88. I believe you received a summary of each claim, and I'll go through the claims bill and provide a summary of each one. Historically, I've just gone

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one by one through the claims, and I'll be happy to take questions as I go along or at the end of my testimony, whichever you prefer. In prior years I have simply paused after the summary of each claim to see if there are questions on that claim. Also, representatives of the Department of Corrections and the Department of Health and Human Services are here to answer any questions you have that I cannot answer, or which would be more appropriately answered by the agency. I actually believe there are other agencies who have claims in the bill who also have representatives here if you have questions. Section 1 of the bill contains miscellaneous claims approved by the board that need legislative approval. The first is claim number 2006-00385. It was filed by Chris and Joy Dinsdale requesting reissuance of a tax refund warrant in the amount of \$13,785.42 that the claimants did not cash prior to the expiration date. The claimants state they didn't cash the warrant in time because they had misplaced it. The warrant expired and was never cashed or reissued by the state. The Department of Revenue recommended that the claim be approved, and the Claims Board did approve the claim. Claim number 2006-00945 was filed on April 19, 2006, by the Douglas County Youth Center requesting payment in the amount of \$18,530 for the detention of a state ward for the period of July 8, 2004, through July 31, 2004, and September 26, 2004, through December 20, 2004. At the time the original invoice was submitted, the HHS building personnel did not have access to enough information in HSS's computer information system to authorize payment of the claim. Upon filing of the claim, more information was available upon which the agency could base their review of the claim. Health and Human Services recommended the claim be approved and the Claims Board approved the claim. I'm just going to pause each time in case you have questions. [LB88]

SENATOR LATHROP: Do you want...pardon me. Do you want us to ask you questions as we go through them, or do you want to give us a list of all of them and then have us ask you questions after? [LB88]

LAURA PETERSON: I'm happy to do either one. Historically what has happened is I've... [LB88]

SENATOR LATHROP: What...how do you want to run them? [LB88]

SENATOR CORNETT: Whatever you prefer. It would probably be easier to break them down one by one. [LB88]

SENATOR LATHROP: Okay. And which one did you just finish, the youth detention center? [LB88]

LAURA PETERSON: Yes. [LB88]

SENATOR LATHROP: Okay. Thank you. [LB88]

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LAURA PETERSON: Sure. Otherwise I think sometimes when I get to the end, it gets...it was too long ago, so... [LB88]

SENATOR LATHROP: No, that's fine with me. [LB88]

LAURA PETERSON: ...I'll just stop. Claim 2007-01148 was filed by the Nebraska Appleseed Center requesting payment as a result of a district court order ordering costs and attorney's fees in the amount of \$19,128.28 to the claimants for the class action lawsuit of Bowlin v. Montanez. The case was a suit filed on behalf of a class of low-income individuals who were denied transitional Medicaid and was decided in the class' favor by the U.S. District Court and the 8th Circuit Court of Appeals. The Health and Human Services Systems recommended the claim be approved and the Claims Board approved the claim. [LB88]

SENATOR CORNETT: And that's for two attorneys' fees, correct? [LB88]

LAURA PETERSON: I'm sorry? [LB88]

SENATOR CORNETT: That's for attorneys' fees, correct? [LB88]

LAURA PETERSON: Attorneys' fees and costs, yes. [LB88]

SENATOR CORNETT: Costs, okay. [LB88]

LAURA PETERSON: Claim number 2007-01373 was filed by Ogborn, Summerlin & Ogborn requesting payment as the result of a U.S. District Court order awarding attorneys' fees in the amount of \$17,650 for the case of Spiering v. Johanns. The case related to the legality of the state's newborn screening requirements. The plaintiffs were found to be partially prevailing, to the extent that they were granted a temporary restraining order. The Attorney General's Office recommended the claim be approved, and the Claims Board approved the claim. Claim number 2007-01379 was filed by the Nebraska Press Advertising Service requesting payment for publication of constitutional amendments in the general and primary elections in a total of \$1,238,723.69, publication as required by Article XVI, Section 1 of the Constitution, to be published in at least one newspaper in each county each week for three consecutive weeks. Publication has historically been funded through the claims process. The Secretary of State's Office recommended the claims be approved, and the Claims Board approved the claim. [LB88]

SENATOR LATHROP: I do have a question. Because I don't know this process, I'm going to ask just to get a little background. But when there are amendments to the constitution what do we do, get a contract with the Nebraska Press Advertising Service, and then they see to it that all the publication happens in all the newspapers across the

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state that need to be done? [LB88]

LAURA PETERSON: That is exactly what happened. I think the alternative would be to provide funding within the Secretary of State's budget but because the amount varies pretty widely based on how many constitutional amendments are going to be there, what they've determined to do instead is just make a deal with the Press Advertising Association. And they essentially front the money, and then they provide us in claim form a listing of all the amendments that were published, each paper it was published in, the dates that it was published, and the cost of that. [LB88]

SENATOR LATHROP: Okay. How many amendments did we have, do you know? Or how much...yeah, how many amendments did we have? [LB88]

LAURA PETERSON: Ten. [LB88]

SENATOR LATHROP: Okay. [LB88]

LAURA PETERSON: Yeah, amendments both...either legislatively or by referendum. [LB88]

SENATOR LATHROP: But they were all, that's the cost of publishing for... [LB88]

LAURA PETERSON: That might be 11. [LB88]

SENATOR LATHROP: Ten or 11? [LB88]

LAURA PETERSON: Ten or 11. [LB88]

SENATOR LATHROP: Okay. Thank you. [LB88]

LAURA PETERSON: We have them, but I might have miscounted. [LB88]

SENATOR LATHROP: That's all I have. [LB88]

LAURA PETERSON: And we do have a list if you would interested, of...they provide us essentially what... [LB88]

SENATOR LATHROP: Four twenty-three was on there, wasn't it? [LB88]

LAURA PETERSON: Four twenty-three. [LB88]

SENATOR LATHROP: And that was a long one, as amendments go? [LB88]

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LAURA PETERSON: It was long, and in fact, the text of them are right here. If you want, I could pass this over. You could look at it. But LB423 was included. This is one...I think the largest one we've ever seen, as far as both size and fee. [LB88]

SENATOR LATHROP: No, that's okay. Okay. Thank you. [LB88]

LAURA PETERSON: Section 2 of the bill includes tort claims which need legislative approval. The first is claim number 04-240. It was filed on behalf of Miranda Judds. This claim arose out of the Seward bus accident in 2001. In this case a lawsuit was filed, and a settlement has now been reached between the state and the claimant in the amount of \$20,000. The settlement was approved by the District Court of Douglas County. This is the last claim from the Seward bus accident, and while the claim itself does not exceed \$50,000, the amounts paid to all claimants from this accident must be aggregated. And the aggregated amount exceeds \$50,000; therefore, legislative approval is required before the claim can be paid. [LB88]

SENATOR CORNETT: Laura, what was the aggregate amount? [LB88]

LAURA PETERSON: We can get that for you. [LB88]

SENATOR CORNETT: Okay, thank you. [LB88]

LAURA PETERSON: I don't know it off the top of my head. [LB88]

SENATOR WHITE: This was the bus that went, when they were repairing West Dodge Road, went off into the creek and all those people got hurt so badly? [LB88]

LAURA PETERSON: That's right. [LB88]

SENATOR WHITE: And then I think one young man died? [LB88]

LAURA PETERSON: I think, was there more? There were three or four deaths actually and we have over the last two years...the first year we had maybe 12 or 13 settlements, I'm not exactly sure, that were brought before the Legislature. I believe there was one last year which was the actual bus driver, and then this is the final outstanding claim. And obviously, the state was not the only payer to these individuals. There are also payments made by the contractor that was working on that project and by the school system, as well. [LB88]

SENATOR WHITE: Has the Department of Roads changed any regulations, procedures, or anything else to deal with this tragedy to try to ensure that something similar doesn't happen again? Or do you know? [LB88]

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LAURA PETERSON: I'm not sure that I can; I can't answer that. [LB88]

SENATOR WHITE: In any event, it's not really your job. I know that. I just was curious because of all the people injured so badly and killed. [LB88]

LAURA PETERSON: And I actually think that there was a procedure in place and what happened was there was a failure of the procedure, but... [LB88]

SENATOR WHITE: Thank you. [LB88]

LAURA PETERSON: The second tort claim--or actually it's two tort claims from the same incident--claim numbers 2007-01347 and 2007-01348, which were filed by Richard and Geraldine Rathje, resulting from an accident on Highway 34 when a state vehicle turned in front of the claimants' vehicle, causing a collision. Mr. Rathje sustained significant injuries and Mrs. Rathje sustained significant and permanent injuries of her back and neck. The state agreed to a settlement in the amount of \$23,000 for Mr. Rathje and \$210,000 for Mrs. Rathje. The Claims Board and the District Court of Lancaster County both approved the settlement. Fifty thousand dollars was paid upon district court approval and that \$183,000 you see in the bill represents the remaining settlement amount. Section 4 of the bill includes agency write-off requests. The statute requires that the Legislature review requests for agency write-offs at every dollar amount. Request 2006-00545 was made by the Supreme Court to write off uncollectible debts from 2002 through 2005. Letters requesting payment were sent by the court to no avail. Upon receipt of the claim, the risk management division facilitated the collection of some debts that were due to the court and the revised write-off request was for \$356.29. The largest individual amount is \$29, most are under \$5. Because of the small individual amounts it is not economical to pursue collection or legal action beyond the efforts already made. Therefore, the Claims Board approved the write-off request in the revised amount of \$356.29. Request number 2007-01230 was made by the Clerk of the Legislature to write off \$19.96. This represents one uncollectible debt for reproduction of legislative materials. Letters requesting payment were sent every month to no avail and the agency reports it can no longer locate the debtor and the amount of the claim debt does not justify further investment in collection. The Claims Board approved the write-off of \$19.96. Request number 2007-01290 was made by the Workers' Compensation Court to write off uncollectible debts from 2003 through 2005. Letters requesting payment were sent by the court to no avail. Upon receipt of the claim, the risk management division facilitated the collection of some debt and the revised write-off request was for \$1,074.94. All but five of the individual debts are under \$5. Of the other five they are all under \$500, with the two largest being \$365 and \$475 which are from vocational rehab clients who cannot be located. The other individual amounts are small and would not be economical to pursue. The Claims Board approved the write-off in the amount of \$1,074.94; however, we were informed late last week that after the Claims Board's hearing on this write-off, the Workers' Compensation Court was able to collect

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two additional dollars, and I would ask that you amend the bill to represent a write-off amount of \$1,072.94, rather than the \$1,074.94 contained in the bill. Request number 2007-01292 was made by the Game and Parks Commission to write off \$5,921.64 for 171 uncollectible checks totaling \$5,685.32 and one uncollectible account from a company that went bankrupt which is in the amount of \$235.97. The agency has taken reasonable steps to try to collect. Each individual debt is small enough that pursuing legal action would cost more than would be collected. In most cases the debtor has been determined to not have assets or to have changed locations and/or bank accounts. The Claims Board approved the write-off as requested. Request number 2007-01297 was made by the Department of Health and Human Services Finance and Support to write off uncollectible debts in the amount of \$348,182.90. This request involves various outstanding charges from July--I think the dates are wrong--but on patients' accounts in the state's regional facilities; \$54,669.14 of the debt is uncollectible because of reasons outside of the control of the agency, primarily bankruptcy or death of the claimant, with no assets. The remainder of the write-off amount is uncollectible because either the statute of limitations for collections ran, or claims were not filed with the claimants' estates within the required deadline. Because these debts cannot now be collected the Claims Board approved the write-off request in the amount of \$348,182.90. I can answer questions; also, there is someone from HHS who will testify, as well. [LB88]

SENATOR CORNETT: All right. I guess the questions I have...and I see Senator White also has questions. Why weren't these debts that could have been collected filed within side the statute of limitations? Why is the state letting this money...why did the state let this money go? [LB88]

LAURA PETERSON: I think that's probably a question better directed to Chris Peterson from Health and Human Services, who will come up to testify on that. I think I can testify to what the Claims Board looked at, which is clearly these are past the statute of limitations. So regardless of how we got to this point, there's no remaining mechanism for the state to collect them. Whether you use a four-year statute of limitations based on its statutory requirement or a five-year statute of limitations based on a contract--because we are talking about a regional center--there's a question about, you know, whether if there's an involuntary placement, whether that's a statutory debt or whether it's a contract debt. But clearly, they are beyond the statute of limitations. But I mean, I can't... [LB88]

SENATOR CORNETT: Okay, Laura. I'm sorry to put you on the spot like that. Go ahead, Tom. [LB88]

LAURA PETERSON: That's all right. I just can't give you a very good answer. I apologize. [LB88]

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SENATOR CORNETT: We'll save that, then, for the next person. [LB88]

LAURA PETERSON: Okay. [LB88]

SENATOR CORNETT: Tom, did you...? [LB88]

SENATOR WHITE: No, that... [LB88]

SENATOR CORNETT: That was covered in this? [LB88]

LAURA PETERSON: Same question. [LB88]

SENATOR WHITE: Yes. [LB88]

SENATOR CORNETT: Go ahead, Laura. [LB88]

LAURA PETERSON: Request 2007-01298 was made by the Department of Health and Human Services Finance and Support to write off \$6,272 that a former employee diverted for her personal use. The agency obtained a judgment against the employee, but the employee filed bankruptcy and the agency did not receive protection in the bankruptcy proceeding. The state did have blanket bond insurance covering employee dishonesty, but the dishonest act was not reported and is now past the reporting period, and no recovery is possible from the insurer. The only option at this time is to write off the debt, and therefore, the Claims Board approved the write-off, as requested. [LB88]

SENATOR CORNETT: I guess I'll let you take that one, Tom. (Laugh) [LB88]

SENATOR WHITE: This was an action of fraud, correct? [LB88]

LAURA PETERSON: Yes. [LB88]

SENATOR WHITE: Debts incurred by fraud are not dischargeable in bankruptcy. Why are we writing this off? [LB88]

LAURA PETERSON: My understanding was that they would have had to file that within the bankruptcy... [LB88]

SENATOR WHITE: Okay. So some... [LB88]

LAURA PETERSON: ...proceeding, and the agency was the only one aware of the debt. And even though it wouldn't have been discharged, it needed to be raised at the... [LB88]

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SENATOR WHITE: And they did not object to the discharge... [LB88]

LAURA PETERSON: They did not. [LB88]

SENATOR WHITE: ...in time, so they blew another statute, basically. [LB88]

LAURA PETERSON: Yes. [LB88]

SENATOR WHITE: Okay. [LB88]

LAURA PETERSON: I believe that's right, that you have to file, and we have the bankruptcy documentation. It was not filed. [LB88]

SENATOR CORNETT: (Inaudible) Next one. [LB88]

LAURA PETERSON: Request 2007-01299 was made by the Department of Health and Human Services Finance and Support to write off 34 bad checks in the total amount of \$534.00 which were written to Vital Statistics. The department has made several attempts to collect each, but all of the individual debts are very small. The most are \$13 with the highest individual debt being \$37. The Claims Board approved the write-off as requested, as it's not economical to pursue each one of those for a small amount. [LB88]

SENATOR WHITE: County attorneys pursue these. Were these checks and the writers referred to the appropriate county attorney? [LB88]

LAURA PETERSON: I don't believe all of them were and that may be something that HHS can provide additional information on, but many of them are also from out of state. These are primarily people who request a copy of either their birth certificate or a death certificate, and there are hundreds of thousands of those and there really are a very few number. But there are annually some that are similar to this. [LB88]

SENATOR WHITE: Thank you. [LB88]

LAURA PETERSON: Request 2007-01300 was made by the Department of Health and Human Services Regulation and Licensure to write off six uncollectible accounts for the HHS laboratory in the amount of \$638. The agency has made several attempts to collect by sending statements, letters, and making phone calls. Most of the debtors can no longer be located and with the exception of one account the debts are under \$40, making it more costly to pursue than the amount that would be recovered. For these reasons the Claims Board approved the write-off, as requested. [LB88]

SENATOR WHITE: Does the Claims Board ever ask the agency whether they contract

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with debt collection organizations, private entities, to try to collect these debts? [LB88]

LAURA PETERSON: The Claims Board actually has a form for agencies to complete when they file their write-off requests and one of the things that it lists...it provides a list of possible ways they may have tried to obtain recovery. One of the options for them to select, I believe, is whether they've given it to a...a letter to an agency, telephone call...outside collection agency is one of the options. [LB88]

SENATOR WHITE: Thank you. [LB88]

LAURA PETERSON: Request 2007-01301 is made by the Department of Correctional Services--Cornhusker State Industries to write off uncollectible debts from the period of 1994 through 2001 in the amount of \$16,982.37. All invoices are dated older than the current records retention schedule for the department of five years for invoices and three years for receipts. The agency has inadequate documentation on file to support the amounts of the debts, the terms of the orders, or proof that the items were received by their customers. Because the agency does not have the documentation, they cannot collect the accounts. The agency did submit information regarding procedures that have been put in place to avoid a recurrence in the future. Therefore, the Claims Board approved the write-off as requested. A representative from the Department of Corrections is available if you have questions on the procedures. Request 2007-01317 is made by the Department of Health and Human Services to write off...oh, sorry. [LB88]

SENATOR CORNETT: Oh, I'm sorry. [LB88]

LAURA PETERSON: Sorry about that. [LB88]

SENATOR WALLMAN: Are these the people that make furniture and that? [LB88]

LAURA PETERSON: The correctional industries are inmates who are making...primarily it's furniture that is sold then to state agencies or other political subdivisions; that's correct. [LB88]

SENATOR WALLMAN: Well then, how come they had a debt? [LB88]

LAURA PETERSON: Well, it's an accounts receivable to corrections, so for example, you know, they sell furniture to my agency. My agency then owes them the money. [LB88]

SENATOR WALLMAN: You didn't pay, huh? (Laughter) [LB88]

LAURA PETERSON: Well, actually the problem is they can't tell us what happened. [LB88]

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SENATOR WALLMAN: Oh, okay. [LB88]

LAURA PETERSON: Their paper documents were destroyed before they collected it,... [LB88]

SENATOR WALLMAN: Oh, all right. [LB88]

LAURA PETERSON: ...so we don't know what was delivered or who received it, or exactly what. Then actually the list of debtors is primarily state agencies, other state agencies. Request 2007-01317 was made by the Department of Health and Human Services to write off uncollectible debts in the amount of \$722,819.22 from overpayments made in Aid to the Aged, Blind, and Disabled, Children and Family Services, Child Care, and Aid to Dependent Children programs. This represents 1,332 individual overpayments; \$3,188.77 of this write-off represents debts which are uncollectible because the debtor was discharged from the debt in bankruptcy or is deceased. The remaining claims are past the statute of limitations for collecting the debt and are claims on which, due to a conversion from paper to computer files, the agency lacks adequate documentation of the debt to support a court action for recovery. For these reasons, the Claims Board determined the debts are uncollectible and approved the write off. I would be happy to answer questions about the Claims Board review of the request or about the determination by the Claims Board that the debts are uncollectible. A representative of HHS is here and will testify about the need for the requests. Request 2007-01319 is made by the Department of Health and Human Services on behalf of the Norfolk Veterans Home to write off one uncollectible debt in the amount of \$5,287.28. This request involves one patient who died with past-due maintenance payments owed to the home. The income statement completed just prior to his death indicated he had only \$20 in assets. The agency was also contacted by the county veterans service officer after the resident's death because the family was arranging financial assistance to cover the burial costs. The Claims Board approved the write-off as requested. Request 2007-01346 was made by the military department to write off uncollectible debts in the amount of \$10,537.58 owed by individuals who were involved in the National Guard Tuition Assistance Program. Each of the students withdrew from the program and was therefore responsible for the cost of the course. The department bills the individuals who owe repayment and has sent numerous letters to each individual. Beyond voluntary repayment under the statute authorizing the program, the department is required to use the provisions of Nebraska Revised Statute 72-1601 to collect the debt. The risk management office reviewed the state's accounting system to determine whether any of the individuals on the write-off list had received payments from the state recently, which would indicate a possibility of offsetting under 72-1601. None of the debtors have had any payments from the state which could be offset under the applicable statute, so the Claims Board approved the write-off as requested. Request 2007-01363 was made by the state Fire Marshal's Office to write off

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uncollectible debts in the amount of \$400 related to fees owed by grain elevators and feed mills. The agency has made reasonable attempts to collect, including turning some of the debts over to a collection agency and seeking the assistance of the Attorney General's Office for collection. The agency and the Attorney General's Office have determined the remaining debts are too small to economically pursue or are uncollectible. Therefore, the Claims Board approved the write-off as requested. I believe that covers all the claims in LB88, but I'd be happy to respond if you have additional questions. [LB88]

SENATOR CORNETT: Thank you, Laura. [LB88]

LAURA PETERSON: Thank you. [LB88]

SENATOR CORNETT: Next proponent? [LB88]

ALLEN BEERMANN: Chairman Cornett and members of this committee, I am Allen Beermann, A-l-l-e-n B-e-e-r-m-a-n-n, representing the Nebraska Press Advertising Service, and we have the claim in this bill as it relates to the publication of constitutional amendments, as well as those that were proposed by initiative and/or referendum. It also covers both election cycles for the calendar year 2006, which would be the primary as well as the general. In the primary those were only proposed by the Legislature; those in the general were those proposed by the Legislature as well as initiative and/or referendum measures proposed by the people. The practice of publishing these in all of the newspapers in the state has gone on, I believe, since back in the twenties when the constitution was revised and revisited and we used the same procedure. Senator Lathrop, I did hear your inquiry earlier of the first witness, and the way we do this is we exchange contract letters with the Secretary of State and the Governor. The Governor is also involved in this under the constitution and the statutes, as now written. And so we do have these letters both for the primary and for the general election. The newspapers publish these three times in every newspaper, both in the primary, if there are some in primary, as well the general. And so they order the paper for this publication, which is what this claim represents, back in February of '06, and if the Legislature approves the claim--and we hope that they will since it's constitutionally required--that they will have waited almost 15 months for their money, and they do not run any interest on this. The purpose for the publication is to let the citizens of our state know, the prospective voters, what are the ballot issues. They can read the title in text, they can read the short form of the explanation of the constitutional amendment as it will appear on the ballot. In Nebraska sample ballots can also be used by voters when they go to the polls pre-marked, as a guide on how they wish to vote on election day on their ballots. So that's basically the process and the procedure as set forth both in the constitution and the statutes and the contracts between the Governor, the Nebraska Press Advertising Service, and the Secretary of State. I would be delighted to try to answer questions. [LB88]

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SENATOR CORNETT: Senator Lathrop. [LB88]

SENATOR LATHROP: I'd like to ask just a couple. The Nebraska Press Advertising Service, is that an independent company? [LB88]

ALLEN BEERMANN: Yes, it is. It is part of the Nebraska Press Association. It is an independent company that runs legal advertising. [LB88]

SENATOR LATHROP: And you told us that they've been waiting 15 months. I appreciate that, that they shouldn't have to wait so long. But here's the question. We don't have a bill from the Omaha World-Herald for example, or the Daily Record or the Ralston Recorder. So what happens is this outfit arranges for that publication for all of these different newspapers? [LB88]

ALLEN BEERMANN: We contract first with the Governor, the Secretary of State; in other words, the state of Nebraska. Then we place all of these legals with all of the papers that exist in Nebraska. [LB88]

SENATOR LATHROP: Okay, so instead of having the Secretary of State contact the various newspapers...how many would that be, sir? [LB88]

ALLEN BEERMANN: Oh, about 200; he would have to have 200 contracts; instead, he has one with us. [LB88]

SENATOR LATHROP: Okay. Okay, so instead of having someone in the Secretary of State's Office make a contract with 200 different newspapers for the publication that's required, we use a service to do that? [LB88]

ALLEN BEERMANN: That is correct. And that's been in place. [LB88]

SENATOR LATHROP: And the service then places the order and pays the various publishers. [LB88]

ALLEN BEERMANN: And we gather all of the proofs of publication and all of the affidavits from each paper, that they published them. [LB88]

SENATOR LATHROP: Okay. [LB88]

ALLEN BEERMANN: And all of that is on file with the Secretary of State. [LB88]

SENATOR LATHROP: Okay, now I understand what the service is. How much would it cost us to do all the publication if somebody from the Secretary of State's Office did

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these things that the Nebraska Press Advertising Service is doing? [LB88]

ALLEN BEERMANN: Well, it would be... [LB88]

SENATOR LATHROP: Maybe what I'm asking you is how much are they making on this contract. [LB88]

ALLEN BEERMANN: We don't make a whole lot because we wait so long for the money and because in the interim newsprint has gone up per ton. And the rate is set by statute. The Legislature sets the rate, not the Press Advertising Service. So we just comply with the statute, is all we do. For the Secretary of State to get involved in contracting with all of these newspapers and trying to gather all the proofs of publication, all of the affidavits, would probably require, I don't know, a full-time staff person. It's a lot of work and especially proofing it all. [LB88]

SENATOR LATHROP: Okay. And that tells me what it would cost if we did it in-house. So what are we paying for this? There's \$1,238,000; how much of that was actually spent on publication expenses, do you know? [LB88]

ALLEN BEERMANN: Well, we don't know because it's going to vary slightly between newspapers depending on their size, what size their paper is in terms of contracting for their newsprint, how along ago they contracted for the newsprint. All of that would vary slightly. [LB88]

SENATOR LATHROP: Mr. Beermann, do you work for these people? [LB88]

ALLEN BEERMANN: I certainly do. [LB88]

SENATOR LATHROP: Okay, and so the claim is for \$1,238,000. Do you know what these people spent with the different newspapers, publishing the things that they publish? [LB88]

ALLEN BEERMANN: Yeah, I believe there is an indication in the file, maybe not yours, but with the risk management. It has how much goes to each paper. [LB88]

SENATOR CORNETT: Do you have an aggregate amount? [LB88]

ALLEN BEERMANN: Yeah, the aggregate amount is the total that's in the claim. [LB88]

SENATOR CORNETT: No. No, no. How much you spent. [LB88]

SENATOR WHITE: We're asking what your profit was. [LB88]

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SENATOR CORNETT: What's the difference between what you spent and what your... [LB88]

SENATOR WHITE: Your gross margin. [LB88]

ALLEN BEERMANN: Oh, I... [LB88]

SENATOR CHAMBERS: Well, he got the million. [LB88]

ALLEN BEERMANN: Yeah, (laugh) our percentage, I believe, is 13 percent commission, if that's what the question is. [LB88]

SENATOR CORNETT: There you go. [LB88]

ALLEN BEERMANN: And then we have to process all the claims and all the tear sheets and all of the affidavits, do all of the proofing, prepare all the copy, and that's what we get for 13 percent. [LB88]

SENATOR LATHROP: Okay. That's the answer I was looking for. [LB88]

ALLEN BEERMANN: The rest goes to the papers. [LB88]

SENATOR LATHROP: Thank you. [LB88]

SENATOR CORNETT: Senator Chambers. [LB88]

ALLEN BEERMANN: Senator Chambers. [LB88]

SENATOR CHAMBERS: What percentage do you get for having to read all of that bunglesome material? (Laughter) [LB88]

ALLEN BEERMANN: Not enough. [LB88]

SENATOR CHAMBERS: Okay, now if there are misspellings, does that result in a deduction of any amount from the total that the state would pay? [LB88]

ALLEN BEERMANN: Probably not, but we think we have not detected any misspellings. They are proofed by four different people or entities. We also run them through spell check. We also have our editors go through them, and I can tell you that this year, there is no known, that came to our attention, misspelling. [LB88]

SENATOR CHAMBERS: If I can find a misspelling, what will I get for that? (Laughter) [LB88]

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ALLEN BEERMANN: It would be a pretty good deal for you. [LB88]

SENATOR WHITE: That's all I would have, though. Thank you. [LB88]

SENATOR LATHROP: One last question for me. How long have we had this arrangement with the Nebraska Press Advertising Service? [LB88]

ALLEN BEERMANN: Well, I go back in my former life when I was at the State Capitol, that was in the early sixties, and then before that, I'm led to believe it was another 20 years before that. Back in the twenties it was the Nebraska Press Association. Later on the Nebraska Press Advertising Service was formed, and I believe that was like in maybe '57, so the entities changed but not the process. [LB88]

SENATOR LATHROP: Okay, thank you. [LB88]

SENATOR CORNETT: Thank you, Mr. Beermann. [LB88]

ALLEN BEERMANN: Thank you for your courtesy. [LB88]

SENATOR CORNETT: Next proponent? [LB88]

CHRIS PETERSON: (Exhibit 3) Good afternoon, Senator Cornett and members of the committee. My name is Chris Peterson, P-e-t-e-r-s-o-n, and I'm the chief administrative officer for the Health and Human Services System, and I'm here to provide information on LB88. Just for a quick note in looking at questions that were raised about the specific overpayments that we're talking about, they broke down in a variety of ways. Some of them were our error in how we attempted to collect. Some of it was due to the inability to pay of the person that had the charge, and some of them was the ability to locate that person. And I'll walk through those as we go through the testimony and then the bill. Section 4 of the bill would allow HHSS to write off uncollectible debt. These are debts in which the agency cannot lawfully file a lawsuit to collect, for reasons such as bankruptcy or being past the statute of limitations. The first request is to write off \$348,182.90 from 95 patient accounts of the three regional centers. Of this amount, \$41,197.06 from eight patient accounts cannot be collected because the debt was discharged in bankruptcy; \$67,352.74 from 11 patient accounts cannot be collected because the debtor has died leaving insufficient assets to pay the debt or probate was not pursued. The remaining \$239,633.10 from 76 patient accounts is beyond the statute of limitations. We are attempting to clean up our financial records on these accounts going back to 1992. When the old Legacy system went down and our paper files came up on N-FOCUS, that automatically triggers a billing statement every month if there is an outstanding debt. In the regional center, when people come into the regional center, we do a financial evaluation of them right away. If they are applicable for Medicaid, we sign them

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up for Medicaid. If they are not, if they do not have sufficient assets to pay for the costs, they do not pay for the costs. Obviously, if they are committed to us for our care, then we are required to pay that. And so as the person then leaves the regional center, if there's an outstanding balance we have, based upon the history that we have with them, we continue to bill. But those are only people that have, through that evaluation process, shown that they actually have the assets to pay for something. In addition, then the billing out--should the address change, we do not go track them down. If the address changes and the letters start coming back out, then we go not after...try to find that person. For approximately \$38,183 of the amount included in this write-off request, the amount owed by the individual debtors was less than \$1,500. Our past practice on accounts less than \$1,500 has been to not file a lawsuit against the debtor before the statute of limitations have run. Many times a debt is of such a de minimus amount that it would be inefficient to pursue collection. These decisions are based on an analysis of the expenses associated with filing a lawsuit and the staff time required to make court appearances around the state. For accounts over \$1,500 we look at every account to determine feasibility of collecting, including financials of the debtor. We are currently revising our collection guidelines in order to be more efficient in debt collection, and we will continue to monitor and refine our collection guidelines based on the outcomes of our efforts. The agency is also asking to write off \$720,819.22 in uncollectible debts on the HHS books from portions of the economic assistance programs. This onetime update is part of an effort by HHSS to review and correct its financial records. In our conversion to our electronic recordkeeping system many accounts were unable to be reconciled due to erroneous data transferred and corresponding paper records being destroyed. The amount of this write-off request comes from overpayments made to clients and providers of HHSS between October 1, 1997, and July 1, 2001. We attempt to collect when client error results in an overpayment, but--and I'd like you to cross out "federal and"--because we do not...we are not held by the federal law that we cannot collect if the agency commits an error. In fact, in the Food Stamp Program, whether it's our error or the client's error, we have to collect. But currently, state rules do not allow us to collect when the agency commits an error. While our error rates are low, ranging from .00003427 percent in child care services to .00323 percent in ADC of all benefits paid out that are not recouped or collected, we still make every attempt to collect when feasible. We work in concert with the Department of Administrative Services for offsets to state obligations as well as future benefit offsets, when it is allowed and appropriate. The total comes from 1,101 accounts totaling \$666,763.22 from the ADC, Aid to Dependent Children program; 48 accounts totaling \$27,448.06 from the AABD, Aid to the Aged, Blind, and Disabled program; 18 accounts totaling \$13,220.63 from child care subsidies; and 124 accounts totaling \$15,387.31 from the Foster Care program. These overpayments are no longer collectible because the statute of limitations has run on the individual debts and there are also a few accounts that are also uncollectible due to bankruptcy or the death of the debtor. In regards to the specific questions asked about Section 4 of LB88, the cost for the \$6,272 made by the Department of Health and Human Services Finance and Support that was theft committed from a former

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employee, on the department's error, we did not file on that. We are looking right now to see about if we are able to go through our bonding agency to collect that. On the \$534 for the request made by the Department of Health and Human Services, bad checks to our Vital Statistics, the county attorney typically has not prosecuted those, but we now will be sending out letters requesting that they do. Six hundred thirty-eight dollars for the Department of Health and Human Services; again, those were bad checks paid to the lab, and we'll follow that new policy with those also. In terms of a collection agency in cleaning up the files that we have, we have instituted several changes. The first was to go back through all of these old records to make sure that the addresses are updated, look at all the past overpayments that fall within those five years, and then determine if they are able to be enforced, and the determination was they weren't. We have been sending them bills, they have been getting them on a consistent basis. There had been no response in over a period of a certain amount of time. At that point, then, we looked at making the decision that those would be uncollectible. On the new bills currently what we have, we have an attorney assigned to that; we have a series of letters now that go out. You get your first notice which automatically happens through N-FOCUS, then we send a series of legal letters, and then at that point the decision is made that we would file a complaint in the district court. I'd be glad to try to answer any of the questions. [LB88]

SENATOR CORNETT: I have a couple, and I'm sure the rest of the committee does. Why wasn't probate pursued? You said the debt was uncollectible... [LB88]

CHRIS PETERSON: Right. [LB88]

SENATOR CORNETT: ...because some of the people had died either indigent or probate was not pursued. [LB88]

CHRIS PETERSON: In terms of...there was not enough...they told us...right. The determination was made that there wasn't enough money to do a probate. [LB88]

SENATOR CORNETT: How is that determination made? [LB88]

CHRIS PETERSON: Senator, do you mind if I look around and get the answer? The actual records are at the regional center. It was determined that there was not enough in the estate to file for probate. [LB88]

SENATOR CORNETT: No. [LB88]

CHRIS PETERSON: Okay. [LB88]

JEFF SCHIMIDT: (Inaudible) [LB88]

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CHRIS PETERSON: The actual records to the regional center determined that there was not enough money to file a probate. [LB88]

SENATOR CORNETT: But they weren't in the regional center at the time, correct? [LB88]

CHRIS PETERSON: Would you like me to have Jeff come up here with me? [LB88]

SENATOR CORNETT: We can't do it that way. [LB88]

CHRIS PETERSON: Okay, sorry. [LB88]

SENATOR CORNETT: So he can testify. [LB88]

CHRIS PETERSON: Okay, we can answer those questions for you. He is here, if you would like me to have him answer the ones I can't. [LB88]

SENATOR CORNETT: Okay. I'll go ahead and let someone else, to see if they have questions. Senator White. [LB88]

SENATOR WHITE: Yes, I have a number of them. How many people were fired as a result of this? [LB88]

CHRIS PETERSON: As a result of? [LB88]

SENATOR WHITE: Losing over \$1,000,000 of public money? [LB88]

CHRIS PETERSON: One for sure that I am aware of. I'd have to go back through the employee records and find out on the others. [LB88]

SENATOR WHITE: HHS has had a number of issues regarding whether or not it is an effective organization. What has been done internally to review the procedures and restructure? [LB88]

CHRIS PETERSON: There have been several things, Senator, that we have done. One of the things that started several years ago is we created an issuance and collections center. And through the past several years different programs have been given to this group to review for the overpayments. As I said, when we transferred from the Legacy system to the N-FOCUS, any time there is a debt there is an automatic notice sent to the last address of that person. In addition, they cross-check daily. If a person comes on the system that has an ADC debt, then we are able to recoup that. We don't let anybody come on the system new that still has a past debt from when they were on the system before, so we cross-check it that way. We cannot mix programs, in that if there is an

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overpayment paid to you in child care and now you come on ADC, we can't mix programs for you. But once you come on then we have ability, depending on the amount of dollars that the overpayment was, to go after you for collection on that. We have also identified, as I said, the amount, the tier of letters to go out in terms of going after the people based upon the amount of the debt that they owe. We send out the normal notice, and then we send out the two legal notices and then depending on the amount of debt they owe, if it's over the \$1,500, then we file the complaint. [LB88]

SENATOR WHITE: Let's talk about the \$1,500 first. Why was that number adopted, rather than referring it to bill collectors who routinely, in my experience, will collect for an assignment of half of the money amounts, far lower than \$1,500. Why wasn't the agency pursuing that normal business practice? [LB88]

CHRIS PETERSON: And I can't tell you that, Senator. We will be pursuing that in the future, in terms of doing the debt collection piece of that. Again, part of it at the time, my understanding was, is because of the amount of the size of each claim. [LB88]

SENATOR WHITE: With regard to the theft of services, not only did the agency not object to the discharge in bankruptcy, correct? Is that correct? [LB88]

CHRIS PETERSON: I might have Jeff Schmidt answer that for you when he comes up after that. [LB88]

SENATOR WHITE: They have not filed a claim against the bonding company, correct? [LB88]

CHRIS PETERSON: We are finding that out. I couldn't tell you that one right now. [LB88]

SENATOR WHITE: Well, how long ago was this theft? [LB88]

CHRIS PETERSON: I believe it was in 2005. [LB88]

SENATOR WHITE: So you've waited over two years, for practically two years, to file a claim against the bonding company. You've allowed the debt to be discharged in bankruptcy, which probably destroys the bonding company's obligation to pay the state. [LB88]

CHRIS PETERSON: Yes, sir. [LB88]

SENATOR WHITE: Was the person who stole this money prosecuted? [LB88]

CHRIS PETERSON: I can't answer that one either. I'd have to have Jeff, who was the

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attorney that handled all of these claims, answer that for you. [LB88]

SENATOR WHITE: Are you aware that routinely, as part of sentencing for this kind of offense a condition of probation, or shorter sentencing, or parole, is restitution? Was a request or demand made to the district court or whoever sentenced this person, that they make restitution? I mean it's not just once, it may be three times that the agency blew the opportunity to regain the public's money. [LB88]

CHRIS PETERSON: That could be, Senator. [LB88]

SENATOR WHITE: Now if we go down to the statistics, I'm...given the numbers involved, I'm staggered by those statistics because that would have you collecting and handling billions if not trillions of dollars, if that's your error rate. Is that based per claim or on a dollar basis? How do you determine your error rate? [LB88]

CHRIS PETERSON: We base the error rate on the dollars that are determined to be in error in the amount that we pay them, and it is based upon the number of claims that we have. Our error rate is measured not only by us but also the feds, and we can get you those numbers on each of those programs, on how many claims we have. [LB88]

SENATOR WHITE: Would you agree that the agency has done an absolutely dismal job being a steward of the public money, given this? [LB88]

CHRIS PETERSON: Yes. [LB88]

SENATOR WHITE: Thank you. [LB88]

SENATOR CORNETT: Senator Lathrop. [LB88]

CHRIS PETERSON: Senator Cornett, if I could have Jeff Schmidt now, who is the attorney that could answer the questions that you had earlier? [LB88]

SENATOR CORNETT: That would be fine. [LB88]

CHRIS PETERSON: Thank you. [LB88]

SENATOR CORNETT: Jeff, please state your name for the record. [LB88]

JEFF SCHMIDT: My name is Jeff Schmidt, S-c-h-m-i-d-t. I used to be an attorney with the agency. I'm in a different position now but for purposes of this discussion, I was an attorney when these events took place. [LB88]

SENATOR CORNETT: All right. I'll start off again with my original questions that I was

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going to ask. In the cases that probate was an option, why was probate not pursued, where the people that are deceased, the deceased inside the regional center, so we know what their assets were? How is that determined? And why were these claims not pursued before the statute of limitations on them ran out, in regards to the other write-offs? [LB88]

JEFF SCHMIDT: Okay. Regarding the probate matters within the regional centers, there are different reasons, so it's a little bit difficult to lump them together. There were some cases in which a notice was filed regarding a probate matter, and we received a notice back where a determination of the court was that there were no assets. There were some claims, some accounts as I understand, for which the staff at the regional centers were aware that the--or believed at least--that the particular debtor did not have any assets, and so they didn't pursue a probate matter. As to giving you the specific reasons in each account, I am not sure I can do that with any real accuracy, beyond that broad statement that there was annually within the regional centers, upon entry and then annually, there is financial information gathered on each patient, as well as the veterans homes. They do the same thing on the members. The staff within the finance department have some fairly good information about the patients at the regional centers, the members of the veterans homes, and based on that knowledge whether our recordkeeping was accurate enough to really reflect that, my understanding in speaking with them is that the reason they didn't pursue probate in some of these is because they were just aware that the assets weren't there. And I know the information from Laura Peterson left some gaps there, and I'm not sure that our documentation really backed up the belief of these staff folks in every instance. But as Ms. Peterson indicated, there are a number of matters that are being reviewed, monitored, and corrected and that would fall within that same category of collection efforts that are being worked on by the agency. [LB88]

SENATOR CORNETT: So you're saying that the people only believed these people didn't have any assets. You don't have any documented proof that they didn't have assets and that it was just determined upon a belief that it couldn't be collected, so then no attempt was made? [LB88]

JEFF SCHMIDT: For some of the accounts, Senator, I can't give you a better answer than that. That's true. [LB88]

SENATOR CORNETT: Okay. On the statute of limitations between all of the claims that you have...and we are talking a few hundred thousand dollars that was allowed to not be collected, just because the statute ran out. Why was that allowed to happen? [LB88]

JEFF SCHMIDT: You know, I'm going to give you the information I have. I was not involved directly in those conversations. It came down to a matter of how the agency could use its resources. Did they have enough legal staff to file claims and...or file

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lawsuits in all of these particular accounts? And a decision was made by the relevant folks that they didn't have the resources to do that. To give you a better answer than that, I'm not sure that I can. I've spoken with a number of the folks that were involved in those discussions, and that's what it came down to, was in their minds the cost benefit analysis in looking at each account...what was the amount of the account, in some cases where was it located, was it within the state of Nebraska or not. What information did they have about the individual debtor regarding assets that that person had? They had access to information that would tell them, for example, whether somebody is receiving Medicaid benefits. And if they are receiving Medicaid benefits, the chances are they don't have the assets to pay a judgment, even if we go get one. So a lot of those different factors went into the discussion on each individual debtor, to determine whether or not it was cost effective to file a lawsuit. If it's an \$800 account and we're going to have to send somebody to Scottsbluff to collect it, and our information is that the debtor doesn't have assets from which to collect the judgment even if we obtain one, the more prudent decision on the part of the agency appeared to be not to spend the time attempting to obtain a judgment that we are not going to be able to collect. [LB88]

SENATOR CORNETT: So what are you going to do if this committee doesn't approve this portion of the claims bill? [LB88]

JEFF SCHMIDT: I don't know what the answer to that question is, Senator. That's not a decision for me to make. [LB88]

SENATOR CORNETT: Senator White. [LB88]

SENATOR WHITE: I have several questions. First, who are the relevant folks who made that decision? What positions do they hold? [LB88]

JEFF SCHMIDT: Well, it may vary depending upon the individual account. There are attorneys and legal...there's an attorney named Ron Sanchez in legal that deals with the regional center and veterans homes accounts. I believe Jim Piazza, with finance, currently is involved in those conversations, but I think Mr. Piazza has been with the agency for two years or less. I'm going to guess at the amount of time. Prior to that I don't know who from finance was involved. At some point a discussion was held with the former director of Finance and Support, Dick Nelson, about which of these accounts we should go after. You'd mentioned the \$1,500 threshold, and I believe that was a conversation between Dick Nelson, Ron Sanchez, and Jim Piazza, about where it becomes cost effective and not cost effective to file lawsuits against some of these accounts. The agency was still trying to collect. I mean, I want to be clear. They weren't just ignoring these; they were making efforts to collect. They were just making a determination about whether to take that next step to go to court. [LB88]

SENATOR WHITE: Now the agency could have assigned these accounts to a private

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bill collector, not used its own resources and not encountered any costs, because they only get paid to the extent they actually collect money; isn't that true? [LB88]

JEFF SCHMIDT: It is true there's a process in statute, and I'm not going to pretend to be an expert on it. My understanding is that the language of the statute requires the Governor to approve any contract with a debt collection agency, but the statute is there, yes. [LB88]

SENATOR WHITE: So anybody ask the Governor to approve this? [LB88]

JEFF SCHMIDT: I don't know that. [LB88]

SENATOR WHITE: You just let \$1,000,000 slide out of the public's hands? [LB88]

JEFF SCHMIDT: Well, Senator, you know, that's a question again, that I'm not sure that I am the right person to answer. [LB88]

SENATOR WHITE: You kind of won the lottery, though. [LB88]

SENATOR CORNETT: Who would the right person be? [LB88]

CHRIS PETERSON: I would be. [LB88]

SENATOR WHITE: Now I have one other question that truly bothers me, because it's the biggest single amount of money I think that was lost, is when the paper records were destroyed during computer conversion. Who authorized the destruction of those paper records and why were they destroyed before they were double-checked against the computer records? No business would do that. [LB88]

JEFF SCHMIDT: That would have been something that would have happened in approximately the 1996 through 1998 time frame, and I can't give you an answer to that. I don't know who authorized it, if you are talking about the records that were related to the change-over from an old system to our current N-FOCUS computer system. [LB88]

SENATOR WHITE: I think those are being...that change-over is being attributed as one of the primary causes of this loss. [LB88]

JEFF SCHMIDT: And I know that the loss of records during that time period was a significant problem for us, yes. [LB88]

SENATOR CORNETT: Senator Chambers. [LB88]

SENATOR CHAMBERS: If a debt-collection agency were to be retained and that

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person, knowing he or she would not recover anything unless the recovery was made, and that agency would use the strong-arm, inconsiderate, threatening tactics of ordinary collection agencies, that would be a very bad reflection on the state if that occurred; isn't that true? [LB88]

JEFF SCHMIDT: You know, Senator, I'm going to defer to somebody in a policy-making position to answer that question. [LB88]

SENATOR CHAMBERS: What do you think? If I called and I said this person called me Sunday morning, this person called me Sunday afternoon and Sunday night, and I said I don't want to be called, and this person said, I work for the state and I'll call you whenever I want to. Do you think that's going to cause me to have a good attitude toward the state? [LB88]

JEFF SCHMIDT: Well, in that instance, if they continued calling after being told not to, I think that would probably constitute a violation of the Fair Debt Collection Practices Act and that would create some liability issues for somebody. [LB88]

SENATOR CHAMBERS: But that doesn't stop them, because they know the ordinary person is not going to have the means to pursue it or do anything, because I know of some agencies that continue to do it. They know the game, they know the field, and they know what they can get away with. Now if that happens, since you are aware that that would be a violation of something, what is done to bring a sanction against the debt collector who would do that, if you know? [LB88]

JEFF SCHMIDT: I believe there is a mechanism to make a complaint to a federal agency, and I forget which one it is, and I think there is a possibility for a private lawsuit. [LB88]

SENATOR CHAMBERS: Um-hum, okay, and you have a federal agency, and how many complaints might that agency be getting? That's a rhetorical question. How many people do they have who are going to enforce anything on these debt collectors who violate people's privacy? Do you think--and this is for your opinion, and then I'm going to leave you alone--that there is an effective machinery at the federal level to give redress to all of these people who will complain about the kind of things that I just mentioned to you? [LB88]

JEFF SCHMIDT: I am going to answer by saying that there is a mechanism in place in the federal statute that is available to them. [LB88]

SENATOR CHAMBERS: Okay. That's a wise answer, and I think if I extrapolate from that, the answer is no. But thank you. (Laughter) [LB88]

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SENATOR WHITE: Certainly the agency having found that private debt collectors were abusing or behaving in violation of the law in a manner that it felt was unethical could cancel any contracts with such an agency, thereby raising the standards of the entire profession, hopefully; isn't that true? [LB88]

JEFF SCHMIDT: I think the advice from legal, I would hope, would be to cancel a contract if we have knowledge that they are violating federal law, yes. [LB88]

SENATOR WHITE: Thank you. [LB88]

SENATOR CORNETT: Any further questions from the committee? Senator Chambers. [LB88]

SENATOR CHAMBERS: No, I don't have any. [LB88]

SENATOR CORNETT: Okay. Thank you, sir. [LB88]

JEFF SCHMIDT: Thank you. [LB88]

SENATOR CORNETT: Next proponent? Is there a representative from the state corrections? Could you please step up? There are a few questions. Senator Rogert, why don't you go ahead? Wait, I was going to say name first. [LB88]

JOHN McGOVERN: John McGovern, M-c-G-o-v-e-r-n, I'm the administrator with Cornhusker State Industries. [LB88]

SENATOR ROGERT: Hi, John. Can you shed a little light on your list of uncollectible debts here that are all interagencies? Can we explain, really, I mean...obviously, if we would have had to have pick that our...it's the same pocket. But why can't those things be paid for out of the correct agency? [LB88]

JOHN McGOVERN: Well, it's not really the same pocket, in that CSI is a revolving fund. [LB88]

SENATOR ROGERT: Okay. [LB88]

JOHN McGOVERN: So these become even more critical to us, because we have to make a profit to sustain ourselves. Basically there's...I guess the easiest way to answer is it was a poor job done on chasing these debts, early on. And we are now going after what we can go after. We actually recovered about 60 percent of the debts. These are ones that either we can't support with paperwork to show that we delivered, or the receiving place can't support that they received it, and our paperwork during the late nineties and even up to today isn't very good. We are putting in a new computer system

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right now that will remedy many of these problems. For example, if we say we are going to ship 100 parts to somebody and we ship one, the shipper comes out saying that we have 100 that we are shipping. And then somebody has to mark down that we shipped one and we owe them 99, and of course, with that kind of a system, it's open for a lot of error. And that's what most of these are. [LB88]

SENATOR ROBERT: So you're going to claim responsibility for most of these, rather than putting the blame on the agencies that haven't paid? [LB88]

JOHN McGOVERN: Well, I'm going to have to. (Laugh) [LB88]

SENATOR ROBERT: Okay. I just wonder, because over half of them are from the same agency, so. [LB88]

JOHN McGOVERN: Yes. (Laugh) [LB88]

SENATOR ROBERT: Okay? [LB88]

JOHN McGOVERN: Yes. [LB88]

SENATOR CORNETT: We're...and maybe Senator White, or...where does the burden of proof lie if you say you shipped something, and you have records that you shipped it, and the other agency doesn't have proof that you shipped it? [LB88]

JOHN McGOVERN: Well, if we have proof that we shipped it, there usually isn't much of a dispute. What happened is that most of this paperwork is over five years old and it was destroyed, so we don't have the proof. Now what we've done is, we look at this every month now. So if we see that someone isn't paying us quickly, we act on it now rather than act on it five years from now. [LB88]

SENATOR CORNETT: Is it a policy, and I assume this policy has been changed, that paperwork is destroyed before debt is collected? [LB88]

JOHN McGOVERN: I'm going to make an assumption here that the policy is--I am not on the accounting end of it--but the policy is that it is destroyed after five years, and I believe that policy is still intact. [LB88]

SENATOR CORNETT: Regardless if it has been collected or not? [LB88]

JOHN McGOVERN: Yes...I can't answer that. I shouldn't answer that. I'm not sure on that. I can just tell you that we look at it much more aggressively than we did under past regimes. [LB88]

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SENATOR CORNETT: So, just so I have a clear understanding, you are destroying any proof that money is owed to you before it is paid? [LB88]

JOHN McGOVERN: We did. [LB88]

SENATOR CORNETT: You did. [LB88]

JOHN McGOVERN: Yes. [LB88]

SENATOR CORNETT: But you don't know if that policy has changed? [LB88]

JOHN McGOVERN: I do not know that for sure, no. [LB88]

SENATOR CORNETT: Thank you. Any further questions from the committee? Senator Wallman. [LB88]

JOHN McGOVERN: Yes, sir. [LB88]

SENATOR WALLMAN: Yeah, I used to be a treasurer for a school board, and we bought stuff from you. We were very happy, but we always got it billed within 30 days and we paid. And so what happens? They didn't pay nothing? [LB88]

JOHN McGOVERN: I'm going to say that it doesn't look like a lot happened. (Laugh) I mean, these are...we do about \$10,000,000 worth of business a year right now,... [LB88]

SENATOR WALLMAN: Yeah, I realize that. [LB88]

JOHN McGOVERN: ...so this is going back to the nineties, so these are some old debts. If you didn't pay...I'm going to tell you that we sent letters out, but I don't think we aggressively attacked it, not hard enough. And now we do. [LB88]

SENATOR CORNETT: Thank you very much. Seeing no further questions, thank you very much. And then I'm going to request...is there anyone here from the State Fire Marshal's Office? Please state your name for the record, and spell it. [LB88]

CATHY WANN: My name is Cathy Wann, W-a-n-n, business manager for the State Fire Marshal's Office. [LB88]

SENATOR CORNETT: Thank you, Ms. Wann. Senator Rogert. [LB88]

SENATOR ROGERT: Thank you, Ms. Wann. Thanks for coming up. This isn't a large sum of money, \$400 you guys have. That's not a big deal. However, I do notice that it's

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the same people quite often, and we are still granting them whatever permit they're requesting? [LB88]

CATHY WANN: This is an annual inspection fee. They're supposed to pay an annual fee, and we do still conduct inspections of their facilities because they are grain elevators and because of the safety of the state, we don't want them exploding. So we conduct the inspection; we don't always get payment. [LB88]

SENATOR ROBERT: So when we go to inspect...in subsequent years, can't we try to get payment at that point? [LB88]

CATHY WANN: Oh, we always try to get payment, and they have been turned over to collection agencies. The one, Tyson Elevator, believes that he doesn't like government intervention, so he just refuses to pay. [LB88]

SENATOR CORNETT: So if you refused to inspect it and they didn't have their inspection sticker, couldn't they be shut down without that inspection sticker? [LB88]

CATHY WANN: I don't believe the statute allows us to not do an inspection. [LB88]

SENATOR CORNETT: What are the penalties for not... [LB88]

CATHY WANN: That's the problem; there's really no penalty. The only thing I think we maybe could do is take it to the district court. However, because of the size of it, the Attorney General's Office said it's not worth it. [LB88]

SENATOR CORNETT: How many years have we been writing off the same individual? [LB88]

CATHY WANN: This individual has had grain elevators since...I think the bill started in 1988. He has refused to pay except for one year in 2001; we don't know why. [LB88]

SENATOR CORNETT: So he hasn't paid \$400 since 1988, every year? [LB88]

CATHY WANN: His annual fee is \$25. [LB88]

SENATOR CORNETT: Of \$25? [LB88]

CATHY WANN: Yeah. [LB88]

SENATOR CORNETT: Oh, that's it? Okay. [LB88]

SENATOR ROBERT: Thank you. [LB88]

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SENATOR CORNETT: Any further proponents on LB88? We'll move on to opponents. Are there any opponents? Anyone in the neutral capacity? That closes the hearing on LB88, and we'll open the hearing on LB89. [LB88 LB89]

LORI THOMAS: (Exhibits 4, 5, 6) Senator Cornett and members of the committee, I'm Lori Thomas, counsel to the committee, and I'm here to introduce LB89, which is the annual denied claims bill. LB89 contains those claims which were denied by the Claims Board, and the claimant had chosen to appeal to the Legislature for your review. The page is handing out three different things. One of them is the docket sheet for the denied claims bills, so there's a little description of each in there. The second handout is the risk manager's analysis of the claims made by the city of Norfolk. This analysis was the best condensed summary that I am aware of at this time, at least, and it contains the claimant's positions as well. So I thought it might be helpful for your consideration. [LB89]

SENATOR LATHROP: Lori, can I interrupt? [LB89]

LORI THOMAS: Yes. [LB89]

SENATOR LATHROP: I have something...do we have a list of the debts that we are talking about? [LB89]

LORI THOMAS: Senator, there's four of them, and they should be each described in the docket sheet summary. It should also be described in your bill summary that you have in your bill book or that summary that you have there in your hand. [LB89]

SENATOR LATHROP: Okay, thank you. [LB89]

LORI THOMAS: You're welcome. Laura Peterson, the state's risk manager, will be following my testimony, and we'll go through the same process that we did earlier. So that's all I had. [LB89]

SENATOR CORNETT: How many proponents are there? Two proponents? How many opponents? Okay. Thank you. Go ahead, Laura. [LB89]

LAURA PETERSON: Good afternoon, Senator Cornett, members of the Business and Labor Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager. I'm here in support of the claims which were denied by the State Claims Board as they are represented in LB89. I believe you received a summary of each claim and as with the approved claims, I will give a summary of each. I'd happy to respond to any questions you have. The first one is claim number 2005-00295 which is filed by Millicent Myers in the amount of \$830.35. This claim is against the Department of Health

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and Human Services and involves reimbursement for expenses that the claimant claims to have incurred on state business in the years 2002 and 2003. Nebraska Revised Statute 81-1174 requires state employees to present requests for expense reimbursements submitted on a monthly basis. Claimant was determined to be significantly beyond the allowable time, as she filed for reimbursement of four expenses which were between two and three years filed prior to the time she filed the claim. The claimant would also be beyond the two-year statute of limitations in 25-218. The claimant and her appeal of the board denial indicates that her caseload was very heavy but also admitted that she did not file her reimbursement requests in time. [LB89]

SENATOR LATHROP: Are you done with this one? [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: Okay. I'm looking at the docket sheet for this one and it says, agency recommendation: recommend the claim be approved. And the risk manager recommendation: deny in accordance with agency recommendation. [LB89]

LAURA PETERSON: Yeah, there should be two agency recommendations. There was the first one and that first one, the attorney who worked for Health and Human Services sent us a letter that said that the reason that the expenses were not approved was due to administrative error and the Claims Board has on occasion, where the error was not that the claimant didn't submit their expenses on time, but that the agency didn't process them properly, gone ahead and paid them. When we followed up with Health and Human Services to determine what that administrative error was, they wrote back and said--and I can't remember if they were looking at a wrong claim--but that there was no administrative error. There was no fault on the part of Health and Human Services. This was actually a case where the claimant did not request reimbursement in a timely manner. And so they changed the recommendation to deny based on 81-1174. [LB89]

SENATOR LATHROP: All right. Thank you. Let me ask you a question about this Millicent Myers. Is this somebody that worked for Health and Human Services? [LB89]

LAURA PETERSON: Yes, and I believe she still does. I also believe she's here. [LB89]

SENATOR LATHROP: Okay. Did she perform a service for the state? [LB89]

LAURA PETERSON: There's no... [LB89]

SENATOR LATHROP: Do we have a bone to pick with her about whether she... absent being late and making her request, do we have a problem with the underlying claim? [LB89]

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LAURA PETERSON: I think the only problem is the timing of it, and so there is no way for the agency to...what it is, is mileage that would show individual visits. She's was or is, at the time of these expenses, a caseworker, which means the expenses are related to traveling to individual site visits. And I believe everyone believes that she actually did visit the site visits, but because of the time that lapsed between the time she did that and the time that she filed it, there's no really good way to review that those were actual case visits, that the mileage is appropriate, and the mileage rate that was in place at the time, because it changes periodically. [LB89]

SENATOR LATHROP: So that I'm clear, that the only defense the state has for this claim is the statute of limitations; otherwise, we think this employee of the state of Nebraska went where she said she went, spent her own gas and her own car, going to see clients of Health and Human Services, that part is not at issue, just the statute? [LB89]

LAURA PETERSON: There hasn't been any review of the actual expenses themselves, but yes, everyone believes that she was working at that time and she was incurring expenses. Whether the dollar amount is exactly correct or the mileage, the Claims Board didn't review that because of the statute of limitations issue. [LB89]

SENATOR LATHROP: But you've had nobody from Health and Human Services tell you, we don't even believe she has \$830... [LB89]

LAURA PETERSON: No. That's what... [LB89]

SENATOR LATHROP: That part we are okay with. [LB89]

LAURA PETERSON: And she has actually submitted all those...subsequent to the Claims Board hearing, she submitted copies of her diaries or logs, basically, her calendar, that would show that she clearly was doing site visits. I mean, I don't think there is anybody who questions that she doing that. [LB89]

SENATOR LATHROP: And how long did she have to submit the claim? [LB89]

LAURA PETERSON: Well, she was... [LB89]

SENATOR LATHROP: You said she's filed it too late and so your recommendation is to not pay her for what she clearly did? How much time did she have to make that claim? [LB89]

LAURA PETERSON: There are two different statutes. There is one on expense reimbursements, which is 81-1174, and it actually says that employees of the state should submit their expense reimbursements on a monthly basis. There is then, of

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course, the secondary statute of limitations for miscellaneous claims which is two years and these are outside of the two years, as well. [LB89]

SENATOR LATHROP: Have we ever paid reimbursement to somebody who submitted their mileage more than a month later? [LB89]

LAURA PETERSON: I believe we have. [LB89]

SENATOR LATHROP: Okay, so that's not the issue. It's just the fact that she waited more than two years to make the claim. [LB89]

LAURA PETERSON: We have denied ones that were significantly longer. I don't believe in a month, but the two years statute of limitation, that's in 25-218, I don't believe we've ever paid one that was beyond that statute of limitations. [LB89]

SENATOR LATHROP: How far beyond that two-year statute was the claim filed? [LB89]

LAURA PETERSON: The work or expenses that were done are ranging from two to three years past, so she was within or close to the two-year statute on the earlier, but the later portions of her expenses and up to three years beyond, so one year beyond the statutes. [LB89]

SENATOR LATHROP: But are you telling us that some of the \$830 is actually within the two-year statute? [LB89]

LAURA PETERSON: I believe it's all outside, but I believe it's very close. There might be a few dollars. I'm not 100 percent certain. We could go back and look. [LB89]

SENATOR LATHROP: Okay, you've answered my questions. Thank you. [LB89]

SENATOR CORNETT: Any further questions from the committee? Go ahead. [LB89]

LAURA PETERSON: Okay. The remaining claims numbers are 2006-00715, 00716, 00717, and 00718, which are filed by the city of Norfolk in the amount of \$200,000 each, for a total of \$800,000. These claims are against the Department of Environmental Quality and involve alleged petroleum release contamination of the city water well fields. The Claims Board, upon advice of the Attorney General's Office, determined that Nebraska Revised Statutes 25-218 applies to these claims and the claims were filed outside the two-year statute of limitations in 25-218 and are therefore barred. At the time of the Claims Board's action on the claims the Attorney General's Office provided verbal advice. Since that time the Attorney General has issued a written opinion confirming that advice, and a copy of that opinion was forwarded to the committee. There were other substantive issues in dispute on these claims, including the per claim

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limit, total recovery limits, offset requirements for recovery from third parties, and contamination from sources other than petroleum. However, because the Claims Board determined the claim was out of time under the statute of limitations in 25-218, the Claims Board did not reach a determination on the other substantive issues. That concludes my testimony. I'd be happy to answer any questions. [LB89]

SENATOR LATHROP: Can I ask you a few questions on this? [LB89]

SENATOR CORNETT: Go right ahead. I've got a couple myself. [LB89]

SENATOR LATHROP: Thank you, Madam Chair. Let me get some background on this whole claim filed by the city of Norfolk, if I may. [LB89]

LAURA PETERSON: Okay. [LB89]

SENATOR LATHROP: They had some weak and...what are these, underground gas tanks? [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: Is that what it was? [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: And was it one tank that leaked into the water fields in Norfolk? [LB89]

LAURA PETERSON: I don't recall if it was one tank or multiple tanks, but it was...I believe it was one tank. [LB89]

SENATOR LATHROP: Did the city of Norfolk file a claim with your office? [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: And was that timely filed? [LB89]

LAURA PETERSON: Timely under 25-218, it was not. [LB89]

SENATOR LATHROP: Why are you hesitating? Is there more to this than what you've shared (inaudible)? [LB89]

LAURA PETERSON: No, I was trying to figure out "timely." I mean, based on 25-218 it was well outside of two years. They filed the claim significantly after two years after the

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release occurred. [LB89]

SENATOR LATHROP: Did they file it within two years of discovery? [LB89]

LAURA PETERSON: No. It was outside of two years of discovery. [LB89]

SENATOR LATHROP: Okay, It was outside of two years of the leak and outside of two years after they knew about it. [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: And it's your judgment, based upon some Attorney General's Opinion, that two years is the time frame they had to file. [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: Is there pending litigation? [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: And where is that pending? [LB89]

LAURA PETERSON: I believe it is Madison County. [LB89]

SENATOR LATHROP: That would be the county where Norfolk... [LB89]

LAURA PETERSON: I was trying to think what county that Norfolk is in. [LB89]

SENATOR LATHROP: But it's in the Madison County District Court? [LB89]

LAURA PETERSON: That's my understanding, yes. [LB89]

SENATOR LATHROP: Who's representing the state of Nebraska in that proceeding? [LB89]

LAURA PETERSON: The Attorney General's Office. [LB89]

SENATOR LATHROP: How long ago has that been filed? Was that filed within the two years? [LB89]

LAURA PETERSON: No. [LB89]

SENATOR LATHROP: Do you know what the status of that litigation is? [LB89]

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LAURA PETERSON: I know it's pending, but I don't know much more than that. [LB89]

SENATOR LATHROP: Did the state of Nebraska through the Attorney General's Office file as an affirmative defense that the claim was late or barred by statute? [LB89]

LAURA PETERSON: I don't know. We have a lot of the court documents, but I haven't been through them in detail enough to tell you. [LB89]

SENATOR LATHROP: They're represented by Mr. Bruckner? [LB89]

LAURA PETERSON: The city of Norfolk? [LB89]

SENATOR LATHROP: The city of Norfolk. [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR LATHROP: I see he's here, so maybe we'll ask him some of those questions. [LB89]

LAURA PETERSON: We probably have that in the files, but I don't know off the top of my head. [LB89]

SENATOR LATHROP: Okay. That's all the questions I have. [LB89]

SENATOR CORNETT: Who is opposing counsel? [LB89]

LAURA PETERSON: Opposing? [LB89]

SENATOR CORNETT: Who is representing the city of Norfolk? [LB89]

LAURA PETERSON: Mr. Bruckner. [LB89]

SENATOR CORNETT: Okay, in this? [LB89]

LAURA PETERSON: In...yes. [LB89]

SENATOR CORNETT: Okay. In some of the material that you have given to us, the Claims Board denied that just based on the statute of limitations issue; am I correct? [LB89]

LAURA PETERSON: Yes, that's correct. [LB89]

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SENATOR CORNETT: There was no other reason cited? [LB89]

LAURA PETERSON: Yes, that's correct. They had other information on substantive issues, but they decided solely based on the statute of limitations. [LB89]

SENATOR CORNETT: Do you have any idea why they did not address the other statutory issues? [LB89]

LAURA PETERSON: I think the determination by the Claims Board was that because it was time barred there was no reason to address each of the substantive issues. [LB89]

SENATOR CORNETT: Okay. Thank you. Senator White. [LB89]

SENATOR WHITE: I have a series of questions. First of all, thank you for sending that Attorney General's Opinion. In that, one of the things that concerned me, it states that the Attorney General back in 1981 claimed that 25-218 did apply to miscellaneous claims. Do you recall reading that? [LB89]

LAURA PETERSON: Until this Opinion we were not aware of that Opinion, but yes. [LB89]

SENATOR WHITE: Okay. Well, one of the things that concerns me is, since that opinion in 1981, for many, many years the Claims Board has not applied 25-218, despite the Attorney General's Opinion with regard to things like warrants and checks and other matters, correct? [LB89]

LAURA PETERSON: With regard to warrants you are correct. Since 1981 they had approved some that were outside the two years. [LB89]

SENATOR WHITE: Okay, so they did not consistently apply this law, even with the Attorney General's Opinion saying that it applied; is that correct? [LB89]

LAURA PETERSON: That's correct. [LB89]

SENATOR WHITE: The second thing is, you state that you believe there was one tank and that it was leaking. Did the city of Norfolk file within two years of the last leaking from that tank? [LB89]

LAURA PETERSON: We didn't do a great deal of investigation into that, but I believe the city represented that leaking is ongoing or was ongoing. [LB89]

SENATOR WHITE: Well, one of the things that concerns me in the memo that's discussed...is this from your agency? [LB89]

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LAURA PETERSON: It's from my office. [LB89]

SENATOR WHITE: Your office? You talk about whether or not the city has been fully compensated because they have recovered \$800,000 from a third party. Do you recall that section in there? [LB89]

LAURA PETERSON: I don't think it discusses full recovery, but I think it discusses the provision that requires you...the statutory provision that requires a reduction of the total claim amount by any recovery from a third party, yes. [LB89]

SENATOR WHITE: I found the interpretation that somehow capped...if you recovered up to \$800,000 from a third party, you no longer have any claim against the state. It would be very interesting and not generally is consistent with what I understood such provisions to be. With regard to the statute of limitations, for example, couldn't we argue that the city of Norfolk did not have a claim against the state fund until it had exhausted its claims against third parties? And then the state fund was responsible for any additional damages beyond what the city was able to recover from the wrongful third party? [LB89]

LAURA PETERSON: Well, first I think it's a little beyond what the Claims Board did, the portion about the \$800,000 and the recovery offsetting,... [LB89]

SENATOR WHITE: We'll get down the statute of limitations because... [LB89]

LAURA PETERSON: ...but on the statute of limitations, my understanding of what was reviewed and what was considered was that that two-year statute of...first of all the two, the right to file a lawsuit against wrongdoing third parties, if you will, and the right to file a miscellaneous claim, are not necessarily one after the other. You technically have the right to do either/or, and therefore, that's why they have the provision for offsetting. And then that the two years began to run when they were aware of the leak. [LB89]

SENATOR WHITE: Could you also not argue that similar to uninsured motorists or underinsured motorists' coverage that perhaps cause of action technically doesn't arise against the state fund until the city of Norfolk had exhausted its remedies against the wrongdoer that allowed the oil to leak in the drinking water? I mean, in other words, until we know how much we could recover against them, the state should have no exposure and no liability. [LB89]

LAURA PETERSON: Well, I think the \$800,000, which certainly, based on the information I provided to the Claims Board, I understood that the \$800,000 is a maximum. Whether you recover that from a third party or whether you recover it from the state, that's the maximum, and one has to be offset... [LB89]

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SENATOR WHITE: I've read that language. I profoundly disagree with that, but this is about the statute of limitations. Could that language be fairly read to say that you don't have a cause of action against the state fund until you have exhausted your remedies against the wrongdoer? Then if you still have damages left--in other words, you have injuries in excess of what you've been able to recover against the wrongdoer--you now have a cause of action against the state. And if that's the case, the question is, did the city of Norfolk file this tort claim, or miscellaneous claim, within two years after exhausting its claims against the wrongdoer? [LB89]

LAURA PETERSON: I don't recall exactly when the \$800,000 that they received against the third party was made, but I believe it was substantially longer than two years before they filed the claim. I could be wrong about that, because that was not...I believe the city may have argued that, or you might argue that. I believe that the position that the Claims Board took was that they had two years under 25-218 from the date they were aware of the leak. And because those were mutually exclusive provisions and because you have to offset one with the other, there wouldn't be a reason to wait until you had exhausted your remedies. I think possibly the legislative history doesn't suggest that you would have to exhaust your remedies under one before you could make the claim against the state. [LB89]

SENATOR WHITE: Well, I may be wrong, but I think the term "offset" assumes a liquidated, identifiable sum, and I would suggest to you if I am accurate--and I may be wrong--but if I am accurate, that you cannot have a liquidated, identifiable sum to offset until you exhaust your remedies against the third party, in which case you don't have a cause of action arising, much less being barred, until you've finished it. [LB89]

LAURA PETERSON: And actually, let me clarify that I am using the term "offset," but the statute itself does not actually use the term offset. What the statute actually says is that you must reduce the amount to be awarded by the state or approved by the Claims Board, by any amount that had been recovered from a third party. And so to the extent that the maximum that we could approve is \$800,000 and the city had already recovered \$800,000, if you took the maximum award and assumed we gave it, and you did what the statute said, which is reduce that award by the amount that they had recovered in a judgment from a third party, you still would get to zero. [LB89]

SENATOR WHITE: Then let's ask ourselves this. Why...have any courts interpreted this as an award? [LB89]

LAURA PETERSON: Not that I am aware of. [LB89]

SENATOR WHITE: Thank you. [LB89]

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SENATOR CORNETT: Senator Chambers. [LB89]

SENATOR CHAMBERS: Is the litigation that you touched on dealing with the very issue we are discussing now? [LB89]

LAURA PETERSON: Yes. [LB89]

SENATOR CHAMBERS: So the court will hand down some decision, one way or the other; either the statute of limitations is not going to apply, or it does. [LB89]

LAURA PETERSON: I apologize. It's not all the identical issues. They are dealing with the issue that under the Petroleum Remediation Act you have the right to sue. [LB89]

SENATOR CHAMBERS: Um-hum. [LB89]

LAURA PETERSON: And the state can intervene in protection of fund or as the owner of the fund, as the manager of the fund. That litigation can go on concurrently with filing the miscellaneous claim. And so I don't believe the issue of the statute of limitations is going to be raised in litigation, because they aren't dealing with the miscellaneous claim. They're only dealing with provisions of the Petroleum Remediation Act. I don't know the exact title; I can't recall the exact title of that,... [LB89]

SENATOR CHAMBERS: Okay, then I'll wait (inaudible). [LB89]

LAURA PETERSON: ...so the miscellaneous claims process itself is separate. [LB89]

SENATOR CHAMBERS: Then I'll wait until the attorney comes up. Thank you. [LB89]

LAURA PETERSON: He can probably explain that a little bit better than I can. But they will not rule on the statute of limitations. I apologize. [LB89]

SENATOR CHAMBERS: Okay. [LB89]

SENATOR LATHROP: I do have a question. It seems to me like we're getting ahead of ourselves, and so I'm going to ask you this question and give you an opportunity to discuss this. If we have litigation pending and we don't have a court...apparently the Madison County District Court has this litigation before it, why are we trying to turn down something, when we don't know what the outcome of the litigation is? In other words, is this going to stop the litigation? What's the point in taking this up before we get a judgment from the District Court of Madison County? [LB89]

LAURA PETERSON: Mr. Bruckner may be able to answer that better than I can, but I believe it's essentially two different methods, two different statutory procedures at the

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same pot of money, essentially. And so if one goes forward, the other would be unnecessary. And so from the Claims Board's perspective, we don't actually have any control or authority or jurisdiction over the litigation now. We could have, and we originally...when we received the claim we received from the Department of Environmental Quality, a letter that suggested that the Claims Board should wait for the outcome of the litigation before doing anything on the miscellaneous claim. Subsequently, there were some sorts of conversations with the city of Norfolk and the Attorney General's Office representing the Department of Environmental Quality, and they later submitted a letter saying that they didn't want us to hold the claim, that they wanted us to go ahead and make a determination on the merits of the miscellaneous claim, which led us to the point we are at now. [LB89]

SENATOR LATHROP: Okay. This says the claim was filed or that the city notified the agency of the contamination, marked March 13, 1998. I'm looking about five pages into this, and there's a chronology. [LB89]

LAURA PETERSON: Okay. Sorry, I have to get that particular...I don't have that page sitting in front of me (laugh). [LB89]

SENATOR LATHROP: Well, let me ask you this though, if you know. A claim was filed apparently, or the agency was notified of the contamination March 13, 1998. That doesn't rise to the level of a miscellaneous claim? [LB89]

LAURA PETERSON: That's right. They're talking about notifying the Department of Environmental Quality, I think, that there was a leak. [LB89]

SENATOR LATHROP: And that's not tantamount to making a proper claim under the Miscellaneous Claims Act? [LB89]

LAURA PETERSON: Under the Miscellaneous Claims Act, no. There is a statutory procedure for filing the claim with the state risk manager on the form prescribed by the Claims Board for a miscellaneous claim. [LB89]

SENATOR LATHROP: Okay. Thanks for your answers. [LB89]

SENATOR CORNETT: I think Senator White had one more question. [LB89]

SENATOR WHITE: One other question. Just--and I probably missed this--do you know whether the city of Norfolk filed this miscellaneous claim within two years or before, of completing litigation against the polluting company? [LB89]

LAURA PETERSON: They filed the miscellaneous claim December of 2005. The original bankruptcy proceeding under which they received a settlement was May 6,

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2003. So they were...they entered the settlement May 6, 2003; May 6, 2003, to December 27, 2005, is slightly more than two years. [LB89]

SENATOR WHITE: Thank you. [LB89]

SENATOR CORNETT: Any further questions? Seeing none, thank you, Laura. Next proponent? [LB89]

TIM KEIGHER: Good afternoon, Chairman Cornett and members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, I guess only in regard to the claims that the city of Norfolk has with the LUST Fund. [LB89]

SENATOR CORNETT: I'm sorry. I apologize. Could you repeat the spelling of your name? We got a little behind over here. [LB89]

TIM KEIGHER: Sure. Sure. It's K-e-i-g-h-e-r. [LB89]

SENATOR CORNETT: Okay. [LB89]

TIM KEIGHER: I guess I'm here in kind of uncharted territory. We usually don't get involved in claims against the state. Our concerns are, should we be basing whether this claim should be paid on...I mean, I have no qualm with the statute of limitations thing. I agree with what has been said before--if this is a claim that was legitimate under the rules of Title 200 and should be paid, I don't care about the statute of limitations. A point--that's up for you guys to decide. I guess I feel that we are putting the cart before the horse in that we should wait and see what the litigation comes out to be before we decide whether we are going to pay the claim or not. And you know, I'm not saying that DEQ is right. I'm not saying that the city of Norfolk is right. I'm just saying I want to make sure that we are all playing by the same rules when we deal with the Underground Storage Tank fund, remedial action fund, and feel that we should wait and see and make sure we are all playing under the same rules. And whatever the court decides, I'm probably happy with. So with that, I would try and answer any questions you might have. [LB89]

SENATOR CORNETT: Senator White. [LB89]

SENATOR WHITE: How is the fund funded? Where does the money come from? [LB89]

TIM KEIGHER: The money that goes into the fund comes from...I believe it's a \$90 fee. There's a fee on every person who owns an underground storage tank. I believe it's \$90, and then nine-tenths of a cent on every gallon of gasoline that's sold and

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three-tenths on every gallon of diesel that's sold in the state. [LB89]

SENATOR WHITE: How much money is in the fund at this time? [LB89]

TIM KEIGHER: The last time that I checked, it's been some time ago, about \$12 million dollar, give or take. [LB89]

SENATOR WHITE: Has money from the fund ever been diverted for other uses? [LB89]

TIM KEIGHER: Yes. A few years ago the state took \$10 million dollars out to help balance its budget. At that time I discussed that with my members and I said, you know, we don't like money being taken out of the fund, but at that time the state was in some pretty desperate financial situation and looked at it and said, okay, we'll do our part. Other funds are contributing to that and there have been other...\$300,000 here for some cattle waste operation thing, and I think \$300,000 for a water study, and some other things like that. [LB89]

SENATOR WHITE: Don't you find it ironic that the state has taken \$10 million for purposes clearly not contemplated in the fund to use for other purposes, but we are denying a claim by a city to clean up a water situation that is exactly what is contemplated by the fund? Don't you see some irony in that? [LB89]

TIM KEIGHER: Well, I guess I go back to, you know,...the rules were set out at the beginning. My members have to comply and every other underground tank owner complies. [LB89]

SENATOR WHITE: And I appreciate that. But don't the rules also say it's supposed to be used for cleaning up petroleum-contaminated land and/or ground water? [LB89]

TIM KEIGHER: Yes, they do. [LB89]

SENATOR WHITE: So we just grabbed \$10 million bucks to use willy-nilly for whatever...that's like a wink and a nod, but here we've got a city that's had substantial real damages with its drinking water supply, and we're going to play technical ware with them on whether we give them their compensation? I'm looking for some justice in here. I know that may be an alien concept. [LB89]

TIM KEIGHER: I guess that is for the court to decide. [LB89]

SENATOR WHITE: Well, you agree that the Legislature could just appropriate the money to compensate Norfolk? [LB89]

TIM KEIGHER: Sure. [LB89]

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SENATOR CORNETT: Senator Chambers. [LB89]

SENATOR CHAMBERS: Exactly what is before the court? What is the court being asked to decide? If the statute of limitations is not an issue, and if what is being sought by the city is what the money is for, what is being determined? Is it that there is a maximum amount that's allowed, and it's being contended that the city is asking for more than that maximum amount? [LB89]

TIM KEIGHER: That is my understanding, but someone following me may know more about the lawsuit than I do. But that's my understanding, yes. [LB89]

SENATOR CHAMBERS: I don't see anybody following you right now (laughter). Oh, you mean, they are going to come after you get through? (Laughter) Oh, okay. [LB89]

SENATOR WHITE: Oh, precision in language. (Laughter) [LB89]

SENATOR CHAMBERS: That's all I will ask you, then. Thank you. [LB89]

SENATOR CORNETT: I'm sorry. Just back to something you said in response to Senator White. The state took \$10 million out of this fund to bail itself out? [LB89]

TIM KEIGHER: About three, four years ago, yes. [LB89]

SENATOR CORNETT: And then they used it for a cattle confinement cleanup? [LB89]

TIM KEIGHER: No, they used the \$10 million to balance the budget. [LB89]

SENATOR CORNETT: Wait...no, but I meant for another \$300,000... [LB89]

TIM KEIGHER: They took another \$300,000 out for some cattle waste study they were doing. [LB89]

SENATOR CORNETT: Have we used anything for petroleum spills or contamination? [LB89]

TIM KEIGHER: Yes, they do. I think in the packet of information you have the state has spent, I don't know, it's \$80 million or something cleaning up underground storage tanks. [LB89]

SENATOR CORNETT: Okay, but... [LB89]

TIM KEIGHER: It's pretty substantial, yes. [LB89]

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SENATOR CORNETT: ...in the past few years the money has been used for, generally, for spill...cleaning up these, or other things? [LB89]

TIM KEIGHER: I would say that generally it's been used for cleaning up underground leaking tanks, yes. [LB89]

SENATOR CORNETT: Okay. [LB89]

SENATOR ROBERT: Tim, how much money is generated a year to go into that fund? Do you know? [LB89]

TIM KEIGHER: I believe it's about \$12 million dollars, somewhere in that range. I don't know for sure. [LB89]

SENATOR ROBERT: It's because of all...it's just...whatever the fuel we sell, basically? [LB89]

TIM KEIGHER: That funds it, correct. [LB89]

SENATOR ROBERT: Okay. [LB89]

SENATOR WHITE: And I appreciate your testimony very much. Tim, with the improvement in the tanks and the monitoring, are the incidents of new pollution by underground tanks diminishing? [LB89]

TIM KEIGHER: Yes, drastically. [LB89]

SENATOR WHITE: So we're not looking at a maybe shortfall in this fund. We're still selling the fuel to bring the money in, but the number of new incidents causing the pollution are dropping? [LB89]

TIM KEIGHER: The number of new incidences, but I believe the last number I saw from DEQ as far as what the backlog is of sites that have not been remediated yet, is about 1,200, somewhere in that range. [LB89]

SENATOR WHITE: I really appreciate it. Thank you. [LB89]

TIM KEIGHER: Um-hum. [LB89]

SENATOR CORNETT: Thank you. [LB89]

TIM KEIGHER: Thank you. [LB89]

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SENATOR CORNETT: Any further proponents? Opponents? [LB89]

MILLICENT MYRES: Good afternoon. My name is Millicent Myres. I work for state of Nebraska, Child Protective Services, case manager, and my case number is 2005... [LB89]

SENATOR CORNETT: Millicent, could you spell your name, please? [LB89]

MILLICENT MYRES: First name spelled M-i-l-l-i-c-e-n-t, last name spelled M-y-r-e-s. [LB89]

SENATOR CORNETT: Thank you. [LB89]

MILLICENT MYRES: I'm here to request to be paid my mileage for the duties I performed for state using my vehicle and my money. It's true that I put in the claim late, but it doesn't mean that I didn't use my money or my vehicle. The amount is \$238.35 from 2002 to 2003. I have my planner that indicated that I visited those families and attended court hearings, and the state has the planner for 2002-2003. And there is no indication from state that says I didn't do visits those periods, and there's no evidence that I used it (inaudible) during the period I am claiming. [LB89]

SENATOR CORNETT: Millicent, were you unaware of the procedure to file claims, or what was the reason that you were late filing this? [LB89]

MILLICENT MYRES: At that period the cases were extremely high, and also I have that heard that, you know, when you file the it's repaid to you, but it has to go through Lincoln. So that...unfortunately, the case load being extremely high at that time contributed to my not filing it on time. [LB89]

SENATOR CORNETT: Did you understand the procedures for filing it and knew what time frame you were supposed to file it under? [LB89]

MILLICENT MYRES: Well, it is said that you file it monthly, but at the same time it is going to be paid to you, but is going to go through Lincoln, if it is more than the time required for you to file. [LB89]

SENATOR CORNETT: Okay, one more time. Did you understand the procedures, and did you understand how you were supposed to file it and what time period you were supposed to file it in? [LB89]

MILLICENT MYRES: For the mileages? [LB89]

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SENATOR CORNETT: Yes. [LB89]

MILLICENT MYRES: Yes. [LB89]

SENATOR CORNETT: Thank you. I think Senator Lathrop, then Senator Rogert. [LB89]

SENATOR LATHROP: Thank you. Can you tell us what you do for the state of Nebraska, what your job was when you were driving? [LB89]

MILLICENT MYRES: I still work for the state. I'm a Child Protective Services case manager. We do home visits--visit children and their parents, visit foster parents and attend court hearings, attend conferences, etcetera, etcetera. [LB89]

SENATOR LATHROP: And you use your own car to do that? [LB89]

MILLICENT MYRES: Yes. [LB89]

SENATOR LATHROP: When did you start working for the state in that capacity? [LB89]

MILLICENT MYRES: I started in February of '96. [LB89]

SENATOR LATHROP: February of '96? [LB89]

MILLICENT MYRES: Correct. [LB89]

SENATOR LATHROP: And this claim is for...you must have made some claims for mileage before this period of time? [LB89]

MILLICENT MYRES: Yes, I did. I did. [LB89]

SENATOR LATHROP: And then, did I...when you were answering questions it sounded like you had previously made your...turned in your miles every month but got behind, and then thought you needed to go through Lincoln to get your reimbursement? [LB89]

MILLICENT MYRES: No, actually I never turned the mileage monthly, and that's why I was under the impression when you turn it in, you will be paid. I have never turned in mileage monthly. Sometimes like more than one year, and I got paid. And you know, so that's why...and they say that, you know, that we pay you, but it has to go through Lincoln. [LB89]

SENATOR LATHROP: Okay. [LB89]

MILLICENT MYRES: So I haven't to file my mileage monthly. [LB89]

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SENATOR LATHROP: Did you think you were doing it the right way here? Did you think you were okay or you just got too buried at work? [LB89]

MILLICENT MYRES: Well, I was too busy. Plus, I was under the impression that they pay, you know, whenever you file it. They pay it and if it is more than they can pay, they will send it to Lincoln. [LB89]

SENATOR LATHROP: So when you were asked questions about the procedure, it sounds like your understanding that the procedure was, I can file it. I can let months go by and file it; they are going to pay, but it is going to have to go through Lincoln and not just your boss? [LB89]

MILLICENT MYRES: Correct, correct. [LB89]

SENATOR LATHROP: Okay. I think that's all I have. [LB89]

SENATOR CORNETT: Senator Rogert. [LB89]

SENATOR ROGERT: So have you filed any reimbursement claims since? [LB89]

MILLICENT MYRES: Yes, I have. I don't want it to go this long again. [LB89]

SENATOR ROGERT: Sure. And you've been paid on those? [LB89]

MILLICENT MYRES: Correct, yeah. Yes. [LB89]

SENATOR ROGERT: Okay. And previous to that you've been paid, well, several times, I assume? [LB89]

MILLICENT MYRES: Yes. [LB89]

SENATOR ROGERT: Okay. Thank you. [LB89]

SENATOR CORNETT: I just wanted to make sure, very quickly. You said that previously, or previous to this claim, that as long as a year had went by without you filing, and then you filed all at one time and receive a payment, correct? [LB89]

MILLICENT MYRES: Correct. I had never filed monthly or bimonthly--up to a year and a month. [LB89]

SENATOR CORNETT: Okay, thank you very much. Senator Chambers. [LB89]

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SENATOR CHAMBERS: She's a mind reader. She asked the question that I intended to ask, seriously. (Laughter) [LB89]

SENATOR ROBERT: Abbie, I have one more. [LB89]

SENATOR CORNETT: Okay. [LB89]

SENATOR ROBERT: When you filed before like when it had been a year, were you asked to submit them more regularly, or did they just go ahead and pay? Did anybody try to clarify the procedure with you as to do it differently? [LB89]

MILLICENT MYRES: Yeah, actually they do it generally, but due to the high case load it was still... [LB89]

SENATOR ROBERT: They still... [LB89]

MILLICENT MYRES: They pay. [LB89]

SENATOR ROBERT: Okay. Thank you. [LB89]

MILLICENT MYRES: Um-hum. [LB89]

SENATOR CORNETT: Seeing no further questions, thank you, Millicent. [LB89]

MILLICENT MYRES: Yes, thank you. [LB89]

SENATOR CORNETT: Next opponent? [LB89]

JIM BRENNEMAN: (Exhibit 7) Chairwoman Cornett, members of the committee, my name is Jim Brenneman, that's J-i-m B-r-e-n-n-e-m-a-n. I'm here to testify in opposition to LB89 as it is currently drafted, and I have copies of my testimony for committee. We are asking that the four claims... [LB89]

SENATOR CORNETT: Sir, I'm sorry. I'm sorry, sir. Senator Lathrop would like you to clarify what you're testifying for? [LB89]

SENATOR WHITE: He's the president of city council, city of Norfolk. [LB89]

SENATOR LATHROP: This is with the city of Norfolk...the Norfolk claims? [LB89]

JIM BRENNEMAN: Sure. I am president of the city council, the city of Norfolk. [LB89]

SENATOR LATHROP: Oh, okay. Pardon me. [LB89]

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JIM BRENNEMAN: And I'm here to urge the committee to reject LB89 as it's currently drafted and to approve the four claims made by the city of Norfolk to recover damages to the city's drinking water wells and real estate in the amount of \$800,000. The city's claim and argument will be presented by our attorney, Mr. Steve Bruckner; however, I want to begin by providing the committee with a brief introduction. In March of 1998 the city learned that one of its two well fields used to supply drinking water to the citizens; namely, the east well field, had been contaminated by carcinogens, benzene, and other petroleum contaminants from leaking underground storage tanks at a gas station located approximately one hundred yards from the water treatment plant for the east well field. The Nebraska Department of Environmental Quality immediately was notified and responded to this contamination. Nearly ten years later the contamination and cleanup continues. The contamination resulted in a loss of drinking water capacity in the city's east well field, because the city was forced to either shut down or reduce production from three to five wells in the east well field. In order to make up for this lost capacity and continue supplying our citizens with adequate drinking water, the city constructed a new well in its other well field; namely, the west well field, at a cost of several million dollars. The city already has pursued several parties responsible for the contamination, including parties that were never identified or pursued by the Nebraska Department of Environmental Quality. To date the city has recovered \$800,000 in damages. A lawsuit remains pending against the former owners of the leaking underground tank, Downing Oil Company, but that action has been stayed by agreement of the parties including the Attorney General's Office, so that the city of Norfolk could pursue these claims that are before the committee today. The city's documented unrecovered damages are in excess of \$2.5 million. The Legislature established a remedy for parties like the city of Norfolk to recover damage to contaminated water wells and real estate without having to go court. That remedy is set out in Section 66-1531 of the Nebraska Statutes. Senator Patrick Engel described this new remedy when it was passed in 1998 to help landowners in Bancroft, Nebraska, as follows: The Nebraska statute makes it nearly impossible for families like the Bargmanns, Lutjens, and Tonges or any of those whose homes or businesses could be contaminated by petroleum releases, to obtain compensation. I do not believe that it is right that the innocent people have to go to court to seek damages, while the owners and operators of petroleum tanks can easily access money for petroleum cleanup from the state fund in which the Legislature has established for that purpose. LB1278 would provide an additional alternative to parties seeking compensation for third-party damages. The bill would allow persons seeking compensation for property damage caused by a petroleum release to file a miscellaneous claim with the State Claims Board. The city has met the requirements of Section 66-1531. We respectfully urge that the committee and the Legislature approve the payments of each of the four claims in the amount of \$200,000 individually and \$800,000 in aggregate. Mr. Bruckner will explain these claims in more detail and respond to an argument advanced by the Nebraska Department of Environmental Quality and the Attorney General's Office, in

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opposition to these claims. Thank you, and I will try to answer any questions you might have. Senator? [LB89]

SENATOR CORNETT: Senator Chambers. [LB89]

SENATOR CHAMBERS: Mr. Brenneman, who approved of that? Was the water facility there before the filling station was allowed to open, or was the filling station there first? [LB89]

JIM BRENNEMAN: The water treatment plant was there and existed for a number of years prior. [LB89]

SENATOR CHAMBERS: So who approved that the filling station being allowed to open there? [LB89]

JIM BRENNEMAN: To the best of my knowledge at that point in time, we didn't have any well protection act in place. [LB89]

SENATOR CHAMBERS: But still, who approved of the filling station opening there? Was it the city that gave them the authority to build or authorization, whether there are permits to construct, permits that would say that this facility was in the proper area that had been zoned for that? Or you don't know? [LB89]

JIM BRENNEMAN: I really do not know. [LB89]

SENATOR CHAMBERS: Okay. When you read from Senator Engel's remarks, it seems, if I heard you correctly, that he named a couple of families who were going to have to go to court to recover damages, while the oil operations could go to this fund and get money. Is that what you were reading? [LB89]

JIM BRENNEMAN: That is correct. That's what Senator Engel professed, that he didn't see why these families would have to go to court to recover their damages while an oil company could just simply make it...file a claim. [LB89]

SENATOR CHAMBERS: Did he say anything about a political subdivision? Because a political subdivision is not a family. [LB89]

JIM BRENNEMAN: That is correct. [LB89]

SENATOR CHAMBERS: So his remarks were not contemplating a city, were they? Is the city doing what it's doing because of Senator Engel's remarks? Do they plead in court that because of Senator Engel's remarks the city of Norfolk was in his mind, but he didn't mention it? [LB89]

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JIM BRENNEMAN: I don't know that the city of Norfolk was in Senator Engel's mind at that time, and I... [LB89]

SENATOR CHAMBERS: So what was the purpose in your mind of reading that to us, so that I can understand? [LB89]

JIM BRENNEMAN: The purpose in my mind was to indicate that private parties could go to the fund and receive compensation for their damages without going to court, and the oil companies could also go...without going court. And so the bill was passed, in Senator Engel's mind and I as understand it, so that these people could recover without having to go to court. [LB89]

SENATOR CHAMBERS: But he wasn't talking about political subdivisions, was he? [LB89]

JIM BRENNEMAN: No, he was not. He was talking about... [LB89]

SENATOR CHAMBERS: Okay, I'm clear now. Thank you. That's all I have. [LB89]

SENATOR ROBERT: Senator Lathrop. [LB89]

SENATOR LATHROP: I have a few questions, if you don't mind. I'd like to get a fix on the damages and what's related to this. You had...apparently had an oil tank, one of those underground gasoline tanks that leaked into the water well area; is that right? [LB89]

JIM BRENNEMAN: That is correct. [LB89]

SENATOR LATHROP: And it contaminated, you said, the east field? [LB89]

JIM BRENNEMAN: Yes. [LB89]

SENATOR LATHROP: You've also told us that your damages totaled \$2.5 million. [LB89]

JIM BRENNEMAN: Yes. [LB89]

SENATOR LATHROP: That's what it's cost the city? [LB89]

JIM BRENNEMAN: Well, we still have unrecovered damages in the amount of \$2.5 million. [LB89]

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SENATOR LATHROP: Okay, let me just go through, if I can. And if you know and if you don't, just tell me. But when the water went into the well field for the east well, did you clean that up or did you just turn it off and go over to the west field and increase your capacity? [LB89]

JIM BRENNEMAN: We started a remediation process immediately, but we had to shut the well down. [LB89]

SENATOR LATHROP: Are you ever going to be able to use that again? [LB89]

JIM BRENNEMAN: That's technical and it's undetermined, to my knowledge. [LB89]

SENATOR LATHROP: Okay. Believe me, we won't have to go into the technical because I don't understand it well enough to get bogged down in that. But just in general terms, how much has been spent to clean up where the spill was over the east well field? [LB89]

JIM BRENNEMAN: I would have to refer that to either our city engineer or Mr. Bruckner. [LB89]

SENATOR LATHROP: Okay. You shut down the east side. Then you went over and increased the capacity of the west side? [LB89]

JIM BRENNEMAN: That is correct. [LB89]

SENATOR LATHROP: Did you increase the capacity in the west side by an amount greater than what you had going on in the east side before you shut it down? [LB89]

JIM BRENNEMAN: Yes, we did. [LB89]

SENATOR LATHROP: Okay. In other words, as long as we are going to make the improvement in the west side to increase our capacity, you increased it greater than what you had over on the east side? [LB89]

JIM BRENNEMAN: That is correct. [LB89]

SENATOR LATHROP: Do you think Bruckner knows the answer to those questions? [LB89]

JIM BRENNEMAN: I'm sure he does. [LB89]

SENATOR LATHROP: You hope so? (Laughter) All right. Well, we'll wait and talk to him, but thank you for coming down here. [LB89]

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JIM BRENNEMAN: Thank you. [LB89]

STEPHEN BRUCKNER: Good afternoon, Chairwoman Cornett and members of the committee. My name is Stephen Bruckner, B-r-u-c-k-n-e-r, and I represent the city of Norfolk in this matter. A couple of preliminary matters: I have prepared for the benefit of the committee, a summary of the city's claim based on everything that is in the rather voluminous record that is before this committee. And I have included in this booklet a number of the relevant statutes, a summary of the claim amounts, and a number of other items--legislative testimony and the like, all of which is described in the summary and which I will comment on. I will note at the outset that the committee was provided a handout by the state risk manager, Ms. Peterson, a summary of the claim, and we have not seen that document, so I am unable to comment on that. I've not known of its existence until today. And there have been a number of questions that have been raised by the committee and I know that the hour is growing somewhat late this afternoon. I want to be respectful of the committee's time, so I am certainly prepared to answer the questions in a dialogue format or continue with my remarks as to why we believe that the State Claims Board erred in denying these claims that are before this committee, on the grounds of the general statute of limitations contained in Section 25-218. I can proceed either way, but I'm certainly amenable to answering the questions that are on the floor at this time. Yes, Senator? [LB89]

SENATOR CORNETT: It is my understanding that you are...have settlement negotiations going on; am I correct? Or have a pending lawsuit or court date? [LB89]

STEPHEN BRUCKNER: There are no pending settlement negotiations. There is a lawsuit and I can...let me provide the background, because there were some questions about that. The city of Norfolk, when it learned that its east well field had been poisoned with benzene, a carcinogenic substance, and other compounds from a leaking underground storage tank that was installed in the vicinity of its well field, took a look at what its rights were and remedies, and sought to recover its damages from those parties responsible for that contamination. You heard Councilman Brenneman talk about that earlier. The parties that were pursued were never identified, other than one, by the state of Nebraska. And nevertheless, the city of Norfolk was able to obtain a settlement in the amount of \$800,000 from several of those parties. That settlement was negotiated in late December of 2002 and finalized in May of 2003. That lawsuit remains pending against the remaining potentially responsible party who owned the underground storage tanks from which this release of petroleum occurred. That entity is called Downing Oil Company. In September of 2003 a second lawsuit was filed against Downing Oil Company. The original one remained pending, and that lawsuit remains pending in the Madison County District Court. However, it has been stayed by agreement of the parties, pending the outcome of the pursuit of these miscellaneous claims that are before the committee. The Attorney General's Office intervened in both

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lawsuits following the filing of the second lawsuit in September of 2003 and is defending that lawsuit. However, to respond to a question that was posed earlier by Senator Chambers, none of the issues that are before the committee and that were before the Claims Board relating to the applicability of the general statute of limitations contained in 25-218, are at issue in that litigation. So hopefully, that gives you a little bit of background of where we stand, Senator Cornett, with regard to that lawsuit. [LB89]

SENATOR CORNETT: With the extent of the damages that Norfolk sustained, why were you only awarded \$800,000 originally? [LB89]

STEPHEN BRUCKNER: We were not awarded; that was a settlement. [LB89]

SENATOR CORNETT: A settlement, pardon me. [LB89]

STEPHEN BRUCKNER: And as I know...there are a couple of attorneys who are familiar with this phenomenon on this committee. That situation was unfortunate in that the responsible parties fell into the following categories: one party, which paid the bulk of the settlement amount, had never operated the underground storage tanks. It happened to come in and buy the facility just about the time the contamination was discovered and shortly before the underground storage tanks, which had contaminated the groundwater, were removed. So to a certain extent it bought that liability, and that's why we were able to negotiate the amount that we were. The second party, a prior operator of the filling station at that site, Contemporary Industries, or 7-Eleven, was in bankruptcy and there was a reference to that earlier. Nevertheless, we were able to get Contemporary Industries to pay \$50,000 of the total settlement amount. The third party, Downing Oil Company, was declared to be financially insolvent by the NDEQ in the course of this cleanup. Basically this cleanup bankrupted it, made it insolvent, and we still have a lawsuit pending against Downing Oil Company. But it's questionable that we would be able to recover anything from Downing Oil. We would be able to access the fund, if we are successful in that case. [LB89]

SENATOR CORNETT: So it is a coincidence that under 66-1531 it said that the total claims for property damage shall not exceed \$800,000 per occurrence? [LB89]

STEPHEN BRUCKNER: It is a coincidence. The amounts were simply a coincidence. We were able to settle for \$800,000; it's an absolute coincidence that the total aggregate amount available under 66-1531 is also \$800,000. Any suggestions to the contrary is patently false, and it does a disservice to this committee for the risk manager to suggest that there should be a one-to-one offset, because that's not the case. [LB89]

SENATOR CORNETT: I'm not saying the risk manager said that. I was just asking. [LB89]

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STEPHEN BRUCKNER: Yeah. But I think there was a suggestion earlier that the two should be offset, and I think it's essential for the committee to understand that that's not the case. [LB89]

SENATOR CORNETT: I think "reduced" was the correct term, not offset, but... [LB89]

STEPHEN BRUCKNER: And in fact, the four claims that were before the Claims Board and that are before this committee, do just that. And I can get into that statute, but the statute that we are operating under, 66-1531, contemplates that there's only one recovery. You can't recover twice for the same set of damages. And so with that in mind, the city as incurred well over \$3 million in damages, has recovered \$800,000 and has on its own, in pursuing these claims, reduced the total amount that it is seeking by that \$800,000. So we are in no way seeking to recover twice for the same set of damages. We have done that even though the statute would arguably allow us not to offset that, because only a third party claim, that is an adjudicated claim, has to be set off. But it's clear from looking at the statute--and I can go into that further if you wish, Senator--but it's clear from the statute that the intent of the Legislature in adopting that is that there would be only one recovery for one set of damages. The fact of the matter is we have \$2.5 million of unrecovered damages. We are seeking \$800,000; that's the maximum that we can get, and we would still be under-recovering by some \$700,000 for the total damages. [LB89]

SENATOR CORNETT: And you're not trying to recover that? [LB89]

STEPHEN BRUCKNER: The decision has not been made, if these claims are successful, whether we would continue to pursue the litigation in District Court in Madison County. Again, the concept is the damaged party is entitled to be made whole. We are still \$700,000 short. Possibly we could pursue that, but the city has not made a determination in that regard. So at this point all we're seeking is the \$200,000 per claim maximum, \$800,000 total amount that's provided under Section 66-1531. [LB89]

SENATOR LATHROP: Steve, I want to ask a few questions about this, if I can to get a little background. [LB89]

STEPHEN BRUCKNER: Sure. [LB89]

SENATOR LATHROP: I'm familiar, of course, with the tort claims process and not with the miscellaneous claims process. [LB89]

STEPHEN BRUCKNER: Right. [LB89]

SENATOR LATHROP: All of the litigation that's taken place thus far has been against a company or companies that have owned or at one time operated a gas station where

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we found the leaky tank; is that the case? [LB89]

STEPHEN BRUCKNER: That's exactly right. [LB89]

SENATOR LATHROP: You don't have a claim pending against the state of Nebraska? [LB89]

STEPHEN BRUCKNER: No. [LB89]

SENATOR LATHROP: If we deny the claim does that allow you, then, to file a claim against the state of Nebraska and litigate the issue, or are you just done? [LB89]

STEPHEN BRUCKNER: No. Done. We're done. [LB89]

SENATOR LATHROP: This is it. [LB89]

STEPHEN BRUCKNER: This is it. [LB89]

SENATOR LATHROP: In terms of your...you mentioned something and I want to make sure I don't misunderstand it, that if you pursued the claim against the oil company that you have pending that's left, and apparently they're without sufficient funds to pay, does that, if you get a judgment, allow you to go collect from some other fund? [LB89]

STEPHEN BRUCKNER: Because that is a third-party claim, as that is defined in the Petroleum Release Remedial Action Act, if we are successful against Downing Oil Company, then we would be able to collect damages from the fund. The fund would pay, but the NDEQ is not the defendant in that. That is why the NDEQ through the Attorney General's Office has intervened. Think of it as protecting the interests of the fund in that litigation. And they are defending it again, on technical grounds as well as substantive grounds. [LB89]

SENATOR LATHROP: Is it the same fund we'd pay this claim from, if we were inclined to? [LB89]

STEPHEN BRUCKNER: Yes, it is. [LB89]

SENATOR LATHROP: So if you pursue this, your claim, obviously if it's worth \$3 million dollars and you've only been paid \$800,000, you'd still have \$2.2 million worth of claim left, right? [LB89]

STEPHEN BRUCKNER: Well, we have \$2.5 million dollars of claim left, of which we are seeking \$800,000 from under the 66-1531 process that we are before the committee on. [LB89]

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SENATOR LATHROP: My point is, it seems like you have two ways to go after the same \$800,000. One is to get a judgment against the now financially insolvent oil company that's probably the primary person responsible for this. [LB89]

STEPHEN BRUCKNER: Right. [LB89]

SENATOR LATHROP: And if you prevail, you can come get the \$800,000 out of this fund; is that true? [LB89]

STEPHEN BRUCKNER: That's correct. [LB89]

SENATOR LATHROP: Or we can approve this claim, in which case you get the \$800,000 and then probably abandon the claim against the insolvent oil company? [LB89]

STEPHEN BRUCKNER: I think that's a fair assessment. [LB89]

SENATOR LATHROP: In terms of the calculation of the damages, our roles are kind of reversed; usually you are picking away at my cases and my damages, but... [LB89]

STEPHEN BRUCKNER: It's ironic, isn't it? (Laughter) [LB89]

SENATOR LATHROP: ...there is a certain irony here. (Laughter) [LB89]

SENATOR LATHROP: White talked about something else that is also kind of an irony. It goes back to the idea, in an underinsured motorist claim, that you don't have the statute of limitations on your underinsured motorist claim, doesn't come into existence, or doesn't start to run until after you've got a judgment, a settlement, with the underlying liability carrier. Is that an analogous situation here? [LB89]

STEPHEN BRUCKNER: I think it is a fair analogy, and I heard Senator White's dialogue on that with Ms. Peterson, and I think it is a very fair analogy. However, I think our situation here is even more fundamental than that. I think we have a situation in which it is absolutely improper for any statute of limitations to apply to the process that's laid out by the Legislature in Section 66-1531, and I can tell you why. [LB89]

SENATOR LATHROP: Tell me why. [LB89]

STEPHEN BRUCKNER: For the following reasons: There are three types of statutes or claims that can be brought against the state of Nebraska and they have been alluded to. But you have a contract claim, you have a tort claim, and you have a miscellaneous claim. All three of these acts were passed by the Legislature at the same time, the

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current act in about 1988, I believe. The Legislature, for contract claims and for tort claims, decided that there should be a two-year statute of limitations specifically laid out in the statute so that any person--not a lawyer--but any person or representative of the city, could look that up and say, oh, I have to file in two years or I am forever barred from ever bringing this claim in court. All right? The Legislature also decided in its wisdom that there should not be an explicit statute of limitations laid out in the Miscellaneous Claims Act, and that was in 1988. No statute of limitations has ever been in the Miscellaneous Claims Act. The reason for that, quite fundamentally, is that the Miscellaneous Claims Act does not contemplate a court action. The statutes of limitation are for court actions, to keep people from waiting too long to go to court. As the committee is aware, the Miscellaneous Claims Act does not in any way contemplate a court action, rather as witnessed by today's proceedings, if a claim is approved under the Miscellaneous Claims Act, it comes here for approval. It doesn't go to court. If it's denied it comes here to be reheard on appeal, which is why the city of Norfolk is here--it can never go to court. So the Miscellaneous Claims Act establishes a wholly nonjudicial remedy, and to Senator Chambers' question, that is what Senator Engel was getting at, is that we do not want to have a process under 66-1531 where parties have to go to court in order to access money when their groundwater has been contaminated or their real estate has been damaged by this contamination. And while at the time that bill was passed in 1988 there were three homeowners in Bancroft who were damaged, that act applies across the board to any damage to a water well or to real estate caused by an underground storage tank. And even more fundamentally than that, I would like to comment if I may, on the recent Attorney General's Opinion, as to why that is incorrect. [LB89]

SENATOR LATHROP: Go ahead, go ahead. This is important enough to... [LB89]

STEPHEN BRUCKNER: Well, as a legal matter, Section 25-218 simply cannot and does not apply to a claim under 66-1531. I've already mentioned that this is a nonjudicial process. There is no recourse to court, unlike the other two acts which require the party that's injured or seeking recovery to go to court. In the Tort Claims Act and the Contract Claims Act, there is no recourse to court. Statutes of limitation fundamentally bar court actions, not nonjudicial claims. But if that is not clear enough, all one has to do is look at the statutory language, and I think we would begin--and it's in your booklet under tab D, 25-218, which is the general statute of limitations that has been brought up as to the city of Norfolk--and I think for the first time to my knowledge in any such claim. But that statute says as you can see, every claim and demand against the state shall be forever barred unless action is brought thereon within two years after the claim arose. There are two very important phrases in there that need to be looked at, and the Attorney General's Opinion simply did not do that and is flawed as a result. First of all one has to ask, is this a claim and demand against the state? As was noted earlier, this is a claim against a fund. That fund contains no state general appropriations; it is funded entirely by fees paid by gas tank owners and by you and I

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when we fill up our gas tanks and pay the taxes that are assessed by the state. In that sense there is no claim against the state. It's against a specific fund that by the way, was established to provide compensation for just these types of claims. So it's not really a claim against the state in that sense. Now as was noted the Legislature has, on occasion, decided to reallocate money that's in that fund, but that doesn't change the fundamental fact that...and the Legislature can do it--it can giveth: it can taketh away--and has done so on occasion. It does not change the fact that there are no state monies whatsoever in that fund. And so it's very questionable whether this is in any sense a claim against the state. But take it a little bit further. The next phrase is, unless action is brought. What do I have to do if I have a claim and demand against the state, in order to avoid being barred? I have to bring an action. What is an action in the context of Section 25-218? Now I have provided at tab K, Exhibit K, various sections of Chapter 25, Articles 1 and 2. Chapter 25 is entitled, Courts and Procedure. So it's where one would look in the statutes to find out what one has to do when pursuing a court action, based on the title of that chapter. Look at Section 25-101. It states that the distinctions between actions at law and suits of equity are abolished, and there is one form of action which shall be called a civil action. Now that's the starting point. Then I turn to Section 25-201 and that informs me that a civil action, which we know is synonymous with action, must be commenced only with the time prescribed in this chapter; that is, Chapter 25. So that informs you that any court claim has to be commenced within the time limits set out in this chapter. Section 25-217 is the next statute that is included in the materials that I provide you, and that says that an action--which we already know is a civil action because that's how it's defined by the Legislature in Section 25-101--an action is commenced on the date a complaint is filed with the court. So with those three statutes in mind, how can one render the opinion that the action that is being talked about in Section 25-218 is the action of filing these claims before the Claims Board? It simply ignores the meaning of the word "action" in Chapter 25, Articles 1 and 2. Now unfortunately, that's an argument that a lawyer can make, and I just did. What is truly unjust about the position that has been taken by the NDEQ, by the risk manager, and by the Attorney General's Office in denying these claims, and ultimately relied on by the Claims Board in denying the claim, is that to my knowledge this is first time that the general statute of limitations has ever been trotted out against a claim like this. In fact, the statute which was passed for the very purpose of compensating homeowners whose basements had been infiltrated by petroleum contamination and also passed for other parties such the city to come along in the future who sustained similar damages to their water supply or to their real estate, those parties would have been barred; their claims would have been barred had the Claims Board adopted the policy on the statute of limitations that it apparently has brought forward now for the first time against the city of Norfolk's claims. Because that statute was passed three to four years after the damages arose for those homeowners up in the Bancroft area. And as soon as the statute was passed and went into law, those homeowners submitted claims just as the process has laid out to the State Claims Board, and the State Claims Board never raised the statute of limitations there, but

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rather a settlement was entered into and those homeowners had their homes purchased in order to compensate them for the losses that they had sustained. Not only does that demonstrate the lack of justice in the approach that's being taken with respect to the city of Norfolk, but I would submit to the committee that that's a precedent that is binding and should have been followed by the Claims Board. And in all fairness to the Claims Board, I believe they understood that. But when you look at the transcript of our claim, and you can see that they are struggling with that very issue, but they felt compelled to follow the legal advice that was provided both by the risk manager and verbally by a representative of the Attorney General's Office. [LB89]

SENATOR LATHROP: That's a very helpful explanation for me. I want to talk to you about the damages on page five of your handout. It looks like you've set them up...I just want to make sure that the committee has an answer to this question. I see that you have at times multiplied the cost of something by...for example, 66.7 percent,... [LB89]

STEPHEN BRUCKNER: Right. [LB89]

SENATOR LATHROP: ...and that maybe goes to what I was talking about with the city councilman. If you are increasing your capacity by greater than what was going on in the east field, we're not paying...or you are not asking us to compensate you for the increase in capacity, but only essentially the replacement capacity? [LB89]

STEPHEN BRUCKNER: That's absolutely right. That is why the percentages are in there, and that's explained in detail in the supplement to the claim that was filed with the Claims Board that's in the record, you know, before the committee. I'm providing the summary here but Senator Lathrop, you are absolutely right. We had deducted out that portion which is extra capacity. You are quite right. It only makes sense, if you're going to incur the expense of installing extra capacity, you might as well size it to what the needs are, both the needs for the portion of the well field in the east side of the city that was damaged, as well as for just additional growth. But it would be obviously unfair to try to collect for that cost, and that's why the deduction is made in the damages calculation. [LB89]

SENATOR LATHROP: Okay. And one last question about damages and really that's all I have left to talk to you about and that is, the claim is for...apparently there's a gap of \$200,000 per person and \$800,000 per occurrence? [LB89]

STEPHEN BRUCKNER: Correct; \$200,000 per claim and \$800,000 total. [LB89]

SENATOR LATHROP: How did we get to four claims? [LB89]

STEPHEN BRUCKNER: The four claims are as follows: When the contamination was discovered and the NDEQ took action, it was necessary to completely shut down two of

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the wells. One of them was turned into a cleanup well. The NDEQ had to appropriate city well number one, which is located within the water treatment facility, to actually pull the contaminated water out and pump it to waste--pump it out. The second well had to be completely shut down to avoid drawing further contamination into the well field. And a third well, and that was well number two--city well number five, there's five total--had to be ratcheted back significantly in order to avoid drawing the contamination to it. That left the city in the position where its firm capacity was below the amount necessary to serve its citizens. And as a result--and the fourth claim, like I say, I should mention, so that I'm complete--the fourth claim relates to the damage to the real estate within the east well field. Clearly it was impossible, because the contamination permeated the well field, to install any further wells there, so that real estate is damaged as well, and it forced the city to go to its only other source of potable drinking water, which was the west well field. [LB89]

SENATOR LATHROP: West well, all right. [LB89]

STEPHEN BRUCKNER: Three wells and then the real estate. [LB89]

SENATOR LATHROP: Steve, where is...in your handout here--and I appreciate the statutes that you've included--where do we find the definition of a claim? Or, I have some concern...is all this real estate that we are talking about and all the property and the assets and the water, is that all one? Is that all the city of Norfolk? [LB89]

STEPHEN BRUCKNER: It's in the city of Norfolk. It's kind of, you know, the wells are... [LB89]

SENATOR LATHROP: But is the property... [LB89]

STEPHEN BRUCKNER: ...in an area... [LB89]

SENATOR LATHROP: If you are making a claim for the city of Norfolk, how are we aggregating it? If it's \$200,000 per person or per entity and \$800,000 per occurrence...it sounds like these are all claims of the city of Norfolk? [LB89]

STEPHEN BRUCKNER: Yes. [LB89]

SENATOR LATHROP: Tell me how we...how come it's not one \$200,000 claim? Why are you piling it up into four separate claims and then making a point... [LB89]

STEPHEN BRUCKNER: Because they are four separate damages. The statute, when you look at that, and that is... [LB89]

SENATOR LATHROP: Is it found in your handout? [LB89]

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STEPHEN BRUCKNER: Well, it is, but I think it would be better if I explained it. It's certainly in the materials that are in the record; 66-1531 provides for the award of damages for uninhabitability of a dwelling--that doesn't apply here--unfitness of a water supply, and then describes what is meant by real estate. So we have claims that we can pursue for unfitness of the water supply--those are the three wells that I described. Those three were damaged in the amounts that are indicated, because they couldn't be used to provide drinking water any further for the city of Norfolk. And the fourth item of damage is the real estate itself, and the basis for that...the calculation for that damage was an amount that was spent by the city of Norfolk to pay for similar land for its well field on the west. And again, that's laid out in the claim, as well. So it's not one damage. It's four separate damages to the three wells and to the real estate, and the statute allows recovery for each item of damage so that you get to the maximum. [LB89]

SENATOR LATHROP: Okay. I see where it's at in here, and I can read it now. I appreciate your remarks. That's all I have. [LB89]

SENATOR CORNETT: Senator White. [LB89]

SENATOR WHITE: Thank you, Steve, for coming in. I have a series of questions for you. First of all, if we do find that the statute of limitation applies to this situation--and I have to tell you I find that troubling that it would--how many of those would...I believe, 1,200 untreated sites in the state, will be forever barred from remedy under this fund, a significant portion? [LB89]

STEPHEN BRUCKNER: They could be if they're now...not all of those sites will involve the type of damages that we are talking about. The city of Norfolk is somewhat unique, in that it is a city that has to provide a safe drinking water supply for its residents. So of those 1,200 claims, not all of them would necessarily have a claim under 66-1531, but it is quite possible that others would be barred, as you suggest. [LB89]

SENATOR WHITE: One of the things that concerns me is traditionally in pollution lawsuits, like RCRA and other lawsuits on a federal level, they have abandoned the concept of the statute of limitations because the pollution exists as a problem today, but the wrongdoers have been gone forever and that's why we have tag-on liability. If you buy a piece of property previously polluted, even a hundred years ago, you can own the liability for that predecessor-owner. In this area we have as a national policy at least, I've never seen a statute of limitations on a short notice adopted in this situation. Have you? [LB89]

STEPHEN BRUCKNER: No, and you are quite right. I think courts have differed on the application of the rule of law that you are referring to, but I think it's a continuing tort theory or continuing harm theory. And actually that was one of the grounds that we laid

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out in our materials for the Claims Board in an effort to persuade the Claims Board that they could treat this claim differently, because in fact, the contamination does continue and continues today as we sit here, polluting that well field. And so if they were concerned about a precedent or whatever, they could certainly adopt a continuing contamination theory that has been used in other areas, particularly in the federal courts for such contamination. [LB89]

SENATOR WHITE: The other thing that concerns me is, is it your understanding that you have the option...you could--and let's assume Downing Oil had money--you could ignore pursuing them and just go against this fund? [LB89]

STEPHEN BRUCKNER: We could. There are two separate remedies. [LB89]

SENATOR WHITE: And doesn't that concern you, the concept that this fund is, in the sense, an underinsured carrier? [LB89]

STEPHEN BRUCKNER: I think it functions very much like an underinsured carrier. [LB89]

SENATOR WHITE: But you can't separately go against another insurance carrier until you have exhausted the original liability. [LB89]

STEPHEN BRUCKNER: Yeah, it doesn't lay that out quite as clearly as the underinsured or uninsured motorist situation does, and so it's not a perfect comparison, but it's in apt comparison, you know, in my view. [LB89]

SENATOR WHITE: If we go against...if you are right and you can go against the fund, does the fund then have a cause of action against Downing, assuming they had money? [LB89]

STEPHEN BRUCKNER: No. [LB89]

SENATOR WHITE: That's troubling, isn't it? [LB89]

STEPHEN BRUCKNER: No. Well, the fund is there, again, in 66-1531, the fund is there to... [LB89]

SENATOR WHITE: Well, but I mean Exxon...I mean, you could cut a deal with Exxon which made \$40 billion dollars in profits last year. In this situation, say, we'll settle for \$10,000 and then hit the fund for the max, if what you're saying is correct? Is that really how you think the statute works? [LB89]

STEPHEN BRUCKNER: Well, I...you know...in fact, I think, well, let me grab my copy of

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the Petroleum Release and Remedial Action Act. I believe...I think I may have misspoken...I think that there is a claim back over against the responsible party under this act, so... [LB89]

SENATOR WHITE: Okay, that's solves much of that. [LB89]

STEPHEN BRUCKNER: ...the fact of the matter is, they're insolvent. [LB89]

SENATOR WHITE: Now one of the things that...the last one of the four claims I'm having trouble with your concept there because if, for example, we have a car full of four people--under normal law according to this--and there's an accident, the accident is the occurrence, and each person has a separate claim. Now they might have different types of damages. Some would be damages for lost wages, some would be for pain and suffering, some would be medical bills. But they only have one claim. Here what you seem to be doing is kind of standing that on the head, aren't you, in that you're saying, yeah, there is one city of Norfolk, but every one aspect of its damage is a separate claim, rather than acknowledging maybe what the law was talking about, Downing Oil had four homes with their own wells near it? There's one spill; that's the occurrence, and each homeowner has a claim up to \$200,000 for an aggregate for that one spill of \$800,000. Isn't that more consistent with general law in these kind of issues? [LB89]

STEPHEN BRUCKNER: Not at all. To follow your analogy, what we have is, we don't have damages to four parts. Let's use a car analogy, take it outside the personal injury situation for a minute. You don't have a damage to four car parts, which is what you would suggest by that question. I only get to recover once for the damage to the car. We have four cars, three wells and a real estate. And I think you would concede that in the hypothetical that you postulated, that I would, if I had four cars that were damaged, I would have four recoveries. [LB89]

SENATOR WHITE: No, I'm not sure. Let's say, for example, I'm driving down the road and lose control of my vehicle, and I drive into your driveway and I damage four cars. You only have one cause of action. [LB89]

STEPHEN BRUCKNER: In that situation, yes. This is different because the statute provides for compensation for damage to real estate and to a water supply, and there are, as I pointed out, three wells... [LB89]

SENATOR WHITE: So why isn't it maybe there's two causes, then? One to the real estate and maybe one for the water supply? [LB89]

STEPHEN BRUCKNER: Part of the problem is we've not had a lot of claims arise under this statute, but that is not in any way how I would read this statute, because if you read it that way, then you're denying recovery to the city of Norfolk for all of its damages. It

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has three separate wells that were rendered either unfit for use... [LB89]

SENATOR WHITE: Steve, we're doing that anyway, because all of your damages are \$3,000,000 max. What we are going to give you is \$800,000, even under this level. So I mean the fact that we're not giving you everything you want, that's not an argument, is it? [LB89]

STEPHEN BRUCKNER: No, I think that the point is that you have four separate damage occurrences, four separate claims. [LB89]

SENATOR WHITE: I agree you have four separate categories of damage, arguably. [LB89]

STEPHEN BRUCKNER: And I don't, and I... [LB89]

SENATOR WHITE: But I don't think...I've never seen the situation where those are described as separate claims when they are owned by one person and it occurs in one event. [LB89]

STEPHEN BRUCKNER: They are separate claims because of the way that this particular statute is worded, again, which allows for recovery for unfitness to a water supply and for damage to real estate. [LB89]

SENATOR WHITE: I'll have to look at it. [LB89]

STEPHEN BRUCKNER: And in that situation, when you have three separate wells that are damaged, those are the first three claims and the real estate is the fourth as I...and I'm sorry I'm repeating myself. [LB89]

SENATOR WHITE: No, no, no. This has been really a delightful conversation. I appreciate it. Thank you. [LB89]

SENATOR CORNETT: Senator Chambers? I'm sorry. I'm reading the statute again. [LB89]

SENATOR CHAMBERS: That's all right. Mr. Bruckner, when you mention the damage to the water and the real estate, does the statute separate those two, or is the use of the real estate rolled into the real estate itself? For example, if this pad represents the real estate and these pencils represent trees growing, I'm using that real estate to grow trees. If the damage is done to the trees, you are saying that under the statute you're reading--and I know the water is different from the trees--that it is making a distinction between the water and the real estate? In other words, the water could be contaminated without harming the real estate? Is that what you're saying? [LB89]

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STEPHEN BRUCKNER: That it could happen. In this case it didn't; but yes, it could happen that way. Our position is that we had damage to three of the five wells,... [LB89]

SENATOR CHAMBERS: I understand that. [LB89]

STEPHEN BRUCKNER: ...okay, and in addition, the real estate that could no longer be used for the purpose of accessing groundwater in the east well field. [LB89]

SENATOR CHAMBERS: But it can be used. The real estate still has value. [LB89]

STEPHEN BRUCKNER : The real estate could still be used for other uses but not for this purpose. [LB89]

SENATOR CHAMBERS: And how are you setting the value for the real estate, in view of the fact that it could be used for other purposes? [LB89]

STEPHEN BRUCKNER: Again, as I mentioned earlier, the value of the real estate was set based on what it took to acquire similar well field property on the west side of town for Norfolk. [LB89]

SENATOR CHAMBERS: But that's not talking about the real estate that you say was damaged. If I insure my house, I can insure it for the amount that I want, or I can insure it for what it would cost to replace a house. If my car is damaged, then my insurance is not going to pay me an amount that would buy me a new car. It's going to pay me for the value of the car at the time it was damaged. That's my analogy. We come back to this real estate. Maybe now it can be used for a shopping mall, which would be of much greater value than it was when simply you had a well beneath it. So I'm not being able to grasp how you determine the value of the real estate or the damage to the real estate that you are going to recover. But I don't want to keep us here forever. I just want that in the record. Here's the other question that I would ask you. You say that when this event occurs, each person damaged could recover up to \$200,000, but there's a maximum of \$800,000 that can be recovered, no matter how many people had been damaged. [LB89]

STEPHEN BRUCKNER: That's what the statute says. [LB89]

SENATOR CHAMBERS: Okay. And you said it's just coincidental that it works out in this case to a total of \$800,000 when you take the \$200,000 for each of these claims as you see them? [LB89]

STEPHEN BRUCKNER: What I said was coincidental is that the prior settlement amount that was recovered by the city of Norfolk in its litigation against the responsible

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parties, was \$800,000 as it happens. That's what's coincidental. [LB89]

SENATOR CHAMBERS: Okay, but in this case you are restricting or limiting what you're seeking to the maximum that you'd be able to recover? [LB89]

STEPHEN BRUCKNER: Under 66-1531, yes. [LB89]

SENATOR CHAMBERS: Okay, that's what we're dealing with now? [LB89]

STEPHEN BRUCKNER: Yes, that's correct, Senator. [LB89]

SENATOR CHAMBERS: If the Legislature approves this claim, the state does not appropriate any money from the General Fund, you're saying? [LB89]

STEPHEN BRUCKNER: That's right. [LB89]

SENATOR CHAMBERS: It would appropriate money from this cleanup fund? [LB89]

STEPHEN BRUCKNER: Yes, Senator. [LB89]

SENATOR CHAMBERS: And \$800,000 is the total amount you could get toward--what is the amount of damage that would be left unpaid for? [LB89]

STEPHEN BRUCKNER: Seven hundred thousand, if the total amount is paid. We have \$2.5 million... [LB89]

SENATOR CHAMBERS: But the total, \$800,000... [LB89]

STEPHEN BRUCKNER: We have \$2.5 million of unrecovered damages at this point. [LB89]

SENATOR CHAMBERS: Um-hum. [LB89]

STEPHEN BRUCKNER: We can only get \$800,000 from this fund. I wish we could get all of it from this fund. But that leaves \$700,000 uncompensated. [LB89]

SENATOR WHITE: It's \$1.7... [LB89]

SENATOR CHAMBERS: Senator White is chomping at the bit. I'm going to let him... [LB89]

SENATOR CORNETT: I was going to say, I'm sitting here saying going no, the math doesn't work (laugh). [LB89]

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STEPHEN BRUCKNER: Excuse me, I'm sorry...\$1.7. Pardon me. [LB89]

SENATOR CHAMBERS: That's okay. He can go ahead, but we're going to be here all day. And I can't stay much longer, so I wanted to get mine into the record. [LB89]

STEPHEN BRUCKNER: Pardon me for misspeaking in that, but it's \$1.7. Excuse me, my math wasn't so good. [LB89]

SENATOR CHAMBERS: Well, I didn't feel you were misleading me. Our discussion was not to get--at least mine--a specific dollar amount as such, necessarily, to hold you to, but to get an idea of the overage that was not going to be paid for by what you see here. [LB89]

STEPHEN BRUCKNER: Correct. Thanks for pointing that out. I apologize for misspeaking. [LB89]

SENATOR CHAMBERS: That's all right. [LB89]

SENATOR CORNETT: I'm sorry. The math is still not working out for me. You've collected \$800,000. [LB89]

STEPHEN BRUCKNER: Yes. [LB89]

SENATOR CORNETT: And you got another \$800,000. That would be \$1.6 million, correct? [LB89]

STEPHEN BRUCKNER: Right. [LB89]

SENATOR CORNETT: And the \$1.6 million and the \$1.7 million, isn't that more than the total? How much are you claiming for your total damages? [LB89]

STEPHEN BRUCKNER: The total damages were in excess...if you look at the claim summary, you can see that. [LB89]

SENATOR ROBERT: Three-point-three million is the total. [LB89]

SENATOR CORNETT: Okay. So \$3.3 million. [LB89]

STEPHEN BRUCKNER: That's right. [LB89]

SENATOR CORNETT: Okay. All right. [LB89]

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STEPHEN BRUCKNER: Three-point-two million is the total amount of damages and then with the way the math works out is we...you can see that. And in Section IV, page five of the summary that we provided, all of the out-of-pocket expenses, the cost to create the new collection well, the new pipeline, and the increase in the west well field treatment plant, totals \$2.9 million. Add to that the \$360,000 for the cost of the real estate which is a value of 72 acres in the west well field used to replace the damage to the real estate and the lost water capacity in the east well field valued at \$5,000 per acre, is exactly what the city had to pay. And then deduct from that the prior settlement amount of \$800,000, which leaves you with roughly \$2.5 million. [LB89]

SENATOR CORNETT: Okay. Go ahead, Senator White. [LB89]

SENATOR WHITE: Is this fund in existence to compensate you for the loss of the use of your property or to help you pay for remediating it? [LB89]

STEPHEN BRUCKNER: To provide for compensation for the damage, not to help with remediation, but to provide for damages to the water supply or the real estate only. It does not provide any compensation for remediation. That is provided through the fund through another mechanism where the responsible party conducts a cleanup. In this particular matter the state has taken over the ongoing remediation that is occurring at this site, and that cleanup effort is being funded also from the tank fund. But that money goes to contractors; it does not go to the city of Norfolk. [LB89]

SENATOR WHITE: So this is a separate section of the fund just to compensate for the loss, correct? [LB89]

STEPHEN BRUCKNER: It's the same fund, but it's a separate section, is one way of looking at it. [LB89]

SENATOR WHITE: Senator Chambers is right about the doctrine of trying to reduce your damages, is he not? [LB89]

STEPHEN BRUCKNER: Yes. [LB89]

SENATOR WHITE: I mean, has the city looked at other uses for this land--tried to sell it? And if so, what is the potential value of the land? [LB89]

STEPHEN BRUCKNER: The...I don't know that I have an answer to that, whether the city has looked at other ways, other uses for this land. What we are talking about in terms of the real estate, though, are...much of the real estate that would qualify as being within the east well field is, frankly, privately owned, if you look at it that way. The wells that we are talking about are actually installed in different locations within the area of 101 Norfolk Avenue, so it's... [LB89]

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SENATOR WHITE: The surface land is already being used in another way (inaudible)? [LB89]

STEPHEN BRUCKNER: In many cases that's exactly right, and the wells would have to be installed in an alleyway or other part of the property, or an easement could be acquired from a landowner. [LB89]

SENATOR WHITE: So you are claiming damages for real property, but you don't own all the real property or all rights to the real property. You just own a mineral right, the right to extract water from under it? [LB89]

STEPHEN BRUCKNER: In some cases property, I believe, would be owned by the city, but in many cases it's exactly as you describe it. [LB89]

SENATOR WHITE: So you are asserting a claim, are you not, that the city does not own it? [LB89]

STEPHEN BRUCKNER: No, the city...let me... [LB89]

CLINT SCHUKEI: It's a combination. [LB89]

STEPHEN BRUCKNER: Yeah. [LB89]

SENATOR WHITE: Good question. [LB89]

SENATOR CHAMBERS: Who's the lawyer? The lawyer is seeking counsel? [LB89]

SENATOR WHITE: We often need it. (Laughter) [LB89]

STEPHEN BRUCKNER: Thank you for the opportunity to consult with my co-counsel, Mr. Schukei, who is here from the city of Norfolk. He's the city attorney for the city of Norfolk. Some of the land is owned by the city as I pointed out, but the damages are due to the fact that there is no way to use any of that land or the groundwater beneath that land anywhere in the vicinity of the east well field to produce potable drinking water. That required the city to go to the west to buy additional land in order to replace that lost (inaudible), and that is why the real estate portion of the claim, the fourth claim, if you will, is valued based on that replacement cost for the real estate. [LB89]

SENATOR CORNETT: But you still have the land, and it's still usable for other functions, correct? [LB89]

STEPHEN BRUCKNER: Not really. As I described, the land is largely developed. [LB89]

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SENATOR WHITE: The land is being used actively, though. [LB89]

SENATOR CORNETT: The land is being used. It's already being used now? [LB89]

STEPHEN BRUCKNER: It's being used by any number of uses, none of them related to the city. But the city can't use the land or the water beneath any of that land for the production of water. [LB89]

SENATOR CORNETT: Well, what about the land you testified that was owned by the city? What is it being used for? [LB89]

STEPHEN BRUCKNER: Let me... [LB89]

SENATOR CORNETT: You said part of the land was owned by the city and part of it was privately held, correct? [LB89]

STEPHEN BRUCKNER: Some of the land would be...for example, alleyways would be land that's owned by the city,... [LB89]

SENATOR CORNETT: Okay, so this is basically a... [LB89]

STEPHEN BRUCKNER: ...streets... [LB89]

SENATOR CORNETT: ...completely developed area. [LB89]

STEPHEN BRUCKNER: That's right. That's exactly right. [LB89]

SENATOR CORNETT: Okay. [LB89]

STEPHEN BRUCKNER: And so as a result, knowing that one can no longer drill a well in the east well field because it was contaminated, the city had to go acquire additional land in the west, and that's a cost that was incurred as a direct consequence of the contamination to the east well field. [LB89]

SENATOR CORNETT: How much land did you buy? [LB89]

STEPHEN BRUCKNER: I'm sorry? [LB89]

SENATOR CORNETT: How much land or property rights did you buy? [LB89]

STEPHEN BRUCKNER: Seventy-two acres...is that right? [LB89]

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SENATOR CORNETT: What was the total? I'm sure it's in here; I have not had a chance to look at it. What was the total cost of the purchase of the land? [LB89]

STEPHEN BRUCKNER: It was \$5,000 an acre. I'm not sure that I have the exact amount, but it is in the claim materials. [LB89]

SENATOR WHITE: That's the new price, the replacement. Okay. [LB89]

STEPHEN BRUCKNER: Yeah. It was \$5,000 per acre. [LB89]

SENATOR WHITE: And you own that land, right? [LB89]

STEPHEN BRUCKNER: Correct. In the east well field. Right? [LB89]

CLINT SCHUKEI: Yes. [LB89]

SENATOR WHITE: And you could sell the surface rights to be developed just like the old well field was? [LB89]

STEPHEN BRUCKNER: That I don't know, and I don't want to speculate on that. [LB89]

SENATOR CORNETT: Okay. Senator Lathrop. [LB89]

SENATOR LATHROP: I do want to go back to this per occurrence and claim with you, Steve, if I can. And if you look on tab B, page--it says page two of two. It's actually right after where it says Exhibit B; do you see that? [LB89]

STEPHEN BRUCKNER: Yes. [LB89]

SENATOR LATHROP: That's the statute you're talking about, 66-1531? [LB89]

STEPHEN BRUCKNER: Yes. [LB89]

SENATOR LATHROP: I'm going to give you my interpretation of it, if I can, and then I want to ask you about your cause of action. It says here, a person--and we're assuming that Norfolk comes with the contemplation of the statute--but a person other than the responsible person may file a claim. And as I read the fact that it says, a claim, instead of separate claims or several claims, the fact that it says, a claim, would suggest to me that you--each entity or each person or family--would be able to make one claim for 200 and your neighbors could make a claim for 200, if there was somebody besides Norfolk. That being my interpretation, I don't know if anybody else shares that with me and I understand you don't. [LB89]

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STEPHEN BRUCKNER: No, I don't. [LB89]

SENATOR LATHROP: But if you continued with your litigation, which would allow you to make a claim against the bankrupt oil company, would you be able to get, in the course of that litigation, an interpretation of whether you're entitled to make one claim for 200 or four claims for 200? [LB89]

STEPHEN BRUCKNER: No, because that's not an issue before the court. [LB89]

SENATOR LATHROP: Are you going to come into the same problem--you go and get a judgment for whatever the amount is against that oil company that's now insolvent. Are you going to get into the same situation where somebody either in this committee or affiliated with the state of Nebraska is going to make that judgment about whether you are entitled to 200 or 800? [LB89]

STEPHEN BRUCKNER: No, I don't believe so, because that's a third-party claim and a third-party claim, the rule of damage--what you can recover...whatever damages you can prove at trial and that's... [LB89]

SENATOR LATHROP: So you don't think you are bound by this? [LB89]

STEPHEN BRUCKNER: No. Again, it's important to understand, and maybe I've not been clear about that. These are two entirely separate remedies that are provided for the city of Norfolk. The city, like any other party, can sue responsible parties and recover, and potentially recover up to the maximum amount available under the fund. I think a question earlier suggested that maybe the recovery was unlimited, and I think it's possible that that may be capped at \$1,000,000. I'm not entirely sure. [LB89]

SENATOR LATHROP: That's the claim that you'd be able to make against the fund? [LB89]

STEPHEN BRUCKNER: For a third-party claim, is that... [LB89]

SENATOR LATHROP: Because you've sued a third party that's insolvent? [LB89]

STEPHEN BRUCKNER: That's right. Now...so that's one remedy, and that was pursued and in the initial litigation the city recovered \$800,000 and has a lawsuit pending against Downing Oil Company, the remaining responsible party. So that's a third-party claim. It does not in any way involve 66-1531. Rather, as was pointed out earlier, 66-1531 is an entirely nonjudicial, administrative process to recover specifically for damages to water supply and for damage to real estate. So they're mutually exclusive, and the city has the opportunity to pursue recovery under each. However, as you see when you read through 66-1531, any claim that's approved under this section shall not be considered to

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be from a collateral source in a judicial proceeding for the same damage. So what that means, I don't get to recover it twice. [LB89]

SENATOR LATHROP: I got it. [LB89]

STEPHEN BRUCKNER: I can't say that, okay, this 66-1531 recovery; I get that, plus I get whatever damages I can get from my third-party claim. [LB89]

SENATOR LATHROP: Okay, I agree with that. [LB89]

STEPHEN BRUCKNER: You have to set it off. Moreover, in addition to the collateral source provision, there is an offset provision that we have respected, although as I mentioned earlier, it doesn't clearly apply because a third-party claim is an adjudication. But we've nevertheless offset the money that we've recovered against the remaining damages that we're seeking here. So we've...I hope that's clear? [LB89]

SENATOR LATHROP: You obviously came prepared, and we appreciate your testimony and your answers to the questions, and in some cases, your candor. [LB89]

STEPHEN BRUCKNER: Thank you. I apologize for the math error, but I can't get everything right. [LB89]

SENATOR LATHROP: That's all right. [LB89]

SENATOR CORNETT: Are there any further questions by the committee? Seeing none, thank you. [LB89]

STEPHEN BRUCKNER: Thank you. [LB89]

SENATOR CORNETT: Further opponents? Are there any further opponents? Neutral testimony? That closes the hearing on LB89 and ends the hearings for today for Business and Labor. [LB89]

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Disposition of Bills:

LB88 - Advanced to General File, as amended.

LB89 - Held in committee.

LB495 - Advanced to General File, as amended.

Chairperson

Committee Clerk