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Business and Labor Committee
February 22, 2010

[LB700 LB995 LB1040 LB1041 LB1042 LB1090 LB1091]

The Committee on Business and Labor met at 1:30 on Tuesday, February 22, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB700, LB1040, LB1041, LB1042, LB995, LB1090, and LB1091. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; Norman Wallman; and Tom White. Senators absent: None. [LB700]

SENATOR LATHROP: (Recorder malfunction)...We are trying to make a record here today. I'll ask you to turn your cell phones off or turn them to vibrate so that they are not interrupting or creating a disturbance during the hearing. We will also ask you if you're going to testify. And the typical process is, we'll introduce a bill. (Cell phone ringing) (Laughter) Senator Wallman. We'll introduce a bill, the Senator introducing the bill, and it will be Senator McCoy on the first bill, we'll hear from proponents, opponents, and those in a neutral capacity. There is no particular order. You just kind of move to the front chairs as the bill comes up and your time to testify approaches. So that we can keep things moving, we have a light system we're going to employ today. The reason for that is the significant number of bills that we're going to hear. The last two are claims bills and that probably doesn't mean anything to most of you but those are time consuming for the committee. So we'll ask you to confine your remarks to four minutes. You will get a yellow light at three minutes. That means you have one minute to sort of wrap things up. And we'll ask you to observe that. If you don't and we get to a red light, you'll find me interrupting you. I don't intend to be or mean to be rude about it but if we don't, then people who are here, you're just...the more you talk, the more you're making people wait on the last few bills until perhaps late into the evening, depending on how this goes. If you testify it is important that you fill out a sheet. All of the proceedings are transcribed so there will be sign-in sheets. Please bring the sign-in sheet up, hand it to our committee clerk, Kate Wolfe, who will put it in the box and then it allows us to keep a better transcript. When you testify, please begin by telling us your name and spell your last name and your first name too if it's out of the ordinary. And I think that's it. We're going to go in the order that is listed on the agenda, LB1040, LB1041, and LB1042 are all Fulton bills. They deal with the Court of Industrial Relations and Senator Fulton will be asked to introduce those three bills all at once. So we'll have those folks who are proponents, they're kind of grouped by subject matter, so we'll ask you to testify on all three of them, when you come up, if you intend to. And again, it's four minutes for all three of them, so you don't get 12 minutes just because there's three bills, all right? (Laughter) Just making sure that you understand what the rules are. We're joined today by Senator Wallman to my left, from Cortland; legal counsel, Molly Burton; Senator McGill; Senator Schilz; and Senator Carlson are members of the committee. I expect Senator White will be along in time and Senator Council, hopefully, will be joining us shortly. If you see, and I should tell you this, if you see senators get up and move about, like Senator McCoy's here, he's got a committee he should be in right now but he's here

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to introduce a bill, so if you see senators get up and leave, that's generally because they have other responsibilities, and they have to introduce a bill in a different committee. They're not being rude. That's just sort of a practical side of what we do here. And my name is Steve Lathrop. I'm the chair of the committee and the state senator from District 12. And with that, I think we're ready for Senator McCoy. []

SENATOR McCOY: Thank you, Chairman Lathrop and members of the committee. I'm Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. I'm here this afternoon to introduce LB700 to you this afternoon which would require residential construction and remodeling work requiring a building permit be performed or supervised by persons certified as a residential contractor in order to obtain the building permit. This does not mean the actual work must be done by the certified contractor. And as, I guess, a point of clarification and disclosure, I'm a member of the contracting industry. Proud to be a member of contracting industry and a part of it for a good portion of my life. My dad owned a construction company. I'm proud that our industry has been the backbone of, or one of the backbones of our economy for many years and will, hopefully, help lead us out of this economic downturn. And this bill came about to provide just to get another layer of protection for consumers. And also a way for those of us as contractors to have yet another tool in the tool bag, so to speak, that we can use to further our education and further our credibility as business people. I guess a few ways that how you can be certified under this piece of legislation, one is to apply to the appropriate department or division in charge of issuing building permits where the contractor resides. Another one would be to show documentation that they've been in the residential construction or remodeling business in Nebraska for the previous five years at the time of application, or successfully passed the standard residential building contractor exam of the International Code Council or similar exam determined by the political subdivision who is in charge of issuing building permits. And this certification is transferable to another political subdivision but not transferable to another person. A couple of other things that I would point out as we've started this process, you know, we...folks behind me that will testify as well. We certainly as we went through this process have discovered a few things that need to be added into the legislation if the committee would choose to move it out along with any considerations that you potentially...you folks might have. So would be a few technical changes and whatnot that you may hear a few people testify behind that we may tweak a little bit if we were to move this piece of legislation on. A lot of hard work has gone into where we've gotten so far with our state Home Building Association, our local home building associations, the HBAs across the state and contractors. There's been a task force that's been working on this issue for a long time, along with some advisory committees. And a tremendous amount of work has gone into where we have gotten to this point. So a lot of kudos should be given to those individuals that have been a part of this process. It's been great to see, quite honestly, and I've been very proud to be part of the process. And I'd be happy to take any questions if there are any. [LB700]

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SENATOR LATHROP: Thank you, Senator. Any questions for Senator McCoy? Senator Council. [LB700]

SENATOR COUNCIL: Yes, thank you, Chairman Lathrop and Senator McCoy and I apologize for my tardiness. I'm like Pavlov. I just went upstairs. I have a concern regarding individuals who have regularly performed work on their own property and, you know, if the work exceeds a certain amount in value, they're required to get a permit. Under this legislation that individual would be required to either be certified or to hire someone to supervise them as they perform work on their own property? [LB700]

SENATOR McCOY: Well, as I mentioned, there were a few technical aspects. That was actually was inadvertently left out of the original green copy of the legislation. Clearly here we're not trying to create a situation where individual jurisdictions across our state allow for certain applications, work that can be done by a homeowner that doesn't require a permit or a permit that they can obtain on their own. This legislation doesn't seek to change that, merely to adhere to that as it currently is or exists now, I should say. So that would be one of the technical things that we would add, I should say, into this piece of legislation to make sure that a homeowner would still have the ability to do work on their own if they so choose, depending on what it is. [LB700]

SENATOR COUNCIL: And the same would hold true for, I would assume, for a landlord who has multiple properties and ordinarily performs the work on the property themselves after having obtained the requisite building permits. [LB700]

SENATOR LATHROP: Senator Carlson. [LB700]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator McCoy, I'm going to go back to this five years because it makes sense that there be an exception for somebody's that been in the business for five years, but could have situations where someone has been in the business for twenty years and moves for whatever reason, moves to Iowa for a couple years and then moves back, so they haven't been here. This says five years immediately preceding, so in that case, would they need to go through the entire process? [LB700]

SENATOR McCOY: That's certainly a hypothetical situation that haven't really taken into account and given a whole lot of thought to. I would be happy to look into that further. Didn't think of that potential situation. Certainly wouldn't want to create a situation where such an individual probably would have a lot of experience would be unfairly burdened, I guess, with adhering to this. On the other hand, potentially...the other side of that, flip side of that coin would be that there may have been some new code issues and whatnot that might have come about while they were gone that potentially, regardless of how long they've been in the business, they might need to know about. So it's certainly a situation that I'd be happy to look further into and

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potentially we may need to make a point of clarification on that. [LB700]

SENATOR CARLSON: Okay. Thank you, because I think there's probably the experience factor. It doesn't matter a whole lot whether it's in Nebraska or Iowa or Kansas but your statement about changes in code could certainly make a difference and they ought to be abreast of that. The...I think the year before you came into the Legislature, two years before, we passed a bill that requires contractors to register in the state and pay a \$50 fee. And I think that that is an annual fee. Now this requires another \$25. That would be in addition to the \$50, wouldn't it? [LB700]

SENATOR McCOY: Correct. [LB700]

SENATOR CARLSON: And is that an annual fee? [LB700]

SENATOR McCOY: Well, it really would be a fee upon going through this process and no, it would not be an annual fee. [LB700]

SENATOR CARLSON: Oh, it would be a one-time fee, okay. All right, thank you. [LB700]

SENATOR McCOY: As it currently stands, yes. [LB700]

SENATOR CARLSON: And then will somebody testify following you that would have some knowledge about the exam? [LB700]

SENATOR McCOY: Yes. [LB700]

SENATOR CARLSON: Okay. I'll wait for that. Thank you. [LB700]

SENATOR LATHROP: Senator Council. [LB700]

SENATOR COUNCIL: And just a comment, Senator McCoy, to Senator Carlson's question prompted. Just this FYI, the Environmental Protection Agency just passed new regulations on repair and remodeling that requires any person who's performing repair and remodeling work on property constructed prior to 1978 to go through a certification process. And I don't know whether you would need to, somehow, incorporate that fact that there is another certification requirement out there that applies to any pre-1978 home repair or remodeling. [LB700]

SENATOR McCOY: The short answer to that question, Senator Council, is yes. That, as I mentioned earlier in my statement, there would be some technical revisions and I don't know necessarily that falls under the...I would consider a technical revision. But yes, that is as the task force has meant and as testifiers behind me will make mention of,

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that is one of the recommendations of things that we've arrived at is to incorporate that if at all possible as we go forward. So yes, I am familiar with that situation as we all have been and as we've worked on this issue and it's certainly one that we are very cognizant of and would seek to address as well. [LB700]

SENATOR LATHROP: Is this a priority designation? [LB700]

SENATOR McCOY: No, it's not, Senator Lathrop. [LB700]

SENATOR LATHROP: Okay. Very good. Thank you. Are you going to stick around to close? [LB700]

SENATOR McCOY: I need to get to Banking's Exec Session. I'll try and get back, potentially, but probably no, I'll most likely need to waive closing. Thank you. [LB700]

SENATOR LATHROP: Okay. All right. Very good. Thanks for coming down. Okay, we will take proponent testimony first so if you're in favor of the bill, please step forward. Have a seat, if you're a proponent. [LB700]

BARBARA WICKMAN-BYRD: I am, thank you. I'm Barbara Wickman-Byrd with Metropolitan Omaha Builders Association, 4141 North 156th Street, Suite 100, in Omaha, Nebraska, here speaking at... [LB700]

SENATOR LATHROP: Can you spell your last name for us too? [LB700]

BARBARA WICKMAN-BYRD: Of course. W-i-c-k-m-a-n-B-y-r-d. [LB700]

SENATOR LATHROP: Okay. [LB700]

BARBARA WICKMAN-BYRD: And I am here on behalf of the 600-plus member companies and several thousand employees speaking in favor of LB700 based on the fact that we are currently working on a local proposal incorporating the same, some of the same, not identical, but some of the same concepts to the bill. [LB700]

SENATOR LATHROP: Are there any questions? I don't see any. We appreciate your input. [LB700]

BARBARA WICKMAN-BYRD: Thank you. [LB700]

SENATOR LATHROP: Thanks for coming down here today. Next proponent. [LB700]

MIKE REZAC: Hello, I am Mike Rezac, R-e-z-a-c, representing the Lincoln Home Builders Association. We're here...I'm here today in support of LB700. The Home

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Builders Association of Lincoln board of directors agrees with the concept of certification of contractors and wishes to continue working with Senator McCoy to help craft a bill that assures an increase of professionalism of our industry. We support continuing education and the International Residential Code testing. Thank you. [LB700]

SENATOR LATHROP: Very good. As an aside that the code testing, as I understand it, is an open book exam. [LB700]

MIKE REZAC: That's correct. [LB700]

SENATOR LATHROP: So what we're essentially asking people that do this kind of work to do is to sit through an open book test on the code and essentially what this will do is to force or ensure that people that are doing this kind of work are familiar with the code itself. [LB700]

MIKE REZAC: That's absolutely correct. [LB700]

SENATOR LATHROP: Okay. Very good. And thank you for your testimony today. Oh, I'm sorry, Senator Carlson has a question for you. [LB700]

SENATOR CARLSON: Thank you, Senator Lathrop. This exam, that answered part of my question, if it's open book, maybe eventually I could pass it, but there must be a cost to it. [LB700]

MIKE REZAC: Yes, I believe there is a fee and I believe it's a \$100 fee to take that exam, I believe. [LB700]

SENATOR CARLSON: So if you're not in the business the five preceding years, and you need to go through certification, then you've got the \$100 fee plus the \$25 fee. [LB700]

MIKE REZAC: Yes. [LB700]

SENATOR CARLSON: Okay. Thank you. [LB700]

SENATOR LATHROP: I think that's it. Thanks for coming down. [LB700]

MIKE REZAC: Thank you. [LB700]

SENATOR LATHROP: Anyone else here as a proponent? [LB700]

KATIE ZULKOSKI: Good afternoon, Senator Lathrop and members of the Business and Labor Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf

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of the Eastern Nebraska Development Council, and we too are testifying in support of the concept of LB700. And I'd be happy to answer any questions. [LB700]

SENATOR LATHROP: You're the third person to say you're in support of the concept. Do you like the bill itself? (Laughter) [LB700]

KATIE ZULKOSKI: We like the bill. We...as Senator McCoy mentioned earlier, there are probably some specifics that need to be looked at, people that are working in their own homes, things like that that perhaps we should be very careful as we draft the language. [LB700]

SENATOR LATHROP: Okay. Well, we'll look forward to having you work with Senator McCoy. [LB700]

KATIE ZULKOSKI: We would love to. [LB700]

SENATOR LATHROP: Thanks, Katie. Anyone else here as a proponent? Anyone here in opposition to LB700 that wishes to testify? Anyone here in a neutral capacity? Seeing none, and with Senator McCoy being absent, we'll close the hearing on LB700, and go to Senator Fulton with LB1040, LB1041, and LB1042. Senator Fulton, welcome. [LB700 LB1040 LB1041 LB1042]

SENATOR FULTON: Thank you. Thank you, Mr. Chairman and members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 here at the Legislature. I bring to you LB1040, LB1041, and LB1042. Nebraskans Commission of Industrial Relations was established in 1947 as a quasi judicial administrative body intended to preserve the public interest in having uninterrupted public service by resolving labor disputes and preventing strikes if collective bargaining should fail. Current statute obligates the CIR to establish wages and conditions of employment on the basis of comparability to prevalent wage rates and conditions of employments. The CIR statute was amended in 1969. Prior to 1969 the Commission was required to base its comparison on prevalent wages and conditions of employment in the same or adjoining labor markets within the state. Since 1969 the CIR may make comparisons without any statutory limitations on geography or labor market size. This has resulted in the CIR comparing Lincoln's labor market to that of Minneapolis, Minnesota, a market ten times the size of Lincoln's. The Lincoln Journal Star has reported the average salary for a city worker has resulted these comparisons in Lincoln to be \$10,000 higher than the average full-time Lincoln worker's earnings. The CIR lacks predictability. Each case heard by the CIR is highly dependent upon competing expert testimony and the CIR is not bound by the same sense of stare decisis as the judicial branch. Since each case heard by the CIR is based more on the quality of the expert testimony and not so much on more predictable guidelines, my proposal...the predictable guidelines that I propose in two of my bills, local units of

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government cannot readily predict what decision the CIR will make. The current CIR statute leaves no room for reasonable interpretation for the commissioners. For example, the CIR is obligated to establish compensation which is comparable to that which is prevalent. The problem is that once a benefit is considered prevalent based on the array used, the CIR makes a comparison only amongst the array members that provide the benefit. Thus, minority array members are no longer included in the calculation. This system always favors salaries and benefits skewed higher because lower and array benefits are removed from the comparison. LB1040 creates a statutory definition of prevalent as the midpoint of all array members which will result in more reasonable determinations. The CIR does not have an objective standard for job match analysis. The standard in statute 48-818 is that of work comparability, not employer comparability. Thus, a numerical job match criterion for comparing job duties is necessary but not limited to employer. Practically speaking, the wages and benefits of a publicly employed mechanic, plumber, or administrative assistant should also be compared to the wages for the same job duties in the private sector. The array should include private sector employers when such is possible. The current CIR structure does not take into account a political subdivision's ability to pay, nor the taxpayers indirectly for that matter. The Supreme Court has determined that evidence of a subdivision's last best offer is not admissible and thus the CIR does not have the authority to take into account a subdivision's ability to pay. LB1042 requires the CIR to weigh, compare, and adjust for any economic dissimilarity shown to exist, which may have a bearing on prevalent wage rates. Essentially, the CIR ought to take into account not only a subdivision's ability to balance its budget, but also what the ramifications of the CIR's decisions might be. I've spoken with local leaders, mayors, city council members and school board members because ability to pay is not presently considered, these elected officials are forced to accept the CIR's decision and respond by either raising taxes, eliminating services, or cutting jobs, or all of the above. Nebraskans expect their government to act reasonably. The CIR should have a reasonableness standard applied to it and this is more specific to LB1042. The CIR's comparability standard, as already mentioned, restricts the Commission from determining the most reasonable outcome. LB1042 would require the CIR to establish reasonable rates of pay and conditions of employment without doing away with the CIR's comparability analysis. In essence my goal is to prevent Lincoln from being compared to labor markets such as Minneapolis. At least that's the anecdote that is most egregious in my mind. A standard of reason will dictate the CIR's decision takes into account the ability of those footing the bill, the taxpayers, to fund new increases in salaries and benefits. Concluding, personnel costs constitute the majority of municipal budgets, often 70 percent to 80 percent of local budgets. The CIR is the ultimate arbiter of these costs whether through an actual decision or by threat of using the CIR in labor agreements. This unelected body's decision affects the fundamental question of the taxpayers' ability to control how their tax dollars are spent. And this is one of the reasons I have decided to bring these bills forward. This legislative package provides several means of reforming the comparability standard so as to provide for such predictability and needed objectivity. If a greater level

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of objectivity and predictability is attained within the CIR structure, political subdivisions may better work with labor to negotiate reasonable contracts that truly benefit Nebraskans, while simultaneously providing just and equitable wages to our public employees. And I'll answer any questions if there are any. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Thanks, Senator Fulton. Any questions for Senator Fulton? I see none. Thank you. [LB1040 LB1041 LB1042]

SENATOR FULTON: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I expect you'll want to stay around and close? [LB1040 LB1041 LB1042]

SENATOR FULTON: Yes, I will. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Those wishing to testify in favor, come on up. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Senator Lathrop, Judge Council, members of the committee, my name is Bill Harding, H-a-r-d-i-n-g. I am a Lincoln attorney. Senator Fulton mentioned that until 1969 the Commission of Industrial Relations, the Court of Industrial Relations then, hadn't handled many cases. That is true. There were 23 cases. I handled case number 24 in 1970 for a Nebraska municipality which was the first case after Senator Carpenter's LB15 which gave for the first time to governmental subdivisions in Nebraska the power to recognize labor unions and the power to negotiate agreements with labor unions. That negotiation's authorization brought into play then collective bargaining which sometimes led to an agreement and sometimes did not. The Nebraska statute mirrors the National Labor Relations Act in saying that to bargain in good faith does not require or compel a party to give up on a position and does not require the signing of a contract. So if there is not agreement at the table, what to be done? Well, go to the CIR. And 48-818 is the only statute in the country giving to a governmental administrative agency, though it finds its basis in the constitution, the authority to establish the wages and benefits of governmental employees. You would think it would be longer. It is very pithy. The brevity is the reason we're here today because as Senator Fulton said, we don't really have stare decisis on a number of key points and when faced with that issue, the Nebraska Supreme Court has said, oh, it's true, the CIR did not follow the standard they used in prior cases in this case in setting comparability, but not to worry. Those are just guidelines and since they are not in 48-818, they are not binding. I am here today on behalf of the League of Nebraska Municipalities to favor LB1040 and the concepts of LB1041 and LB1042 and on behalf of the Nebraska Chamber of Commerce and the industry to favor the concepts of LB1040, but the Chamber does not take a position on LB1041 and LB1042. There has not been a lot of litigation by municipalities of late before the CIR because, frankly, municipalities are concerned about the cost of

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the litigation. It is extensive. I'll explain that if you have questions, and because of the fact that there may not be predictability. LB1040 is a codification of standards that have existed with one exception. The one exception is found on page 8 of the bill. It is Section (b) talking about total compensation. I see my time's expired. May I answer this one question or would you like me to stop? [LB1040 LB1041 LB1042]

SENATOR LATHROP: Go ahead and finish your thought and then we'll see if there's any questions. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Section 48-818 talks about establishing total compensation. In other words, not just wages, not just benefits, total compensation. All of the above. The problem is that now when faced with an array of say, seven numbers, four of which might provide a benefit, say personal days, but three do not. When totaling the number of hours or days for personal days, the Commission divides by four, not seven. The problem is this, if you're looking at total compensation, those three other array members have placed a value of zero on that benefit because they put their money someplace else. So if we look at total compensation, it doesn't matter where the dollar is placed, it's just that you find it someplace. And I don't know if you are history buffs, I do commend to you if you're not, to become one, and read the book 1491. It talks about this hemisphere before a fellow from Italy got here. On page 20 it is described that zero was the single most significant development in the civilization of the world. The CIR could at least count zeros. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Any questions? Senator White, you're recognized. [LB1040 LB1041 LB1042]

SENATOR WHITE: I appreciate you coming, counsel and I obviously am troubled by a number of these bills but LB1041, for example, would enable or require the Commission to take into account wages, rates, and conditions of employment of both public and private workers considering like or similar skills when determining comparability. Where will you find anybody in the private sector with comparable skills to a police officer or a firefighter and the comparable obligations to make the kinds of personal risks necessary to fulfill those duties? [LB1040 LB1041 LB1042]

WILLIAM HARDING: Senator, I don't think you will. I think uniform services will be an exception, but there are plenty of other jobs that municipalities hire where you can find those skills. [LB1040 LB1041 LB1042]

SENATOR WHITE: So what you're saying, for example, then in teachers you would compare them to private schools even though those are often considered religious missions intermixed with their teaching? [LB1040 LB1041 LB1042]

WILLIAM HARDING: Well, Senator, I'm here to speak on behalf of municipalities and I

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recognize that there are unique issues in education just like uniform services. But I will tell you that when a municipality has a winter storm, for example, and we've had some, we have to move the snow. We have to take the branches. Many times private contractors are hired to perform those services and they work side by side with city crews. They're performing essentially the same work, the same equipment. [LB1040 LB1041 LB1042]

SENATOR WHITE: In that aspect but then they're doing other jobs, the city employees are, like filling potholes in traffic, things like that. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Well, I just had lunch with one of your alums who is a mayor of this city and he spoke about potholes and I realize that there are issues involved in the rest of the year but, frankly, I don't see any particular problem in going out and looking at the private sector and seeing whether the work is the same. If it's not, don't compare it. The Nebraska Supreme Court has said as much. They've said if you don't have the comparisons, fine. But in the case involving Douglas County, they said for that clerical worker, for that custodial worker, go ahead and compare it. [LB1040 LB1041 LB1042]

SENATOR WHITE: Then really, then LB1041 is unnecessary because you already have it in case law. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Well, in case law but unfortunately, as you know, Senator, if it's not in the statute, it may be found to be one of those items that is not followed. The case involving Douglas County was followed by a case involving the city of Grand Island using the same example as the equipment operators I mentioned. And same work, same equipment, same job, and the Commission said, well, no, we don't think they're close enough. [LB1040 LB1041 LB1042]

SENATOR WHITE: Well, they'll have that ability anyway won't they? [LB1040 LB1041 LB1042]

WILLIAM HARDING: Well, perhaps they would but as you, I believe, that if it's in the statute that would be a good starting point. [LB1040 LB1041 LB1042]

SENATOR WHITE: Well, I find it hard to give credence to the idea that a court that will ignore a Supreme Court decision will follow a statute, but perhaps we've had different experiences in the law. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Well, I've had some. [LB1040 LB1041 LB1042]

SENATOR WHITE: As have I. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Huh? [LB1040 LB1041 LB1042]

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SENATOR WHITE: As have I. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Yes. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Any other questions? I see none. Thank you for coming down, Mr. Harding. [LB1040 LB1041 LB1042]

WILLIAM HARDING: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: The next proponent to testify. And while our next proponent is coming up here I'll remind you that just because you have four minutes doesn't mean you need to take four minutes. (Laughter) So we'll encourage you not to repeat other people's testimony. Welcome. I didn't direct that at you, but... (Laughter) [LB1040 LB1041 LB1042]

MARK SCHORR: (Exhibit 1) Well, given Mr. Harding's excellent presentation, I will be brief. My name is Mark Schorr. I'm an attorney here in Lincoln. I'm appearing today not as a private attorney but on behalf of the Lincoln Chamber of Commerce and its public policy steering committee. I do, however, note that I have extensive experience representing both sides in collective bargaining and I've specialized in labor and employment for over 25 years, including handling cases in front of the Commission of Industrial Relations. The Lincoln Chamber is a proponent and supports...and I'm testifying only on LB1040. We believe the amendments to Section 48-818 would give greater emphasis to proximity and give this as more of a consideration in the current analysis that the CIR goes through in a labor dispute to determine comparability analysis in terms of setting wages based upon the current standard of comparability. We think the provisions in LB1040 would address some of the anomalies that we've seen as this statute has worked its way through the years. Historically, the Supreme Court and the CIR had held that greater size metropolitan areas like Kansas City, Minneapolis, Denver, were not appropriate comparisons for cities such as Lincoln. And then we have cases where Lincoln has, of course, as it was mentioned, was compared to Minneapolis-St. Paul, a much greater size metropolitan area. We believe that LB1040 as proposed would provide greater predictability as well as stability for local governments and we believe that's an issue of budget analysis and good business. We also believe that the standards enunciated by Senator Fulton in his bill would create a more fair analysis for comparability in terms of setting wages for public employees in Nebraska by looking more at proximity and creating a more localized analysis of those issues. And so I said I'd be brief. Mr. Harding covered it in good detail, but I would take any questions. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Thank you, Mr. Schorr. Any questions? Senator Council. [LB1040 LB1041 LB1042]

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SENATOR COUNCIL: Some of you may have noticed, I've tried to refrain from asking questions. I'm going to consider all the testimony. For those of you who don't know, I'm a former commissioner of the Board of the Court of Industrial Relations so I'm going to try to be as neutral and objective as I can. When you talk about the Lincoln case and when you say that Lincoln was compared to Minneapolis, and I'll tell you I wasn't involved in that case. Haven't read it, don't know. But what you're saying is that Minneapolis was included in the array for consideration, it wasn't that the Commission of Industrial Relations picked Minneapolis-St. Paul and said, we're going to compare Lincoln to Minneapolis-St. Paul. Minneapolis-St. Paul was included in the array of cities that it was compared with, isn't that the...? [LB1040 LB1041 LB1042]

MARK SCHORR: Yes, it was with a number of other larger cities but I believe the wage rates in Minneapolis-St. Paul had some impact on the outcome in the case. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: And I appreciate that but the statements that have been made thus far is that Lincoln was compared to Minneapolis-St. Paul and that's not accurate. Lincoln was compared to an array that included Minneapolis-St. Paul. There may have been some cities in that array, and I don't know, that were smaller than Lincoln. But that's the bone of contention here as we discuss this proposed legislation. But I just want it clear to my fellow committee members that this wasn't a case where the Commission of Industrial Relations picked Minneapolis-St. Paul and said we want to compare Lincoln to Minneapolis-St. Paul. It was included in whatever number of cities were in that array. [LB1040 LB1041 LB1042]

MARK SCHORR: That is correct. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. Now, you're a proponent for LB1040. Are you also a proponent for LB1041 and LB1042? [LB1040 LB1041 LB1042]

MARK SCHORR: I think we agree with some of the concepts, but the Chamber has decided to appear only today in support of LB1040. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I see no other questions, thanks for coming down, Mr. Schorr. [LB1040 LB1041 LB1042]

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MARK SCHORR: Thank you, Mr. Chair. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Next proponent. Councilman, welcome to the Business and Labor Committee. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Thank you, Mr. Chair. Thank you very much. My name is Franklin Thompson. Thompson is spelled T-h-o-m-p-s-o-n. I'm here on behalf of the Omaha City Council and the city in general, speaking on behalf of LB1040, LB1041, and neutral on LB1042, although I do like many of the things that are in LB1042. As previously spoken, I believe that Senator Fulton's legislation will increase the opportunity for predictability and stability. As a result of that predictability, objectivity, reasonableness, including the issue of ability to pay, and I particularly like the section on localizing the analysis of the market and geographic limitation of the array. A lot of people have talked about, so far, Minneapolis and Lincoln. We would have been very happy had we had Lincoln in our array but we've had some that are much, much, much further out. We feel that that limits our ability to have a fair and balanced final analysis of what should be done. Most of what needs to be said has already been said and so I won't take my full four minutes. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Let's see if there's any questions though. Senator Council. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Thank you and welcome, Councilman Thompson. In your testimony, you just kind of revealed a contradiction and that is, it's fine to use comparables when it suits your purposes. You use Omaha and say you have to go much further out. Well, what other city in Nebraska is comparable in terms of size? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: One of the things that's in LB1042 is the whole idea of making sure that the issue is defined and what city you can use. And actually it's LB1041. The Commission is limited in its ability to compare markets based upon the population role of not less than half or not more than twice the population. So because I believe in that particular standard, then I would think that Lincoln would be a good comparable city for Omaha, but I would like to stay within our general region for that comparison. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: So then under that standard, wouldn't Lincoln be subject to being compared to some much larger communities? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Yes, but as long as we stay within our general geographic area, then I believe that that's the feeling of the Omaha Council that that would be fair. [LB1040 LB1041 LB1042]

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SENATOR COUNCIL: And general geographic region, last time I checked Minneapolis-St. Paul was less than 400 miles away. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: They are in our region and they are in our array but I feel that Cincinnati is far too...much too far. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: And so it's the distance in your opinion as opposed to the actual comparability of the type of work, the type of wages, the type of community. Cincinnati may be closer in terms of demographics to Omaha than some city of comparable size in Wyoming. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: I believe that there are some exigencies and some things here in this area that help the comparables as opposed to somewhere, let's say, Fort Worth, Texas. I think geographics has a major point to play in terms of what it is you are looking at. There are some weather issues, there are some issues of history, and I feel that going too far out you're comparing apples and oranges. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay, and so how did the bill address...it talks about populations within a region, how does the region determine...who gets to determine the region? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Those are some things that, obviously, still have to be worked out. And I know this is not a perfect bill, but it is the beginning of a movement that has to happen because right now the cities, whether it be Lincoln or Omaha, we're always on the short end. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Now the issue on ability to pay, and that's LB1042? Every time I read these all together... [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: That would be LB1042. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay. Now LB1042 kind of assumes the passage of, the existence of LB1040. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Yes. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: And so if you get what is being proposed in LB1040, so you've got your array confined to a region that you think is comparable in terms of geographics and demographics, and yet there still should be a factor of ability to pay? I guess I'm trying to see how the connection from some of the...well, in Senator Fulton's opening there was...kind of inherent in his opening is that because there's a sense that the decisions of the Commission have been skewed in a way that larger wages are the result, or larger compensation packages are the result, that because of that then there

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ought to be some consideration of a political subdivision's ability to pay. What I'm asking you is, assuming everything in LB1040 is enacted, what is the rationale and the justification for ability to pay then? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: I believe that Omaha is a unique city in that we are trying to compete with larger cities that have a smaller population. And there are many studies that have been done that shows that although we haven't reached our tax lid limit, that in general the total taxation is a heavy burden. And so we're providing the same lane miles as a Kansas City or the same lane miles as a Dallas but we don't have the concentration of people. And so I would like for those kinds of things to be taken into consideration, not that it becomes a hammer or becomes something that we use to make a guilt motive, but to take into consideration the total picture. I think sometimes in the past those things haven't been considered. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay. So then the intent is to basically move it away from collective bargaining, in the traditional sense of collective bargaining and move it to some realm of financial public policy. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: As I understand it and I could be mistaken, but I do believe that when it comes to certain things that you take into consideration for schools that that's allowed and I would just like that same ability to be applied to the governing agencies. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Well, at least in my term on the CIR I never knew of a case where a school district's ability to pay determined what the ultimate compensation package was. But maybe something happened since I left and someone will enlighten me. Thank you. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: And I would like to say that there's a first time for everything and right now it's broken. And I'm reaching out to you to be a person that helps fix it and if fixing it means tweaking what we have or introducing something that's better, I would like to encourage you to do so rather than sit back and just say, I throw my hands up and I'm not going to be a part of the solution. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Well, I can give you my pat answer too, Mr. Thompson, both sides can employ better negotiators. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: That is true. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Thank you. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: I agree with that 100 percent. [LB1040 LB1041 LB1042]

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SENATOR LATHROP: Okay. We have more questions for you. Senator White has a question. [LB1040 LB1041 LB1042]

SENATOR WHITE: I have a concern, Councilman. I appreciate you being here. The ability to pay, does that include the ability to raise taxes and is this bill asking this body to give to the Court of Industrial Relations the ability to order a city or a school district to raise taxes? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: No. Yes and no. Yes, it should include the ability to raise taxes and that should be taken into consideration. But no, on the part of ordering it to be done. [LB1040 LB1041 LB1042]

SENATOR WHITE: Well, then if the court...Court of Industrial Relations, for example, Omaha is not near its levy limit. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Yes. [LB1040 LB1041 LB1042]

SENATOR WHITE: And are you really inviting them to start looking into whether or not the city council of Omaha ought to be raising property taxes up to their levy limit? Because it seems to me you're opening Pandora's box, and I could be wrong. I'm not going to be the guy sitting there at the council table when you get a CIR order saying, you can afford to pay a whole lot more. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: It is a Catch-22 for us but I believe that the total tax on the citizen of Omaha must be considered and not just the levy itself. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I do have some concerns. I'm going to express them and maybe since this really amounts to sort of an opening discussion on the subject matter, but it strikes me as very difficult for someone who is a judge or a commissioner to begin the process of taking into account ability to pay for this reason. How do you measure ability to pay? If you have someone that's not up against their lid limit, do we consider what their ability to pay is if they went to the lid limit? It seems like a...we're asking the Commission...I appreciate the problems that the cities are expressing today. I hear you saying that you need some relief or that you want some help, but the idea that we're going to take into account ability to pay, I think we're asking the commissioners to get into an area that I don't know that we want them working in. I really do have concerns about that and then does the city, or could a city, for example, undertake to spend large sums of money in some area other than on their employees and effectively turn their employees into low-paid workers? [LB1040 LB1041 LB1042]

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FRANKLIN THOMPSON: You make a good point and I do believe that the problem with Omaha is that we have not reached our lid. I agree that that's an issue. However, I do believe that it should be one of many things that's taken into consideration. Are we rolling the dice on this? Yes, we are. But there is a real problem and that real problem needs a solution. This is a beginning and I'm not against, necessarily, refining and tweaking what it is that we're having to look at. But we have to do something. Right now we're not doing anything and that's problematic. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Senator White. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you, Councilman. But I want the record clear on this because what I understand from Senator Lathrop and your response is, we're not only inviting the Court of Industrial Relations that these bills are enacted to look at whether you can raise taxes, we're going to have them start reviewing the advisability of your spending. For example, you could get a court, a Commission of Industrial Relations opinion saying, you know, those big projects down at the riverfront, ill-advised. We're not going to accept those as legitimate expenditures and ergo, you have a lot more ability to pay. I mean, I really don't think that's anywhere where the Commission on Industrial Relations should go second-guessing the mayor and the city council in making those kinds of determinations. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: It is a problem. At the same time we also know that our particular...our two largest unions have some of the best contracts in the Midwest hands-down. So at what point does reasonableness enter the picture in regards to making sure that a city of our size can afford one of the more Cadillac programs in the whole Midwest? [LB1040 LB1041 LB1042]

SENATOR WHITE: I think everybody agrees these contracts ought to be reasonable, all right. But that's not what's happening here. What we're talking about is setting up the Commission on Industrial Relations as the body that gets to decide rather than the city council or ultimately the voters. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: That is one way to look at it. But I see it as more increasing the predictability so that before we go to negotiations, we have a better idea of what the rules are. Right now, it's like a crap shoot. We just don't know what we're walking into. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you, Councilman. I really appreciate your courtesy. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator Carlson. [LB1040 LB1041 LB1042]

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SENATOR CARLSON: Thank you, Senator Lathrop. Mr. Thompson, you're catching the brunt of the questions today. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: That's okay. [LB1040 LB1041 LB1042]

SENATOR CARLSON: And you're doing a good job. Who are the cities in your array? I don't know. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Dallas, Fort Worth, St. Louis, Tulsa, Oklahoma City, Minneapolis, and I believe Tulsa. I might also include Wichita. [LB1040 LB1041 LB1042]

SENATOR CARLSON: How many are in there? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Seven all together. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Is that by rule? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: It was a compromise. The city had its array and then the unions had their array and then the court put the two together and came up with a compromise array. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. And Denver wasn't in there? [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Denver is. Denver is the last one, yes. Um-hum. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. All right, thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I see no other questions. Thank you and we appreciate your testimony and your answers to the questions. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: And if we need to fine-tune it, help us fine-tune it. [LB1040 LB1041 LB1042]

SENATOR LATHROP: We got the message. [LB1040 LB1041 LB1042]

FRANKLIN THOMPSON: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you, Councilman. Anyone else here as a proponent of any one of these three bills? [LB1040 LB1041 LB1042]

JOHN SPATZ: Thank you, Chairman Lathrop and members of the committee.

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Appreciate being here. My name is John Spatz, but it's spelled S-p-a-t-z, believe it or not, but it is pronounced Spots. And I was here a few months ago when there was a study that was done this summer and I enjoyed my opportunity to be before you. I'm a city council person here in Lincoln testifying just on my behalf to maybe give a little perspective as an elected local person. And there's two things I want to address very briefly. Number one, the language about economic dissimilarities. Right now, economic dissimilarities are not included in figuring out wages and benefits. And the position that we get put in is very difficult. In Lincoln, Nebraska, this last year, our valuation went down about 1 percent. I'll say that again, our valuation went down about 1 percent. As far as I know, I don't know that that's ever happened in the city of Lincoln so our property tax revenue actually went down. Add to that our sales tax revenue actually went down this last year. So it put us in a very difficult position financially. So when your revenues are going down and we have a variety of different collective bargaining agreements, or parties, when one of them comes to you and suggests that by comparability they're entitled to a 2 percent, 4 percent, as high as an 8 percent increase in wages, to get comparable, there's three things you can do. Number one, you can raise taxes, raise property, raise your levy. Number two, you can cut staff or cut programs or you can do a combination of those two things. And then, number three, in my opinion, the most dangerous, but politically the easiest, is to make a deal. If a particular bargaining unit says, we think we're entitled to 6 percent by comparability, but we'll accept, let's say, 2 percent if you get x, y and z. Maybe some management prerogatives get put in there. But we try to avoid doing number three. So what the city of Lincoln has done the last three years, I've been on the city council for three years, is we've cut staff and the way it works within each collective bargaining unit, those with the least seniority are the first ones to go, or those are the first programs that don't get refilled. So when there is an issue like there has been the last three years in Lincoln with our revenues coming in, and where we're at terms of comparability, the people paying the price of that are the people at the low end of our salary schedules. It's the guy making \$10 an hour mowing our parks. It's the people at the very bottom and they're bearing the brunt of this problem, and that's very difficult. We've chosen not to raise taxes over the last three years. Is that something we can continue doing forever if things don't change? I don't know. But we didn't think it would be appropriate to raise property taxes during an economic downturn. So the choice is raise taxes, cut staff, combination of both, or do some kind of a deal that may compromise the city long term. Now, some of the testimony you may hear from some of the opponents, and I think I've done a poor job of articulating this position, but something you'll probably hear is that the CIR only deals with a handful of cases throughout the entire year. Most of the collective bargaining is done, a deal is made, and everything is fine, and that's true. So maybe we do a poor job in talking about the CIR as the body setting the wages. Really, it's the threat of the CIR is what I'm referring to. Because what happens is that we, as a city say, well, we think this bargaining collective group is comparable, at let's say, 5 percent. That group may think it's 6 percent and you try to work out a deal somehow. And if you don't have the revenues to do it, you can raise taxes or cut staff. We've cut

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staff. We've cut positions. There's a lot of missing jobs here in Lincoln. That's the first thing I want to talk about. And I think including something dealing with economic dissimilarities, having that be a part of the equation may help when you're city of Lincoln when valuation goes down which may start happening to some of our rural areas in other parts of the state. That's a big risk. That may start happening. That happened in Lincoln and it may happen in other places. The second thing I want to talk about briefly is I really hope going forward that this isn't such a nuclear issue. Whenever I...or the word CIR, people cringe as though that's something you're not supposed to talk about. It's almost taboo and there's a lot of people said that it makes no sense introducing something, nothing's ever going to change. I think we've got to work, everybody in this room together. Not this committee, not just myself, but everybody in this room together I think has got to do something moving forward to make some changes here because I don't believe it's sustainable. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I have a question for you. Is the city...this just occurred to me while I was listening to you talk about the labor cost, but the city if it's going out...if it wants to build a bridge, are you experiencing an increase in the costs associated with road construction? [LB1040 LB1041 LB1042]

JOHN SPATZ: Well, actually the last few years the prices went up and they peaked about a couple of years ago. They've gone down a little bit over the last couple of years. [LB1040 LB1041 LB1042]

SENATOR LATHROP: But they do go up. [LB1040 LB1041 LB1042]

JOHN SPATZ: They do go up. Yes, they do. [LB1040 LB1041 LB1042]

SENATOR LATHROP: And what occurs to me as we listen to this argument, and maybe some folks that come behind you can address this, but what we're essentially saying when we say we want to talk about ability to pay is the cost to build a bridge is going up, the cost to fill the potholes is going up, the cost to buy playground equipment is going up, and that puts us in a spot and we want to make up the difference by not having what would otherwise be traditional increases in pay for our employees. [LB1040 LB1041 LB1042]

JOHN SPATZ: Right. Well, speaking personally, I'm not necessarily a fan of ability to pay costs. I didn't say anything about ability to pay. I like the concept of using economic dissimilarities. So if in a situation this happens to Lincoln again where there's a decrease in valuation, which is a pretty unique event, would we compare to a community that maybe had a 10 percent increase in valuation or a flood of sales tax revenue or something like that where there's very specific economic dissimilarities from community to community. I would like to see...and maybe this isn't the perfect language. I didn't say anything about ability to pay though. [LB1040 LB1041 LB1042]

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SENATOR LATHROP: Well, and here's what that...the concern it brings me to and that is, when the proponents come up and they talk about the concerns they have running cities, and believe me I understand and your Legislature tries to be sympathetic to the concerns of the cities as they try to govern and run the cities. But as I listen to it, you talk about the need for predictability and then you want to throw into the mix a variety of things that are really poorly defined, so. And we'll hear from a commissioner. I asked a commissioner to be here today, but now we're going to have the Commission in the name of being more predictable start to take into account whether a comparable is a city that's had...experienced a similar decrease in their valuations and I think you can...if we did that, I suspect you would be back here and say, well, the Commission didn't take this into account and that's unique about Lincoln and then we put so many considerations on the table that we've made it entirely unpredictable, or even from your perspective even more so unpredictable. [LB1040 LB1041 LB1042]

JOHN SPATZ: That's right. Well, I don't necessarily disagree with that. I mean, this is a tough nut to crack because there's problems. I haven't heard a perfect solution, but really when I say the city of Lincoln when we face a situation where valuation goes down and sales tax revenue is down and we hear from collective bargaining agreements that we think 8 percent is comparable but we'll make a deal, that puts us in a very bad negotiating position and bad things end up getting in collective bargaining agreements because of that. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Here's my experience having done trial work and that is, every settlement that somebody reaches is where two lawyers on each side of the deal predict what's going to happen when a case goes to trial and they say, this is about what's going to happen when the case goes to trial. So I suspect and we'll hear from folks on either side and that's what makes this hearing interesting. But I suspect we'll hear that it may be...there may be aberrations in what you expected to happen, but everybody has a pretty good idea of what it looks like, right? [LB1040 LB1041 LB1042]

JOHN SPATZ: Yeah, we do, we do. Right. Yeah, and that's why you don't see numerous cases go before the CIR because you kind of have an idea of what it's going to be. And you might be wrong. The real trick is selecting the array. And that gets very difficult and, you know, how do we know who's going to be in the array. That can be a problem. [LB1040 LB1041 LB1042]

SENATOR LATHROP: You know, I question whether it's difficult to pick an array or whether it's risky. [LB1040 LB1041 LB1042]

JOHN SPATZ: It's both. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Good. I don't practice in the area. I find these hearings

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fascinating and I learn something every time. Yep, Senator Council. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Thank you, and thank you, Councilman Spatz. I mean, and the same holds true with Councilman Thompson's testimony as well. I mean, I had the fortune or misfortune of being on the city council. I had the fortune or misfortune of being involved in negotiations of two major contracts, neither of which ended up in the CIR. And I've been on the Board of Education so I know the issues that the municipalities and the school boards face. But I think we need to be very careful about what we're asking for here and on the economic dissimilarities subject, for example. I can't speak for the other commissioners that served with me but I know I was appointed because I'm a labor and employment lawyer. I'm not an economist, you know, and to talk about economic dissimilarities, you're placing an expectation on a body of lawyers, quite frankly, to be able to determine what is or is not economically dissimilar. And I really don't think people need to think about what they're asking for because you really might not want that. Number two is the whole premise is that somehow if the ideal is reached in terms of comparables, the array. Whatever the ideal is in the political subdivision or the school district's mind is arrived at. It appears to me that inherent in that is some belief that if we arrive at this ideal magical array, that they'll somehow present comparables that will result in reduced compensation or reduced...I mean, that's kind of...the sense is, is that if, you know, we're having a problem here because the comparables, at least the argument appears to be the comparables always result in school district A having to pay more or city B having to pay more, and I don't think...I think that's a faulty premise that, you know, you may find yourself in a group of comparables where 8 percent increase is, in fact, the comparable. I mean, you're not going to avoid those situations if that is what the real world is showing us. [LB1040 LB1041 LB1042]

JOHN SPATZ: Oh, I agree. And, you know, there's seven different bargaining units for the city of Lincoln. I would suggest some of them probably are closer to maybe if we do a percent, we're comparable. But there's circumstances where we think it may be much, much higher and my concern, and I don't know what the proper solution to this is, but in a situation where our revenue goes down this year, I'm put in a position where we have to raise taxes or cut jobs. I don't like cutting jobs and I feel like there's really nobody here in this room that represents the people at the bottom end of that pay scale, the guy making \$11 mowing our parks, or a new teacher making \$24,000 a year. Those are the people who end up losing their job first, or those are the positions that we don't rehire or positions we eliminate. And really if you think about it, that puts a strain on the remaining employees when we're not refilling those positions or when we are laying off people. Then the people who remain have to do more...we keep asking more and more of our current employees. So I... [LB1040 LB1041 LB1042]

SENATOR COUNCIL: I understand. I mean, I've witnessed it where cities have given

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considerably more money to bargaining unit A and the only way to pay for that is to take it from bargaining unit D. I mean...but the CIR is not necessarily responsible for that. I mean, the cities make a conscious decision whether to do something more with bargaining unit A and to leave bargaining unit D intact, but unfortunately, and you're right, is that that's who ends up more often than not, getting the short end of the stick in these things. [LB1040 LB1041 LB1042]

JOHN SPATZ: Yep. It's...and I'll leave unless there's more questions, but really it's our labor laws. And we maybe do a disservice referring to it to CIR. It's really our labor laws and our labor laws have resulted in the city of Lincoln have a nonpolice, fire, civilian staff right now that's smaller than it was in 1992. And we've grown significantly. As a result of our labor laws, we've lost labor. I just don't think...our labor laws are very labor friendly when we look at it that way. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. One of the first statements that you made, John, when you started, was the threat of the CIR. Is the threat of the CIR bigger to management or to labor? [LB1040 LB1041 LB1042]

JOHN SPATZ: Well, I would suggest it's management. I'm sure labor will disagree with that. It can swing both ways, it can. But what typically happens is we'll get briefed behind the scenes saying, okay, their people are saying they'll be comparable at 8 percent. We think they're comparable at 4 percent. So we need to find some way to make this work because we don't want to go to the CIR and risk an 8 percent increase in wages. There's that threat for each bargaining unit and for each one it may be a little differently...a little different. And really the big key is, it comes down to who is in the array. That's a big piece of it. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Now, the city of Lincoln you have to have a balanced budget, don't you? [LB1040 LB1041 LB1042]

JOHN SPATZ: Yes, we do, yep. [LB1040 LB1041 LB1042]

SENATOR CARLSON: And I'm going to make a statement here that might be a little bit in conflict with what Senator Lathrop brought up, but when you have declining values and declining revenues, you still have to have a balanced budget, and you have negotiations with labor that don't want cuts, they'd rather cut staff. But when times are really tough and Senator Lathrop brought up, building a bridge costs more money, that's not necessarily true. Aren't you finding in some of your construction projects that you're doing more with less when times are tough? [LB1040 LB1041 LB1042]

JOHN SPATZ: Yep. Yep. [LB1040 LB1041 LB1042]

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SENATOR CARLSON: So that is a possibility that if everybody cooperates you can get through the tough times because you can actually do more with less if you're allowed to do that, and everybody cooperates. [LB1040 LB1041 LB1042]

JOHN SPATZ: Right. That's right. And unfortunately, the city of Lincoln has lost a lot of positions because of the threat of the CIR. Now, maybe I've done a poor job of articulating that. It's not the cases that have gone before the CIR but rather the threat. Anything else? [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. I think that's it. Thanks for coming down again. We always enjoy hearing from you. [LB1040 LB1041 LB1042]

JOHN SPATZ: Thank you very much. Appreciate your time. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Anyone else here as a proponent? [LB1040 LB1041 LB1042]

KEN STEINBECK: (Exhibit 2) Chairman Lathrop and other senators, my name is Ken Steinbeck, that's S-t-e-i-n-b-e-c-k. Thank you all for allowing me the opportunity to visit with you just very briefly today. I live in Grand Island with my wife. I am a business owner, but more important to today's testimony, I'm a taxpaying citizen. I support Senator Tony Fulton's legislative bill, LB1040 and LB1041. The citizens of Nebraska and the United States are experiencing tough economic and political times. We must respond with courage and conviction. Currently, there are extraordinary pressures on governmental budgets. One of the chief causes of these budgetary pressures is spiraling government spending on payroll. This situation calls for tough decisions made with integrity and with an aim for the common good. These decisions are especially challenging, because the public sector does not have market pressures similar to the private sector where competition naturally limits payrolls. We need the CIR to balance the interests of public employees, and the taxpaying public. The state of Nebraska needs the CIR to mandate comparability studies that include both public and private sector job classifications. I understand that more government services require more government employees and more tax dollars for public employees' wages. If I were employed in government, I would probably say that the taxpayers who complain about tax increases while demanding more services can't have it both ways. But the day has arrived when continual expansion of public budgets must be curtailed. Public employees to the greatest extent possible, must be subject to the same economic forces as their private sector counterparts. It is my opinion that these bills from Senator Fulton will work toward that end. Our state slogan is "Nebraska, the Good Life." At the end of the day there are two options, government must either reduce services or increase taxes. Either way we risk losing our claim to the "Good Life." When economic changes lead to

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unexpected reductions in tax revenues, we must stop upward pressures on government budgets. That is why I ask you to assist taxpayers in conducting government business with common sense. If we continue down the path we will be forcing our government to cut services for all citizens. We have to reach a balance of tax revenue versus public payroll. Please vote to move the bill to the floor of the state Legislature for full debate. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you, Mr. Steinbeck. Any questions? Senator Wallman has a question for you before you get away. [LB1040 LB1041 LB1042]

SENATOR WALLMAN: Yeah, thank you, Chairman. Yeah, thanks for coming down. You're always welcome to testify here, anybody is. I was looking over the government...our budget for the state this year and it was not necessarily employees. A lot of it was insurance cost. Some benefit costs and that literally went up double in ten years. So that's not really...I guess you could consider that employee cost but it's sad when we have to lose infrastructure employees that work for us and a lot of them are not necessarily the highest paid people on the block, you know. One of my good friends lost a job in Lincoln here and he's probably collecting unemployment now, I don't know. So we're still paying, you know what I mean. Thank you. [LB1040 LB1041 LB1042]

KEN STEINBECK: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I see no other questions. Thank you for your testimony, Mr. Steinbeck. Anyone else here as a proponent? If you want, you can come up here and sit in the front row while Ms. Rex testifies. [LB1040 LB1041 LB1042]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. I'd like to start by saying the League Executive Board has historically strongly supported comparability. We believe in the CIR as a process but we do believe that it does need to be refined. With that I'd like to highlight just a few of the many important concepts in LB1040. We do appreciate Senator Fulton introducing this as well as LB1041 and LB1042. I think LB1041 and LB1042 are ideas to be discussed but we're specifically talking about at this moment, LB1040, and I'd like to just share with you a couple of key things. First of all as Bill Harding said, there's nothing in this bill other than one issue that has not been a CIR case sometime, somewhere, done with the city. The problem is, it's never consistent, it is never the same. And it is not an issue to say, well, there's only been a few cases involving municipalities, because my analogy would be the same thing if the Nebraska Supreme Court renders a decision involving annexation. All cities in the state are affected by that decision. You don't need to have 530 cities going up to the Nebraska Supreme Court to figure out what you can do on an annexation case. So in CIR the problem has been, does it mean anything? Is there a precedent? Because the reality is, as Mr. Harding indicated before, in case after case, it just seems to be a

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situation where you can apply one rule here, but not in the next case, to the point that we have city administrators telling us, is it even worth us doing precomparability type surveys to "stay out" of the CIR so that we can, in fact, meet our statutory requirement and mandate of providing comparability and paying for comparability for same or similar work. Because if the standards are always changing, how do you know what you're supposed to do? So with that, I'd just like to share with you a few reasons why we strongly support this bill, LB1040. And we think the other concepts need to be discussed too. If you look on page 4 of the bill starting on Section 5 you'll note there are dates certain. This puts in place certain dates so both sides know, here are the dates, here are the rules. And the same way if you're going to play Monopoly, know what the rules are. It's not that both sides get the same rules. This is an important thing, I think, in this whole concept so all sides...and there's nothing in concrete about the dates. We think this is something that we need to sit down with both sides and talk about. What are dates that work for everybody? But there should be...there should be a process in place. Right now, there is not. Looking on page 6, Section 9, on line 7, this encourages joint arrays. We think that's important. We think the whole concept of the CIR was supposed to be to keep the parties to make their...have their negotiations on a local level. In order to do that, why would the CIR not want to take into consideration joint arrays when both sides agree on what the joint array is? Right now you can agree on the joint array but if you end up with a CIR, you're starting over from scratch. Those joint arrays mean nothing. So in Section 9 it talks about the fact that if a joint array and survey is utilized for negotiations, it shall be admissible in evidence by the Commission in its determination of terms and conditions of employment. Also, the issue of local labor market. That is talked about on page 6, Section 10, looking at line 18 on (b), what is the local labor market? And this gets to the issue of the city of Grand Island case which was a 1996 case involving basically...and I think Mr. Harding may have referred to this, where they have the same folks in Grand Island mowing the parks, using the same equipment, some are private, some are public, and with local labor market, there's no question in response to Senator White's comment earlier. You cannot compare a police officer in the city of Grand Island with anyone else in the city of Grand Island. I mean you're going to compare them to police officers. The whole concept of comparability is comparing same or similar work with workers having same or similar working conditions. May I continue just for a few minutes, Mr. Chair? [LB1040 LB1041 LB1042]

SENATOR LATHROP: Until it turns red. [LB1040 LB1041 LB1042]

LYNN REX: Pardon me? [LB1040 LB1041 LB1042]

SENATOR LATHROP: Until it turns red. [LB1040 LB1041 LB1042]

LYNN REX: Okay. [LB1040 LB1041 LB1042]

SENATOR LATHROP: You're on the yellow. It means you have a minute left. [LB1040

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LB1041 LB1042]

LYNN REX: I'm sorry, I should have my glasses on, I would have known that. (Laughter) I need to keep talking. I need to talk faster. So essentially, we do think that this is an important concept. We think it's important to put the concept of the local labor market in there. I would submit to you whether it is Oshkosh, Nebraska, or Omaha, Nebraska, when you're looking at word processors, your local labor market, you're not attracting folks from Minneapolis-St. Paul or Cincinnati, Ohio, you're talking about people in your local market for those types of positions. So we would suggest that is an important concept. In addition, in terms of comparing same or similar work, you will note that one of the things that is being suggested on page 8, lines 8 through 10, this is the area that has not been in a CIR case before. And that is, if you're going to look at total compensation, look at what's above the prevalent and below the prevalent and that is getting to the cost up to zero whether you consider all of them or not because the concern we've had, and we've discussed this in the fall hearing. The concern is when you have four employers out of a seven city array, for example, and four of those cities provide benefit X, the other three don't, it ought to be divided by seven, not divided by four. And the reason is because the other three are putting those dollars someplace else. And either it is a dollar for dollar value or not. And as I indicated earlier this fall, what's happening is, cities are no longer inclined to negotiate on the back end on tax deferred benefits when employees want them, because now we have learned the rule, which is, you're not going to get a dollar for dollar credit unless you do it in take-home pay. That's about the only place you get a dollar for dollar credit. There are other issues I'd like to raise with you but maybe somebody would be kind enough to ask a question. (Laughter) Or not. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Does anybody have their hand up? (Laughter) Senator Council. (Laughter) [LB1040 LB1041 LB1042]

LYNN REX: Thank you. I guess just very, very quickly and I will make this very quick. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: It was a question by osmosis, Mr. Chairman. (Laughter) [LB1040 LB1041 LB1042]

LYNN REX: And I sensed that. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Calling for a brief answer. [LB1040 LB1041 LB1042]

LYNN REX: I will do my best. Yes, I will do my best. Also on page 8, line 16, this is the economic variables issue. The economic variables test was used in the Omaha firefighter case one and Judge Green referred to it. The concept of economic variables is not a new concept. Sometimes the CIR uses it, sometimes they don't. That's the

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problem. Sometimes they do and sometimes they don't. We would like to have some level of consistency regarding that. So in closing I would just say that we appreciate your willingness to listen to this important legislation. We appreciate your willingness to get the parties together and maybe start a process and a dialogue of deciding what's reasonable, because we do support the concept of comparability. We don't think that it's fair that only certain folks always are the ones that lose their jobs along the way, because that's what's happening. I'd be happy to respond to any other questions. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Thanks, Lynn. And I see no other questions. All right, thank you. [LB1040 LB1041 LB1042]

LYNN REX: Thank you very much. Appreciate your time. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Do we have any other proponents? Okay. And how many people are here in opposition that intend to testify? Okay. I'll just...I want you all to be thinking about not repeating what somebody else has said, if you can, when we get to the opponents. Sir, welcome. [LB1040 LB1041 LB1042]

PATRICK BONNETT: My name is Patrick Bonnett, Omaha, Nebraska, 4979 South 132nd Avenue. I'm a financial advisor, insurance agent, and I'm here today to convey the thoughts and feelings from two different constituencies. First, I'm here authorized to speak on behalf of the Nebraska Taxpayers for Freedom and secondly, I want to speak on behalf of my family. I have a huge family here in Nebraska. We own eight businesses, including...in addition to the farms that we operate. We have operations in Senator White's area, yours Senator Lathrop and others, and multiple insurance agencies, financial advisory firms, catering business, cookie company, dog grooming business, pet hospital. So the thoughts that I wanted to convey and I won't get into the technical things that we have with these three bills. Whatever you decide to do, we wanted to make you understand that we're worried. Of the eight businesses that we operate in the Omaha area, all have seen layoffs except for my own, Encore Financial Services. I'm the only one that's added new employees and they're commissioned based. It's been mentioned that inflation and the cost to do some projects is going up, but historically, inflation as measured by the CPI has been very low over the last 12 years, less than 2 percent. So when you talk about inflation and the cost of completing government programs or construction projects, I think it's fair to point and pay special attention to the cost of labor which has gone up exceedingly high. As a member of the Taxpayers for Freedom, we've obtained and analyzed multiple collective bargaining units and employment contracts. And we were surprised to learn that very few, if any, and it's very rare for any of the comparable cities to also use Omaha as their comparable. In regards to the CIR, there's a lot of just fundamental things that we, as average citizens, don't really understand about it. And we'd like this board to take a look at it, such as the Department of Labor divides Nebraska into seven labor zones, yet

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there's only five commissioners. And Omaha, as Nebraska's industrial base, is totally unrepresented. Just starting there, at the basic organization of the CIR, we call it into question. The rising cost just to live in Nebraska is another thing that we wanted to bring to this board's attention. The high...cost of new taxes, growth in government spending, and things like that, it just doesn't occur in a vacuum. They begin with these labor contracts. And every time taxes go up 1 percent, 2 percent, in OPPD's case, 14 percent, there's a certain constituency that's placed right out of living here. Part of my operation is I originate mortgages, so I'll deny people just because of the debt to income ratios become too high and thus when they come in for a loan, they're just...I call them a renter. I tell them to go rent and not absorb these additional taxes. I can personally tell you that I'm responsible for moving more than \$21 million out of the state, just because when clients come to me they want to know can I retire? That's the first question I get. Can I afford it? And oftentimes the answer is yes, but not here in Nebraska. If it makes economic sense for them to move out of state and capitalize an extra 7, 8 percent just in income taxes alone, that's an easy choice to make and my clients are doing it very readily. Missouri, Arizona are some of the areas that they're going to, and my time is up. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. We appreciate your thoughts. Thanks for coming down. There are questions for you. Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. In part of your first statement I think I heard you say, very few cities use Omaha for comparability. Did you say that? [LB1040 LB1041 LB1042]

PATRICK BONNETT: I looked at a number of cases, just cursory via Tulsa, Oklahoma, Cincinnati, Oklahoma City, and one in Texas. And I couldn't find where any of them use Omaha as one of their comparable cities. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Now I'm trying to be on your side. [LB1040 LB1041 LB1042]

PATRICK BONNETT: I didn't want to get into... [LB1040 LB1041 LB1042]

SENATOR CARLSON: Is that a good thing? Why wouldn't they use Omaha then? [LB1040 LB1041 LB1042]

PATRICK BONNETT: Because of the arc, I didn't want to single out any one collective bargaining unit, Senator, but in particular, Fraternal Order of Police. In a lot of these cities they just don't use Omaha because we're so far, in a way, overcompensating on some of our police items in their contracts. It just doesn't make the use of Omaha's agreement conducive to their system. [LB1040 LB1041 LB1042]

SENATOR CARLSON: So in your opinion, Omaha is not used because some things are

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out of line rather than things are too low? If I'm going to compare myself with somebody, I'd rather compare myself with somebody that's way up here and I'm trying to get there. [LB1040 LB1041 LB1042]

PATRICK BONNETT: Um-hum. I don't know what the reasoning is, but I can tell you that they don't use us. We're using them. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator Council. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: First is a request. Could you spell your last name for the record, please? [LB1040 LB1041 LB1042]

PATRICK BONNETT: B-o-n-n-e-t-t, Bonnett. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Thank you, Mr. Bonnett and I'm going to follow up on Senator Carlson's question. So when you conducted your research, you reviewed what cities, the...each negotiating side presented to whomever their arbitrator is or did you look...you looked at what was ultimately selected as the array? [LB1040 LB1041 LB1042]

PATRICK BONNETT: That's really not my field of study but in order to form an informed...or create an informed opinion from the things that we've been reading in the paper and so forth, we obtained the contracts and started to compare item for item, drop pay for drop pay, sick pay for sick pay, and we wanted to understand before we created our own... [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Forgive me for interrupting. My question was when your statement that none of the cities that Omaha uses as comparables, use Omaha as comparables. My question was, what did your research look at? The comparables that were proposed by the respective bargaining sides or the comparables that were ultimately selected by whatever their arbiter is? [LB1040 LB1041 LB1042]

PATRICK BONNETT: We took a look at their final contracts and the comparable cities that were ultimately used. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay, so... [LB1040 LB1041 LB1042]

PATRICK BONNETT: And it wasn't none, it was seldom. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Pardon? [LB1040 LB1041 LB1042]

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PATRICK BONNETT: It was very few cities. I'm sure there's probably a city out there that has Omaha as a comparable, but four of the contracts that we looked at we couldn't find any but a couple. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay. So you're saying that in the collective bargaining agreement itself, it sets out who their comparables are? [LB1040 LB1041 LB1042]

PATRICK BONNETT: Yes. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: I mean, I'm just saying, I've never seen that. I mean I'm just surprised that they actually set out in their collective bargaining agreement who they can be compared to. [LB1040 LB1041 LB1042]

PATRICK BONNETT: Most contracts show the comparable cities. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: That's news to me. [LB1040 LB1041 LB1042]

PATRICK BONNETT: I can provide copies. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator White has a question for you. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you for coming, Mr. Bonnett. I appreciate that and the businesses you run in the community. They're important to us. As I've been following the debate, among many of the organizations, especially that are pushing a major rehaul of the Commission on Industrial Relations, a lot of them are unhappy with how cases were decided. For example, we heard earlier there's a Supreme Court case that requires private sectors to be compared to public sectors, but they don't always follow it. Those kinds of concerns. And one of the things I thought about that, and I thought, you know, who appointed these folks? And I went back and I looked. And Mr. Burger, who was a presiding commissioner, was appointed in 2000 by now Senator Johanns, reappointed in 2006 by Governor Heineman. Jeffrey Orr was appointed originally by Governor Thone, reappointed by Governor Orr, Governor Nelson, Governor Johanns, and Governor Heineman. William Blake was appointed by Governor Johanns and then reappointed by Governor Heineman. Loren Lindahl was appointed by Governor Johanns. Bernard McGinn was appointed by Governor Heineman. I mean, the concern that I'm getting here is that the complaints have been, not so much about the internal nature of the statute. I mean, when we start talking about them, the proposals will give these gentlemen, if I read them right, the ability to set new taxes or order a community to set taxes or second-guess spending, you know, whether it's business development, which I don't think anybody really is in favor of, I hope. So then you look at who did it

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and it's been all Republican Governors, very conservative gentlemen. So I guess I'm...and maybe you can help explain it to me. I'm at a loss. The law has been the same for 40 years. [LB1040 LB1041 LB1042]

PATRICK BONNETT: I'm not sure where you're going with the Republican, Democrat, or whoever, Senator. Our organization, the NTF, that's who the question is directed to, is 30 percent Democrat, 50 percent Republican, and 20 percent Independent. [LB1040 LB1041 LB1042]

SENATOR WHITE: Well, I know your organization. I've testified a number of times. Sure, and you've had me down there and I've testified. What I guess I'm getting is, I've seen this ground as a political ax, you know, that there's just a bunch of wild spending liberals on the Commission on Industrial Relations and it ain't so. So I'm trying to come to grips with what's the underlying problem? [LB1040 LB1041 LB1042]

PATRICK BONNETT: I think one of the problems we have is that this CIR, regardless of its political makeup, the taxpayers don't see us having standing. It just...it's we...I don't know how to answer your question really. [LB1040 LB1041 LB1042]

SENATOR WHITE: And the ideas have been brought forward and you're a free market guy, I hope, I assume. [LB1040 LB1041 LB1042]

PATRICK BONNETT: Yep, I am. [LB1040 LB1041 LB1042]

SENATOR WHITE: Do you really comfortable with the idea of these gentlemen second-guessing a city on what it's tax level should be? Because that's what this bill is inviting. [LB1040 LB1041 LB1042]

PATRICK BONNETT: What the CIR really is, is basically a triage unit to the Court of Appeals, and that's how we view the CIR. [LB1040 LB1041 LB1042]

SENATOR WHITE: Well, I mean, again, the question that was...and I mean this, I mean, this is a serious deal involving a lot of money. Do you think we ought to give these guys the ability and reasonableness, ability to pay to second-guess tax rates and other spending, not on employees so they can determine what's reasonable? [LB1040 LB1041 LB1042]

PATRICK BONNETT: I don't really see...after reading the bills, I don't see us as granting them new authority to set tax rates. [LB1040 LB1041 LB1042]

SENATOR WHITE: Well, if they say the ability and reasonableness to pay is one of the factors, believe me they're going to look at what the cities could tax because that's where communities get their money. What's their tax rate? [LB1040 LB1041 LB1042]

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PATRICK BONNETT: I think you'll find that the community has little ability to pay more. [LB1040 LB1041 LB1042]

SENATOR WHITE: I agree with you but if you look at our levy limits in Omaha on property tax, for example, we're well below them. And other communities throughout the state are at their limits. [LB1040 LB1041 LB1042]

PATRICK BONNETT: Just because we're below the levy limits doesn't mean the people have any more money to pay. [LB1040 LB1041 LB1042]

SENATOR WHITE: I'm not saying that they do, just the opposite. The point is, those decisions should be made by elected representatives, don't you think? [LB1040 LB1041 LB1042]

PATRICK BONNETT: Yeah, we don't like unelected politically appointed boards of any sort. [LB1040 LB1041 LB1042]

SENATOR WHITE: I appreciate your courtesy, I really do. And, again, thanks for the businesses you run in the community. [LB1040 LB1041 LB1042]

PATRICK BONNETT: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you for your testimony today. [LB1040 LB1041 LB1042]

PATRICK BONNETT: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I think I understood that to be the last proponent. Are there any other proponents? Seeing none, we'll move to opponents. And as we move through the opponents, if you intend to testify, maybe you could move to the front row and we can have you in and out a little more timely. Good afternoon, Mr. Corrigan. [LB1040 LB1041 LB1042]

JOHN CORRIGAN: Good afternoon, members of the committee. My name is John Corrigan, C-o-r-r-i-g-a-n, and I'm an attorney from the law firm of Dowd, Howard and Corrigan in Omaha, and I'm also here on behalf of the Nebraska AFL-CIO. It is wonderful to hear that our friends, who are proponents of these bills, are really here on behalf of the little guy as the AFL-CIO has been on behalf of the little guy for the last 120 years. The fact is that these bills ought not to come out of the committee because they represent a desire to make the process unfair. The process as it stands now is a fair process. The CIR exists to resolve labor disputes and that's what it does. These disputes get resolved through predictability, and ultimately if they're not resolved through predictability by virtue of negotiations, the CIR resolves them through a

mathematical process. And that process is one that these bills seek to change, to change the math. If you change the math, you can change the outcome. For example, the...LB1040 contemplates a minimum number of three array points being placed on the Commission as a requirement. That will become the rule, not the exception. And once you do that, you lose...you rewrite essentially the Commission's decisions which say that they prefer six to eight array points because that gives you statistically significant array. It also...and Ms. Rex testified that she had some concern that this would...there was only one part of the bill that wasn't something that was already in accepted law or previous case law. The fact is, they're telling you only Nebraska...only Lincoln and Omaha can go outside the state. Everybody else has to stay within the state. Now, who does that punish? Well, there's Bellevue, who is sitting there, almost 50,000 people, and there is Grand Island sitting there at almost 50,000 people. In the Grand Island fire case in 2007, we had to go outside the state to get an array of enough cities to have a statistically significant array. The Bellevue...or the Grand Island police case in 19...or in 2002, in that case, the CIR said, and Mr. Harding litigated and successfully convinced the CIR, that Bellevue was so much different because of its proximity to Omaha, because of its impact on working conditions in Bellevue, that Bellevue shouldn't compare to Grand Island and Bellevue was excluded from the array. Who else is Bellevue going to compare to? If they can't compare to Grand Island because of the dissimilarity in working conditions, and they can't go outside the state, there are precious few cities that they can use to compare to. Ultimately, we see what we have concerns with is this is a shifting of the burdens onto the labor, onto employees to disprove factors that the employers would like to assume, the management would like to assume. And such as, you're being told that the Commission doesn't take economic dissimilarities into account in making its decisions. And I can tell you that that's simply not the case. If those economic dissimilarities are proven to have an impact on working conditions, the Commission will take them into account. And we've had those cases. We've seen that process. What really we're talking about here is some effort to rewrite the Lincoln firefighter's case in 1998 from the Nebraska Supreme Court. And many of the issues that the Supreme Court addressed and decided in that case are what appear in LB1040. And in Lincoln, you won't even see Minneapolis in the array if they ever went back to the Commission with the fire department because of the change in working conditions that Lincoln has experienced. The members that I represent, we've stood on those union floors and we've had to sit there and watch people try and make a decision about whether I'm going to accept a contract that might work to see one of my union brothers or sisters laid off. Those are the decisions that they have to make. Not only do we have to decide will we take less than what we might be offered in court but if I don't, am I going to have to watch the guy to the left and to the right of me lose their jobs? And we understand that and that is the process under which we negotiate with the concern for the threat of the Commission. It is predictable. I can tell you it's very predictable in the sense that having litigated, our firm, these two Omaha police and fire cases in the last year, we had a pretty good idea what was going to happen and so did the city. And instead of accepting what happened, now we have the city down here and some other

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actors trying to change the rules because they're not accepting the reality of the results. I'm happy to answer any questions. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thanks, John. Any questions for Mr. Corrigan? Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. So, John, are you saying that labor feels a threat from the CIR? [LB1040 LB1041 LB1042]

JOHN CORRIGAN: Well, labor doesn't get to raise taxes and then hire lawyers with tax money to litigate political positions. They have to do it collectively, and so when you take a bargaining unit, say, Columbus or Hastings, for example, where there's 15 or maybe 20 people, they have to go out and raise the capital. There's a great threat to them being able to do that and they know that, and the employers know that. And we also know that if they can generate the capital in order to litigate the cases, to hire the experts because these are trials based on evidence, and 48-818 requires that, then both sides have something to lose. The unions understand that as well and so it's not a place where we want to go. I think, you know, in the Omaha firefighters, for example, two cases in 40 years. And that's a union that has a lot of resources because they have a lot of people. So, yeah, it is not somewhere where you like to go because it is a mathematical process. There might be one job where somebody is going to get an 8 percent pay increase. There's also another job based on comparability that might see a 14 percent pay deduction. And we saw that exact scenario play out in the Omaha fire case. There's...and there's really nothing you can do about that once you apply the concept of "prevalency" to the job matches. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator Council. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Yes, a quick question, Mr. Corrigan. The issue of the array and selection of the array, I'd be curious to hear your thoughts. LB1040 addresses the issue of joint surveys and joint arrays and as you know having practiced before the CIR that the parties can agree on those arrays during the course of negotiations, they can agree on those surveys during the course of the negotiations, and nevertheless reach impasse at which time it comes to the CIR and it's a brand new ball game. What are your thoughts about utilization of agreed upon arrays? I mean, if the parties have jointly agreed to an array or a survey, the Commission...and I don't think it's beyond the Commission's ability to accept a stipulation as to the array. [LB1040 LB1041 LB1042]

JOHN CORRIGAN: That happens all the time, Senator. You'll see...let's say that you want to come up with eight cities, one side has four, the other side has four, and then there's four that are in question, they're fighting over. That happens all the time and

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because of the predictable nature of the Commission, there are agreements. Now, what I see in this bill being proposed is, there going to admit into evidence an agreed upon array. Now, that doesn't mean the CIR has to follow it as I read the legislation. I don't...and I don't see anybody for that reason agreeing to an array. It's not forcing the parties to agree to an array. It's just if you do, then it has to go into evidence and the Commission may or may not consider it. That doesn't make any sense to me. The point is, right now we have...we do have time lines. If somebody has a labor dispute, if that's not filed within the Commission within the year that the dispute exists, the Commission loses jurisdiction entirely. That's a good time line. It works. It imposes negotiating deadlines on people. Now, that...if you force us to...if you say the parties have to agree upon array, then essentially you're legislating negotiations. It takes away the power of the parties to resolve their own disputes and be comfortable with that, you see a mediation. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Well, I'm not...no, don't get me wrong. I'm not suggesting that parties be forced to agree upon an array, but I'm just saying if the parties have, in fact, agreed upon an array and are willing to have the Commission make its decision based upon that agreed upon array, would you have problems with that? [LB1040 LB1041 LB1042]

JOHN CORRIGAN: Well, if the parties were agreeing upon an array, I certainly have no problems with that. But if that happened, then they wouldn't need the Commission. (Laughter) [LB1040 LB1041 LB1042]

SENATOR COUNCIL: You're generally not going to be in the CIR, right? I mean, you kind of get to my point but I'm just saying, I mean, I'm looking at the bill that's presented and what the underlying assumptions are and the underlying assumptions are that if the parties agree on an array and they present it to the Commission, that the Commission be bound to follow that. And I'm just asking you as an opponent, would you have any problem with that being mandated, for example? [LB1040 LB1041 LB1042]

JOHN CORRIGAN: Well, I personally would because that's like saying to a lay person, we want you to agree on what your damages are before you have your trial, okay? That will be what it is. And then he finds out, okay, that sounds right. I didn't know I was entitled to back pay. I didn't know I was entitled to economic damages. And then a lawyer steps in and says, wait a minute, you can't agree to that, you're entitled to higher damages. And the court says, nope, he agreed to it. What you're...and you see this tactic a lot in negotiations where the employer will come in and say, we're not going to negotiate at all until we get the decision on what that array is. Well, that's not negotiation, that's Boulwarism and it's not necessary. Now, the fact is some people they can do it. It's comfortable. We know what the market is by doing our own research. Well, you can't impose that on a party unless they're represented, because they need to know what their rights are. [LB1040 LB1041 LB1042]

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SENATOR COUNCIL: Okay, because it...just briefly, the point you're making is that if that's imposed that if the parties ever reach an agreement and that person, those parties are bound, the concern you're expressing is that while they may have agreed upon that, they have failed to agree upon a wide range of other outstanding issues and it reduces their leverage or their position in the event they end up having to go to the Commission. And it's your position, they should start from a clean slate. [LB1040 LB1041 LB1042]

JOHN CORRIGAN: Well, they're free to agree on an array. I don't think that the Commission by this legislation would be bound to follow it although they would have to admit it into evidence. I don't know that that's going to make a big difference to them but if you've got a party who has agreed upon an array without knowing all of the factors at play and what may or may not be a reason to exclude an array point beforehand, then they're going to be disadvantaged. And the reason we have a trial is so that the trial process produces the most accurate array. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay, now in all fairness, I mean, these folks aren't engaging in these negotiations without legal counsel. So, I mean, so, you know, the fact of the matter is, is that people have been using threat of CIR, fear of CIR, all of those are based upon opinions that they have received from well-trained and experienced labor counsel on what the likelihoods are, so we're not talking about unrepresented individuals, I mean, in all honesty. [LB1040 LB1041 LB1042]

JOHN CORRIGAN: I'd like to think so and certainly that's true for the major organizations, but we're dealing also with much smaller organizations... [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Some smaller, yes. [LB1040 LB1041 LB1042]

JOHN CORRIGAN: ...and that's not the case. I mean, you know, it's oftentimes, and I'm sure the management lawyers will tell you the same thing, sometimes they bring this to you when it's too late. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: That's all, Mr. Chair. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Senator White has a question for you. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you, Mr. Corrigan for coming. You've heard the questions regarding ability to pay. Do you think that opens up, as an attorney, the issue to be litigated in the Commission on Industrial Relations what the tax structure of a given political subdivision is, what their spending priorities are, what their debt structure is?

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[LB1040 LB1041 LB1042]

JOHN CORRIGAN: It reminds me, Senator White, of the arguments in some of the old constitutional or contracts clause cases where the employer said, I understand I can't break this contract that I have with a private company, but I'm just broke, and I have the police power to administer. And exactly in those cases, that is what has been litigated. So when a public employer says, listen, we're going to just get rid of...putting everybody on vacation, a furlough, an automatic furlough as they did in (inaudible) County last October. And the court says, well, if you're going to do that, you're going to have to prove to me that you can't pay for it. And they lost that case because of their tax levy. It just...it doesn't make any sense when if you really think about what the Legislature was doing in 48-818 and saying, we understand there are cyclical economic times, and let's look at the market. And right now, as we're looking out around the country to see people that we're going to compare to for some of our clients, we're seeing wage freezes and that's coming back in the array. And that's the beauty of 48-818 as it stands now. And that's the beauty of the balance that was struck 40 years ago. Now, I know that a league of cities doesn't like it because of a few cases out at Grand Island, but it's not time to restructure this balance because of a couple of cases that they didn't like, in my opinion.

[LB1040 LB1041 LB1042]

SENATOR WHITE: So we're clear, the proponents if this thing gets on the floor and passes, the cities, in your mind, are squarely looking at exploding the whole area of what's litigate...what you're going to be able to fight about, first in the Commission, then on higher levels, which will include taxes, spending and tax policy and debt structure.

[LB1040 LB1041 LB1042]

JOHN CORRIGAN: Debt structure especially, absolutely. And you know, the cities they'll go to a bonding agency and tell you how great everything is and then turn around to us and the CIR and say, oh, my God, the sky's falling. And it makes it hard for them to take that position. It shouldn't be tried in the Commission. Now, if you want to have a trial like that, I guess that's what we have elections for, in my mind. What is the cities' priorities? What are we trying to accomplish? When it comes to resolving labor disputes, the Commission is a narrow venue and it resolves them. Maybe not in the way everyone likes, but they're resolved and that means a lot to having labor peace. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: I think that's it. [LB1040 LB1041 LB1042]

JOHN CORRIGAN: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you, Mr. Corrigan, for coming down. [LB1040 LB1041

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LB1042]

DALTON TIETJEN: Hello, members of the committee, my name is Dalton Tietjen, T-i-e-t-j-e-n, and I'm a member of the law firm of Tietjen, Simon and Boyle. And for the last nearly 25 years, my law partners and I have been working with public sector employees. We have represented municipal employees from one end of the state to the other. I'm here today representing NAPE/AFSCME Local 61, IBEW Local 1536, and the Lincoln City Employees Association. I think that it's important in considering the testimony regarding these bills and the bills themselves that our current system, as Mr. Harding, I think, pointed out, is provided for, at least the CIR is provided for in the Nebraska Constitution. And the reason for that is it is a strike substitute. Our founding writers of the Constitution decided that employees, public employees should not have the right to strike and that we should instead having continuity of service. Now, I think that nobody is going to argue with that. However, they also thought that it is absolutely essential that if we're going to take this huge tool, it's really the only tool that labor has to try to convince management of their proposals. If you're going to take that away, you have to give them something fair that will guarantee their rights. And I think that we have that at this time. The current system is not perfect. But, overall, I think it works very well. It's reasonable and it's thought out. We have decades of case law to look at. We have conscientious commissioners as Senator White points out that they're not wild-eyed radicals that are going to try to push everything labor's way. They try to do the most fair job that they can under a good system. Now, many of the proponents of this legislation say that the system is very unpredictable and that it's broken. I have to disagree with that. This system is not so wildly unpredictable. There are broad trends that are very consistent. There may be a few bumps along the road here that take into consideration unique circumstances but, overall, we know what to expect if we're going to go to the CIR. And that's why we don't have very many cases that go to the CIR. Both sides do their comparability surveys. They analyze it. They know what's going to happen so they come to a deal. Now, I found it very unfortunate that Councilman Spatz would say that the worst thing that can happen...the worst alternative is that there would be a deal made rather than going to the CIR. I think that shows a misunderstanding at least, if not a total antipathy, towards collective bargaining. Collective bargaining is about making a deal. When you make a deal, you've achieved your goal and both sides are probably going to be somewhat unhappy but that's what it's all about. That's the bottom line. I think that actually what these bills will do is they'll foster huge unpredictability. They'll open extremely large areas that have never been considered by the CIR before so they'll be wide open questions. So what they will be is income guarantees for lawyers and for compensation consultants. And I'm not one to look a gift horse in the mouth but I just don't think it's fair. I don't think it's going to work, for either the cities because they're going to be subject to this...I think there will be a flood of new litigation testing out this reasonability because everybody has a different idea of what reasonability is. And then every time that there's a ruling, there will be an appeal. So it's just going to be more expensive. It's not going to help any of the problems that have

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been identified. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Thank you, Mr. Tietjen. Any questions? I see none. [LB1040 LB1041 LB1042]

DALTON TIETJEN: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: You were very clear. We appreciate it. Good afternoon. [LB1040 LB1041 LB1042]

MARK MCGUIRE: Chairman Lathrop and members of the committee, my name is Mark McGuire, M-a-r-k, McGuire, M-c-G-u-i-r-e. I'm general counsel for and registered lobbyist for the Nebraska State Education Association. It seems as though every speaker that's come up here today to some measure gave their pedigree so I'll do mine. In 30 years since I've been representing NSEA in this area, I know we've tried over 100 wage cases involving our members, teachers in the state of Nebraska. I would sharply disagree with the initial statement made that the problems of the CIR were the absence of predictability. I would say the total opposite is true. There is a high level of predictability in the world of school districts and school teachers or school employees. That predictability has been built. We didn't inherit it. It didn't fall from the sky. We built it a case at a time, being constant to certain principles throughout. Now, we have 250 school districts that bargain collectively. Of that number, somewhere in the range of two to three per year reach impasse that result in tried and decided, what we call a 818 or a wage, 48-818 wage case. So the level of predictability is great. As you pointed out Senator Lathrop not so long ago, that it's...any other situation there's two good lawyers on either side, you can see about what the CIR is going to do, that's what predictability is. You have a pretty good notion of where it is and it's going to be somewhat in between. The jockeying at the early settlement stage primarily is jockeying over who is in the array. There are any number of things that enter into negotiations for teachers. I won't go over all of them but to score a point, the...compared to districts in the array, are all based upon a couple simple little rules. You look at other schools with enrollments of no more than twice as large, half as small. Where do those numbers come from? Well, they come out of the educational directory by the Department of Education. There was a case that established...that was one of the rules. When can you file these? Are we out of time? Are we filing it too soon, too late? There's a case that says you have to have your wage case filed before the end of the school year, the school year being defined as when the kids are still there. That took another case to decide. So of those hundred some cases developing over the years, that's how predictability is established. The predictability is a very, very important piece and that's why it is a true advantage for the school boards, the teachers, the school administrators, the patrons, to have collective bargaining issues resolved in a reasonable manner within a reasonable time and that's what happens and that most everybody settles, 243 out of 245, whatever that ratio is. It must be about 99 percent. I would...I see my orange light is here. In LB1042, that

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is...LB1040 ostensibly doesn't pertain to us, but it's only a floor amendment away from us getting pulled into it. It would be a disaster. It would destroy everything we've built in 40 years. If that's their goal, that would be the problem. LB1041 doesn't address any issue that I've heard spoken about today that matters. Now, LB1042 is the one that's troublesome by inserting the word "reasonable." That sounds nice. I view that bill as being insidious, but brilliant drafting because you put in the word "reasonable". Gee, that sounds nice. Who's against reasonable? Reasonable is the subjective standard of analysis. If you look at 48-818 where you see the word "reasonable" in the green copy, drop down two lines and you'll see the words "comparable to the prevalent." That's the comparability standard. Comparability is objectively determined. Comparability in our world literally comes down to a comparable rate to schools, produces X dollars down to the penny. The reasonableness leads to "ability to pay." Ability to pay is a quagmire and the questions I think here have pretty well flushed that out that it includes the CIR making all sorts of decisions. I have one last comment. I've appeared a lot in front of Education Committee and I always hear there about local control. Well, if LB1042 were law, local control would no longer be the school district of Benkelman or Bellevue or anywhere else. It would be on the fifth floor of the State Office Building because that's where the decisions were being made. Thank you. I would be happy to do any questions. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you. Any questions? I see none. Thanks, Mark. [LB1040 LB1041 LB1042]

MARK McQUIRE: Thanks. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Come on up. [LB1040 LB1041 LB1042]

MIKE McCLELLAN: Good afternoon, Senators. My name is Mike McClellan, spelling is M-c-C-l-e-l-l-a-n. I'm a Sergeant with Douglas County Corrections. I've been an employee there for 18 years and I currently serve on the Fraternal Order of Police, Lodge No. 8, Executive Board, for the past 12 years. I'm here today to speak on behalf of the 304 members of the Fraternal Order of Police and Lodge 8 and Douglas County Department of Corrections employees that are opposed to LB1040, LB1041, and LB1042, that Senator Fulton first read on January 21, 2010. These bills, if passed, would have a devastating effect on union workers in this state. FOP Lodge 8 has always bargained in good faith with our employer, Douglas County, and has made every reasonable effort to come to an agreement when negotiating a contract. We have always abided by the ruling of the Court of Industrial Relations in the past and if we chose to appeal their decision, we knew we always had that option to do so. Just so the Commission is aware, we, FOP Lodge 8, have only been at an impasse twice in 32 years for negotiations that required us to seek assistance from CIR. Senator Fulton's bills under this newly revised repeal of the original Section 48-818, known as Nebraska Municipal Comparability Act, would place the men and women of Douglas County

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Corrections at an inherent disadvantage. The Court of Industrial Relations would have to use the new statutory guidelines limiting its comparison to those labor markets in which population of labor market is not less than half the population of the labor market of the employer involved in an industrial dispute. Douglas County Corrections being the largest county jail in the largest city in the state of Nebraska, doesn't allow us to be compared to any cities larger than us in the state. Showing arrays or surveys would not be feasible because the arrays selection process wouldn't reflect accurately due to the restrictive demographics. Our work is different by scale and nature and because of this, job match analysis would be very difficult. We would need to go outside the local labor market that is now binding us. Prevalent wage and rates and conditions of employment would never truly be fair and equitable under this act. Senator Fulton's bill has no mechanism to determine if a city or a county has the ability to pay. Where is the outline process explaining this? Who will make this decision? It would be fiscally irresponsible for the Commission to entertain these bills without having these basic questions answered. Simply put, Nebraska Municipal Comparability Act is unfair to municipal employees and union workers. I implore you to vote to kill LB1040, LB1041, and LB1042 in committee. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Thank you, Mr. McClellan. Are there any questions? Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. Have you appeared in front of the CIR? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: No, sir, I have not. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. And I'm not asking this as a threatening question. Do you have any fear of the CIR? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: No, sir. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Are they a threat? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: In my experiences I've been with my department, one of the two times that we've appeared before CIR, it was not passed on to me as a threat, but, in fact, an opportunity to be heard. [LB1040 LB1041 LB1042]

SENATOR CARLSON: So the answer is no, they're not a threat to you? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: No, sir. [LB1040 LB1041 LB1042]

SENATOR CARLSON: I don't know if they should be, but your answer would be they're

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not a threat? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: No, sir. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Let me just follow up on that because it seems obvious to me as a lawyer that does some litigation work, but ultimately anybody that decides a dispute is somebody the people are going to be nervous about, right? If somebody wants...has this point of view and another person or an entity has a different point of view, the person that's going to decide that is...everybody wants to know what's going through their mind, right? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: Right. Sure. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Because if you knew what the CIR was going to do precisely, then you would have no reason to go down there. You'd just accept that, if it's offered and if it's not offered, you go down there so you could get it. [LB1040 LB1041 LB1042]

MIKE McCLELLAN: Correct. [LB1040 LB1041 LB1042]

SENATOR LATHROP: So the idea...and we have heard the word threat or fear of the CIR, ultimately anybody that decides a dispute has a certain relationship to the litigants and that is, they're the person that's going to make the decision and it may or may not be a good outcome depending on your point of view. Would that be true? [LB1040 LB1041 LB1042]

MIKE McCLELLAN: Yes, sir. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. No other questions? All right. Thanks for coming down, Mr. McClellan. [LB1040 LB1041 LB1042]

MIKE McCLELLAN: Thank you. [LB1040 LB1041 LB1042]

MIKE MARVIN: (Exhibit 3) Good afternoon, Chairman Lathrop and members of the committee. My name is Mike Marvin, M-a-r-v-i-n. I'm the former executive director of the Nebraska Association of Public Employees and prior to that I was with the Transport Workers Union of America. I've been negotiating public sector contracts in the state of Nebraska for over 30 years. I'm not going to read my whole statement in to you. You have it. There are some things that I wanted to touch on that I've heard here today that I don't think maybe were explained to my satisfaction in a manner that I see them. But other than that, I'll let my statement stand for itself. One of the things that Senator White did bring up that I think should fall into your consideration is the fact that these

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commissioners are appointed and reflect usually the political ideology of who is the Governor. Again, we don't get flaming liberals on this Commission to make these decisions. They are fairly conservative and have been throughout my 30 years in this business here in this state. One of the other things I wanted to talk about was Ms. Rex brought up, and several others brought up, on the prevalent where if four out of six have a benefit, the other two should count as zeros. Well, that works in the opposite way too. If we have three out of six that are in the array, it is not prevalent. And those three, no matter what that benefit or that cost is, are thrown out and the union does not get a chance to put that on in its case. I think that's an important piece to note. If you start doing that you're going to start opening up, as has been said, a lot of litigation as soon as you change these because we do have a history. We do know what to expect. And as part of that, I've been involved in over 24 negotiations. I tried to count them all up this morning. There's 24 and then probably a few others that I had forgotten over the years. Four of them went to the CIR and two of those we settled because both sides were in fear of what the CIR was going to do. When you put your fate in a third party's hands, you don't know what's going to happen. It's better to control your own fate. And I think that works on both sides. So only two of them out of all of those were...did the CIR make a decision in. One of the other things that I wanted to talk about was the prohibitive cost of going to the CIR. Unions do not go there lightly. We have to pay these attorneys that you heard from, their fees, and believe me they don't come cheap. (Laughter) We also have to go out and hire an expert in the personnel field to evaluate and do the things that we need to present to the court. And they don't come cheap either. It is very cost prohibitive for a union to take a case to the CIR. If we're going to do it, we're not doing it lightly. It's not just as a threat or to push people, but it is only because we really believe we do have a case. And I also believe that on the affordability point, it is something that brings banishment to the table and forces them to negotiate in good faith. If that requirement was not there, I'm not sure that they would come to the table always trying to come to an agreement. That's been my experience that they have a fear of that, both sides fear. And that forces them to come to the table and say, okay, well, we can't afford to pay the prevalent wage but maybe we can do this here and make other agreements that bring us to a conclusion. But with that, that's all I have to say. And if you have any questions for me, I'd be more than happy to answer them. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Mike, you just used the term "fear" again, and maybe you gave it some context because people are talking about the fear. When we talk about the fear in a decision maker or in the CIR, it's the fear that the CIR will make a decision that the litigant...that's worse than what the litigant could get by bargaining. [LB1040 LB1041 LB1042]

MIKE MARVIN: True. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Somebody puts an offer on the table and they say, well, we'll

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offer you 4 percent and you say, well, I won't take anything less than 6 and, ultimately, the fear is that you could go and the CIR could give you 3.5 and so you take an offer. But it's the fear that something will happen that's worse than what you could get in negotiations. [LB1040 LB1041 LB1042]

MIKE MARVIN: Yes, yes. [LB1040 LB1041 LB1042]

SENATOR LATHROP: All right. It's not a crazy fear of the people down there or the process. [LB1040 LB1041 LB1042]

MIKE MARVIN: No, it's not a fear of the process but it's just what could come out in the decision. As I said, and everybody that I know that's in this business feels it's better to control your own fate than to put it in a third party's hands. And I think if you start changing this legislation, you're going to see a lot more put into a third party's hands because nobody knows what to expect. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Senator Council. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Just a quick comment. And thank you, Mr. Marvin, and some may view my comment inappropriate, but I don't know how to take the fact that I'm not universally viewed as a flaming liberal. (Laughter) That's all. [LB1040 LB1041 LB1042]

MIKE MARVIN: Sorry, Senator. (Laughter) [LB1040 LB1041 LB1042]

SENATOR LATHROP: Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. And by one of your earlier remarks I just can't get by without asking this question. Do you classify White and Council and Lathrop as cheap attorneys? [LB1040 LB1041 LB1042]

MIKE MARVIN: No. (Laughter) [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Good answer. (Laughter) [LB1040 LB1041 LB1042]

MIKE MARVIN: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: How many more proponents do we have? Or, pardon me, opponents? Okay. And then as I indicated earlier I did ask a commissioner to come here and...not for the purpose of trying to persuade us on policy, but just to talk about the procedures of the CIR and how these bills might touch on the CIR. Welcome. [LB1040 LB1041 LB1042]

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DAVE ENGLER: Thank you. Good afternoon. My name is Dave Engler, I'm the president...and that E-n-g-l-e-r. I'm president of the Nebraska Professional Firefighters Association. I'm not an attorney, but I can tell you from my point of view the Commission of Industrial Relations has been very predictable and, obviously, I don't want to go back to all the testimony that you've heard before but as a union member who does our surveys, it is very predictable. And as such I met with the city of Lincoln the other day and I think we're right on as far as the cities go, so predictability is not really a question there. The proponents are always stuck on this Lincoln and Minneapolis argument that occurred in 1998, haven't brought up any newer arguments. It's been a long time since 1998. But keep in mind, they're not talking about some of the other cities. They're not complaining about some of the other cities in that seven city array. One city...and we looked at this during the court case, one city is not really statistically significant. So the argument about Minneapolis really didn't have a huge impact on the array anyway and the outcome wouldn't have been significant had that been deleted from the array. The focus here really needs to be on cooperative negotiations and not on litigation. And by the way that the law is and by the way the Commission has been formed, I believe it does that. The CIR...to some extent, I would say, that the scales of justice are tipped a little bit in favor of the municipality with the Commission because it is so expensive. And as Mr. Corrigan talked about earlier, the cost to a labor union is significant and so it's not something that you just want to do every day, just we're going to go to the CIR. That's not the case. In fact, in the Lincoln Firefighters case, in June we will have finally paid off all our legal fees as a result of that. So it's very significant. The one thing that I believe is for sure is changes to this will make things very unpredictable and will result in a lot of litigation. And if you decide to change it, I'd like you to wait three years so maybe I can get a law degree and make some of the money that the attorneys will be making out of this. But that will all be not only to the expense of the union member but more so to the taxpayer because we will engage in litigation that was unnecessary to begin with and it will be an attack on the unions. In my opinion, the system works well. It's worked for over 40 years and this change is not warranted and we are opposed to all three of the bills we're talking about today. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Thanks, Dave. Are there any questions? I see none. [LB1040 LB1041 LB1042]

DAVE ENGLER: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thanks for coming down. And we have one more opponent. [LB1040 LB1041 LB1042]

BRYAN HURST: Thank you, committee members. My name is Bryan Hurst. I'm on the board of directors for the Lincoln City Employees Association. My job with the city, I'm a city health inspector. I've been with the union about two years. The reason I'm opposed

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to this bill is, or all three bills as I've read them, is I kind of see this as a back door attempt to balance our city budget on the hard working city employees. It's going to make this harder...it's going to make it more difficult for people in positions like mine that are pretty technical when you have rules that say you have to do comparability with the private sector when there really aren't any private sector jobs that are similar. So I think it's important that we have the array capabilities that we have now under the current law. And basically, you know, I want to echo what our attorney has said, Dalton Tietjen...about the importance of the current law that we have in protecting our workers' rights and I'd just like to say I hope you decide to kill this bill and keep the law the way it is. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Very good. Any questions? I see none. Thanks for coming down today. [LB1040 LB1041 LB1042]

BRYAN HURST: Sure. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Were you here to testify? [LB1040 LB1041 LB1042]

BRYAN HURST: Neutral. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Oh, in a neutral capacity. Very good. That will do it for the opponents, apparently, and I did ask the Commissioner to come. I'm going to invite him to come up, and I want to make two things clear. One is that he's here at my invitation or at my request, and second, that it's not to talk about the policy of these bills but to talk about the procedure and what these bills might do to the process and, of course, to answer questions that the committee members may have. Welcome. [LB1040 LB1041 LB1042]

PETE BURGER: Thank you. And we understand our role is not to tell you how to do policy. I really have nothing to say about LB1041. It just expands, you know, who's permissible to be considered to be compared against. It might cause some additional cases to be filed, but we can deal with that if you pass LB1041. It's not going to cause havoc with us at all. With LB1040, I was a little different than...my analysis is a little different than Mr. Corrigan's. I thought it was to basically overrule. With the Grand Island firefighter case in 2007 where the concept of proximity ran directly into the requirement of same or similar work skills and working conditions and the decision was made that, you know, the statutory requirement of same or similar work skill and working conditions trump proximity and we ignored a proximately close community in the Grand Island case. That's what I believe this thing, this LB1040 does is elevate proximity and attempt to make it more important and a more important criteria that we must look at. We have no position whether that's right, wrong, or indifferent. I did see a couple of technical problems that I'd like to alert you to in LB1040. One of them is, when Mr. Harding testified about the clause that said we were to use zeros in the second half of the

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calculation, it's on page 8, Section (b) he said that said that. I'm glad he said that to me because when I looked at that I said I have no idea what this means. It looks like to me a mathematical tautology. It says in considering total compensation, the Commission shall consider wages and benefits both...and below prevalent level. So prevalent is defined as the midpoint. The midpoint is the average of the mean in the median. By nature, you had to have considered benefits above and below. So I'm just saying, if you're going to tell us to use zeros, just say it and say it very expressly so because I don't think this does. The other one was in the MSA. It may have been a...yeah, I don't know what, but when you'd look at the MSA language about who can be in an array. It says that basically if you're in an MSA, you can be compared to anybody and...but if you're not, then you can't be compared to anybody who's not only in an array but adjacent...I mean, in an MSA but adjacent to an MSA and that comes up with some quirky results. Fremont could use Columbus as a comparator in a case involving Fremont. Columbus could not use Fremont as a comparator in a case involving Columbus. Southeast Nebraska creates a checkerboard that's a mess. Beatrice is not in, but is adjacent. And the communities that common sense would suggest to us are the best comparators would all be blocked. Plattsmouth is next to the Omaha MSA. Nebraska City, Otoe County, is next to the Lincoln MSA. Saline County, Crete, is next to the Lincoln MSA. Seward is in the Lincoln MSA. York is next to the Lincoln MSA. That needs to have some technical challenges or you have a situation where everybody that you'd normally think Beatrice ought to be compared to, is off the table and they're being compared to McCook and Holdrege and Ogallala, which I don't think is consistent with the idea that proximity is what we wish to elevate in LB1040. Those are my only comments about LB1040. LB1042, I don't want those powers. It is a Pandora's box. The clause that... [LB1040 LB1041 LB1042]

SENATOR LATHROP: What powers are you talking about? Maybe you can be more specific. [LB1040 LB1041 LB1042]

PETE BURGER: Okay. I think that the language that the councilman from Lincoln said was not ability to pay is ability to pay in the second paragraph and I have no idea how to make comparisons of ability to pay. We receive cases that are small units such as the police department of the city of Omaha. We don't get the city of Omaha's employees. So I have no idea even what we're supposed to look at. The entire city budget? I don't know what we're supposed to do with whatever findings we might make. I mean, we can go to other states that had considered these issues and try and see how they do it, but as was noted before we're unique in how we decide...in having wage cases and deciding them in a judicial form, you know, without sending people out to interest arbiters. I have no ideas, as I stated today, how I would implement, you know, LB1042. And reasonable is an invitation to being arbitrary. Right now we're kind of a bunch of nerds who just crank the math after we figure out who's similar and there isn't any discretion to do really anything. It's, you either have a prevalent benefit or you don't. And if you do, you do the math. And we're quite willing to do the math however this body

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thinks we ought to do that math on those benefits. But we don't decide that...you know, the fire department has done a great job and they ought to probably get a little more than what's comparable and we don't decide, well, yeah, the city council is unhappy with having to pay these guys so we'll pay them a little less than is comparable. I don't want to have that responsibility. If you give us that responsibility, it's kind of like, God's sake, let's spell some stuff out. Tell us what you mean by reasonable. Tell us what you want us to do in terms of comparing ability to pay. This is a very broad statute that ought to give lots of people concerns and I simply am scared of...I don't know how to interpret it. I don't know how to implement it, so. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. You know what I didn't do is ask you to put your name on the record. [LB1040 LB1041 LB1042]

PETE BURGER: My name is Pete Burger, B-u-r-g-e-r. My address is 71214 Road 385, McCook, Nebraska. [LB1040 LB1041 LB1042]

SENATOR LATHROP: And tell us your position with the Commission. [LB1040 LB1041 LB1042]

PETE BURGER: I'm one of the commissioners. I'm currently the presiding officer. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. Very good. And now we'll see...Senator Council has a question for you. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Thank you. Thank you, Judge Burger. Good to see you. [LB1040 LB1041 LB1042]

PETE BURGER: Thank you. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: I don't know how to feel today. I'm not a flaming liberal. I was a math nerd. (Laughter) I just don't know how to feel about all of this. And I just have a couple of questions, and you kind of alluded to it. I mean, LB1042 essentially politicizes this process, doesn't it? I mean, it makes...it would force the commissioners to, you know, really get in to the actual politics of city financial operations. [LB1040 LB1041 LB1042]

PETE BURGER: I have two concerns. One of the them is, yes, I don't want to be a super city council, I don't want to attempt to be second-guessing the Omaha City Council on the priorities they've set on what's most important for our resources whether it's utility infrastructure or the police department or the fire department. I don't...it's none of my business. And I really don't want that. The other is in terms of politicizing. If reasonable is not defined and the Commission is given broad authority to do what it

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wishes and, you know, okay, comparable is nice but we're going to do something else, I could see where the policy debate over labor management issues in the public sector begins to drift away from this room and drift into the Governor's Office where appointments of who the commissioners are, become very important. Where they really aren't that important today when, you know, we're just cranking the math, who it is isn't all that important. But if you give us broad unfettered discretion, I could see where then who gets on the Commission is now a political football and policy changes aren't made by debate on the floor of the Legislature, but they're made by replacing people who are more friendly to one side or the other. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Okay. Well, that certainly explains my appointment. (Laughter) Let's talk about predictability or lack thereof. I mean, it was my experience and I hope that you confirm that in terms of making a decision or decisions with regard to prevalence and comparability, at least in my tenure on the Commission, I looked at the previous decisions of the Commission and looked at any appeals taken therefrom from...in establishing the guidelines for reviewing a particular case. Is that not how you and the rest of the current Commission function? [LB1040 LB1041 LB1042]

PETE BURGER: I hope it is and I believe it is. As was alluded to earlier, the Commission originally when it was, you know, in its infancy was formed kind of to mirror the National Labor Relations Board in how it operates. And they have reported decisions which are binding on future cases and so do we. It's a strange thing in that we act over here, we're not a court but we act like a trial court over here in hearing cases but it's kind of like an appellate court because our decisions in, you know, 2002, tell us that we have to be consistent and follow that in 2010. Occasionally, what you get the complaint about inconsistency is like the, you know, the Grand Island firefighter case where two competing concepts that are ingrained in the Commission's, you know, jurisprudence, run up against each other. And we have to decide and they're inconsistent. You know, we got a close city but it doesn't meet the works skills and working conditions and so we didn't include a close city, Hastings, in the array with Grand Island, but it was because we've decided that the similarity of the work skill and working conditions was more important than just being down the road 30 miles. And, you know, but that is characterized as inconsistent. It was not arbitrary. It wasn't like we just decided, let's ignore it here and kick that out because it would be convenient. And so I believe we do try to be consistent and the testimony that was given about predictability is because we're transparent and we try to be consistent and because of that there is predictability. And so there are a great many settlements as compared to cases that are actually tried. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: And the last question. I have a fairly vivid recollection of one of the last cases while I was still a member of the Commission involved a bargaining unit. It was really technical, city-civilian bargaining unit, and these folks were involved in some really technical, and we had no public employee kind of comparables. And we

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looked at private industry. [LB1040 LB1041 LB1042]

PETE BURGER: Yeah, I don't remember that specific one but it certainly doesn't bother me to be mandated to say, you've got to look at private industry where it's appropriate. That's a policy decision and I have no, you know...although I had some technical concerns, I have no concerns whatsoever if that's what you decide to do. We'll follow it. We can do it. That's reserved for your decision, not mine. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: But the point I'm making is, there's nothing that precludes the Commission under... [LB1040 LB1041 LB1042]

PETE BURGER: Oh, no, we just haven't because the majority... [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Because we've had...I mean, generally you have comparables within the public sector. [LB1040 LB1041 LB1042]

PETE BURGER: Yes. Yes, and... [LB1040 LB1041 LB1042]

SENATOR COUNCIL: But there's nothing that prevents it if... [LB1040 LB1041 LB1042]

PETE BURGER: No, and basically the...you know, but as was alluded to, there are certain jobs that simply can't be. You can't compare a policeman to a security guard at Westroads. They're not the same. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Right. Correct. Thank you, Judge Burger. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Any other questions? Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you, Senator Lathrop. Judge Burger, in this hearing today, and you're hearing from somebody that doesn't have much expertise whatever in this whole area, but we have all the proponents of the bill in a sense are expressing concern with the performance, either the performance or the procedure of the CIR. Then you have labor that are really all saying, it's fine, don't mess with it. It would be kind of nice if there was a little bit of mixture in here but that's not what we have. So my question to you is, what do you feel like the Commission does very, very well and what do you feel...or what's the biggest challenge for the Commission? [LB1040 LB1041 LB1042]

PETE BURGER: What we do well, I think, is to act consistently and act without ideologic concerns that we do not have people who push one way or the other on what should be

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the result based upon political ideas. We are all appointed as judges, that title got took away, but we still think of ourselves in that way, act in that way, avoid ex parte conduct with counsel on pending cases, and try to decide them on the facts and the law so that they are predictable. We just simply try to get it right. As far as the problems, I think the perception is what I would describe the, you know, the idea that we are a threat to the city councils. And, you know, it's little things that, I mean, really do not have huge economic impact, like one case where we just decided Hastings wasn't appropriate, that's a cause celebre and has, you know, be the troops have rallied behind, we have to change that. The idea where we...they don't like the two-part test where once we decided that giving a sheriff's deputy a uniform allowance is prevalent, that we're only going to use to...for purposes of calculating it, the ones that actually do and not count the ones who don't. It probably has very little impact and I don't think I heard any of the proponents even say, oh, you can't do that, it would be a terrible thing. I mean it's just, it's a mathematical methodology. But as alluded to, I think there's two things here. One is, I think there's dissimilar bargaining power between...in negotiations between the unions and the cities. The cities can just say that's it, I'm not going to pay any more, and we're the safety valve. So, you know, we're probably looked on more kindly by the labor representatives because we are the way out of impasse and they can't strike, and they can't do anything else about it, they can come to us. From the perspective of the city, they've said that's all I'm going to pay, that's all I can afford to pay. We are an irritation. We are a source of uncertainty. They can't really win. They can only, you know, spend a bunch of money on consultants and attorneys and such. So I would say it's not what we're doing, but where the parties come from that causes one side to think we're doing things just fine and the other side to think that we're bad and we're a threat and somehow we are run amuck because we represent a different thing to each of those bodies. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: That was a great explanation. Senator White. [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you for coming, Judge. [LB1040 LB1041 LB1042]

PETE BURGER: Thank you. [LB1040 LB1041 LB1042]

SENATOR WHITE: I, by the way, fought to keep the title, Judge. (Laughter) And for exactly the reason you said, which is that the roles you play you should be reminded of that old saying, you call a judge "your honor" to remind him that he has some. (Laughter) So I did want to point out and maybe you've heard this or not, that Senator Carlson hears one side of it but I have friends in labor, they tell me one of the horrible things is the cost. And there's so much they'd like to do whether it's organizing new bargaining units or taking stuff up, but the cost of litigation in the Commission on

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Industrial Relations is just prohibitive. Have you also heard complaints, you know, sometimes about availability of remedies? [LB1040 LB1041 LB1042]

PETE BURGER: I have not heard so much complaints but I've heard testimony like we heard today that we don't lightly go...consultants are expensive, lawyers are expensive. We have...I mean there's a lot of preparation. I tried the Omaha firefighters' case and there was over 400 exhibits. You know, that took hours of work, consultants and lawyers to prepare that and familiarize themselves with that and the opponent side, so it is not a cheap process. I have no idea. If you're getting to...do you have any ideas of how we can make it cheaper? Not unless probably we abandon the judicial model entirely and went to sending them out to interest arbitration and informal process, and you're stuck with what that is, and there's no appeal to the Court of Appeals and that's it. Go get it. That's about the only way you could make it cheaper, just totally abandon the idea of the judicial model for deciding these cases. [LB1040 LB1041 LB1042]

SENATOR WHITE: And just so some of the folks on the other side do get it, do you see any possibility that opening up the idea of what a city can pay, how much they can tax, or how they should structure their debt, and where they should spend their money will make it anything other than enormously more expensive? [LB1040 LB1041 LB1042]

PETE BURGER: Oh, no, we will spend a great deal of time on issues that we never did before, expanding the lengths of trials, expanding probably into a different class of consultants than are normally hired now. You know, it could double the cost of a case if we have to take up those issues. [LB1040 LB1041 LB1042]

SENATOR WHITE: Not to mention putting you in a position of being a city councilman. [LB1040 LB1041 LB1042]

PETE BURGER: Yeah, which again, I really don't request the...the...(laughter). [LB1040 LB1041 LB1042]

SENATOR WHITE: You didn't sign up for that tour of duty? [LB1040 LB1041 LB1042]

PETE BURGER: The promotion would be unrequested. (Laughter) [LB1040 LB1041 LB1042]

SENATOR WHITE: Thank you, Judge. [LB1040 LB1041 LB1042]

SENATOR LATHROP: From nerd to God. (Laughter) Are there any other questions? Senator Carlson. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Senator Lathrop. Just to clarify what I think Senator White asked you, that's in regard to LB1042. [LB1040 LB1041 LB1042]

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PETE BURGER: LB1042 is what I understood him to be talking about, yes. [LB1040 LB1041 LB1042]

SENATOR WHITE: That's the ability to pay a portion of this. [LB1040 LB1041 LB1042]

SENATOR CARLSON: Okay. Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Okay. I see no other questions. You have my appreciation for the education you gave us today and we appreciate the court's opinions. [LB1040 LB1041 LB1042]

PETE BURGER: Thank you. Glad to do it. [LB1040 LB1041 LB1042]

RICK HOPPE: (Exhibit 4) Chairman Lathrop, members of the committee, good afternoon. I'm Rick Hoppe, I'm the mayor's chief of staff for Mayor Chris Beutler of Lincoln. I will be brief as I have a raging case of bronchitis. In fact, if one of you could find a pharmaceutical lobbyist I wouldn't testify at all. With that being said, the last three years the city of Lincoln has cut nearly 140 full-time equivalent employees, which is about 10 percent of our nonpublic safety work force. Our last three budgets in terms of what changes percentagewise have been, have been a decrease of .06 percent this year, an increase of 2.2 percent last year, and a first year increase of 1.5 percent. We have two primary revenue sources, property tax and sales tax make up about 70 percent of our revenues. In the 1990s sales taxes were increasing enough that we could afford to pay the increases of the costs of providing services. That is no longer the case as you've heard from other testimony, our revenues have consistently fallen. For the first time last year our valuation base actually shrank in the city of Lincoln. We have worked very closely with the city labor unions and engage in a cooperative relationship. Those relationships, we felt, have been successful. We feel like we've negotiated most of the agreements that have been under comparability. Unfortunately, that still isn't keeping pace with our current circumstances as our revenues aren't allowing us to grow at that rate. Now, I think the Beutler administration, particularly Mayor Beutler himself, would tell you that we're proud to call ourselves friends of labor. We really want to work cooperatively, but what's been going on now has not been very friendly to labor. Labor families have been hurt by the cuts we've made. Working families in the community have been hurt by the services that we've had to reduce in the situation. We are caught in the middle of a situation where our revenue base is not growing but our costs continue to do so. As we discussed in our letter to Chairman Lathrop of October 23, which has been passed out to you, we believe that attempts to better establish the rule of precedent and ensure a smoother negotiating process can be mutually beneficial. We remain in support of those provisions as outlined in the letter. Many of them are embedded in LB1040, although we do believe they could use some further refinement. With respect to the rest of LB1040, we are neutral in the remaining provisions since we

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are not sufficiently knowledgeable on their impact to give a definitive opinion. What we do want to convey today is that we sincerely believe the cooperation is the missing ingredient to the annual debate in front of this body about what should happen with the CIR. We do not want to polarize our relationship with the city unions to any degree because we feel, again, that cooperation has been the basis of our success in negotiating agreements. We believe the city unions have the same goal in mind as we do, a more successful community and they're willing to work cooperatively to do that. We're hoping that that example will spill over into some sort of atmosphere of mutual respect and, perhaps, greater efforts in the future to work together on changes on the CIR that could lead to benefit for everyone. The city of Lincoln would like to be part of a group of stakeholders that includes representation from this committee, from organized labor, and from municipalities that would examine the CIR, look at strengths and weaknesses, and see if we can't figure out how to meet mutual needs of all the groups and improve the system. We must not be afraid to talk about the needs of our futures and we need to do so in a manner that does not polarize the situation to a great degree. The future success of the city of Lincoln and the other municipalities depends on it and we'd stand ready to engage in any dialogue this committee feels would be productive. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you, Mr. Hoppe. Are there any questions? I see none. Thank you for your testimony today. We appreciate it. [LB1040 LB1041 LB1042]

RICK HOPPE: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Anyone else here in a neutral capacity? Looks like we have two more testifiers. Three. [LB1040 LB1041 LB1042]

JOHN BONAIUTO: Chairman Lathrop and members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of Nebraska Association of School Boards. I'll start my testimony and say that as far as school boards, we really don't have a problem with the CIR or the judges on the CIR. The predictability issue has been something that we've worked with and boards understand. However, the very issue of predictability may be...is our biggest economic concern. School boards have two sources of revenue. To fund salaries, it's property taxes and state aid. When the CIR was put into place, school boards controlled their tax levy and that changed in the late '90s. We sat here a dozen years ago before the Revenue Committee and dealt with those issues, and state aid is not predictable. And many of you...well, I would say all of you sitting right here can remember last year when we talked...had some painful discussions about state aid on the floor of the Legislature and when new money was going into the formula, as the formula was directing the money, about 80 percent of it went to 26 school districts. Not saying that those districts didn't deserve that allocation, but there are another 220 districts and for those districts that are at the top of their levy, and if their state aid is going down, they need to deal with this process. And as I look ahead, I think

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discussions about how we move ahead with the scenario that would have us facing a cliff effect when the federal funds go away in the next year of somewhere between \$250 million and \$280 million, I think every district is going to be at the maximum for their dollar five levy and it won't take them long to get there. And then we're going to be talking about state aid. And so I think without question my message here is, we're working with this process, but if a district looks at their array, they can't remain static. If people are moving up, somebody's moving down and so for those districts that will be able to fund what is needed to increase salaries, I don't know what you do with the districts that have no levy and are losing state aid. And you can only lay off so many people. I mean, if it comes to laying off people to maintain viable classrooms and accreditation and those types of things, we've got a scenario here that I think if there's a way to have discussions and talk about solutions and not do it in this context necessarily, but prior to the crisis or the difficulty, that would be the preference. So that is really my message is we're looking to the future and what's on the horizon and we know that it's going to be more and more difficult to deal with the increases. [LB1040 LB1041 LB1042]

SENATOR LATHROP: It sounds like a talk you could give to the Education Committee, the Appropriations Committee... [LB1040 LB1041 LB1042]

JOHN BONAIUTO: Absolutely. [LB1040 LB1041 LB1042]

SENATOR LATHROP: ...and you just brought it into the Business and Labor Committee. (Laughter) [LB1040 LB1041 LB1042]

JOHN BONAIUTO: Well, and I thought, you know, I needed to practice somewhere. (Laughter) And this was a good committee to start. [LB1040 LB1041 LB1042]

SENATOR LATHROP: That's a problem with being a one-day committee, I guess. [LB1040 LB1041 LB1042]

JOHN BONAIUTO: You just look like a friendly group to visit with, and... (Laughter) [LB1040 LB1041 LB1042]

SENATOR LATHROP: Great. Senator Wallman has a question or a point to make. [LB1040 LB1041 LB1042]

SENATOR WALLMAN: And, John, welcome here. [LB1040 LB1041 LB1042]

JOHN BONAIUTO: Thank you. [LB1040 LB1041 LB1042]

SENATOR WALLMAN: As you've been a welcome adviser to us in the past and the School Board Association, and as they talked about consolidation...you know when I

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was a kid we had a lot more schools and we had one superintendent per county basically. Lancaster County had Mr. Melichar. I don't know if you remember him and we had lots of rural districts. [LB1040 LB1041 LB1042]

JOHN BONAIUTO: Yes. And Senator Dierks this year in Education did introduce a unification bill and has prioritized that, I believe. And that has been moving through the process and so I think people see that there are some things that need to be done locally to deal with what we're going to be facing and we're going to need all the help we can. But this process drives everything. We understand the process and it...but boards have less flexibility than they've ever had before because of the levy being set and state aid being as unpredictable as it is. [LB1040 LB1041 LB1042]

SENATOR WALLMAN: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you for your testimony. [LB1040 LB1041 LB1042]

JOHN BONAIUTO: Thank you. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Good afternoon. [LB1040 LB1041 LB1042]

JOHN McCOLLISTER: (Exhibit 5) Good afternoon, Senator Lathrop and Senators (inaudible). I welcome your attention and the hour is late so I will not go long. My name is John S. McCollister, M-c-C-o-l-l-i-s-t-e-r. I'm the executive director of the Platte Institute in Omaha, Nebraska. And we are a nonpartisan, nonprofit think tank, state think tank, as I say located in Omaha. I'm also aware of the CIR. I am aware of the CIR through my service on the Metropolitan Utilities Board of Directors for 30 years. We've got ample opportunity to deal with the CIR and dealt with many of the kinds of problems that you're hearing about today. We were aware of the problems with the CIR on the Platte Institute. And to that end we hired a scholar, a John Heieck, and he wrote two papers for us, one that dealt with total elimination of the CIR, and the second paper wrote...is the paper that you just received, which talked about some of the deficiencies he found with the CIR. And he felt that the CIR statute should be amended to require the city consider city's ability to pay before setting salaries. You've heard ample discussion about that this afternoon. Secondly, the CIR should be amended to require that the CIR consider Nebraska cities when setting new city employee salaries. And finally, the CIR statute should be amended to provide meaning, legislative oversight, and appellate review of all CIR salary decisions. And so those were John Heieck's conclusions. We welcome the fact that discussion is starting on this. There's ample evidence that we do need some legislative relief and I welcome and enjoyed listening to the testimony of the last couple of speakers where they also indicated that there was a need for some legislative relief. So with that, I'll take any questions. [LB1040 LB1041 LB1042]

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SENATOR LATHROP: Any questions for Mr. McCollister? I see none. Thank you for your patience today and your testimony. [LB1040 LB1041 LB1042]

JOHN McCoLLISTER: Thanks, Senators. [LB1040 LB1041 LB1042]

JON CAMP: Well, good afternoon, committee, my name is Jon Camp. And that's spelled J-o-n for Jon, C-a-m-p for Camp. I'm appearing here individually, but I also have been on the Lincoln City Council for 11 years and I'm an attorney by background and a native Lincolnite. I think the message I'd like to share with you, and I am appearing in a neutral position, and I've thoroughly enjoyed the testimony that you've heard today. And I hope when your two colleagues that had to step out that you'll share some of what I'm going to say. But the bottom line is, the system is fractured and I cannot emphasize that enough. It's not broken but it's fractured. And I think you're in a very good position right now to go forward with this legislation. It's not exactly right, but to get the dialogue going so that from a standpoint of municipalities, school boards, the management side, and the labor side, we can fine tune. And a good example is...and I appreciated Judge Burger's testimony. I thought it was excellent and also Senator Council's comments with her experience on the Commission of Industrial Relations. But, you know, there is a mathematical formula they're following but they're following an array set up and a set of rules whereby that Pythagorean theorem or whatever, needs to be fine tuned. And one good example is the way it relates to Nebraska. At the outset I think Senator Fulton mentioned the editorial from the Lincoln Journal about how a municipal employee earns on the average \$10,000 more than a private sector employee. It's common knowledge that in Nebraska the government benefits are substantially higher than the private sector. And comparability and the rules by which the CIR provides its guidance and so forth, go beyond those borders, go into other areas. Now if you look at our economy today, we're also seeing on a national scale some real problems evolving. It wasn't but a few years ago that the city of Pittsburgh literally went bankrupt and the state had to come in and unfortunately, those police, those firefighters suffered 30 to 35 percent wage reductions and the whole city suffered and it was a disaster. Nebraska and the city of Lincoln are in pretty good shape. Omaha has a few more challenges with its labor union contracts and underfunding and so forth. But I think you are at the opportune time to proceed and let's see if you can get to the floor of the Legislature these measures and then get a good dialogue going so that we can fine tune and correct. And that's all that we really need to do. And that way it works hand in hand with the labor unions and with the cities so that we don't hit a brick wall where we have financial problems. We are, as Mr. Hoppe, the chief of staff, or Mayor Beutler mentioned, we've had some real challenges in Lincoln. Over my 11 years, it's been very, very challenging as we've seen diminishing revenues. We're facing some huge unfunding in our police and firefighters' pension and there are just a host of factors there, that I don't want to see municipal employees laid off. That's the last thing because that affects families, that affects children, and that affects the school district and it's a very huge ripple effect. So with that in mind, I'd like to see you continue the dialogue on an active measure, on an active

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standpoint. And you have that within your power as the Business and Labor Committee. I'd like to also mention a couple other key concepts, that the current system has what I call a ratcheting effect. By looking at these arrays and other areas, it tends to ratchet up the compensation levels, but they're not related back to what the economics are in the state of Nebraska and we need to fine tune to get it more on that basis. The definitions of jobs and so forth. I mean the Grand Island-Hastings situation, as Judge Burger addressed it, addressed, was a real difficult one and I can't necessarily dispute the way the CIR came out on that. But it was one that kind of doesn't make a lot of sense and if we could put some statutory relief there to make it more common sense and result, that will help Nebraska and the various jurisdictions. I think perhaps the last thing I'd like to say and then I'll be glad to entertain any questions you have and I appreciate the privilege of being apparently your last speaker, but I'd like to see you make an error of co-mission and proceed with what may need to be some adjusted language here in these three measures, but make an error of co-mission rather than an error of omission and let us continue on the road to a brick wall. [LB1040 LB1041 LB1042]

SENATOR LATHROP: Thank you, Councilman. Are there any questions? I see none. Thank you for your testimony. [LB1040 LB1041 LB1042]

JON CAMP: Thank you very much for your time. [LB1040 LB1041 LB1042]

SENATOR LATHROP: And I think that's it on the testimony which will bring us to Senator Fulton. Had a great discussion today. [LB1040 LB1041 LB1042]

SENATOR FULTON: Indeed. Thank you, Mr. Chairman. Briefly, the standard of reason is something I've heard talked about and I want to point out that this is not without precedent in making determinations between labor and management for public employment. As I understand it, and I went and looked it up, in matters...and just to be accurate, matters that involve school districts, I think community colleges also, and education service, yes, use community colleges. If it's agreeable to both parties, the CIR can assign a special master who in 48-811.02(4) gets to utilize and choose the most reasonable final offer. So it's not without precedent and I didn't know that before we came with LB1042, but in our research we found that the standard of reason is not without precedent. So that could be a way for it, I could suggest for the committee. Another is with respect to the ability to pay. We purposefully chose language that didn't utilize ability to pay. As I understand it, the term ability to pay came in a decision from 1978, at least that's where I think I saw it first. We have...ostensibly there are two parties that come before the CIR. If the CIR is involved it's because there wasn't a decision that could be found or an agreement that could be found. So the ability to set taxes still would reside with one of those parties that brings it forward and that's the elected official. So I...while indeed that's something we should consider, it...the mechanism, it seems, disallows one who is unelected to be making tax decisions. And lastly, just an observation. This word fear kept being used over and over and over. It

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seems to me that if there is fear, it would be due to unpredictability, and if we have a predictable situation, then it would seem ostensibly that one wouldn't have fear. That both sides have some element of fear suggests there is unpredictability. And indeed that's one of the reasons why I brought this forward because as many of the proponents have said, it seems to be an unpredictable process. And I recognize that's in dispute. So if it pleases the committee, I am willing to work on a solution to this. If not a solution in the near term, at least to have some discussions, part of the reason I brought these bills forward. I share that with you individually. And with that, I appreciate your time and...etcetera. [LB1040 LB1041 LB1042]

SENATOR LATHROP: (Exhibits 6-9) Thank you. It has been a good discussion. I appreciate the testimony of those that have come here today, commissioner for showing up. I do have a couple of other things to indicate for the record. We have a letter from John Joseph Heieck II, not dated, but this letter will be offered as a proponent as well for the record. A letter from the Omaha Chamber of Commerce dated today, February 22, 2010, from David Brown, as a proponent. Also a letter from Coby Mach, President and CEO of LIBA, offered in support, as well as a letter from Ms. Nancy Russell, dated today's date, and offered as a proponent. And those will be entered into the record and provided in support of these three bills and that will conclude our hearing on LB1040, LB1041, and LB1042. Thank you. [LB1040 LB1041 LB1042]

SENATOR COUNCIL: Do you want to proceed? [LB995]

SENATOR LATHROP: Yes. This will be very brief. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm here to offer LB995. LB995 is essentially a shell bill. It was offered so that in the event we could bring the parties, who you've just heard from, together to arrive at some consensus on changes to be made to the CIR, that we would incorporate them and amend them into LB995 and take it to the floor with a solution. I don't know if that's going to happen this year, but I think we've had a great discussion on Senator Fulton's bills. Every time we talk about the CIR, this committee learns more and more about the subject matter. But in the event we are able to come to some consensus on change, then we would make an amendment to LB995 and move it to the floor. [LB995]

SENATOR COUNCIL: Any questions of Senator Lathrop? Senator Carlson. [LB995]

SENATOR CARLSON: Thank you, Senator Council. If there were a bill that came out of this, there isn't any...I lost my terminology for...(laugh)... [LB995]

SENATOR MCGILL: Priority? [LB995]

SENATOR CARLSON: Priority. Thank you. Priority. [LB995]

SENATOR LATHROP: I think that's right. And, of course, the bill was offered early on in

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the session so it was my hope...and I have talked to both sides and said...I've encouraged both sides to visit and say, are there things that labor feels like they would like to see changed? There are clearly things that you'd like to...we've heard today that the employers would like to see changed, and we are beginning that dialogue. But it's not brought us to any kind of a conclusion or agreement as to changes or a give-and-take that might take place that we would put into the bill. [LB995]

SENATOR CARLSON: And as far as you know, Senator Fulton wouldn't have a priority on any of the three that he brought? [LB995]

SENATOR LATHROP: No. No, he does not...he has not prioritized nor has the Speaker or the committee prioritized LB1040, LB1041, or LB1042. [LB995]

SENATOR CARLSON: Well, I think what would be an injustice, because this was a pretty in-depth discussion. If we don't spend the time during this session to come up with something, I certainly think in the interim that should be a project, and then if something is introduced in January, it's got two years to be discussed. [LB995]

SENATOR LATHROP: That's true. That's true. And it's my hope that if there is something that can be a give-and-take or some way to address the concerns so that all are comfortable with what we're doing, then, you know, it's an appropriate subject matter for a bill. [LB995]

SENATOR CARLSON: Thank you. [LB995]

SENATOR COUNCIL: Any other questions of Senator Lathrop? [LB995]

SENATOR LATHROP: I expect that there will be no proponents, opponents, or neutral testimony, so I'll waive my close. [LB995]

SENATOR COUNCIL: I shall ask that question. Are there any proponents of LB995? Any opponents on LB995? Anyone to testify in a neutral capacity? Seeing none, and Senator Lathrop has waived his closing and that closes the hearing on LB995. And I return the chair to the Chair. [LB995]

SENATOR LATHROP: Very good. We will next go to the two claims bills. Every year the Business and Labor Committee has the responsibility to consider claims that have been approved or denied by the Claims Board and to affirm or otherwise address the handling of those. They'll be introduced by our legal counsel and then we'll hear from Ms. Laura Peterson. [LB1090]

MOLLY BURTON: And we are going to do these two bills separate. The first one...well, my name is Molly Burton, B-u-r-t-o-n, legal counsel for the Business and Labor

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Committee. The first bill is LB1090, introduced on behalf of the director of Administrative Services. This is the annual claims bill, the claims that were approved for payment. It's necessary to go then to the Legislature to approve the payment of those claims either through the General Fund or a cash fund. Laura Peterson, who is the Risk Manager for the Department of Administrative Services, is here to testify and give more specific details on those claims. I believe there's three tort claims, two workers' compensation claims, and the rest are agency write-offs for uncollected debts. [LB1090]

SENATOR LATHROP: Very good. Thank you, Laura. [LB1090]

MOLLY BURTON: Questions? [LB1090]

SENATOR LATHROP: And before you sit down or as you're sitting down...I'll let you introduce yourself, but I want to make sure you tell me right up front, none of these involve my law firm, is that true? [LB1090]

LAURA PETERSON: That is true. [LB1090]

SENATOR LATHROP: Okay, okay. [LB1090]

LAURA PETERSON: Good afternoon, Senator Lathrop, members of the Business and Labor Committee. My name is Laura Peterson, L-a-u-r-a P-e-t-e-r-s-o-n. I am the state Risk Manager. I'm here today in support of LB1090, which contains claims approved by the Claims Board or litigated claims which were settled or in which a judgment was obtained against the state and which require the review of your committee. I plan to go through the claims in the bill and provide a summary of each claim. I'll start through the claims. I'd be happy to take questions as I go along or at the end of my testimony, whichever you prefer. In prior years, I've simply paused after each claim and... [LB1090]

SENATOR LATHROP: I think that's a good approach. [LB1090]

LAURA PETERSON: Okay. [LB1090]

SENATOR LATHROP: If we can have you give us a thumbnail sketch of each one, I'll look to see if any senators have questions, and if they don't, then we'll proceed onto the next one. [LB1090]

LAURA PETERSON: Okay, great. Just to clarify, I'm pretty sure I can't do this in three minutes. [LB1090]

SENATOR LATHROP: Oh, yeah. Skip the lights. (Laughter) All right. [LB1090]

LAURA PETERSON: Maybe three minutes per claim, but...it's a...the little red light is a

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little... [LB1090]

SENATOR LATHROP: All right. All right. Everybody comes to the Business and Labor Committee with a shtick. [LB1090]

SENATOR McCOY: Except for maybe Lynn Rex. She might be able to do it. [LB1090]

SENATOR LATHROP: Lynn Rex. Lynn Rex might. Okay. [LB1090]

LAURA PETERSON: I could try but it would be really, really... [LB1090]

SENATOR LATHROP: Go ahead. [LB1090]

LAURA PETERSON: The first amount in the first section...the first section of the bill includes tort claims which require legislative review. The first amount in this section of the bill is \$145,000 for tort claim numbers 02-591, 02-592, 02-593, 02-594, and 02-596, all against the Department of Health and Human Services. It also should include tort claim number 02-595, which I inadvertently left out of the draft. The claims are by parents and on behalf of their children in a home where a foster child was placed by Health and Human Services. The allegation was that the state placed a foster child, known to be a risk, in the home, and that that foster child sexually assaulted the children who were living in the home at the time. The case was in litigation and was recently settled by the Attorney General's Office. The payee was left blank when the bill was introduced because the attorney for the children is finalizing a structured settlement. Those structured settlements will be \$50,000 each for the two children. In accordance with this settlement, in addition to that \$100,000 to be paid to the children or payable to a structured settlement on behalf of the children, the parents will each receive \$3,000 and the attorney fees and costs will be paid directly to the law firm in the amount of \$39,000. [LB1090]

SENATOR LATHROP: We will need to amend the bill to include Claim Number 02-595, is that right? [LB1090]

LAURA PETERSON: Yes. [LB1090]

SENATOR LATHROP: Okay. Otherwise the amount remains the same? [LB1090]

LAURA PETERSON: The amount remains the same, and we're just...we owe the payee for the \$39,000, which is the law firm, and the two parents of \$3,000 each, and we're simply waiting for them to finalize those structured settlements. They're working with two different companies and they haven't finalized those. Those will be \$50,000 each. [LB1090]

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SENATOR LATHROP: Okay. And when you say that they'll be \$50,000 each, essentially we're buying an annuity that will pay \$50,000, but the premium is going to be significantly less than \$50,000, which is how we can get it all done for \$145,000? [LB1090]

LAURA PETERSON: Actually, I believe we're setting aside \$50,000 in an annuity for...I mean, they are each getting \$50,000. [LB1090]

SENATOR LATHROP: The premium then for the annuity... [LB1090]

LAURA PETERSON: The premium is \$50,000. [LB1090]

SENATOR LATHROP: Okay. Well, then I've got a question for you. [LB1090]

LAURA PETERSON: Did I do my math wrong? [LB1090]

SENATOR LATHROP: Well, you said \$39,000 for the attorney; \$3,000 each for the parents. How many parents are there? [LB1090]

LAURA PETERSON: Two parents. [LB1090]

SENATOR LATHROP: And then you have one, two, three, four, five, six different claims. Are they all siblings? [LB1090]

LAURA PETERSON: They were filed separately but there are only two siblings who were found to receive payments. [LB1090]

SENATOR LATHROP: Okay. So two will get \$50,000 each. [LB1090]

LAURA PETERSON: Right. [LB1090]

SENATOR LATHROP: \$39,000 for the lawyer, and... [LB1090]

LAURA PETERSON: And \$6,000 for the parents--\$3,000 each. [LB1090]

SENATOR LATHROP: \$6,000 for the parents. And that gets us to... [LB1090]

LAURA PETERSON: I think it adds up to \$145,000... [LB1090]

SENATOR LATHROP: Okay. [LB1090]

LAURA PETERSON: ...hopefully. Math isn't my... [LB1090]

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SENATOR COUNCIL: As a math nerd, that's \$145,000. [LB1090]

LAURA PETERSON: Right. We have other people to be the math nerds, not me. [LB1090]

SENATOR COUNCIL: That's 145. [LB1090]

LAURA PETERSON: I'm glad somebody can. [LB1090]

SENATOR LATHROP: All right. Thank you. You can go to the next one I think. [LB1090]

LAURA PETERSON: Okay. The next tort claim is claim number 2006-00661 which was filed by Susan Christman against the Department of Roads. It was actually combined at trial with tort claim number 2006-00727, which was filed by her husband James Christman for loss of consortium, and the award is actually for both claims. So again, we'll need to add that claim number when we do the committee amendment. [LB1090]

SENATOR LATHROP: Say that number again? [LB1090]

LAURA PETERSON: 2006-00727 for James Christman. [LB1090]

SENATOR LATHROP: That's in there. [LB1090]

LAURA PETERSON: I'm sorry? [LB1090]

SENATOR LATHROP: It's in there. [LB1090]

LAURA PETERSON: Oh, it is in the bill. I'm sorry. [LB1090]

SENATOR LATHROP: Okay. [LB1090]

LAURA PETERSON: I must...I think I was looking at the original draft maybe, and then when I...okay. Ms. Christman was injured when the vehicle she was driving hit loose gravel that was on the road as the result of work being done by the Department of Roads. The allegations in the case was that the department negligently placed the gravel and failed to use proper signage to warn of that loose gravel. The district court determined the department's actions were the proximate cause of Ms. Christman's injuries, although the court did reduce the damage award by 5 percent because of Ms. Christman's failure to wear her seat belt, which contributed to the injuries, as she was thrown from the vehicle. Five percent is the maximum reduction for this purpose under Nebraska Revised Statute 60-6,273. The state paid the \$50,000 which is allowed under the State Tort Claims Act upon receipt of the judgment by the district court, and the remaining \$32,973.56, which is identified in LB1090, represents the remainder of the

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award as well as the applicable interest. [LB1090]

SENATOR LATHROP: Your point may be...we can stop for just a second. Every claim with a value greater than \$50,000 requires our approval, so we will hear occasions where you've paid the \$50,000 and you're here for approval for the balance. [LB1090]

LAURA PETERSON: Exactly. [LB1090]

SENATOR LATHROP: Okay. Any questions about that claim? Seeing none, you can go to the next one, Laura. [LB1090]

LAURA PETERSON: Okay. The final tort claim in LB1090 is tort claim number 2009-03745. This claim was filed by the widow of a former state employee of the Supreme Court. State employees receive \$20,000 in life insurance paid for by the state and are allowed to purchase additional life insurance from the group plan at their own expense. If an employee is not actively at work for 12 months, they can no longer participate in the group plan but are to receive notice from their agency that they can convert their group plan life insurance to an individual policy. In this case, the state employee was ill and away from work for 12 months. The agency failed to provide him the required notification that he was able to convert his group life insurance to an individual policy. He passed away one day after the allowable time to convert his policy. The claim amount of \$225,869.24, which was awarded by the State Claims Board, is the amount of life insurance the former employee could have converted and to which his family would have been entitled but for the failure to notify them of the option to convert. [LB1090]

SENATOR LATHROP: Senator Carlson. [LB1090]

SENATOR CARLSON: What was the time lag in there? Was it a year did you say? [LB1090]

LAURA PETERSON: He was away from work for a year. He was using...you know, used his vacation, sick leave, and then catastrophic leave donations from other employees. [LB1090]

SENATOR CARLSON: Okay. And then once that time period is over, he had so long to convert that policy. [LB1090]

LAURA PETERSON: Thirty days. He was supposed to receive notice from the agency... [LB1090]

SENATOR CARLSON: Yeah, I understand that. [LB1090]

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LAURA PETERSON: ...that he could convert. He had 30...there was 30 days after the end of the 12 months. [LB1090]

SENATOR CARLSON: And he died two days beyond that. [LB1090]

LAURA PETERSON: One or two days after the 30 days. [LB1090]

SENATOR CARLSON: So I think it's important to realize the only thing the state could have gotten out of that was a one-month premium. That's a big amount of money? [LB1090]

LAURA PETERSON: Well, although this is actually an insured plan. Unlike most of the state's benefit plans like health insurance, workers' compensation, etcetera, this is an insured plan where we simply facilitate the purchase of life insurance. But, right, there would have been a one-month additional... [LB1090]

SENATOR CARLSON: But had that insurance been purchased there would only have been one month of premium paid. Now that's a big amount of money and it looks like the state really failed here. But had they given proper notice...well, yeah, it wouldn't have come out of state coffers. It would have come out of the insurance company. [LB1090]

LAURA PETERSON: Right. And this is actually...it was a long-term employee. I believe he had been employed 30 years or so. [LB1090]

SENATOR CARLSON: That's a pretty costly error. [LB1090]

SENATOR LATHROP: It is. [LB1090]

LAURA PETERSON: Yes, it is. [LB1090]

SENATOR LATHROP: And we'll...yeah, this is when we hear about all of them. [LB1090]

LAURA PETERSON: Sorry. You get the costly ones. [LB1090]

SENATOR LATHROP: Yeah. Okay. Well, thank you for that explanation. You can continue. [LB1090]

LAURA PETERSON: Okay. Section 2 of the bill includes workers' compensation claims which were settled by the Attorney General's Office and require legislative review. The first claim was filed by Charyl Henne, a former food service worker at the Western Nebraska Veterans' Home. Ms. Henne had arm, neck, and back injuries and was

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unable to return to work and was unable to obtain employment as the result of her vocational rehabilitation plan. The lump sum settlement includes a Medicare set-aside and is currently pending final approval for the amount Medicare will accept for their secondary payor claim. Depending on this final amount, the minimum the state will owe is \$114,499.31. The maximum that we will owe is the \$119,000. Upon notice from Medicare, we will be able to pay the first \$100,000, and the maximum remaining \$19,000 is what's contained in the bill. [LB1090]

SENATOR LATHROP: And now you lost me. I'm looking... [LB1090]

SENATOR CARLSON: Yeah, you lost me, too. [LB1090]

SENATOR LATHROP: Yeah. You said that the most we'll have to pay is \$119,000... [LB1090]

LAURA PETERSON: Right, \$119,000. [LB1090]

SENATOR LATHROP: And you're asking for \$19,000 in this bill. [LB1090]

LAURA PETERSON: Because we anticipate Medicare's approval coming through prior to the passage of the bill. And like tort claims, we can pay the first amount, but the first amount is \$100,000. And so... [LB1090]

SENATOR LATHROP: You can pay \$100,000 on a work comp claim. [LB1090]

LAURA PETERSON: We can pay \$100,000 on work comp. So our anticipation is that we would pay that \$100,000 even before this bill is passed. And we're asking... [LB1090]

SENATOR LATHROP: How close...do you...now, you're waiting on Medicaid or CMS to give you an answer to a Medicare set-aside, right? [LB1090]

LAURA PETERSON: They have already approved the set-aside. We're just waiting on their secondary payor reimbursement piece, which is... [LB1090]

SENATOR LATHROP: Their subro. [LB1090]

LAURA PETERSON: Right. [LB1090]

SENATOR LATHROP: Okay. [LB1090]

LAURA PETERSON: And it's only a small bill that's in dispute, and that's why you see...it's the difference between the \$114,000 and the \$119,000. [LB1090]

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SENATOR LATHROP: Do we need to hold this up or do you expect to have that notification and...? [LB1090]

LAURA PETERSON: We're pretty far along and we expect to have that very soon. So, you know, you never know. It's Medicare. But CMS... [LB1090]

SENATOR LATHROP: Okay. You don't know with those guys. [LB1090]

LAURA PETERSON: But we are anticipate...we've been through the most difficult parts of the process with them, and we're anticipating it. [LB1090]

SENATOR LATHROP: Senator Council. [LB1090]

SENATOR COUNCIL: So, at most, we would have to amend...we may be in a position of amending the amount downward. It won't be amended up. [LB1090]

LAURA PETERSON: You could amend it. If we knew, you could amend it down to the one...or to \$14,499.31. [LB1090]

SENATOR COUNCIL: Right. [LB1090]

LAURA PETERSON: However, the language of the bill directs the, I believe the director of Administrative Services to issue a warrant for this amount, or as much as necessary. So by giving us the \$19,000, this comes out of the Workers' Compensation Fund and that cash is already available. So it wouldn't necessarily be...it wouldn't be necessary for you, because you're really only giving us authority for that much...the amount...the amount we actually need. I believe that's Section 3 of the bill, but I can direct you to it more specifically if you want me to. [LB1090]

SENATOR COUNCIL: Okay. [LB1090]

SENATOR LATHROP: That's okay. I think you can go on to the next one. [LB1090]

LAURA PETERSON: Okay. The second claim was filed by Bradley Warner, a former employee of the Department of Roads, who sustained injuries to the head, shoulder, neck, and arm, and is now on Social Security disability and does not wish to pursue, and as a part of the litigation waived his opportunity for vocational rehabilitation because of the Social Security disability. The total court-approved settlement was \$174,633.86 for the present value of Mr. Warner's entitlement to permanent total benefits, and \$25,366 for the approved self-administered Medicare set-aside. The state paid the \$100,000 allowed by law, and the remaining \$100,000 is included in LB1090 for your review. [LB1090]

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SENATOR LATHROP: Okay. [LB1090]

LAURA PETERSON: Okay? Section 4 of the bill includes agency requests to write off bad debt. Request number 2009-03468 was filed by the Department of Insurance to write off \$4,372.15. This amount represents outstanding invoices for a market conduct examination and agent appointments. The invoiced company was Benicorp and has been declared insolvent and ordered liquidated by a court in Indiana, and therefore, no recovery is available to the department. Therefore, the board approved this request. Go on? [LB1090]

SENATOR LATHROP: You can keep going. [LB1090]

LAURA PETERSON: Request 2009-03469 was filed by the Department of Insurance to write off \$40. A former licensee of the department issued an insufficient funds check to the department. The department pursued recovery until it was informed by the licensee's legal guardian that she had been declared both incompetent and indigent. Therefore, the board approved the request to write off the debt as uncollectible. Request 2009-03470 was filed by the Department of Insurance to write off \$6. The invoice was a cancellation fee for two agent appointment cancellations. The company is inactive and in Florida. Given the small dollar amount of the debt and the letter writing efforts to collect undertaken by the agency, the cost of taking further collection action would be outweighed by the amount owed. Therefore, the board approved the request to write off the debt as uncollectible. There's a smaller one if it makes you...(laugh). Request 2009-03734 was filed by the Lottery Division of the Department of Revenue to write off \$19,459.22. The write-off involves seven debts from retailers for the years 2001 through 2003. The debtors are either bankrupt or unable to be located or both. The agency made extensive attempts to collect the debt, both by agency staff and the utilization of outside collection agencies, and the debts are now likely beyond the statute of limitations for collection even if the debtors were not bankrupt or unable to be found. Therefore, the board approved the request to write off the debts as uncollectible. [LB1090]

SENATOR LATHROP: Senator Council. [LB1090]

SENATOR WALLMAN: So we can't arrest these people? Can't find them, huh? [LB1090]

LAURA PETERSON: Well, I'm not sure there would be the ability to arrest them criminally anyway. I mean, they owe a debt, but, yeah, I mean the Department of Revenue has a collection agent on staff. They use their own staff as well as a collection agency to try to collect, but eventually the statute runs. [LB1090]

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SENATOR COUNCIL: Okay. I was just going to ask the question, those sales taxes that were...but when you say debt, is it...? [LB1090]

LAURA PETERSON: These are actually lottery retailers who obtained, you know, permits to sell lottery tickets and had...and so they basically have a stash of our...it's not really our money, but it's our lottery tickets, and then they're supposed to report in and turn in the revenue, and did not turn in the revenue. And they pursued collection and were unable to collect. But, yeah...no, not taxes...lottery. [LB1090]

SENATOR COUNCIL: Okay. [LB1090]

SENATOR CARLSON: Was it seven of them? [2009-03468]

LAURA PETERSON: Seven, um-hum. [LB1090]

SENATOR LATHROP: So this is at like the Kwik Shop at the corner... [LB1090]

LAURA PETERSON: Exactly. [LB1090]

SENATOR LATHROP: ...sells lottery tickets, they take money in, and, you know, spend it on payroll or whatever... [LB1090]

LAURA PETERSON: And they have a schedule for reporting in. [LB1090]

SENATOR LATHROP: ...and they go under. [LB1090]

LAURA PETERSON: Exactly. [LB1090]

SENATOR LATHROP: Okay. [LB1090]

LAURA PETERSON: Okay. Request 2009-03910 was filed by the Department of Health and Human Services Division of Public Health, Environmental Health Unit to write off \$60, which was the fee for an x-ray registrant. The agency pursued the debt until the debtor declared bankruptcy. Because the debtor filed bankruptcy, the board approved the request to write off the debt as uncollectible. Request 2010-04016 was filed by the Nebraska Accountability and Disclosure Commission to write off \$38,251.53. The amount represents late filing fees. The agency made reasonable efforts to collect the debts to the extent the law would allow them. The fees are due from defunct committees, deceased individuals, and individuals who can no longer be located. In addition, many of the fees are now past the statute of limitations for collection. Therefore, the board approved the request to write off the debts as uncollectible. [LB1090]

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SENATOR LATHROP: Tell me what that is again, how we got to \$38,000? [LB1090]

LAURA PETERSON: There are late filing fees. [LB1090]

SENATOR LATHROP: Late filing fees? So if somebody is filing an accountability and disclosure form and it requires 15 bucks or 100 or whatever it is because they filed it late, we just can't collect it. [LB1090]

LAURA PETERSON: My understanding is there are fees associated with being late with your report. [LB1090]

SENATOR COUNCIL: Late. Yeah, \$25 a day. [LB1090]

LAURA PETERSON: And Frank is here and hopefully he'll correct me if I'm...he'll stand up and, you know, scream or something if I'm saying that wrong. But my understanding is that there's a fee for being late. [LB1090]

SENATOR LATHROP: Is this a lot of \$100 fees, or are there some big ones in there? [LB1090]

LAURA PETERSON: I think there are some bigger ones in there. [LB1090]

SENATOR LATHROP: And how far back do we go? I appreciate that sometimes we come in and there's three years' worth of these. [LB1090]

LAURA PETERSON: It's several years' worth, and they're several years...they're at least, like 8-10 years. [LB1090]

FRANK DALEY: Most of them are (inaudible). [LB1090]

SENATOR LATHROP: Okay. And that was Frank Daley. So the record reflects it, Mr. Daley is here from Accountability and Disclosure, and to facilitate this moving right along, he's just answered our question from the gallery, but... [LB1090]

LAURA PETERSON: And we do have it in a file which I have with me, and I can get to counsel as well, the list of who they were, what year they were. [LB1090]

SENATOR LATHROP: Okay. Senator Carlson. [LB1090]

SENATOR CARLSON: I think this gets so high in a few cases because it can be \$75 or \$100 a day and then that adds up pretty quickly, is that...? How do some of these get that high? [LB1090]

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SENATOR LATHROP: You know what? Frank, if you just want to answer the question, and the record will reflect that Frank Daley is answering the question. [LB1090]

LAURA PETERSON: And let me tell you, too, and I have the list and he can...there is one fee: Citizens for Nebraska's Future from a 1998 B-5 report which is \$25,940.28. And then the... [LB1090]

SENATOR LATHROP: And the principals of that are no longer around? Do you want to hear testimony about that, Senator Carlson? [LB1090]

LAURA PETERSON: I think part of the problem is holding the committee members responsible...if I remember from our discussion of this before is that it was an organization...it was on an individual who was filing. [LB1090]

SENATOR LATHROP: You know what? We'll have you continue and maybe we'll have Mr. Daley come up here briefly in support of the bill. [LB1090]

LAURA PETERSON: I'm sure he could explain it better than I can. Do you want me just to go on to the next one? [LB1090]

SENATOR LATHROP: Yep. Let's hear about the \$2.89. [LB1090]

LAURA PETERSON: (Laugh)...for yourself. 2010-04102 was filed by the Clerk of the Legislature to write off \$2.89 stemming from reproduction of legislative materials. The agency attempted collection. The dollar amount involved is very small and unlikely to be collected. The cost of pursuing collection further would likely outweigh anything collected. And therefore, the board approved the request. [LB1090]

SENATOR LATHROP: I'm pleased that the Legislative Council is running a ship so tight that we're talking about something less than three bucks. [LB1090]

SENATOR McCOY: That the \$2.89 makes a big difference. Yeah. [LB1090]

LAURA PETERSON: It's an improvement from last year when it was \$6 and some cents, I think. [LB1090]

SENATOR LATHROP: I will note that the legislative branch seems to be doing better than the other branches of government. [LB1090]

LAURA PETERSON: There aren't any from my agency. (Laugh) Does that help? (Laughter) It's getting late. Okay, 2010-04118 was filed by the Department of Health and Human Services. The request is to write off \$413,878.22 of bad debt incurred in the department's facilities and benefit programs. \$306,683.11 of the request represents

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debts from the Aged, Blind, and Disabled; Aid to Dependent Children; Child Care; and Children and Family Service programs. The remaining \$107,195.11 represents bad debt incurred at the department's facilities and in their programs, including Developmental Disabilities, the Beatrice State Developmental Center, the regional centers, the Vital Records program, and the Health Lab. \$1,225.48 was insufficient funds checks written to Vital Records. No individual check exceeded \$25. \$83,831.67 was debt that is uncollectible due to the death of the debtor. \$135,632.08 is debt that was uncollectible due to the bankruptcy of the debtor. \$14,422.22 is settlements approved by the Attorney General's Office where they were pursuing the debtor. \$175,950.81 was uncollectible because the debtor continued to be on government assistance or had assets that were legally protected from collection and the statute of limitations for collections ran while the debtor was still in one of those two statuses. The board approved the write-off request in the amount of \$413,872.22, as I've described. [LB1090]

SENATOR LATHROP: Senator Council. [LB1090]

SENATOR COUNCIL: On that \$175,000 one where the debtor...were those overpayments to the person, and that...? [LB1090]

LAURA PETERSON: Usually it's a variety of things. There can be overpayments, but there also can be that they are in a facility and that they have been...you know, they do an income calculation and they're required to do a payment for their care based on their income calculation. But they may not have liquid assets to pay, and so the department, over several years of developing a collection policy, has said we're going to make it a policy of your receiving income-based benefits, meaning you've qualified based on your low income; we are not going to pursue collection of a debt until you go off that income eligibility benefit. But these are all ones where while they were still receiving income-based benefits, the statute of limitations ran. [LB1090]

SENATOR COUNCIL: Okay, like someone at a nursing facility. [LB1090]

LAURA PETERSON: Yeah, it could be the regional centers, it could be the veterans' home, it could be Beatrice State Developmental Center, any of the facilities. [LB1090]

SENATOR COUNCIL: Douglas County Health, if they were receiving... [LB1090]

LAURA PETERSON: I think most of them are our own, um-hum. [LB1090]

SENATOR COUNCIL: Oh, your own. Okay. [LB1090]

SENATOR LATHROP: So those are preventable...or not preventable. [LB1090]

LAURA PETERSON: Exactly. And the department provides us a file on each individual

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debtor, where if the bankruptcy, they have the bankruptcy documentation. If it's income eligibility, they show that they were income eligible for benefits, and the statute ran. [LB1090]

SENATOR LATHROP: My point is that one of the first years I was down here we had a lot of HHS debt that we got rid of, much of it just people weren't paying attention to and no one tried to collect. We've done what we can with this money and this is what we're left with after the statutes run on people we could not collect from while the statute was available. [LB1090]

LAURA PETERSON: That's exactly right. There are none of those earlier kind of claims contained within this write-off request. [LB1090]

SENATOR LATHROP: Okay. Very good. [LB1090]

LAURA PETERSON: And the last one, Request 2010-04177 was filed by the Military Department to write off debt in the amount of \$1,082.47 owed by three 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 made reasonable efforts to obtain repayment as authorized in statute. A review was conducted in the state accounting system, and it was determined that offsetting, as required by statute, would not be available in these cases, so the claims were to approve the request to write off the debt as uncollectible. That concludes my explanation of the claims. I can answer other questions if you want. [LB1090]

SENATOR LATHROP: Any questions for Laura? I see none. I think we will have Mr. Daley come up briefly to address the Accountability and Disclosure issues. [LB1090]

FRANK DALEY: Good afternoon, Chairman Lathrop and members of the committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Accountability and Disclosure Commission. And perhaps I can start with just answering the questions I heard as you were going along. Most of these are committee debts; in other words, the committee has generated late filing fees by failing to file one document or another on time. Most of these are more than ten years old, and frankly, the big one is Citizens for Nebraska's Future, a ballot question committee dating back to 1998, which generated \$25,900 in late filing fees. At the time, our law was different than it is now. Our current law makes clear that in the case of candidate committees, if the committee can't pay the late filing fees, the candidate is personally responsible. For other committees, if the committee can't pay the late filing fees, the treasurer is responsible. For ballot question committees, if they raise or spend more than \$100,000, they're required to post a bond to ensure payment of late filing fees and civil penalties. That's the law now. All but two of these issues that are before you today predate that time. So in the case of Citizens for Nebraska's Future, the committee was responsible. They gave us every bit of money

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they had. They liquidated their assets and gave us that money. They got rebates from vendors; they gave us that money. But that was the end of the assets. They lost the ballot question. There were no more contributions coming in. We secured a judgment, but obviously, our attempts to collect it were unsuccessful. Others of these involve candidates that have died or candidates that date from the days when it was unclear under Nebraska law who was responsible. There are only two cases before you today. They involve the same ballot question committee that postdate the new law, and that involved a very local ballot question committee that was not required to file a bond because of their small amount of spending. However, after the ballot question was finished, the committee had no assets, and the responsible party, the treasurer, died. So that's the reason these are coming before you now. [LB1090]

SENATOR LATHROP: Senator Carlson. [LB1090]

SENATOR CARLSON: Thank you, Senator Lathrop. Was it Citizens for a Better Nebraska? [LB1090]

FRANK DALEY: Citizens for Nebraska's Future. [LB1090]

SENATOR CARLSON: Oh, for Nebraska's Future. So is that a case where they didn't pay the first late filing fee and then it just compounds day after day? [LB1090]

FRANK DALEY: No. It was actually a situation in which it was a committee that ran a very, very tight, excellent campaign, as far as compliance with the Accountability Act. But a key person at the end left, and during the crucial final days the committee was receiving what are known as late contributions. That is, contributions of more than \$1,000 in the 14 days prior to the election. Many of these contributions were quite big, and at the time, the late...you were required to disclose those within two days, and the late filing fees were \$100 a day not to exceed \$3,000 or 10 percent of the amount contributed. And because of the substantial contributions that were being made during that time, I think they actually generated about \$40,000 in late filing fees. This is the balance that they couldn't pay. [LB1090]

SENATOR CARLSON: Okay. Thank you. [LB1090]

FRANK DALEY: Under current law, they would have been required to have posted a bond which would have guaranteed the payment of the late filing fees. [LB1090]

SENATOR LATHROP: So we've gotten smarter about it. We've changed the law and we shouldn't get burned in the future. [LB1090]

FRANK DALEY: That's correct. At least not to this extent. [LB1090]

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SENATOR LATHROP: Okay. All right. We like that. Any other questions for Mr. Daley? I see none. Thank you for coming down. [LB1090]

FRANK DALEY: Thank you. [LB1090]

SENATOR LATHROP: We appreciate the explanation. Any other witnesses to testify in favor of LB1090? Anyone here opposed to LB1090? Or here in a neutral capacity? Seeing none, that will close our hearing on LB1090 and we'll move to LB1091. Again, that brings us to our committee counsel. [LB1090 LB1091]

MOLLY BURTON: My name is Molly Burton, B-u-r-t-o-n, legal counsel for the Business and Labor Committee, here to introduce LB1091, which was introduced by this committee on behalf of the Department of Administrative Services. This is the counterpart to LB1090. These are three claims that were disapproved by the board and are here for you today to...the Department of Administrative Services is asking you to disapprove these three claims. Laura Peterson is here who can give specifics on why these claims were denied. [LB1091]

SENATOR LATHROP: Very good. [LB1091]

LAURA PETERSON: Senator Lathrop, members of the committee, my name is Laura Peterson, L-a-u-r-a P-e-t-e-r-s-o-n. I'm the State Risk Manager here in support of the claims that were denied by the State Claims Board as they are represented in LB1091. As with approved claims, I'll just stop after each one and... [LB1091]

SENATOR LATHROP: That's fine. [LB1091]

LAURA PETERSON: I'm going to take the first two together if that's all right, and then do the third one. The first two claims, 2009-03278 and 2009-03279, are both contract claims filed by Chad Brouse against the University of Nebraska Medical Center in the amount of \$200,000 each. Mr. Brouse filed nine claims against the University of Nebraska Medical Center: three tort claims and six contract claims. Eight of his claims were for \$200,000 each. The ninth claim did not identify an amount. He has also filed at least one lawsuit and I am not sure if there are others. Each of the claims and the lawsuit allege essentially the same scenario: that he was attending the medical school at the University of Nebraska Medical Center and was treated differently than other students. He alleges he was disabled due to mental health issues which led to discrimination, eventually his failing classes, and termination from medical school. The claimant failed to provide evidence of staff mistreatment or evidence he was discriminated against or treated differently by anyone at UNMC medical school or that his termination from UNMC's medical school was the fault of anyone other than himself. He failed to provide proof of his alleged financial losses to support the \$200,000 alleged claim amount. The Contract Claim Act, which both of these fall under, requires the

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claimant to provide a copy of the contract which has allegedly been breached by the state agency. Mr. Brouse provided no valid contract, although he did provide several copies of UNMC's operating policies and procedures. Based on the lack of evidence of a contract breach or damages, the board denied both claims. [LB1091]

SENATOR LATHROP: Is there a tort claim in there? Did he actually file a lawsuit? [LB1091]

LAURA PETERSON: He filed a lawsuit. It was not specific to the tort claim but covered the same issues. There had been a tort claim. There were three tort claims, six contract claims. As you know, the Contract Claims Act, there are two ways for it to proceed. You file the Contract Claim Act, and then either party, the state or the claimant, has the opportunity to object to the jurisdiction of the Claims Board. If either side objects to the jurisdiction, then those claims can go on to court and they are removed from our jurisdiction, and therefore, yours. If they are not objected to, as was the case with these two and not the other four contract claims, then they are treated like a miscellaneous claim and they are heard by the board, and upon denial of the board any appeal comes to you. [LB1091]

SENATOR LATHROP: Okay. There were three civil lawsuits filed? [LB1091]

LAURA PETERSON: There were three tort claims. There was one lawsuit. There may have been... [LB1091]

SENATOR LATHROP: And what was the disposition of the lawsuit? [LB1091]

LAURA PETERSON: It was dismissed. I do not know, though, if it has been appealed. [LB1091]

SENATOR LATHROP: Well, that might be kind of important, isn't it? [LB1091]

LAURA PETERSON: I don't know if it is still pending. But it was...it was a...I believe it was a negligence-based case as opposed to a contract-based case. And these two are contract claims. [LB1091]

SENATOR LATHROP: Right. So these are discrimination cases, right? Is it a civil rights suit? [LB1091]

LAURA PETERSON: No. [LB1091]

SENATOR LATHROP: So it just said you negligently... [LB1091]

LAURA PETERSON: The allegations are less than clearly identified to identify whether

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it's negligence or... [LB1091]

SENATOR LATHROP: At what level in the litigation was it dismissed? [LB1091]

LAURA PETERSON: Trial court...district court. District court level. [LB1091]

SENATOR LATHROP: But in a 12(b)(6) or in a summary judgment? [LB1091]

LAURA PETERSON: Um, I don't know. I could get...yeah, I could get... [LB1091]

SENATOR LATHROP: In other words, his pleadings were insufficient... [LB1091]

LAURA PETERSON: I don't believe they went...it was dismissed early on and I don't know on what basis. I'm sorry. [LB1091]

SENATOR LATHROP: Okay. Okay. I'm going to ask you to give us a little more information before we exec on it, just so that we're comfortable that all avenues have been closed and there is no...you know, we don't want to disapprove these if, in fact, he might have a meritorious appeal on file, right? [LB1091]

LAURA PETERSON: Actually, I don't know that it would matter. Our position would be that if anything is going forward, it would be those tort claims. And if they would end up being...if there would end up being an award or judgment over \$100,000, I don't believe that your disposition and disapproving the contract claims would... [LB1091]

SENATOR LATHROP: Oh, these are only the contract... [LB1091]

LAURA PETERSON: These are only two of the six contract claims... [LB1091]

SENATOR LATHROP: Okay. Very good. [LB1091]

LAURA PETERSON: ...and none of the tort claims. Right. [LB1091]

SENATOR LATHROP: All right. That clarifies it for me. [LB1091]

LAURA PETERSON: Tort claim denials wouldn't appear in a denied claims bill. [LB1091]

SENATOR LATHROP: Okay. [LB1091]

LAURA PETERSON: Sorry. [LB1091]

SENATOR LATHROP: That's all right. Senator Wallman. [LB1091]

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SENATOR WALLMAN: Yeah, thank you, Chairman. In regards to this, does UNMC, will have a debt on this individual? [LB1091]

LAURA PETERSON: Do they what? [LB1091]

SENATOR WALLMAN: Do they have a medical debt, you know, too? Are they filing this to get rid of a debt to the...? [LB1091]

LAURA PETERSON: No. No, no, no. Huh-uh. [LB1091]

SENATOR LATHROP: Okay. [LB1091]

LAURA PETERSON: Sorry. I didn't understand your question. [LB1091]

SENATOR LATHROP: And our last claim? [LB1091]

LAURA PETERSON: The last one, the third and final claim is Claim Number 2009-03294. It was filed by Alston and Bird, a law firm from Georgia on behalf of Grubb and Ellis Healthcare REIT, Inc., against the Department of Banking and Finance. Alston and Bird originally submitted \$10,000 for Grubb Ellis to sell \$10 million worth of securities during the period September 20, 2007, to September 19, 2008. Alston Bird then submitted a check to cover an oversale, and it sold beyond the \$10 million, and a check for \$50,000 to license an additional 50 million shares. Grubb Ellis only sold a portion of the 50 million and sought a refund of \$45,464.23, which represents the registration fee for the unsold shares. The Nebraska Securities Act does not provide for refunds of licensing fees if there is an unsold balance at the end of the licensing period. It appears that an error was made either by Grubb Ellis or their law firm, Alston Bird, when it calculated the number of additional shares it needed to license for the remainder of the licensing period. This was a miscellaneous claim, and therefore, there was no allegation of state negligence leading to this overregistration. Rather, the law firm states, they "believe that the equities in this matter weigh in favor of refunding the amount." Because there is no provision in law for such refund and there was no finding of negligence nor an allegation of negligence, the board denied the claim. [LB1091]

SENATOR LATHROP: Equities. That's usually the last weak reed you lean on. (Laughter) [LB1091]

LAURA PETERSON: Equities. It's the fluff language when you don't have a case. [LB1091]

SENATOR LATHROP: Okay. Are there any questions on any of the claims to be denied? Okay. Let's see if there's anybody here in support of LB1091. Anyone here in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

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February 22, 2010

opposition? Or in a neutral capacity? Seeing no one, that will close our hearing on LB1091 and our hearings for the day. [LB1091]