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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 13, 2012

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[LB765 LB792 LB858 LB1159]

The Committee on Government, Military and Veterans Affairs met at 9:30 a.m. on Monday, February 13, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB765, LB1159, LB792, and LB858. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Charlie Janssen; Russ Karpisek; Rich Pahls; Les Seiler; Kate Sullivan; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. This is, you remember, the makeup day for the snow we had a couple weeks ago and when we cancelled afternoon hearings. We will be taking up four bills today, starting in the order as they are listed outside the door. We will start with Senator Krist, LB765; then we'll move to LB1159; and then we will take up LB792; and finally LB858. Before we get to that business, let me introduce the members of the committee, starting with Senator Rich Pahls from Millard, on the end to my right. Next to him is Senator Les Seiler from Hastings. Soon to join us, I expect, is Senator Charlie Janssen from Fremont. The Vice Chair of the committee, Senator Scott Price from Bellevue, will be a few minutes late, he informs us. Seated next to me on my right is legal counsel for the committee, Christy Abraham. On my immediate left is Senator Russ Karpisek from Wilber. Seated next to him is Senator Kate Sullivan from Cedar Rapids, and next to her is Senator Norm Wallman from Cortland. On the very end is Sherry Shaffer; she is the committee clerk. If you are going to testify on behalf of, support, or against any of these bills, we ask that you fill out this form. Print clearly the requested information, and when you appear at the table, give a copy of this to Sherry, the clerk, so that we can have a clear record of who you are and what your position is. If you wish to be recorded for or against any of these bills but do not plan to testify, we ask that you fill out this form. Both of these forms are available at the...each entrance to the room. Please print clearly so we can read it. Now if you have material that you would like for the committee to see, any supporting documents, please provide 12 copies, and give those to the clerk for distribution. We have two pages today. They are new and I do not know their names, and I have no help.

SENATOR WALLMAN: Sam and Matthew.

SENATOR AVERY: Sam and Matthew?

SAM ADAMS: That's right.

SENATOR AVERY: Where is it? Oh, here it is, here it is. Okay, I did find it, thank you. Sam Adams from Ogallala and Matthew Harris from Lincoln. Welcome, guys. They're the morning crew. Okay, if you have something you'd like for us to see, they will distribute it. If you do not have 12 copies, they will get them for you. If you have a copy

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of your testimony, that would be nice to have as well; and if you need 12 copies of that, give that to the clerk, and we'll get them distributed. Now if you have any electronic devices that make noise, please put them on silent or on vibrate so that as not to disrupt the proceedings. If there are any credentialed press here, these rules don't necessarily apply to you; you can have computers or things of that sort if you are credentialed press. Are you?

\_\_\_\_\_: I'm not.

SENATOR AVERY: You're not. Okay, close your computer, please. All right, we'll start with introducers who will make their initial statements, followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the senators only. We'll start with Senator Krist. I may have to leave; I don't know. I've got a bill in another committee, but I don't think that it will be during your testimony on this one but maybe on the next one. So we'll start with LB765, Senator Krist. [LB765]

SENATOR KRIST: (Exhibit 1) Thank you, Chairman Avery and members of the Government Affairs Committee--Government, Military and Veterans Affairs Committee. I want to start, in way of introduction...and I will not repeat this for the second bill because it's the same subject matter. But as way of introduction, I have spent 21 years in the Air Force and 10 years now...12...11 years as a contractor for the federal government. My qualifications, in terms of speaking about services contract acts, is a culmination of over 25 years of actually either writing the proposals, making a decision on who the contractor should be, or being the contractor of choice. That Services Contract Act at the federal level, I believe, is a well thought-out, well-run, extremely efficient contract process. I believe that the way to privatize with the best probability of success is to develop a trust between the government--in this case, the state--and the contractor. That trust honestly goes forward a long way towards solving issues in the execution of the contract. In my particular...few contracts that we deal with right now, we have a cap on administrative events that need to happen in the contract, and then a reimbursable basis for services that are performed--completely different than what the state of Nebraska has done in its privatization program for the reform related to child family services and foster care. We threw a bunch of money at a prime contractor and said, take care of it for us. I literally...when you come through this day and you start looking at some of the documentation materials that I have looked at over the last year-and-a-half in the LR37 process--and I know you've read the Auditor's report, the Performance Audit Committee report, which I am a member of, the individual surveys that are included in LR37, and the LR37 report--I think you will come to the same conclusion that I have: We did not do a very good job with our contracting process. We heard all over the state of Nebraska how subcontractors were paid very, very little and very, very little money was going to the kids, where it should have gone to begin with. Part of that...I would believe that the initial problem with this process of privatization comes from poor--let me underscore that--poor contracting measures. You will see today two bills

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from me, one from Senator Mello, and then obviously Senator Avery, an opportunity to make that contracting process better. Do I think what I am suggesting is the answer, it's the golden BB, if you will, it's the key to the castle? I'm pretty egotistical, so you know I probably do. But will it come out of this committee in final format to be a Krist bill? I think not. I think you're...I don't want to tell you your responsibility, but I hope that you take ahold of this thing, wrap it up in an Avery bill as a committee bill, whatever you need to do. But we have a broken contracting system in the Department of Health and Human Services, and we need to fix it. Given that as my initial dialogue on introduction for both of the bills, let me tell you about LB765. It requires the director of the Health and Human Services to conduct a cost-benefit analysis before going forward. I don't think that's too unreasonable. Let's find out if it's going to save money, cost us money, and how we're going to do it. To include life cycle costs, if we're going to have contractors come in and do it, there's a life cycle cost for a human being that's going to be employed. A government employee has a much higher life cycle cost than does a private...to privatize and put it in a contractor's hands. It also would provide that any contract that's more than \$25 million has to have that cost-benefit analysis. One of the things that we have seen in all of our investigation, in LR37 and the Child and Family Services, is that we have very, very, very little financial oversight and even less management oversight by the department in some very critical areas--very critical areas. What I passed out to you, thanks to your legal counsel--Christy, thank you very much--is...I will point towards paragraph 2 of the handout. As background, DHHS initiated Families Matter reform in 2009 by entering into contracts with private providers of child welfare services. The first contracts were to carry out the implementation stage of reform. The second round of contracts were the service coordination and delivery contracts. These contracts have been amended several times. I think we're up to number ten now. None of these contracts were competitively bid because DHHS determined the contracts were exempted from that requirement under Nebraska Revised Statute and the rest. I would invite you to take a look at this memo, and this memo happened between legal counsels and this committee--again, thank you, Christy--and our own Michelle Chaffee in the Health and Human Services Committee. It is an excellent recap of what we did not do, and if we want it be done right, what we need to do to turn it around. The bill is pretty straightforward; there aren't very many changes in it. The line changes are...you can see in the green copy, in page 3, it changes so that the director will be responsible if we have something over \$25 million. On page 4, if the value of contracts is \$25 million or less, that is addressed. With that, keeping it short, sweet, and simple so that you can take a look at the actual process, that would conclude my introduction on LB765, and I'd be happy to answer any questions. [LB765]

SENATOR AVERY: Let me ask you about the need analysis. How detailed do you expect that to be? The cost benefit, I mean. Are you looking for actual specific numbers--this is what it's going to cost, this is what the savings will be to the state--that kind of stuff? [LB765]

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SENATOR KRIST: The Department of Administrative Services already has a template or a format to go about with a cost-benefit analysis. I think--I believe--that it needs to be as detailed as it needs to be for the particular project. In other words, if your goal is to privatize, then you'll accept additional cost, no question. If your goal is to privatize in order to meet the reduction of cost on the government side, then probably the cost-benefit analysis would be much more detailed than you would...in my case, my experience, I've seen cost-benefit analysis that simply said Company A, on an unsolicited proposal, has offered to do the same process, the same job, and here's a cost, and it's well below what we can do. So that would be a least cost as opposed to best value, but those would have to be weighed out. [LB765]

SENATOR AVERY: Questions from the committee? Senator Pahls. [LB765]

SENATOR PAHLS: Here's a...and I am not...of course, I don't have the background that you have. But when I've dealt with cost-benefit analyses in the past...I understand the rationale behind it. But if you don't complete the cycle, if you don't evaluate what happened, you can, you know, you can list a little bit. But if nobody ever comes back and...it just doesn't matter. How would you answer that? [LB765]

SENATOR KRIST: I would answer that with LB1159, which is the next bill. I'm going to tell you that our...when I went forward and had ideas on how to change the contracting process, getting the bill written, I had an issue with single subject, so it's divided up into two. But there has to be continual oversight, continual evaluation within the contract process. You're absolutely right, Senator. [LB765]

SENATOR PAHLS: Thank you. [LB765]

SENATOR AVERY: Senator? [LB765]

SENATOR SULLIVAN: I think Charlie did. [LB765]

SENATOR JANSSEN: Yeah, go ahead. [LB765]

SENATOR AVERY: Okay, you're going to defer to Senator Sullivan? [LB765]

SENATOR JANSSEN: Uh-huh. [LB765]

SENATOR SULLIVAN: Thank you, Senator Avery; and thank you, Senator Krist. When you first started your comments, you talked about the fact that there needed to be trust between the state and the entity that has the contract. Explain that a little bit more. [LB765]

SENATOR KRIST: Let me give you an example. I am in a contract right now where the

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government asks me to perform a function: fly and maintain their airplane. If I go back and say, on day ten you didn't give me enough money to do that and here are the reasons why, the documentation is there. You have to have trust in the person that you contract that the information that you're getting is accurate. If the contractor comes back over and over and over and says, I didn't get enough money to perform this contract, credibility becomes...comes into play. So I honestly believe that from the very beginning, if the parameters are set up so that the contract is written for the services that are provided, there are checks and balances and performance indicators along the way, it is goal- and performance-oriented, and it's constantly overseen by the entity that is contracting and part of the government, then that establishes a trust factor, and you can negotiate back and forth as opposed to the situation we have right now where the contractor continues to come back and ask for 1.5/1.8/10.5 with very little justification. We should have had case management rates in place before we ever started this thing. That would have developed a trust, a per unit, if you will--I hate to talk about kids as units--but a cost basis that would put a per-unit value on it. If we would have seen the cost value on a case rate basis that we're projecting in right now, I doubt seriously we'd be in the...in this contract because it's more expensive, and every state that's gone before us that's gone through outsourcing and privatizing its child welfare has ended up spending at least half, again, as much than we spend right...as a government entity. So if we'd have done that to begin with, we probably wouldn't have gone to this extent within the contract. [LB765]

SENATOR SULLIVAN: And explain to me...I think I understood you to say that there's a difference in the life cycle cost between a government person and a private entity? [LB765]

SENATOR KRIST: Absolutely. When you negotiate for a contract, you negotiate for a rate, and most of the time, that's a wage rate. The individual contractor is responsible to take care of his or her people, so 401(k)s, retirement, programs, insurance programs. In most cases, government agencies are much more expensive than private industry in terms of contracting, so the life cycle cost of Bob Krist to do your job would be less, if I'm privately contracted, across the board--and I think it's pretty well established--than if I were a government employee. [LB765]

SENATOR SULLIVAN: Thank you. [LB765]

SENATOR KRIST: You bet. [LB765]

SENATOR AVERY: Senator Janssen. [LB765]

SENATOR JANSSEN: Thank you, Chairman Avery. Senator Krist, you actually answered several questions that I had, and the initial was: How many contracts? And I see there is nine contracts that are over \$25 million. You touched on it on other states,

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but is there any data that you have that would say how much we would save by doing this, as a percentage or based on other states? Just out of curiosity... [LB765]

SENATOR KRIST: Well, that's a difficult question. The answer is that in most cases the states who have preceded us in this effort who were further along are spending more money on the entire program. So again I would expect if we would have done a cost-benefit analysis up front, we would have seen it was going to cost us more. [LB765]

SENATOR JANSSEN: Okay, thank you. [LB765]

SENATOR AVERY: Senator Price? [LB765]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Senator Krist. In the cost-benefit analysis that you are outlining here, is there a portion of that that prescribes that the government entity need to do a manpower study so they accurately can size the contract? Because one of my greatest concerns...and you know from federal work we're very aware of what that involves. But when we're outsourcing or even contemplating outsourcing work, we don't even know the size of scope and that the government may not have adequately and fully disclosed the level of effort required. So I sit and say I need 7 FTE to do a certain task when I actually...I'm performing it with 15. We bid it out, someone has to come in, like an MEO, we're 10 percent under and they get 5, and we wonder why it fails. [LB765]

SENATOR KRIST: Right. [LB765]

SENATOR PRICE: So is that part of it, or is that an additional thing we need to consider? [LB765]

SENATOR KRIST: When in statute, it's part of it. If we would have gone through DAS in the beginning, we may have seen that. But to answer your question through Senator Sullivan's question as well, we started out with this process with less than 3,000 kids. We're up to near 6,000. So did we identify the task at hand to begin with? Did we set up the contractors to fail? To your point, yeah. [LB765]

SENATOR PRICE: Well, you ask that question, and I have to follow up with when we look at the total number of caseloads currently in the system, do we look at the...does that mean that we've had a number of children who have stayed in the system longer? So in other words it...given a unit time, have we really seen 100 percent increase? Did we change the criteria for the state to become involved? I mean, those are different things. In this though and sticking to what this is, the question really comes down to, is: Are we properly sizing the contracts? Not even...even before we look for a cost benefit, are we properly sizing them, and will this address that? [LB765]

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SENATOR KRIST: It goes a long way to addressing it, but I think so does LB1159, Senator Mello's bill, and Senator Avery's bill in combination. [LB765]

SENATOR PRICE: Thank you, Senator Krist. Are there other questions? Senator Wallman. [LB765]

SENATOR WALLMAN: Thank you, Chairman (sic) Price. Yeah, welcome to this committee, Bob--Senator Krist. And you are very good at looking at performance-based contracts or open-ended, at-risk contracts. So at-risk contracts, you'd think the contractor would have some idea, wouldn't you? [LB765]

SENATOR KRIST: Well, and to your point--and you know all too well, Senator Wallman--when we asked questions about that early on during the LR37 process, the contractor came...every one of the prime contractors came back to the state and said, you can't do this, you can't do this with the same amount of money that you did it before, and we can't do this, we're losing millions of dollars as nonprofits, you can't do this, and we ignored them. [LB765]

SENATOR WALLMAN: Thank you. [LB765]

SENATOR KRIST: You bet. [LB765]

SENATOR PRICE: Thank you, Senator Wallman. Senator Seiler? [LB765]

SENATOR SEILER: Senator Price. Senator Krist, I noticed you used \$25 million. Is that a...how did you arrive at the \$25 million cutoff? [LB765]

SENATOR KRIST: It's a combination of the performance audit. And when we did the performance audit as part of LR37 and the Auditor's report, we arrived at the \$25 million as a standard right now for sense of urgency requirements in contracting room. It's...you could pick a number out of the hat and say 20 or 25, but somewhere in that 20-30 range is about as far as you want to go in terms of risk analysis before you have a full-blown contract cost-benefit analysis and all the rest of the parameters. [LB765]

SENATOR SEILER: Because your cost benefit eats up the profit of doing the survey? [LB765]

SENATOR KRIST: No, not necessarily, but there are contracts out there for sense of urgency or other parameters. [LB765]

SENATOR SEILER: Okay. [LB765]

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SENATOR KRIST: I mean, it...we're not trying to say that a director can't go out and do something in an expedient manner, but at what line do you draw that? Where do you say that this is above this point and you need to do a cost-benefit analysis, risk assessment, performance and goal objectives within the contract? We chose a number that's convenient within the industry, basically, both at the federal and other state levels in terms of looking at those numbers out there. [LB765]

SENATOR SEILER: Thank you. [LB765]

SENATOR PRICE: Thank you, Senator Seiler. Anybody else? Any other questions? Seeing none, thank you, Senator Krist. [LB765]

SENATOR KRIST: Thank you, Senator Price. [LB765]

SENATOR PRICE : And we will move to proponents. Are there any proponents for LB765? Welcome. [LB765]

JULIE DAKE ABEL: (Exhibit 2) Good morning. Thank you, Senator Price and members of the committee. My name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-e-l, and I'm executive director of NAPE/AFSCME Local 61. On behalf of all the state employees that we have the honor of representing, we want to lend our support to LB765. We would certainly think that with the challenges facing essential health and human services that a commonsense bill of this nature would be unnecessary. Most public and private entities do use some sort of cost-benefit analysis, and even your own Legislative Performance Audit Committee recognized major taxpayer and employee resources have been wasted, unfortunately, and the delivery of basic public services have been jeopardized because of the lack of basic managerial techniques such as this cost-benefit analysis. While we support this bill, we think \$25 million threshold provides little protection against the types of financial abuses that you guys are wrestling with today. We would actually look at the proposed threshold being reduced to around \$5 million. We believe that it's fair for taxpayers to know where their money is going and specifically what will be done with that money to the best of the ability. Unfortunately, current actions by this administration undervalue the work of its employees and the investment of training and experience that current state employees have, and again I really want to thank Senator Krist for all of his work in this area. And we do think that if this bill is looked at...and that reducing the costs maybe down from the threshold, looking at the \$25 million down to around \$5 million would be a wise move. And that's all I have, and I'd be happy to answer any questions. [LB765]

SENATOR PRICE: Thank you. Are there any questions from the committee? Senator Pahls. [LB765]

SENATOR PAHLS: Yes, thank you. The question I have...I know you've moved from 25

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to 5, basically. In your experiences, are you...do you have much of a background in cost-benefit analysis in dealing with other areas? [LB765]

JULIE DAKE ABEL: I do not. [LB765]

SENATOR PAHLS: Okay, okay. [LB765]

JULIE DAKE ABEL: The only thing that I can tell you is that, you know, we do see, you know, certain areas of government that are privatized out. I mean most specifically, you know, we...as we've been talking about the child welfare, the \$25 million, it...that figure concerns me because I think it would be easy to have maybe come under that \$25 million and to just say, well, maybe it will just cost this much so we don't have to do that much work. And I just kind of think that it's kind of a basic...you know, I understand that there has to be some sort of parameter set, but I think a little bit lower so everybody is comfortable with the decision that's being made. [LB765]

SENATOR PAHLS: But have you ever been...seen cost-benefit analysis utilized in, like, much smaller projects? I mean, doesn't even have to be in the millions of dollars. [LB765]

JULIE DAKE ABEL: From the state, I have not, no. [LB765]

SENATOR PAHLS: Okay, thank you. [LB765]

SENATOR PRICE: Thank you, Senator Pahls. Senator Janssen? [LB765]

SENATOR JANSSEN: Yeah, thanks, Julie. I appreciate you coming down today. If we were to lower it, do you have any idea of the fiscal impact? I looked at the bill, and right now I think it calls for 0.75 FTEs, and you're one and two and maybe another full employee the next year for \$25 million. Do you...would you anticipate needing more employees or full-time employees to handle the caseload? [LB765]

JULIE DAKE ABEL: You mean from the state that would need those employees to do that? [LB765]

SENATOR JANSSEN: Yeah. [LB765]

JULIE DAKE ABEL: I think there may be some, but I think that cost would be...I think that would be offset for, you know, for the...not only the concern of the taxpayers, but also that...everybody that...you know, that if there's a contract done, that it's done the proper way. So I think that would be a minimal cost for what we may...to get out of it, but I cannot tell you exactly what that may be. [LB765]

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SENATOR JANSSEN: Yeah, I'm just kind of wondering because we throw a number out, and there's nine contracts at \$25 million. I don't know how many would be affected at \$5 million. Is that...? [LB765]

JULIE DAKE ABEL: And honestly I don't know either, Senator. [LB765]

SENATOR JANSSEN: Is it just kind of a...you went with \$5 million, or is...? [LB765]

JULIE DAKE ABEL: I mean, you know, we're certainly open to that. But we're thinking that if you get any...you know, if you get somewhere around \$5 million, you know, maybe even \$10 million, that then that just seems to be a responsible move to look at how the taxpayers' money is being spent. [LB765]

SENATOR JANSSEN: Thank you very much. [LB765]

JULIE DAKE ABEL: Um-hum. [LB765]

SENATOR PRICE: Thank you, Senator Janssen. Are there any other questions from the committee? Senator Wallman. [LB765]

SENATOR WALLMAN: Thank you, Vice Chair Price; and yeah, thanks for coming down, too, Julie. And do you see this number--percentage-wise--growing every year? Is that on account of valuation issues or just more kids in foster care, other care from the state? [LB765]

JULIE DAKE ABEL: Well, I think that there's a whole number of things that have gone into effect. I'm not sure that I'm the expert on that, as to why it's increased a lot. I certainly think just how the whole situation was handled, I don't think that the...while the providers may try and do the best that they can, I think that it really was a bad move for the kids, to get rid of the case managers as they knew them, and so I think there's many different things that have affected what's happened with the children and why that number has increased. [LB765]

SENATOR WALLMAN: And are case managers overworked now, do you think, do you feel? [LB765]

JULIE DAKE ABEL: I can't actually speak to how, you know, how the providers feel about their caseworkers. [LB765]

SENATOR WALLMAN: Okay. [LB765]

JULIE DAKE ABEL: I do believe that overall, yes, they are, and they have been for some time. [LB765]

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SENATOR WALLMAN: Thank you. [LB765]

JULIE DAKE ABEL: Um-hum. [LB765]

SENATOR PRICE: Thank you, Senator Wallman. Are there any other questions? Seeing none, thank you for your testimony. [LB765]

JULIE DAKE ABEL: Thank you. [LB765]

SENATOR PRICE: (Exhibits 3-5) Any further proponents? Are there any opponents for LB765? Would anybody like to testify in the neutral? Then as Senator Krist is coming to make a closing, I would like to read into the record the following three records. We have one from DHHS in support; we have another one from NASW in support; and finally, we have a letter from CAFCON, Children and Family Coalition of Nebraska. Welcome back, Senator Krist. [LB765]

SENATOR KRIST: Thank you, and I think my closing would be to tell you how important it is to the CEO of DHHS to come forward in support of this measure. One part of the contracting mosaic or puzzle should be solved. I believe that you, your task would be to blend it in, weave it in to a larger, more encompassing contractual bill at the end of the day, and I would say that that would conclude my closing comments. [LB765]

SENATOR PRICE: Thank you, Senator Krist. Any...? Senator Karpisek. [LB765]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Senator Krist. Ms. Abel talked about lowering the number to \$5 million. Would you be agreeable to lowering that or...? [LB765]

SENATOR KRIST: I would say...I would suggest that rather than taking my word, I would suggest legal or the committee contact DAS--and, you know, right now that's going to affect nine contracts in the Department of Health and Human Services--and find out what impact that would have on the remaining contracts because if there's a \$5 million contract out there and it's saving us money to get it done and there's a sense of urgency or expediency that needs to be afforded, then I don't think that it's necessary. That \$25 million level, you know, in the big scheme of things is a pretty low number. I don't want to handcuff a department director or the agency or the whole department, but I want them to exercise more financial and management oversight over the contracts. So that's a long-winded answer for "it depends." [LB765]

SENATOR KARPISEK: That's great. Thank you, Senator Krist. [LB765]

SENATOR KRIST: Thank you, sir. [LB765]

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SENATOR PRICE: Thank you, Senator Karpisek. Are there other questions? I would just ask one thing. In this, when we look at doing the cost-benefit analysis, isn't there a certain amount of some cost? I mean, you're going to pay the certain amount no matter what you do, so we should have the number that it's going to take to perform more. I mean, sure there are factors that would elevate it when you have a much more complex contract, but just to have them first sit down, you're going to have a certain set number of hours to perform it. So when you have to do that at a lower threshold, would you agree that you're going to see that move up in a linear fashion to the cost? [LB765]

SENATOR KRIST: There are one or two people, in my experience, that are down in the Zorinsky Building, for example, and on the base at Offutt, on the federal level, that are so good at doing these things that I don't know that it would be linear, but I do know that there would have to be some expertise developed in terms of doing it. And you're absolutely right, there is a minimum; and then depending upon the project, there are many more factors that would have to go into it including life cycle costs on equipment and people. [LB765]

SENATOR PRICE: Thank you very much, Senator Krist. [LB765]

SENATOR KRIST: Thank you, Senator Price. [LB765]

SENATOR PRICE: Any further questions? Seeing none, that we will close the hearing then on LB765 and give you an opportunity to open up on LB1159. [LB765]

SENATOR KRIST: (Exhibits 1-2) I'm not usually one of those people that hands out a bunch of material, but today I'm making an exception. What the page is going to give you is...and I'll wait until it's out to describe both of them, but they're key to your decision-making process, I believe, as you go forward. Senator Pahls asked earlier, what about the ongoing performance evaluation? A good contract establishes trust from the very beginning. A good contract tells you exactly what you need to do in terms of a per unit. A good contract also gives you some kind of performance base that both as a contractor and the federal government or the, I'm sorry, the state government can work towards. A great contract is one where you blend all those items together, and there's no misunderstanding about what needs to be performed. And in fact you can expand the scope of the contract--the scope, we're talking about actually what's performed--by simply saying, I'm going to put you on notice, I'm going to add another 2,000 kids; I'm going to put you on notice. I'm going to add another mission. The mission that I now want you to perform is case management. With simple modification that could have been done much easier had we had those performance indicators in place. So the first piece of paper I want to draw your attention to with talking points which I will speak to during my few minutes that I'll take with you. The other one...you know why Performance Audit Committee is so good at what they do? The Performance Audit staff,

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they are wonderful. Martha Carter helped me put together this section-by-section breakdown of what you're doing in each one of the sections of the bill. And it gets you back to a point where you realize if you're going to proceed, then these are the points that you will succeed with or take out, and I would suggest that that probably needs to be done before you combine other bills as well. I'll leave that for your perusal. LB1159 would add to Nebraska services contract statutes selected provisions from federal contracting regulations, federal acquisition regulations, or FARs. The FAR is based on performance-based contracting principles. Characteristics of a performance-based contract are: requirements are described in terms of results rather than methods used to perform the work; work is performed using measurable performance standards such as timeliness, quantity, or quality; procedures are defined for a reduction of fees and/or reductions of the fixed-price contract when services do not meet the contract requirements; and performance incentives. As I talked to you before, I'm involved with several contracts, one of which is a fixed and variable. I know that I'm going to go out and I'm going to perform this contract, and every month I'm going to get an amount of money from the government by the contract that allows me to have the overhead staff, the administrative functions, and the flexibility to move forward. Everything I do besides that is within the scope of the contract. The scope tells me fill the airplane with gas, fly it, do this, do this--not too dissimilar from what we're doing now in the Child and Family Services except your widget changed to a human being, which is even more important when you're dealing with human beings. The human factor in this is that the reimbursable or the tangible...in the federal model, in the FARs, there's a fixed cost and then a reimbursable built in. In other words, I'm not giving you \$5 million to do something; I'm giving you \$1 million worth of overhead administrative costs. When you spend it within the scope of the contract, you come back to me and I'll reimburse you within 30 days. If I don't reimburse you within 30 days, you get 10 percent penalty from me--pretty fair concept, and we don't have the overruns, we don't have the problems. And, to build the trust, when I come back to you and say, you know what, I can't do it for that amount of money but here's what I can do it for, in the FARs is built in a little term called "fair and equitable adjustment." It comes back in and says...and a contractor comes back in and says, I'm sorry, I can't do it for that amount of money. The government then negotiates and says, you know what, you're right, the price of your insurance has gone up so much that you're taking money out of your own pocket to do something. Key in the factor here is knowing when it's going to cost you up front and expecting that the contractor's not going to do this for nothing. They're not involved with this to do it for nothing. There is a fair pay for a fair day's work; that is also key to trust. The benefits of the performance-based contracting are obvious: defining the outcomes; making the outcomes more quantifiable; linking outcomes to contract incentives, which again increases your profit margin if you do it well--we put incentives in there and you may make a little more money than just the basic; and basing contract renewals and extensions on demonstrated performance; and achieving measurable outcomes. This also was prepared by Martha Carter. She did a wonderful job, and it will walk you through each one of the things. And I would say I could read these to you, but I trust

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that in your deliberation in Executive Session and throughout the rest of the day, you will see how much sense this makes from the very beginning. It again prevents a situation which we currently have in place. Did you know that we are just now, after a year-and-a-half, being asked by the contractor to come up with a per-widget formula or a case-based formula? We're just now negotiating for that. We're several years into this thing and we're just now deciding that we probably ought to figure out what it costs. We have a program called 347 out there on the financial side, okay? It has a budget in the 347 Program that's the size of a small South American country. It has over 40 subprograms. Now you can't move money from a program to a program, but you can move money from a subprogram to a subprogram. Department of Health and Human Services cannot tell you how much they have spent on foster care and I...it doesn't make any difference who you ask. Ask Liz Hruska, who you all know, one fantastic person. She's having a problem putting a price tag on what we spent. The contractors coming back to us right now, just for two service areas in this state--two service areas--and they want another \$20 million to continue. Contract started out at \$105 million, and by different estimates you'll find that there has either been \$50-70 million added, and we can't tell you where all that money has gone. That's a really frustrating thing. Not only that, it's almost criminal. You establish trust with a good contract, you establish fair means with a contract; that's what this is going to lead you down the path to do. Senator Mello has a different idea about parts. I don't agree or disagree; I think they're strong. Senator Avery has a slightly different twist. The point is, the contracting process is the rudimentary problem within the Child and Family Services. I am convinced of that. We started off going down the wrong track, not knowing what we were required to do nor how much money we were going to spend, and we continue to throw money at it. And let me remind you when Director Landry, who was director...Kerry Winterer's predecessor, when he entered into this thing, it was supposed to have been at no additional cost to the state of Nebraska. And let me also remind you that all the five contractors, prime contractors that started out on this thing, told the state within the first six months it is not possible to do what you want to do. And within the first seven months, we lost three out of the five contractors. Does it seem to you like we went down a path for success? That is the rudimentary problem to turn this thing around. Establish the contracts, know what you're going to pay, know what the services are going to be required. I will get off my soapbox. I apologize, I was pretty adamant about these things, but I ask you to take a look at it. And again I have no pride of authorship; it doesn't have to have Krist's name on it. It can have this committee's name on it and make just as proud to contribute to it. [LB1159]

SENATOR PRICE: Thank you, Senator Krist. I might engage you in just a small conversation here. [LB1159]

SENATOR KRIST: Yes, sir. [LB1159]

SENATOR PRICE: First and foremost, would you agree that the situation of how we do

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the accounting of this had nothing to do with the...with having a privatized contract in place? I mean, I would submit we had a similar level of ignorance and ability to understand where money was flowing to and from in the previous model. [LB1159]

SENATOR KRIST: Yes, sir. [LB1159]

SENATOR PRICE: Okay, great. Obviously, one of the big issues here is the timing. This is a major undertaking to change your contracting standards to bring them into best practices, and the amount of times that I've...I'm not even sure that you could force the round pegs through the square holes quick enough to meet when the legislation would require this. So you understand we have a...there's a very large curve involved in bringing the state into compliance with performance-based contracting. [LB1159]

SENATOR KRIST: If you look at the...can I answer that part of it? [LB1159]

SENATOR PRICE: Please. [LB1159]

SENATOR KRIST: If you look at that as a measurable objective in terms of contracting, the Governor has said and we have said there will be no more privatization contracts in the state in the other three service areas. They have returned to the state oversight. The two existing contracts that are out there that continue to draw money away at a rate that's alarming, which is the southeastern and the eastern service areas, contracts are up in 2014, so we roughly have 12 months to try to put together some contracting performance factors, some different established best practice measures that we would put into place before those contracts would have to be renegotiated in 2014. And as you know, it is always possible to amend or extend a contract while you're renegotiating the next contract to be in place. I see it as a--and you've described it--as a monumental task. I agree 100 percent, but a task that we have to, in part or in whole, undertake, and I think that's a built-in time line now, is that 2014--June of 2014. [LB1159]

SENATOR PRICE: Well, I would submit that the training tale is going to be significant on this one. And then when we look at the...think when you talk about this performance-based contract and one of the challenges is to have proper oversight and that it's very easy for that contract again to have a lot of scope creep and requirements creep and...which can be injurious to the overall, you know, goals of a contract for costs. And so how do you see that being...I want to say, how would you see that to be taken care of or addressed? [LB1159]

SENATOR KRIST: By lessons learned. The Casey Foundation and the states who have already gone through this process have fallen on their swords, hit every land mine they possibly could, and some of them have been very successful at the end of the day or reasonably successful, more successful than we are--I'll put it that way--so I think we need to look at those other states that have succeeded in setting up the practice.

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Florida comes to mind as an example, not a model but as an example of contractuals that have evolved with the process, so that would be part of it. The other part of it, I think, arguably is that there is fiscal notes attached to both of these. There are fiscal notes attached to all four of them I think you have coming today. I would grant you that the effort will be monumental and that it won't be cheap, but I will also tell you that we just threw away anywhere from \$50-70 million on just two service areas because we didn't start out with best practices and performance base in mind. This is one of those things I think that old cliché about you can't afford not to do it right really comes back and speaks to me about the issue. [LB1159]

SENATOR PRICE: Thank you very much, Senator Krist. [LB1159]

SENATOR KRIST: Yes, sir. [LB1159]

SENATOR PRICE: Are there other questions? Senator Sullivan. [LB1159]

SENATOR SULLIVAN: You know, when you think about it, the performance-based contract accountability, I can't think of an area that would be probably more important than when you're dealing with the lives of children. But I'm trying to figure out how do you build that in the right way to a contract? Are we almost looking at maybe a third party that has to be removed? Not the deliverer of the services, not the entity/the state that's contract for those services but a third entity that can be removed and establish those...that...how they measure the accountability? [LB1159]

SENATOR KRIST: I'd like to go in the weeds just a little bit to answer the question. We have two contractual models that are out there right now. We have a prime contractor, KVC, that does everything, and then we have another model that is a broker model--it's called a broker model. That broker model is what's currently employed by NFC. That's a collaborative board that does what they need to do in terms of services by putting those services out in individual organizations--Boys Town, Family Services, Uta Halee, etcetera--two different models. We think, after looking at this for over a year--and Senator Wallman will share the experience with you in Exec--but the broker model works best because good or bad, meaning tough or easy, assignments are not always taken by the prime contractor to their advantage when they're working with others; not that I'm saying that they always do that, but there is a perception that that happens. So in the broker model, you would have performance indicators, goals, objectives. And you would look at the individual providers, and you would say, for example, if you're providing caseworker...caseload/caseworker/management/case management functions, you currently have 32 percent--this is an accurate number, by the way--32 percent turnover in your case managers. Thirty-two percent. Okay, a 30-year population that's dealing with our kids is turning over. You have to retrain them and get them back in, etcetera, etcetera--very expensive, both the contracts. Your goal and objective is to be down below that standard by 2 percent every year for the next five years. Now how you

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do that goes back to the best practices. You'll go back and say, how do I keep them longer? Obviously, I pay them \$1 million apiece, they'd probably all stay, but that's not a good objective. So it's up to then the contractor and the broker to figure out what those objectives might be. Another example might be we have actually increased the number of kids that we've put...made wards of the state during this whole process, okay? Our objective is to decrease that number, so another performance objective would be we want to decrease the number of kids who are being referred to and put in to be wards of the state by 3 percent or 5 percent per year in the next five years of the contract. And I would also say, as long as I'm making that comment, there are contracts out there that do huge tasks. I'm talking multi-airplanes, billions of dollars, and they're only let for one year at a time. A base contract with five option years--I'm sorry, four option years--that's renewable by the government and by the contractor. So if you do a good job for us in the baseline year and meet those objectives, option year one comes along, you'll probably get the contract back. Option year two comes along and you're not doing so well, let's sit down and talk about your objectives; let's talk about the continuing as looking at your objectives and how your performance values are there. Again, trust factor back and forth, but that's how the objectives would be laid out in my mind. And the performance indicators would be...we would look at them at...ongoing, look at the objectives that were carried out. [LB1159]

SENATOR SULLIVAN: Thank you. [LB1159]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions? Seeing none, thank you, Senator Krist. [LB1159]

SENATOR KRIST: You bet. [LB1159]

SENATOR PRICE: And we will now move on to proponents for LB1159. Any proponents? Welcome back. [LB1159]

JULIE DAKE ABEL: (Exhibit 3) Thank you again. My name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-e-l, and I'm the executive director of NAPE/AFSCME Local 61. I'm here to testify mostly in support of LB1159. We really appreciate all of Senator Krist's work and everybody else on this issue as we know it is a very important issue. One of the concerns that we have, though, is that in this bill as it is introduced, it does repeal Sections 73-301 to 73-307, and I would ask that you take a look at that. Those parts require agencies to undertake additional steps in the service contract process when a proposed contract is expected to replace state workers. And as most of you may know that when the child welfare system was privatized out, that state workers were replaced. If those current statutes were abided by, we actually wouldn't be in part of this mess that we're currently in. Also wanted to say that, you know, your predecessors were very cognizant of why it was intended that the state initiate a cost-benefit analysis when state employees were to be displaced. We...like I said, we do not have any problem with this

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proposal except for the repeal of those sections of the law. And I would like to add--I'm going to kind of go back for just a second, if you give me just a tad bit of leeway--is that in the previous bill that we were talking about, when we talked about what \$25 million would be, is that that also would equate to approximately 500 jobs, so I just wanted to add that in there, and I'd be happy to answer any questions anybody may have. [LB1159]

SENATOR PRICE: Thank you, ma'am. Would you please repeat the sections of the law that we're going to be repealing. You said 73-601 (sic) through 73...? [LB1159]

JULIE DAKE ABEL: 73-301 through 73-307. [LB1159]

SENATOR PRICE: All right, thank you. And I am going to be perplexed when you sit there...you came up and testified as a proponent, but the piece of paper you handed out says a statement of opposition, so that was problematic for everyone. [LB1159]

JULIE DAKE ABEL: Yeah, originally...okay, sorry about that. [LB1159]

SENATOR PRICE: But given that, are there any questions from the committee? Senator Avery, we are now on proponents, and Senator Wallman has a question. Please, Senator Wallman. [LB1159]

SENATOR WALLMAN: Thank you, Senator Price. Yeah, a question again. With Senator Warner, I think he had a bill, something about this, the deprivatization cost analysis, what it would be. [LB1159]

JULIE DAKE ABEL: Yes. Yes, he did. [LB1159]

SENATOR WALLMAN: And it didn't get out of committee, did it? [LB1159]

JULIE DAKE ABEL: That I am not sure about. [LB1159]

SENATOR WALLMAN: Yeah, I don't think so. [LB1159]

JULIE DAKE ABEL: I do believe though, I do believe that is correct. This is one of the things that he worked on quite a bit, so. [LB1159]

SENATOR WALLMAN: Because I tried it myself. [LB1159]

JULIE DAKE ABEL: Yes. [LB1159]

SENATOR WALLMAN: Thank you. [LB1159]

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SENATOR AVERY: Any other questions for this witness? Don't see any, thank you for your testimony. [LB1159]

JULIE DAKE ABEL: Okay, thank you. [LB1159]

SENATOR AVERY: More proponent testimony? Any opponent testimony? We're on LB1159. Opponent testimony? Anyone wish to testify in a neutral position? I don't see any. Senator Krist? [LB1159]

SENATOR KRIST: Let me start off by saying that in statute...I'm not sure whether it's the specific statute that Julie referred to, but in statute right now, any time a government employee is displaced there is a requirement for a cost-benefit analysis, and I believe it is...it's also in a different statute. One of the problems is that the Department of Health and Human Services has exempted itself or looked at being exempt by confusing statutes that are currently in law, and I think that's one of the things that I would hope your legal counsel--and Senator Avery is well aware of that--would lead you through in terms of conversation. It needs to be very clear. This is too important. And as Senator Sullivan alluded to, you can have a per-widget/per-unit cost. And you deal with putting something together or building something and you have some leeway, you might be able to fail. But we're talking about human beings, and to even dismiss the fact that we did not know what this was going to cost or the parameters going forward is, in my mind, borderline criminal. But we're here to try to solve the problem, and I would hope that this is one of the pieces that your committee looks at in terms of helping us get to the end and to the point. The LR37 report, as you are all aware, was a culmination of a lot of folks who came together and looked at a process. It will be fixed over the period of probably 18 months to 3 years--this is not going to be a quick fix--and it's going to be probably 10 or 15 pieces of legislation that get us to a point where we're going to be back on the right track. But we're doing it for the right reasons; we're doing it for the kids. Thank you very much. [LB1159]

SENATOR AVERY: Thank you. Any more questions for Senator Krist? Thank you. [LB1159]

SENATOR KRIST: Thanks. [LB1159]

SENATOR AVERY: (Exhibits 4-5) Before I end the hearing on this bill, I have two letters: one in support from the Children and Family Coalition of Nebraska and one in opposition from the Department of Administrative Services. [LB1159]

SENATOR KRIST: Thank you, sir. [LB1159]

SENATOR AVERY: Thank you. That ends the hearing on LB1159. We'll now move to LB792, Senator Mello. We're seeing a lot of you this session. [LB1159]

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SENATOR MELLO: (Exhibits 1-3) Yeah, I think I have one more hearing actually after this with you as well, not today but next week. Good afternoon, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. As some of the committee members may remember, there has been numerous attempts over the years to amend Nebraska statutes dealing with personal services contracts both by my predecessor, Senator Don Preister, and Senator Jerome Warner before him. In fact, I actually reintroduced what had been Senator Preister's final attempt at changing these statutes during my first year of the Legislature in 2009, with LB645. The underlying goal of that bill, like its many predecessors, was to require state agencies to perform a cost-benefit analysis on personal services contracts valued over \$50,000. At the hearing on my bill in 2009, the Department of Administrative Services testified in opposition, essentially stating that the cost-benefit analysis aspects of the legislation were unnecessary as they were already being done in most cases under the provisions in statute 73-301 through 73-307. Under these sections, any contract for personal services between a private entity and a state agency that would replace services being performed by state employees with services being performed by the private entity, with some exceptions, must first be approved by the Department of Administrative Services. In 2008, the Department of Health and Human Services first announced its plans to privatize Nebraska's child welfare system. The initial reforms transferred service coordination functions to five private agencies, which are commonly referred to as lead agencies. The transfer of service coordination functions began in November 2009, and at that time no effort was made to comply with the requirements in Chapter 73. On October 15, 2010, the Department of Health and Human Services announced the next step in the privatization of child welfare: the transfer of case management functions to the lead agencies. At this point, the Department of Health and Human Services also announced their intention to reduce their child welfare staff as a result of the transfer of case management but did not make any effort to comply with the requirements in Chapter 73 prior to announcing the decision to further privatize child welfare. While DHHS ultimately complied with these requirements, it was clearly not until after the decision had already been made. Following this series of events, my office sent a formal request to the Attorney General's office, requesting an investigation into whether DHHS had in fact violated statute by failing to comply with the requirements in Chapter 73 in November 2009, when the initial steps to privatize the child welfare system were made. This request was based on the plain language in 73-301, which requires review of any contract for personal services between a private entity and a state agency, "if on the effective date of the contract, the personal services are performed by permanent state employees of the agency and will be replaced by services performed by the private entity." In contrast, the Department of Health and Human Services took the position that the statute should not apply because no state employees were actually displaced at the beginning of the reform efforts. The committee should have received a copy of the Attorney General's Opinion on this issue

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which held that while the legislative history was not entirely clear, the interpretation of the statutes by the Department of Health and Human Services was entitled to some consideration and weight. I believe that DHHS' interpretation of these statutes is incorrect and that LB792 would clarify that personal services contracts, which transfer state duties to a private entity, should be reviewed by the Department of Administrative Services regardless of whether any state employees are actually displaced. The admission by the Department of Administrative Services that just two--I remind you that just two--of the approximately 2,500 personal services contracts in place currently have actually undergone a review required in Chapter 73 demonstrates that state agencies may not just be misinterpreting the law; they may be attempting to void it altogether. Based upon both the DAS fiscal note and the letter of opposition that my office received from the Department of Roads this morning, state agencies analyzing LB792 have either failed to fully read the language in the bill or are attempting to commit death by fiscal note. For example, both the Department of Administrative Services and the Department of Roads assume that the bill would require every single personal services contract by every single agency to undergo the review when the language in Chapter 73-301 still clearly states that only contracts transferring personal services from state employees to private employees are subject to the review requirement. DAS also assumes in their fiscal note that all contract renewals are subject to the review when the current language in Chapter 73-307 clearly states that renewals of contracts that have already been approved pursuant to Chapter 73 would not have to be reviewed unless they resulted in the displacement of additional state employees. Both the fact that the bill would not apply to all personal service contracts and would not apply to renewals is confirmed in the fiscal note from our Legislative Fiscal Office. As a result, the fiscal note for LB792 would be minimal if any. During my time in the Legislature, I've introduced numerous bills that would change the way DAS does business, and with few exceptions those bills have been opposed by the department. The bill the committee has before it today, LB792, is a simple clarification of the personal services contract statute, and I think the resulting fiscal note from the Department of Administrative Services can at best be described as vindictive. The committee should have received a copy of AM1973, which harmonizes the changes in LB792 by adding additional language to Chapter 73-307. The amendment makes it clear that renewals or amendments to a personal services contract could potentially be subject to review, but only if they resulted in either displacement of additional state employees or transfer of additional personal services to private entities. For an example, if the Department of Health and Human Services had performed the required review when they initially transferred service coordination functions and then had amended the contract to transfer some of the case management functions without displacing employees, existing statutory language would not provide for review of that amendment. AM1973 would ensure that if additional services are privatized, the contract would be reviewed. Thank you for your time, and I'd be happy to answer any questions you may have. [LB792]

SENATOR AVERY: Thank you, Senator Mello. Questions from the committee? I don't

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see any. [LB792]

SENATOR MELLO: All right, thank you. [LB792]

SENATOR AVERY: You're going to stay to close, right? [LB792]

SENATOR MELLO: Yeah. [LB792]

SENATOR AVERY: All right. Proponent testimony? Welcome. [LB792]

JULIE DAKE ABEL: Sorry about that delay. [LB792]

SENATOR AVERY: That's all right. [LB792]

JULIE DAKE ABEL: (Exhibit 4) Good morning, Senator Avery and members of the committee. My name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-el, and I'm executive director of NAPE/AFSCME Local 61. We certainly want to lend our support to LB792. We believe this is an extremely important legislative bill that Senator Mello has brought forth this year. The statutes that are being amended in this legislation are the result of a lot of extensive work that previous legislators...most importantly Senator Warner, who anticipated the potential abuses of private contracts for public services. The state has certainly witnessed this during the past year-and-a-half in the child welfare arena. Senator Warner and your predecessors had a good reason to be concerned. We believe that a case can also be made that this statute in its original form was violated. And in the case of the efforts by this administration to turn social workers into telemarketers under the oxymoron that they call ACCESSNebraska--which has become known to many as "NOACCESSNebraska"--our attorney had pointed out to the Department of Administrative Services a rather "trumped-up" report was developed to justify the decision that had already been made. In other words, it was done after the fact. We believe that this is an important statute, and we do believe that Senator Mello's legislation would help make it better. Thank you. [LB792]

SENATOR AVERY: All right. Questions from the committee? Don't see any, thank you. [LB792]

JULIE DAKE ABEL: Thank you. [LB792]

SENATOR AVERY: Additional proponent testimony? Proponent testimony to LB792? All right, we'll move to opponent testimony. All right, neutral testimony. Senator Mello, we're going to get out of here early. [LB792]

SENATOR MELLO: I know. Thank you. Thank you, Chairman Avery and members of the committee. For a point of clarification, because the only letter of opposition that...or

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the current form...in its current form opposed LB792 was a letter from the Department of Roads, which I want to clarify either their misinterpretation of the statute or the legislation, which if you look at their letter in the middle of the second paragraph, it states, "By adding 'regardless of whether any state employee is displaced,' LB792 would shift the focus of the Department of Administrative Services' duties from monitoring the privatization of state employee functions, to monitoring of all personal services contracts." To be clear, the Department of Roads is just...in a nice way, is inaccurate in the sense of their interpretation, or even they may have misunderstood the sections of Chapter 73 because the new language that's in the green copy of the bill--the amendment doesn't affect this section I'm discussing--the new language in subsection 3 of the green copy states that it...this section applies to "any such contract," which means any such contract in subsection 1. The Department of Roads is interpreting any such contract as any personal services contract in general, which it's clearly stated in the bill it only affects the contracts in subsection 1. So I think unfortunately they took a very broad view in their opposition of not fully understanding that subsection 3 is focused only on subsection 1, which was laid out in my testimony, which means that once again it only affects this personal services contracts that displaces state employees or provides transfer of services...more additional transfer of personal services to a private entity, as I mentioned through the analogy of looking at our DHHS privatization effort of the service coordination and ultimately the case management. So, I would be more than willing to work with the committee and the legal counsel--committee legal counsel--to clarify that if needed further. But I believe it's a simple misinterpretation that the Department of Roads didn't realize that subsection 3 as stated only applies to subsection 1, not their other concerns that are currently laid out in the Nebraska Consultants' Competitive Bidding Act which incorporates most, if not all, the Department of Roads' actual contracts for any infrastructure-related projects they may do. [LB792]

SENATOR AVERY: Any questions from the committee? Senator Wallman. [LB792]

SENATOR WALLMAN: Thank you, Chairman Avery. Senator Mello, welcome. You're picking on the Department of Roads here. And I can appreciate what you...you know, cost-benefit analysis. I don't know if they did the privatized road--you know, the roadside mowing--and now we have trees and everything coming up. The contractors don't exactly finish the job. I noticed the little state tractor going around. So did they do a cost-benefit analysis on mowing roadsides, you think? [LB792]

SENATOR MELLO: You know, Senator Wallman, that's a good question and at this point, I...without knowing how that contract came about, whether or not it was a "personal services contract" that's essentially governed under Chapter 73 or if it's through the Consultants' Competitive Bidding Act, which could have been a different act, which they do their...which the Department of Roads does a majority of their bids through that actual act, I can't give you a specific example of whether or not they did a

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cost-benefit analysis. I think it is worthwhile to mention though for the committee's sake again that our research on LB792 and issues resulting, Chapter 73 over the last three years, has proven that the Department of Administrative Services, when they came in front of this committee three years ago saying that they do cost-benefit analysis existing right now for all of their contracts, showed that they only have done two contracts where they did an actual cost-benefit analysis out of the 2,500 that they currently have. So I think that seeks maybe some more clarification from that department's either "mistestimony" they provided three years ago,... [LB792]

SENATOR WALLMAN: Yeah, it would be nice. [LB792]

SENATOR MELLO: ...or it needs to show...is that we as a Legislature need to update these statutes to provide more clarification of what the department actually should or should not be doing. [LB792]

SENATOR WALLMAN: Thank you, Senator Mello. [LB792]

SENATOR AVERY: Any more questions from the committee? I don't see any. [LB792]

SENATOR MELLO: Thank you. [LB792]

SENATOR AVERY: (Exhibits 5-6) Thank you. I have two letters. You mentioned the letter of opposition from the Department of Roads; I also have a letter of opposition from the Department of Administrative Services, signed by the director. [LB792]

SENATOR MELLO: Thank you, thank you. [LB792]

SENATOR AVERY: Okay, that will end the hearing on LB792. And now we'll move to LB858, and I will turn the chair over to Senator Price. [LB792]

SENATOR PRICE: Thank you, Senator Avery. Please. [LB858]

SENATOR AVERY: Today is service contract day. [LB858]

SENATOR PRICE: Yes, it is. [LB858]

SENATOR AVERY: (Exhibit 1) I am Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28. I am sending around a list of current contracts over \$25 million, and it will become apparent in a minute why I'm doing that. I'm here to introduce to you LB858. This bill, like the others that you've heard today, is the result of the Health and Human Services Committee's study of the privatization of child welfare by the Department of Health and Human Services, otherwise known as LR37. As part of the LR37 interim study process, both the Auditor of Public Accounts and the Legislature's Performance Audit Committee

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issued a report on the process of privatizing services to children in the welfare system. One of the recommendations from the Performance Audit Committee was to require a state agency to "work with Administrative Services" in contracting for services over \$25 million "to ensure adequate accountability and sound contracting practices." That's a quote from the recommendation. LB858 addresses that recommendation by placing additional requirements on state agencies contracting for services over \$25 million, and the handout that you have there will list those contracts, as they currently exist, over \$25 million. With this bill, an agency proposing to contract for services over \$25 million will submit to the Materiel Division of the Department of Administrative Services a copy of the proposed contract and a completed proof-of-need analysis. The proof-of-need analysis will include: (1) the reason for purchasing the service instead of using state employees; (2) a review of the long-term cost savings; (3) an explanation of how the state agency will have adequate control mechanisms to ensure the services are provided pursuant to the terms of the contract; (4) a jurisdiction for entering into the contract, if the contract will not result in a cost benefit to the state. The Materiel Division will certify the proof-of-need analysis by determining whether the analysis contains the information required and will report to the state agency within 30 days. The Materiel Division, in certifying the proof-of-need analysis, only is required to determine if all of the information required is provided, not to do a separate analysis. If the division certifies the analysis, the agency may enter into the proposed contract. If the division does not certify the analysis, it will inform the state agency of the additional information required. The state agency will file their proposed contract, proof-of-need analysis, and proof of certification with the Legislative Fiscal Office. This is important because the Legislature will have ready access to the information on all contracts over \$25 million. Also included in the bill is a change to the child welfare exception for service contracts. Currently in law, service contracts with direct providers of medical, behavioral and development health services, childcare, or child welfare services to an individual are exempted from most of the service contract provisions such as competitive bidding or completing a preprocess. LB858 allows an exemption for service contracts with direct providers of child welfare services to an individual if the contract is under \$25 million. Remember, this is consistent with the recommendations of the Auditor and of the Legislative Audit Committee. This provision is important because the Department of Health and Human Services relied upon the child welfare exemption and ordered it to enter into the contracts to privatize child welfare. Both the Legislative Performance Audit Committee as well as the Auditor of Public Accounts expressed concerns about the way HHS entered into these contracts. This bill keeps the child welfare exemption in place but requires that if the contract is over \$25 million, the agency will need to complete a proof-of-need analysis to justify why the contract is necessary as well as competitively bid the contract. With that, I will be happy to take any questions you might have.  
[LB858]

SENATOR PRICE: Thank you, Senator Avery. Are there questions from the committee?  
Senator Sullivan. [LB858]

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SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Senator Avery. Am I correct in thinking that your legislation is sort of a combination of Senator Krist's two bills? Am I correct? And are there differences? [LB858]

SENATOR AVERY: There are some differences. This is broader. I think his is more narrowly crafted. I don't know how the Department of Administrative Services will testify today, but we did consult with them when we were drafting this. I...it is my expectation that this committee is under some obligation to do something in this area, and we have four bills before us that contain provisions that ought to be in whatever we take to the floor. That doesn't mean that one is superior to the others, necessarily, but we will have the option of taking the best of all four of these and putting them into a bill that we would report out. And, I'll be honest with you, I'm looking at this as one of the committee's priority bills. [LB858]

SENATOR SULLIVAN: Thank you. [LB858]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Wallman? [LB858]

SENATOR WALLMAN: Thank you, Senator Price. Senator Avery, on these performance contracts or all these contracts here, we have to have some kind of assessment tool. You know, there's different ranges of care. That has to be set up by the state, wouldn't you think? [LB858]

SENATOR AVERY: Well, you mean for each contract? [LB858]

SENATOR WALLMAN: Yes. [LB858]

SENATOR AVERY: I think yes, and Senator Krist had that in his first presentation, and I would point out that that had broad support. Those contracts over \$25 million are the key ones, and I think that having the Department of Administrative Services review those to make sure that all the information is provided that is required is important. That's the minimum that we could do. I would be the first to tell you this is a...my version of the service contract legislation is not as perhaps aggressive or as extensive as some of the others that you've heard today. [LB858]

SENATOR WALLMAN: This is a lot different than building a bridge or something, you know? [LB858]

SENATOR AVERY: That's right. [LB858]

SENATOR WALLMAN: Thank you. [LB858]

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SENATOR AVERY: As Senator Krist said, we're dealing with human beings,... [LB858]

SENATOR WALLMAN: Yeah. [LB858]

SENATOR AVERY: ...and we have to be very, very careful how we craft the law.  
[LB858]

SENATOR WALLMAN: Thank you, Senator Avery. [LB858]

SENATOR PRICE: Thank you, Senator Wallman. Are there any other questions? I would just ask, would not this language, when we talk about personal service contracts, expand beyond just the ones for...that take care of citizens? It would be other personal services contracts that are over \$25 million? Just let me focus what I'm trying to say. This doesn't just focus on HHS-type contracts, correct? [LB858]

SENATOR AVERY: No, it doesn't. [LB858]

SENATOR PRICE: Okay, thank you very much. Are there any further questions? Seeing none, thank you, Senator Avery. [LB858]

SENATOR AVERY: Let me clarify that a little bit. [LB858]

SENATOR PRICE: Go ahead, please. [LB858]

SENATOR AVERY: It was the HHS contracts that precipitated this. [LB858]

SENATOR PRICE: Right. [LB858]

SENATOR AVERY: Yeah. [LB858]

SENATOR PRICE: And we...and that is not something...but this is a broad, expansive across all personal services contracts. [LB858]

SENATOR AVERY: Right, right. [LB858]

SENATOR PRICE: Thank you very much, Senator Avery. We will now move on to proponents for LB858. Welcome, Senator Harms. [LB858]

SENATOR HARMS: Senator Price and colleagues, my name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District, and I am also the Chair of the Legislative Performance Audit Committee, and I'm here today to offer the Performance Audit Committee's support for LB858. The need for LB858 arose from the Performance Audit Committee's sections' recent audit of the child welfare system as a part of LR37

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study. In that audit, we found that the Division of Child and Family Services did not conduct any type of cost-benefit analysis prior to entering into the 2009 lead agency contracts, which conflicts with contracting standards and we believe was a critical error. The Performance Audit Committee felt that state government should have a protection in place to keep a state agency from being able to enter into substantial personal services contracts without conducting or obtaining at least a detailed analysis of the potential financial implications. To that end, we recommend that there be legislation drafted that would require a written cost benefit or a similar analysis or an opinion by a financial expert of the potential financial implications of the personal services contracts valued at \$25 million or more. LB858 does this and more by requiring a proof-of-need analysis which would include a review of any long-term actual contract cost savings and an explanation of the analysis used to determine such savings. This proof-of-need analysis would also require the explanation of the process by which the state agencies will include adequate control mechanisms to ensure that the services are provided pursuant to the terms of the contract, including a description of the method by which the control mechanisms will ensure the quality of the services provided by this contract. The Performance Audit Committee supports the additional protection and the additional accountability with LB858 I would require of any state agency wishing to contract. Senator Price, this ends my testimony. I'd be happy to answer any questions if I can. [LB858]

SENATOR PRICE: Thank you, Senator Harms. Well, I would just follow up with a question which I asked earlier. Whether it's a...what's proposed under this, a need analysis or any performance-based contracting, before you do that, when you want to do a cost-base analysis you need a proper and full understanding of the work to be performed. And would you say that in looking in hindsight here at what's happened with these HHS contracts that the agencies didn't know the scope of work, so the contract was on...anything that was done would have been on shaky ground because the scope of work was not...the contract wasn't properly scoped to let a bidder know how much they were going to have to do? [LB858]

SENATOR HARMS: I think that's absolutely correct. Not only that, Senator Price, there were no long-range plans in place, there were no benchmarks in place, no way for anyone to really evaluate really what's taken place. And I think what we're trying to put in place here--or what Senator Avery is trying to put in place which we support--LB858 starts to place those kinds of things in place. You at least have some control. [LB858]

SENATOR PRICE: Okay, great. But would you concede that in a proof of an analysis...a proof-of-need analysis you'd have to have some type of manpower baseline to understand the scope of work to be done? [LB858]

SENATOR HARMS: I think you probably would. I think you have to have some understanding about that aspect. And, you know, right now where we are today with

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Health and Human Services pretty much spells it out that this could have at least started to prevent some of this from taking place. [LB858]

SENATOR PRICE: Do you know, Senator Harms, are there currently, either through Legislative Performance Audit or other agencies that you've seen, adequate manpower study guidelines? [LB858]

SENATOR HARMS: There are some available that we...you could look at and that you could pull from, that... [LB858]

SENATOR PRICE: Well, I know that from working with the federal government--Senator Krist was talking about the FAR--there are very robust manpower study models out there... [LB858]

SENATOR HARMS: Yeah. [LB858]

SENATOR PRICE: ...to be used so you can actually know what is the level of work being done that have the justification for that. So I think that before we go forward, if we're going to do a massive rework of how we do contracting, we need to go to the original source document that calls for--the core document--for the work to be performed. [LB858]

SENATOR HARMS: Well, that's something you...I think as a committee, we're going to have to review. But when you really look at this, it's flexible enough and appropriate enough for the Department of Administrative Services to start to at least get some controls on truly what is happening. And what you're talking about is something that they could very well use, where you could...yeah, I suppose you could probably amend this into the bill, but... [LB858]

SENATOR PRICE: Well, I'm sure we'll hear more in following testimony, but thank you. Are there any other questions from the committee? Seeing none, thank you, Senator Harms. [LB858]

SENATOR HARMS: Thank you very much. [LB858]

SENATOR PRICE: We'll move on to the...any further or the next proponent? Are there any other proponents for the bill? Seeing none, we'll now move on to opponents for LB858. Do we have anybody wishing to testify in opposition? Seeing none, would anybody like to testify as a neutral position on LB858? Welcome, Director. [LB858]

CARLOS CASTILLO: Good morning, Senators. Members of the committee, my name is Carlos Castillo, C-a-s-t-i-l-l-o. As you know, I'm the director of Administrative Services, and I appreciate this morning having the opportunity to appear on LB858 in a neutral

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capacity. The department opposed the green copy of this bill. However, since the bill's introduction, we have met with Senator Avery several times over the last several weeks and have discussed this bill in detail and several points related to the bill that we felt needed further clarification to create a more feasible approach to enhancing the management of contractual services. These conversations with Senator Avery were very productive. This bill as proposed would prohibit with some exceptions state agencies from entering into contracts for services in excess of \$25 million unless the agency first submits to the Materiel Division a proposed contract for and a proof-of-need analysis. Once the proof-of-need analysis is submitted, the Materiel Division would need to certify receipt of the proof of need prior to the agency entering into the contract. This bill includes mandatory elements of a proof-of-need analysis, but would allow the Materiel Division to add any criteria it deemed necessary. Although I'm testifying here today in the neutral capacity, I'm also very aware that several bills have been introduced to this committee, all trying to create additional safeguards, oversight, and accountability when agencies contract for services. I stand ready to work with and assist Senator Avery and this committee in attempting to improve the current service contract process. Again, I would like to thank members of the committee for the opportunity to testify this morning, and I'd be happy to answer any questions you may have. [LB858]

SENATOR PRICE: Thank you, Mr. Castillo. Are there questions from the committee?  
Senator Sullivan. [LB858]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Mr. Castillo. But just a clarification then. The proof-of-need analysis comes to your agency and you certify it as being received or as being reviewed and conceivably accepted or denied? [LB858]

CARLOS CASTILLO: That's part of the conversation over the last couple of weeks that we've had with Senator Avery, and part of our concern would be that we would be acknowledging that we've had receipt of the proof of need and that the elements as outlined under a proof of need are present, not making value judgments on whether or not individual components of the proof of need are satisfactory or not. That's where it gets a little difficult for us. Our buying shop, our procurement office, has 12 buyers in it, of which we help agencies with the procurement process. We're not program specialists; we don't know all the ins and outs of, let's say, a KVC contract for child welfare services. That ultimately has to reside at the agency level. We help agencies manage the process, make sure they have good specifications, make sure that they are doing scoring appropriately. But that's part of the conversation that we've had with Senator Avery is getting some clarification about what exactly is required when we get that proof of need. [LB858]

SENATOR SULLIVAN: Because it's a little different and out of the scope of what you...how you normally operate, do you see that, first of all, some new parameters may need to be established? And will there be a need to communicate where...maybe in a

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more and different way with the Department of Health and Human Services? [LB858]

CARLOS CASTILLO: Well, I mean, you know...first of all, I should point out that I think under the last time I looked into the contracts--I think it was referenced a couple of times this morning--the contracts that HHS has for services over \$20 million, most of those were conducted by the agency, some of which never even were flowing through our procurement process. They've used an exemption to contract for those services. There were maybe three or four that we helped them with the process on, so I'd like to think on the three or four that we helped them on--most recently, I think they were for managed care contracts I think with United and Coventry--we helped them with the process, and absolutely communication back and forth is important. On the other contracts, they manage that process for the most part themselves. So, I mean, that's...and that is under the way the statutes are written, they have the authority to do that. So when they come to us and ask for help, we're more than happy to provide them with assistance. That doesn't always occur because they've decided to do the procurement process themselves. [LB858]

SENATOR SULLIVAN: Thank you. [LB858]

CARLOS CASTILLO: You bet. [LB858]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions from the committee? Seeing none, thank you for coming down and testifying today, sir. [LB858]

CARLOS CASTILLO: Thank you. [LB858]

SENATOR PRICE: (Exhibits 2-3) Would anybody else like to testify in the neutral? Seeing none, Senator Avery, you can close. As you're coming up, I will read into the record a letter of support from the National Association of Social Workers and another letter of support from the Children and Family Coalition of Nebraska. Senator Avery? [LB858]

SENATOR AVERY: Thank you, Senator Price. I just want to thank Carlos for being cooperative. His department has had, I thought...I think, a good attitude toward this. It would be easy for them to draw in and say you're attacking us; we're not. This is to improve the process that we now know needs improving, and I think we have enough bills before us and ideas contained in those bills that we can get that done, and I believe that we can count on the cooperation of the Department of Administrative Services in doing that. Thank you. [LB858]

SENATOR PRICE: Thank you, Senator Avery. Senator Seiler? [LB858]

SENATOR SEILER: I just have one question. Will you, Bill--Senator--remove that

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exemption from HHS so that any contract over \$25 million will have to go to Administrative Services? [LB858]

SENATOR AVERY: It does...it preserves the exemption for those under 25, but those over it, no. Right. [LB858]

SENATOR SEILER: Yeah, I said over. It has to go. [LB858]

SENATOR AVERY: Right. [LB858]

SENATOR SEILER: Thank you. [LB858]

SENATOR PRICE: All right. Thank you, Senator Seiler. Are there any other questions? Senator Sullivan. [LB858]

SENATOR SULLIVAN: Thank you, Senator Price. Getting back to the question I asked Carlos, I mean, is if you look at what the Legislative Performance Audit identified as some problems and if we're looking at what we're trying to improve with the...specifically with the contracts in Health and Human Services, I'm not sure that we've got all the right people at the table, and I don't know how you feel about that. Obviously, Carlos said that this is one of the areas of expertise that they may not have, and yet that's the very thing that we're trying to address So how are we going to work this out? [LB858]

SENATOR AVERY: Well, under this bill his office would have to determine if all of the information has been provided. [LB858]

SENATOR SULLIVAN: Right. [LB858]

SENATOR AVERY: They would not be asked to make a separate analysis as to the accuracy of the need. The agency, though, that is planning to let the contracts would have to provide the information. And I think he's right that his office cannot be expert on everything that we do in state government, and to pass judgment on the accuracy of the need or the reliability of the information, that, I think, is asking a bit much of the department. But providing that everything is here that's required under the law...and the...you were talking about contracts over \$25 million, so they're going to be competitively bid, so there will be all sorts of eyes on these proposals, these contracts. But that's something we might want to consider in Exec Session, if there are elements of the other bills that we might want to collect and put together in a piece of legislation by way of committee amendment. [LB858]

SENATOR SULLIVAN: Thank you. [LB858]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any comments? Seeing

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none, thank you very much, Senator Avery. [LB858]

SENATOR AVERY: Thank you. [LB858]

SENATOR PRICE: And that will close the hearing on LB858 and ends our hearings for the day. [LB858]

SENATOR AVERY: Yes, it does. [LB858]

SENATOR PRICE: Thank you for participating in your government. [LB858]