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Transcriber's Office

Business and Labor Committee
February 04, 2013

[LB177 LB248 LB559 LB560]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 4, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB177, LB248, LB559, and LB560. Senators present: Steve Lathrop, Chairperson; Ernie Chambers; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: Burke Harr, Vice Chairperson; and Brad Ashford.

SENATOR MCGILL: All right, everybody. We're going to go ahead and get started, despite the low volume of senators here today. Senator Lathrop is opening on a bill in another committee and Vice Chairman Harr is not with us today. He's up in Omaha and Senator Ashford is also absent. So I was recruited to chair the committee hearing for the first part of this afternoon. I'm State Senator Amanda McGill from northeast Lincoln. We have our wonderful committee research analyst or our committee attorney here, Molly Burton, who will be with us this one last day before having her child. They're very excited about that. And Paige Hutchinson, who is the committee clerk; Senator Tom Hansen; and Senator Norm Wallman. Thank you for keeping us all company here today. Go ahead and remember, please, to silence your cell phones before we get started, and to make sure that if you're planning to testify to fill out one of the sheets there in the front so that Paige here can use it to make sure that the record is accurate. And when you come up to testify, make sure that you say and spell your name for us. And with that, we welcome Senator Smith here to open on LB177. Good afternoon.

SENATOR SMITH: (Exhibits 1, 2) Good afternoon, Senator McGill and members of the Business and Labor Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. I am here today to introduce LB177. Since drafting and preparing this legislation, new information has come to my attention; and I feel that it warrants amending the bill as it is currently written. I will address these changes as I present the testimony today. As a business owner, I am very well aware of an employer's legal obligation to pay wages owed within a certain period of time after employment is terminated for whatever reason, voluntarily or not. Under law, payment is due at the next regular payday or within two weeks of the end of the employment. Being among the vast number of honest and fair employers myself, I was not aware that there is little recourse for an employee, should an employer not abide by the provisions of the law. This issue came to my attention when investigative reporter, Mike McKnight, called me during the summer regarding several former employees of a Papillion-area business who had not been paid hundreds of dollars in back wages. When he asked me what could be done, my research revealed that the only course of action these individuals could take would be to file suit in a court of law. To me, this seemed an unnecessary and costly burden for someone to have to go through to get what rightfully belongs to them. Specific to unpaid wages, there is absolutely no enforcement provision for this regulation set forth in Nebraska's Wage Payment Act. States that have similar wage payment laws vary in the degree of how

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they are enforced, but all of the surrounding states do provide for some level of enforcement by a state labor or work force department. Nebraska does not. In its current form, LB177 would allow the commissioner to investigate cases where an employer did not pay wages owed and assess waiting time damages in the amount of 50 percent of wages owed. Furthermore, the bill allows that an employer who refuses to pay wages owed or waiting time damages assessed by the department shall be reported to the appropriate county attorney where they could be guilty of a Class IV misdemeanor, which would carry a maximum fine of \$500. However, in its current form, LB177 would also allow the Commissioner of Labor to investigate any alleged violation of the Wage Payment Act, not just the owed wages portion of the act, and then to assess a civil penalty of up to \$1,000 per violation. This latter provision of the bill is simply too expansive from what I am trying to accomplish, as my intent is only to address the willing failure to pay wages due. I have an amendment--if you could distribute this, please--I do have an amendment here that will clarify that intent as well as to provide more clarification as to when the commissioner may assess waiting time damages. Finally, an employer subject to an investigation has the opportunity for a hearing and the right to appeal in accordance with the Administrative Procedure Act. The unfortunate fact is there are some bad employers out there, and our current law does not provide for a real enforcement mechanism. That is what LB177 seeks to accomplish. That will conclude my testimony, and I encourage this committee to advance LB177 to General File with the proposed amendment. And I'm available to respond to any questions you may have. Thank you. [LB177]

SENATOR MCGILL: Thank you, Senator Smith. Are there any questions from the committee? I do not see any. Thank you very much. We'll go ahead and take the first proponent of LB177. Are there any proponents in the house? Hello. Welcome. [LB177]

ABBIE KRETZ: Good afternoon. Good afternoon, everyone, Senators. My name is Abbie Kretz; it's A-b-b-i-e K-r-e-t-z, and I have that sheet. I actually am a senior organizer with the Heartland Workers Center, which is located in Omaha. As history has shown us, exploitation is not something new to our society but rather, like so many other social ills, molds itself to specific period in time. Today we find ourselves in an era in which employers are once again taking advantage of employees, specifically not paying them for the work they have done. This may mean paying them or not paying them minimum wage, overtime payment, and bad checks, partially paying them, or deciding not to pay them at all. Wage theft is an issue affecting workers across the country. A 2009 report by the National Employment Law Project surveyed over 4,300 low-wage workers in New York, Chicago, and Los Angeles and found that at least 68 percent of these workers had experienced at least one wage violation. Based on the calculations that these researchers found, each worker lost an average of \$51 per week and with over 1.1 million workers in these three cities, this averaged out to be approximately \$56.4 million in lost wages per week. Now fortunately, we do not have those numbers here in Nebraska, but we do have stories. Nearly every week for the last two years the

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Heartland Workers Center has at least met with one worker who has not been paid. This is...the amounts that the workers were owed was anywhere between \$200 to \$30,000. While wage theft plagues a variety of workers, it has especially hit hard the workers in the restaurant, cleaning, and construction industries. For example, ten workers from a local bakery in Omaha were paid with bad checks or partially paid in cash but never paid completely. Among these workers were students from Westside and Creighton Prep schools. And although the case was pursued and investigated by the Wage and Hour Division, the business owner claimed to not have the money to pay them, yet he continues to do business. A man who cleaned Shopko stores at night tried to pursue a case against his employer with the Wage and Hour, only to discover that they could never find the employer. Three cases against Nebraska meat packing plants have gone to court as workers were not being paid for the time it takes to put on and take off protective equipment, which is popularly known as donning and doffing. Currently, 17 workers are pursuing a case against a demolition company who owes them approximately \$10,000 through Small Claims Court, although the employer claims to never have met these workers. I could keep going on, but I don't think we have time for all of this. So therefore, the Heartland Workers supports LB177 because it begins to penalize employers who do not pay by imposing a civil penalty, but even more importantly begins to assess damages, which are subsequently affecting the workers. As I have stated, many of these workers are employed in low-wage, entry-level industries which means that they depend on each paycheck. When they are stiffed either part or all of the money earned, they are forced to look the other way for other ways to survive, whether it be support from family members or supplementing their income from public assistance. Studies have also implied that young adult children enter the work force earlier rather than pursuing higher education because they must begin to support their family. Wage theft places law-abiding employers at a competitive disadvantage against dishonest employers, who are able to reduce expenses by cutting payroll to nearly nothing. It also depresses consumer spending which we know helps to fuel a healthy economy. Lastly, wage theft defrauds the state of tax revenue. A February 2011 case that we worked with some workers in construction, while the workers were paid in cash, the employer supposedly was deducting federal and state taxes from them. But only by the end of the year he would give them a 1099 form instead of a W-2 form. So I guess as the state motto goes, The Good Life, I think we need to begin to change some of our statutes so that that can apply to all Nebraskans. And I'd be happy to take any questions. Thank you. [LB177]

SENATOR MCGILL: Thank you, Abbie. Any questions? I don't see any. Thank you very much. [LB177]

ABBIE KRETZ: Thank you. [LB177]

SENATOR MCGILL: Any other proponents, folks here in favor of this bill? [LB177]

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CAROLINA QUEZADA: Thank you. Good afternoon, everyone. [LB177]

SENATOR MCGILL: Welcome. [LB177]

CAROLINA QUEZADA: (Exhibit 4) My name is Carolina Quezada. I'm executive director of the Latino Center of the Midlands. [LB177]

SENATOR MCGILL: Could you spell your name for us real quick. Thanks. [LB177]

CAROLINA QUEZADA: Sure. Carolina, C-a-r-o-l-i-n-a, Quezada, Q-u-e-z-a-d-a. And I'm here today to express my support for actually two bills that will be coming up before the committee today that protect our communities and families from unfair labor practices. The issue of wage theft is a serious one in our community since it not only places effective workers in a demoralizing situation, but it sends a strong message to others that the employers who resort to such practices are powerful enough to operate this way without repercussions. Latino Center of the Midlands, a community-based agency that has been serving the community since 1971, has seen its share of stories from workers, from community members who are afraid to speak up because they feel the system is so much more powerful than they. That because they are a lower social class, their troubles are minuscule and less important than the interest of these businesses and employers who fail to pay their wages. In this country, there is a standard of fairness where an employee enters into a contract with an employer, there is a contract. If you do the work, you get paid. You get paid if you do the work. To do so otherwise is un-American. Unfortunately, there are glitches in the system, for were it not for this, these bills would not be introduced. There are employers who are not fulfilling their contractual agreements and resort to stealing. I urge you to please uphold the dignity of all workers and their ability to provide for their families without the fear of retaliation. Please support the passage of LB560 and LB177. Thank you. [LB177]

SENATOR MCGILL: Thank you very much. Any questions? [LB177]

SENATOR HANSEN: I have one question. [LB177]

SENATOR MCGILL: Senator Hansen. [LB177]

SENATOR HANSEN: Thank you for being here today. [LB177]

CAROLINA QUEZADA: Yes, sir. [LB177]

SENATOR HANSEN: You used the word "contract" quite a bit. Are you talking about a written contract, verbal contract? [LB177]

CAROLINA QUEZADA: You know, based on the stories that we have heard at our

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center, they primarily have to do with a contract, something that was written. [LB177]

SENATOR HANSEN: Written contract, okay. [LB177]

CAROLINA QUEZADA: Yes, sir. [LB177]

SENATOR HANSEN: Okay. Thank you. [LB177]

SENATOR MCGILL: We just need to make sure you fill out a form, too, or did you... [LB177]

CAROLINA QUEZADA: One of these? Perfect. Will do. [LB177]

SENATOR MCGILL: Yes, okay, yes, perfect. Thank you very much. [LB177]

CAROLINA QUEZADA: Thank you. Thanks for your time. [LB177]

SENATOR MCGILL: Did I see one more person to testify in favor, or a couple more? [LB177]

DARCY TROMANHAUSER: So ladies first. [LB177]

SENATOR MCGILL: Hey, works for me. [LB177]

DARCY TROMANHAUSER: (Exhibit 5) Good afternoon. My name is Darcy Tromanhauser, D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r, and I'm here today for Nebraska Appleseed, a nonprofit, nonpartisan organization dedicated to justice and opportunity for all Nebraskans. And we're here also to testify in support of LB177. We're pleased to see all of the attention that this issue is getting this year, both through LB177 and through Senator Mello's LB560, so that's great to see. I think other organizations have already summed up the basics on this, and I think one other way to sort of summarize the issue is that if you're robbed on your way home from work on payday, the law goes after the thief and prosecutes a crime. But if you're not paid on payday, then we have a different standard. And so this bill helps to remedy that. We support LB177. We have a couple of minor concerns just related to the Department of Labor process that could slow the deterrence mechanism and how many wage theft violations must occur before the department reports, but it sounds like the amendment might actually address that. And we see LB177 as a good complement to LB560 and think that perhaps merging the two bills would do a lot to solve this serious problem. So I'll stop there and be happy to answer any questions. [LB177]

SENATOR MCGILL: Thank you, Darcy. Senator Wallman. [LB177]

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SENATOR WALLMAN: Thank you, Chairman McGill. Yes, Darcy, I have some issues in my district here with an employer quit paying health premiums and they still was on the job. So would you consider that... [LB177]

DARCY TROMANHAUSER: Quit paying health premiums? [LB177]

SENATOR WALLMAN: Yeah, and didn't tell the employees. [LB177]

DARCY TROMANHAUSER: And didn't tell the employees that. So as I understand, this bill would address that because if you were changing the wage structure, you'd have to provide 30 days' notice. And I would imagine that health benefits would be part of the wage structure, but I could double-check. That's just off the top of my head. I could check that and get back to you. [LB177]

SENATOR HANSEN: Thank you. [LB177]

SENATOR MCGILL: Yeah, we'll probably have to look into that to see if that would be included in that or not. I'm not sure. Otherwise, any other questions? Thank you, Darcy. [LB177]

DARCY TROMANHAUSER: Thank you. [LB177]

SENATOR MCGILL: One more proponent. [LB177]

WILLIE HAMILTON: (Exhibit 7) My name is Willie Hamilton, 2724 N. 24th Street, and I'm representing the political action chair for the NAACP as well as Black Men United, a nonprofit organization. Good afternoon, members of the Business and Labor Committee. Again, my name is Willie Hamilton, 2724 N. 24th Street, Omaha, Nebraska. Thank you for giving me the opportunity to come before you today in support of LB177 and LB560 for the following reasons. As an African-American who has been a victim of retaliation and discrimination, I feel compelled to speak in support of this bill. I have firsthand knowledge of the type of discrimination having been employed by an agency that has retaliated against me due to whistleblowing. My wages were withheld for an extended period of time, placing myself and my family into extreme hardship. I believe to expand the recordkeeping requirements of the employers who have been found guilty of unlawful employment practices to five years are needed and is reasonable. The commissioners need to be able to subpoena employment records and witnesses related to the wage theft, which is another reason why I support this bill. This problem persists across the country. And with the history and the sweeping changes in immigration laws, this type of legislation is necessary to ensure fair treatment and fair, timely, and equitable pay. Thank you for giving me the opportunity to come before you. And if you have any questions, I will be happy to answer them at this time. [LB177]

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SENATOR MCGILL: (Exhibit 3) Thank you. Any questions? I don't see any. Thank you, Willie. Last call for proponents. Anyone? Okay, we will move on to the opposition. Anyone here in opposition to the bill? I do have one letter to read into the record in opposition from the National Federation of Independent Business. Anyone here neutral? Commissioner, welcome. [LB177]

CATHERINE LANG: Thank you very much, Senator. Good afternoon, Senator McGill and members of the Business and Labor Committee. My name is Catherine Lang, C-a-t-h-e-r-i-n-e L-a-n-g, director of the Department of Economic Development and Commissioner of Labor. I appear before you today as the Commissioner of Labor in a neutral capacity on LB177. In 2012, the Department of Labor, Labor Standards Division, fielded more than 33,000 contacts related to claims under the Nebraska Wage Payment and Collection Act. The individuals contact our office seeking assistance with their wage and benefit issues. Currently the department has no statutory authority to investigate wage claims. Our effort regarding this act is to provide information to the citizens to assist them in understanding the law in this area. However, many times if no payment has been made, then the department exercises its responsibility to enforce the Wage and Hour Act to assure that the payment of minimum wage is made pursuant to Sections 48-1201 to 48-1209.01. Currently Labor Standards Division conducts just over 1,200 wage conciliation actions annually. This represents about 4 percent of the total calls for wage payment assistance that come into our office. Staff pursues select cases when jurisdiction is authorized under the Wage and Hour Act or if an employer with whom we have had contact is a chronic problem. Each investigator generally resolves about 15 conciliation...wage conciliations per month in addition to the minimum wage investigation payroll audits that are also conducted. LB177 proposes to provide jurisdiction to the Department of Labor to investigate and subpoena records and witnesses related to the enforcement of the Nebraska Wage Payment and Collection Act. It's already been mentioned that there would be an amendment to strike the penalty or the fee, but I did want to note that at least in the current bill that is there. The department is also responsible for the prosecution of and collection of the wages and fee under the Administrative Procedure Act, and the department shall refer employers who continue to violate the act to the county attorney for prosecution. If LB177 passes, the number of calls and contacts we receive may not significantly increase, but the scope and number of investigations that the Labor Standards Division would conduct would present a significant increase in workload. We estimate that two full-time staff would be dedicated to wage conciliations, handling up to 400 cases per year per staff person. We also estimate between 10 and 15 administrative hearings per year, and approximately five hours of an attorney's time in preparation and hearing time in addition to the \$1,000 per hearing for a contracted hearing officer. So our fiscal note is somewhere between \$162,000 and \$165,000 for enforcement. And I would be happy to answer any questions. [LB177]

SENATOR MCGILL: Thank you, Commissioner Lang. Senator Hansen. [LB177]

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SENATOR HANSEN: Thank you, Commissioner. I have the same question that I had earlier about contracts. And you used the word 33,000 contracts. Are all these contracts written contracts? [LB177]

CATHERINE LANG: Oh, I'm sorry. We have...and I don't think I articulated accurately, 33,000 contacts. [LB177]

SENATOR HANSEN: Contacts. [LB177]

CATHERINE LANG: So that's the number of people that contact our office... [LB177]

SENATOR HANSEN: Okay. [LB177]

CATHERINE LANG: ...every year on this issue. [LB177]

SENATOR HANSEN: And that's why I assume that it takes a month to deal with each of the 1,200, the 1,200 that you do investigate. [LB177]

CATHERINE LANG: Right. If with regard to...well, less than that, but if with regard to those contacts we find that no payment has been made, then we use the Wage and Hour Act to give us the ability to enforce those. And that's where we get to the approximately 1,200. [LB177]

SENATOR HANSEN: Okay. It's written down there as contacts, not contracts. I'm sorry. [LB177]

CATHERINE LANG: Okay, yeah. No, and I didn't state it very clearly when I spoke. [LB177]

SENATOR HANSEN: No, I don't think that was the problem (laugh). Thank you. [LB177]

CATHERINE LANG: You bet. You're welcome. [LB177]

SENATOR MCGILL: Thank you. Senator Chambers has joined us. Welcome. [LB177]

SENATOR CHAMBERS: Am I in the right room? [LB177]

SENATOR MCGILL: Yes, you are. [LB177]

SENATOR CHAMBERS: Oh, okay. [LB177]

SENATOR MCGILL: Senator Lathrop and Harr just aren't here so I'm keeping the chair

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warm. Any final questions for the commissioner? I don't see any. Thank you very much. [LB177]

CATHERINE LANG: Thank you. [LB177]

SENATOR MCGILL: Anyone else here neutral? Senator Smith, would you like to close? Senator Smith waives closing. That finishes the hearing on LB177. And I think I saw Senator Larson walk in the room to open on LB248. Welcome, Senator. [LB177]

SENATOR LARSON: (Exhibit 1) Good afternoon. I am Senator Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n, representing District 40 from O'Neill; and today I'm here introducing LB248. LB248 would allow an employer who operates all or a portion of his or her business for a reoccurring period of periods of up to 26 weeks or less to apply to become a seasonal employer. If an employer receives a seasonal employer determination, an individual who performs seasonal work for that employer cannot in the offseason file for unemployment benefits based on the wages they made as a seasonal employee. LB248 applies to only those employers who seek a seasonal employer determination and only those employees who perform seasonal work for that designated employer. The idea of this bill came from a situation that was brought to my attention from a local police department in my district. The police department employed a part-time police officer who also held a job as a seasonal employee elsewhere. The police officer, while still holding his part-time job at the police department, filed a claim for unemployment benefits based on the seasonal wages he was no longer earning during the offseason. The police department, whose operating budget was already stretched, was charged to pay part of the police officer's unemployment benefits he claimed as a seasonal employee out of work in addition to continuing to pay the police officer his part-time salary. Even while working a part-time job, this individual was allowed to file for unemployment insurance benefits based solely on the wages he earned as a seasonal employee. Allowing seasonal employees to collect these benefits during the offseason is counterintuitive to the purpose of unemployment benefits serve. Seasonal employees take seasonal jobs knowing that the position is finite. There is no exception for a seasonal job to turn into a full-time position or to extend into the offseason. Lifeguards, for example, know they work during the summer months when pools are open. When the pools area closed, they know they will have to seek elsewhere, if necessary, to sustain their standard of living between seasons. Unemployment benefits are there for those individuals who unexpectedly find themselves out of work and need temporary assistance until they can find a new job and get back on their feet. This cannot be compared to a situation faced by an individual who takes seasonal employment knowing the work is temporary. At least 22 other states have seen the logic in restricting seasonal workers from claiming unemployment benefits based on seasonal wages. Exempting these employees helped preserve a state's unemployment insurance fund to ensure that sufficient funds are there for those who truly need them. It also helps employers, such as the police department in my

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example, from having to pay out unemployment benefits to employees who are waiting out the offseason. I want to take some time to address the fiscal note that comes along with this bill. After the bill was introduced, it was brought to my attention that the way the bill was currently drafted has created conformity issues with federal laws. This is part of the reason why the cost to implement this bill was so high. In consultation with individuals from the Department of Labor, I have amended the bill to fix these issues which, by doing so, will significantly decrease the cost to the department. This is the amendment I have handed out to the committee. The department also informed me that they would like to see the date to implement this legislation pushed back. Right now the changes made in the bill would go in effect in October of this year. By moving the date back, it would allow the department more time to implement the changes it needs to make with its technology. This change will also cut back the cost of this legislation. The Department of Labor has asked their IT staff to recommend a new date. And while I have not heard back from them on a new date yet, I will be willing to amend the start date for this bill as soon as they provide us with a suggestion. Thank you and I can try to answer any questions you may have. [LB248]

SENATOR MCGILL: Thank you, Senator Larson. Any questions? I don't see any. [LB248]

SENATOR LARSON: Thank you. [LB248]

SENATOR MCGILL: Thank you very much. Do we have any proponents in the crowd today? Anyone here in favor of the bill? All right. Anyone here in opposition? Welcome back, Commissioner. [LB248]

CATHERINE LANG: Thank you very much. Senator McGill and members of the Business and Labor Committee, my name is Catherine Lang, C-a-t-h-e-r-i-n-e L-a-n-g, director of the Department of Economic Development and Commissioner of Labor. I appear before you today as the Commissioner of Labor in opposition to LB248. As Senator Larson has already stated, he has offered an amendment to LB248. However, my testimony today is based on the green copy of the bill, and the fiscal note that you have in front of you is also based on the green copy of the bill. And I appreciate that Senator Larson mentioned that we had already conversed about these issues. Our first concern with LB248 is that the bill will place Nebraska's unemployment insurance program out of conformity with federal requirements. The consequences include but are not limited to the loss of administrative funds that support the administration of the Nebraska unemployment insurance program estimated at \$15 million for fiscal year 2012, which would have to be replaced with General Funds. Additionally, the Federal Unemployment Tax Act tax credits for Nebraska employers would also be lost as a result of being out of conformity. This would result in a federal tax liability of approximately \$300 million per year to our employers. And please know that we are going to be looking at the amendment offered by Senator Larson to assure that it brings

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the state back into conformity. Another concern with LB248 is the significant programmatic changes that will be required to two major computer program systems of the department. One is UICONNECT, our tax system, and the other is our benefit payment system we refer to as BPS. The requirements contained in LB248 as written create significant reprogramming to both systems as reflected in the fiscal note. The other reason that the fiscal note is so high is the compressed time frame to bring the state into compliance if the effective date were to be October 1, and we will be visiting with the senator about another date for effectiveness or effective date of the bill. I was very pleased to have an opportunity to talk to Senator Larson prior to this hearing. And we will review his amendment in greater detail. I'd be happy to answer any questions. [LB248]

SENATOR MCGILL: All right. Any questions? I don't see any. Looks like you're off the hook. Thanks. [LB248]

CATHERINE LANG: Thank you. [LB248]

SENATOR MCGILL: Anyone else here opposed to LB248? Anyone here neutral? Senator Larson, would you like to close? [LB248]

SENATOR LARSON: Real quick so I can get back to Appropriations Committee. Thank you, guys, rather painless hearing overall. [LB248]

SENATOR CHAMBERS: You don't get any sympathy for that plea of going back to the Appropriations Committee (inaudible). [LB248]

SENATOR MCGILL: It is a stark contrast to last week so. [LB248]

SENATOR LARSON: Like I said, we worked with the Department of Labor. Obviously, the fiscal note when the bill was drafted we were unaware of the conformity issues with the federal standards so hopefully the amendment fixes that. Happy to work with the Department of Labor to get that fiscal note taken care of. Like I said, rather simple bill to ensure that those that need unemployment benefits because they lost their jobs, make sure those funds are there for them and not people that understand that they only have seasonal work and getting them from that. So like I said, it's simple fix. I appreciate the committee's time and I hope you have a nice day. [LB248]

SENATOR MCGILL: All right. Thank you very much. [LB248]

SENATOR LARSON: Thank you. [LB248]

SENATOR MCGILL: Now go send Senator Mello our way. [LB248]

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SENATOR LARSON: I will. [LB248]

SENATOR MCGILL: We'll sit at ease for a few minutes while we wait for Senator Mello. All right, everybody, we could come back to attention. Senator Mello has graced us with his presence to open on LB559. Welcome, Senator. [LB559]

SENATOR MELLO: Good afternoon, Senator McGill and members of the Business and Labor 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. While Nebraska has not experienced the unprecedented high levels of unemployment that many other states have seen, many Nebraska businesses were negatively impacted during the Great Recession and have been forced to lay off thousands of workers. Short time compensation, also referred to as shared work or work sharing, is an option within the federal and state unemployment insurance system that provides businesses with a valuable tool to prevent layoffs in the case of a temporary economic downturn. LB559 would adopt a short-term compensation or STC program, making Nebraska the 26th state with such a program in the United States. Since 2010, seven states have enacted STC programs, and STC has been recommended by the National Governors Association as a best practice for assisting workers in an economic downturn. STC is a voluntary program under which employers can temporarily reduce the normal work hours of designated employees in lieu of temporary layoffs. For example, if a Nebraska business faced a 20 percent reduction in their production, ordinary business practices might result in that business laying off one-fifth of their work force. If the business instead chooses to adopt an STC program, they can reduce employee hours by 20 percent, perhaps by switching to a four-day work week, cutting production by the required 20 percent while retaining its total work force. Employees whose hours are reduced under an STC plan would then be eligible for a prorated unemployment insurance benefits to offset their lost wages. While these benefits would not fully cover their lost income, they help mitigate the loss. As some on the committee may recall, I introduced similar legislation, LB791, last session. In fact, my office had been involved in heavy negotiations with the Nebraska Chamber of Commerce, the Nebraska Department of Labor, to finalize amendment language, when the United States Congress passed the Middle Class Tax Relief and Job Creation Act, legislation primarily aimed at extending the federal payroll tax cut and unemployment benefits. This legislation also included a section known as the Layoff Prevention Act of 2012, which provided new requirements in federal law for state STC programs, while also providing significant additional federal funding to help states launch new STC programs and promote STC to both businesses and workers. Since the federal legislation provided new requirements for STC programs, last year's negotiations were put on hold until the appropriate guidance from the United States Department of Labor was made available. This guidance was just finalized in late December and the provisions of LB559 generally track the model state language drafted by the U.S. Department of Labor. Also included in the bill are a handful of provisions which have been found to be beneficial in other states that have existing STC programs.

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Under the bill, an employer wishing to create an STC program must submit a written STC plan to the Nebraska Department of Labor. In order for that plan to be approved by the department, it must meet certain minimum requirements laid out in Section 4 of the bill. These requirements generally track the new federal requirements and include identifying which employees will be affected, providing notification to the affected employees, and certifying that health and retirement benefits will continue to be provided as if the employee's hours had not been reduced. Employers must also certify that they will not hire additional part-time or full-time employees while an STC program is in operation, that the STC program will not be used to subsidize seasonal employment, and that they have obtained the written consent of any collective bargaining unit, if applicable. Short-term compensation has generally been shown to benefit both employers and employees in other states where similar legislation has been adopted. For employers, STC helps businesses to weather economic slowdowns while still retaining their skilled work force, eliminate future business expenses for recruiting, hiring, and training new employees, and helps sustain employee morale and productivity. Employees benefit from keeping their job rather than being unemployed, and are able to retain their health insurance and retirement benefits. As mentioned earlier, the Layoff Prevention Act of 2012 provided significant federal funding to help states implement STC programs and conduct outreach activities. States have until December 31, 2014, to apply for these grants, and Section 13 of the bill provides language requiring the Department of Labor to take advantage of the opportunity. States can also receive federal reimbursement of STC benefit costs for up to three years, which will protect the Unemployment Trust Fund from any immediate impacts as a result of the new program. A 2011 report from the Congressional Research Service, however, found that STC programs have a minimal impact on the balance state unemployment trust funds. Similarly, a survey of states with STC programs done by the state of Indiana found that nearly every state reported a minimal fiscal impact on their state trust fund. In addition to benefiting from this newly available federal funding, the state should see additional benefits from STC as well, as these programs help preserve jobs and maintain consumer spending during economic downturns and reduce the burden on Medicaid and other public assistance programs. In those states that had programs in place before the start of the recession, STC has been credited with saving about 166,000 jobs in 2009, and nearly 100,000 jobs in 2010. The committee should have, and if not you will be receiving them, since my staff is in another hearing for me right now, a series of reports from the National Employment Law Project and the Center for Law and Social Policy, both national organizations that have done significant academic research surrounding STC programs. Thank you for your time and I'd be happy to answer any questions you may have. [LB559]

SENATOR MCGILL: All right. Any questions from the committee? I don't see any. Thank you. [LB559]

SENATOR MELLO: All right. Thank you. [LB559]

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SENATOR MCGILL: Any proponents? Welcome. [LB559]

JAMES GODDARD: (Exhibit 1) Good afternoon. My name is James Goddard, that's J-a-m-e-s G-o-d-d-a-r-d, and I'm the director of the economic justice and healthcare access programs at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. As the committee is well aware, Nebraskans have a strong work ethic. In fact, we consistently rank high nationally in labor force participation. LB559 would build on these strengths by creating a mechanism to keep more workers working. Indeed we support LB559 because of its potential to help low-income workers. First, the bill is intended to keep workers working rather than facing a layoff or potentially a job loss. Obviously, that helps families keep food on the table, but it also prevents an uneven work history; and an uneven work history is a barrier for low-income individuals that prevents them from reentering stable employment. Moreover, Nebraska has a significant amount of low-income working families. About 32 percent of our working families are considered low-income. LB559 can help them by preventing the economic crisis families face when they're laid off or when they lose their job. Senator Mello also mentioned the benefit...the ability to retain healthcare benefits, which is obviously huge to families. In short, we support this bill because it holds the promise of keeping low-income workers working, preventing an uneven work history, and promoting economic stability for families. We urge the committee to advance the bill. Thank you. [LB559]

SENATOR MCGILL: Thank you, Mr. Goddard. Any questions? No? Thank you very much. Are there any other proponents here today? Hello there. [LB559]

KEN MASS: Senator McGill, members of the committee, my name is Ken Mass; it's K-e-n M-a-s-s, representing the Nebraska AFL-CIO and in support of LB559. I think Senator Mello and the previous speaker have outlined the benefits of this. It's a win-win situation. So if there are any questions, I'd feel free to answer them. [LB559]

SENATOR MCGILL: Thank you, Mr. Mass. Any other...no, no questions. Thank you very much. [LB559]

KEN MASS: Thank you. [LB559]

SENATOR MCGILL: Anyone else here in favor of the bill? All right, anyone here opposed? [LB559]

CATHERINE LANG: Good afternoon, Senator McGill and members of the Business and Labor Committee. My name is Catherine Lang, C-a-t-h-e-r-i-n-e L-a-n-g, director of the Department of Economic Development and the Commissioner of Labor. I appear before you today as the Commissioner of Labor in opposition to LB559. I did give Senator

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Mello's office a call earlier today just to let them know that our main opposition to the bill is the increase in the benefits that would be paid out and the increase in the administrative costs to implement the programming necessary to carry this out. I'm going to summarize some of my testimony because Senator Mello has already done a good job of laying out the purpose of the bill and the conformity with U.S. DOL. We do want to raise just a couple of issues though. The language set forth in Section 14 of the bill is contained within the U.S. DOL model statute, but we're worried that it may--may--present a state constitutional issue. In Section 14, it provides that the provisions of the act shall not be enforced if the provision is held invalid by the United States Secretary of Labor. It is constitutionally questionable whether the Nebraska Legislature can delegate legislative powers to the Secretary of Labor. Consideration may be...should be given to requesting guidance from the Attorney General on this issue. Federal short-term compensation requirements are not allowed for short-term compensation benefits paid to seasonal, temporary, or intermittent employees. Like the model statute, LB559 does not directly prohibit seasonal, temporary, or intermittent employees from drawing short-term compensation benefits. The committee may want to consider making an explicit exclusion of seasonal, temporary, and intermittent employees from drawing short-term compensation benefits in order to avoid the possibility of a court decision contrary to the intent of the Middle Class Tax Relief and Job Creation Act of 2012 as interpreted by the U.S. DOL. In the fiscal note, you'll find a detailed explanation of our estimate of benefits. We did utilize information from the state of Missouri in terms of reaching our estimate that the anticipated cost to the trust fund for additional benefits to be paid would be approximately \$10 million. The Middle Class Tax Relief and Job Creation Act of 2012 allocates \$216,000 for the implementation of the short-term compensation program, and \$433,199 for the promotion and enrollment in the short-term compensation program. We have estimated at the Department of Labor that implementation expenses are approximately \$2 million in contractor costs during FY '13 and '14, and just under a half million dollars for FY '14 and '15. Because of the cost of implementing LB559 is projected to exceed the amount of the implementation grant by U.S. DOL, the passage of LB559 would result in funds being diverted from other unemployment insurance program projects to pay for the implementation of this program. Given the length of time required to make any changes to the benefit payment systems, it may not be possible to complete the necessary changes within the time line contemplated in the legislation. Additionally, we do anticipate ongoing costs for implementation of LB559. LB559 presents a long-term unemployment insurance benefit cost to Nebraska employers. The additional annual increased costs to the Unemployment Trust Fund for short-term compensation is estimated at over \$10 million per year. Federal law allows for the reimbursement to the state of all the short-term compensation benefits paid pursuant to the conforming state law for a period of 156 weeks, except that no benefits will be paid for weeks beginning after August 22, 2015. So even if Nebraska qualifies for the initial reimbursement of the short-term compensation benefits during the biennium ending on June 30, 2015, any short-term compensation benefits paid after August 22, 2015, will be a direct cost to

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Nebraska employers paid from their Nebraska accounts in the Unemployment Insurance Trust Fund, and this could have consequences for our employer community in future years. I'd be happy to answer any questions. [LB559]

SENATOR MCGILL: All right. Any questions? Senator Wallman. [LB559]

SENATOR WALLMAN: Yes, thank you. Yes, Commissioner, welcome. [LB559]

CATHERINE LANG: Thank you. [LB559]

SENATOR WALLMAN: Is our policy...what is that...the short-term worker policy? How many days? Do we have a figure in there? [LB559]

CATHERINE LANG: For this act... [LB559]

SENATOR WALLMAN: Short-term employment. [LB559]

CATHERINE LANG: ...or for the current law? [LB559]

SENATOR WALLMAN: Yeah, for this current law. [LB559]

CATHERINE LANG: The current law has very explicit prescriptions about what can qualify. An employer has to put together a plan, submit that to the Commissioner of Labor for approval, and all of those things are laid out in the act very specifically. [LB559]

SENATOR WALLMAN: Okay. Thank you. [LB559]

CATHERINE LANG: Okay. Thank you. [LB559]

SENATOR MCGILL: Other questions? No? Thank you very much, Commissioner. [LB559]

CATHERINE LANG: Okay. Thank you. [LB559]

SENATOR MCGILL: Anyone else here in opposition? Anyone here neutral? All right, Senator Mello, would you like to close? [LB559]

SENATOR MELLO: I would. [LB559]

SENATOR MCGILL: And you've got those reports for us now. [LB559]

SENATOR MELLO: (Exhibit 2) We do have those reports here. A couple points, I

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should say, of clarification in regards to the Nebraska Department of Labor's testimony in opposition. The first component, Section...I believe it is Section 4, subsection (6), actually we felt describes exactly that there's no subsidy for short-term compensation program for seasonal employment during the off season nor as a subsidy of temporary, part-time, or intermittent employment. So to the concern that was raised that that language needed to be clarified, by all means we felt that that language was clarified in the legislation this year in comparison to last year's; but we're more than willing to continue to try to clarify that further if the department so chooses. I think another aspect that is...it's unique, I think, in this piece of legislation; and last year, the Department of Labor came in a neutral capacity. And since the neutral capacity came last year, also had no federal reimbursement for almost three years, which is now available under this version of LB559, and which, if you review the fiscal note, both prepared by the Department of Labor and our Legislative Fiscal Office, they have actually estimated that all of our expenditures would be picked up by revenues from the U.S. Department of Labor. So there is no fiscal note in regards to the cost of implementation, and that is to be reimbursed by the U.S. Department of Labor through the grants that we explicitly lay out in the bill for our Nebraska Department of Labor to apply for. So just drawing attention to the fiscal note, it does not have a fiscal impact over the next two and a half years. The question does remain is when that federal...essentially, the federal fund...the full federal funds to cover the implementation and creation of the program, when those do go away, what ultimately would be the fiscal impact? I think it's questionable in the sense of looking at other states' information. As I mentioned in my earlier testimony, the state of Indiana did an analysis of other states that had short-term compensation plans, and found a very minimal impact on their state's unemployment trust fund, as did the Congressional Research Service as they did their 2011 report, which we used partially last year when we introduced the bill. So I've spoken with the Fiscal Office in the sense of these numbers the first year are, I think tremendously probably more accurate; the second year it's going to be a question of whether or not there's going to be that number of Nebraska businesses who take advantage of this depending upon our economic circumstances. And for us to be able to determine what that's going to be in year three and four is questionable, at best, only because this is a new program and we don't ultimately know how many businesses--once again, this is a voluntary program--how many businesses ultimately qualify to utilize the short-term compensation plan and ultimately will take advantage of it. So I hope to provide a little bit of a correction I think in regards to the Department of Labor's testimony that they're not going to be able to cover the costs because their fiscal note and our Legislative Fiscal Office said that they would be able to be fully reimbursed by the federal government. So with that, as always, I'd be happy to work with the committee in regards to any potential changes that the committee sees in LB559. [LB559]

SENATOR MCGILL: All right, thank you, Senator Mello. Any final questions? Senator Hansen. [LB559]

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SENATOR HANSEN: I have one question. Senator Mello, if...I mean, it's very similar to grants that we see all the time where to a government subdivision, it's either granted by the state or a nonprofit, and then when that grant runs out then the problem of whether are we...where are we going to get the money to run the program. This is...did you say two and a half years you think it's going to be paid for by the U.S. Department of Labor? And then (inaudible), or is it a year and a half? [LB559]

SENATOR MELLO: It's...um...Commissioner Lang did mention--I think their dates were correct--it was through August 2015 that the state would be fully reimbursed for its expenditures and costs associated with the program. After August 2015, that funding right now is slated to go away under federal law. [LB559]

SENATOR HANSEN: But if the statute is going to stay in place, so the next recession we have an employer is going to have to say, am I going to let people go or am I going to take advantage of these benefits? And then it's going to come back on the state, is that correct? [LB559]

SENATOR MELLO: I would go back...well, the funding mechanism is through the Unemployment... [LB559]

SENATOR HANSEN: Trust fund. [LB559]

SENATOR MELLO: ...Trust Fund. So the question ultimately, there's multiple policy questions that we could discuss in regards to whether or not it's beneficial for our work force, long term, to instead of laying off employees and then ultimately those employees be coming, you know, essentially applying for public assistance and public benefits through Medicaid, for SNAP, for a variety of other public benefits that the state provides, of whether or not that cost outweighs the potential usage of businesses to ultimately, for them, to pay slightly more, possibly long term, if they utilize this program on unemployment insurance taxes. So that's a question ultimately that's left up to individual businesses to make that determination if they want to do that. But I haven't seen and the research we've got from other states, this cost in their trust fund, even during the Great Recession, traumatically impacted their trust funds. I mean, businesses don't automatically qualify for this. They have to be approved by the Department of Labor, which we make it very clear in here that there's guidelines and there's benchmarks for businesses to meet before they would qualify for this program. [LB559]

SENATOR HANSEN: Okay. Thank you. [LB559]

SENATOR LATHROP: Very good. Any other questions for Senator Mello? Thank you for introducing that bill. I have been down in Education Committee. My name is Steve Lathrop. I'm the Chair of the committee. I've been down in Education Committee introducing two bills myself, and that happens from time to time when senators have to

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get up and leave, and you've probably already been told that before. And before we start with Senator Mello's last bill, I just want to recognize today is Molly's last day for the next six weeks. My trusted committee counsel is going to have a baby tomorrow, so we all feel the excitement of having a new member of our family in the Business and Labor Committee, and so if you get a chance before you leave, wish Molly well--and, I guess, a short labor. (Laughter) Quick, painless. Hopefully she gets the epidural. I think that's what she's counting on. In any case, that's what I got on labor...(laugh). On to the business. Senator Chambers did call me the humorless senator the other day, and I'm trying to make up some ground. Senator Mello, welcome to the Business and Labor Committee. [LB559]

SENATOR MELLO: (Exhibit 1) Good afternoon, Chairman Lathrop and members of the Business and Labor 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. Wage theft, or the systematic nonpayment or underpayment of wages, is a problem affecting millions of workers across the country. Recent studies have even suggested that over 60 percent of low-wage workers suffer some type of wage violation on a weekly basis. While much of the academic research on wage theft is focused on major urban areas like New York, Chicago, and Los Angeles, working families in the construction industry and in the low-wage sectors like retail and food service, can far too easily fall victim to wage theft right here in Nebraska. The committee should have received a copy of "Where Theft is Legal," a recent report by the Progressive States Network. This report, which examined the existing wage laws in all 50 states found that Nebraska ranked among the bottom ten of states providing statutory protection against wage theft. LB560, by making a series of small changes to our existing wage statutes, seeks to provide employees in Nebraska with greater protections against wage theft as well as additional methods of enforcing existing laws. Since there is no single bullet policy that can address wage theft, the changes in LB560 are interspersed amongst the Nebraska Fair Employment Practice Act, the Wage and Hour Act, the Nebraska Wage Payment and Collection Act, and the Employee Misclassification (sic--Classification) Act. I believe that each of these changes are fairly commonsense updates, and that to the extent they may place additional mandates on businesses, most Nebraska businesses are already complying with these provisions as best practices. First, Section 1 of the bill would amend the Nebraska Fair Employment Practice Act to provide a minimum period of five years that employers must preserve employment records used to document whether they have engaged in unlawful employment practices. Currently, statute leaves this period of time up to the Nebraska Equal Opportunity Commission via the rules and regulations process. But the commission has not promulgated regulations to set this minimum standard since at least 1984. Requiring that employers hold on to this information ensures that employees who believe that they have been a victim of wage theft can have access to the documentation and the evidence that could help provide their case. I would note, however, that since the Nebraska Fair Employment Practice Act only applies to employers with more than 15 employees, this requirement would not apply to

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many of Nebraska's small businesses. Next, Section 5 of the bill amends the Nebraska Wage Payment and Collection Act to require employers...then requires employers must give 30 days' written notice to any employee before altering their normal wages. The same 30-day notice provision is already required when an employer changes employees' regular pay dates. This section also amends the Nebraska Wage Payment and Collection Act to require employers to provide each employee with an itemized statement listing the wages earned and the deductions on each payday. Current statute already requires employers to provide this information to employees, but only after the employees make a written request for such information. Both of these last provisions will help provide workers with critical notice of changes in their employment that could alert them to potential wage theft situations. In addition to providing workers with more notice, LB560 provides for whistle-blower protections under the Wage and Hour Act, Nebraska Wage Payment and Collection Act, and Employee Misclassification (sic--Classification) Act. The language in each of these new sections is identical to the current whistle-blower protections in the Nebraska Fair Employment Practice Act. After the bill was introduced, it was brought to my attention that since the act the language was taken from is enforced by the Nebraska Equal Opportunity Commission, but the other acts fall under the Department of Labor, we may need some cleanup language to make sure that there is still a hearing process for complaints under the whistle-blower provisions of the other three acts. Finally, the bill provides for the enforcement of the Nebraska Wage Payment and Collection Act through both criminal penalties and investigation by the Nebraska Department of Labor. Currently, the act only provides for enforcement through filing a civil action. While attorneys fees are available for individuals who make a successful court claim, since most wage theft cases involve low-wage workers there really is little incentive for attorneys to take cases under the act. These provisions in the bill mirror the enforcement and penalty provisions in the Wage and Hour Act, although after reading Senator Smith's bill earlier today, I believe his language may provide a better remedy for victims of wage theft, and I would be supportive of using his language in lieu of Section 7 of my bill. Of course, I recognize that this is written in both the provisions in LB560 and in Senator Smith's bill would generate a fiscal note to provide additional labor law inspectors in the Department of Labor, I also think however that it would be money well spent. Unscrupulous employers who engage in wage theft are not just harming their workers, they're harming our economy by depressing consumer spending, and they're often impacting our state budget by failing to pay state taxes on the wages that are being stolen. While I'm hopeful that the committee will look favorably at LB560, at a minimum, I hope that today's hearing will be the start of a productive conversation about what we as a state can do to address serious deficiencies in our current wage laws. In the Department of Labor's own fiscal note, they admit that they received more than 33,000 complaints under the Wage Payment and Collection Act each year, yet are powerless to do anything about these complaints. LB560 is just the tip of the iceberg when it comes to putting teeth in our wage laws. And if the bill is not advanced, I continue to plan on working on the issue over the interim. Thank you for your time, and I'd be happy to

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answer any questions you may have. [LB560]

SENATOR LATHROP: Any questions for Senator Mello? Senator Hansen. [LB560]

SENATOR HANSEN: I guess I have one. On Section 5, on page 5, the 30-day provision that regular paydays or wages are altered by an employee. Does that include if they go up too, wages go up? They have to have a 30-day notice? [LB560]

SENATOR MELLO: Yes. I mean, I would have to... [LB560]

SENATOR HANSEN: Even if they go up? [LB560]

SENATOR MELLO: I would have that interpretation too, yes. [LB560]

SENATOR HANSEN: Thank you. [LB560]

SENATOR LATHROP: Any other questions? I see none. Do you want to stay to close? [LB560]

SENATOR MELLO: Yes. [LB560]

SENATOR LATHROP: Okay. Proponents, those in favor of the bill, if you'd like to come forward. [LB560]

ABBIE KRETZ: (Exhibits 3 and 4) Good afternoon, Senator Lathrop, members of the committee. My name is Abbie Kretz, A-b-b-i-e K-r-e-t-z. I'm the senior organizer with the Heartland Worker Center. What I'm having passed around are actually two e-mails that were sent to us about situations that people have individually experienced or have seen within their communities, so it's just kind of a reference for you. LB560 is to us an extension of LB177 that was earlier introduced, and it begins to take a more preventative approach to wage theft. By requiring employers to provide all workers with pay stubs, workers will know their hours, wages, and deductions, and can begin to ensure that they are paid properly. Providing workers with this written statement shouldn't be hard, especially if employers are already keeping track of the hours paid. How hard can it be to make a copy of that sheet? The provision that provides for whistle-blower protections is important to safeguard workers who want to come forward. Fear of losing their job or facing other sorts of retaliation is why workers do not speak up. One employee I have spoken with, Ed, wants to quit. He works at a painting company in Omaha but he's still owed for one month of pay, and he wants to quit because he's not getting paid for that month, but he thinks that if he does leave he won't get those back wages that are already owed to him; yet he is unsure about reporting it to anyone because he doesn't know what will happen to his job if he does so. Providing whistle-blower protections is not only good for workers but can begin to help the state

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better understand the degree to which wage theft is affecting Nebraska workers as more will hopefully begin to come forward. Lastly, the act of making wage theft a Class IV misdemeanor is the first step in deterrence. Although the fine is minimal, perhaps by making it a criminal act, employers will begin to think twice about not paying their employees. If employers know that they can get away with not paying workers, they will continue to do so. I can remember a group of workers who were cleaning new restaurants right after construction, three of them were not paid, and the employer blatantly denied that he owed them anything. A year later, the same individual opened another company in the same industry under another name, and again, not paying his new employees. Again, the measures laid out by LB560 are not only good for Nebraska workers but also for honest Nebraska businesses who are following the laws and contributing to the state. Thank you. I can answer any questions you may have. [LB560]

SENATOR LATHROP: Thanks, Abbie. Any questions for the witness? I see none. Thanks for coming down. We appreciate it. [LB560]

ABBIE KRETZ: All right. Thank you. [LB560]

SENATOR LATHROP: Anyone else here to testify in favor of the bill? Good afternoon. [LB560]

KEVIN HILTON: Good afternoon. My name is Kevin Hilton. I am a representative of the regional...sorry, North Central States Regional Council of Carpenters, and I want to speak in favor of the bill. Thank you for your time and listening to all the information that we have to share. We know that wage theft adversely affects many industries in the economy. We know that it affects places such as retail, restaurants, grocery stores, caregiving industries, home healthcare, domestic work, manufacturing, construction, wholesalers, building services such as janitorial services. We've seen instances in cleaning and laundry, car washes, and even in beauty salons, in beauty and nail salons. But I can only speak to you with regard to how it is affecting the construction industry. Specifically we represent carpenters within the construction industry, and what our information provides us is a little less formal than the number specific or percentages of those things. But we actually visit well over 90 percent of the commercial construction sites in the area of Omaha and Lincoln. Out of these visitations, we speak to carpenters daily. We know that this practice takes place on numerous accounts. We have not gone into specifics to find out specific percentages but we know that it happens enough to affect the industry. We speak to carpenters that do work in concrete, framing, drywall, finishing, doors, and floor covering, as well as some other aspects of the trade. And in this trade we know that we run into a cloudy environment of subcontracting misclassification where employment can sometimes be foggy. But wage theft unfortunately is very common and it affects not only the victimized employees but it affects a competitive market where contractors must be competitive to get work. And if unscrupulous contractors are allowed to cut off or reduce their bids by that of which they

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can actually reduce pay directly to employees owed, it can cause a competitive disadvantage or imbalance within the industry. And that's very concerning to us because it not only affects, like I said, the victimized employee but also the good contractors that are trying to maintain a competitive balance within the industry. And so it's an issue that needs to be looked at not only for the employee's sake but also employers within the state. And if you have any questions. [LB560]

SENATOR LATHROP: Very good. Any questions for Kevin? Senator Wallman. [LB560]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, Kevin, thanks for coming down here. [LB560]

KEVIN HILTON: Oh, thanks for having me. [LB560]

SENATOR WALLMAN: And is this a problem with construction management mainly of subcontracting these things out, or where is the problem at, mostly, you think? [LB560]

KEVIN HILTON: Well, I think that typically it will take place under layers of subcontracting where a general contractor is actually subcontracted to specific work, sometimes it can get cloudy as to whether or not an employee is an actual subcontractor and misclassification. But where there is clear employment, we can also see where there's wages that have been withheld. Does that answer your question? [LB560]

SENATOR WALLMAN: Yes. [LB560]

KEVIN HILTON: Okay. [LB560]

SENATOR LATHROP: Senator Hansen. [LB560]

SENATOR HANSEN: Thank you. I just have one question. On that bidding process example that you gave where they actually bid it without considering ever paying those employees, that's premeditated. Is that taken into account anywhere in the...I should be asking the lawyers, but it sounds like that's a...that's really severe when they do it premeditated, especially in that bidding process. [LB560]

KEVIN HILTON: Well, I think within there because it's commonplace, Senator, we may not necessarily see it calculated into a bid. But where a contractor has been using day labor or have been actually not paying workers on other jobs, it affords them the room to be able to cut a bid so low that otherwise they wouldn't make any profit. Where a normal contractor that is actually paying, or a good contractor that's actually paying wages--at times, benefits--and those other things that go into the wage payment calculation, such as workers' compensation, unemployment, we've seen work...contractors bid 30 percent

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lower, and obviously that's something that they take into account. [LB560]

SENATOR HANSEN: Thank you. [LB560]

SENATOR LATHROP: Okay. I do have a question for you, and that is your familiarity and the purpose of testifying here is that you go around to commercial sites and see what carpenters are doing on the sites and, you know, what their circumstances are. Would that be true? [LB560]

KEVIN HILTON: Yes. [LB560]

SENATOR LATHROP: And can you tell us, your support for the bill would suggest that wage theft in that speciality, carpentry, is prevalent in Nebraska. Are those...? And you're nodding your head, yes. [LB560]

KEVIN HILTON: Yes. [LB560]

SENATOR LATHROP: And that's not getting recorded, so that's why I asked. Are those folks, carpenters who are not being paid, are they typically misclassified in the first place, or are they actual employees who are not getting paid? [LB560]

KEVIN HILTON: Well, I think that it can go either way, and misclassification...I think it...that's a good question. I wouldn't be able to give specifics on what's more prevalent, but I think we've come across instances where wages were not paid in both circumstances where it was a direct line of employment and also where an employee was misclassified as a subcontractor. [LB560]

SENATOR LATHROP: Okay. And my next question then is, do you see these same employers continuing to operate? In other words, this is an issue that Senator Mello and I've talked about, since he introduced the bill last time, which is how many of these people are not paying wages because they're going out of business, and how many of them are doing it as a business practice? So one day they're not paying three carpenters, and then they turn around, the same business, opens up, you know, gets a job across town and hires three different carpenters, doesn't pay them. In other words, that it's a scheme or a plan as opposed to a guy going out of business. [LB560]

KEVIN HILTON: Sure. Well, I wish I had specific numbers for you on that, because I think that's a great question. But we have found that that does become, for lack of a better term, I think a competitive strategy of unscrupulous contractors where they do use that repeatedly. [LB560]

SENATOR LATHROP: Okay. [LB560]

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KEVIN HILTON: And we have seen contractors that have either through bad reputation or through trouble with some of these unlawful instances, have shut down and actually then come back with under another corporate identity. [LB560]

SENATOR LATHROP: Okay. Thank you for the answer to that question. Does anybody have any other questions? I see none. Thank you for your testimony today. [LB560]

KEVIN HILTON: Thank you. [LB560]

SENATOR LATHROP: And we'll take any other proponents that care to testify. [LB560]

KEN MASS: Senator Lathrop, members of the committee, my name is Ken Mass, K-e-n M-a-s-s, and here today in support of LB560, as we did last year, support of the bill then. And I think you've hit the nail on the...the previous speaker and yourself, Senator Lathrop, this misclassification. When you have somebody that's not paying wages for 30 days, and a couple of the other bills too, basically they're probably receiving cash. Now you run this trickle down, down the line. Who is benefiting from this? The employee isn't benefiting because the employer isn't paying him on time. Then you've got maybe not paying the right rate. But the Department of Revenue is losing money too, because I'm sure...I'm sure if there is misclassification, they aren't paying the bills, they aren't reporting to the state that, oops, we forgot to pay the state too. So I think there's a lot of domino effect to and in play here. And enforcement is a key. Always has been, always will be. Until we take...and you talk about economic development. Misclassification is the most economic development thing in the world for the state of Nebraska. So in closing I'd answer any questions. Thank you. [LB560]

SENATOR LATHROP: I see no questions. But thanks for your testimony, Mr. Mass. [LB560]

KEN MASS: Thank you. [LB560]

DARCY TROMANHAUSER: (Exhibit 5) Good afternoon again. My name is Darcy Tromanhauser, D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r, and I'm here for Nebraska Appleseed. We're a nonpartisan, nonprofit organization dedicated to justice and opportunity for all. And we're here to testify in strong support of LB560. Fairness and dignity are key to any employment relationship, and many of us take for granted the simple fact that our employer will pay us on time and to the penny. LB560, as you've heard from previous testifiers, ensures fair treatment of hardworking Nebraskans by targeting those few dishonest employers who would undermine fairness both for employees and a fair playing field for other employers by failing to pay for work performed. It's important to note that this bill does not place additional burdens on honest employers in Nebraska. It affects only those few bad apples whose unlawful actions have a serious impact on both the people whose wages are stolen and on honest employers. We see that LB560 adds

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several commonsense provisions to protect people who want to report stolen wages and to discourage wage theft in the first place. And with that I'll close since I think you've heard all of the basics before me. But if there are any questions, I'd be happy to answer them. [LB560]

SENATOR LATHROP: Very good. Thank you for your testimony. And I don't see any questions, thank you. [LB560]

DARCY TROMANHAUSER: Thanks. [LB560]

SENATOR LATHROP: Next proponent. [LB560]

ERNESTO MEDINA: Senator Lathrop, members of the committee, thank you. My name is The Reverend Ernesto Medina, E-r-n-e-s-t-o, Medina, M-e-d-i-n-a. I am a clergy member of the Episcopal Diocese of Nebraska. I recently preached on a parable that said a person can come to work at 6 in the morning and expect to be paid an abundant wage, same, another person can come at 9, another at noon, another at 3, and some even ten minutes before the end of the day, and expect to get the same wage, an extravagant wage at that. That world has yet to come, and so we live in this world, a world where we believe that if you work for an hour, you get paid for an hour; that if you work for a day, you get paid for a day; if you work for a week, you get paid for a week. It's unconscionable to believe that in this wonderful state that there are some employers that believe that an hour is not worth an hour, or work a week, worth a week. And even worse, if they're caught, that some employers believe that they can inflict negative consequences on a victim. The behavior is unethical, it's un-American, and inconsistent with the values that we have here in Nebraska. And I urge your support of LB560, moving this bill forward. Thank you. [LB560]

SENATOR LATHROP: Very good. Thank you. I see no questions. Others here in support? Anyone here in opposition to LB560 who cares to testify? Seeing no one, we will take neutral testimony from those who are here to testify in a neutral capacity. [LB560]

CATHERINE LANG: Chairman Lathrop and members of the Business and Labor Committee, my name is Catherine Lang, C-a-t-h-e-r-i-n-e L-a-n-g, director of the Department of Economic Development, and Commissioner of Labor. I appear before you today as the Commissioner of Labor in a neutral capacity on LB560. My testimony will be fairly identical to my testimony on LB177, so I will not repeat it. But it is true that the Department of Labor fields about 33,000 contacts related to claims under the Nebraska Wage Payment and Collection Act. LB560 proposes to provide jurisdiction to the Department of Labor to investigate and subpoena records and witnesses related to the enforcement of Wage Payment and Collection Act. The department shall also refer employers who continue to violate the act to the county attorney for prosecution. If

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LB560 passes, the number of calls or contacts we receive may not significantly increase, but the scope and number of investigations that the Labor Standards Division would conduct would present a significant increase in workload. We estimate two full-time staff would be dedicated to wage conciliations, handling up to 400 cases per year, per staff person. The fiscal note on this bill is slightly less than LB177. It's approximately \$149,000 in the first year and \$154,000 in the second year. And I would be happy to answer any questions. [LB560]

SENATOR LATHROP: Do you know how much revenue the state would make if we actually got the money from these people? I mean, we have employees that are being uncompensated, and as one of the testifiers said, the state isn't getting paid either. They're probably not getting the revenue they deserve or have coming for withholding. Does this pay for itself? Has anybody done that math? [LB560]

CATHERINE LANG: We have not done that analysis, no. I would not know the answer to that question. [LB560]

SENATOR LATHROP: Can you estimate how much income or...how much income you would capture if you spent \$152,000 a year enforcing this new provision for Nebraskans? Do you have any idea how much...how successful you'd be and how much wages you'd put into the hands of Nebraskans that actually did work? [LB560]

CATHERINE LANG: In the testimony on LB177, what we did state to the committee is of those 33,000 contacts that we receive, what we do is if no one...if someone has been paid nothing, we will then exercise our responsibility under the Wage and Hour Act to assure at least minimum wage compensation, and we handle about 1,200 cases a year in that area. Perhaps we could analyze the income related to those cases and provide you with that analysis. Off the top of my head, I wouldn't know, but that may be the only place where we would be able to tell you the exact number of wages in that situation, and so we would be able...we would look to do that. [LB560]

SENATOR LATHROP: I'd be interested, Commissioner, in whether or not it turns into a wash. [LB560]

CATHERINE LANG: Sure. [LB560]

SENATOR LATHROP: If we...if you aren't collecting wages through the Department of Labor, you're probably also getting or you could certainly refer them over to Revenue to collect the revenue, and does it turn into a wash? [LB560]

CATHERINE LANG: We can look at that for you. [LB560]

SENATOR LATHROP: Okay. I'm not going to let you get away quite that easy. Can you

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give me, and with the other committee members' indulgence, can you give us a little short update on misclassification, your efforts to enforce that statute and your success? [LB560]

CATHERINE LANG: Okay, just... [LB560]

SENATOR LATHROP: Or the progress, if any, that you're making. I know you put a new report out and Molly is telling me that it shows some progress. Can you just share with us where we're at in that respect. [LB560]

CATHERINE LANG: I'll give you a quick summary and then if there's information that I don't have, I'm happy to get that for you. [LB560]

SENATOR LATHROP: Okay. Thank you. [LB560]

CATHERINE LANG: We've got sort of two ways that we are looking at this. We will get direct complaints into the Labor Standards Division related to employee misclassification, and investigate those. If we do--when we do--let me say it that way. When we do on-site inspections, one of the things we make sure of is that if you are...if you...if someone is deeming you to be a contractor or a subcontractor, we then make sure that you, in fact, are registered as a subcontractor. Because by registering as a subcontractor, that's fine, you can be a contractor or subcontractor in that case. What we're also doing is when we discover those individuals who are now going to register as a subcontractor, we make sure that they also register under unemployment insurance so that we have them registered as an employer there. So there are a number of things that we're doing internally to assure the proper classification, whether you are a employee and should be classified as an employee and consider yourself an employer; and if, in fact, you believe you are a contractor or a subcontractor, that you are registered under the Contractor Registration Act. Now that Contractor Registration Act is limited to construction contractors, but at least we will assure that you are registered there. And if you register there, we want to make sure that you're registered for unemployment insurance. We also then share that information with other agencies such as the Department of Revenue. [LB560]

SENATOR LATHROP: But...okay, so let's say you get a tip. [LB560]

CATHERINE LANG: Um-hum. [LB560]

SENATOR LATHROP: The carpenters call you and they say we were just out at the site, these drywallers are in here, and every one of them calls themselves a subcontractor and they work for J&L--I'm making that up--J&L Drywalling, and J&L Drywalling has the contract for this job. Sixteen guys are in there putting up drywall. They've been moving around with J&L on different spots and they all call themselves

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independent contractors. If you go on the site and merely request that they register, that misses the point of the misclassification. It helps with the registration but it misses the point, doesn't it? [LB560]

CATHERINE LANG: Well, but if a person believes that they are in fact are a subcontractor, they have...they make that determination themselves. I mean, they're registering themselves... [LB560]

SENATOR LATHROP: But that isn't the law we passed though, is it? Didn't we set out a criteria for who is an employee and who isn't? And it's the law and not the decision of the person who chooses to be misclassified that's controlling. [LB560]

CATHERINE LANG: Unless they believe that they, in fact, are not under the control and authority... [LB560]

SENATOR LATHROP: Okay, let me put it this way. [LB560]

CATHERINE LANG: Okay, sure. [LB560]

SENATOR LATHROP: When we passed the misclassification act, we set criteria. I think we borrowed from unemployment, did we not, to require or to discern and to set out the law in Nebraska on who's an employee and who isn't for purposes of whether they're being misclassified. If they're being misclassified, that is, if they work for one guy, if the boss tells them when to be there, if they're controlled by one guy, it doesn't matter what they call themselves. They're misclassified even if they sign up as a subcontractor. [LB560]

CATHERINE LANG: What I'd like to do in that case is look at our examples, look at the investigations that we've made, and report back to you specifically on that. [LB560]

SENATOR LATHROP: Okay, let's do that. I appreciate... [LB560]

CATHERINE LANG: Yeah. [LB560]

SENATOR LATHROP: I appreciate that and I know I'm putting you on the spot. But if it comes down to, and enforcement is dependent upon, well, we just went and talked to the 16 guys that are hanging drywall for J&L on every job in Omaha for the last two years, and they all call themselves subcontractors, that's not enforcement. That's just leaving it up to the guys to continue the practice of misclassifying themselves. [LB560]

CATHERINE LANG: Let me see what we've got on that one and report back to you specifically. [LB560]

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SENATOR LATHROP: Okay. [LB560]

CATHERINE LANG: Yep. [LB560]

SENATOR LATHROP: I would appreciate that. [LB560]

CATHERINE LANG: Absolutely. Yep. [LB560]

SENATOR LATHROP: Okay. I apologize for that, and thank you for your patience, everybody else that's here. Any other questions for the commissioner? I see none. Thank you. [LB560]

CATHERINE LANG: Okay. Thank you. [LB560]

SENATOR LATHROP: Anyone else here in a neutral capacity? Seeing none, Senator Mello to close. [LB560]

SENATOR MELLO: Thank you, Senator Lathrop. And I will be brief, just a couple points I guess of clarification or information. One, in regards to the fiscal note in regards to the labor law specialists, as I mentioned before, that I wasn't...I guess I'm not in opposition to what the department came up with in regards to their fiscal note or our Legislative Fiscal Office's fiscal note in regards...it seemed reasonable that they would need additional staff to begin enforcing these laws, which to some extent surprised us when we did research on this legislation to find out that they ultimately were not able to enforce the law, which raises I think a bigger policy question for this committee and this Legislature to consider. But as...Senator Lathrop, as you remember over the last couple of years through the budget process, that the Legislature and ultimately it started in the Appropriations Committee, funded two additional labor law specialists specifically to begin the enforcement of LB563, the Employee Misclassification (sic--Classification) Act. So I think that's something that while hopefully we'll see some of the fruits of that labor be...I could see be realized in future reports. And I'll be interested to see that information that Commissioner Lang will provide you, particularly knowing that their staffing has been dramatically increased over the last year due to this Legislature's priority of providing them additional funding and staffing to do exactly that. So while I'm not opposed to providing them additional funding for labor law specialists, I do share a similar perspective that Senator Lathrop provided the committee in regards to these positions paying for themselves in regards to the lost revenues the state is currently seeing due to wage theft. It's something that for Senator McGill and Senator Lathrop and Senator Ashford and Harr who were on the Judiciary Committee last year and saw the bill I brought forward last year regarding wage theft, this is a little bit different take. It's not obviously going in the same statute area. And last year's legislation was purely focused on criminal penalties, where this actually focuses significantly more, obviously, on our existing wage laws and trying to provide more teeth in the collection of those

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wages. So with that I'd be happy to work with the committee Chair, knowing the committee counsel will no longer be around for a while in regards to addressing any issues in this legislation. Thank you. [LB560]

SENATOR LATHROP: (Exhibits 2 and 6) Okay. Thank you, Senator Mello. That will close our hearings for the day. Oh, before we close the hearing on LB560, I have a letter from the NFIB, the Voice of Small Business, dated February 4, 2013, in opposition; and the Nebraska Equal Opportunity Commission who has testified by a letter dated...or sent us a letter, dated February 4, 2013, in a neutral capacity. And with that, that will close the hearing on LB560 and our business for the day. [LB560]