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Business and Labor Committee
February 11, 2013

[LB19 LB95 LB163 LB373 LB437]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 11, 2013, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB437, LB95, LB163, LB19, and LB373. Senators present: Steve Lathrop, Chairperson; Burke Harr, Vice Chairperson; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: Brad Ashford; and Ernie Chambers.

SENATOR LATHROP: Good afternoon. Welcome to the Business and Labor Committee. My name is Steve Lathrop. I am the state senator from District 12 and the Chairman of the Business and Labor Committee. We have five bills on our agenda today. It looks like we have some new faces, so I'll cover a few rules that we have here for testifiers. The first thing I would say, just as a matter of being in the hearing room, please turn your cell phones off or onto the vibrate mode so that they're not interrupting the hearing. If you intend to testify, we generally work in this order. The senator introducing the bill will come forward, and you'll see Senator Hansen do that on LB437 in just a moment. He will introduce the bill. We will then take up those folks wishing to testify in a...in support of the bill, then we'll take opposition, then we'll take neutral testimony. And this doesn't apply to the introducer, but each person testifying on a bill will be given three minutes. You will know where you're at in the three minutes because you'll have two minutes on a green light. We use the light system here as a lot of the committees do. You'll have two minutes on a green light. When it goes from green to yellow, that's your indication that you have one minute left. And I'll ask you...I always feel rude when the red light comes on and now I have to interrupt you because some people don't stop. I have to do that because with five bills and in order to get through all of the bills and have my committee home or out of here at a reasonable hour, we have to observe that, the time on those lights. So I'm not being rude if I interrupt you when that red light comes on but only trying to make sure that we move the hearing along in an orderly fashion. I'm joined today by Senator Wallman from Cortland. Tom Hansen is also here. He's going to put in the first bill, and he is also a member of the committee. And I should also explain, when you see that there's empty chairs here, it's not because people are shirking their responsibilities or don't care about this particular bill, but we have to introduce bills in other committees. So you'll see, I think, Senator McGill and Harr, for example, are introducing bills in other committees right now. And so, please, if somebody gets up and leaves, it's not because they're not interested but because they're likely introducing a bill in a different committee, and that certainly happens from time to time. So with that, we'll begin with LB437 and Senator Hansen. Welcome to the Business and Labor Committee.

SENATOR HANSEN: Thank you, and good afternoon. And good afternoon, Senator Wallman, too. My name is Tom Hansen, T-o-m H-a-n-s-e-n, and I'm here representing District 42, the Lincoln County area. I'm introducing LB437 at the request of the

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Nebraska Department of Labor. In a nutshell, LB437 requires the inspection of elevators, amusement rides, and boilers by qualified, private inspectors retained by the owner and to transfer the administration of this inspection program from the Department of Labor to the State Fire Marshal's Office. LB437 authorizes private inspectors licensed by the state to perform inspections of elevators, amusement rides, and boilers now performed by the state of Nebraska. This legislation would act to shrink the size of the state government by having inspections currently conducted by state inspectors performed by qualified private inspectors. Most states adjoining the state of Nebraska do not require these inspections to be performed by state inspectors. LB437 continues to require every elevator, amusement ride, and boiler that is now inspected to continue to be inspected. Who performs the inspections will change but not the type of elevators, amusement rides, and boilers inspected. If you have questions, I ask that you direct them to Commissioner Lang, who will follow me with more detailed testimony. And I would like to say that they have prepared an amendment to LB437. It's AM185. That's all I have. [LB437]

SENATOR LATHROP: Very good. Thank you, Senator Hansen. [LB437]

SENATOR HANSEN: May I join you at the chair? [LB437]

SENATOR LATHROP: You may join us at the senators' table. [LB437]

SENATOR HANSEN: Thank you. [LB437]

SENATOR LATHROP: And we'll hear from the commissioner first. Welcome. [LB437]

CATHERINE LANG: Thank you. I will try and watch the buttons. 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 in support of LB437. I want to thank Senator Hansen for introducing this legislation on behalf of the department. Last year, as the Legislature considered the merger of the Department of Economic Development and the Department of Labor, one aspect of the merger that seemed to generate interest and support was the transfer of the life safety functions of the Department of Labor to the State Fire Marshal. Life safety functions include the inspection and certification of boilers, conveyances, and amusement rides and the administration of a federal grant program not referred to in state statute, OSHA 21(d) Consultation Program. We are pleased to offer legislation that will consolidate the life safety programs from the Department of Labor into the State Fire Marshal's existing life safety programs. These changes do not diminish the public safety for Nebraska citizens related to conveyances, amusement rides, or boilers; they merely change the manner in which the safety inspections are achieved. The same conveyances, amusement rides, and boilers will be inspected under LB437 as are inspected under current law by

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inspectors with the same qualifications, and the state will continue to be responsible for verifying that all conveyances, amusement rides, and boilers continue to be inspected on an annual basis. LB437 provides for the transfer of these programs to the State Fire Marshal on October 1, 2013. However, in addition to the transfer provisions, there are substantive changes to the programs that I would like to highlight. And the amendment is actually the language to make the transfer effective. It deals with the personnel and the equipment of the programs to be transferred. The Boiler Inspection Act makes the following changes. It moves and clarifies the definition of a special inspector. That codifies current policy requirements. It requires that all boilers be inspected annually. It allows for a waiver of state inspection for antique engines with a boiler in a manner similar to what is done in Kansas, and that will be if a nonprofit association certifies that the association contracts with an authorized inspection agency to perform the inspections, the boiler has been inspected and certified as safe by an authorized inspection agency, a copy of the inspection report is filed with the State Fire Marshal, and the boiler owner has paid the regular certification-of-inspection fee. Exceptions from annual inspections by the special inspectors are: unfired pressure vessels when the owner maintains a safety inspection and repair plan in accordance with national safety standards--that's current law; hot water and hobby boilers may be inspected biennially; boilers inspected by a city, upon the request of an owner; and boilers owned by the state or political subdivisions when the boiler owner requests an inspection by a state inspector. We have a section-by-section analysis that would go through all of the changes, and so I want to be mindful of the time. With regard to amusement rides, we will allow for the amusement rides to be inspected by a qualified inspector and eliminate the requirement that the inspections be performed by the state. And then, lastly, there are several changes that are made to the Conveyance Safety Act, some of which will be very important to members who are here today to testify. And again, I'd be happy to provide these detailed points for the committee. [LB437]

SENATOR LATHROP: Okay. Anybody have questions for Commissioner Lang?
Senator Wallman. [LB437]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, thanks for being here. And I think this is probably a good idea. But as far as liability issues, if something happens on these rides by a private inspector hired by us as a state, are we liable then? [LB437]

CATHERINE LANG: No, and we currently do not believe we are liable if an accident should happen. [LB437]

SENATOR WALLMAN: Okay, thank you. [LB437]

CATHERINE LANG: Okay. [LB437]

SENATOR LATHROP: I want to ask some broad questions, if I can, about the bill.

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Currently, boilers, conveyances, and amusement rides are inspected by someone employed by the Department of Labor, is that true? [LB437]

CATHERINE LANG: Not in all cases. Boilers can be, and many are, inspected by non-state employees. And in the area of the conveyances, we do have a contract with an inspection entity to inspect many of the conveyances in Nebraska. [LB437]

SENATOR LATHROP: So amusement rides would be all inspected by state employees? [LB437]

CATHERINE LANG: Yes, because we are not able to find anyone else to do that. [LB437]

SENATOR LATHROP: Okay, so we're transferring all of these functions from Labor over to the Fire Marshal. [LB437]

CATHERINE LANG: That's correct. [LB437]

SENATOR LATHROP: And for what purpose? What's the problem with having you responsible for that versus the fire guys? [LB437]

CATHERINE LANG: The primary reason for moving it is to consolidate all of the life safety programs together and in...and have one agency that's responsible for the inspection of...whether it's a fire issue, a conveyance, a boiler, because we believe that they are fundamentally related to one another. [LB437]

SENATOR LATHROP: Okay. And do we intend, after we get them over to the Fire Marshal's Office and out of your office, then to have all of this done by someone other than a state employee? I notice Senator Hansen introduced this and said we'll be reducing the size of state government. [LB437]

CATHERINE LANG: Um-hum. [LB437]

SENATOR LATHROP: Are we just reducing the number of employees, or are we saving money in this enterprise? [LB437]

CATHERINE LANG: We will reduce the amount of inspections currently done by state employees, and so there will be less cost in terms of the administration of these programs and the inspections being done statewide. The cost would then still be borne by the property owner, but they would be contracting either with a special inspector...to be able to then inspect their conveyance or their boiler. [LB437]

SENATOR LATHROP: Currently, does the state send somebody out on a schedule,

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whether it's annually or every other year, for these inspections? [LB437]

CATHERINE LANG: Yes, we do. [LB437]

SENATOR LATHROP: And so it's not incumbent upon the owner of the conveyance or the amusement ride to contact the state for an inspection. That would be the current circumstance, is that right? [LB437]

CATHERINE LANG: For the most part that is correct. If we get behind we are contacted by property owners to come out and inspect their... [LB437]

SENATOR LATHROP: Okay. [LB437]

CATHERINE LANG: And in the area of boilers, many of our boilers are inspected by special inspectors as opposed to the state of Nebraska employees. [LB437]

SENATOR LATHROP: Okay, but this bill would have these functions move over to the Fire Marshal's Office; and the Fire Marshal, in turn, would contract these inspections out. Is that true? [LB437]

CATHERINE LANG: Actually, we're transferring the responsibility to get the inspection done to the private property owner, who will then file their certificate of inspection with us, which turns the state, whether it's the Department of Labor or the State Fire Marshal, into assuring that each of them are inspected on an annual basis. There have been years where we have gotten dramatically behind. [LB437]

SENATOR LATHROP: All you are going to do in the end, when this bill is over or if it passes, is you are going to have a list of people and, as they send their inspection certificates in, someone will check it done. [LB437]

CATHERINE LANG: Yes. [LB437]

SENATOR LATHROP: But you'll have nothing to do with any of the inspections. [LB437]

CATHERINE LANG: For boilers, we will continue to do the state boilers unless the state entity wants a separate boiler inspection to be done. The conveyances will move to private inspection. [LB437]

SENATOR LATHROP: When you say "we" though, it will still be somebody you contract with. Is that true? [LB437]

CATHERINE LANG: I don't believe we contract with them. The owner will do the contracting. [LB437]

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SENATOR LATHROP: Okay, so now all you're going to do is, effectively, it goes over to the Fire Marshal. I'm just trying to get the big picture. [LB437]

CATHERINE LANG: Yeah, you bet. [LB437]

SENATOR LATHROP: It's going from you to the Fire Marshal, and the Fire Marshal is going to make sure that people have contracted with somebody who holds themselves out to be a suitable inspector. [LB437]

CATHERINE LANG: That would be correct. [LB437]

SENATOR LATHROP: Do we have some way of knowing who is a suitable inspector or an approved inspector versus one who's not? [LB437]

CATHERINE LANG: There is a process in the bill that lays all of those qualifications out. [LB437]

SENATOR LATHROP: Okay. [LB437]

CATHERINE LANG: And they have to be... [LB437]

SENATOR LATHROP: And do get some certification, I'm a certified inspector? [LB437]

CATHERINE LANG: Yes, sir. [LB437]

SENATOR LATHROP: What if they make an inspection and they get it wrong? Right now the state, under the political...or the State Tort Claims Act, has immunity from liability for a bad inspection, do they not? [LB437]

CATHERINE LANG: That would be correct. [LB437]

SENATOR LATHROP: What about the guys that...let's say I've got an elevator and, where you used to be responsible for that or your office used to be responsible for that, now the Fire Marshal is going to contract with somebody to do the inspection. Is that guy going to be liable if he gets it wrong and my elevator goes down 12 floors while I'm in it? [LB437]

CATHERINE LANG: I do not know the answer to that. [LB437]

SENATOR LATHROP: What is the state to gain from this process? Tell us what the bigger policy reason is for making these changes, if you can. [LB437]

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CATHERINE LANG: It is our opinion that the state should not be in the business of inspecting privately owned boilers and conveyances, that that can be handled through a private inspection process, as it is in many other states, and that the process of the state is to ensure that they are inspected annually and to keep the owners on track with getting their annual inspections. And so we become much more of an administrator of that process than involved in the actual inspection. [LB437]

SENATOR LATHROP: Will the state continue to have any responsibilities of inspection in any other areas? [LB437]

CATHERINE LANG: Other...? I'm sorry, I'm... [LB437]

SENATOR LATHROP: The state inspects a lot of things, don't they? Don't they inspect...like, we have weights and measurements to make sure that when I buy a gallon of gas it's a gallon of gas, right? That hasn't been contracted out, has it? [LB437]

CATHERINE LANG: I do not know that. [LB437]

SENATOR LATHROP: Okay. I think I've got the idea of this bill and what's intended to be accomplished by it. And any other questions from any of the other members? Okay. [LB437]

CATHERINE LANG: Okay, thank you. [LB437]

SENATOR LATHROP: Thank you. I appreciate it. [LB437]

CATHERINE LANG: You bet. Thank you. [LB437]

SENATOR LATHROP: Proponents, if any, of LB437, you may come forward. Good afternoon. [LB437]

JIM HEINE: (Exhibit 1) Good afternoon. I'm fighting a cold, so I apologize. I may be a (inaudible). [LB437]

SENATOR LATHROP: Every third person does, so. [LB437]

JIM HEINE: I'm sorry. [LB437]

SENATOR LATHROP: Just don't share it with anybody and we'll be fine. [LB437]

JIM HEINE: I'll try not to, Senator. Chairman Lathrop and members of the Business and Labor Committee, for the record my name is Jim Heine, J-i-m H-e-i-n-e, and I am the acting State Fire Marshal. I am here to testify today in favor of LB437. The State Fire

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Marshal agency has a long history of working to ensure the safety of Nebraska citizens. A principal component of the agency's duties is ensuring compliance with National Fire Protection Association codes, which include the "Life Safety Code." As stated by Commissioner Lang, LB437 and the proposed amendment would transfer the administration of the Conveyance Safety Act, the Nebraska Amusement Ride Act, the Boiler Inspection Act, and OSHA 21(d) Consultation Program from the Department of Labor to the State Fire Marshal agency. The first three programs function similarly to the current programs in the State Fire Marshal agency in that they are based on code enforcement. The OSHA 21(d) Program is slightly different in that it is not code enforcement but, rather, enforcing federal law standards. However, even with that difference, the ultimate goal is to help ensure public safety by providing education to the business owners and operators. LB437 not only transfers these programs to the State Fire Marshal agency but also alters the aspect of how the programs will function. In the case of the Conveyance Act, the initial and annual inspections will no longer be conducted by state employees. The State Fire Marshal agency will be issuing certification documents once proof of inspection, necessary documentation, and the necessary fee are submitted to the agency. The State Fire Marshal agency conveyance staff members will be able to conduct investigations and inspections in the instance of a complaint or if an accident which causes more than \$1,000 worth of property damage or personal injury occurs. This is similar to what will occur in the Nebraska Amusement Ride Act. The State Fire Marshal agency will be able to issue a permit for the amusement rides to operate once proof of an inspection by a qualified inspector is submitted to the agency, along with the necessary proof of insurance and fee. Again, the agency staff members will be able to conduct inspections of amusement rides and can suspend an operating permit if a hazardous or unsafe condition is found. In regard to the Boiler Inspection Act, the staff transferred to the State Fire Marshal agency will still be conducting boiler inspections for boilers owned by the state of Nebraska or its political subdivisions, as well as some unfired pressure vessel inspections. Additionally, the staff will continue to issue certificates for all boilers that must comply with the Boiler Inspection Act. The proposed bill provides a clear definition of the special inspectors that will be conducting some of the inspections as well as providing a listing of qualifications for such inspectors. Thank you for your time and consideration. I will be happy to answer any questions you have. [LB437]

SENATOR LATHROP: Very good. Any questions of the witness? I want to talk about amusement rides for just a second. Do you have any expertise in amusement rides right now? [LB437]

JIM HEINE: Myself, personally? [LB437]

SENATOR LATHROP: Yeah. [LB437]

JIM HEINE: No, sir. [LB437]

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SENATOR LATHROP: Do you have anybody in your office that does? [LB437]

JIM HEINE: No, sir. [LB437]

SENATOR LATHROP: You're not going to...then your office is going to contract with somebody to do these inspections. Is that how it's going to work or how you expect it would work? [LB437]

JIM HEINE: Well, in accordance with LB437, yes, sir. [LB437]

SENATOR LATHROP: And are you going to incur any expense associated with that, or do you just charge the amusement operator for the inspection? [LB437]

JIM HEINE: Again, we would follow in accordance with how it's laid out in LB437 to create the funds to be able to operate the program. [LB437]

SENATOR LATHROP: Okay. Do you know any guys who inspect amusement rides right now? [LB437]

JIM HEINE: Other than the staff that already is doing it with Department of Labor, no, sir. [LB437]

SENATOR LATHROP: But we're not going to use any state employees. It's part of shrinking government, right? [LB437]

JIM HEINE: Yes. [LB437]

SENATOR LATHROP: But do you know anybody that does this work? [LB437]

JIM HEINE: No, sir. [LB437]

SENATOR LATHROP: Do you know how you're going to pick anybody to do this work? [LB437]

JIM HEINE: We'll have to put it out somehow for bids, find out if there's any private entities out there that would be able to perform this function. [LB437]

SENATOR LATHROP: Do you know if there are any? [LB437]

JIM HEINE: No, sir. [LB437]

SENATOR LATHROP: Here's a concern I have. I'll just say this right now. If I'm...if the

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job...if the bill is to send it to your department and not have state employees do it and we...the expectation that you will have somebody do it from...you know, that you'll put it out to bid and have somebody, presumably, accept a contract with the state and we don't even know if there's anybody out there, that is a concern. I mean, I don't know if it's a workable approach to handing it off from the Department of Labor to the Fire Marshal. So if you want to look into that...and you can get back to my office. I'm not trying to embarrass you or put you on the spot. But if we don't know if there's people that even do this that can be hired, then we could be sending it to the Fire Marshal, rifting all these people that are doing it for the state right now, and not have anybody inspecting amusement rides. [LB437]

JIM HEINE: Yes, sir, I can do that. [LB437]

SENATOR LATHROP: Okay, okay, thank you. Any other questions? Seeing none, thank you for your testimony, for appearing here today. [LB437]

JIM HEINE: Thank you. [LB437]

SENATOR LATHROP: Next proponent, if any. Is anyone here in opposition to LB437? [LB437]

TAD FRAIZER: (Exhibit 2) Good afternoon, Chairman Lathrop, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm local counsel for the American Insurance Association, a national trade association of property and casualty insurers. Our members collectively write \$7 million in boiler and machinery insurance in Nebraska and perform over half the boiler inspections in the state, covering about 58 percent of the market. We really don't have problems with most of the bill. We are really focusing on Section 14 on page 16 of the bill. But since we had some significant concerns there, we're appearing in opposition. But the rest of the bill we're fine with. Bluntly put, we insure things that blow up and can destroy equipment, property, and kill people and, therefore, we would like to maintain control of the inspection of boilers that we insure and that we assume the risk on. We want to be very clear: We have no desire to inspect boilers that we do not insure. We have no problem with outside inspection agencies, under the bill, inspecting boilers that we don't insure. In other words, they can inspect uninsured boilers, that's fine. However, on the boilers that we do insure, we want to maintain control of the process. Our concern is that in some other states our members report when these outside inspection agencies have been authorized they'll go around to our insured clients and say, hey, would you want to buy a boiler inspector from us, and they do it. And then, when it comes time for people to inspect the boiler, they say, well, I've already got an inspection. Well, if you haven't dealt with this inspection agency, you may not be willing to accept that inspection, and then the insured is forced to shut down their boiler, take it offline, have it reinspected, and bring it back up on-line, which, with some units, large units, can take a matter of hours or a day

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for them to cool down, be inspected, and then bring them back on production. So in the information we've distributed to you we show the solution that some states have adopted, which is basically to limit these outside inspection agencies to insuring only boilers that are insured...or, excuse me, that are not insured or boilers for which the insurance company makes a specific contract with that inspection agency. And I see I'm running a little short on time, so I'll cut it off there and try to answer any questions that the committee might have. [LB437]

SENATOR LATHROP: Any questions? Senator Hansen. [LB437]

SENATOR HANSEN: Thank you. Tad, the way the insurance inspectors work now, I understand that. Do they come in from various states? Is there...because the insurance company is probably not located in Nebraska, are those insurance inspectors from the state? [LB437]

TAD FRAIZER: All...any inspector who would perform an inspection on a boiler in Nebraska would be certified currently by the Nebraska Department of Labor as a special inspector. Depending on the companies, some inspectors are actually on the staff of the insurance company; in other cases, an insurance company will contract with an outside inspection agency with which it has an ongoing relationship that it has confidence in. [LB437]

SENATOR HANSEN: Okay, thank you. [LB437]

SENATOR LATHROP: Presently do we make...I know the state is responsible for this right now, and it seems to me like we've made some changes to this statute since I've been on the Business and Labor Committee, although I don't remember it specifically. But do we already allow for the insurance companies to select and provide for the inspection? [LB437]

TAD FRAIZER: Yes. Under current law the Department of Labor can authorize insurance company inspectors to be credentialed as the special inspectors, under Nebraska law, and make those inspections. [LB437]

SENATOR LATHROP: And if...what...give me an insurance company that insures these boilers. [LB437]

TAD FRAIZER: Well, one of the classics would be, like, the Hartford Steam Boiler Company, one of the old-line companies. [LB437]

SENATOR LATHROP: Okay, let's call it the Hartford. If the Hartford currently...if they do an inspection of a boiler in an office building, is the state coming in behind them and doing a second one? Or does that satisfy both the insurance company and the state?

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[LB437]

TAD FRAIZER: My understanding is it satisfies both the insurance company and the state, since the inspector meets the certification requirements for the state. [LB437]

SENATOR LATHROP: And your position today is, regardless of whether it's being done by the Department of Labor or it's over in the Fire Marshal's Office, you don't want your insureds to be subject to two inspections or for you to have to come in after the state guy has been there because these property owners don't want to shut the boiler down twice. [LB437]

TAD FRAIZER: Not exactly that, Senator. I mean, we're not worried where the inspection agency is housed, whether it's Department of Labor or the Fire Marshal. It's... [LB437]

SENATOR LATHROP: Right, right. That makes you no difference, right? [LB437]

TAD FRAIZER: No, no. It's the authorization of what are called authorized inspection agencies, AIAs, these outside units. And we don't have a problem with them existing; we just don't want outside, kind of, freelance AIAs inspecting the boilers that we insure without our permission, in effect. Unless they have a contractual relationship with our insurance company members, we don't want them inspecting the boilers that we do insure, so that we don't get into this problem with an owner being solicited for an outside inspection, in effect, and then discovering the insurance company won't accept that. So we're fine with these outside AIAs inspecting boilers that we don't insure. That's not our problem. We're not concerned with them. We just want to maintain control of the inspection process for those boilers that we do insure. [LB437]

SENATOR LATHROP: So for anything you insure...and you send an inspector out. You just want the state to stay away, or their contractors. [LB437]

TAD FRAIZER: In effect, yes. [LB437]

SENATOR LATHROP: Okay, okay. I think I get it. Senator Hansen. [LB437]

SENATOR HANSEN: Thank you. You don't see very many boilers. I don't see very many boilers because they're down in the basement, they're hid away, and...which is a good thing. And I can't imagine anyone having a big boiler without insurance. Are most of the boilers in the state of Nebraska insured? [LB437]

TAD FRAIZER: I would assume so, but there's no requirement that they be insured. I mean, you'd be nuts not to, but I suppose, theoretically, it's possible some people go bare. [LB437]

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SENATOR HANSEN: Okay, thank you. [LB437]

SENATOR LATHROP: Okay, thanks, Tad. [LB437]

TAD FRAIZER: Thanks. [LB437]

SENATOR LATHROP: Next opponent, I guess. We're on opponents. [LB437]

STEVE SIMPSON: (Exhibits 3, 5-7) My name is Steve Simpson, S-i-m-p-s-o-n, and I am the business manager for the International Union of Elevator Constructors, Local 28. I cover the entire state of Nebraska and southwest Iowa. In fact, all but about four of the current licensed elevator mechanics in the state are represented by me. I am also a licensed elevator mechanic, which I paid for myself, my license, as did all of my members, and I come here before you today to oppose LB437. I do have a letter here written by a former state elevator inspector, head elevator inspector Bud Witt. I can read it to you very quickly. [LB437]

SENATOR LATHROP: We'll have you pass that out and just have you testify about your own thoughts. [LB437]

STEVE SIMPSON: Will you? I've got copies of that. But the reason why I'm opposed to this bill is public safety. I've got here in my hand, and you can give this to the state senators if you wish...currently there is a third-party inspector going on right now in the state of Nebraska. They've hired third-party inspectors. They've even...at the Department of Labor. And the third-party inspectors...I have in my hand here...these are state forms for them to inspect elevators. This particular individual inspected 28 elevators in one day. I have another one in here where he inspected 29; and another one in here inspected 22, all on separate days. These elevators weren't next door to each other. They were in different buildings throughout the city of Lincoln. I know there's 24 hours in a day and I'm going to go ahead and give him the benefit of the doubt that he worked 24 hours a day to do all this work, but I highly doubt that he did. So with that being said, I don't think we're getting the same inspections that we were getting from the Department of Labor. Department of Labor does approximately six to eight elevators a day and it takes about an hour, an hour-and-a-half to look at an elevator currently. I'd like to point out also, too, under the Nebraska Department of Labor Conveyance Advisory Committee meeting on July 17, 2012, the State Fire Marshal attended that meeting. And in that meeting they said that the main concern was that the programs would be administered pretty much the same. They were talking about moving the Conveyance Safety Act to the State Fire Marshal's Office, and in that they said the main concern was that the programs would be administered pretty much the way they currently are. And the State Fire Marshal addressed the issue and said it would be some internal policy changes, like uniform state vehicles, etcetera, but that the program

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would probably run pretty much like it is, directed by the state statute rules and regulations. He also said the safety program would be administratively housed under Assistant Fire Marshal. There was no opposition to a possible move of the conveyance safety program to the Fire Marshal's Office. Also, on the...also, during public comment, after I brought up the many different types of inspections that are being done quickly, it was pointed out in the minutes that the Department of Labor does do a more thorough job of inspecting the elevators and that Department of Labor inspectors have typically noted things in inspections that are covered under other codes as well, such as electrical codes, fire codes, and building codes. Currently a third-party inspector... [LB437]

SENATOR LATHROP: Okay, Steve, let's see if anybody has any questions. [LB437]

STEVE SIMPSON: All right. [LB437]

SENATOR LATHROP: I've got to stop you when that light turns red or we're going to be here... [LB437]

STEVE SIMPSON: I understand. Thank you. [LB437]

SENATOR LATHROP: And it's not fair to the guys behind you that are waiting. [LB437]

STEVE SIMPSON: I understand. [LB437]

SENATOR LATHROP: Anybody have questions for this witness? When you went through...I have a question for you. When you went through and determined that 28 elevators had been inspected in one day by one of these contract inspectors, did you look to see where they were, relative to one another... [LB437]

STEVE SIMPSON: Yeah. [LB437]

SENATOR LATHROP: ...or geographically? [LB437]

STEVE SIMPSON: Yes. They were in the city of Lincoln. A lot of them were at the...and the one on the 28 in one day was at what used to be the mall here and it's now...I think it's an office mall here in downtown Lincoln or down on "O" Street. But in order to get into an elevator, typically, you can't just walk into the door and get keys to everything. You have to go to each individual maintenance person and talk to each individual office to get into each individual equipment room. And with that being said, that takes time. [LB437]

SENATOR LATHROP: How many different buildings were they? [LB437]

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STEVE SIMPSON: Five in one day. [LB437]

SENATOR LATHROP: Okay, so several of them. [LB437]

STEVE SIMPSON: Um-hum. [LB437]

SENATOR LATHROP: If they had 5 and there are 28, they had about 6 elevators in each one? [LB437]

STEVE SIMPSON: The majority of them were at that mall, yes. [LB437]

SENATOR LATHROP: Okay. How long does it take, typically, to do an elevator inspection? Let's say that there's 25 of them you're going to do in one building. You're going to just...you're not going from building to building; you're just looking, doing whatever inspection involves. Can you tell me that? [LB437]

STEVE SIMPSON: If you've got 25 in one building, which would generally probably be a hospital or something along those lines, you could probably get that done in a week maybe. [LB437]

SENATOR LATHROP: What's it take...what's a typical time frame to do an adequate inspection of an elevator? [LB437]

STEVE SIMPSON: I would say, depending on its height, because you should check every opening, I would say anywhere between an hour and an hour and a half. [LB437]

SENATOR LATHROP: Okay. Anyone else have any other questions? I see none. I think that will do it. [LB437]

STEVE SIMPSON: Thank you. [LB437]

SENATOR LATHROP: Thank you. If you are testifying, please...I'm being reminded that I forgot to remind you guys that, if you're testifying, to fill out a form. That helps us keep a good record. So if you wouldn't mind doing that, that would be helpful today. If there...is there anyone else here in opposition? Okay. [LB437]

GREGG ROGERS: I'll complete the form when I'm done. [LB437]

SENATOR LATHROP: All right, well, I'm going to get in trouble from Paige here. [LB437]

GREGG ROGERS: I could do it before if you would prefer, sir. [LB437]

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SENATOR LATHROP: No, no, let's go ahead, and we'll...I'll take my chances with Paige. [LB437]

GREGG ROGERS: (Exhibit 4) All right, Mr. Chairman. My name is Gregg Rogers. I am--it's spelled R-o-g-e-r-s--the national coordinator for the Elevator Industry Work Preservation Fund, which is a labor management organization concerned with the safety of the riding public and the workers involved in the installation, maintenance, and repair of conveyances. I'm opposed to LB437 and would ask that it be voted down by this committee due to the simple fact that it's bad legislation. What I see about the bill is that it is written to make the program fail. Under Section 47(1) the proposal locks in the fees of between \$50 and \$100. Those fees will not sustain the program, yet, this next sentence in that section requires the Fire Marshal to establish fees for a certificate of inspection at a level necessary to meet the costs of administering the act, and I just find that voodoo economics. I'm sorry, but that's the word I used. Further, in the context of LB437, the draft proposed by the commissioner, is language that guarantees failure of the program, even if it is moved to the Fire Marshal's Office, by locking in the rules and regulations adopted and promulgated by the Commissioner of Labor pursuant to the Conveyance Safety Act, "prior to the operative date of this act shall continue in full force and effect until amended or repealed by the State Fire Marshal." Again I ask, why would you pass a law in a program that has language that guarantees failure? I would point out that current statute, 48-2506(1), already instructs the commissioner, after public hearings, to establish a reasonable schedule of fees for licenses, permits, certificates, and inspections authorized by the Conveyance Safety Act. The commissioner shall establish the fees at a level necessary to meet the costs of administering the act. My question to this committee is, why is this program in the red when the Legislature mandated the commissioner to set those fees accordingly? In 2008 this program was in the black and supported at least four--and I've actually been told there were seven--inspectors' positions, along with the clerical necessary to run the program. And now, five years later, this program is in the red, according to the commissioner, and so the suggested remedy is to gut the program and then shift it to the Fire Marshal. Section 48-2506(2) states, "The commissioner shall administer the Conveyance Safety Act. It is the intent of the Legislature that, beginning in fiscal year 2008-09, the funding for the administration of the act shall be entirely from cash funds remitted to the Mechanical Safety Inspection Fund that are fees collected in the administration of the act." It's my opinion the commissioner failed to meet the intent of this Legislature. I do want to note, for the record, that in testimony to LB971 or the companion AM1851, which transfers inspection program to the Fire Marshal, the commissioner stated,... [LB437]

SENATOR LATHROP: Mr. Rogers, I'm afraid you're out of time. [LB437]

GREGG ROGERS: Okay. [LB437]

SENATOR LATHROP: Let me see if there's any questions for you though, okay?

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[LB437]

GREGG ROGERS: Sure. [LB437]

SENATOR LATHROP: Any of the members have questions for Mr. Rogers? Senator Hansen. [LB437]

SENATOR HANSEN: I've got one. [LB437]

SENATOR LATHROP: You looked like you were cooking one up there. [LB437]

SENATOR HANSEN: Yeah, I'm cooking up one, yep. On the first page where you referred to this as voodoo economics, there's two items there, one for the inspection fee and one for the fee for the certificate. That seems like two separate items where Fire Marshal would have discretion on setting those fees. [LB437]

GREGG ROGERS: As I read through the bill, I read that as being one fee, sir. Maybe I misunderstood that and, if so, then... [LB437]

SENATOR HANSEN: Well, I'm going mostly by your written testimony here. You said, the next sentence, the proposal locks in fees, \$50 to \$100,... [LB437]

GREGG ROGERS: Um-hum. [LB437]

SENATOR HANSEN: ...and those will stay in the program. Yet, in the next section there, the Fire Marshal established fees for a certificate of inspection. So what's the difference between the inspection and a certificate? [LB437]

GREGG ROGERS: The certificate inspection fee was locked in at \$50 to \$100, and then in the next paragraph it says that those fees for the certificate of inspection shall fund the program. [LB437]

SENATOR HANSEN: All right. Thank you. We'll check that out. Thank you. [LB437]

SENATOR LATHROP: Very good. I see no other questions. Thank you for your testimony. [LB437]

GREGG ROGERS: Um-hum. [LB437]

SENATOR LATHROP: And again, I apologize for having to cut you off. [LB437]

GREGG ROGERS: No problem. [LB437]

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SENATOR LATHROP: But that's my job. [LB437]

GREGG ROGERS: I wasn't watching the lights. [LB437]

SENATOR LATHROP: That's my job as Chair. Good afternoon. [LB437]

BOB SACKETT: Hello. I'm Bob Sackett, S-a-c-k-e-t-t. I have a small lift company, and I also sit on the Elevator Safety Board. Part of the problem here, as I see it, is safety versus money. Right now, to get this program back into the black, we'd have to charge \$12 a month per elevator to get the program back into the black. You get rid of the rest of the inspectors and the oversight, who is going to inspect or review the plans? The Fire Marshal always says he doesn't have the ability to inspect plans before on a new installation. The second thing is, is by having the state people, only eight of them, we guarantee you low prices for people out west. If you have an inspector that has to run all the way to Scottsbluff, you might have somebody that has a two-stop elevator in a church that gets socked with a \$500 bill, which is, in a sense, a tax on them. So I...and in my last statement, I'd like to say, it's not really broke, we just have underfunded this agency and we have not allowed this agency to raise its fees. And that's why it's in the red, and we need to adjust those issues. And I think there's a bill later on that will address those issues, and that's why I oppose this one. Thank you for your time. [LB437]

SENATOR LATHROP: Mr. Sackett, did you say you're on the Elevator Safety Board? [LB437]

BOB SACKETT: Yes, sir. [LB437]

SENATOR LATHROP: Is that a state board? [LB437]

BOB SACKETT: Yes, sir. [LB437]

SENATOR LATHROP: Okay. Tell me your judgment or your thought process on whether this is compromising public safety. [LB437]

BOB SACKETT: I truly do. [LB437]

SENATOR LATHROP: Do you have an opinion about that, first of all? And what's your opinion? [LB437]

BOB SACKETT: I truly do because, this industry, the technology is ever-changing, and it puts an undue burden on the Fire Marshal that does not have the expertise in this industry. And if they get rid of the head inspectors and all the people that do, we're going to find some people that have some accidents. We've been really blessed in this

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state not to have any elevator accidents. The only accidents we have in this state are on bootlegged elevators. People have put elevators or wheelchair lifts in without permits. And \$12 a month for a building owner is nothing. If they can't afford \$12 a month for an elevator, then they need to think about getting into another business than renting office space because that's nothing. [LB437]

SENATOR LATHROP: Tell me about, briefly, your thoughts on why you think this is going to the Fire Marshal. You seem to think it's related to finances. [LB437]

BOB SACKETT: You're eliminating 12 positions, or 8 positions, and... [LB437]

SENATOR LATHROP: Those are eight spots over at the Department of Labor? [LB437]

BOB SACKETT: Right. And our committee has had several people testify before it that the department is either in the red or in the black. The funds disappear and come back, and it's really hard for us to understand where all the funding is going from. But if you do the math...the department needs to be solvent and, for whatever reason, the state of Nebraska has decided not to let the department raise its fees. And we've all known what has happened since 2008, I think, is the last time we've raised fees. Gas has gone up; insurance has gone up. Everything has gone up, but we still charge the same amount of money. This...if there is a perfect fee, this goes directly to the person that uses the product. This is not like a sales tax on tobacco to fund the stadium or something. This is exactly what people...I mean, I'm sorry. I'm not very good at this. [LB437]

SENATOR LATHROP: No, you're doing fine. [LB437]

BOB SACKETT: But this fee goes right to the people who need the protection, okay, and it's there to protect you and me, when we get on that elevator and press that button, that we're going to get to four or five or six. It protects the landlord that, when that customer gets and goes four, five, and six, that they're going to get there and not have a problem. And this program, I think, is less than a million dollars, if this had been properly funded. [LB437]

SENATOR LATHROP: Okay. [LB437]

BOB SACKETT: So in the scheme of this state budget, that is nothing. [LB437]

SENATOR LATHROP: Do we have eight inspectors now? Is that what you said? [LB437]

BOB SACKETT: I think we're understaffed currently, sir, and that's why... [LB437]

SENATOR LATHROP: Well, I was going to say, eight...it sounds like there's a lot more

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elevators if it takes, what, an hour and a half to do one? [LB437]

BOB SACKETT: There is close to 4,000 elevators in the state of Nebraska, as I understand. And the state can get through with the eight people, get through those in the regular cycle, in a year. That's not a problem for them. [LB437]

SENATOR LATHROP: Okay. And you said you're on the board. Were you appointed by the Governor? [LB437]

BOB SACKETT: Yes, sir. [LB437]

SENATOR LATHROP: Okay, and probably approved by this committee. [LB437]

BOB SACKETT: I hope so. [LB437]

SENATOR LATHROP: Yeah, I must...forgive me for not recognizing you. (Laugh) All right, well, we have a lot of people that come through here. [LB437]

BOB SACKETT: Thank you. [LB437]

SENATOR LATHROP: Thank you for your testimony, and we... [LB437]

BOB SACKETT: Thank you again. [LB437]

SENATOR LATHROP: Yeah, yeah, thank you. Anyone else here in opposition? Good afternoon. [LB437]

JOHN FALGIONE: (Exhibit 8) Good afternoon, Senator Lathrop, members of the committee. My name is John Falgione, J-o-h-n F-a-l-g-i-o-n-e, and I was recently the State Fire Marshal for the last six years, from January 2007, until my retirement, December 28, 2012. I am here today to speak in opposition to LB437. During my tenure as a State Fire Marshal, the idea of transferring certain programs from within the Department of Labor to the State Fire Marshal was talked about for many years. The Department of Labor wanted to transfer the programs that operated by enforcing codes into the State Fire Marshal. As it seemed, this would allow for a more cohesive structure and purpose to both agencies. I was accepting of the idea but wanted to ensure that any programs that were transferred would be self-sufficient because the agency budget did not have the extra funds to support a new program. Unfortunately, this goal was never achieved during my tenure as one of the programs. The conveyance safety program is still not capable of generating enough funds to meet the statutory requirements for the program. During last year's discussions relating to the merger of the Department of Labor and Economic Development, this issue was again raised and the Department of Labor stated that, we're planning to make a regulation change that

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would create a new certification fee, patterned after what is used in the boiler inspection program, which would alleviate the funding deficit. However, this regulation has never occurred, and the current funding levels will not support the program. Rather than address this funding problem, the language of LB437 decimates the conveyance program by eliminating state inspection and, instead, privatizing all conveyance inspections. The practice of allowing some private inspections has already started within the program through an outside contract, even though there are no provisions in current state law to allow for this situation. Under the language of LB437, the new structure will require the State Fire Marshal to issue a certificate document after the private companies submit a fee and documentation saying an inspection was conducted. There will be no direct control or supervision of the inspections themselves. The conveyance safety program was set up to ensure the safety of Nebraska's citizens. This kind of life safety is a primary purpose of the State Fire Marshal agency. Currently, all required statutory inspections are performed by State Fire Marshal staff members or delegated authority representatives who are accountable to the State Fire Marshal. There is direct supervision and control of the person performing the inspections. Under LB437 this will be the case. It has been said that this new structure will not reduce the safety to Nebraska citizens, but I disagree. If the State Fire Marshal has no direct control of the inspections, there is no way to ensure that complete, detailed, and comprehensive inspections are being conducted. It's also been said that this new structure would remove liability from the deep pockets of the state. While this may be true, I do not believe liability concerns should be the primary focus when dealing with life safety of the citizens of Nebraska. Rather, we should bring the conveyance program back to full staffing level, thus, allowing direct control over inspections to help ensure the highest level of life safety. LB437 would also change the current program structure in the boiler inspection program in that it would require the inspections to now be conducted by special inspectors, which are defined as someone employed by an insurance company insuring the boiler. Again, this removes the State Fire Marshal from having direct control over the inspections. [LB437]

SENATOR LATHROP: John, I've got to interrupt you,... [LB437]

JOHN FALGIONE: Okay. [LB437]

SENATOR LATHROP: ...because when that light turns red, I've got to stop. [LB437]

JOHN FALGIONE: Okay. Yes, sir. [LB437]

SENATOR LATHROP: Are there questions from any of the members? Senator Hansen. [LB437]

SENATOR HANSEN: I've got one. Thank you, John, for being here. In the big picture, do you think those life safety functions ought to be all under one agency? I mean, not

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regarding the payment of them or keeping that program going. [LB437]

JOHN FALGIONE: Yes, I agree. [LB437]

SENATOR HANSEN: Do you think in the big picture it should be... [LB437]

JOHN FALGIONE: I agree. I have always...there was reference made earlier to a meeting back in July of last year. I've never been in opposition to having the inspection process, the code enforcement process, all under the State Fire Marshal's agency. But to take a program that's not funded and try to do anything with and there's no funds allocated for it, and to do it with people that you have no control over their inspection abilities or performance standards, I mean, you can always have the standards, but will it...are they actually being performed to those standards? It's a precarious position. [LB437]

SENATOR HANSEN: The standards are certainly a part of it, I mean, and a very big part of it too. But the funding of it, sitting on the Appropriations Committee for four years, you have to have the program that needs funded before you can fund it. I mean, it's close proximity (inaudible). [LB437]

JOHN FALGIONE: Absolutely. And it was my understanding, in my discussions with the commissioner of years ago on this, that there was a program in the mill to raise the state fees, to raise the fees to make these a fully funded, viable program, and that was never brought into play. There was...it was... [LB437]

SENATOR HANSEN: Thank you. [LB437]

JOHN FALGIONE: The fees were never raised to make the program viable. [LB437]

SENATOR LATHROP: I'm going to ask a hypothetical. If you were still over in the Fire Marshal's Office, would you want the responsibility of a program, if money weren't the issue, when the inspectors are all subbed out? [LB437]

JOHN FALGIONE: No, sir. [LB437]

SENATOR LATHROP: And what would be your concern, other than the fact that they would be handing you an unfunded or an underfunded responsibility with having you essentially managing contracts for having other people do these inspections? [LB437]

JOHN FALGIONE: Okay, I guess I take everything more on a personal level. I'm looking out for the state at that point, and I fail to see how there is...the state and the State Fire Marshal agency would not have an element of liability in a catastrophic event, which would result into a life's...the deep pockets, I know this program was supposed to

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eliminate the deep pocket thing, but I have my doubts. [LB437]

SENATOR LATHROP: Did you have some discussion about the money or the problem with shifting this from the Department of Labor to your office when you were still a Fire Marshal? [LB437]

JOHN FALGIONE: Some. There was some discussion and it was...I made it very clear that I was only willing to accept that program on the basis that the staff and funding came along with the program to keep the program because there are no extra funds in the State Fire Marshal budget to absorb a startup of a new program and to fund it and to get it going and to sustain it. [LB437]

SENATOR LATHROP: Okay. Thank you for your testimony and your willingness to come here today and testify. [LB437]

JOHN FALGIONE: Thank you very much. [LB437]

SENATOR LATHROP: Anyone else here in opposition? Is there anyone here who wishes to testify in a neutral capacity on LB437? I see none. Senator Hansen to close. Senator Hansen... [LB437]

SENATOR HANSEN: I'll waive. [LB437]

SENATOR LATHROP: (See also Exhibit 9)...waives his close, and that will take us from Senator Hansen to the next bill, which looks like Senator Dubas and LB95, the Employee Credit Privacy Act. Welcome. [LB437]

SENATOR DUBAS: (Exhibits 1 and 3) Thank you. Thank you, Senator Lathrop, members of the Business and Labor Committee. LB95 deals with an issue that was brought to my attention several years ago by a constituent. I was previously before you a couple of years ago to introduce a credit check bill in 2011, and I'm back today to reintroduce very similar legislation. It's the intent of this bill to prevent people from being discriminated against in obtaining or retaining employment because of his or her credit history or credit report. Since there are times when looking at a credit report or credit history serves an obvious purpose, there are several exceptions included in the bill. Businesses such as banks, financial holding companies, savings banks, savings and loan associations, credit unions, or trust companies are all exempt, along with insurance or surety businesses, state law enforcement agencies, state or local government agencies that require applicants' credit history or report, or a debt collector. There is also an exemption for a bona fide occupational requirement. And to qualify as a bona fide occupational requirement, at least one of the following circumstances must be met: state or federal law requires bonding or other security; the duties require signatory power over marketable assets of \$100 or more per transaction; it's a managerial

position; or the position meets criteria in administrative rules that the United States Department of Labor or the Nebraska Department of Labor has adopted and promulgated to establish the circumstances in which a credit history is a bona fide occupational requirement. I think the question that we should be asking ourselves is, what is an employer looking for when they use a credit check as part of their employee assessment? And from what I've been able to determine, there is little correlation between credit history and job performance or the likelihood of committing fraud. A credit history is a generic recording of a person's financials. It cannot demonstrate a reason behind the numbers--good, bad, or indifferent. There are many occurrences in our lives that are out of our control but that can have an impact on our credit scores. The loss of a spouse or a child, a divorce, medical expenses from a serious or chronic illness, bankruptcy, job loss, and identity theft can all significantly impact our history and the ability to improve our report history. It's also not uncommon to have inaccuracies in a report, so unless you regularly monitor your report, you may not be aware of false information that's present. And it's also not easy or a quick undertaking to make corrections to a report. The use of credit reports as part of a job screening process can create a Catch-22. You cannot improve your score without a job to pay your bills, and you may not get a job without a good credit history. Currently, a prospective employee has to give permission to the employer to obtain a report, but that puts the applicant in a difficult position, and then the employer is also required to let that applicant know if they'd been denied the job based on their credit history and allow them an opportunity to provide explanations or make corrections. This can be a cumbersome process. And if you have multiple applicants for a job, it will probably be easier to offer the job to someone else, rather than tell the applicant that they were turned down because of their credit history. It appears that the use of credit scores in job interviews has an especially negative impact on women, the disabled, and certain populations, such as Hispanics and African Americans, because their scores tend to be lower. We also should not ignore the fact that a significant number of people across the country and in our state are unbanked or underbanked. Slightly over 20 percent of Nebraskans fall into these categories. And because of that situation, it prevents them from building a score that could create hardships as they work to improve their lot in life. According to TransUnion, the risk of consumer credit delinquency has recently hit an all-time high, which means credit scores will not see a quick rebound. I understand there must be a balance in order to recognize an employer's need to assess potential employees and the need to help prospective employees caught in economic conditions that were not of their own making, and I hope LB95 can be that balanced approach. I received an e-mail from a young woman this morning that I think it's...and you've handed it out to me, but I'd just like to highlight it because I do really feel it makes the point that I'm trying to make through LB95. And here's a woman who she's an army veteran, a single mother of three, she has a bachelor's degree, two master's degrees, and she's starting on her Ph.D. this fall. She's a member of multiple professional organizations. She coaches her daughter's soccer team, very hard worker, high morals and ethics. But she has a poor credit score because, several years ago, she hit some very difficult times in her life.

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During those times, she was basically raising her children and family on \$12,000 a year. She kept two jobs. She did not want to get on public assistance, so she did everything that she could. She cut out all the extras. She did whatever she could to hold hearth and home together and take care of her children and has continued to improve herself through her education. But her credit score does not reflect any of those things that she has done to help improve her life. And she has been able to rise above it, but if someone was looking at her application and using her credit score as a part of that consideration, it could have a negative impact on her. So, as I said, I do appreciate and understand the balance between what employers are looking for versus where employees are at in their particular situation, but I hope LB95 can, in some way, try to address that. I'd be happy to answer any questions. [LB95]

SENATOR LATHROP: Very good. [LB95]

SENATOR DUBAS: And I did hand out also a letter from NSEA, who is in support of the bill as well. [LB95]

SENATOR LATHROP: Okay, very good. Any questions for Senator Dubas? I see none. You did introduce this a year ago? [LB95]

SENATOR DUBAS: Two thousand eleven, I did. [LB95]

SENATOR LATHROP: Two thousand eleven, okay. [LB95]

SENATOR DUBAS: And Senator Council also introduced a similar bill. So between those two bills, we've... [LB95]

SENATOR LATHROP: I was going to say, it feels like Groundhog Day. [LB95]

SENATOR DUBAS: Yeah, we've kind of put the two together. [LB95]

SENATOR LATHROP: Okay. [LB95]

SENATOR DUBAS: So I will waive my closing. But should you have any questions later, I'd be happy to visit with you and work with the committee. [LB95]

SENATOR LATHROP: All right, thank you. [LB95]

SENATOR DUBAS: Thank you. [LB95]

SENATOR LATHROP: First proponent, those in support. [LB95]

JON REHM: Good afternoon. [LB95]

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SENATOR LATHROP: Good afternoon. [LB95]

JON REHM: Jon Rehm, on behalf of the Nebraska Association of Trial Attorneys; and Rehm, Bennet and Moore law firm in support of LB95. In addition to what Senator Dubas eloquently said, NATA has chosen to support this bill, one, because part of the reason that people, as Senator Dubas said, have...they have bad credit or things that are not their own faults, such as disputed personal injury cases, disputed workers' compensation cases, that can drag out. In addition, under the Nebraska work comp system, some employees can get vocational rehabilitation benefits which, in part, are paid for by the state. And part of the purpose of our Work Comp Act is to reemploy injured workers. So if you have somebody who has had a work comp case that's drug out for three years, which is...you know, it happens sometimes in disputed cases, having somebody...they're going to have poor credit, and you're going to undermine the purpose of the Voc Rehab Act by being able to strike people for having bad credit. So, as Senator Dubas also pointed out, credit checks can disproportionately affect certain minorities, such as African Americans and Hispanics, as well as women and younger people as well. LB95, to some extent, if employers follow the provisions of LB95, it gives them somewhat of a...I mean, it's not an official safe harbor, but somewhat of a safe harbor that they can point to as a legitimate reason for not hiring somebody should a fair employment discrimination case be brought. I favor this bill, just a few things that I think that would make it a better bill. One, I would, if I were...I would like to see it where the credit check would only be done after posthire, and that's something that is consistent with the kind of analysis you do under the Americans with Disabilities Act, where you don't...you can't ask about a disability until after you've hired somebody. For likewise, I don't think employers should be asking about credit checks and credit until they hire somebody because, as Senator Dubas pointed out, obviously, there's legitimate reasons why employers want to know these things. And also, you know, doing background checks on employees doesn't just impact the employee-employer relationship. There's a coworker relationship, there's a client relationship, and there's also, you know, the relationship with the public. Just from the perspective of lawyers, trial attorneys, and probably lawyers in general, it would be nice if there was a general, fiduciary catchall exception in here. In Section 4, paragraph 2, for example, I mean, at our firm we have paralegals handling clients' checks all the time. We wouldn't be...we wouldn't...you know, we're not...we're excluded from this act. So I think maybe, just for lawyers, you know, not just trial lawyers but business lawyers in general, we would probably want to have...be able to have that covered, be able to be covered by the act. But otherwise I think it's a very good bill. [LB95]

SENATOR LATHROP: So what you're saying is you like the bill, except you don't want it to apply to you? (Laughter) [LB95]

JON REHM: No, that's not what I'm saying at all. That's not what I'm saying. [LB95]

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SENATOR LATHROP: (Laugh) No, it kind of sounded a little bit like that, like... [LB95]

JON REHM: Well, I... [LB95]

SENATOR LATHROP: I get why though, but... [LB95]

JON REHM: Yeah, I understand why, but, I mean, again, fair employment is about...I mean, it's not...fair employment is not just employee-employer. It's also coworker; it's also the public; it's also the client as well, so. [LB95]

SENATOR LATHROP: Um-hum. [LB95]

JON REHM: Yeah, I mean, I realize...but, I mean, that's...that would make it a better bill. [LB95]

SENATOR LATHROP: So you would carve out an exception for any employee who would be entrusted with the checkbook or a trust account? [LB95]

JON REHM: Yes. [LB95]

SENATOR LATHROP: So real estate, all banks, savings and loans, places like that? [LB95]

JON REHM: Yes, yeah, so. [LB95]

SENATOR LATHROP: Okay. Okay, thanks, Jon. Any questions? I see none. And the idea there is that their access to or their susceptibility to adverse consequences to the employer and their clients over theft? [LB95]

JON REHM: Sure, sure. [LB95]

SENATOR LATHROP: Okay, got it. Thanks, Jon. Anyone here in support or anyone else that wishes to testify in support? Seeing none, anyone here in opposition? [LB95]

ROBERT HALLSTROM: (Exhibit 4) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business in opposition to LB95. I've indicated in my testimony that the credit checks provide a valuable source of information regarding honesty and sense of responsibility of an applicant or an employee. There are a number of exemptions, including general, broad-based exemption for bona fide occupational requirements. We believe that that will lead to more litigation and trying to determine exactly what a bona fide occupational requirement is. I've expressed concerns over

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Section 5 of the bill. It talks about discrimination based upon an employee either instituting an action or testifying in an action relating to the Employee Credit Privacy Act. The bill doesn't suggest that, even if that might be a frivolous case, that you still wouldn't have to defend yourself against a possible action because a cause of action is created by the bill. Senator Dubas had gone through some of the protections that are provided to an employee under the Fair Credit Reporting Act at the federal level. I've addressed those in pages 2 and 3. We're required to notify and get consent from an employee prior to obtaining and using a report at the front end. If we are going to take any...prior to taking any adverse action, we must give them a pre-adverse action disclosure, including a copy of the credit report and a written summary of their rights under the federal act. And finally, if we do take adverse action, we must provide them with an adverse action notice, contact information, and a right to correct any disputed information that might exist in the credit report. There's been a couple of the witnesses, including Senator Dubas, have talked about the issue of discrimination against minorities, females, etcetera, by the use of credit reports. I think the EEOC has already brought numerous lawsuits that, if you don't have a justifiable employment policy for using that credit report, the disparate impact that it can have on a female or a minority would certainly subject you to potential liability even without a specific discrimination law in regards to credit reports. So, all in all, we think credit reports are justified for use by employers, and we oppose and would ask that LB95 be indefinitely postponed. Be happy to address any questions. [LB95]

SENATOR LATHROP: Very good. Thanks, Bob. Any questions for Mr. Hallstrom? I see none. [LB95]

ROBERT HALLSTROM: Thank you. [LB95]

SENATOR LATHROP: Thanks for your testimony. [LB95]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, good afternoon. For the record, my name is Ron Sedlacek. That's spelled S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce and would like to start out just by saying that, generally speaking, background checks cost employers both in time and money. And the employers will run those checks, including credit reports, but after they've gone through the time, the cost, and the effort to find the right candidates. Usually, it's from a large field of applicants. They cull the applications to get down to the few that they're considering to hire. So they don't really invest the money in a background report for the motive of refusing to hire. When they do that background check, it's because they're interested in taking a really close look at the candidate now. They're conducting due diligence to make sure there's no business-related reason that would preclude the hiring of that person. And usually, when they use it, it's because they feel it's an important piece of information for them to have. Now as an applicant, if you make it to the point where a potential employer is

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asking you for a background check, you ought to celebrate because that's great news. You're making the cutoff. It means you've gone through the preliminary stages of the hiring process and they're really, seriously considering you as a candidate. So why do employers generally pull the reports? Usually, to assess accountability and responsibility or to check for fraud or other dishonest behavior or to verify applicant information. We talked about the rights under the Fair Credit Reporting Act and, of course, you have to consent in order to release such a report. That can always be refused. Mr. Hallstrom also mentioned the EEOC. They have guidances which say that an employer must justify prescreening policies, demonstrate that the use of credit records is job-related, and that it's consistent with a business necessity. Those are the three elements. So the EEOC even...there could be cases of potential disparate impact. But the EEOC, nonetheless, considers them legal, they remain legal, and they look at these cases...they look at it on a case-by-case basis. What's interesting though, kind of ironic, is that the court dismissed an EEOC discrimination claim regarding credit reports in the case of EEOC v. Kaplan Higher Learning Education. And they began using credit reports because...or a credit history as a factor in employment because they had a breach of their systems back in 2004. So they took the additional steps then to ensure compliance with regulations and guidelines, including a background check on potential employees. And their policy was that they wanted to be sure that the applicants for certain employment positions, those applicants weren't under financial stress or burdens that might compromise their ethical obligations. Ironically, the court noted, in this particular case, that their policy was almost the same as EEOC's own policy program handbook. Eighty-four of the 97 positions at the EEOC require credit checks. And the court said, what's the reason? And it was, quote, the notion that overdue just debts increase temptation to commit illegal or unethical acts as a means of gaining funds to meet financial obligations. So they are justifiable under particular cases. They are expensive. You don't use them for every applicant, as a general rule. [LB95]

SENATOR LATHROP: Okay. I see no questions from anybody else. I've got one though. [LB95]

RON SEDLACEK: Um-hum. [LB95]

SENATOR LATHROP: In the process, as you've described this--and that was one of the things I was wondering--... [LB95]

RON SEDLACEK: Um-hum. [LB95]

SENATOR LATHROP: ...an employer just can't go in and pull a prospective employee's credit, right? [LB95]

RON SEDLACEK: That's correct. [LB95]

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SENATOR LATHROP: They have to consent to it? [LB95]

RON SEDLACEK: That's right. They have to go through the Fair Credit Reporting Act. You have to have the consent, and then there are disclosure of rights. [LB95]

SENATOR LATHROP: So the employee can say, yeah, okay, I've made it this far and now you want to look at my credit, I've got something to tell you,... [LB95]

RON SEDLACEK: That's a good thing. That's definitely...if you're a serious applicant, you know, you may have... [LB95]

SENATOR LATHROP: ...let me explain my crappy credit. [LB95]

RON SEDLACEK: You know, most of the professional human resource people know there has been stress in the last few years, that people may find themselves out of a job, they're racking up a lot of credit in car debt perhaps, or, you know, maybe a second mortgage on the house, and...if you want...if you explain that, I think that that goes a long ways. [LB95]

SENATOR LATHROP: Okay, thanks, Ron. [LB95]

RON SEDLACEK: You get a copy of the report as well, so...before they make the decision. [LB95]

SENATOR LATHROP: Yeah, you didn't get the job, but here's your credit report. (Laughter) [LB95]

RON SEDLACEK: No, no, you get the report first. [LB95]

SENATOR LATHROP: The good news is you get a copy of your credit report. (Laughter) [LB95]

RON SEDLACEK: They can't take...no, they...yeah, just technically, they can't take an adverse decision before you get the report, so you do have time, yeah. [LB95]

SENATOR LATHROP: Okay, okay, thanks, Ron. I see no other questions. Anyone else here in opposition? [LB95]

TAD FRAIZER: That's mine from last time, so. Good afternoon, Chairman Lathrop, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, local counsel for the American Insurance Association, a national trade association of property and casualty firms including firms that write fidelity and surety bonds. We appeared back in 2011. I believe Senator Council had LB530, which this bill now seems to

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embody most of LB530 in it, because we had some specific concerns as to Section 4, which appears on page 4 of the bill, as to limitations or potential limitations on employees...excuse me, employers being able to obtain bonds on employees. Section 4(a) provides if state or federal law requires bonding. There's no reference to local law. And Section (d) talks about administrative rules establishing that a credit history might be a bona fide occupational requirement. It's a little unclear what that might amount to, but our concern is that employers should be able to obtain bonds if they deem it appropriate for their protection or as a customer relations matter on employees, even if they may not have a signatory power over money or be in a managerial position. And the example I used a couple years ago and, I think, is still good is I get ads all the time at home for home cleaning services that advertise the people come and get the dust bunnies out from under your bed are bonded and insured. A lot of home repair service people you...part of their advertising is they're bonded and insured. Now they may not directly qualify under the terms of this provision in Section 4, but we think if employers feel that bonds are appropriate as, you know, to protect them or as a marketing thing with their potential customers, that they should be free to do so. And obviously, since bonds cost money, you're only going to run those credit reports in a bonding situation if you've got someone hired and you want to have that bond in place for them. And I'd be happy to try to answer any questions the committee might have. [LB95]

SENATOR LATHROP: Very good. Thanks for your input. I see no questions. Anyone else in opposition care to testify? [LB95]

JIM OTTO: (Exhibit 5) Senator Lathrop, members of the committee, my name is Jim Otto. That's J-i-m O-t-t-o. I am president of the Nebraska Retail Federation and here to express the opposition of the Nebraska Retail Federation to LB95 as drafted. I won't go into all the reasons. They've already been articulated. I did want to point out, however, that we do have model legislation that other states have used to address this issue. I included a copy of the model legislation with my sign-in sheet, should the committee like to consider that. And we would not be opposed to the language...while we wouldn't be totally supportive of the effort, we would not be opposed to the language in the model legislation because that has been used successfully in other states. [LB95]

SENATOR LATHROP: (Exhibit 2) Okay, very good. Thanks, Jim. Any other opponents? Anyone here in a neutral capacity on LB95? Seeing no one, I will, for the record, indicate that I have a letter from Consumer Data Industry Association, dated February 11, and that is in opposition. The NSEA has also sent a letter in support of LB95; and Liz King from AssetWorks in support. With that, we will close our hearing on LB95, and that will bring us to Senator McGill and LB163. [LB95]

SENATOR MCGILL: Thank you, Chairman Lathrop and fellow members of the committee. I'm Amanda McGill, M-c-G-i-l-l, and I'm here to introduce LB163 that will

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work to address Nebraska's work force needs and also its education gaps. The bill grows out of a concern I've heard from many industries: We have great jobs in Nebraska but no one trained to do them. Also, while Nebraska has low unemployment, many of its citizens are underemployed. That means our current educational structure does not adequately prepare our young people for successful careers in the jobs of today and tomorrow. Across our state we need to increase students' opportunities for success through education. LB163 looks at both vocational and traditional education and focuses on rethinking the way we structure our educational system so that it is more in tune with the marketplace. LB163 states that the Department of Labor, the Coordinating Commission for Postsecondary Education, and the State Department of Education will produce an annual report that projects work force needs and educational credential production. This report--it includes degrees and other credentials--will be issued by postsecondary institutions, career schools, high school vocational programs, and other work force training programs. The report will be provided to all elementary, middle, and high schools. My goal is for our K-12 education system to use this report to provide students with a greater awareness of the jobs that are available and which would make good careers in Nebraska. I see this report as an invaluable tool for the career academies that are in development around our state. These results can be used to build career tracks in those schools, guaranteeing their graduates are qualified for good-paying jobs that are readily available and, in some cases, the students could start their careers in those jobs right away after graduating high school. It could also be used to further improve internship programs in certain career fields. If we know that there is a big gap in a certain type of engineer, then it would help our schools to have a better idea of where that was taking place and what kind of shadowing programs they could be developing, really getting kids thinking about certain careers that maybe they haven't thought of before and, hopefully, lessen the number of kids we have going to college without really knowing what they want to do or getting degrees that won't directly turn into a job that's readily available in Nebraska. Much of this data, from what I understand, is available, but it's not compiled into one useful report. And so it's out there floating around. We know about maybe this industry and what the work force shortage is, and we might know a little bit about what this school is working on. But to have it in one place so that data can be useful in filling some of these gaps, I think, would be a really good thing. So I appreciate your consideration and would be happy to take questions. [LB163]

SENATOR LATHROP: You got any thoughts on the fiscal note? Looks like this is about an \$82,000 undertaking. [LB163]

SENATOR MCGILL: Yeah. I feel...you know, I know Commissioner Lang is going to come up and testify in a neutral capacity, and I may have a few questions there too. Like I said, a lot of the data is available, it's just not compiled in the same place. So I do question if it takes a full-time person to compile all this information, and maybe she can elaborate on that or give her a heads-up about elaboration on that. We also looked at

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housing this under the Coordinating Commission, you know, who should take this on, but they, for sure, don't have the resources either. So there would be some sort of fiscal note in terms of who compiles this information. [LB163]

SENATOR LATHROP: Okay. I see no other questions, Senator McGill. [LB163]

SENATOR MCGILL: All right. [LB163]

SENATOR LATHROP: So we'll get to the supporters, one at a time. Yeah. [LB163]

DENNIS BAACK: I'll fill out one of the forms here in a minute. I haven't filled one out. Senator Lathrop and members of the Business and Labor Committee, my name is Dennis Baack, D-e-n-n-i-s B-a-a-c-k, executive director of the Nebraska Community College Association. I think, Senator Lathrop, we see a little bit of overlap with your LB481 that you introduced before the Education Committee. I think a lot of the things that they're...that we're shooting for here are also in that one. So it would seem to me that somehow we need to work this out so that we're not doing two of these reports, that we just do one report that kind of helps identify this. And I do agree with Senator McGill. I think a lot of the information is out there, but I don't know that it's ever been put into the kind of a form where we can really see exactly how it all fits together. I mean, certainly, the Coordinating Commission has all the data on any kinds of degrees or certificates or diplomas or anything that we do in community colleges or anybody else does in any of these areas. But I'm not sure it's ever been put together in the final report. So I could see a good possibility of what you're looking for in it because yours is more aimed at the critical needs for business and industry. But there isn't any reason, I don't think, that we couldn't, kind of, include that same idea in this idea and probably make them work together. I think there's some real possibilities for that, so...and we would be very supportive of that and, of course, helpful in any way we can be when you get to these studies. [LB163]

SENATOR LATHROP: Let me ask you a question, Dennis, and this would be maybe one that Senator McGill would ask. Is this information already out there somewhere? [LB163]

DENNIS BAACK: I think so. [LB163]

SENATOR LATHROP: Does it take a study or a full-time employee over at the Department of Labor to assemble the information that we're really trying to secure in this bill? Which is, we do the Forecasting Board when we're trying to do budgeting issues and set tax policy and what our reserve ought to be, and it seems to me that maybe you already do this, maybe you have access to something that you can share with the Legislature about what are the jobs of the future, because that's really what we're talking about. [LB163]

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DENNIS BAACK: Certainly. And when you get into critical needs of business and industry, we certainly have the contacts to find that out. And they do tell us, on many occasions, here's what we need. You know, we keep hearing that there's a great need for welders in the state, and that comes directly from business and industry. [LB163]

SENATOR LATHROP: Right. [LB163]

DENNIS BAACK: And they keep telling us that, I need that, and we keep trying to provide as many as we possibly can. But our problem is getting students into those fields. I mean, that's the problem that we have, finding students who are interested in those fields. But I'm...and I'll let the commissioner defend whether or not it takes a full employee. I don't know if it takes a full employee. [LB163]

SENATOR LATHROP: I wasn't being critical. I... [LB163]

DENNIS BAACK: No, no, no. I understand that, yeah. [LB163]

SENATOR LATHROP: But here's the thing. When it comes to industry saying, I need welders, that's a short-term view. They're saying, you know, I put the sign in the door and nobody came, and so I need welders, can you turn out some welders at the community college? But this bill really says, looking down the road, is nursing going to be the big thing in five years from now and not...what are the...what's industry screaming for today? [LB163]

DENNIS BAACK: Yeah, we need to be able to project better, I think, and I'm not so sure that we do that very well. Now you...there will be...I see lots of studies nationally that come out with the top 20 jobs and the jobs of the future and those kinds of things. I think we probably all need to be paying more attention to that because I don't know if we're paying close enough attention to all of those things that are coming out. And I think community colleges tend to react pretty carefully with those, but we need to keep on top of that to do that. I know the nursing field is one that's, you know, we keep talking about. There's going to be more and more need for nurses. But, you know, the problems that we have in community colleges putting out more and more nurses are, number one, faculty to teach those. There have to be people with master's degrees and stuff that want to teach; and they can do a lot better in the private sector, in many cases, than they can teaching. And the other one is the number of clinicals that are available for the hands-on kind of stuff that we require our people to do in those fields, and we're pretty well maxed out on those in the state of Nebraska right now. So there's other things that we have to do along the line to be able to put out more nurses. [LB163]

SENATOR LATHROP: Okay, well, we'll hear from some other witnesses and get some other points of view. But thanks for being here today. [LB163]

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DENNIS BAACK: Sure. [LB163]

SENATOR LATHROP: We appreciate it. Next proponent. [LB163]

MARSHALL HILL: (Exhibit 1) Senator Lathrop, members of the committee, I'm Marshall Hill, M-a-r-s-h-a-l-l H-i-l-l. I am executive director of Nebraska's Coordinating Commission for Postsecondary Education, here to testify as a proponent to LB163. As you know, the Coordinating Commission is identified in the bill as cooperating with the Department of Labor and the Department of Education to do this work, and we would be pleased to do that. We actually already do cooperate with both entities quite a bit, as you'd expect. The Department of Labor does issue some very helpful reports already in this regard; they're just not as comprehensive as this bill calls for. For us, it would involve not very much more work, so we put forward a zero fiscal note. I'm always careful about the fiscal notes I provide, so I'm sure that Commissioner Lang is equally careful about hers. I'll let her speak for that. In my view, it would require some additional work on their part because it's a more comprehensive approach. What they do now is quite useful and helpful for the people that pay attention to it. I'm not so sure enough people do pay attention to it. Right now we collect the information on graduates from the six community colleges and the University of Nebraska at Kearney; and we provide matching work with the Department of Labor for wage records so you're able to tell how many of those graduates of those institutions are working in the state, in what fields, and so forth. Not all institutions in the state participate. University of Nebraska at Lincoln does not; University of Nebraska at Omaha does not; the College of Technical Agriculture does not. We think that it would be helpful, obviously, more beneficial if all public institutions were to provide this information and if independent institutions were invited to do so, if they chose. I'll conclude my testimony there and respond to any questions you have. [LB163]

SENATOR LATHROP: Okay. Anyone have any questions? I do. You've just suggested that the Department of Labor puts out a bunch of information already and that there's some people that don't pay enough attention to it, and that might include me. [LB163]

MARSHALL HILL: It would include me if it were not part of my response. (Laugh)
[LB163]

SENATOR LATHROP: Yeah, yeah. So here's the question. Because of your position with the Coordinating Commission, do you feel like you have enough information so that you're able to forecast what the jobs are of the future right now or where the needs are going to be? [LB163]

MARSHALL HILL: I think that we... [LB163]

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SENATOR LATHROP: By the time you read what the Department of Labor is putting out, what you know already, you've seen what Senator McGill is trying to capture, or what kind of information she wants to have available--and that really is to put in the hands of educators to try to recruit, get kids into those positions--do we have that information now? [LB163]

MARSHALL HILL: For our purposes, we have what we need, largely. For example, when institutions propose new degree programs that would prepare people to go into certain aspects of the work force, we do research to see if they're not preparing someone to go into a field that's soon to not exist. We are able to find enough information, either through Nebraska sources at the Department of Labor or U.S. Department of Labor, frankly, to get a good handle on that. So I understand that the intended uses of this are broader than that though, so that people could have a sense of what industries are growing in Nebraska, what work fields would be likely to result in better job opportunities, and so forth. That's a little harder to find right now in a comprehensive way. [LB163]

SENATOR LATHROP: Senator McGill. [LB163]

SENATOR MCGILL: Just to reiterate, so the university though doesn't...University of Nebraska, like in Lincoln, does not participate in giving you information about what people are graduating with, how many... [LB163]

MARSHALL HILL: Correct. Actually, we do whatever data is available, but not much data is available. Our information largely comes from federal sources that the institutions are required to report. They're not required to report them in the same ways that the community colleges now report for the process that goes on at the Department of Labor now. I'm hesitant to speak for the university, but my general belief is that they've had some fear that a focus on job production would make people tend to believe that that's their sole reason for existence. We all know that's not the case, that the university does more than prepare people for their first jobs. So for those reasons, I believe, and perhaps because they didn't want to put the effort into it, they have not participated. We have not asked them in the last several years. [LB163]

SENATOR LATHROP: Okay, well, Senator McGill looks like she's getting an idea, but...Senator Hansen. [LB163]

SENATOR HANSEN: Yeah, I'm having that same idea. It may not be the sole purpose of the University of Nebraska, either at Lincoln or Omaha, I understand that, but it darn well ought to be one of the best in its... [LB163]

SENATOR MCGILL: Um-hum. [LB163]

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MARSHALL HILL: It's... [LB163]

SENATOR HANSEN: It ought to be one of the highest ones. [LB163]

MARSHALL HILL: Yes, sir, it's very important, obviously. [LB163]

SENATOR HANSEN: And that...at Curtis, the Nebraska College of Veterinary...or, not veterinary, but Technical Agriculture, in general, they do a great job of placements and, whether they tell you or not, they do a lot of good. And a lot of those students go back to a home operation, too, after two years of school. [LB163]

MARSHALL HILL: Yes, sir. [LB163]

SENATOR HANSEN: And there's...you know, that's employment, but it's not really anything that would be listed through the Department of Labor, but... [LB163]

MARSHALL HILL: Right. You and I have seen but another several times out at Curtis, and we're quite, quite familiar with that. [LB163]

SENATOR HANSEN: Yes. [LB163]

MARSHALL HILL: I think Curtis would look very good on reports like this. [LB163]

SENATOR HANSEN: Yeah, I think so, too, yeah. [LB163]

MARSHALL HILL: I'm confident they would; and, frankly, I'm confident that the UNL and UNO would look good as well. We don't have an elitist, arrogant, distant higher education community here in Nebraska. They realize that one of the important responsibilities they have is to produce people who can fit into the work force. And so I don't think it's any hesitancy on that part, just a fear that perhaps that would become the sole focus. I think that's a fear which is not really justified. [LB163]

SENATOR HANSEN: Thank you. [LB163]

SENATOR LATHROP: Very good. Thanks for your insight. [LB163]

MARSHALL HILL: Thank you. [LB163]

SENATOR LATHROP: I thought those were proponents. (Laugh) [LB163]

SENATOR MCGILL: I know. Well, then never mind. [LB163]

SENATOR LATHROP: They were just people leaving, Senator McGill. (Laughter) There

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isn't that much support. Anyone else here (laughter)...I don't know. It's been a long week already. Anyone else here in support of LB163? Anyone here in opposition? And neutral. [LB163]

CATHERINE LANG: Chairman Lathrop and members of the Business and--... [LB163]

SENATOR LATHROP: Welcome back. [LB163]

CATHERINE LANG: ...thank you--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, Commissioner of Labor, appearing before you today in a neutral position on LB163. LB163 requires the Department of Labor, in consultation with the Coordinating Commission for Postsecondary Education and the Department of Education, to produce an annual report regarding state work force needs, projections, and educational credential production. Our fiscal note reflects the cost to the Department of Labor to research and produce this study. General Funds are required by the department because we do not have any other funds available to perform these functions. The department does receive federal funds to perform the functions required by the United States Bureau of Labor Statistics and Employment in Training Administration. But these funds are limited to the requirements of those grants, and the funds cannot be used for any other purpose; therefore, additional duties required of the department for state studies, such as the one proposed in LB163, must be funded by General Funds. I would like to clarify why we have a full-time person in our fiscal note, and it isn't simply to put the report together. But this individual, this staff member, would also be required to pull the data together and then to be able to match up the labor occupation codes with the education program instruction codes and then develop those projections. So there is an awful lot of additional work, and we believe a single full-time FTE is required to do this. And I'd be happy to answer any questions. [LB163]

SENATOR LATHROP: Senator Harr. [LB163]

SENATOR HARR: Thanks. Thank you, Chairman Lathrop. You say it requires additional work. But you think it's good work, don't you? [LB163]

CATHERINE LANG: Yes, we would agree. [LB163]

SENATOR HARR: Okay, thank you. That's it. [LB163]

SENATOR LATHROP: How much of this information is already available through your office? [LB163]

CATHERINE LANG: There... [LB163]

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SENATOR LATHROP: In one form or another, is...and maybe this is the way I'm going to put the question. [LB163]

CATHERINE LANG: Um-hum. [LB163]

SENATOR LATHROP: Do you already go to the point where this bill wants you, like 80 percent of the way, and the last 10 percent is what's taking a full-time employee, to assemble it? If Senator McGill and I sat down and read all the things that your office churns out... [LB163]

CATHERINE LANG: I don't know that I would be comfortable putting a percentage on it. The information...there is an awful lot of information out there, whether it is ours at the Department of Labor or the Commission for Postsecondary Education or the Department of Education. What we don't have is a road map of matching up the information from the three separate entities. So you've got credentialing programs that you need to then match up to what work force positions are then fulfilled by those credentialing requirements, and then we're working extensively with K-12 and higher education in the longitudinal study area so you can track people, students, as they're going through the entire system. But every time you jump from one database system and one agency to the next, you've got to bridge that information so that it can go into the next amount of data that you want to then...you know, let's say if you're doing a longitudinal study to track people. It's true that we track the graduate outcomes of our community colleges, our state colleges, and one of our university system entities. But again, we've got to match that up now with the credentialing or programs or majors that are in those higher education institutions to track them to the jobs that are in the work force. We do work force projections but, again, it's tying those data elements together so that you can track from a credential into a job and then track how many of those are in that work force projection data that we have for the future. [LB163]

SENATOR LATHROP: Well, is this asking for anything more than work force projection data? [LB163]

CATHERINE LANG: Yes, I believe it is asking for more than that. [LB163]

SENATOR LATHROP: I'm...well, maybe...okay. We don't really need to look in the rearview mirror on this one, right? It's about trying to make some projections about what we need going into the future; so 2, 3, 5, 10, and 20 years down the road, what are the majors or what are the jobs that we're going to need to fill. [LB163]

CATHERINE LANG: And we...oh, go ahead. [LB163]

SENATOR LATHROP: And, well, that seems to me to be the point of the bill, and then we disseminate that and the folks at the universities can try to...or the high schools...

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[LB163]

SENATOR MCGILL: Yeah. [LB163]

SENATOR LATHROP: ...can try to plug the kids into a career path so that we have a stock or an inventory of these trained people for the businesses that will need them, as projected. Go ahead. [LB163]

CATHERINE LANG: But our responsibility under the study is not limited to just doing the work force projection requirements; it's also then to tie it to the credentials that will meet that work force projection. That linking of data elements is what is not currently being done, so I think it is correct that much of this information is out there in silos. And the question is...you've got to bridge it, and that is where we believe an individual would perform that function of bridging that and then creating the report that would come out of that. [LB163]

SENATOR LATHROP: The information about the projections, where is that found? [LB163]

CATHERINE LANG: We have our work force projection data. I can get the link to you. [LB163]

SENATOR LATHROP: Because I think my bill just asked them to do that, and it came up with some big, hairy fiscal note to come up with that information. [LB163]

CATHERINE LANG: Is that the bill that was mentioned, LB481? [LB163]

SENATOR LATHROP: That's one where I was down in front of Education last week, and...yeah, I know Mr. Hill was down there, and so was Dennis Baack on it, but...well, anyway. [LB163]

CATHERINE LANG: Happy to go back and look at that. [LB163]

SENATOR MCGILL: Could you send us those links? That would be useful for me too. [LB163]

CATHERINE LANG: Oh, yes, I can send you the link to the graduate outcome studies and to our labor force projection information. [LB163]

SENATOR LATHROP: Okay, well, I guess we'll let Senator McGill look at that and see what... [LB163]

SENATOR MCGILL: Um-hum. [LB163]

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SENATOR LATHROP: ...if that satisfies her needs or if there is something else we need to do with that information. [LB163]

SENATOR MCGILL: Hmm, no. (Laugh) [LB163]

SENATOR LATHROP: Okay. All right. [LB163]

SENATOR MCGILL: Well, and, like Commissioner Lang just said, I mean, she just expressed how there are silos. And so I do feel it's important that we're bringing all that information into one place so that our middle schools, even, and high schools can start preparing people for where they need to be going in order to fill those gaps. And so, I mean, she expressed the very problem while she was explaining her fiscal note. [LB163]

SENATOR LATHROP: Okay, well, thanks for your testimony. [LB163]

CATHERINE LANG: Yeah, absolutely. Thank you. [LB163]

SENATOR LATHROP: That is the...any other neutral testimony? Seeing none, Senator McGill waives close. [LB163]

SENATOR MCGILL: I will waive. [LB163]

SENATOR LATHROP: And that will close our hearing on LB163 and bring us to Senator Nordquist and LB19. [LB163]

SENATOR NORDQUIST: Hello, Mr. Chairman, members of the esteemed Business and Labor Committee. I'm state Senator Jeremy Nordquist from District 7 in downtown and south Omaha. I'm going to take you back to a discussion of conveyances here. I'm here to introduce LB19, which seeks to enhance the protections and safety regulations in the existing Conveyance Safety Act by expanding the act's jurisdiction statewide. And the bill also moves the administration of the act from the Department of Labor to the State Fire Marshal. In Douglas, Lancaster, and Sarpy Counties, only licensed elevator mechanics are permitted to make mechanical repairs on conveyances. LB19 would extend this policy statewide, as it's a very important public safety issue for these repairs to be made by a professional. Elevator and escalators can be extremely complex devices, and the consequences of incorrect installation or maintenance can be deadly. The three largest counties in the state have benefited from the protections of the Conveyance Safety Act, and I believe it's time that we expand those protections statewide. The bill would also transfer the inspection division from the Department of Labor to the Fire Marshal. This was proposed in an amendment last year to LB971. It was never debated, but the Commissioner of Labor did, at that time, state their support.

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And I believe that concept of the transfer is also encompassed in LB437 this year. I think it's the responsibility...I think this responsibility certainly would better fit under the State Fire Marshal, whose mission is to provide measures for life and property protection from fire and address environmental accessibility and homeland security issues through education, inspections, training, and response. I think conveyance safety could certainly fall under addressing and ensuring public safety through inspections. LB19 as introduced only addresses the transfer of the Conveyance Safety Act. My staff will provide the legal counsel, Mr. Koebernick, a draft amendment to include the boiler inspections and amusement inspections as well. It was simply my intent to cover the conveyances but, due to the cost concerns addressed in the fiscal note, it certainly would make more sense to transfer all of those items under the State Fire Marshal. Hopefully this will address a majority of the concerns raised in the fiscal note; and I certainly stand willing, with the committee, to improve this legislation and move it forward to ensure that everyone riding a public conveyance in our state has peace of mind to know that that conveyance has been properly inspected. Thank you. [LB19]

SENATOR LATHROP: Any questions for Senator Nordquist? I see none. [LB19]

SENATOR NORDQUIST: All right. I'm going to head back to Appropriations. We're doing some finalization on our budget, so I'll...going to waive closing, Mr. Chair. [LB19]

SENATOR LATHROP: Okay. [LB19]

SENATOR NORDQUIST: We can always follow up with questions later if you do have some. [LB19]

SENATOR LATHROP: I know where to find you. [LB19]

SENATOR NORDQUIST: Thank you. [LB19]

SENATOR LATHROP: Thank you. The first proponent of LB19. [LB19]

GREGG ROGERS: I didn't write a speech for this. My name is Gregg Rogers, R-o-g-e-r-s, and I just want to voice my support of this bill. I think this is more in the right direction of what needs to be done to protect the riding public and the workers of your state. It does bring in some equipment that was inadvertently left out in some previous legislation a few years back that actually cost the state or the department several thousands of dollars. We estimate roughly \$30,000 more, and that would be platform lifts and stairway chair lifts in a commercial setting, not in residential. Residential is still exempt within this bill. So that's a good thing. There is a lot of them in use and they currently are not being inspected, and they should be because they are powerful by nature, so. And I'd be glad to answer any questions. [LB19]

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SENATOR LATHROP: Okay. Remind me what organization you speak for. [LB19]

GREGG ROGERS: I'm with the Elevator Industry Work Preservation Fund. It's a labor management organization between all your major elevator contractors and the Elevator Constructors Union. [LB19]

SENATOR LATHROP: Very good. Got it. Thank you, Mr....oh, I'm sorry. Senator Harr. [LB19]

SENATOR HARR: Thank you, Mr. Chairman. This removes...does this...is this correct? It removes the monitoring of elevators on private properties in Douglas, Sarpy...or in residence? Excuse me. [LB19]

GREGG ROGERS: Within the exemption part it exempts elevators and platform lifts and stairway chair lifts within residential, yes. [LB19]

SENATOR HARR: And what is the reason for that? [LB19]

GREGG ROGERS: Because that was a losing battle that we had in this state for years. We've been before this committee several times and, in my opinion, obviously, we should protect anybody riding on elevators. And I truly believe that those in the home are the most vulnerable to those that put profit ahead of safety. But I understand politics, too, and that's... [LB19]

SENATOR HARR: All right, thank you very much. [LB19]

SENATOR LATHROP: Senator Wallman. [LB19]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yes, I understand politics as well as you. Have you ever seen an injury, though, on a porch lift or a platform lift? [LB19]

GREGG ROGERS: Oh, yes, yes. I actually serve on the ASME A18 code committee that writes safety code for platform lifts and stairway chair lifts, and we do have records of fatalities on stairway chair lifts. A woman was in her home. Her mobility-impaired child was on the lift and it got stuck halfway down the stairway. And she happened to stick her head underneath it to try and figure out what had got stuck on, and it took off and it crushed her right on the stairs in front of her child. So they can malfunction. They're rare, yes, but it can malfunction. [LB19]

SENATOR WALLMAN: Thank you. [LB19]

SENATOR LATHROP: I see no other questions. Thank you, Mr. Rogers, for your testimony. Next proponent. Welcome. [LB19]

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STEVE SIMPSON: My name is...hi. Thank you. My name is Steve Simpson, S-t-e-v-e S-i-m-p-s-o-n. I am the business manager for the Elevator Constructors Local Union 28; covers the entire state of Nebraska and southwest Iowa. We've had a bill in place for years now, the Conveyance Safety Act. The Conveyance Safety Act has allowed for licensing of any county over 100,000. I currently have a license. I have to go through continuing education to upgrade that license. I have to pay for my license every other year. We have to get it renewed and it's just...I guess, statewide, just makes sense. Currently it's...why are the members of Douglas County...why should they be safer riding their elevators than the members of, say, Thayer County in Nebraska. It just makes sense. We plan on...the idea of moving it to the Fire Marshal, again, makes sense. We're looking at a code enforcement agency. That's all the elevators inspectors are is a code enforcement agency. It's quite apparent to me after today that the Department of Labor really doesn't want us and perhaps we need to go somewhere else. It allows for the committee to have more input as well. People that serve on the committee currently are in the elevator industry. It makes sense for people that are in the elevator industry to actually have some more input as to what goes on in the state as far as installing elevators or safety as well. The license that we have...in the past it's been mentioned that the license is going to raise the cost of certain items out in the state, that sort of thing. Every single member that works on an elevator out of state I would question that by asking them, would they qualify right now to have a license? I'm going to say that nine times out of ten, yes, they do. They can get their own license. I pay for my own license. Every member I currently represent pays for their own license. I don't know how that's going to raise the cost to the membership...to anybody in a rural community. In fact, that's a...it generates money, for lack of a better way of putting it. And, in conclusion, I just...I think this a bill that just kind of falls into place. It's something that should happen, it's something that's been endorsed by the Commissioner of Labor in the past, and it should continue to move forward. [LB19]

SENATOR LATHROP: Okay, thanks, Steve. Any questions for this witness? I see none. [LB19]

STEVE SIMPSON: Thank you. [LB19]

SENATOR LATHROP: Next proponent. [LB19]

BOB SACKETT: Bob Sackett, S-a-c-k-e-t-t. Is this bill perfect? No. It does address a lot of the issues. It puts some teeth back into the elevator/conveyance boards. It actually gives us authority to give variances without being second-guessed by somebody else higher up in the Department of Labor. To your question, I...about...you ever heard of anybody getting hurt on a wheelchair lift or an incline wheelchair lift, I'll just relate a quick little story. I was in church a few years ago. And a young man was at Westside High School, and he was on an incline wheelchair lift that hadn't properly been

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maintenanced. And he was spastic and he actually drove off the end of his wheelchair lift, down numerous steps, with a chair landing on top of him. The young man broke his legs. And he was a quadriplegic to begin with, so life became even more hard for him. So it is very, very important for this type of equipment to be inspected, and that's a very positive thing to be added back. I apologize. As an industry, we just keep coming back to you and back to you, and we should get this thing right. And I think this is the first step. If I had to switch hats, the only thing that I don't like about this law is I own a small business and it puts a lot of restrictions on my ability to grow my business. And that hurts me because I would like to be able to leave my business to my kids, but I probably won't be able to because of the restrictions this bill has in it. I'm one of those few people that don't belong to the union. And I offer a quality, safe product and have for years, and I think there should be more people like myself in the industry so there's competition. [LB19]

SENATOR LATHROP: Okay, very good. Thanks, Mr. Sackett. I don't see any...oh, pardon me. Hang on a minute. [LB19]

SENATOR HANSEN: One quick question. [LB19]

SENATOR LATHROP: Senator Hansen. [LB19]

SENATOR HANSEN: It's about a four-hour drive between here and North Platte, and then another three hours on to Scottsbluff. Should we consider allowing elevator inspectors from, say, Cheyenne to come in and look at some of the elevators in Scottsbluff and Chadron and...I mean, they're scattered out there. They're a little thinner than they are here, but they're still... [LB19]

BOB SACKETT: I personally don't have a problem with that as long as they meet the state requirements. But what I've always argued for is a state test. Currently all you have to do is go to be educated in several different meetings, and then you get your mechanic's license that qualifies you to take another test to become an inspector. The state really has no input, doesn't ever test a person's ability right now on whether they qualify as an inspector or not. For example, you go to Iowa, I still believe that you have to take a state test to become a licensed mechanic and to be an inspector. [LB19]

SENATOR HANSEN: In Iowa, you have to take Iowa's test, you mean? [LB19]

BOB SACKETT: I have, to inspect, and they break it down into different types of equipment too. So if you wanted to be an inspector or an installer/inspector on wheelchair lifts, you do there. If you want to residential, whatever you want to do, they have their test broken down; at least they did when I took my test. Now a lot of states have reciprocity, if I said that right, that if you have a license in one state it goes to another. [LB19]

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SENATOR HANSEN: Okay, thank you. [LB19]

SENATOR LATHROP: I see no other questions. [LB19]

BOB SACKETT: Thank you. [LB19]

SENATOR LATHROP: Thank you. Next proponent. Is there anyone here to testify in opposition? [LB19]

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 in opposition to LB19. First, this is only a partial transfer of the life safety programs from the Department of Labor to the State Fire Marshal. We believe that it would be appropriate to transfer all of the life safety programs, and this bill currently does not have a mechanism to do that. That is why the fiscal note for LB19 maintains staffing at the Department of Labor for the amusement ride program. We have struggled in the past to find qualified staff members to conduct the inspection of amusement rides on a part-time basis, we have not been successful in finding a contract inspection entity to assist in these inspections, and it would be terribly inefficient to have full-time inspectors for a process that is seasonal only. Second, LB19 expands the conveyances inspected. It would put platform lifts and stairway chair lifts under the regulatory authority of the committee. Currently these conveyances are completely exempt from inspection. LB19 would impose inspections on these conveyances statewide, and it would have the effect of imposing limitations on the types of accessibility lifts that can be used in small and mostly rural organizations. Third, LB19 continues the state inspection of conveyances and that, we believe, can and should be done by the private sector, which is represented in the department's LB437. Privatizing the inspection process is about removing the state as an intermediary between the private elevator owner and the inspector. There is no reason for the state to bear the burden of scheduling inspections that can be scheduled by private property owners. These are the parties that are in the best position to monitor these devices and to take remedial action should maintenance or repairs be needed. And this bill provides greater incentive for them to make sure that citizens are safe, LB437. Fourth, LB19 significantly modifies the role of the Conveyance Committee. The committee would be responsible for the rules, regulations, fees, and licensing authority and a variance authority, and they would remove that from the Commissioner of Labor. We believe that that will create difficulty if this program is transferred to the State Fire Marshal. And lastly, we believe that it will increase the cost of installing and repairing elevators in the nonmetro areas of Nebraska because it will be required that these elevators are...that the repairs and installation is performed by a licensed elevator contractor. Right now that only applies in Douglas, Lancaster, and Sarpy County. We know that South Dakota, Wyoming, and Kansas do

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not have state licensing programs for elevator contractors, and so there would be no reciprocity to Nebraska for any of those individuals that are performing in the other areas of the state. And I'll be happy to answer any questions. [LB19]

SENATOR LATHROP: Okay, let's see if there are any. [LB19]

CATHERINE LANG: Okay. [LB19]

SENATOR LATHROP: I don't see any. Let me ask one though,... [LB19]

CATHERINE LANG: Sure. [LB19]

SENATOR LATHROP: ...try to understand the difference between this bill and the very first one that you appeared on. [LB19]

CATHERINE LANG: Um-hum. [LB19]

SENATOR LATHROP: The first one you were in support of; this one you are here in a neutral capacity. [LB19]

CATHERINE LANG: Opposition capacity on this one. [LB19]

SENATOR LATHROP: Oh, I'm sorry, opposed. [LB19]

CATHERINE LANG: That's okay. [LB19]

SENATOR LATHROP: And your opposition is you want it all out of your office and over at the Fire Marshal? [LB19]

CATHERINE LANG: Yeah, so we want all the programs to be transferred. We don't believe that the conveyance inspections should be expanded. We believe that the inspections can be and should be done by the private sector. We also believe that modifying the role of the Conveyance Committee is going to create great difficulty, no matter which agency is responsible for it, and we also don't believe that the nonmetropolitan parts of Nebraska should be required to have their installations and repairs done by licensed elevator mechanics. [LB19]

SENATOR LATHROP: Let me ask about that. That's hard for me to believe that you oppose having or requiring that work on elevators be done by somebody who is licensed to do that work. Why would you...so if I go down to the Firestone dealership and I find a mechanic down there, is that okay to have him work on the elevator? [LB19]

CATHERINE LANG: What we're finding across the state--and there have not been

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incidents that would otherwise indicate that there is a safety concern--are building...
[LB19]

SENATOR LATHROP: Have they...well, let me ask you this though. [LB19]

CATHERINE LANG: Yes. [LB19]

SENATOR LATHROP: Has anybody done that? Have we turned nonlicensed guys loose on these elevators in other parts of the state? [LB19]

CATHERINE LANG: For doing the repairs and the maintenance? [LB19]

SENATOR LATHROP: Yeah. [LB19]

CATHERINE LANG: Yes. Yeah, they're currently being done that way in non-Lancaster, Sarpy, and Douglas County. [LB19]

SENATOR LATHROP: And so who is doing it? Just some guy who holds himself out as a mechanic? [LB19]

CATHERINE LANG: Well, but I don't know that it's fair to say to the property owners that they're going out and just hiring anybody to do these repairs. These are being done by people who have experience in these areas. They're just not licensed. [LB19]

SENATOR LATHROP: Okay. What's the downside to making sure people are licensed to do...I'm thinking, honestly...and I'm going to tell a story while we're sitting here talking about this. My office used to be on 92nd and Dodge. I got in that elevator one time--it's four stories--and that thing dropped six feet like that, scared me to death. [LB19]

CATHERINE LANG: Um-hum. [LB19]

SENATOR LATHROP: I didn't know if I was going to the basement or what was going to happen. And I look over, and your name is on the thing; thought about calling you. [LB19]

CATHERINE LANG: (Laughter) Did you...yeah. [LB19]

SENATOR LATHROP: Well, but you know what? People are. We're dropping people from, you know, First National Bank. I don't know how many stories that is, but... [LB19]

SENATOR HARR: Forty. [LB19]

SENATOR LATHROP: Forty floors? I mean, we're talking about people's safety. So

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what's wrong with making sure that they're licensed to do something that involves the safety of people going up and down in these cars who have...something happens, they don't have some emergency brake on them that they can grab or clutch. What's wrong with making sure that they're licensed, and why does the Department of Labor think that's not a good idea? [LB19]

CATHERINE LANG: Because our concern is that we have no record to indicate that what is being done in the nonmetropolitan areas of our state has been unsafe. Second, these repairs are being done, not necessarily being required to be done, by licensed inspectors. And when you're in the farther, western part of Nebraska and we could not have reciprocity for people that are in South Dakota, Wyoming, or Colorado or Kansas to come into Nebraska, we think that's a real restriction for the property owner to get the repairs done that are needed to be done. So that means every repair will have to come from licensed repair people that are coming from the eastern part of the state. [LB19]

SENATOR LATHROP: Do you know what it takes to get licensed? [LB19]

CATHERINE LANG: I do not know off the top of my head, no. [LB19]

SENATOR LATHROP: I'm just wondering if it's a burden to be licensed. Is it a simple test where you need to know, you know, five pages of code, or is it...? [LB19]

CATHERINE LANG: I do not know the answer to that. [LB19]

SENATOR LATHROP: Okay. [LB19]

CATHERINE LANG: We'd be happy to get that for you. [LB19]

SENATOR LATHROP: Okay. I'm just...we have this fight every year and it's like, finally, I want to get conveyances out of the Business and Labor, move a bill, and solve it. And I'm trying to better understand it. I'm not... [LB19]

CATHERINE LANG: Yeah. Yep. [LB19]

SENATOR LATHROP: I don't mean to be putting you on the spot, but I... [LB19]

CATHERINE LANG: No. [LB19]

SENATOR LATHROP: But if the question is, should we or shouldn't we have licensed people, then the question in my mind would be, does it promote safety? Is it hard to get licensed? Because if it's not hard to get licensed and people won't do it, then it tells me that maybe they shouldn't be working on these things. [LB19]

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CATHERINE LANG: And this has been discussed inside the Conveyance Committee, so we'd be happy to put that information together for you. [LB19]

SENATOR LATHROP: The Conveyance Committee? [LB19]

CATHERINE LANG: Um-hum, of the Department of Labor. [LB19]

SENATOR LATHROP: Oh. [LB19]

CATHERINE LANG: That issue of who can do these repairs has been an issue of discussion inside the Conveyance Committee. [LB19]

SENATOR LATHROP: Okay, and your opposition today on this bill isn't what it's trying to accomplish, but you think it...your bill is more comprehensive in that it takes four other programs and moves them to the Fire Marshal. [LB19]

CATHERINE LANG: That is one of our oppositions to this bill is that it doesn't move all the programs, that's correct. [LB19]

SENATOR LATHROP: And what's your other one? That you'd have to be a licensed...? [LB19]

CATHERINE LANG: The expansion and then the license and... [LB19]

SENATOR LATHROP: Okay. [LB19]

CATHERINE LANG: Yes. [LB19]

SENATOR LATHROP: Okay, got it. [LB19]

CATHERINE LANG: Yeah. Okay. [LB19]

SENATOR LATHROP: All right, any other questions for the commissioner on anything? (Laughter) [LB19]

CATHERINE LANG: (Laugh) No. [LB19]

SENATOR LATHROP: We do that sometimes when you come over here. [LB19]

CATHERINE LANG: Can I make stuff up at that point? [LB19]

SENATOR LATHROP: No, no, no. We sometimes like to catch up on other programs over there. But I see no other questions. [LB19]

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CATHERINE LANG: Okay, thank you. [LB19]

SENATOR LATHROP: Thanks for coming. Anyone else here in opposition? [LB19]

JIM HEINE: (Exhibit 2) Good afternoon again. Chairman Lathrop and members of the Business and Labor Committee, for the record my name is Jim Heine, J-i-m H-e-i-n-e, and I am the acting State Fire Marshal. I'm here today to testify in opposition of LB19. LB19 would transfer the administration of the Conveyance Safety Act from the Department of Labor to the State Fire Marshal agency. While the agency is generally supportive of consolidation of safety inspection programs, I have a number of concerns with LB19. First, LB19 would greatly expand the duties and the authority of the Conveyance Committee. The committee would change from having only an advisory role to now reviewing required codes to determine if any variances are needed and then promulgating regulations not only on the codes and the variances from the code but also the licensing requirements. The committee will now have the full authority to adopt and promulgate regulations the committee deems necessary to carry out the act. These changes are problematic because the agency is the organization that is actually charged with enforcing the act. Under the provisions of LB19, the agency will be placed in the position to enforce regulations that it did not adopt or promulgate. Furthermore, the introduced bill does not transfer any funding, staff, or equipment of the conveyance program. As can be seen in the fiscal note submitted by this agency, this will require the State Fire Marshal agency to operate as if this is a brand-new program which requires startup funding. In order to meet the statutory requirements of the act--namely, that all conveyances in the state are inspected by the state elevator inspector or his deputy inspectors--the agency will need to bring the program to full staffing level necessary to carry out the required inspections. Additionally, the agency will have to hire all new staff members, as the proposed bill does not allow for the transfer of the current employees. These current employees are still tasked with enforcing the Nebraska Amusement Ride Act, a program that will remain at the Department of Labor. Thank you for your time and consideration. I will be happy to answer any questions. [LB19]

SENATOR LATHROP: Thanks, Jim. Any questions for the acting Fire Marshal? How long have you been the acting Fire Marshal? [LB19]

JIM HEINE: About 30 days now. [LB19]

SENATOR LATHROP: Three days? (Laugh) [LB19]

JIM HEINE : Thirty days, 30. [LB19]

SENATOR LATHROP: Oh, 30. Oh. [LB19]

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JIM HEINE: Sorry, again, my cold. I'm not talking... [LB19]

SENATOR LATHROP: No, that's okay. I was going to say, you kind of walked into a great hearing for your third day, but... [LB19]

JIM HEINE: Hey, it was interesting. [LB19]

SENATOR LATHROP: Okay, yeah, thank you for your testimony. [LB19]

JIM HEINE: Thank you. [LB19]

SENATOR LATHROP: Anyone else here opposed to LB19? Are there any witnesses here in a neutral capacity? [LB19]

TAD FRAIZER: Good afternoon, Chairman Lathrop, members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, the national property casualty trade association. I had not intended to testify on this bill because in its original form it did not include boiler inspection. But I believe I heard Senator Nordquist say he was going to put in an amendment transferring boiler inspection as part of this bill, in which case I'd just reiterate the comments we made earlier during the hearings on LB437 as to insurers maintaining control over inspection of boilers that they insure. And I'd be happy to try to answer any questions. [LB19]

SENATOR LATHROP: Okay. I do have a question for you on the boilers. If the boiler inspection is done by the insurance company, so the Hartford insures the boiler in my building, then do you guys just pay him? Do you hire a building or a boiler inspection company to go out and inspect all of the boilers that you insure? Is that how that works? [LB19]

TAD FRAIZER: It depends on the company. Some companies actually have licensed inspectors on staff as their own employees that they send out to do their inspections. Other insurance companies will contract with an accredited inspection agency to handle their inspections for them. [LB19]

SENATOR LATHROP: Okay, but you guys pay them directly and... [LB19]

TAD FRAIZER: Yes, and... [LB19]

SENATOR LATHROP: And the Department of Labor or the Fire Marshal,... [LB19]

TAD FRAIZER: No. [LB19]

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SENATOR LATHROP: ...in either event, they don't have any expense. [LB19]

TAD FRAIZER: No, and that's...the inspection is generally built into the cost of the premium that the property owner is paying on their property, which is, I guess, one of the reasons we raised some questions earlier on LB437 because if an outside inspector comes in and says, hey, let me do an inspection for you, they pay for that, whereas they would have gotten inspected as part of their premium under their insurance coverage, so they... [LB19]

SENATOR LATHROP: So they're getting nicked twice for an inspection. [LB19]

TAD FRAIZER: Either that or the insurance company, as a matter of keeping the client happy, eats the cost of that inspection. But it... [LB19]

SENATOR LATHROP: Do we have currently a requirement that there be boiler tenders? Do you have to be licensed or you have to be qualified to be the guy that's running the boiler? [LB19]

TAD FRAIZER: I don't honestly know, Senator. [LB19]

SENATOR LATHROP: Okay. [LB19]

TAD FRAIZER: I think I've seen some references that indicate that may be so, but I'm...I can't really speak to that. [LB19]

SENATOR LATHROP: (Exhibit 1) Okay, thank you. Anyone else in a neutral capacity? And, seeing none, it looks like we have a letter from the National Elevator Industry in support of LB19, and that's in the form of a February 11, 2013, letter signed by Amy J. Blankenbiller. And with that, that will close our hearing on LB19 and move us to Senator Mello and LB373. Why don't we let folks move in and out. Okay, Senator Mello, you're good to go. [LB373]

SENATOR MELLO: (Exhibit 1) Oh. Good afternoon, Chairman Lathrop, 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. Three years ago, this Legislature passed LB552, the Nebraska Construction Prompt Pay Act. This original prompt pay legislation, which was advanced by the Business and Labor Committee unanimously and passed 45-0 in the full Legislature, sought to address the payment of contractors and subcontractors on construction projects. Unfortunately, despite the passage of LB552, many of Nebraska's subcontractors continue to have problems with receiving payment in a timely manner. Unscrupulous contractors, often from out of state, have been avoiding the prompt pay law, either by abusing retainage provisions or just chancing that the subcontractor won't file a suit to enforce their rights under the act due

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to the legal costs. LB373 would amend the Nebraska Construction Prompt Pay Act to address these issues that have continued to cause problems for small businesses in the construction industry. First, the bill provides a definition for the term "substantially complete." While this common construction term appears in multiple locations within the act, the lack of a common definition leaves the term potentially susceptible to conflicts over interpretation between contractors and subcontractors. LB373 uses the definition of "substantially complete" from the prompt pay legislation of our neighboring state of Kansas. Existing language in the act provides that when a subcontractor has performed work in accordance with the provisions of the subcontract and all the conditions precedent to the payment contained in the subcontract have been satisfied, the contractor shall pay the subcontractor within ten days. LB373 would clarify that failure to pay under the act is a violation of the existing criminal penalty for failure to apply payments for lawful claims, located in Chapter 52. The bill also requires that the contractors place any proceeds intended for the payment of subcontractors into a trust account and provides that failure to do so would also be a violation of that same section. As I previously mentioned, many of the problems that subcontractors currently face with regard to prompt payment issues stem from the abuse of retainage. While retainage for many projects typically does not exceed 10 percent of the entire contract, subcontractors whose work is completed early in the project are essentially getting paid for only 90 percent of what they are owed until the retainage is released at the completion of the entire project. On large projects, this 10 percent can be a significant amount of money for subcontractors. LB373 seeks to lessen the impact of the withholding of retainage by capping the retainage amount at no greater than 5 percent of the total project costs. My office has been exploring alternative language, however, that would instead require the release of retainage as each subcontractor completes their work. Another area where many subcontractors have struggled to receive prompt payment is in residential construction. Section 45-1207, which was a part of the original prompt pay legislation, provides that the act does not apply to the residential construction projects consisting of four residential units or less. Unfortunately, nothing in the legislative history of the original legislation provides a legitimate policy reason for this exclusion. Many subcontractors that worked with my office in drafting LB373 have reported significant problems with obtaining in-time payments, so much so that they have stopped bidding on residential projects altogether. To address this problem, LB373 provides an outright repeal of the section that exempts residential construction. Finally, while some amounts owed to subcontractors are small enough that they can be addressed in small claims court, the expense of hiring a lawyer to obtain prompt payment under the act can be prohibitive in many cases. LB373 provides that when a contractor, owner, or subcontractor brings an action to recover damage for a violation of the act, the court shall award attorneys' fees and costs to the prevailing party. In the weeks leading up to today's hearing, my office has been contacted by multiple organizations expressing concerns over some of the provisions in LB373. While I firmly believe that the additional language is necessary to address the ongoing problems many subcontractors are having in obtaining prompt payment, my office is more than

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happy to work with these groups and the committee to find a workable solution moving forward. It is worth noting, however, that the provisions in LB373 are currently working in a number of other states; actually, ten states, including Kansas, who currently caps retainage at 5 percent; and five states, including Missouri, who currently requires that proceeds for subcontractors be placed in separate trust accounts. There are a number of subcontractors that I've invited to testify today who can speak to greater detail about some of the situations they continue to deal with, within the industry. I would generally defer any construction-related questions to them but otherwise would be happy to answer any questions the committee may have. [LB373]

SENATOR LATHROP: Thanks, Senator Mello. Any questions for Senator Mello?
Senator Harr. [LB373]

SENATOR HARR: Thank you. And welcome, Senator Mello, to the Business and Labor Committee. [LB373]

SENATOR MELLO: I've been here before, but glad to be here. [LB373]

SENATOR HARR: Well, you're always welcome though. I have some specific questions on the legislation though. So if you look on page 3, line 20 to 23,... [LB373]

SENATOR MELLO: Yes. [LB373]

SENATOR HARR: ...which is Section 7. And I understand wanting to get some clarity on the definition. I'm just not sure if this provides much clarity. And you...it says, "is sufficiently complete in accordance with the contract to be used for its intended purpose." Does that mean a certificate of occupancy or...I'm not sure what...that doesn't provide much clarity to me as far as what is sufficiently complete. [LB373]

SENATOR MELLO: Ultimately, we utilized this language...this exact language comes from the state of Kansas statute regarding their prompt pay legislation which they use to clarify... [LB373]

SENATOR HARR: They also don't have income tax or a lower one. We don't always do what Kansas does. (Laughter) [LB373]

SENATOR MELLO: That is true; but unfortunately, I would argue that to some extent...and also, I did pass out this "50-State Survey" of issues regarding retainage. [LB373]

SENATOR HARR: I saw that, yeah. [LB373]

SENATOR MELLO: But this ultimately, this definition, in doing research on this bill and

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working, ultimately, with this committee's legal counsel, this was a definition that everyone involved felt what clarified the existing statute more than what was currently in statute. So by all means, Senator Harr, if you have suggestions that clarify intended purpose further and/or clarify "substantially complete" further than what our neighboring states, like Kansas, is using, I'd be more than willing to entertain any changes and suggestions. [LB373]

SENATOR HARR: Okay, and I...well, and I guess I'm just trying to figure it out. So is it a certificate of occupancy on a building? Is that what is sufficiently complete? Or what would be sufficiently complete in a building? Is it when the HVAC and the windows, when the building is enclosed? What is... [LB373]

SENATOR MELLO: I think each project is determinant upon, ultimately, the individual subcontractor in regards to what service they're providing. So "substantially complete" for an electrician may mean that the entire project has been wired, with the exception of maybe 10 percent of the work or 15 percent of the work in regards to tying up the loose ends as you put the light boxes on. I think it's dependent upon each specific subcontractor, what "substantially complete" means. But, by all means, we can provide you and the committee further research in regards to how Kansas came up with this definition which, as I stated, I felt it was a fairly good step in the right direction to clarifying what was concerned to be a very vague definition in the original legislation that was passed a couple years ago. [LB373]

SENATOR HARR: Okay, thank you. And then, if we can go to page 4, 18-23, this has to do with the trust funds. [LB373]

SENATOR MELLO: Yes. [LB373]

SENATOR HARR: The contractor would be the holder of the trust account, correct? [LB373]

SENATOR MELLO: Correct. [LB373]

SENATOR HARR: So who does the interest go to then on these accounts? Let's say he puts...let's say the contractor puts \$100,000 in there, goes to the sub. Now, right now, interest is one-tenth of 1 percent, so it really doesn't matter. But we may not always have such good and/or bad interest rates, depending on your point of view. If we go back to the days of 12 percent, that could be something substantial. So my question is, and this is an issue we face in the bar association, who does that trust money go to? [LB373]

SENATOR MELLO: I have to assume the...any interest that would be generated out of the payment that is due to the subcontractor, which really it's...if there's \$100 placed in a

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trust that's to be used to pay someone, that \$100 goes to the subcontractor to be paid. [LB373]

SENATOR HARR: Yeah. [LB373]

SENATOR MELLO: Any interest that's generated on that, I would assume, would be interest that goes to the general contractor, since it's their... [LB373]

SENATOR HARR: It would go back to the general or go to the sub? [LB373]

SENATOR MELLO: No, it would go to the general contractor. [LB373]

SENATOR HARR: Okay, and then that leads to another question. And thank you for the clarification, and that's all I'm looking for here. Is it a...I'm trying to figure out how this would work. If I'm the general contractor, do I need a separate trust account for each subcontractor? Or do I have just one account? Or how does that work? [LB373]

SENATOR MELLO: The way I interpret the language in line 18 through 19, "a contractor shall place any proceeds intended for the payment of subcontractors"--s, plural--"in a separate trust account,"... [LB373]

SENATOR HARR: Yeah. [LB373]

SENATOR MELLO: ...I imagine then that any amount that's due to subcontractors, all subcontractors, would be placed in a separate trust account that would then be used to pay them as they complete their work. [LB373]

SENATOR HARR: So one trust account? [LB373]

SENATOR MELLO: That's the way I envision it, or at least that's the way I interpret the language that we worked on. [LB373]

SENATOR HARR: Okay, that's a little different than...okay, last point. All right, that's all I need to know. Thank you. [LB373]

SENATOR LATHROP: Senator Hansen. [LB373]

SENATOR HANSEN: Thank you. Senator Mello, out west we call "substantially complete" almost done. (Laughter) And, Senator, I've had that happen. Subcontractors come up to me as an owner, not even as a contractor, and they say, I'm almost done, I need some money to buy product for the next job. And I say, well, as soon as my lights turn on, you know, then we'll get you a check, but...so is that retainage? I mean, what's...how does retainage and "substantially complete" work together? [LB373]

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SENATOR MELLO: Well, ultimately, the retainage is the amount that's held behind for subcontractors in regards to the finished...ultimately be paid as the project is finished. The question that you'll continually hear, I think, from some of the subcontractors behind me who can...I would be first and foremost to tell you that they can give much more specific information regarding this process than I can. But ultimately, that retainage is carried over, unfortunately at times, significantly longer periods of 120 days to a yearlong period after that subcontractor has been well completed, done with their work. And so the question it comes down to is whether or not...and we felt in the current draft that we're...we've been looking at other language and trying to consider other ideas that are out there of trying to find ways to pay off subcontractors as they complete their components of the project instead of holding their entire payments until after the complete project is done. And so if there's suggestions, by all means, Senator Hansen, that you or the committee has...and, as I mentioned, even those who will come in opposition today, we've expressed that we're open-minded, willing to hear and consider other ideas. The underlying problem is that you have a business-to-business transaction where one business is taking advantage, essentially, of another business by not paying them and, thus, utilizing that nonpayment as almost a noninterest-bearing loan for them to be able to continue to do future projects until the first project is completely done which, even in some cases, as you'll hear today, the project is done, but for some reason or another there may be one or two small technical things that need to be completed and they still hold on to that retainage. And so I think the thought is that, you know, is LB373 perfect, in regards to what the substantially complete language may be or may not be? That's left up, I think, to this committee. I mean, we utilized the language used in Kansas statute, and we felt that was a good improvement from where we were when this Legislature passed prompt pay a couple years ago. But I think if there's other suggestions and examples...and I think part of that is that "50-State Survey" that we provided and handed out in regards to what other states currently do in regards to utilizing retainage issues and trust issues. [LB373]

SENATOR HANSEN: Thank you. [LB373]

SENATOR LATHROP: I see no other questions. Are you going to stick around? [LB373]

SENATOR MELLO: I will. We're done for the day downstairs. [LB373]

SENATOR LATHROP: Oh. [LB373]

SENATOR HARR: Hmm. [LB373]

SENATOR LATHROP: Well, the way Nordquist left, we thought you guys were really... [LB373]

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SENATOR HANSEN: Yeah, he had a long day. [LB373]

SENATOR MCGILL: Yeah, what? [LB373]

SENATOR MELLO: We got done when he came down. [LB373]

SENATOR LATHROP: Ah. [LB373]

SENATOR MELLO: So it worked out. (Laughter) [LB373]

SENATOR HARR: Amazing. When he's gone... [LB373]

SENATOR LATHROP: That's a good Chair, cover for you. Those who want to speak in favor of LB373, we'll take proponent testimony next. Good afternoon. [LB373]

CHRIS CALLIHAN: (Exhibits 3 and 5) Good afternoon, senators. Chairman Lathrop, members of the Business and Labor Committee, my name is Chris Callihan, C-a-l-l-i-h-a-n. I am the representative of the members of the Lincoln Electrical Standards Group. The Lincoln Electrical Standards Group was formed about a year ago and is made up of electrical contractors that own and/or operate their businesses in the greater Lincoln area. We formed this group to advocate and protect the interests and viability of the business owners and workers in the electrical industry in Lincoln. LB552, the Nebraska Construction Prompt Pay Act, originally wasn't able to fulfill or fully address some of the problems that are pervasive in the construction industry. Within our monthly meetings and with the help of a few state senators, we came up with some additional tools not originally in LB552. LB373 seeks to correct some of these deficiencies. From the point of view of the subcontractors, being paid the amount owed on time and the retainage being held affects their abilities to meet their financial obligations. Whether or not they get paid for the work that they've done, they still have to pay their employees, they...which also includes state and federal taxes on those earnings of those employees. They typically have 30 days to pay for the material and equipment rentals before interest will start to accumulate from their suppliers. With profit margins being so low, the ability to absorb these unjustifiable payment delays can be catastrophic to a business. And, as a side note, some of these are never paid. Businesses end up writing them off as losses, which further reduces the taxes to the state treasury. Retainage is also another issue. A 5 percent cap on retainage should be sufficient for construction projects in Nebraska. As an example, one of the largest projects in Nebraska is the Haymarket arena, going on right now. The retainage that is being used and withheld on that project is 10 percent per month, but the individual...or but the withholding stops when the total amount withheld reaches 5 percent of the total contracted amount for each individual contractor. Another issue: recovery of attorney fees and legal costs. This would give businesses a real tool to resolve the problem. With the added provisions proposed by LB373, businesses will have more realistic options to

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assure that they are promptly paid for the material, labor, and equipment that they are contractually obligated to provide to these construction projects. With my testimony today I have included a copy of the "Guidelines for a Successful Construction Project." These are guidelines that the Associated General Contractors of America, the American Subcontractors Association, and the Associated Specialty Contractors have agreed to develop and promote. There are a few contractors from the group here today to talk to the committee and answer any questions the committee might have. Thank you for your time and consideration on this matter. [LB373]

SENATOR LATHROP: Very good. Thanks, Chris. Any questions for this witness? I see none. Do you have a business? Do you have an electrical...? [LB373]

CHRIS CALLIHAN: No, no. [LB373]

SENATOR LATHROP: Okay. All right, I have no other questions. [LB373]

CHRIS CALLIHAN: Thank you. [LB373]

SENATOR LATHROP: Thank you. Next proponent. [LB373]

BOB PHILIPPS: (Exhibit 6) Chairman Lathrop, members of the Business and Labor Committee, thanks for allowing me to speak on behalf of myself and the electrical contractors, subcontractors. A couple points I'd like to bring up. [LB373]

SENATOR LATHROP: Could you start with your name? [LB373]

BOB PHILIPPS: Oh, I'm sorry. [LB373]

SENATOR LATHROP: That's all right. [LB373]

BOB PHILIPPS: Yeah, it's Bob Philipps, P-h-i-i-i-p-p-s. I'm with Commonwealth Electric. [LB373]

SENATOR LATHROP: Go ahead. [LB373]

BOB PHILIPPS: Reading through the LB373, there's a few points that I'd like to reinforce. The first thing is that this bill, right off the bat, to me, seems like it's a bill based on responsibility. It's not asking for anything that's unfair or unjust. We do the work; we do the installation. We should be paid for it in a timely manner. Part of the issue that we have right now is that, as with the retainage issue, 10 percent...again, if your job, say it's \$100,000. You hold \$10,000 out of it. You're not getting this retainage money until the end of the project. And substantial completion, whether it's, we're almost done or almost complete, that could be held up. Basically, as an electrician,

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we're always the first ones in, last ones out, other than the landscapers. So sometimes, if our...if the job is complete, we're waiting for our retainage to be paid. All the lights are working, all the plugs are working, and we're waiting for the landscape or maybe some concrete work or some touch-up work or gutters or something like that, that has nothing to do with our business. We're being penalized for that. And again, at these times, 10 percent, that's a huge profit at this point. I mean, that...the way the market is, it's just...it's not there. What that does is, to me, it's a pyramid effect. If we're being held up, the trickle down is that our subs--our subs--rental equipment, vendors that supply the material are being held up, too, because it's pay when you get paid, other than the labor. If we're not profitable--and again, profit is not a dirty word; I looked it up in the dictionary--what this does is, again, we pay our labor right away, so the company is in a negative cash flow. If we're in a negative cash flow, it hampers our ability to bid other jobs, create work for our labor, and we don't have enough money to reinvest back into the community. In regards to Section 45-1203(3), placing the funds in a separate trust fund, all this does is safeguard against the ability to get paid, you know, in a timely manner. The money isn't moved from the principal back over to change orders that affect the project itself. [LB373]

SENATOR LATHROP: Is this problem unique to electricians? [LB373]

BOB PHILIPPS: Unique? No, it's pretty standard. [LB373]

SENATOR LATHROP: So we could have plumbers in here telling us the same concerns? [LB373]

BOB PHILIPPS: Plumbers, concrete, roofers, anything that...any trade that builds the building or a project. Whether it be residential, whether it be commercial, everybody is held accountable. Everybody is...there...it's a retainage issue. [LB373]

SENATOR LATHROP: So it's happening to everybody. You just testified that you're first in and last out. [LB373]

BOB PHILIPPS: Um-hum. [LB373]

SENATOR LATHROP: So is the 10 percent that's withheld, is that 10 percent of the total project cost? So by the time you go in to, you know, put the outdoor lights up, which presumably is the last thing you do, or hang some lighting at the very end, have you been paid for everything but the 10 percent? [LB373]

BOB PHILIPPS: Correct. Usually, at the end of the project, if it's 10 percent, or there might a couple change orders at the end that they've added additional scope of work, those costs would be withheld also until it's completed. But the 10 percent, yeah, is held until the end of the job or an end to the substantial completion. And for us, I feel it's, you

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know, once we get our final permit, electrical permit, we're done. Now there might be a couple... [LB373]

SENATOR LATHROP: Once you get what permit? [LB373]

BOB PHILIPPS: Electrical, the final electrical permit, because each... [LB373]

SENATOR LATHROP: Is there an inspection? [LB373]

BOB PHILIPPS: Yes, yes. [LB373]

SENATOR LATHROP: You know what I'd like to do? And I'm going to use you to do this. And I'm not...I don't want to take a lot of time, but just so that the committee better understands the issue, walk through a hypothetical. You...somebody wants to build a, you know, four-bay strip mall in Lincoln somewhere. And you're the electrical contractor, and you have a general contractor that, you know, you bid the job and you get it. Tell us what happens and where this retainage becomes an issue and how it affects your work. [LB373]

BOB PHILIPPS: Okay. Let's just say, for round numbers, so I can keep up, it's a \$1 million electrical project, okay? [LB373]

SENATOR LATHROP: Okay. [LB373]

BOB PHILIPPS: So as the project...you provide a schedule of values saying that you're going to install the electrical service, you're going to install the lighting outlets, whatever. And as the project goes over a 12-month period, a month into it you provide an invoice or a bill for what you've completed, the work schedule, the...whatever is completed. [LB373]

SENATOR LATHROP: Is that going to be set out in your contract? [LB373]

BOB PHILIPPS: It can be. [LB373]

SENATOR LATHROP: So you say, I'm going to do A, B, C, D, and E. And when I get done with A, that's going to be \$100,000 worth of the work. [LB373]

BOB PHILIPPS: It can be, Senator. It could be. It depends if it's a service or panel feeders that, without getting too technical, it's...you might not complete that in one month. It might not be just complete, cut and dried. You might have several months of installation on this. So it's... [LB373]

SENATOR LATHROP: But typically, will your contract with the general dictate when you

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can get paid and how much? [LB373]

BOB PHILIPPS: Right, right. They'll...it will state in the contract, percentage of completion on the 25th of the month. Or when you order gear or electrical equipment or fixtures, you might bill that up front because that's on the premises or it's in an area where the owner can... [LB373]

SENATOR LATHROP: So you and the contractor have an agreement. [LB373]

BOB PHILIPPS: Right. [LB373]

SENATOR LATHROP: If I'm buying all this material and I'm going to incorporate it in there and I buy all of it in the first month and it's on the property, I'm going to bill you for it and I'm going to bill you for some work, and I expect to be paid. [LB373]

BOB PHILIPPS: Correct. [LB373]

SENATOR LATHROP: Do you generally get paid? [LB373]

BOB PHILIPPS: Yes. [LB373]

SENATOR LATHROP: That is...at least that isn't a retainage issue. [LB373]

BOB PHILIPPS: No, that's a separate issue. [LB373]

SENATOR LATHROP: Okay. [LB373]

BOB PHILIPPS: What...this is part of 30 days, too, but it could be a 45-day window or a 60-day window where you're getting paid under normal payments. So if I provide an invoice in October, I might not get paid until December. [LB373]

SENATOR LATHROP: That's just a slow pay problem... [LB373]

BOB PHILIPPS: That's just a slow pay. Now at the end... [LB373]

SENATOR LATHROP: ...and not really the object or the subject of this bill. [LB373]

BOB PHILIPPS: Right. [LB373]

SENATOR LATHROP: Okay. [LB373]

BOB PHILIPPS: Well, it's still part of the prompt pay. But the retainage portion of it, at the end of a job you've billed out \$1 million and you've been paid \$900,000. So at that

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point, through the...your permit, you will call the electrical inspector in the state electrical or city, whatever has jurisdiction. They'll come out, inspect it. If there's any items that need to be corrected, they'll tell you to correct them. If not, they'll give you a final, you know, permit. At that point, we're complete, other than maybe 5 percent of the work. Let's say that's done in...let's say it's June of the year, okay, but the landscaping, some of the concrete work isn't done until August or September. At that point, the clock starts ticking as far as the retainage. So now we're going to be out five, six months before we get it, and it happens all the time. Our retainage might be anywhere from 120 to 240 days. So now we're sitting with the money...with retainage that we should have had at the end of the job. [LB373]

SENATOR LATHROP: You say, we're sitting there with. [LB373]

BOB PHILIPPS: Without, I'm sorry, without. [LB373]

SENATOR LATHROP: Actually, the general contractor is sitting there with... [LB373]

BOB PHILIPPS: Right, or the owner. It could be the owners or the owners' agent. [LB373]

SENATOR LATHROP: Okay. [LB373]

BOB PHILIPPS: So we...we're on a negative cash flow or we're...no... [LB373]

SENATOR LATHROP: And I'm going to hear the other side of this story, I expect, pretty soon,... [LB373]

BOB PHILIPPS: Yeah. [LB373]

SENATOR LATHROP: ...when we get to opponents. But what's the...what's your understanding of the logic for holding the money? It's to make sure that if they call you back, you come back and do it, isn't it? [LB373]

BOB PHILIPPS: Right, and great point because there is a redundancy there. At the end of the job, in part of your contract, what you have to do on your...provide on your O&Ms, your owners' maintenance equipment and manuals, they require you to give a warranty letter. So I have to provide them a warranty saying what we installed is correct and in a workmanlike manner, inspected, and here is our assurance that we're going to make sure, in a year's time, that we're going to go back. Say the light goes out here, we come back in and fix it, okay. That's part of the warranty. But they're holding it as part of the...I feel the retainage is getting held as part of the warranty, which to me is, you know, redundancy and not fair. [LB373]

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SENATOR LATHROP: Okay. I have one more question for you. Do you ever have owners or general contractors who say, I know I'm sitting on the retainage, it amounts to \$30,000, and, you know, I didn't make as much on this as I thought I would, and I...instead of I give you that \$30,000, how about I just give you...I'll pay you \$20,000 of it now and we'll call it good? [LB373]

BOB PHILIPPS: That's... [LB373]

SENATOR LATHROP: In other words, do you have them negotiate what they're going to pay you from the retainage to try to diminish the balance? [LB373]

BOB PHILIPPS: It's happened in the past. [LB373]

SENATOR LATHROP: Okay. I'm just trying to better understand the... [LB373]

BOB PHILIPPS: Right. And again, it... [LB373]

SENATOR LATHROP: ...what the issue is. [LB373]

BOB PHILIPPS: This doesn't affect every general contractor or owner's group. It's...we're only talking about the people that are violating it or are not being fair about it. There are a lot of quality general contractors and a lot of quality owners groups out there. I mean, we're bringing this to the table because of the other 10 percent or 15 or 20 percent. [LB373]

SENATOR LATHROP: Okay. Senator Hansen. [LB373]

SENATOR HANSEN: One question. In your testimony you were talking about your subcontractors, where you rang material, rang specialty items. I assume that's scaffolding, generators, or something that you used in the process. Do you have a prompt pay, 30 days, on those people, or should this bill cover you too? [LB373]

BOB PHILIPPS: This bill will cover all of us. [LB373]

SENATOR HANSEN: All of you. [LB373]

BOB PHILIPPS: And it's a trickle down. [LB373]

SENATOR HANSEN: Okay. [LB373]

BOB PHILIPPS: You're correct. If it's a scaffold or rental equipment or a subcontract, say, a fire alarm installation, or say there's the concrete pad for a transformer, we'll hire that out. So it's...we pay when we get paid, and so it trickles in. Also, the vendors that

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are...there's...and we work all across, you know, the United States, so it's...we try to pay them as fast as we can. As soon as we get paid by the general contractor, we're usually paying them, just our company policy, within 15 days. [LB373]

SENATOR HANSEN: Okay, 15 days, that's great. Can we get government to pay that quick? (Laughter) [LB373]

BOB PHILIPPS: That's your job, Senator. [LB373]

SENATOR HANSEN: Who do we talk to about this before we couldn't cover government? Thank you. [LB373]

SENATOR LATHROP: Okay, I see no other questions. Thanks for your explanation too. [LB373]

BOB PHILIPPS: Okay, thank you. [LB373]

SENATOR LATHROP: Okay, next proponent. [LB373]

BRIAN ALLISON: (Exhibit 7) Good afternoon, Senators. My name is Brian Allison, B-r-i-a-n A-l-l-i-s-o-n. I'm the owner of Sentry Electric here in Lincoln, Nebraska. My business has been in operation for 31 years, and I'm responsible for the livelihood of 25 employees and their families. I'm here today to voice my support for LB373. Typically, electrical contractors or subcontractors on projects that require retainage, some subcontractors hold the greatest percentage of risk on any project. We're at risk of the owner failing to pay and the general contractor failing to pay. The contracts we sign push the majority of the job risk down to the subcontractors. Pay-if-paid clauses in our contracts shift the risk of nonpayment by the owner to the subcontractors. We indemnify the owner and the general. We are required, in most instances, to include owners and generals in our insurances. We are subject to one-sided contracts, and we're at the mercy of the general contractor. Unethical contractors and owners use many ways to prolong final payment of retainage to subcontractors. One example is I was on a project where I was provided a punch list of items to correct at the end of the project. I completed those items, and then, as soon as that was done, I was handed a second punch list and ended up getting five different punch lists. That took six months to get this finally straightened out and for me to get payment on that project. Many times, even when you don't have a punch list and all...or we have a punch list and all our items are corrected, if one subcontractor on the project has not completed his punch list, we're still...our withholding is still withheld until all punch lists are completed. I had a school project a few years ago where the retainage was extended for over eight months because a painting subcontractor couldn't get back to the job to do some final touch-up because school was in progress and he didn't want the fumes in the school. It's my opinion that the vast majority of the general contractors that I've worked with are very

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ethical. It is not those contractors that this legislation is directed at or needed. It is needed for those contractors and owners that retain payment to subcontractors for their own gain. This legislation will not prevent general contractors and owners from retaining payment to subcontractors because they can't substantiate their pay request. This legislation will not prevent a general contractor or owner from procuring a bond from the subs to guarantee completion. This legislation does not prevent a general contractor from withholding payment for disputed work. This legislation will not prevent a general contractor or owner from completing their projects on time or affect their budgets. In 1972, subcontractor profit margins were around 6 percent; now they're half of that. The retainage amounts have not been reduced. Even with the retainage at 5 percent, we are in the hole from our first pay request. The owners and general contractors are holding from three to five times what the subcontractor's profit would be on a project. The retainage amounts are very large sums of money, and they're often held for over six months without interest. The change in this current legislation will assure me that the funds that I have already earned are available to me if the owner or general contractor were to default before I receive my final payment and will put retainage amounts more in line with the low profit margins that are now commonplace in our industry. Plus, it will give me a legal means to recover money that is unfairly withheld, and it will allow me to have funds available to finish a project, pay my vendors, and to provide a comfortable living for my employees, their families, without borrowing money from a bank. [LB373]

SENATOR LATHROP: Very good. Thanks, Mr. Allison. Any questions for Mr. Allison? I don't see any. [LB373]

BRIAN ALLISON: Okay. [LB373]

SENATOR LATHROP: Thanks for your testimony. [LB373]

BRIAN ALLISON: Thank you. [LB373]

SENATOR LATHROP: Next proponent. [LB373]

MARSHA BABCOCK: Thanks. [LB373]

SENATOR LATHROP: Good afternoon. [LB373]

MARSHA BABCOCK: Good afternoon, Mr. Chairman. [LB373]

SENATOR LATHROP: You've been waiting a long time for this. [LB373]

MARSHA BABCOCK: Yeah, really. (Laugh) Members of the committee, my name is Marsha Babcock, M-a-r-s-h-a B-a-b-c-o-c-k. I am here today representing the Mechanical Contractors Association of Omaha. Those are those plumbers and pipe

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fitters that you referred to earlier. My members...I have about 30 member companies. Their size ranges anywhere from 5 employees to 300 employees. Most of the work that they do is on commercial, industrial, institutional kind of work, so we don't really...we get into some of the residential service market. But really, we don't do any of the residential new construction, so I have no opinion with respect to that aspect of the bill. Overall, the owners, the architects, engineers, certainly the general contractors with whom my members work are very professional. We work exceptionally well together. We've worked on many successful projects, and we'll continue to do so. However, that's certainly not always the case, and in the current economic climate the weaknesses in our relationships, both contractual and otherwise, can become somewhat acute. I am going to limit my testimony to the two issues that are of most concern to the contractors that I represent, and that would be the issues that Mr. Allison referred to most: retainage and the definition of "substantially complete." When we started working on this legislation as an industry back in 2010, we agreed on the need for prompt pay. All of us were in the same boat. We were having difficulty getting paid for our work. And so we were all able to come together and agree that this was a good thing, that there needed to be some parameters. However, there were two things on which we could not agree, and that was the amount of retainage and whether or not we should be including a definition of "substantially complete," because right now that's entirely being held in the hands of the owner, their representative, or the general contractor. Retainage has kind of a history behind it. It's been 10 percent forever. And my members tell me that the reason that that number has always been used is because historically that was your profit margin. You had about 10 percent profit. So what they were doing was withholding your profit margin and then paying you for your work, giving you your profit when it was done. As you've heard the testimony today, and I think even the opposition would agree, that those profit margins are more in the 3 percent range than the 10 percent range, and so it's time for those retainage numbers to represent what is truly the case now. And I see my time is up. [LB373]

SENATOR LATHROP: Okay, thanks, Marsha. [LB373]

MARSHA BABCOCK: Um-hum. [LB373]

SENATOR LATHROP: Any questions for this witness? I don't see any. The profit margins, is that...I heard the electrician say 3 percent. That's true of the mechanical guys as well? [LB373]

MARSHA BABCOCK: Yes, um-hum. [LB373]

SENATOR LATHROP: And is the biggest portion of this...I mean, in this bill, does it mean more to you to have the number ratcheted down to 5 percent, or is the trust account part something that you feel strongly about as well? [LB373]

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MARSHA BABCOCK: My members don't feel strongly about the trust account component. They would be concerned about lowering the retainage amount and making that more accessible and then, certainly, tightening the definition of "substantially complete," because the retainage...getting access to the retainage is dependent upon that definition being more clear. [LB373]

SENATOR LATHROP: Do you have an opinion about what that definition should look like? [LB373]

MARSHA BABCOCK: Yes, as a matter of fact, I do. I believe that the definition that's included at this point in time goes a long way toward getting where it is that we need to do. I would, in line 22, I would strike the word "to," and in line 23 strike "be used," and I would substitute "after contract so that the owner can occupy or utilize the constructed project for its intended purpose." Again, I think that addresses something that Senator Harr mentioned. [LB373]

SENATOR LATHROP: Say that again. You would...so that the owner can occupy the premises... [LB373]

MARSHA BABCOCK: Occupy or utilize the constructed project for its intended purpose. [LB373]

SENATOR LATHROP: If you were the first guy in and your job was to build foundations or dig the footings,... [LB373]

MARSHA BABCOCK: Um-hum. [LB373]

SENATOR LATHROP: ...you'd be waiting until the landscaper left, wouldn't you, under that definition? [LB373]

MARSHA BABCOCK: Well, you do now, you do now. I think that... [LB373]

SENATOR LATHROP: So you'd be happy to pay as the day they took...the owner takes possession then. [LB373]

MARSHA BABCOCK: It would certainly be clearer. When you're given a certificate of occupancy, there's no dispute as to whether or not that job is substantially complete. Everything else before that seems to be open to interpretation. Now you could also utilize it for its intended purpose. And again, you know, you can play games with all language, as we know. But what's happening is as they described. You wait, even if you're the first person in, even if you...like, for example, plumbers. They'll come in and they'll have ground work, and they'll lay the underground plumbing. They'll cover it up. They'll have it inspected, cover it up, and start moving on from there. Right now they're

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waiting until the end of the project before they get paid. Arguably, if you have something about being able to utilize the project for its intended purpose, at that point, when it's been inspected and it's covered and you're ready to move on, that portion of the project is able to be utilized. That work is done, and the project can move forward. I'd make that argument. It gets a little bit closer. It narrows it a little bit more than the language that Senator Mello had proposed. [LB373]

SENATOR LATHROP: Okay, okay. [LB373]

MARSHA BABCOCK: And that's what we're trying to do. [LB373]

SENATOR LATHROP: I get it. I want to make sure that if this bill moves that we're done with this subject. [LB373]

MARSHA BABCOCK: That would be nice. [LB373]

SENATOR LATHROP: And I don't mean that in a, like,... [LB373]

MARSHA BABCOCK: I understand. [LB373]

SENATOR LATHROP: ...don't waste my time. I just mean that I want to...if we're going to put a fix on this, then I want to make sure it's a thoughtful fix and it fixes the problem so that we're not dealing with it in a year or two,... [LB373]

MARSHA BABCOCK: Um-hum. [LB373]

SENATOR LATHROP: ...where we realize our language or our definitions weren't tight enough. [LB373]

MARSHA BABCOCK: Um-hum. And... [LB373]

SENATOR LATHROP: So thank you for your... [LB373]

MARSHA BABCOCK: Thank you very much. [LB373]

SENATOR LATHROP: Thank you for your thoughts. [LB373]

MARSHA BABCOCK: I look forward to working with the committee. [LB373]

SENATOR LATHROP: Anyone else here that cares to testify in support? Good afternoon. [LB373]

PAUL SCHEEL: (Exhibit 8) Good afternoon, Senators. My name is Paul Scheel, P-a-u-l

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S-c-h-e-e-l, and I want to start out with reading a testimony from the owner of Hy-Electric. Please accept this letter as my testimony at the hearing scheduled February 11, 2013. Economic conditions prevalent for the past few years have had a tremendous adverse effect on small contractors such as Hy-Electric. A major burden of being a small subcontractor is often slow pay by owners and general contractors. The Nebraska Construction Prompt Pay Act as it was originally approved was a step in the right direction but, without penalties or means of enforcement, has had little effect on the problem. We are still challenged on a daily basis to collect money due in a timely manner. I currently have one project that has been completed since June 2011 and we have not received final payment. More recently we had a tenant finish a project in downtown Lincoln which has been open for business since mid December. The only payment I have received is for a prepaid order of light fixtures billed on November 12, 2012, and paid December 19, 2012. Outstanding are our bills dated from November 30, 2012. The above examples are typical for small companies doing business with much larger companies. I believe small businesses are the backbone of our community, employing a large portion of our work force. We are asking for assistance in dealing with predatory business practices common in today's marketplace. Modifying the Nebraska Prompt Pay Act as you have proposed will have a positive effect on small businesses such as mine. Thank you. Sincerely, Paul N. Heiman, president, Hy-Electric, Inc. My position with the company: I'm an estimator, project manager, and I have many other hats. One of them is to be the sounding board for the owner of the company, the pin cushion, the punching bag, whatever you want to call it, okay, so I get to hear a lot about what's happening in the front office, as far as the billing is concerned. And I wasn't sure how I could present that to you to where, you know...what would be the best way to present that to you? And I thought the best way...let's just break...let's just get in there and we'll just put together some stuff. I've got five, six different contractors, two from out of state; the rest are here in town. Of the ones here in town, I have a small, a medium, and large company. But these are examples of where we're at. I've got a progress bill here it took 92 days to pay. I've got a final bill, 112 days to pay. I got a job with retainage, took 106 days to collect; another one, 90. I had two progress bills, 137 days, 109 days. I've got one here it took us 269 days to catch a final bill from someone that...and this goes on and on. We have a job that we have not been paid yet that we completed, final billed June 13, 2011. We have a job downtown, as I was talking about earlier. All we've gotten paid for is light fixtures to date. And in that same job we had...since the customer has been open we've gotten...we did a little project for the customer directly, billed them, and have been paid,... [LB373]

SENATOR LATHROP: Okay. [LB373]

PAUL SCHEEL: ...the same customer that the general contractor is billing to get their money to pay us. That doesn't make sense. [LB373]

SENATOR LATHROP: Yeah. Paul, let's see if anybody has questions for you, okay, on

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the committee. [LB373]

PAUL SCHEEL: Okay. [LB373]

SENATOR LATHROP: While you were testifying I thought of a question, then there was some racket behind me. I couldn't...I got distracted. Do you guys...I know what it is. Do you guys know who these contractors are? You know, everybody who sat in that chair said most of them are good but there's a few of them that are bad. Do you guys...do people in your community that do the work you do know who they are? [LB373]

PAUL SCHEEL: Yeah, I know all of these contractors. And some of them that are on this... [LB373]

SENATOR LATHROP: So if he asks you to bid another job, would you bid it or...see, part of it is it's puzzling to me...and I know I've met with you guys a couple of times to talk about this issue. But part of it's puzzling to me because I don't know why anybody would do any work for somebody like that. If they won't pay you for 100 or 150 days after you're done doing the work and then the next time he wants to build a school you put a bid in, why is that guy able to work with subs or, you know, guys like you that are doing the mechanical or the electrical or whatever the work is? Is it just necessity? [LB373]

PAUL SCHEEL: I guess we're just gluttons for punishment. (Laughter) But really, like I said, I've got five different contractors listed here. I'm going to put a title to the...I'm going to say it's a culture. It's every general contractor here in town, the good ones and the bad ones. If they want to compete with their competitors, they've got to do what their competitors are doing. [LB373]

SENATOR LATHROP: But... [LB373]

PAUL SCHEEL: And what's happening is the squeaky wheel is the one that gets the payment, and apparently we don't squeak loud enough. But there's a culture out there that the general contractors, as a whole, it seems to be like that. Now I've got to decide, do I want to, after I spent all this...I've invested five years to get my license; I've invested other years to get my general contractor's license. I've invested a lot of time to get to where I'm at and to have the skills that I have. I am...you know, maybe I should look at another profession because it's...it has gotten challenging. [LB373]

SENATOR LATHROP: Well, I'm not telling you to change jobs, and it wouldn't be my place to tell you to do that. [LB373]

PAUL SCHEEL: No, and I understand that. I'm just... [LB373]

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SENATOR LATHROP: Do you guys charge interest on your outstanding balances? Is that... [LB373]

PAUL SCHEEL: Yes, and they don't pay them. We're...our hands are tied. We really don't have, without some of the legislation...some of the stuff that's in this LB373, we really don't have any means for recourse unless we happen to just have deep pockets to begin with and want to go get lawyers and chase after them. But the contracts that they're writing...I'm getting somewhere else maybe I shouldn't be, but... [LB373]

SENATOR LATHROP: Well, at least we're going to understand your industry and your problem,... [LB373]

PAUL SCHEEL: Yeah. [LB373]

SENATOR LATHROP: ...because what you're saying is the contractor gives you the contract and you say, well, I'm going to bill you interest, and they just go, yeah, I'll pay you in 180 days and it's not going to have interest on it. [LB373]

PAUL SCHEEL: Right, well, they're not going say that. They're just going to send us the bill...finally, they'll send us the payment, but it won't have that interest built into it. [LB373]

SENATOR LATHROP: Okay. Senator Harr has a question for you. [LB373]

SENATOR HARR: Thank you. I just want to follow up a little bit. If you know--and it sounds like you do--who the slow payers are, do you take that into account when you do the bid, so that you charge them more? [LB373]

PAUL SCHEEL: Yes, and that's why I don't get very many bids. [LB373]

SENATOR HARR: All right, thank you, yeah. [LB373]

SENATOR LATHROP: Okay, I think that's it. We're understanding it better with every witness, so thanks for taking the time to explain it to us. [LB373]

PAUL SCHEEL: You're welcome. [LB373]

SENATOR LATHROP: Next proponent. [LB373]

PAUL SCHEEL: (Bumps mike.) Sorry. [LB373]

SENATOR LATHROP: You're all right. Anyone here in opposition who wishes to testify? [LB373]

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JAMES OVERCASH: Good afternoon, Mr. Chairman and members of the committee. My name is James Overcash, J-a-m-e-s O-v-e-r-c-a-s-h. I'm an attorney that's been involved in the construction industry for more than 20 years. I'm here today on behalf of the Association of General Contractors, the building division. We're here to testify in opposition of LB373. The Building Chapter is a group of leading contractors that had historically worked, obviously, with the Unicameral to implement laws that improved the construction industry in Nebraska. We appreciate your time. We appreciate Senator Mello's attempts to improve the business environment that faces Nebraska contractors. The Building Chapter is one of the original parties involved with the drafting and the passage of the Construction Prompt Pay Act in 2010, which passed as LB552. At that time, the Building Chapter worked with all industry groups to craft a statutory framework to address the issue of prompt pay in the construction industry. Again, prompt pay not only comes from generals to subs but also from owners to generals. It's a thing that, in effect, falls down for...like a waterfall. As part of the development of LB552 there was a give and take between the parties regarding that bill. Some of the points that we found objectionable, frankly, now appear in LB373. Additionally, LB552 has only been in effect since 2010, actually late that year, so a little more than two and a half years. And we do believe that the law has positively changed the behaviors of some parties in the construction industry. Regarding LB373, we do have concerns. First, the trust account provision, a provision the AGC opposed in LB552, the creation of a separate trust account for placing payments creates a very expensive and burdensome administrative process requiring contractors to maintain multiple checking accounts. My reading of the LB373 requires a separate...I thought that required a separate trust account for each project. So the question of whether it is a separate trust account, a trust account for each project, a trust account for each subcontractor, I think it's unclear in that regard. But under either of those three scenarios, I think it's administrative burden. Secondly, I do not believe that the inclusion and the reference to 52-123, which makes it a criminal act, is necessary; 52-123, which appears under the lien statutes, I believe, takes care of making...the criminal action already there is a Class II misdemeanor. Third, Section 4 of LB373 limits retainage on projects to 5 percent. I believe there is mainly legitimate reasons, including risk, the schedule, bonding capacity, and payments to subcontractors, to have a percentage larger than 5 percent. For example, the subcontractor could not provide a payment performance bond. A general may want to require, and the sub willingly provide, more than a 5 percent retainage so they could have that project rather than requiring the subcontract. Finally, Section 5 makes an exception to what I'll call the "American" rule, which is a legal...attorneys refer to it, but that each party...being responsible for their own attorneys' fees. We believe that's currently the law and how it should go, going forward. In summary, we believe that there are some bad actors in the construction industry. However, the Building Chapter does not believe that we can legislate all these bad actors out of the construction industry. Additionally, the new legislation only creates additional administrative burdens upon which good actors are already attempting to comply. Thank you. My light is...time is

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done, Senator. I would be happy to answer any of your questions. [LB373]

SENATOR LATHROP: It is, it is. Thanks. Let's see if there's any questions. I don't see any. [LB373]

JAMES OVERCASH: Thank you. [LB373]

SENATOR LATHROP: Thank you for your testimony. [LB373]

JUSTIN BRADY: Senator Lathrop and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for a group of homebuilders from Lincoln-Omaha area. And there are some behind me that will also come up and talk about why they feel, from a residential standpoint, they operate in a different manner than what the Prompt Pay Act operates in. I just wanted to briefly come up here to, I'd say, introduce them. Jim Christo is going to testify and, I believe, Fred Hoppe. But I listened to the proponents and the five of them that got up here and testified. The first one got up and talked about a problem with the Lincoln arena. The second one talked about a \$1 million project which equated to \$100,000 electrical project. The last one talked...the third one about a school project; the fourth one from the letter talked...or the fourth one talked about commercial; and the last one, the letter referred to commercial. You didn't hear from individuals that come up here saying there was a problem in the residential realm. Now it has...you know, I'm not saying there aren't builders out there that haven't paid, and I'm not saying that there may be something to look at. But I think, from the individuals you heard that were in favor of this bill, there is a problem on the commercial side. I don't think that problem equates over to the residential side. And I'd try to answer any questions but, like I said, I know there are some homebuilders coming behind me that could answer more specifically. [LB373]

SENATOR LATHROP: Okay. Senator Wallman has got a question for you. [LB373]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, Justin, welcome. Do you feel that people that hire general contractors are late in payment also, you know, if I'm a builder? [LB373]

JUSTIN BRADY: Oh, I'm sure there would be some. [LB373]

SENATOR WALLMAN: Is that a problem? [LB373]

JUSTIN BRADY: Yeah, um-hum. [LB373]

SENATOR WALLMAN: Thanks. [LB373]

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JUSTIN BRADY: Um-hum. [LB373]

SENATOR LATHROP: Okay, I think that's all the questions. Thanks, Justin. [LB373]

JUSTIN BRADY: Thank you. [LB373]

SENATOR LATHROP: Next opponent. [LB373]

JIM CHRISTO: Chairman Lathrop, members of the committee, Jim Christo, J-i-m C-h-r-i-s-t-o. I have a small building and remodeling company here in Lincoln, Nebraska, and I speak in opposition to the residential part of this bill, echoing what Mr. Brady, or Justin, talked about. Due to the gray hair, I've been in this business for quite a few years and have been a victim from the other side. By that I mean that, as a residential contractor, I have paid, on more than one occasion, electrical contractor for services rendered on a project. Unfortunately, that electrical contractor--who is not in this room, of course--was not prudent in his judicial responsibility and paid the supply house for the materials that went into that residential project. Prudent on their part, they filed the lien. So I had...got the opportunity to pay for that material twice, and it also cost me dearly to get an electrician to come in and finish the job because the lien was filed shortly after the rough-in was done, and then it's a couple of months before the finish is done. I didn't...I learned. I became a more, I guess, prudent businessperson. I now research the subcontractors that I employ. And when they receive a check, they sign the lien waiver that they can't...they have paid the supply house or will pay the supply house. I have not had to go to court on that. So far it's worked and I hope it continues. But I became a better businessperson in choosing the people that I do business with. And I thank you for your time. Any questions? [LB373]

SENATOR LATHROP: Very good. I don't see any. Do you have... [LB373]

SENATOR HARR: No, no, just thanking him. [LB373]

JIM CHRISTO: Thank you. [LB373]

SENATOR LATHROP: No? Okay, thanks, Jim. [LB373]

CURTIS SMITH: Good afternoon, Senator Lathrop, members of the committee. My name is Curtis Smith, C-u-r-t-i-s S-m-i-t-h. I am the executive director of the Nebraska Chapter, Associated General Contractors. We're the highway people, as opposed to the Building Chapter, which you heard previously. Many of our concerns are similar to and the same as stated by Mr. Overcash, the Building Chapter. Much of the work that our members do are with the highway department, Nebraska Department of Roads, and those projects always contain a prompt pay clause already. We're already there. The provisions work very well. I don't think we heard anybody today complaining about slow

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payment from highway contractors. There are penalties if you don't pay. So, anyway, that provision works very well. Our biggest issue with the provision is...LB373 would be the trust account provision of the bill. We would have the same concerns stated by the Building Chapter. It would create a separate trust account. To do so would place...putting a...would create additional costs and burdens on the contractor to keep track of all that. So anyway, we believe the current system does not need additional rules or regulations, so we would oppose LB373. Questions? [LB373]

SENATOR LATHROP: Yeah. Can you tell me what the...you said that most of your members are doing highway work and that the contracts with the... [LB373]

CURTIS SMITH: Yes, prompt pay. [LB373]

SENATOR LATHROP: ...state or the political subdivisions will have a prompt pay provision. [LB373]

CURTIS SMITH: Yes. [LB373]

SENATOR LATHROP: What's that? Can you tell us what that is, typically? [LB373]

CURTIS SMITH: It's pretty...what the highway department does is they pay 100 percent of the payment of the work done, and then you're required to pay within 20 days of that to your subcontractors. And that's always...that's the second tier all the way down. If you get paid...if they were paid material, excuse me, stockpile materials, they turn in a bill, pay it, and then you pay, pay when paid, and the requirement is 20 days. And they really don't have a provision for...you'd have to have an exceptional reason to have any retainage. The highway department does not hold retainage. [LB373]

SENATOR LATHROP: So highway projects, this wouldn't be an issue because you get your money and they require that you pay the subs... [LB373]

CURTIS SMITH: As long...yeah. That's why we're pretty much specifically talking about the trust accounts. That's just a... [LB373]

SENATOR LATHROP: Okay. [LB373]

CURTIS SMITH: And we would...as I read the bill, it would apply to anybody doing construction work in the state of Nebraska. [LB373]

SENATOR LATHROP: Okay. I think I get it. [LB373]

CURTIS SMITH: Okay. [LB373]

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SENATOR LATHROP: I don't see any other questions. Thanks. [LB373]

CURTIS SMITH: Thank you. [LB373]

SENATOR LATHROP: Again. [LB373]

FRED HOPPE: Hello. My name is Fred Hoppe. [LB373]

SENATOR LATHROP: Every hearing I'm at, you're there. (Laugh) [LB373]

SENATOR MCGILL: No joke. [LB373]

FRED HOPPE: I'm around. My name is Fred Hoppe, F-r-e-d H-o-p-p-e. I'm an attorney in Lincoln. I represent Nebraska Realtors but I'm not here for them. But I represent a lot of homebuilders in the Lincoln area. I also have a construction company and a real estate company of my own, and I build things. I'm opposed to the bill for a couple reasons. One, I'm opposed to having the residential portion in. It's going to be a problem for a lot of homebuilders and it's going to be a problem for subs and it's going to be a problem for owners. Maintaining the separate trust account is not needed. If somebody is unscrupulous, the last thing they're going to worry about is that trust account. If they're not unscrupulous, having the trust account doesn't mean a hill of beans because you can save the money, put the money aside in your own accounts as well as putting them in a trust account. That's number one. Number two, the 5 percent retainage, when we go out...and Jim Overcash mentioned this. But when we go out and try and determine who we're going to use for subs and what we're going to do for retainage on a job, it depends on who we're getting as to what the retainage might be. A concrete sub might be high retainage because, at the end of the deal, if concrete goes south, it takes almost all the contract price to remediate it. So in certain circumstances, having different amounts for retainage makes different situations work and not work. So to have that locked into statute, that's no place for the Legislature. Those things need to be worked out in the contracts between contractors, the main contractor and his subs. And all of the aspects of the contracts need to be worked out in those contracts. So those are my two primary objections. The...we do want to retain the residential exception. The key thing there is in residential contracting every payment that works down the field keys off of when the owners pay in. Normally, the bulk of that pay-in is at the end of the entire project, the end of when the house is done, the certificate of occupancy. And so you've got to keep that in mind. And I don't want to see, in my legal business, having a lot of clients have to come in with the American rule thrown out. It'll just be terribly contentious, and I'm opposed. Any questions, I'd be happy. [LB373]

SENATOR LATHROP: I do not see any questions. Thanks for coming down, and good to see you again. [LB373]

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FRED HOPPE: Thanks. (Laugh) I'm sure I'll see you again. [LB373]

SENATOR LATHROP: All right, well, probably tomorrow somewhere, (laughter) Ag Committee. [LB373]

MIKE BENKER: Good afternoon. [LB373]

SENATOR LATHROP: Good afternoon. [LB373]

MIKE BENKER: My name is Mike Benker, B-e-n-k-e-r. I'm the executive vice president for the Home Builders Association of Lincoln and a former builder and remodeler in Lincoln and Lancaster County. I can see where there's obvious problems and things that need to be addressed and worked on. But one of the things that I look at is I'm not sure that everything has been considered or thoroughly thought through on the residential side. With any business there are the majority that follow the laws and do as they should, and there's always a bad apple here and there that, hopefully, for one way or another, will be not in business very long, for the benefit of society. We already have...I'll try to just hit things that maybe haven't been covered as thoroughly. And we obviously already have mechanic's lien laws, notices of commencement or liability to protect subcontractors. These are very effective in the residential market for the most part. We highly recommend general or trade contractor agreements. That way, a lot of the things that have been addressed or brought up can be addressed before the project starts and, hopefully, followed through with. Those bad apples will always find new ways to get around any legislation that is brought forward or passed. We see that in codes every day, where you have people that virtually do work underground so they don't have to pull permits and those types of things. I guess the biggest recommendation that I've got is that, for residential contractors, I would recommend that this not be a part of this bill and that, if there is a problem that we're trying to solve, let's identify the problem and let's work with local homebuilders associations that...in our case, we have about 500 member companies. Those are builders and those are associates, which, in many cases, are electricians, plumbers, mechanical contractors, many of which work together very, very well on a daily basis. Kind of, the payment process for most residential jobs, the escrowed money, the possibly becoming a felon are all extreme consequences and they require extreme situations to justify them. Such legislation would cause more damage to small business and, ultimately, the consumer. There are educational opportunities that we could take advantage of. Most processes for invoicing take about 15 to 45 days. And so I guess there are commercial contractors that don't want to do residential work, and there are residential contractors that don't want to do commercial work. And these are two very different types of work between the generals and the subcontractors. I'll finish with that. If you have any questions... [LB373]

SENATOR LATHROP: Okay, Mr. Benker, thank you. I see no questions. [LB373]

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MATT SCHAEFER: Good afternoon, Chairman Lathrop, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, and I'm a registered lobbyist appearing today on behalf of the Eastern Nebraska Development Council, whose members include homebuilders. The council is opposed to expanding the act to residential construction. I don't want to be repetitive, but we would just echo the concerns that you've heard already about the rigid retainage and trust account requirements as drafted. Thanks. [LB373]

SENATOR LATHROP: Okay, thanks, Matt. Opponents? Anyone in a neutral capacity? Senator Mello to close. [LB373]

SENATOR MELLO: I was planning on...I've got about a 35-minute close, but I'll condense it to about 60 seconds. [LB373]

SENATOR MCGILL: (Laugh) No. [LB373]

SENATOR LATHROP: Well, you're going to have to cram it into about 30 seconds. [LB373]

SENATOR MELLO: Chairman Lathrop, members of the Business and Labor Committee, I appreciate the testimony and the feedback today on LB373. A couple points. I think, if anything that you heard from the proponents, is that there is a unique culture within the construction industry. And without picking on purely one of the opponents' testimony and the logic used, the reality is subcontractors ultimately are not in a position to negotiate some of the issues that are in LB373 and/or are in the current Prompt Pay Act. I think that's very clear. Now, granted, I think we heard overwhelmingly the opposition is coming from the residential side. But I think the overarching argument, though, is this issue is still pervasive. You ultimately have business-to-business transactions that are not ultimately being...are not currently being conducted still aboveboard that are ultimately putting one business under greater strain because of the lack of their ability to negotiate contracts because they are the subcontractor. My hope is, moving forward, that there are some components that we can work on. I think the retainage issue, to some extent, is the overarching, I think, issue in regards to the proponents. But also, even to some extent, the opponents' testimony, excluding the residential opponents, is the issue that we need to be able to, I think, have a serious dialogue about. And there are other ideas out there. We provided some information in regards to what current states do. I think there's other solutions out there that we can explore as well. The other main issue that I think Senator Harr mentioned, as well as one of the proponents, is clarifying the "substantially complete" definition. By no means am I wedded to that definition that's in the green copy of the bill. Ultimately, I think that plays, I think, a key part in regards to what the subcontractor can try to receive, their retainage, and their ultimate payments, depending upon what that definition is. There's a couple other issues that were raised by the opponents we're going to do our research

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on to double check. It does say in the statute that the owner does not include the state of Nebraska. So in relation to the AGC road construction, any state contract would not apply under the current act, let alone any changes to the act. But we'll double check some of the other components that the AGC roads association brought up in regards to municipalities and other political subdivisions. But I just wanted to clarify that that is in the current statute now, and we're going to dig in a little bit further. But I look forward to working with the Chairman on this legislation, as he is a cosponsor, and we have some time to work on it, knowing that the legal counsel is going to be gone for a while. So thank you. [LB373]

SENATOR LATHROP: Yeah, that's good, that's good. You might want to visit with some of these folks who have expressed concern, and they can contact Trevor in your office to work on some of the particulars. [LB373]

SENATOR MELLO: We will do that. [LB373]

SENATOR LATHROP: Yes? Okay, very good. Thanks, Senator Mello. Thank you all. We learn something every day when we have these bills up, and I think we learned a lot today about the issue and the concern. [LB373]

SENATOR MCGILL: Um-hum, yep. [LB373]

SENATOR LATHROP: (Exhibits 2 and 4) So thank you for your testimony. Oh, before we close, I do have letters from the city of Omaha that's opposed to LB373 and Joachim Davis, president of Ambition Electric, in support. And those will be entered as part of the record. And that will do it for tonight. There will be no Exec Session. [LB373]