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Business and Labor Committee
February 24, 2014

[LB949 LB950 LB955 LB1036 LB1073 LB1090 CONFIRMATION]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 24, 2014, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB949, LB950, LB955, LB1090, LB1036, LB1073, and a gubernatorial appointment. Senators present: Steve Lathrop, Chairperson; Burke Harr, Vice Chairperson; Brad Ashford; Ernie Chambers; Tom Hansen; Amanda McGill; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: Sorry, sorry, I apologize. I've been down in an Exec Session of Judiciary Committee which probably will explain why Senator Ashford may be a little late.

SENATOR HARR: And Chambers.

SENATOR LATHROP: Chambers, McGill. Anyway, welcome to our last Business and Labor Committee hearing.

SENATOR HARR: We have a little present for you as our Chair.

SENATOR LATHROP: Yeah. And my very last one. So we have a full slate today. And we will take bills up in the order that they were posted outside beginning with the appointment of Joel Carlson to the CIR. For those of you who have not been here before, we first of all welcome you, and secondly, we use the light system. And basically what that means is that a bill is introduced by a senator, those who want to testify in favor of the bill are invited to come up one at a time and speak. When you take advantage of the opportunity to speak, you're given a green light for two minutes and a yellow light for a minute. The yellow light is to tell you you got...you know, you're inside of a minute. And when you get to the red, we ask you to stop your remarks. And please, I'll ask you to stop. The reason...it's really difficult for me as the Chair to try to interrupt people and say, stop, because I feel like I'm being rude. But on the other hand, because we have so much material to cover today, so many bills to hear, in order for us to get the staff and everybody else out of here at a reasonable hour and for the people who are going to testify on the last bill to be heard at a reasonable hour, we'll ask you to observe the light system. Maybe we will have everyone introduce themselves. And we'll begin with Senator McGill and go around the room.

SENATOR MCGILL: Well, he just introduced me. I'm Senator McGill. I'm from northeast Lincoln.

SENATOR WALLMAN: I'm Norm Wallman, District 30, south of here.

SENATOR HANSEN: I'm Tom Hansen, District 42 which is in Lincoln County.

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DAN JENKINS: Dan Jenkins, I'm the committee clerk.

SENATOR LATHROP: I'm Steve Lathrop, the Chair.

MOLLY BURTON: Molly Burton, legal counsel.

SENATOR HARR: Burke Harr, I represent midtown Omaha, Legislative District 8.

SENATOR LATHROP: Okay, two more things I just was reminded of, if you are going to testify we'll have you fill out a testifier's sheet. We do that so that we can maintain a good record, we get your name spelled right, and so forth. And the other thing is, today because we have two bills that are similar in nature--we would expect the same proponents and the same opponents--we are going to hear LB955 and LB1090 at the same time. That will be done by having the two senators introduce their respective bills, and then we'll invite people up to speak on one or the other of the two bills as a proponent, an opponent, or in a neutral capacity. And with that, we will ask Joel Carlson...is Joel here?

JOEL CARLSON: Yes, thank you. [CONFIRMATION]

SENATOR LATHROP: Welcome to the Business and Labor Committee.
[CONFIRMATION]

JOEL CARLSON: Thank you. Well, hi. Good afternoon. Mr. Chairman, do you need me to state my name for the record? [CONFIRMATION]

SENATOR LATHROP: Yeah, go ahead and state... [CONFIRMATION]

JOEL CARLSON: Okay. [CONFIRMATION]

SENATOR LATHROP: ...your name for the record and spell your last name for us.
[CONFIRMATION]

JOEL CARLSON: Okay. I do that in court a lot. So Joel Carlson; first name is J-o-e-l, Carlson is C-a-r-l-s-o-n. Thank you for the opportunity to come before the committee today. I've been appointed to the Commission of Industrial Relations. Obviously, you have to give some consent if this is going to go forward. By way of background, I'm a graduate of the University of Nebraska College of Law. I practice in Norfolk, first started with the Madison County Attorney's Office. I was a prosecutor there for at least 12 or more years, but now I've been in private practice with a firm. It's a long name but it's Stratton, DeLay, Doele, Carlson, and Buettner. I don't expect you to memorize all that, but one of the names on that...my partners is Tom DeLay. He used to be on the

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Commission of Industrial Relations. So I feel like I've got a little bit of a mentor there. In terms of the type of practice I do, it's a general practice, a trial practice; don't get a whole lot of employment law disputes up there because I think those are handled a lot by Lincoln and Omaha firms; have had a few occasional unemployment cases both employee and employer. Also I'm a plaintiff's lawyer for workers' compensation cases, so I get little bit of that flavor with employee/employer disputes and things of that nature. And again, like I said, I've never represented anybody before the CIR before. So you can look at that as a positive or a negative depending on what you're looking for. But I think what it probably does is that I don't have any preconceived notions on what has to happen. I know what's important based upon how I see judges handle cases in my courtrooms that I'm involved in. And that's the basic things that we all want judges to do which are listen well, respect the participants, respect the process, ask good questions, research, make sure you get it right because this is important. And I guess the things I've always learned is that a lot of times when you have cases or you see names and...on a piece of paper but there are real people behind that too. It's not just a number and a calculation. I know that ends up being a lot sometimes what CIRs have to deal with. So from that perspective, I don't have a whole lot more that I can testify to. If you have any questions, I'd be happy to answer them. [CONFIRMATION]

SENATOR LATHROP: Well, we think we'll give you the litmus test and ask you if you're friends with Mike Flood. [CONFIRMATION]

JOEL CARLSON: Yes. (Laughter) [CONFIRMATION]

SENATOR LATHROP: Okay, we'll take that into consideration as well. Joel, how long have you been practicing? [CONFIRMATION]

JOEL CARLSON: Well, I've been out of law school since 1988. [CONFIRMATION]

SENATOR LATHROP: Eighty-eight? [CONFIRMATION]

JOEL CARLSON: Yes. [CONFIRMATION]

SENATOR LATHROP: Okay, good. And the whole time you said you were in the Madison County Attorney's Office, was that full time when you were doing that, or did you have a practice on the side? [CONFIRMATION]

JOEL CARLSON: That was full time for that. I did a little bit of private practice before that, then did prosecutor work, and then back in private practice. [CONFIRMATION]

SENATOR LATHROP: You would have been with Joe Smith then. [CONFIRMATION]

JOEL CARLSON: Yes. [CONFIRMATION]

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SENATOR LATHROP: All right. I know Joe well. [CONFIRMATION]

JOEL CARLSON: Yes. [CONFIRMATION]

SENATOR LATHROP: Any questions for Mr. Carlson from the committee? I see none. We'll see what kind of support or opposition you garner. I'm sure you'll be fine. (Laughter) [CONFIRMATION]

JOEL CARLSON: Okay, all right. [CONFIRMATION]

SENATOR LATHROP: Thanks, Joel. [CONFIRMATION]

JOEL CARLSON: Thank you. [CONFIRMATION]

SENATOR LATHROP: I appreciate you coming all the way down here. [CONFIRMATION]

JOEL CARLSON: May I be excused? [CONFIRMATION]

SENATOR LATHROP: Well, why don't you have a seat in case you want to...we want to talk to you after we get done hearing from the folks that are here for or against. [CONFIRMATION]

JOEL CARLSON: Okay, sure. [CONFIRMATION]

SENATOR LATHROP: But you're welcome to have a seat. [CONFIRMATION]

JOEL CARLSON: Sure, okay. [CONFIRMATION]

SENATOR LATHROP: Is anyone here in support of the nomination of Mr. Carlson to the CIR? Seeing none, anyone here in opposition? Also seeing none, anyone here in a neutral capacity on the appointment? Okay, I see none. Now you may be excused. (Laughter) Just so that you know, generally the process is we will take up your name in an Exec Session and the nomination and have a vote probably in the next week or so. [CONFIRMATION]

JOEL CARLSON: Okay, thank you. [CONFIRMATION]

SENATOR LATHROP: Okay, thank you. Say hello to our friend Mike Flood. [CONFIRMATION]

JOE CARLSON: I will. [CONFIRMATION]

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SENATOR HANSEN: We got already (inaudible).

SENATOR LATHROP: Yeah. Okay, next we will take up...we have...the next two bills are claims bills. We appreciate that a lot of you are here to testify on bills that will follow the claims bills, but because one of our testifiers has to catch a plane, we're going to take those up next. And we will begin with approve claims in LB949. That will be introduced by our committee counsel.

MOLLY BURTON: Senator Lathrop, members of the committee, my name is Molly Burton, B-u-r-t-o-n, legal counsel for the Business and Labor Committee here to introduce LB949 which are those claims against the state of Nebraska that have either been approved by the Claims Board or have been settled by the...and/or settled by the Attorney General's Office. And because they are of a certain amount, they need approval for appropriations by the Legislature. There is also an amendment that should be behind...it's not in amendment form yet, but it should be behind your bill. And Ms. Anderson will walk you through the amendment. Shannon Anderson, the risk manager, will discuss some of these claims. Also those claims that the Attorney General's Office is involved with, David Cookson from the Attorney General's Office will describe those claims. And we do have some write-off requests, and we do have some agency representatives here I believe to discuss those write-off requests. But Shannon Anderson will actually go through the write-offs and describe... [LB949]

SENATOR LATHROP: And subject to committee members having specific questions, I think we'll proceed in this fashion. We'll have Shannon testify as to everything but tort claims, tort claims being lawsuits for injuries against the state of Nebraska. That will lead to Mr. Cookson from the Attorney General's Office. Shannon will address all of the other claims including write-offs. And if you have concerns about any of the agency write-offs, we do have representatives from the various agencies who are here that I do not intend call up here to answer questions unless one or more of the committee members have particular questions. Fair enough? All right. We'll begin with Shannon. [LB949]

SHANNON ANDERSON: (Exhibit 1) Thank you, Mr. Chairman, members of the committee. As was stated, we were going to begin with the tort claims in the bill. There are seven in the bill, and two more were approved this morning by the State Claims Board which are handled in the amendment. Of those nine, seven of them were handled by the Attorney General's Office. And I would like to have Chief Deputy David Cookson come up now and handle the tort claims, those seven. And then I'll come back in to finish bill if that's appropriate. [LB949]

SENATOR LATHROP: That'd be perfect. That'd be fine. [LB949]

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SHANNON ANDERSON: Great, thank you. [LB949]

SENATOR LATHROP: Thanks, Shannon. [LB949]

DAVID COOKSON: Mr. Chairman, members of the committee, good to see you all again. My name is David Cookson, C-o-o-k-s-o-n, Chief Deputy Attorney General. As Shannon said, we have seven claims, and I'm going to go through these kind of in a one-liner fashion just to give you an idea of what they involve. [LB949]

SENATOR LATHROP: In terms of the bill, they would be those found beginning in Section 1. [LB949]

DAVID COOKSON: Yes, I believe so. [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: I'm not sure about the amendment because I haven't seen it but... [LB949]

SENATOR LATHROP: I'm just trying to make it easy for the committee to follow along. [LB949]

DAVID COOKSON: Right. Yeah, they do start in Section 1. And actually, I'll try to mirror the bill. The first...actually the first and the fourth claim are related. This was a 1983 action brought in federal court by two individuals...1983 is a civil rights lawsuit brought by two individuals. It involved a murder case that occurred in Murdock, Nebraska. These individuals were originally arrested. An allegation was made they were falsely arrested. Ultimately, as a result of the actions of the State Patrol officers who are defendants, they were cleared and the actual perpetrators of the crime were discovered. Nonetheless, there was multiple parties to this case. This is a fairly notorious case involving the Douglas County CSI Office, David Kofoed who was ultimately convicted for his actions in this case in part by our office, and the county attorney in Cass County. [LB949]

SENATOR LATHROP: These are two individuals that have made a claim under the bill we passed five years ago, something like that? [LB949]

DAVID COOKSON: No, no. This is civil rights claim. [LB949]

SENATOR LATHROP: Civil rights claim. [LB949]

DAVID COOKSON: This is a 1983 claim in federal court. [LB949]

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SENATOR LATHROP: And which of these...I'm looking at the sheet, can you tell me the claim numbers? [LB949]

DAVID COOKSON: Yeah, claim number 2009-03406 and 2014-13248. That would be on the next page, on page 3. [LB949]

SENATOR LATHROP: 13248, okay. [LB949]

DAVID COOKSON: The amount of the claims that the state paid is reflective of what we believed was the attorney's fees that, as a prevailing party under 1983, these parties would recover. Significantly more money was paid by Cass County who was the lead agency in the murder investigation. And currently there's, I believe, a multimillion dollar default judgment pending against Mr. Kofoed directly. [LB949]

SENATOR LATHROP: So that's the \$600,000 claim and the claim for \$325,000. [LB949]

DAVID COOKSON: Correct. [LB949]

SENATOR LATHROP: Okay. And those are...one is going to lawyers and the other is going to pay the defendants? [LB949]

DAVID COOKSON: Well, the defendants...the lawyers and the defendants will split the money... [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: ...however they see fit. We reached those amounts based on what we thought they were going to likely recover as reasonable attorney's fees given that we had...this case had been up to 8th Circuit and back and was scheduled for trial this summer and was fairly involved, a lot of evidence. [LB949]

SENATOR LATHROP: Okay, one second. I'm going to invite the committee to ask questions as we go through these. [LB949]

DAVID COOKSON: Yeah. [LB949]

SENATOR LATHROP: So I'll stop briefly to see if anybody has any questions about that particular claim. And feel free to interrupt or get my attention as we go through these tort claims. And seeing no one trying to interrupt me, we'll have you proceed, Mr. Cookson. [LB949]

DAVID COOKSON: I'll go to 2009-03539. This was paying to Sandra Ham, guardian for

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Ian Ham. Ian Ham is a resident of BSDC. This is brought by his mother who is his guardian. The issues were actually tried in Gage County. BSDC's staff was found to be negligent in the treatment of his diabetes, and there were questions revolving the ordering and placement of a feeding tube for Mr. Ham after a surgical procedure at Beatrice Community Hospital. [LB949]

SENATOR LATHROP: This is essentially a medical malpractice claim for one of the residents. [LB949]

DAVID COOKSON: Right. [LB949]

SENATOR LATHROP: When it says, 152, sometimes the state will pay 50 and then come in for the balance. Is this the total amount or is this the balance after 50? [LB949]

DAVID COOKSON: This is the total. This is the total. [LB949]

SHANNON ANDERSON: It's the total amount. The odd amount is the interest that we had to project. [LB949]

DAVID COOKSON: The judgment was entered earlier...or last fall I believe. [LB949]

SENATOR LATHROP: And that is, as you indicate, not a settlement amount but a judgment amount. So a court has ordered us to pay it. [LB949]

DAVID COOKSON: It was a judgment. Yeah. [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: We consulted with the client, HHS, and they indicated that they did not believe it was appropriate to appeal, and we concurred in that judgment. [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: The next one is 2014-13247, and this is a claim involving another 1983 action. We settled this claim for \$65,000; \$50,000 was paid by the risk manager. The \$15,000 is the balance of that settlement. [LB949]

SENATOR LATHROP: What's the nature of the claim? [LB949]

DAVID COOKSON: The plaintiff alleged that she was arrested based on a confidential informant's indication that she was in possession of...selling methamphetamine which turned out to be not the case. And so the case was brought against a State Patrol trooper, a civil rights violation. [LB949]

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SENATOR LATHROP: And settled for \$65,000 by your office. [LB949]

DAVID COOKSON: Correct. [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: That includes both damages and attorney's fees. [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: Then we've already done 13248. The other ones I have I believe then are... [LB949]

SHANNON ANDERSON: In the amendment. [LB949]

DAVID COOKSON: ...in the amendment. And so I will... [LB949]

SENATOR LATHROP: Is the...wait a minute. [LB949]

SHANNON ANDERSON: I'll do those two. [LB949]

SENATOR LATHROP: There's 11365. [LB949]

SHANNON ANDERSON: (Inaudible). [LB949]

SENATOR LATHROP: And the amendment is this draft amendment... [LB949]

DAVID COOKSON: Right. [LB949]

SENATOR LATHROP: ...to LB949. [LB949]

DAVID COOKSON: The first case is Thomas versus Ricketts (sic), correct? Is that in the amendment? Okay. This is a tort case involving the Lincoln Correctional Center. And again, it's a medical negligence case. The gist of it is that the plaintiff was improperly diagnosed and did not receive appropriate treatment. By the time he was ultimately diagnosed with basaloid carcinoma, obviously he incurred some significant medical procedures. And in this one we settled the case for \$125,000 at mediation. [LB949]

SENATOR LATHROP: Hang on a minute. I don't see that in this amendment. [LB949]

SHANNON ANDERSON: It isn't. It's...I'm sorry. Mark Thomas and Thomas Davis. He

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skipped a claim...so it's on page 2... [LB949]

DAVID COOKSON: Oh, sorry. My bad. [LB949]

SHANNON ANDERSON: ...line 17 to line 22 is the claim that he just discussed. [LB949]

DAVID COOKSON: Ah, yes, 2011-11365. Thank you, Shannon. My bad. [LB949]

SHANNON ANDERSON: That's okay. [LB949]

SENATOR LATHROP: So the \$125,000...was the total amount \$125,000 or \$175,000? [LB949]

DAVID COOKSON: Correct. No, it was \$125,000. [LB949]

SENATOR LATHROP: Okay, \$125,000 will be paid to an inmate who was misdiagnosed or didn't receive timely treatment... [LB949]

DAVID COOKSON: Correct. [LB949]

SENATOR LATHROP: ...for a medical condition. [LB949]

DAVID COOKSON: Right. [LB949]

SENATOR LATHROP: And that is a settlement amount? [LB949]

DAVID COOKSON: Yes. [LB949]

SENATOR LATHROP: All right. I see no questions about that. [LB949]

DAVID COOKSON: Sorry about the confusion. [LB949]

SENATOR LATHROP: No, that's all right. Now we're into the amendment, right? [LB949]

DAVID COOKSON: Right. Tort claim number 2013-12765. This is the Estate of Maravilla-Cortez v. State of Nebraska. This is a pursuit case. Individual ran a stop sign...traffic signal in Lexington, Nebraska. Trooper initiated a stop, turning on lights and sirens. Driver of the truck accelerated, attempting to evade arrest. Trooper called in the pursuit. They were traveling in speeds somewhere in the neighborhood of 100 to 110 miles an hour. They approached an intersection where they...the truck that the trooper was chasing struck the decedent's vehicle. And the decedent was obviously killed in the accident. [LB949]

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SENATOR LATHROP: This would be commonly referred to as a police chase case where the State Patrol chased somebody down over running a stoplight or a stop sign, goes speeds of 100 miles an hour, and the person being pursued hit an innocent bystander... [LB949]

DAVID COOKSON: Right. [LB949]

SENATOR LATHROP: ...who was killed. That person had family. [LB949]

DAVID COOKSON: Yeah, he had five adult children. He'd been...and his wife of 40 years. [LB949]

SENATOR LATHROP: Was this a result of a trial or a settlement? [LB949]

DAVID COOKSON: This was a settlement. We mediated this case. [LB949]

SENATOR LATHROP: Okay, okay. [LB949]

DAVID COOKSON: The total amount of the settlement is \$575,000. [LB949]

SENATOR LATHROP: And in your judgment, that's in line for the loss sustained by that family? [LB949]

DAVID COOKSON: Well...and in this case, the decedent did not die immediately, and as in all of these broadside truck cases, involved horrific fire... [LB949]

SENATOR LATHROP: Horrific injuries. [LB949]

DAVID COOKSON: Yeah. [LB949]

SENATOR LATHROP: Okay. [LB949]

DAVID COOKSON: Which would have...the evidence would have been presented that demonstrated that he suffered significantly before he died. [LB949]

SENATOR LATHROP: Senator Wallman has a question for you. [LB949]

SENATOR WALLMAN: Yeah, thank you, Chairman Lathrop. Yes, this individual being pursued, did they have insurance on the vehicle or...? [LB949]

DAVID COOKSON: I do not know. I can look into that for you though, Senator. I think generally what happens with these pursuit cases is when the person tries to get away,

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there's usually some indication that there's something else going on besides running the traffic... [LB949]

SENATOR LATHROP: Not permissive use. Yeah. [LB949]

DAVID COOKSON: Yeah. [LB949]

SENATOR LATHROP: Okay. [LB949]

SENATOR HANSEN: I have a question too. [LB949]

SENATOR LATHROP: Oh, pardon me, Senator Hansen. [LB949]

SENATOR HANSEN: Was it police or State Patrol? City police or State Patrol? [LB949]

DAVID COOKSON: It was a State Patrolman which is why the state is liable. [LB949]

SENATOR HANSEN: Okay, okay. [LB949]

SENATOR LATHROP: Very good. Next one. [LB949]

SENATOR HANSEN: Thank you. [LB949]

DAVID COOKSON: The next one I'm going to cover is Davis v. State of Nebraska, and I don't have a claim number on this one yet. This is the wrongful conviction which was brought under the statute passed by the Legislature...what, it's been probably three or four years now. Mr. Davis was wrongfully convicted of murder with the death of his wife in 1968. In '69, he was sentenced to life in prison. In '70, his conviction was reversed by the Nebraska Supreme Court. On remand in 1971, a jury found Mr. Davis not guilty. We...at trial it was stipulated that he was convicted of a felony, received a new trial, no subsequent conviction was obtained. The case was tried to Judge Luther based on the issue of Mr. Davis' innocence. The judge ruled that he met the standard of clear and convincing evidence. There was no indication that he had suborn perjury, fabricated evidence, or otherwise made false statements. So he fits squarely within the statute. Judge Luther awarded Mr. Davis \$250,000. Based on the fact that we did not see any reversible error, we made a decision not to appeal. [LB949]

SENATOR LATHROP: Completely discretionary with the court. [LB949]

DAVID COOKSON: Yeah. [LB949]

SENATOR LATHROP: And well within the cap. [LB949]

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DAVID COOKSON: Yeah. There was no clear error or abuse of discretion in this case. Actually the appeal deadline would have run today, and we made the decision not to appeal and alerted the risk manager so that it could be included in this for Mr. Davis. And then I have one workers' compensation claim. This is Roberts v. Lincoln Regional Center. A woman suffered injuries which required surgery, seven surgical procedures, her last surgical procedure performed in September 2012. She was sustained at 61.5 percent loss of earning capacity based on her permanent work restriction, and she could not pull, lift, or push in excess of 20 pounds. Based on her average weekly wage, we had a life expectancy of 25.2 years with an average weekly wage of \$456. That would put the present value of her permanent disability at \$229,000. We settled it for \$150,000. [LB949]

SENATOR LATHROP: Okay. Any questions about the work comp claim? I see none. Does that cover all the tort claims? [LB949]

DAVID COOKSON: I believe. [LB949]

SENATOR LATHROP: All of them in the AG's office? [LB949]

DAVID COOKSON: This is all the ones that have come through us. [LB949]

SENATOR LATHROP: Okay. Any questions for Mr. Cookson before we let him get away and catch a plane? I see none. Thanks for coming by today and explaining the tort claims. [LB949]

DAVID COOKSON: Thank you for accommodating my schedule. [LB949]

SENATOR LATHROP: Sure. Shannon, welcome back. [LB949]

SHANNON ANDERSON: Thank you, and I'm kind of sorry I don't have a plane to catch. (Laugh) There are two claims that were settled by my office through our third-party administrator. And you will find them on the bottom of page 3, beginning on lines 22 and then top of page 4, 1 through 3. It's the same incident, a snowplow accident up Highway 94 and 77 by Walthill. Our driver failed to yield the right-of-way sending the semitruck of the claimant into the ditch. This was a trucker who lived in New York State. So we have reached a settlement with...on tort claim 2013-12766 for \$32,807. And that is to Brian McCoy. We did pay him out \$10,000 last fall after the board had acted to hold him over. It was a continuing business interest. And then Progressive Insurance is the second claim on top of page 4 there, 2013-12904. And they had paid out \$29,996.27, \$1,000 of which is a deductible that will go back to Mr. McCoy. So that was what... [LB949]

SENATOR LATHROP: But that was for property damage? [LB949]

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SHANNON ANDERSON: Property damage and loss of use. [LB949]

SENATOR LATHROP: Okay. [LB949]

SHANNON ANDERSON: So we had to get some other...and there was a semitruck trailer involved. That would bring us, Mr. Chair, to the write-offs. [LB949]

SENATOR LATHROP: All right. [LB949]

SHANNON ANDERSON: And I have here--if the page would like hand out some--this is a list of the people at the bottom here...the people that were on hand to testify, and I won't call out that we have director of roads here out of respect. If you want to talk to him, okay. (Laugh) I had just found out that he was coming and so that did not...his name did not get on the sheet. Anyway, write-offs, as you know, pursuant under the Miscellaneous Claims Act, an agency, when deem a debt uncollectable, may come to the State Claims Board and appeal and seek approval for writing the debt off. As a miscellaneous claim, that comes to the Legislature under the claims bill. The statute is not replete with information as to what we look for in the different debts that have been deemed uncollectable. And so the position of the board the last four years has been to focus on due diligence. In each of these, the agencies have met that degree of due diligence that would deem that the debt is uncollectable. Besides phone calls and letters, bankruptcy is a classic one. And the obvious one is that the claimant is deceased if you will. So if I can...we'll walk through these write-offs, and then, as the Chair had mentioned, there are people here, except from the Supreme Court because they were not required to appear today at the Chairman's discretion, in the audience here that can answer the questions specifically about the actual debt. [LB949]

SENATOR LATHROP: Are you able to give us any background at all? [LB949]

SHANNON ANDERSON: Yeah, sure. I'll do it right now real quick. [LB949]

SENATOR LATHROP: All right, maybe...and now we're talking about Section 4 of the bill. [LB949]

SHANNON ANDERSON: Section 4, we'll begin with line 10, and that is the write-off requested from the Department of Roads. And what that is...basically it's damage other parties make to roadways and signs. The NDOR has a very sophisticated process of determining due diligence that they use for their legal department, and they have thoroughly researched and documented their due diligence efforts. So we at the board went ahead and approved that. [LB949]

SENATOR LATHROP: So these would be somebody knocking over a street sign... [LB949]

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SHANNON ANDERSON: Right. They've had an accident... [LB949]

SENATOR LATHROP: ...with an uninsured vehicle or something. [LB949]

SHANNON ANDERSON: Right, or they've had an accident and hit the ice didn't even think you had to pay for the guardrail. But those are damages sustained by the state and collectable. So there are people who actually pay those. These are the ones that have not. The Supreme Court has requested \$286.29, and those are faxing services primarily from attorneys. And they range from a debt of \$3 to \$140. The Supreme Court typically makes these requests annually. So these are up to date, but they have notified them through letters and contact. The next write-off is...on line 14 there is from the Military Department for \$7,546.27. These are debts incurred from the tuition assistance program when the participant has dropped out of school and oftentimes has then dropped out of the Guard. And they have...the military has a system in place where they actually go after setoff. So if they were still active in the Guard, they would be able to essentially garnish wages, look at things that are due. So these are uncollectable. And like I said, it's a minimal amount for the breadth of their program. The next one on line 16 is the request from Department of Health of and Human Services for \$747,545.18. This is the lowest amount that we've had in the four years that we've testified before you. And that is out of...I say that out of respect for...that they have done a job...what they've testified before the board is they've identified the debts, they've identified the 13 areas within the agency that incur these types of debts, primarily again through...a lot of them are deaths. A lot of them are...they're overpayments in Medicaid as well as failure to pay on services provided. But these are the most vulnerable of vulnerable and basically judgment-proof. And so the agency we've seen on the board, we've seen that they have brought that number down as well as they've cast a net to sweep up as many as possible. [LB949]

SENATOR LATHROP: Senator Harr. [LB949]

SENATOR HARR: Thank you. What percentage of that \$747,000 would you say are the overpayments or the...? [LB949]

SHANNON ANDERSON: I don't have that information. And their representative is here if you'd like her to come and answer your questions. Would that...? [LB949]

SENATOR HARR: Yes. Well, when we're done. When we're done. We can come back for that. [LB949]

SHANNON ANDERSON: Okay, okay. Great. The next one then is from the Department of Revenue Lottery Division for \$16,385.66. These are where failure...retailers have failed to pay for the lottery tickets. But each one of these that they're being requested for

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write-off involve a bankrupt retailer. So that's the uncollectability on...for that reason.
[LB949]

SENATOR LATHROP: So a convenience store that sold the tickets... [LB949]

SHANNON ANDERSON: Right. These gas stations... [LB949]

SENATOR LATHROP: ...and now they went under. Is that normal? Is that number...?
[LB949]

SHANNON ANDERSON: They've never...this is the first time they've brought one in...
[LB949]

SENATOR LATHROP: Happens every year or... [LB949]

SHANNON ANDERSON: I don't...they weren't on last year. [LB949]

SENATOR LATHROP: Okay. Senator Wallman has a question about the lottery.
[LB949]

SHANNON ANDERSON: Okay. And again, there should be a representative here.
[LB949]

SENATOR WALLMAN: Okay. Thank you, Chairman Lathrop. Why should we as a state
pick that up do you think? [LB949]

SHANNON ANDERSON: Well, it's uncollectable. And so then you begin to...and the
representative can more fully do that. What we look at, from the board perspective only
and not from an agency, we look to see whether it would cost more to chase down a
debt that's uncollectable than it is to write it off which is what any business would do. So
whether the lottery for this amount of money is even capable of participating in the
bankruptcy proceedings, I don't know that. But that would be the next avenue is if they
could file a debt with that through the bankruptcy proceedings. The next one is for the
Department of Motor Vehicles for \$1,190.85. They have come before us in the years
past because of the transcript fee, and it's the failed transcripts, the failed administrative
hearings. And so they weren't being paid. You've recently changed that law so those
are going away as is. So we don't expect to see that debt. And I think this is maybe,
perhaps the last time that they've...cleaning that up. And then the final one, beginning
on line 22 from the Board of Educational Lands and Funds for \$7,572.57. They testified
to the board that this was a case where the tenant had terminated the lease, failed to
pay the rent payments, they terminated the lease. They then had the next tenant
harvest that crop, apply that towards the debt. There were some expenses that came
out to being \$7,500. And it's uncollectable from this tenant. But they put that in

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perspective to the board of saying they have \$30 million to \$35 million in leases a year. So to request \$7,572, they did not consider that to be a significant amount. So that was all of our... [LB949]

SENATOR LATHROP: Relative to the whole amount. [LB949]

SHANNON ANDERSON: Right. [LB949]

SENATOR LATHROP: Senator Hansen. [LB949]

SENATOR HANSEN: Thank you. Was this on grassland or irrigated ground? What was...? [LB949]

SHANNON ANDERSON: It was...I don't know that, Senator. I know it was a millet crop that they had to harvest the next year. [LB949]

SENATOR HANSEN: Millet? [LB949]

SHANNON ANDERSON: Yes. [LB949]

SENATOR HANSEN: Okay, so it was a row crop. Okay, thank you. I was just wondering if it was...had anything to do with the drought in 2012. [LB949]

SHANNON ANDERSON: Oh, with drought. No, there was no testimony to that effect. [LB949]

SENATOR HARR: Farmers versus ranchers. He wants to make sure it's a farmer, not a rancher. I get it. (Laughter) I see how you are. [LB949]

SHANNON ANDERSON: Tough room. Now you had some other questions if you want to ask the... [LB949]

SENATOR LATHROP: Well, let's first before you get away, anybody have questions for Ms. Anderson? I see none. Why don't we have the representative from Health and Human Services come forward, Sarah... [LB949]

SHANNON ANDERSON: Sujith. You have to pronounce your name, Sarah. [LB949]

SENATOR LATHROP: Sujith. [LB949]

SHANNON ANDERSON: I think she's done this before. [LB949]

SARAH SUJITH: Sujith, just like it looks. [LB949]

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SENATOR LATHROP: I never know with the J if it's silent or how that all works. [LB949]

SARAH SUJITH: Good afternoon. [LB949]

SENATOR LATHROP: Welcome to Business and Labor Committee. And maybe you can, for those members who haven't served on the committee or don't recall the process, explain the agency write-offs for \$747,000. [LB949]

SARAH SUJITH: As Ms. Anderson said, most of these are from various needs-based assistance. There are 13 programs that we've identified that we analyze every year for these write-offs. A large percent of these debts is overpayments. And an answer to your question, Senator Harr, I don't have the exact percentage that are based off of overpayments but it's just over 50 percent I would think. And we can get exact numbers to you if you'd like. And for the most part, 98 percent of those overpayments are being asked to be written off because part of our collection policy is that when a recipient is on needs-based assistance, we delay collection efforts because, as Ms. Anderson said, they're essentially judgment-proof and wouldn't have any assets to collect on. And while we're not pursuing collections, the statute of limitations passes and therefore it becomes uncollectable and then we put it into write-offs. [LB949]

SENATOR HARR: Okay. So that's 50 percent. What's the other 50 percent of the write-off? [LB949]

SARAH SUJITH: Some of it is for services that have been provided. For example, debts from the facilities that we have, BSDC, the regional centers, the veterans' homes. Some of them may be fees that... [LB949]

SENATOR HARR: Wait...so wait. Regional centers, aren't those government entities? [LB949]

SARAH SUJITH: They are. [LB949]

SENATOR HARR: And so we're writing services provided from or to them? [LB949]

SARAH SUJITH: It would have been services provided to clients where for some reason... [LB949]

SENATOR HARR: Okay. [LB949]

SARAH SUJITH: ...they should have reimbursed us, and we weren't able to collect on those. And the majority of those write-offs are people who have since been deceased. And we pursue collection through probate if we can. But if a year has passed and there

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is no probate, then we add it to our write-off. [LB949]

SENATOR HARR: Okay, and what percent...what number amount is that? [LB949]

SARAH SUJITH: Well, I don't have percentages. [LB949]

SENATOR HARR: Do you have a dollar amount? [LB949]

SARAH SUJITH: I can tell you dollar amounts... [LB949]

SENATOR HARR: Yeah. [LB949]

SARAH SUJITH: ...that were from the facilities. That doesn't necessarily mean that all of those are from services provided. But for BSDC, the total amount is \$1,643. For the Lincoln Regional Center, it's \$3,565 and some change. The Norfolk Regional Center is \$6,250, and the Hastings Regional Center is \$24,542. [LB949]

SENATOR HARR: Okay. [LB949]

SARAH SUJITH: So not a very large portion of our claim. [LB949]

SENATOR HARR: Yeah, no. And so then where's the remainder of the write-off? [LB949]

SARAH SUJITH: The majority is from those needs-based assistance. [LB949]

SENATOR HARR: Any guess...so that's...what dollar amount is that? [LB949]

SARAH SUJITH: The dollar amount for that is \$486,043. [LB949]

SENATOR HARR: Okay. And then let's say there's \$50,000 from what you just described. What is the remainder then? [LB949]

SARAH SUJITH: Well, the \$486,000, that is from the needs-based assistance. It comes from assistance to the aged and disabled, foster care, childcare subsidy,... [LB949]

SENATOR HARR: Okay. [LB949]

SARAH SUJITH: ...aid to dependent children, Medicaid, social services, and other disabled services. [LB949]

SENATOR HARR: Okay. So I guess I'm confused. I have \$486,000 as a write-off. You say you have uncollectable services overpayments. You have \$50,000 that are given to

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regional centers. [LB949]

SARAH SUJITH: Yeah, the portion that we haven't discussed yet is developmental disability services. [LB949]

SENATOR HARR: Okay. [LB949]

SARAH SUJITH: And that is just over \$200,000. So that would account for the remainder. [LB949]

SENATOR HARR: And what is that \$200,000? Explain what that is. [LB949]

SARAH SUJITH: That is for developmental disability services. [LB949]

SENATOR HARR: Services provided to the mentally disabled that you were unable to collect on? [LB949]

SARAH SUJITH: Correct. [LB949]

SENATOR HARR: Okay. And the... [LB949]

SENATOR LATHROP: So in...oh, I'm sorry. [LB949]

SENATOR HARR: Go ahead. [LB949]

SENATOR LATHROP: In that circumstance...let's talk about the developmentally disabled people getting community-based services. They get services, and you pay a bill and then realize that you shouldn't have paid for it. [LB949]

SARAH SUJITH: Yes. [LB949]

SENATOR LATHROP: And then they're not in a position to pay it back for something you paid for. [LB949]

SARAH SUJITH: Yes. [LB949]

SENATOR LATHROP: Okay. Do you have...I didn't mean to interrupt you, Senator Harr. [LB949]

SENATOR HARR: Nope. She answered my questions perfectly. Thank you. [LB949]

SENATOR LATHROP: Senator Wallman, do you have questions? [LB949]

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SENATOR WALLMAN: Yes, Senator. Yeah, is this agencies...is this common practice to overpay? [LB949]

SARAH SUJITH: To pay for... [LB949]

SENATOR WALLMAN: To overpay for services. [LB949]

SARAH SUJITH: There are overpayments. Some of them are inadvertent errors. Some of them are due to misinformation that we're provided. In some cases, there's earned income that we're not made aware of until after the fact. [LB949]

SENATOR WALLMAN: Okay, thanks. [LB949]

SENATOR LATHROP: Yeah, the classic example is somebody might get some sort of a benefit check, and you find out two months later that they actually had income back when they were getting a check. [LB949]

SARAH SUJITH: Correct. [LB949]

SENATOR LATHROP: But they're in no position to pay you back. Or you've done what you can. And typically, don't you send those to collections for a time? [LB949]

SARAH SUJITH: Yes, part of our policy is to send debts to collection agencies. As I said though, if someone is on needs-based assistance, we will wait until they're no longer on that assistance before we start collection procedures. [LB949]

SENATOR LATHROP: Okay, because they're virtually judgment-proof in the meantime. [LB949]

SARAH SUJITH: Correct. [LB949]

SENATOR LATHROP: Okay. Any other questions, Health and Human Services? I see none. Thank you for coming down today. Do any members of the committee want to hear from any of the other agency heads concerning any of the other claims? I see none. With that, that will close our hearing on LB949 and that will take us to LB950 which should take just a second. Thanks for those of you that came down today. We appreciate you being here even though we didn't get to call you. Ms. Burton, you're good to open on LB950. [LB949]

MOLLY BURTON: Senator Lathrop, members of the committee, again, my name is Molly Burton, B-u-r-t-o-n. I'm here to introduce LB950 which is actually a shell bill for any claims that are denied by the State Claims Board. And as of this date, there have been no claims that have been denied. If someone has a claim that's denied, they have

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the right to appeal to the Legislature. [LB950]

SENATOR LATHROP: And our procedure in the Business and Labor Committee is to put one of these in in case there is a denied claim between now and the time we go to the floor. And absent that, we'll never have a hearing on this. [LB950]

MOLLY BURTON: Correct. [LB950]

SENATOR LATHROP: All right. Anyone have any questions? Okay. I don't think we need any testimony on it. That will close our hearing on LB950 and take us to Senator Dubas. And we are, as I mentioned before on these two bills--my sheet is gone--Senator Dubas' LB955 and Senator Conrad's LB1090, we'll introduce both of those at the same time since the subject matter is close to one to the next. And so with that, Senator Dubas, welcome to the Business and Labor Committee. [LB950]

SENATOR DUBAS: Thank you very much, Senator Lathrop, members of the Business and Labor Committee. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. I represent Legislative District 34. Last year was a year filled with babies both in my legislative office and in my family. My son and his wife gave birth to our eighth grandchild, a boy. My legal counsel gave birth to a healthy baby girl in July. And my daughter gave birth to her second set of twins, a boy and girl, in August. I saw the economic challenges these families faced as they looked at taking time off. If families are required to use up all of their vacation, personal, and sick days to stay at home with their newborn, what happens if they need that time later? If they spend time to bond with their new baby and regain their strength, will they be able to pay their hospital bills, their mortgage, or their groceries? That was when we began discussions about the lack of paid family medical leave and what it means to families. It is from those discussions that I began to research what types of leave policies exist. And frankly I was surprised to learn that the state of Nebraska does not offer any paid maternity leave. The federal Family Medical Leave Act provides up to 12 weeks of unpaid leave to care for a newborn, adopted, or foster child or care for a sick family member or your own serious medical condition. But this policy only covers about half of our work force leaving approximately 75 million workers with no medical leave protection. Even with the federal law, millions of workers can't afford to take leave without pay. Federal law does allow states to set their own policies that may be more expansive and several states have already established their own family leave laws but very few offer a paid leave. Under current law, employees are torn between taking care of their family and staying on their career path. Paid family leave allows workers to be caregivers as well as breadwinners. The United States is the only advanced economy in the world that does not guarantee workers access to paid leave. According to the WORLD Policy Analysis Center, 177 countries offer some type of paid maternity leave. Today, only 11 percent of U.S. workers have access to paid family leave and fewer than 40 percent have access to employer provided short-term disability which will provide partial pay to women after childbirth. We live in an ever-changing

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world. Today, women are half of the work force. Two-thirds of mothers are the primary or the cobreadwinner in the family. Many of these same women earn minimum wage and receive no maternity or sick leave. Out of the 26,000 children born in Nebraska every year, approximately 20,000 are part of households without a stay-at-home parent; 8,000 are born to single mothers. In addition to more working mothers, our demographics are changing as our population ages. More and more demands are made on employees as they seek to take care of their children as well as their parents. In a survey done by AARP in Nebraska, 44 percent of the respondents said they have had to take time off from work to care for an adult family member. We now have more and more families living with economic insecurity. The Shriver Report paints a perfect picture of the world we live in by stating: We have working mothers dashing around getting ready in the morning, brushing their kid's hair with one hand and doling out medication to their own aging mother with the other. Women constitute two-thirds of minimum wage earners in the country. Forty percent of the households with children under the age of 18 have mothers as the sole or primary source of income. And women still earn only 77 percent of the average man. If we desire our state's economy to prosper and flourish, we must recognize the importance of family-friendly policies. The reality is we need to bring our thinking about families out of the 1950s and recognize the need for flexibility in the work force. And I am aware that there are businesses here in Nebraska that are taking these very steps to providing family-friendly policies that are flexible. This is an area where public-private partnerships can really take the lead. Only one-fifth of our families across this country have a male breadwinner and a female homemaker. This is the reality of the 21st century, and neither the business community nor policymakers have adjusted to that fact. There are many reasons why paid family medical leave policy is good for employees, but there are also benefits for the employer as well. When employees feel valued and less stress about commitments to their family and their job they will be more willing to stay with the employer thus reducing turnover and the need to retrain workers. Ninety-eight percent of employers surveyed reported that employee morale and loyalty were improved when they offered some type of paid leave policy. Paid family leave has more benefits than just maternity leave. It can also alleviate pressures on adult children facing the very tough decisions about care of their elderly parents. Or it can allow a spouse to attend cancer treatments with their husband or wife and not worry about medical bankruptcy or losing their home. Admittedly, this idea came from my own experience and concern for women. Ninety percent of caregivers are middle-aged women. In this day and age, those women are also employed and they're helping to build the economy as well as their own skills. But these are not just women's issues. By creating paid family medical leave, we support all of our families, our economy, and our entire state. This bill will direct the Department of Labor to set up the program which will operate similar to a payroll deduction. All employees will pay into the fund. Granted, there are many details that need to be worked out to fully implement a program such as this. And it is my sincere hope that this legislation will continue to be researched and vetted so we can be among the first states in the nation to recognize the importance of family-friendly work force policies. I hope the business

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community will look at this legislation and begin to think about what they can do to support their employees and see the positive results for their businesses. I also hope that state government will have that same revelation. We know middle income families and below struggle daily to make ends meet. A recent report referred to families on the brink of poverty as those living below 200 percent of the poverty level. That equates to around \$47,000 a year for a family of four. All one of these families would have to experience is one illness requiring an extended time off from work to push them over the edge. So they are not only dealing with the stress of an illness, now they are worried about loss of income and potentially the loss of their job. One in three Americans live with this type of stress. And 70 percent or 42 million of that group are women. Fifty years ago, the war on poverty was launched, and it was clear at that time who those people were living in poverty. Today, that line has blurred. There is less of a distinction between the middle class, the working poor, and those in absolute poverty. My bill will help families care for each other and employees balance work and home life. There are many arguments to support paid family medical leave and countless studies point to positive impacts on both families and businesses. Yet the best argument for paid family leave: It's simply the right thing to do. And I have to tell you as I began researching this issue...I mean, I just have volumes of information down in my office. It is really becoming a much more prevalent discussion across the workplace as well as across the country which I think is good. And as I said, I would love to see Nebraska be among the leaders of putting policies such as this and working with our business community to really support families because I think it's just a win-win for everybody across the board. With that, I'd be happy to try to entertain any questions you may have. [LB955 LB1090]

SENATOR LATHROP: I see no questions. Are you going to stick around to close?
[LB955 LB1090]

SENATOR DUBAS: I will. [LB955 LB1090]

SENATOR LATHROP: Very good. And we'll have...before we take proponents of LB955, we'll have Senator Conrad introduce LB1090 on a related subject. Welcome back. [LB955 LB1090]

SENATOR CONRAD: Thank you. This is my last appearance before this prestigious committee. [LB955 LB1090]

SENATOR LATHROP: And my last day as the Chair. [LB955 LB1090]

SENATOR CONRAD: Well, isn't that something? [LB955 LB1090]

SENATOR HANSEN: And my last day and Norm's last day and Amanda's last day.
[LB955 LB1090]

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SENATOR LATHROP: Yeah. I think Senator Chambers and Senator Harr will be the only ones coming back next year. [LB955 LB1090]

SENATOR HARR: Possibly. (Laughter) [LB955 LB1090]

SENATOR CONRAD: Well, we'll be in good hands then. [LB955 LB1090]

SENATOR HARR: God willing, Chambers. [LB955 LB1090]

SENATOR CHAMBERS: Oh, I'm willing. (Laughter) [LB955 LB1090]

SENATOR LATHROP: All right, in any case, welcome back. [LB955 LB1090]

SENATOR CONRAD: (Exhibit 18) Very good. Thank you very much. Senator Lathrop, members of the Business and Labor Committee, my name is Danielle Conrad; that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent the "Fightin' 46th" Legislative District of north Lincoln. And I'm here today to introduce LB1090. LB1090 creates the Healthy Families and Workplaces Act and would require employers to provide 1 hour of paid sick leave for every 30 hours worked up to a maximum of 40 hours in one calendar year. The act only applies to full-time employees. It begins at the commencement of employment and does not require the employer to pay for unused sick leave upon separation. The bill also provides for acceptable uses of sick leave and gives enforcement powers to the Department of Labor. The act does not apply to very small businesses and an individual employed in domestic services, a minor child working for their parents, or those who are employed in agriculture as defined in Section 48-604. I introduced this legislation because it addresses a critical work force issue. Our Legislative Research Office did a study on the numbers of Nebraska employers. The latest statistics that they had available was from 2007. But that report indicated that about 57 percent of Nebraskans have some form of paid sick leave in the private sector. However, that means 43 percent of our employees lack paid sick leave. Paid sick leave allows workers to stay at home when they are ill. This helps us to not spread disease and illness. It also puts the focus on prevention by allowing someone to go to a doctor's appointment if needed, and it allows a parent to take care of their sick child, their parents, or their spouse. Providing a basic level of paid sick leave is a critical work support for Nebraska working families. I urge your consideration of the measure. [LB955 LB1090]

SENATOR LATHROP: Very good. Thank you, Senator Conrad. [LB955 LB1090]

SENATOR CONRAD: Thanks. [LB955 LB1090]

SENATOR LATHROP: Anybody have any questions for Senator Conrad on LB1090? Senator Wallman. [LB955 LB1090]

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SENATOR WALLMAN: Chairman Lathrop, thank you. Yes, welcome again here to you. [LB955 LB1090]

SENATOR CONRAD: Thank you, Senator. [LB955 LB1090]

SENATOR WALLMAN: Have you researched other countries in this? [LB955 LB1090]

SENATOR CONRAD: You know, we haven't had a chance to look too far beyond our own borders, but these types of practices, it's my understanding, are more commonplace in other countries. And our research, as provided by the National Partnership for Women and Families which I think was distributed to the committee as well, has found that different localities and states are just now beginning to take a look at this in the United States. And we've seen some movement on the local level and then on the state level in Connecticut. [LB955 LB1090]

SENATOR WALLMAN: Okay, thank you. [LB955 LB1090]

SENATOR LATHROP: Very good. I see no other questions. [LB955 LB1090]

SENATOR CONRAD: Thank you very much. [LB955 LB1090]

SENATOR LATHROP: Are you going to stick around to close? [LB955 LB1090]

SENATOR CONRAD: I do not plan to, no. Thank you. [LB955 LB1090]

SENATOR LATHROP: Okay, very good. For those of you who are going to testify on this bill, if you could do me a favor when you come up for, against, or neutral, when you come up if you could, besides giving us your name and spelling you last name, tell us if you're here on one bill or both bills or if you have an opinion that you favor one and not the other you can make that clear just so the record reflects which bill your testimony is directed to. And with that, we'll take up the first proponent of either LB955 or LB1090. [LB955 LB1090]

RODNEY VLCEK: Good afternoon, Chairman Lathrop, members of the committee. I am here to testify in support of both LB955 and LB1090. My name is Rodney D. Vlcek, spelled V-I-c-e-k. I'm president, secretary/treasurer of the Nebraska State AFL-CIO. And like I said here, I am in support of both LB955 and LB1090. First, starting with LB955, the Paid Family Medical Leave Act, this bill is an important first step in providing necessary security and flexibility to Nebraska's working families. Since 1993, most employees have been guaranteed protection from termination should a family member get sick. However, it is not generally understood that this leave is merely employment protection. It doesn't come with continued pay. This forces many people to balance with

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their already tight budgets made even tighter by medical expenses with the real need to care for their loved ones. This bill, through a payroll deduction program, would allow Nebraska's working families the flexibility to put their loved ones first. This policy also provides benefits to Nebraska's employers. Life-changing events like the birth or adoption of a child or the illness of a close family member can seriously affect productivity. If an employee is also attempting to juggle medical expenses, the mental hardship is even more severe. LB955 would allow working families to take time away from work to deal with these situations and then return to work. And then secondly, on LB1090, the Healthy Families and Workplaces Act, we support this bill because it is good policy for workers, businesses, and for consumers. Workers who come to work ill tend to stay sick longer. They are also more reliant on expensive emergency and urgent care facilities because they are unable to visit their doctors during normal business hours. It is estimated that over 40 million workers currently lack access to paid sick days. Policies like the Healthy Families and Workplaces Act go a long way to ensure that when employees get sick, they can seek the care they need when they need it. For businesses, a healthy work force is a productive work force. While they may have to make do with a smaller staff when an employee is ill, this is far better than the employees risking spreading their illnesses to coworkers. Moreover, when employees are forced to work ill, their work product suffers. We believe it is better for businesses to...for these workers to take time to get well. Thirdly, for consumers the Healthy Families and Workplaces Act is essential. Three-quarters of all restaurant and service employees reported working while they were sick. This increases the likelihood of the spread of disease and poses a serious public health risk. By providing workers limited paid time off, these numbers would reduce substantially. In short, this bill is good policy for Nebraska and we urge you to advance LB1090. And with that, I'll take questions on LB955 or LB1090. [LB955 LB1090]

SENATOR LATHROP: Terrific. Any questions for Rod? I see none. Thank you for coming down today. [LB955 LB1090]

RODNEY VLCEK: Great. Thank you. [LB955 LB1090]

SENATOR LATHROP: Anyone else here as a proponent of either bill? [LB955 LB1090]

SUSAN CAMPBELL: (Exhibit 1) My name is Susan Campbell, S-u-s-a-n C-a-m-p-b-e-l-l. I am proponent for both bills. I am only speaking from personal experience. I am supposedly retired. But I have a real passion for caregivers having been one myself. So I am a member of the southeast area Nebraska Respite Network advisory board, cochair of the Nebraska Caregiver Respite Coalition, and member of the Lincoln caregiver education group which sponsors the monthly education support group for caregivers that I facilitate. And as a caregiver chick, I helped compile, publish and still distribute a notebook called the Caregiver Organizer which is a very effective tool to help caregivers. I'm not an expert, but I just wanted to share some of my experience,

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some of the things I learned, most of it the hard way through my caregiver's journey. And I know that you're all intelligent people so you probably have done some research on this matter as well. If you haven't been a caregiver, you very likely will be at some point, you or your wife or someone in your extended family. And I will tell you that the...with the advent of the baby boomers and people living longer and so on, there's going to become a very critical scarcity of caregivers within the next decade or so. So this is something that really needs to be addressed. My first caregiving experience was with my father. And at that time I was not in the work force. We had four young sons. So I had no paid leave, medical or family sick leave. And I...so it was really tough. I cared for my husband the last 16 years of his life, worked for the city of Lincoln in Aging Partners and did have vacation leave, paid vacation leave and medical leave which I took advantage of. So I've experienced both, so this really addresses both bills where I had to also take medical leave for myself. So it's...caregiving is...if you keep family caregivers, keep people in their home it's very cost effective too. So I think it would behoove you to really look at this bill very favorably and send it through. Thank you. I appreciate you listening. [LB955 LB1090]

SENATOR LATHROP: Hey, thanks for coming down. [LB955 LB1090]

SUSAN CAMPBELL: Are there any questions? [LB955 LB1090]

SENATOR LATHROP: I don't see any questions, but thank you for coming here before the committee today. Mark. [LB955 LB1090]

MARK INTERMILL: (Exhibits 2 and 3) Good afternoon, Senator Lathrop and members of the Business and Labor Committee. My name is Mark Intermill, spelled M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP in support of both bills. Senator Dubas mentioned a survey that AARP had conducted. This was a telephone survey that we did of all individuals...803 individuals over the age of 18. We typically will conduct surveys with our members, but this time because we were including some questions about caregiving, we thought we should be...take a more broad-based look at the population. And as she indicated, we...they're 44 percent of the individuals we surveyed who had experience with caregiving, including 17 percent that are currently caregivers. And if you take a look at the 1.4 million Nebraskans who are over the age of 18, 17 percent of that number, it works out to about 238,000 family caregivers in Nebraska. And that's consistent with other research that we've seen. These are individuals who are providing a service of great benefit to the state of Nebraska. If we were to...if they were suddenly to stop providing those caregiving services, we would see a significant increase in the cost of the Medicaid program and other services that provide long-term care for older persons. So I think there is a real benefit for caregivers then. It's time that the state take a look at what we can do to support them. There are also costs to caregivers, which I will switch to my other sheet here. We have...the information that we see is that the out of pocket...average out-of-pocket expenditure for a caregiver is about

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\$5,531 to cover a range of cost including just...for long-distance caregivers in particular there's costs associated with travel. There are a number of things that are...a caregiver has to provide. So in addition to the benefit that caregivers are providing, they're also incurring costs. So we're supporting these bills because they do provide a benefit to those caregivers who are providing so much to our state. And the other reason that we're supporting this is when we asked individuals about whether or not they support legislation, and specifically about the Family Medical Leave Act, on the back of the sheet on LB955 we found 63 percent supported legislation like the Family Medical Leave Act. So we believe this is an issue or an idea that's worthy of your consideration. We would look forward to working with the committee in the future to try to make progress on it. [LB955 LB1090]

SENATOR LATHROP: Very good. Thanks, Mark. Any questions for Mr. Intermill? I see none. [LB955 LB1090]

MARK INTERMILL: Thanks. [LB955 LB1090]

SENATOR LATHROP: Thank you. Anyone else here to testify in support of either bill? [LB955 LB1090]

MOLLY McCLEERY: Good afternoon. [LB955 LB1090]

SENATOR LATHROP: Good afternoon. [LB955 LB1090]

MOLLY McCLEERY: (Exhibits 4 and 5) Senator Lathrop, members of the committee, my name is Molly McCleery; that's M-o-l-l-y M-c-C-l-e-e-r-y, and I'm a staff attorney in the Economic Justice Program at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. And I'm here in support of both LB955 and LB1090. Working hard and taking care of our families are core Nebraska values. And as such, it's crucial that our state has policies that both support a strong work force and healthy families. And this means that Nebraska's workers shouldn't have to choose between financial stability and caring for themselves or their loved ones. LB955 and LB1090 are significant steps in ensuring the health and stability of our work force and of our families. As we've heard today already from Senator Dubas' introduction and some other testimony, very few employees are protected from the economic instability that can result from having to take time off to engage in self-care or care for a family member. This isn't solely a Nebraska issue. As was mentioned earlier, the U.S. is the only advanced economy that fails to provide guaranteed paid leave for some portion of parental leave. We've also heard that gaps exist in the federal protections under the federal Family Medical Leave Act. LB955 and LB1090 step in to provide income protections for workers that don't currently exist under state or federal law. The financial instability associated with taking unpaid leave either to engage in self-care or care for a family member is experienced by both men and women

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and individuals from different socioeconomic backgrounds. However, for low-income families unpaid leave can be even more challenging. In recovering from the most recent recession, the fastest growing jobs in the U.S. have been in low-wage service and retail sectors. These positions like retail salesperson, restaurant staff, personal and home healthcare aides are unlikely to come with benefits like paid sick leave or paid family leave. For workers in these positions, they're forced to choose between going to work sick or caring for themselves or caring for a family member. And oftentimes this really isn't a choice. There's not an economically viable option to not go to work. So as was mentioned in previous testimony, you have workers going to work sick. And this is especially concerning when you consider these are folks that are working with the public, especially if you're a home or personal aide. Consequently, LB955 and LB1090 are important steps in providing increased supports for Nebraska's workers. Specifically as to LB955, while paid leave could be a tremendous assistance to Nebraska's low-income families, we have to ensure that paid leave policies are administered in a way that actually support low-income families. In its current form, LB955 doesn't specify the amount of the income deduction. I see that my time is up. Can I finish this point? [LB955 LB1090]

SENATOR LATHROP: You have just a little bit to wrap up your last thought. [LB955 LB1090]

MOLLY McCLEERY: Oh, okay. We would just encourage that there be a ceiling or a cap on the amount of payroll deduction that is implemented for employees. And with that, I can take any questions. [LB955 LB1090]

SENATOR LATHROP: Very good. Is this your first time in front of the Business and Labor Committee? [LB955 LB1090]

MOLLY McCLEERY: No. [LB955 LB1090]

SENATOR LATHROP: You've been here before? [LB955 LB1090]

MOLLY McCLEERY: Yes. [LB955 LB1090]

SENATOR LATHROP: Okay. Is this your first year with Appleseed? [LB955 LB1090]

MOLLY McCLEERY: Yes. [LB955 LB1090]

SENATOR LATHROP: Okay. That may be it. Well, we're glad to have you here. I don't see any questions, Molly. [LB955 LB1090]

MOLLY McCLEERY: Okay, thank you. [LB955 LB1090]

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SENATOR LATHROP: All right. Thank you. Anyone else here as a proponent? [LB955 LB1090]

AUBREY MANCUSO: (Exhibits 6 and 7) Good afternoon, Senator Lathrop, members of the committee. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. We're here today in support of both LB955 and LB1090, so I'll focus my initial comments on LB955 and then add some additional comments on LB1090. Nebraska is a state that values children and families, but we don't always do enough to ensure that those values are codified in our laws. And LB955 would really make Nebraska a leader in ensuring that we are supporting children and families and ensuring that families who need time away from work to care for a sick child or other family member are truly able to do so. Of particular concern to Voices for Children is the time that new parents need to care for a child after birth or adoption. The majority or about three-quarters of all Nebraskans with young children have all available parents in the work force. New parents need time to bond with their child and to adjust with the associated life changes that come with having a new child. Families should be able to do this free from additional financial stressors. When parents aren't able to take the time they need, both parents and children can be negatively impacted. Research has found that mothers with at least eight weeks of paid leave are less likely to experience postpartum depression and to be in overall better health. In addition, the World Health Organization recommends exclusively breast-feeding for the first six months of a baby's life due to the positive health impacts on the child and ensuring paid leave can help increase a mother's capacity to breast-feed. A new child in the family also comes with additional expenses, and for many working families they're not able to manage time away without income. And under our current system, those who are more likely to be able to financially manage that income disruption are also more likely to have access to paid leave. Those with access to paid leave tend to be well-paid people who work in managerial or professional occupations. Paid family leave is also an important economic issue for both women and for the state overall. One study found that women who take paid leave are 39 percent less likely to receive public assistance or food stamps in the year following a child's birth. And finally, on paid sick leave I'll just add that statistically children get sick more often than adults. On average, school-age kids get sick at least three times during the average school year. And for younger children it's even more. Under some estimates they get around eight to ten colds in the first two years of life. And so it's important that parents have that flexibility to care for their young children. It's also a public health issue when children go to school or day care sick, they're putting other children and adults at risk. And parents also need that time to ensure that they're able to take their kids to well-baby visits that prevent more serious illnesses. So with that, I'm happy to take any questions. Thank you. [LB955 LB1090]

SENATOR LATHROP: Very good. Thanks, Aubrey. Any questions? I see none. [LB955 LB1090]

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AUBREY MANCUSO: Thank you. [LB955 LB1090]

SENATOR LATHROP: Thank you for your testimony. Anyone else here in support of either LB955 or LB1090? We'll now take opposition testimony if any. [LB955 LB1090]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, and I'm here on behalf of the Nebraska Chamber of Commerce. I'd like to just convey that the Nebraska Chamber labor relations council did review the two bills, decided to take a position opposed to both bills from the viewpoint of...that we'd like to see consistency with federal and state regulation. In particular, as I understand it now Senator Dubas mentioned that her particular bill continues to need construction and that's where a lot of the committee spent a lot of...quite a bit of time, just discussing the mechanics of, you know, an innovative idea such as this. And that was the question as to how would the program, since it's an employer tax...not an employer tax. And it's not from the angle because it's an employee tax, but it's an employee payroll tax. Is it going to be calculated on an insurance-based system or is it going to be calculated on how much an employee earns and what kind of...amount of tax would that be that would make a program such as this sustainable, you know, particularly as you get into upper incomes? Secondly, it does apply to employers with one or more employees, anyone who's covered by unemployment compensation. And we find that to be a challenge. Overall, when the...in 1993, when Congress passed the Family Medical Leave Act and phased in time for implementation and as you know there's a lot of complications to that act, and there are varying definitions there that vary from this particular...these particular proposals. Question was at one time though...it was, what was the threshold amount going to be? And they were talking about paid leave at that time. However, and they were...we were thinking that they might settle on 100 or more employee level. And what happened was it went down to 50 or more employees but it would be unpaid so that at least there would be job protection for those. But they did realize, Congress realized that because the complexities and what small business would have to face that it was best to have a higher threshold. With that, I'll entertain any questions. [LB955 LB1090]

SENATOR LATHROP: Okay. It doesn't look like there's any questions, Ron. [LB955 LB1090]

RON SEDLACEK: Thank you. [LB955 LB1090]

SENATOR LATHROP: Thanks for your...oh, wait a minute. Wait a minute. [LB955 LB1090]

RON SEDLACEK: Yes, sir. [LB955 LB1090]

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SENATOR LATHROP: Senator Chambers. [LB955 LB1090]

SENATOR CHAMBERS: You had indicated that the Chamber of Commerce would rather see something done federally in this area. [LB955 LB1090]

RON SEDLACEK: Maybe. I want to be clear. If there is something to be done, yes, they would prefer that and that...what we do here in the state would match that requirement. [LB955 LB1090]

SENATOR CHAMBERS: Has the Chamber taken a position at the federal level in favor of this? [LB955 LB1090]

RON SEDLACEK: We don't get involved too often with federal issues in that regard. [LB955 LB1090]

SENATOR CHAMBERS: So it might be a strategy to defeat it at every state level by saying, let the federal government do it, when really the Chamber is opposed to this. Is that true or is that false? [LB955 LB1090]

RON SEDLACEK: If I had my guess it would be that if you had polled most members on the federal legislation, they probably would not vote favorably for it. [LB955 LB1090]

SENATOR CHAMBERS: Would not. [LB955 LB1090]

RON SEDLACEK: That would be my impression. [LB955 LB1090]

SENATOR CHAMBERS: Okay, I was just inquiring, not to engage in an argument. [LB955 LB1090]

RON SEDLACEK: Yes, sir. [LB955 LB1090]

SENATOR CHAMBERS: Thank you, that's all that I have. [LB955 LB1090]

RON SEDLACEK: Okay. [LB955 LB1090]

SENATOR LATHROP: Thanks, Ron. [LB955 LB1090]

BOB HALLSTROM: (Exhibits 8 and 9) Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the National Federation of Independent Business in opposition to both LB955 and LB1090. Our members consistently have indicated that they oppose government mandates of this type preferring to be able to set the package of compensation and benefits on their own and let the marketplace dictate what those

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compensation levels and benefits should be. With respect to LB955, I've given an example that NFIB's average size employee base is five. Based on the amount of paid family medical leave that would be allowed, such an employer would be giving 20 percent of their work force over 10 percent of the year off with paid time for family medical leave. That dictates the fact that the employer must get a temporary worker for replacement purposes or end up going without someone to do the work which obviously isn't a very good alternative either. So it clearly affects the productivity and the operations and the profitability of the business. I'd be happy to address any questions that the committee may have. [LB955 LB1090]

SENATOR LATHROP: Did you say you oppose both bills, Bob? [LB955 LB1090]

BOB HALLSTROM: Yes, sir. [LB955 LB1090]

SENATOR LATHROP: Okay, pardon me. Senator Wallman has a question for you. [LB955 LB1090]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for coming. I...you know, it's a tough issue. I agree with small business. And, you know, employees, weren't they willing to kick some money in there with withholding of something like this, would that work? [LB955 LB1090]

BOB HALLSTROM: Well, I think there's a lot of mechanical problems with no parameters as to what that payroll withholding might be and so forth. It would certainly have to be spelled out in any type of legislation. But I think from the truly small business perspective you still get down to, that's a significant percentage of the work force that's gone from the workplace potentially for a significant period of time. And it really provides a hardship for smaller employers. [LB955 LB1090]

SENATOR WALLMAN: Thanks. [LB955 LB1090]

SENATOR LATHROP: Senator Chambers. [LB955 LB1090]

SENATOR CHAMBERS: Mr. Hallstrom, I constantly hear small business. What number of employees would constitute a small business in your organization? [LB955 LB1090]

BOB HALLSTROM: Well, from the NFIB's perspective, obviously the federal definition of a small business is much, much greater. But from the NFIB perspective, our businesses have an average of five employees for our members. [LB955 LB1090]

SENATOR CHAMBERS: Five employees. [LB955 LB1090]

BOB HALLSTROM: Yes. [LB955 LB1090]

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SENATOR CHAMBERS: So you are talking about small employers. [LB955 LB1090]

BOB HALLSTROM: True. [LB955 LB1090]

SENATOR CHAMBERS: What's the...do you know of any member whose number would equal that of the federal government's definition of a small employer? [LB955 LB1090]

BOB HALLSTROM: I don't know for sure. I would be surprised if we had anybody that was a member of NFIB approaching that. We do not allow publicly traded companies to be members of NFIB for example. We do have larger members, but I would suspect nothing that would reach the federally mandated definition of a small business threshold. [LB955 LB1090]

SENATOR CHAMBERS: A wish that cannot be granted: I wish the first letter in your acronym would be "never." And the last three would spell a word. Then it would be "never fib." [LB955 LB1090]

BOB HALLSTROM: Well, there's no fibs. (Laughter) [LB955 LB1090]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB955 LB1090]

SENATOR LATHROP: I think that's it, Bob. Thank you. Anyone else here in opposition to either LB955 or LB1090? Anyone here in a neutral capacity? [LB955 LB1090]

HARVEY SANKEY: I'm an opponent. [LB955 LB1090]

SENATOR LATHROP: Pardon me? [LB955 LB1090]

HARVEY SANKEY: I'm in opposition. [LB955 LB1090]

SENATOR LATHROP: Oh, okay. [LB955 LB1090]

HARVEY SANKEY: My name is Harvey Sankey, H-a-r-v-e-y S-a-n-k-e-y, and I'm testifying for the Printing Industries of the Midwest, specifically Nebraska. On LB955, we are opposed to this because it's a mandate on the individual employee to pay a payroll tax. It takes away their freedom. And I don't think we should be taxing employees any more than they have to be today. As far as LB1090 is concerned, employers should often pay...employers should offer paid sick days at their own discretion. Employers best understand the benefit preferences of their employees and must maintain flexibility to meet the unique needs of their work force. Research out of the Cleveland State University found that the cost incurred by a paid sick leave policy would include lost

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wages for new users of paid sick leave policies and administration expenses incurred to operate sick leave accountability systems. The study concluded that a paid sick leave mandate would be harmful to employers noting that the cost of the mandate would outweigh the benefits. A survey of New York City employers in 2010 by the partnership of the New York City found that a paid sick leave mandate would cost city employers \$789 million a year. The survey also found that small businesses and nonprofit organizations would be faced with almost 20 percent of the cost of the citywide mandate. A 2013 study by Employment Policies Institute found that many businesses responded to a paid sick leave mandate in Connecticut by reducing paid leave, scaling back employee benefits, cutting back on hours, reducing wages, or raising prices. About 24 percent of the employers that responded to the survey said they'd hire fewer employees as a consequence of the law, and 10 percent admitted that the law had caused them to limit or restrict their expansion within the state. Currently, there are only four jurisdictions in the United States that have passed local paid sick time laws; one in San Francisco, however that was in 2006. However, research found that over 28 percent of the employees in the bottom wage quartile faced layoffs or total hours reduced as a result of paid sick leave mandate. The other one was in Washington, D.C. That was in 2008. This...they exempted though tipped restaurant workers as well as workers in the first year of employment. In November 2008, Milwaukee did the same thing, however city...Milwaukee County circuit judge ruled that the city ordinance was invalid under Wisconsin State law. [LB955 LB1090]

SENATOR LATHROP: Mr. Sankey. [LB955 LB1090]

HARVEY SANKEY: Thank you. [LB955 LB1090]

SENATOR LATHROP: We've got to see if there's any questions. We always appreciate having you come down here and testify, whether it's the Business and Labor or the Judiciary Committee. [LB955 LB1090]

HARVEY SANKEY: Yeah, thank you. [LB955 LB1090]

SENATOR LATHROP: You're a frequent flyer in both. Today, I do not see any questions. Thank you for your testimony. [LB955 LB1090]

HARVEY SANKEY: All right. Thank you. [LB955 LB1090]

SENATOR LATHROP: (Exhibits 10-17) Anyone else here in opposition to either bill cares to be heard? Anyone here in a neutral capacity? Seeing no further testifiers, I'm going to add to the record letters that we've received from the NASW in support of LB955, Holland Children's Movement in support of LB955, the Grocery Industry in opposition to LB955, as well as LIBA who is in opposition to LB955, the Lincoln Human Resource Management Association also in opposition to LB955, HRM Nebraska State

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Councils likewise opposed, as is the Nebraska Building Chapter of the Association of General Contractors. And with respect to LB1090, we have a letter of support from the National Partnership for Women and Families and a letter opposed by the Nebraska Building Chapter of the Association of General Contractors of America. Those letters of opposition and support will be made part of the record. And with that, Senator Dubas to close on LB955. [LB955 LB1090]

SENATOR DUBAS: I will be brief. I just want to reiterate the fact that I think there's three or four states that now have a paid family medical leave policy in place. And there are more and more...if I had my list in front of me, I think it'd be close to a dozen that are at least looking at it now. So I think it's demonstrating that states are not wanting to wait around to see what the federal government is going to do. They're taking it upon themselves, and they take it upon themselves because they can craft policy that's going to fit their state and the businesses in their state and the employees in their state. So I think that's a good way to go personally. And I guess on a little more personal note, I am a little bit sad that I won't be able to be here in the following years to follow through with this because I think it is a very important policy discussion for our state to be having. And when you look at the statistics of the number of people in the work force, single head of households in the work force in Nebraska, I think we are at the top of the list when it comes to number of adults in the work force, heads of families, single-parent families. We're right there at the top. And so I think that means these policies are even more important for those working families in our state. They will be good employees if they feel they have that flexibility, that they aren't going to worry about, if I stay home and take care my child or my parent or whoever it is that, you know, I stand the potential of either losing my job or definitely losing income. So as I said, I'm sorry that I won't be able to follow through, but I think starting this discussion the way we are today with this bill as well as Senator Conrad's, I'm hoping there will be some senators following us who pick it up. I think there's real potential to sit down with the business community and other interested stakeholders and really come up with policy that will fit the state of Nebraska and serve us well. So with that, I'll take any questions. [LB955 LB1090]

SENATOR LATHROP: Very good. Good to have you here. [LB955 LB1090]

SENATOR DUBAS: Thank you. [LB955 LB1090]

SENATOR LATHROP: Last appearance. [LB955 LB1090]

SENATOR DUBAS: Yeah, thank you. [LB955 LB1090]

SENATOR LATHROP: Thanks, Senator Dubas. We'll give folks a chance to move around and then we'll take up the next bill which will be Senator Wallman and LB1036. Okay, our own Senator Wallman to open on LB1036. Welcome. [LB955 LB1090]

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SENATOR WALLMAN: Thank you. Good afternoon, members of the Business and Labor Committee. For the record, my name Norm Wallman, W-a-l-l-m-a-n. I'm here to introduce LB1036 which will establish that Lincoln and its employee labor unions must negotiate two-year labor agreements timed to coincide with the city's biennial budget. I have introduced LB1036 at the request of the city of Lincoln. It is legislation of a limited scope offered in response to the city of Lincoln adopting a biennial budget process which is similar to the state of Nebraska's biennial budget process. State Employees Collective Bargaining Act already requires that two-year agreements be negotiated to correspond to the state's biennial budget period. And this has worked well for the state. And this bill recognizes that Lincoln, Nebraska's only city of the primary class, has moved to a biennial budget process and provides for a labor negotiation schedule that mirrors the budget process. Obviously, it is a process change that will give slight economic advantage to employees during some budget cycles and to the city during other budget cycles depending on which way the economic winds are blowing at the time the agreements are negotiated. For example, if all of the city's labor agreements are negotiated in 2016 at the time when wages and benefits are on the rise in comparable communities, unions will be able to negotiate larger increases in pay and benefits. But if wages and benefits fall off in 2017, the unions will already have their wage increases locked for the entire two-year cycle. I anticipate that a biennial negotiating schedule will provide financial benefits to both the city's public employee unions as well as the city of Lincoln so labor negotiations can be time consuming and expensive processes. Both the unions and the cities must spend money not only on the people doing the negotiations, but also consultants that analyze the impact of changes in pensions and their health plans. Passing this bill means that those necessary and appropriate expenses will only have to be paid by Lincoln and its unions every two years at most rather than being a potential drain of time and resources every year. So I am introducing LB1036 to enable Lincoln and its public employee unions to save time and resources. If other cities follow Lincoln's lead in adopting a biennial budget, this practice, which was adopted for the state of Nebraska a number of years ago, should be extended to any city with a biennial budget. Thank you. And I should note, when I was on the school board we tried to negotiate two-year contracts. And it was a lot more painless, let's say. And there will be people following me, pro and con. [LB1036]

SENATOR LATHROP: I expect so. Thanks, Senator Wallman. I appreciate your introduction. And with that, we'll take proponents or those here to testify in favor of LB1036. [LB1036]

STEVE HUBKA: Chairman Lathrop and members of the committee, my name is Steve Hubka; that's spelled H-u-b-k-a. I'm the finance director for the city of Lincoln. I'm here in support of LB1036. The bill is for Lincoln only, as Senator Wallman has pointed out. It addresses cities only of the primary class, and obviously we're the only one. We'd like to thank Senator Wallman for introducing LB1036. And he also covered many of the major points of which there are not a lot of here. But there are some fairly important ones to

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somebody like myself in my position. As he said, the bill requires labor organizations in the city to bargain for two-year contracts to coincide with the two-year budget cycle. Using the authority granted by the Legislature and Lincoln citizens through a charter amendment, Lincoln switched to a biennial budget process for the 2012-2014 biennial budget period. We're in the last few months of our first biennial budget. We believe that a biennial budget process has saved us thousands of hours of staff time and elected officials' time compared to the previous system of adopting annual budgets. It also allowed for reorganizations in some departments. Likewise, multiple-year contracts with labor unions are more efficient than negotiating every year. As you well pointed out, it saves time and money for both the city and the unions. In looking to develop the biennial budget process, we looked at guidelines used by the state of Nebraska in its budget process. And as Senator Wallman also pointed out, that's required in state law, that state unions bargain for two-year contracts that coincide with the budget. We believe the same provision included in this bill for the city of Lincoln would be a good budget practice to have mandated. Personnel costs constitute at least 70 percent of our tax-funded budget. And without the certainty of labor costs for a two-year period, accurate budgeting is very difficult and depends on estimates which may or may not be accurate. As a practical matter, Lincoln and its six bargaining groups have had many multiple-year contracts in recent years without this mandate. Nevertheless, we believe this bill provides a clear mandate from the Legislature to follow a best practice and further solidifies the benefits we've seen from biennial budgeting. We urge the committee to advance LB1036. [LB1036]

SENATOR LATHROP: Very good. Thank you, Mr. Hubka. Any questions? Senator Chambers. [LB1036]

SENATOR CHAMBERS: Did you say this methodology has been used on occasion already, and there have been savings to the city as a result? [LB1036]

STEVE HUBKA: We have had many contracts with most all of our various labor unions that have had multiple-year contracts. Sometimes they've done two years, up to four-year contracts. But what we'd like to do is get it in sync with the two-year period that we have the budget for. [LB1036]

SENATOR CHAMBERS: But did you say there have been savings that resulted? [LB1036]

STEVE HUBKA: Yes, there have been not only from the biennial budget process versus an annual budget process, but I certainly believe from negotiating multiple-year contracts versus annual contracts. [LB1036]

SENATOR CHAMBERS: So these savings are of benefit to the city for other purposes. [LB1036]

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STEVE HUBKA: They could be a benefit, but labor unions usually hire legal counsel as well. And if they can get a multiple-year contract, that saves them money as well as the city. [LB1036]

SENATOR CHAMBERS: But any savings to the city thus far haven't been used and applied to the snow removal yet, have they? (Laughter) You don't even have to answer. [LB1036]

STEVE HUBKA: Yeah, that's a tough question. [LB1036]

SENATOR CHAMBERS: We're all in it together, those of us who drive in Lincoln. That's all that I have. [LB1036]

SENATOR LATHROP: Okay, thank you. I see no other questions. [LB1036]

STEVE HUBKA: Thank you. [LB1036]

SENATOR LATHROP: Next proponent. Anyone else here in support of LB1036? Seeing none, anyone here in opposition? [LB1036]

DAVE ENGLER: Good afternoon. [LB1036]

SENATOR LATHROP: Good afternoon. [LB1036]

DAVE ENGLER: Chairman Lathrop, members of the Business and Labor Committee, my name is Dave Engler. I am the president of...and that's E-n-g-l-e-r. I'm the president of the Nebraska Professional Fire Fighters Association and Lincoln Fire Fighters Association. As an actual person who does negotiate labor agreements, I know that one of the most critical factors in the give-and-take of bargaining is the term and length of the contract. There are many factors to consider when negotiating the length of the agreement; economic variables, insurance costs and coverage, as well as organizational changes. All of these are just some of the factors that may influence variations in the length of an agreement, not just the budgetary cycle. In our system alone, there may not be enough economic data available from other cities to make an informed decision in a multiyear agreement. That varies from city to city, and sometimes those things aren't available to make a consideration for a multiyear agreement. And that's out of our control. This bill ties the hands of both parties and forces them into situations that may be less than ideal. Further, in the event of a dispute, the CIR will only order on the year in dispute which is inconsistent with this bill. They don't order on two years. They order on the one year of the dispute. While I appreciate all the sudden concern for labor unions and lawyer fees and all those things that we're paying, we ask that this bill does not make it out of committee. Mandating this in state law takes away

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the ability for negotiators to negotiate and chips away at our ability to collectively bargain. [LB1036]

SENATOR LATHROP: Okay. I don't see any questions. [LB1036]

DAVE ENGLER: No questions. [LB1036]

SENATOR LATHROP: Thanks, Dave. [LB1036]

DAVE ENGLER: Thank you. [LB1036]

SENATOR LATHROP: Anyone else here in opposition? [LB1036]

RODNEY VLCEK: Good afternoon. My name is Rodney D. Vlcek, spelled R-o-d-n-e-y D. V-l-c-e-k. I'm president, secretary/treasurer of the Nebraska AFL-CIO, and we are opposed also to LB1036. We feel that collective bargaining should be left at the bargaining table between employer and employee and not mandated into state law. I think Brother Engler pretty much emphasized it, that times can change. And requesting a two-year mandate on the collective bargaining agreement is bad practice. So with that, I'll take any questions. [LB1036]

SENATOR LATHROP: I don't see any. [LB1036]

RODNEY VLCEK: Great, thank you. [LB1036]

SENATOR LATHROP: Anyone else here to testify on LB1036, in opposition or in a neutral capacity? Seeing none, that will close...I'm sorry. Senator Wallman, would you like to close? Senator Wallman waives the close on LB1036. And that brings us to the last bill, LB1073. [LB1036]

SENATOR ASHFORD: Senator Lathrop. [LB1036]

SENATOR LATHROP: Good afternoon, members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 in Douglas County, and I'm here today to introduce LB1073. Those of you that have been around a few years will remember that we passed an E-Verify bill for public employers probably six years ago that would require that public employers E-Verify before hiring any employees on to the public payroll. LB1073 would extend that requirement to employers in the private sector. I have to tell you that I...I want to say this about my bill as I introduce it, that I suspect that there will be a lot of people who testify in support of the bill, and they may all have different reasons. And I want you to know why I am offering the bill and why I am not offering the bill. I am not offering the bill to pile on in the debate over immigration. The bill is offered because those who work in the

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trades have found it difficult to compete with employers who hire employees who have no legal status. And the difficulty with being an employer who plays by the rules, who hires employees who they pay a decent hourly rate to, who they cover with unemployment compensation benefits, who they cover with workers' compensation benefits is when you compete with the unscrupulous employer who will hire those who do not have a legal status in this country and they do not pay a fair wage, they don't cover them with work comp benefits, and they don't cover them with unemployment benefits, it creates an unfair advantage for the unscrupulous employer. And it penalizes those who play by the rules. The bill is intended to level the playing field and require that those who employ, employ those who have a legal status. With that, I'd be happy to answer any questions. [LB1073]

SENATOR ASHFORD: Thank you, Senator Lathrop. [LB1073]

SENATOR LATHROP Thank you. [LB1073]

SENATOR ASHFORD Proponents, those for the bill? Okay, Doug. [LB1073]

DOUG KAGAN: (Exhibit 1) Good afternoon. My name is Doug Kagan, D-o-u-g K-a-g-a-n, and I represent Nebraska Taxpayers for Freedom. We support LB1073 for many reasons. Recognizing that congressional legislation eventually will make use of E-Verify mandatory in all states, many employers already use this system voluntarily to become accustomed to its provisions. As more states enact legislation to require its use, companies are using E-Verify to demonstrate positive corporate citizenship. The glitches in the system when first promulgated have disappeared. Error rates in 2012 stood at 3 percent according to the Department of Homeland Security with improvements in speed and processing. Additional improvement will appear with increased digital imaging which will stop the ID theft problem in the hiring process and in the community itself. A 2013 Immigration Service survey revealed that 86 percent of users seemed satisfied, 88 percent particularly satisfied with its accuracy. At the federal level, the biggest advantage is reducing company exposure to violations, fines, and workplace raids that disrupt company operations. If an employer in good faith hires someone not authorized to work here but successfully verifies the individual through E-Verify, the employer will not face liability. Homeland Security maintains that E-Verify is the best means to verify eligibility of new employees because it eliminates Social Security mismatch letters and improves wage and tax reporting accuracy. At the Nebraska level, E-Verify would offer immunity relating to state income tax liability. If a company hires someone not eligible to work here and deducts expenses associated with him when calculating state income taxes but uses E-Verify, the company would not face liability. The Nebraska Department of Labor encourages E-Verify use. Employers cannot face discrimination lawsuits because a government computer completes the checking. E-Verify would permit the employer to invest in training a new person quickly without risk that he would become found illegally working and deported thus wasting

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resources invested in training. It would ensure that all Nebraska businesses operate on the same playing field, targeting those that purposely hire illegals and pay substandard wages with no benefits. Less likely, the illegal aliens will try to obtain employment but later arrested and deported leading to family disruption, kids yanked from school, and draining of law enforcement and immigration court financial resources. Finally, we support this bill because it will protect Nebraska jobs and protect communities from the fiscal ills of illegal immigration and incarceration, welfare, healthcare, and education costs. Thank you, and I'll answer any questions you have. [LB1073]

SENATOR ASHFORD: Senator Chambers. [LB1073]

SENATOR CHAMBERS: I've been curious about the name of your organization. Is this Nebraska Taxpayers for Freedom to distinguish it from a group of taxpayers who are against freedom? Is there such an organization that you know of, Nebraska Taxpayers Against Freedom? [LB1073]

DOUG KAGAN: No, Senator, never heard of that organization. (Laugh) [LB1073]

SENATOR CHAMBERS: So why is that construction there? I'm just curious. [LB1073]

DOUG KAGAN: Well, that's just the name we selected about 30 years ago. I can't even remember why. [LB1073]

SENATOR CHAMBERS: Well, maybe then there was an organization of taxpayers against freedom. (Laughter) Oh, wait a minute. Freedom for whom? [LB1073]

DOUG KAGAN: Well, freedom for the taxpayer obviously. [LB1073]

SENATOR CHAMBERS: Freedom for the taxpayer to pay taxes? [LB1073]

DOUG KAGAN: Pay not so much taxes. [LB1073]

SENATOR CHAMBERS: Okay, thank you. [LB1073]

SENATOR ASHFORD: Okay, thanks. Yes, Senator Hansen. [LB1073]

SENATOR HANSEN: Doug, can you give us an idea of what, in your estimation, how long does it take for the E-Verify process to actually work, just the mechanical part of it? [LB1073]

DOUG KAGAN: Yes, it just takes a very few minutes, less than ten minutes per individual. And it works so fast that a lot of companies have found that they really don't need to hire new personnel in their HR departments to take care of this. They just

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assign the work to their current employees. It works a lot faster than it did in the first place. When they first started using E-Verify at the federal level, they had several glitches. It was slower. There was a lot more mismatches. Their error rate was, you know, like 5 to 7 percent. It's gone down since. Now they're doing some...and I didn't get a lot of details on this but they call it digital imaging and bio imaging so they can identify people more accurately at the company level. And when they send the information through the computer to match it at the federal level, there will be continually a better accuracy rate. [LB1073]

SENATOR HANSEN: Do you know where that database is located at? It doesn't matter if it's that quick. [LB1073]

DOUG KAGAN: Well, it's in Washington somewhere. I don't have a precise location for it. [LB1073]

SENATOR HANSEN: I know it used to be in Minneapolis. And they had to do a lot of it by mail. And like grape pickers, especially...they were here...they sent their information. They didn't...had no idea. By the time the grapes were picked, the people were gone and the E-Verify system hadn't gotten back to them. So, glad to hear that it's... [LB1073]

DOUG KAGAN: It's a lot faster, and it's a lot more accurate now. [LB1073]

SENATOR HANSEN: Thank you. [LB1073]

SENATOR ASHFORD: Yeah, Senator Wallman then Senator Chambers. [LB1073]

SENATOR WALLMAN: Thank you, Senator Ashford. Yes, do you know how much it costs to get a card to be verified as a...do you know how much? [LB1073]

DOUG KAGAN: I saw it, but I didn't write it down. It's...the cost is just minimal. It doesn't...I read that it doesn't...the companies don't need to hire more employees. They just use their current employees, and they do it as a matter of course. And it doesn't add a large expense to the company. [LB1073]

SENATOR WALLMAN: I went to an organization last night for a benefit and they said it costs \$50. [LB1073]

DOUG KAGAN: Per person? No, I never read that it was that much. I read... [LB1073]

SENATOR WALLMAN: I don't know. I didn't know. That's why I... [LB1073]

DOUG KAGAN: I read cents, not dollars. [LB1073]

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SENATOR WALLMAN: I don't know. Thank you. [LB1073]

SENATOR ASHFORD: Senator Chambers. [LB1073]

SENATOR CHAMBERS: So this is operational as a federal program now. [LB1073]

DOUG KAGAN: Yes, and in some states they're using it also. [LB1073]

SENATOR CHAMBERS: And when they started it, there was a problem with accuracy which is improving now. [LB1073]

DOUG KAGAN: That's true. [LB1073]

SENATOR CHAMBERS: And there was a problem with how slow it was which is improving now. [LB1073]

DOUG KAGAN: That's true. The process is much faster now than it was when it first started. [LB1073]

SENATOR CHAMBERS: So when you have a program of this magnitude, then it's not uncommon to have these kind of difficulties as you try to make it work the way it should. [LB1073]

DOUG KAGAN: Well, I think a lot of it was computerization. I mean, computerization has improved over the years, and I think that's true with the federal government just as anywhere else. They get newer, better computers so they're more accurate and they're faster. [LB1073]

SENATOR CHAMBERS: But the program does improve over time. And it's... [LB1073]

DOUG KAGAN: Yes, and it will continue to improve also. It will continue to work faster and it will continue to be more accurate. They right now have about a .3 percent error rate. It was like 7 percent a few years. And they're going to whittle that down even less. [LB1073]

SENATOR CHAMBERS: Well, why didn't--since they were having all those problems--they just say, this is too much trouble. We're not going to do this. If the states want to do it, they can. But the federal government isn't going to do this. But they never thought about just scrapping it. They thought they would try to improve it (inaudible). [LB1073]

DOUG KAGAN: That's true. That's true. [LB1073]

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SENATOR CHAMBERS: But that doesn't apply when comes to healthcare for the public and people who are sick, children and so forth. They want to kill that program altogether, huh, the same people? Oh, (inaudible) you don't have to answer. I just...that was going around and around in my mind as I listened to you. You've been very helpful. Thank you, Mr. Kagan. [LB1073]

DOUG KAGAN: Yeah. Okay, Senator. [LB1073]

SENATOR ASHFORD: Okay, next proponent for the bill. [LB1073]

MARTY BROWN: Good afternoon. Marty Brown, M-a-r-t-y B-r-o-w-n. I didn't really have a prepared thing. But two things I've done today is I went to Senator Hadley's office, and then I went to see Jon Bruning's office. And two things come in mind. When I had hail damage on my home of \$18,000, I tried to hire an all-American team that I could count on, that I could speak to and verify that they were legal citizens. I had to go 12 different times. I couldn't find one out of Omaha. I found one out of Lincoln. And my requirement was they didn't have to be paid by 1099. I wanted to make sure they were going to pay on unemployment insurance, on workmen's comp, and Social Security. That's not being done. Okay, I had neighbors that verify this, that they're not paying workmen's comp. So what I wanted to find from the Revenue Committee was where this money, I mean millions and millions of dollars, were being applied in Omaha for housing, roofing, siding, windows and so forth. So my question to the Revenue Committee is, has there been uptick in revenue because of this term? I haven't been able to get an answer yet. The other thing is I have a son in business. He's in hardscape. He has business in Colorado and Omaha. He hasn't been able to compete with those that are not E-Verified for employment simply for the fact that they are not paying for workmen's comp. They are not paying for Social Security. They're not paying for all these items that go undetected. So he's shot, and then he doesn't...they don't have any liability insurance. So E-Verify, I agree with LB1073, that we need some type of verification because our federal government is not doing it. And with this, we have some record of what's going on. So that's my personal preference, that we need some type of database, as Mr. Chambers brought up, to bring forth because we don't know who these people are. E-Verify would correct some of that. We found that in Fremont as well. So I do thank you for your time. [LB1073]

SENATOR ASHFORD: Next supporter. [LB1073]

HARVEY SANKEY: My name is Harvey Sankey, H-a-r-v-e-y S-a-n-k-e-y, and I represent the Nebraska Taxpayers for Freedom as opposed to the Nebraskans who are against freedom. I am in favor of LB1073 simply because of what Senator Lathrop had to say. Simply stated, and I am in favor of that. Thank you. [LB1073]

SENATOR ASHFORD: Thank you, Mr. Sankey. Next supporter. [LB1073]

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SUSAN GUMM: (Exhibit 2) Good afternoon. Thank you for allowing me to testify today in front of the Business and Labor Committee. I support LB1073. Participation in E-Verify not only protects jobs for U.S. workers, it also prevents wage depression that results from illegal aliens willing to work for substandard wages. Illegal immigration has heavily contributed to wage stagnation in many low-skill occupations. The stagnation of blue-collar wages has been driving the increasing income inequality, but most politicians ignore the immigration component. Illegal immigration-related document fraud and identity theft is committed primarily for the purpose of employment. Illegal aliens who use fraudulent documents, perjure themselves on I-9 forms, and commit identity theft in order to get jobs are committing serious offenses and are not law abiding. Illegal immigration and high levels of identify theft go hand in hand. States with the most illegal immigration also have highest levels of job-related identity theft. E-Verify also ensures that all U.S. businesses operate on a level playing field by preventing the use of cheap labor. There are only two ways to level the playing field: allow all employers to hire anyone they want at any wages and working conditions they want to offer, or ensure that no employers can hire illegal aliens. E-Verify can protect Nebraska workers from unfair competition for jobs in our current period of high unemployment, and taxpayers won't have to subsidize employers' cheap labor by providing welfare, healthcare, education, etcetera. Children's Social Security numbers are especially valuable for employment purposes. Children do not use their Social Security numbers for employment, credit, or other purposes, so the illegal use of their Social Security numbers can go unnoticed for many years. When ordinary people become victims of identity theft, the legal repercussions can be enormous. It can cost victims hundreds of hours and thousands of dollars to undo the damage and recover their names and lives. Due to the growing presence of illegal aliens. Many states and local governments are seeking local solutions that they can apply to discourage the arrival of illegals. Instead of wasting time on comprehensive immigration reform legislation which focuses primarily on helping the people who break our laws, we need to pass true immigration reform, like LB1073 to protect the jobs, identities, and tax dollars of Nebraskans. Thank you. [LB1073]

SENATOR ASHFORD: Could you give us your name? I'm sorry. [LB1073]

SUSAN GUMM: Oh, I'm sorry. Susan Gumm, S-u-s-a-n G-u-m-m. [LB1073]

SENATOR ASHFORD: Thank you. [LB1073]

SUSAN GUMM: You're welcome. [LB1073]

SENATOR ASHFORD: I don't see any questions. Thank you, Susan. [LB1073]

SUSAN GUMM: All right. Thank you, Senator. [LB1073]

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SENATOR ASHFORD: Other proponents? Oh, there's a form. [LB1073]

SUSAN GUMM: I gave it to him. [LB1073]

SENATOR ASHFORD: Okay. Next proponent. [LB1073]

STEVE SIMPSON: (Exhibits 3 and 4) Good afternoon. I am Steve Simpson, S-t-e-v-e S-i-m-p-s-o-n. I am the president of the Lincoln Building Construction Trades unions, and I'm also executive board member on the Omaha Southwest Iowa Building and Construction Trades unions. The reason why we are proponents for LB1073 is we have members in our organizations that are suffering from the ill effects of people of unscrupulous contractors, for lack of a better way of putting it. I don't wish to pile on the illegal immigration issue either, but I am willing to say it's not very logical that we're going to be able to round up every person in this country and send them back. It would make more sense to us that we would be more logical to be able to punish people who employ people and knowingly employ people that are not here legally. Ultimately, what we come down to is, and it always boils down to this, is the...it's greed. A contractor is going to go out there, and he's going to try to hire somebody for less wages. He's going to try to skip around the fact that he has to pay any taxes or any unemployment insurance or anything else in order to do a job. But then he's going to hide behind the fact that he thinks that there's no skilled...there's a skilled work force shortage, etcetera, etcetera, which is a myth. There is no skilled work force shortage. We've got people that can come out and do the jobs any day you want. We've got people coming back from overseas that have been fighting in Afghanistan and Iraq that need places to go to work. We've got people that are unemployed around the country who are willing to take jobs for the right wages. So I would offer to you that...I brought to you that from the Omaha World-Herald, an article that was in August of last year about a roofing company who uses E-Verify. Is it perfect? No, but it's a great deterrent. And I think it would set up a situation just like a highway patrol person out with a speed gun. People are always going to slow down. So it is a deterrent. And that's what we're dealing with. And that's all I have. [LB1073]

SENATOR ASHFORD: I don't see any. Thank you, sir. [LB1073]

STEVE SIMPSON: Thank you. [LB1073]

SENATOR ASHFORD: Next supporter I guess. Any opponents? Alan. [LB1073]

ALAN PETERSON: (Exhibit 7) Mr. Vice Chairman and members of the Business and Labor Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I represent ACLU of Nebraska. We oppose LB1073. I have a very short time, and I want to mention that the policy arguments against that bill are set forth in as much detail as I could in a one- or

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two-page letter and an attached memorandum. There are ten policy reasons set forth in that memo about why E-Verify probably should not be expanded. It has still problems of accuracy, problems of creating a new national database which almost amounts to starting a federal identification system, a "show me your papers" mentality in our country. Instead of going through those, I ask you take a look at it before you would vote on this bill. I think the bill is certainly well intended. My expertise--if I have any--is constitutional law. This bill is unconstitutional. It's kind of boring, but there's a constitutional issue known as the supremacy clause. And it holds that when the federal government has taken over an area of law, that in many cases states are not permitted to legislate in that area. I'm afraid that LB1073 falls in the classification of trying to have a state law go too far and too far beyond the federal laws in an area where Congress has said, this is ours, not yours, states. And that is the regulation of immigration. In 2011, the U.S. Supreme Court decided a case called United States Chamber of Commerce, of all people, and the ACLU (sic) v. Whiteman (sic)...Whitely (sic) (Chamber of Commerce of the United States v. Whiting). The case is cited in my little memo. It held that there's an exception for regulation of immigration, and that states could legislate as to E-Verify and similar laws if they used as the sanction, the punishment, the licensing system in the state. But that's a narrow exception, and LB1073 doesn't rely on taking away somebody's license. Instead, LB1073 establishes a violation of the E-Verify system as a new crime, a Class III misdemeanor. In that case, the U.S. Supreme Court made pretty clear that where a state tries to go beyond the sanctions that the federal similar law provides, that that goes beyond what's allowed under the supremacy clause. This bill could probably be fixed if we had a big licensing...general licensing system in Nebraska that could be used, but we don't. I am out of time, and I want to respect that. I think it may well be unconstitutional. [LB1073]

SENATOR ASHFORD: You know, Alan, when we passed...Steve mentioned the legislation we passed six or seven years ago, and you helped us on that bill. And I think that bill is constitutional because it's grounded on the contract between the public entity and the particular employer. And that requirement that E-Verify be used I think is valid constitutionally because certainly the state can and already does require that contractees with the state...or contractors to the state have...you know, follow all laws including federal law regarding immigration. So I think that...and when we went through many of these same bills and the ideas when we did I think it was LB206. I can't remember exactly, or LB602, one or the other...and spent some while going through some of the analysis you were talking about and did come up with that bill. And I think what's interesting about it is that I think has, though voluntary, it has created a more voluntary use of E-Verify. I think as Mr. Kagan mentioned it, that had increased. As far as the comments made about employment, it seems that our unemployment, at least the state Nebraska, is almost full employment. We're almost at near a full employment status. That doesn't mean we shouldn't use E-Verify, but we don't have huge unemployment here. But one of the I guess more...at the time we did this bill, and we spent a year working on the bill that we passed six years ago, you know, we were trying

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to think, what would be the perfect system to use E-Verify? And I think at that time what became clear to us is no matter what you do with citizenship, if you had a work-permit system in place where you had a sufficient number of work permits available to whomever, someone who came here with status, got a work permit, that could be easily verified through an E-Verify system I believe. And I remembered going through that. My question though is this, one of the problems we had with applying this more broadly is not so much that E-Verify isn't a better system than it was, but because the status of individuals is always in flux, and that is often not picked up by the E-Verify system. Can you comment on that? [LB1073]

ALAN PETERSON: Yeah. There are many situations where a noncitizen immigrant is either in the process of trying to change that status legally or possibly has been ordered to be deported but has an appeal going. There are a number of those, probably a dozen in-between kinds of statuses. [LB1073]

SENATOR ASHFORD: Well, and there are, yeah, many of those. And if someone is in, again, the process of, you know, marrying a citizen, all those kinds of situations... [LB1073]

ALAN PETERSON: Yeah. [LB1073]

SENATOR ASHFORD: ...that occur...anyway, I guess my point only is is that, not that Senator Lathrop's idea is wrongheaded, it isn't, but that it does create compounded problems as you look through it. However, if we did have a system of work permits or a system of pathway or whatever that could be verified, then it would...it could possibly work. [LB1073]

ALAN PETERSON: And I would agree with Senator Lathrop and your last statement if this were drafted properly. There are six states that have already done a mandatory E-Verify. [LB1073]

SENATOR ASHFORD: Right. [LB1073]

ALAN PETERSON: But they never use the criminal sanction because that gets into the preempted area that... [LB1073]

SENATOR ASHFORD: Right. And I think we actually drafted it that way initially when we did our bill and had to pull back. But anyway, okay. Thanks. [LB1073]

ALAN PETERSON: Yeah, yep. [LB1073]

SENATOR ASHFORD: Senator Chambers...no, I guess there are no questions. [LB1073]

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ALAN PETERSON: Thank you, Senators. [LB1073]

SENATOR ASHFORD: The next opponent. [LB1073]

JENNIFER CARTER: Good afternoon. My name is Jennifer Carter, J-e-n-n-i-f-e-r C-a-r-t-e-r. I'm the director of public policy with Nebraska Appleseed, and I am actually not the staff member with the most knowledge on this topic. We have already submitted our letter, but I didn't think that actually I'd be able to stay. But since I'm here, I wanted us to appear on the committee statement in opposition. And our concern, I think, is that even if there have been some improvements in E-Verify, our understanding is it still is not as accurate as we would hope it to be. And that's at its current volume. And the sense is that if you increase the volume going through E-Verify, we would see larger problems and problems in the system again. And the only really solid study that we have seen from 2006 to 2008 showed that actually 54 percent of unauthorized workers were confirmed by this system in that time period and that others, particularly if they are foreign born, have a 20 to 40 percent more likelihood of getting a tentative nonconfirmation. And then there are problems with the appeals process because sometimes it's a very small problem, a typo on the application, something like that. And they should be able to appeal that, and there are lots of problems with notification and getting those corrected. And then people end up losing their jobs when they actually are...have the status to work. So we just wanted express those concerns and ask that maybe a little more work is done to see if this is really...can be possible and done in a way that is accurate and not jeopardizing work for people in the state. Thank you very much. I'm happy to take...well, I'm happy to try to answer questions. I don't know if I can. [LB1073]

SENATOR ASHFORD: Yes, Senator Wallman. [LB1073]

SENATOR WALLMAN: Yeah, thanks. This is a different committee for you to be in, huh? [LB1073]

JENNIFER CARTER: Yes. Yeah, we're not here as often. [LB1073]

SENATOR WALLMAN: Do you know...you know, like I was told last night, to get a card like for food stamps and everything, to get verified for that, it costs \$50. Is that right? [LB1073]

JENNIFER CARTER: You know, I don't know. I'm happy to check and see if we know what the cost is... [LB1073]

SENATOR WALLMAN: Okay. I figured you'd know. [LB1073]

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JENNIFER CARTER: ...but I'm not aware. I can ask our staff on that. [LB1073]

SENATOR WALLMAN: Thanks. [LB1073]

JENNIFER CARTER: Thanks. [LB1073]

SENATOR ASHFORD: Thank you. [LB1073]

JENNIFER CARTER: Okay. [LB1073]

SENATOR ASHFORD: Okay, next opponent. Neutral? Senator Lathrop...Restaurant Association. [LB1073]

JIM PARTINGTON: (Exhibit 5) Chairman, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I appreciate the opportunity to represent the Nebraska Restaurant Association and testify regarding LB1073. The National and Nebraska Restaurant Associations expect that E-Verify will be made mandatory as an integral component of federal comprehensive reform legislation, and our association believes that designing an employment authorization verification system is a federal role. Actions by 50 different states and numerous local governments in passing employment verification laws create an untenable situation for employers and their prospective employees. E-Verify has experienced dramatic growth both in terms of usage by employers and the number of queries processed. United States Citizenship Immigration Services has taken a number of steps since 2005 to strengthen E-Verify, but some aspects of the program remain contentious. Security experts worry that it is not perfectly reliable, business groups see it as costly, and labor and immigration advocates are concerned about the negative effects of E-Verify on some legal workers. Because of these concerns, we believe that a gradual phasing in of the requirement for E-Verify based on the capacity and reliability of the system should be considered and there should be temporary exemptions or alternative solutions for operations below a minimum employee threshold. Small business and agriculture are different. Many businesses of this type do their own hiring without dedicated staff. This is one reason why E-Verify is still voluntary under federal law. Lawmakers recognize that making it mandatory could overburden sectors of the economy responsible for most job creation such as small business and agriculture. Smaller employers do not have universal access to high-speed internet connections and are less likely to have human resources or legal staff. The Nebraska Restaurant Association supports an orderly and phased implementation of E-Verify as part of comprehensive immigration reform. This concludes my testimony, and I'd be pleased to answer any questions that you may have. [LB1073]

SENATOR ASHFORD: Jim, I just have one question. As far as the burden is concerned, you already are required to have an I-9 form on file, correct? [LB1073]

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JIM PARTINGTON: That's correct. [LB1073]

SENATOR ASHFORD: So with this, it wouldn't be...I don't believe under the federal law there's a requirement of a I-9, is there, of an I-9 form if you use E-Verify? I don't think there is. I think it replaces the I-9. [LB1073]

JIM PARTINGTON: No, it won't replace the I-9. [LB1073]

SENATOR ASHFORD: It doesn't replace it? [LB1073]

JIM PARTINGTON: The I-9 would be the foundation for entering the information into... [LB1073]

SENATOR ASHFORD: So you still have to get the written report...or the written form. Isn't there an expedited way to do that, or do you have to complete the I-9 form? Maybe you do. [LB1073]

JIM PARTINGTON: I'm sorry, I... [LB1073]

SENATOR ASHFORD: Do you have to complete the I-9 form under the voluntary E-Verify system? [LB1073]

JIM PARTINGTON: You have to complete the I-9 form regardless. [LB1073]

SENATOR ASHFORD: Okay, so that's still there. And in the Senate bill I thought there was some way of...at least the Senate bill, which is the only real big bill that has all that in it, that there was...that E-Verify replaced some of those recordkeeping requirements. But maybe I'm wrong. Do you know that? [LB1073]

JIM PARTINGTON: I don't know that for sure. [LB1073]

SENATOR ASHFORD: Okay. [LB1073]

JIM PARTINGTON: I haven't heard that the I-9 was going to be replaced. The I-9 is a separate issue of very great concern to business mostly because of the administrative detail because... [LB1073]

SENATOR ASHFORD: Right, and I thought that E-Verify was...anyway, that's maybe my imagination. But, okay. Thanks. [LB1073]

JIM PARTINGTON: Yeah, okay. [LB1073]

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SENATOR ASHFORD: Any other neutral testifiers? Senator Lathrop. [LB1073]

SENATOR LATHROP: Just briefly to reiterate my point which is if you are engaged in an industry like cement finishers, for example, and you are trying to run your business in an ethical way, pay a good wage, pay benefits, and do the things the law requires including withholding unemployment, work comp, those kinds of things, and you're trying to compete with somebody who's right next to you in the yellow pages who is hiring people, calling them all independent contractors, or they hire them and make no effort to determine whether they're in this country legally and have the authority or the permission under our laws to work, then you take advantage of them. You don't have to cover them with work comp because when they get hurt, you take them to the hospital, you drop them off, and you don't stick around. Nobody is covered by work comp. And it's the unscrupulous employer that we all pay for. And they get a competitive advantage of about 30 percent when they don't do withholding, when they don't do...provide work comp coverage, and they don't pay unemployment benefits. And that's the reality. And while I favor comprehensive immigration reform, and we desperately need it, there are a lot of people that are trying to run a business who are at a competitive disadvantage to the unscrupulous contractor. That's what it's designed to do. And perhaps there is a way to...I appreciate Mr. Peterson's comments every time he comes into here or into Judiciary Committee. And maybe there's a way to clean this up in a way that it's not unconstitutional. But it's certainly an expression of frustration by state lawmakers that we don't have comprehensive immigration reform. [LB1073]

SENATOR ASHFORD: Thanks, Steve. [LB1073]

SENATOR LATHROP: Thank you. [LB1073]

SENATOR ASHFORD: (Exhibits 6, 8, and 9) Any...that concludes all the hearings I believe except I have to enter into the record I guess. We have a letter from the Operative Plasterers' and Cement Masons in support of the bill. We have a letter from the Nebraska Grocery Industry Association in opposition to LB1073 and the Nebraska Cattlemen also opposed to LB1073. With that, the hearing is concluded. [LB1073]