

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Business Committee March 18, 2019

**B. HANSEN:** [RECORDER MALFUNCTION] Hansen, I represent the 16th Legislative District in Burt, Cuming, and Washington Counties, and I serve as Vice Chair of the Business and Labor Committee. I'm going to be holding the fort down here for a little bit because our chairman is in another hearing right now introducing another bill. We will start off by having other members of the committee and committee staff do self-introductions, starting with Senator Chambers on the right. On the right.

**CHAMBERS:** Ernie Chambers, District 11: Omaha.

**LATHROP:** Steve Lathrop, Legislative District 12.

**HALLORAN:** Steve Halloran, Legislative District 33.

**SLAMA:** Julie Slama, Legislative District 1.

**B. HANSEN:** OK. And also assisting the committee is our committee pages, Hunter and Ashley. This afternoon we'll be hearing five bills and we'll be taking them in the order listed outside the room. On each of the tables in the back of the room you will find testifier sheets. If you are planning to testify today, please fill out one and hand it to Keenan when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed in the committee statement for particular bill you must testify in that position during the bill's hearing. If you do not wish to testify but would like to record your position on a bill, please fill out the white sheets in the back of the room. Also note the Legislature's policy that all letters for the record must be received by the committee by 5:00 p.m. the business day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you do have any handouts that you please bring nine copies and give them to the page. If you need additional copies, the page can help make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement we will hear from supporters of the bill, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name. Please also spell them out for the record. We will be using a five-minute light system today. When you begin your testimony, the light at the table will turn green. The yellow light is your one-minute warning and when the red

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light comes on we will ask you to wrap up your final thoughts. I would remind everyone, including senators, to please turn off your cell phones or put them on vibrate. With that, we will begin today's hearing with LB577. Welcome, Senator Vargas.

**VARGAS:** Thank you very much, Vice Chairman Ben Hansen and members of the committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I'm proud to represent District 7, the neighborhoods of downtown and south Omaha in the Nebraska Legislature. LB577 builds upon previous work I've done within the same set of statutes: The Employee Classification Act. Now, as the committee is aware, and for some new members of the committee, this law imposes penalties on employers who misclassify employees as contractors. This practice allows employers to avoid paying unemployment and other taxes on workers and from covering them on workers' compensation and unemployment insurance. Employee misclassification reduces labor costs for the employer but creates an unlevel playing field for businesses who do things by the book in terms of following our state labor laws. Workers who are misclassified as independent contractors work without the legal protections typically afforded to employees. And this practice has a negative consequences for our state government, because when employees aren't paying taxes we are shorted in tax revenue. Additionally, there are often consequences for workers' families because many times at the work sites where employers are violating the Employee Classification Act there are other violations of labor laws, including things that relate to worker and public safety and public health. Unfortunately, there is a very recent example of this that I can point to which I hope will better illustrate the problem that I will hand out to members of the committee. Just last week two construction workers were injured and are still hospitalized because of an accident at a work site. A boom lift came into contact with a live power line, which caused a very powerful electric shock. That has caused one of the workers to fall 40 feet from the lift he was on and a current shot through his body. Another worker went to help him and he also suffered an electric shock who had, and injuries to his hands. Now, I'm told that this is at a work site of a subcontractor who had workers who were really employees but were misclassified as independent contractors. The accident occurred because the employer took shortcuts when it came to worker safety and chose not to shut the electricity to the site off while work was being done. That is where LB577 comes in. This bill is modeled off of successes in two other states, Florida and Massachusetts, that would allow the Commissioner of the Department of Labor to expedite investigations on work sites where there are health

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and safety violations and to shut down all work at the site until the investigation concludes. Now the reason it isn't in the Employee Classification Act set of statutes is to hopefully streamline and provide some efficiency to this whole process. For example, with the most recent issue that I mentioned, perhaps if an investigator from the department was at the work site responding to a tip about misclassified workers and he or she noticed that there were some other violations, the issue could have been identified at the work site and it could have been put to a stop quickly. This would have been the alternative to the current system, which would require a separate investigator to go to the site and evaluate the potential health and safety violations. I'm very thankful, and I've mentioned this before on the record, that Commissioner Albin has been a really good steward of this program and has been trying to do everything they can to not only execute on it but on work on places to then improve it, make sure we have the staff to support it. So we did have a brief exchange of the Department of Labor and I'm sure we'll hear from Commissioner Albin or someone from his office on this. My understanding is that there is an issue, there may be a training issue that needs to be solved in this statute. The misclassification investigators may not be currently qualified to determine whether this is a health or safety violation at work site. It's my hope that we can work with the department and this committee to iron it, iron out any processes or technical things that could make this bill workable. The last thing I'll, I'll state, and I'll hand out a larger report here on the fiscal 2004 workers compensation system, this is just for Massachusetts. Some of the language, I'll also pass this out. This was written specifically to allow the ability for the commissioner of labor to then have this authority, rather than saying that they shall do it. So the decision making on whether or not this would happen still lives within the purview of the commissioner which is who we, is executing on, on this act and we believe has the, has the say and autonomy to make those decisions. But we wanted to make sure to clarify that they are allowed and may do everything they can to then follow through on this complete component for public safety. So with that, I'm happy to answer any questions and will just thank the committee.

**B. HANSEN:** Thank you, Senator Vargas. Is there any questions from the committee at all? All right, seeing none, thank you, Senator Vargas. And we will--

**VARGAS:** Thank you very much.

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**B. HANSEN:** And we'll begin with any proponents for LB577.

**JUAN ALVARADO:** Good morning, Senators. My name is Juan Alvarado, J-u-a-n, Alvarado is A-l-v-a-r-a-d-o. My address is 3060 Titus Ave, Omaha, Nebraska, 68112. I'm here on behalf to test, testify partly on behalf of the incident that happened last Monday. I've been meeting with the family most of the week. And the actions that happened was to, on top of the 30 percent that they saved turning in the bid, they wanted to save an extra \$800. So somebody's life, at 25 years old, changed for \$800. I am actually born and raised in Mexico, and I migrated here because the safety standards that I was taught in the construction field meant something. So when somebody would have drove in this particular job site, they have would clearly understood that they were in violation of an OSHA act. OK? This is cage that they were on his four feet by eight foot, OK? The building between the post and the building is 12 feet. Nobody in their right mind should have been able or allowed to get up there and only two feet of separation between the metal cage and that arc and that post of electricity. He didn't touch the post, it became an arc. It was that close, to save \$800. He already misclassified these workers. They're employees, but because they were calling them independent contractors they were able to land the bid, that this bid Omaha awarded \$1.8 million in TIF money on top of it. So as a taxpayer, I promoted this, this job site. So like I said, I'm here because we as workers in the Hispanic community are tired of this. I see this all the time, especially with people who work on high, high, high levels of risk doing a labor that we can't complete in public jobs. They always want the lower bid, the lower bid is gonna get you this. I can tell you this family will never find itself working with his brother. He will never, ever feed himself. He was just trying to provide for his family, now he's not going to be able to do that at age 25 years of age. So I'm here to attest that this impacts our communities, not just the south Omaha community, but the whole Nebraska community. We want to make a better state than the one I left a long time ago. And please help us do this. This is a community asking that we're worth more than \$800. We really are, and we'll show it day by day by work. Thank you. I can ask you-- any questions that you have.

**B. HANSEN:** Yeah, thank you, Mr. Alvarado. Appreciate you coming. Are there any questions from the committee at all? Seeing none, thank you. All right, our next proponent?

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**FELICIA HILTON:** Hi. My name is Felicia Hilton, F-e-l-i-c-i-a H-i-l-t-o-n. I am the Government Affairs Director for the North Central States Regional Council of Carpenters and we are here in favor of LB577. One of the main reasons that we're in favor of it is because of the way that Senator Vargas tied it back into the Misclassification Act, which doesn't require the commissioner of the DOL to have a fiscal note. It basically fits right in with the statute and what he is already allowed to do. This just makes sure that he has the ability to stop work where he sees that public safety and public health for the workers, in particular, are in threat. This bill, part of the reason why we're supportive of the bill is because we want to make sure that the taxpayers of Nebraska aren't constantly paying for injuries that are caused by workers' comp and they shouldn't fall back on the taxpayers. So when you look at misclassification you have a two-fold. You have workers that are being misclassified, so you have contractors not paying state and federal or federal, state local taxes if applicable; they're not paying workers' comp; they're not paying unemployment insurance; and they're not paying taxes on these employees. In the case of an accident like what happened on Monday unfortunately, there is no workers' comp. And so with his lifelong injuries, he will be a responsibility of the Nebraska taxpayers probably for life. And so that's why we're asking that if there isn't, if, if an inspection happens and you see dangerous things happening on the job site, the chances are not only are the workers not trained but they don't have workers' comp. We were out there today to check out the job site. Once again, we see another young man in the bucket truck and he's not tied off. When they saw one of our guys filming it, they decided, oh, tie him off. So on this job site, they still don't care. And it's because, you know, fines are just a part of doing business when they get fined \$500 for these violations. So we're asking that you guys consider this legislation, not just in the sense of what the commissioner is able to do as far as stopping work but the actual dangerous work that is in the construction industry as a whole. And that workers working without workers' comp is something that just should not be tolerated anywhere when it comes to construction. Because of the nature of the injuries that happen, a lot of times the people that do get injured on construction sites end up not being able to work again or fully work again. And so they are reliant on workers' comp either for the rest of their life because the type of injury that happened, like with this gentleman. And if they don't have workers' comp then it's two-fold. So there no one pay taxes of any kind on the front end and now we have this, this young person who obviously was employed by someone because he was in someone's bucket truck. Someone

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rented that bucket truck and that's who he was working for, and he's listed as an independent contractor and no one on the job site knows who he was working for or any of this. But we do know his injury happened on the job site, he was hurt on the job site, and he was in someone's bucket truck on the job site. And that's why we're seeing workers' comp being essential to work stoppage and unsafe conditions should be allowed by the commissioner to, to basically stop work under those conditions. So unless there is any questions?

**B. HANSEN:** Yes, Senator Lathrop.

**LATHROP:** Ms. Hilton, this actually was my bill a long time ago, the misclassification bill, and its basic design is to stop the practice of somebody employing-- and you run into it a lot, the carpenters do, where somebody will start a drywall company and they will hire 10 guys and call them all independent contractors, right? Then they get a, a competitive, competitive advantage because there's no withholding, there's no FICA, there's no unemployment, there's no work comp, there's nothing. They get it, a 30 percent competitive advantage over the, the contractor that's doing it the right way.

**FELICIA HILTON:** Right.

**LATHROP:** And after that bill passed, there was some difficulty getting the Department of Labor to enforce it. The carpenters were good about identifying job sites where this was taking place. They contact the Department of Labor-- Mr. Albin was not the commissioner at the time, I'll just say-- contact the Department of Labor and then they go out and get them to pay 25 bucks and register as an independent contractor and completely not enforce this provision.

**FELICIA HILTON:** Right, that's--

**LATHROP:** What's your experience in, say, the last couple of years, with getting the-- well, let me back up. The carpenter is still going out and identifying job sites where people are misclassified as independent contractors when they're actually employees.

**FELICIA HILTON:** Yes.

**LATHROP:** And can you tell us how often you're complaining about that to the Department of Labor?

**FELICIA HILTON:** Oh, we complain about it quite a bit. It's really getting the workers to want to complain about it because it still has

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to be filed by the individual worker that they are being misclassified or that their wages were stolen and the thing--

**LATHROP:** And if you, if you identify some, a job site, and let's say some apartments are going up and they have folks in there doing drywalling who are all working for the same person but all identified as independent contractors, do you or do the carpenters make a complaint to the Department of Labor?

**FELICIA HILTON:** Yes. Yes, we do.

**LATHROP:** Do they go out there now? Are they enforcing this?

**FELICIA HILTON:** I believe they, they take notice but I'm not sure of the rigor in which they're enforcing just because, you know, there's some, I believe, some legality into how we can work with the department in, in those cases as far as what they're investigating.

**LATHROP:** You know what they do if they go, are they going out to the job sites where you're identifying misclassified employees at all?

**FELICIA HILTON:** I think Juan might know that a little bit better than I would, if they were actually attending and showing up at those job sites.

**LATHROP:** Do you have a conclusion about how well the department has done enforcing this act in, say, the last two years?

**FELICIA HILTON:** I have-- I mean, I can't say I have a solid conclusion but I do know that they have taken the concerns seriously in the sense of hiring bilingual investigators and putting more resources towards trying to go and look at misclassification. But as far as inspecting job sites and making sure they're safe, I still think that there's some expertise needed there when it comes to construction sites specifically to be able to know that you're looking at a construction site with either trafficked labor or folks that are being misclassified. Because that's what we run into most cases. There's workers that don't even know what city they're in, they don't know what state they're in. And we know right off the bat, I mean, if workers are from Guatemala or Honduras, there's not a lot of drywall in Guatemala and Honduras. So we know that they're coming here to do that. They're not doing it there and then coming here.

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**LATHROP:** And then when somebody gets hurt, as this case illustrates, they essentially drop them off at the emergency room and leave?

**FELICIA HILTON:** Yeah, they essentially drop them off.

**LATHROP:** And then no work comp, hospital doesn't get paid. The taxpayers, no one's contributing to our--

**FELICIA HILTON:** No.

**LATHROP:** --the cost of running government.

**FELICIA HILTON:** No, we actually have a case in Minnesota that we worked with the attorney general in Minnesota to go and look at what we call labor brokers, people that can bring in anywhere from 100 to 200, 10, 15 guys to take on big projects. There was a broker in Hennepin County in the Twin Cities and he had a worker who broke his back, you know, a piece of precast concrete fell on him, broke his back. They took him to the emergency room and said that he was moving a refrigerator. Well, when we found out that basically they use deportation and things like that against workers so that they don't speak up for these types of injuries and injustice. When it all came out, because we were able to get the workers to actually testify to what really happened, they charged the labor broker and he's now going to go to court and all kinds of things. But he is for trafficking labor. It's the first case in Hennepin County and in the state of Minnesota where they actually took a case for labor trafficking.

**LATHROP:** OK, thank you for your answering the questions.

**FELICIA HILTON:** All right, thank you.

**B. HANSEN:** Any other questions? Seeing none, thank you very much. Our next proponent who would like to testify? Any other proponents? OK, we do have one letter for the record from Jean Petsch from AGC of the Nebraska Building Chapter in support of LB577. Are there any opponents that wish to testify? Welcome.

**JOHN ALBIN:** Thank you, Senator Hansen, members of the Business and Labor Committee. For the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I'm the Commissioner of Labor. And I appear before you today here in opposition to LB577. As proposed, LB577 amends the Employee Classification Act to authorize the commissioner to cause a contractor to cease work on a job site if the commissioner believes the health, safety, and welfare of the general public is being

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threatened or that a contractor is operating in violation of the Employee Classification Act. This bill does not define the scope of the safety review required by the department's on-site investigators or the amount of training and safety issues that the department's on-site investigators would be required to possess. Even an OSHA-style inspection of the working conditions at the work site would not satisfy LB577's requirements because an OSHA inspection is limited to the health and safety of the workers on site, not the general public. LB577 will require some level of safety assessment as the potential impact of the work at the construction site on the general public. Misclassification affects the misclassified individual and his or her eligibility for unemployment and workers' compensation benefits, misclassification effects honest contractors competing with a contractor who uses misclassification to underbid its competitors. But misclassification in and of itself does not affect the health and safety of the general public. LB577 seems to create a duty to inspect as to health and safety issues that may affect the general public. That duty would then expose the state of Nebraska to potential liability under the State Torm-- Tort Claims Act. If an investigator visits a construction site and a week later work perform-- a member of the general public is injured due to work performed at that work site, LB577 would seem to suggest the state could potentially be held liable for injuries to persons or property that occurred. LB577 authorized the commissioner to shut down a work site pending the outcome of an investigation or prohibit a contractor from continuing to work on a site even if the contractor is, even before the contractor is accorded a due process hearing. If the intent of the bill is that a shutdown can only occur after notice and hearing on the violation and any appeals under the Administrative Procedure Act then the work at the site in question will likely be completed before the constrict-- hearing and appeals period are concluded. That concludes my testimony and I'd be happy to answer any questions you might have.

**B. HANSEN:** Thank you, Commissioner Albin. Any questions from the committee? Yes, Senator Lathrop.

**LATHROP:** I've got a couple. Commissioner, if this were not an evaluation or an assessment of the health and safety of the general public but rather the workers on the job site would your opposition go away?

**JOHN ALBIN:** It would lessen, it wouldn't go away. I mean, our inspectors are trained to go to check for things like workers'

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compensation coverage, making sure that somebody show-- that every person there at the work site that they investigate is either a registered contractor or an employee of somebody, a registered contractor. They really don't have any training in health and safety issues. And just given our experience with the OSHA 21(d) program, giving a full OSHA-style inspection such as whether a line, electrical line is locked out would require a lot more training than the individuals that we have in our employ now.

**LATHROP:** OK, so health and safety is not in your wheelhouse. The other part of the bill would authorize you to cause the contractor to cease performance of services on site if there was a violation identified, a misclassification, violation identified. And it sounds like you guys do, you can recognize when there's misclassification.

**JOHN ALBIN:** That we can do.

**LATHROP:** So if this health and safety of the public or even those that work on the work site is taken out of the bill, and we're just talking about your office shutting down a work site when you find people that are misclassified, if that's all that's left in the bill does your opposition go away?

**JOHN ALBIN:** I guess--

**LATHROP:** You're willing to do that?

**JOHN ALBIN:** My question would be whether, right now within the Employee Classification Act if we find an individual we believe was in violation, we have to give notice and hearing to the employer before we can actually assess a fine. So I guess part of one of my questions would be, and I would hope that if the bill is advanced it would be clarified is, you know, is this an absolute shutdown pending hearing or is this a shut down after notice and hearing? Because, as I mentioned in my testimony, if it's after notice and hearing, in a lot of the cases the individuals in question will be gone. You know, they come in and do drywalling job and they're gone in a matter of days. And it's simply not possible to get a hearing conducted, which has been one of the barriers to enforcement of the program is that by the time we get to a notice and hearing the workers have moved on. They are not always the most cooperative witnesses for a variety of reasons. And some do, obviously. But so I guess I had to, you'd have to tell me a little bit more about the scope that you would imagine it

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would be. Are we doing notice and hearing first like we do with regular violations versus a shutdown pending resolution of the issue?

**LATHROP:** What if it's a shutdown pending resolution of the issue? Do you have authority if we give you that to do such a thing?

**JOHN ALBIN:** Well, if you give us authority to do it, we can do it. Yes.

**LATHROP:** All right. If we gave you that authority would you oppose the grant of that authority in a bill?

**JOHN ALBIN:** I guess it wasn't an option presented before me before. I'd have to talk a little bit to people involved to see what their thoughts are.

**LATHROP:** What's being done now to enforce the Misclassification Act?

**JOHN ALBIN:** Right now we have investigators that go out in the field. They've been increasing their numbers of inspections. Last year, last calendar year there was 601 on-site inspections. In each of the on-site inspections a check for two programs coverage, actually. One is the Contractor Registration Act to be sure that the people are there are registered contractor. And in order to be a registered contractor you do have to provide us evidence of a workers' comp insurance. And they also check on the Employee Classification. And to give it a rough shorthand, it's basically the workers on site either have to be an employee of a registered contractor or they have to be a registered contractor. And remember under the act, OK--

**LATHROP:** If you get on-- this is a frustration for me. If you get on the site that they're drywalling an apartment complex and you go out there and out in front is a big truck that says "Joe's Roofing". And, and you find Joe and or you talk to some of the employees and they go, no, I'm not an employee at Joe's, I'm an independent contractor and they don't have-- and they're not a registered contractor, what do you do?

**JOHN ALBIN:** When that would either--

**LATHROP:** What happens? Are you, are you shutting them down or are you just making them register even though there's 25 guys out there drywalling and they're all independent contractors? Do you see a violation of this act or do you simply make them register?

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**JOHN ALBIN:** It depends upon the circumstances. There was an instance where we basically had a line out in front of the office with people all coming in with cash to register. None of whom at that time spoke English and we refused to take their registrations. If someone comes to a site and we find someone's in violation, we will do some investigation as to, and try and talk to them-- and with the bilinguals, it has helped-- about their status and, and whether they do work for other people. We generally if we believe the person is a contractor we'll then help them register rather than just fine them. And but the contractor registration issue presents an issue on the employee classification side because, as you know, under the act, if someone is registered as a contractor then there's a presumption raised under the statute that that individual is in fact an independent contractor. And then you add in the factors that we send out basically a show-cause order requiring the person to appear for a hearing that they are employing or misclassifying people. Hearings take time because they get employers-- attorneys involved. We contract outside for legal, for hearing officers in that case. So it's weeks, if not months before a hearing comes up. So it delays the impact of our inspections or--

**LATHROP:** Just in the last couple of years how many contractors have you cited for a violation of the Misclassification Act?

**JOHN ALBIN:** The numbers in the annual reports and I don't have that in front of me. It sticks in my head it was five last year.

**LATHROP:** How many?

**JOHN ALBIN:** Five.

**LATHROP:** Five?

**JOHN ALBIN:** Yes.

**LATHROP:** Out of 600, out of 600 site--

**JOHN ALBIN:** Inspections, yes.

**LATHROP:** You got five guys?

**JOHN ALBIN:** Yes.

**LATHROP:** OK, that's all I have.

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**B. HANSEN:** Are there any other questions? All right, seeing none, thank you, Commissioner.

**JOHN ALBIN:** Thank you.

**B. HANSEN:** Are there any other opponent testimonies? OK, seeing none, are there any that wish to testify in a neutral capacity? OK, seeing none, Senator Vargas, you are welcome to close.

**VARGAS:** Thank you very much, Vice Chairman. Not too much, I just want to thank the committee. This was written specifically so that the authority would be given and empowering the Commissioner of Labor to make these decisions. My hope is working with Commissioner Albin and following some of the lines of questioning that Senator Lathrop brought forward is that there is a, there's a pathway forward to make this work. I don't think it's a, I don't think it's a heavy lift. We don't want to make overreaching assumptions that investigators do more than what they are intended to do. But we do want to make sure we're enforcing this act. And that's something that I've done here for the last two years, and I've been in front of many of you for this a couple of years now. Because the data is showing that there is still an issue. And I would be the first to say in conversations with the commissioner and the Department of Labor that they are aware it's an issue. There's a difference between, I think, some of what we proactively find and what we reactively find. And this is making sure that we provide some more authority to the Commissioner of Labor so that they can do more of their due diligence for this. I'm happy to look, to work with them so that we can get to a place where this is, this works for everybody. With that, I thank the committee and am happy to answer any questions.

**B. HANSEN:** Are there any questions for Senator Vargas? Senator Crawford.

**CRAWFORD:** Thank you, Vice Chair. And thank you, Senator Vargas. So just to be clearer, would you be in support of if the health and safety and welfare was directed about to the workers as opposed to the general public?

**VARGAS:** If, I'm happy to work on it to address some of those issues in a sort of role, role clarity for that.

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**CRAWFORD:** Right. And would it be your understanding, your expectation that this ability to stop work at a workplace would be also for misclassification?

**VARGAS:** Yes.

**CRAWFORD:** All right, thank you.

**B. HANSEN:** Any other questions? Yes, Senator Halloran.

**HALLORAN:** Thank you, Vice Chair Hansen. I should have probably asked this of Commissioner Albin, but what, what's the responsibility of other agencies, say, such as OSHA, to find these problems and address them from the, from their venue? I mean, there's a lot of, a lot of local agencies that are supposed to be responsible for safety on the job.

**VARGAS:** Yeah. I can't tell you right now off the top of my head. But we can look into that and get you some information.

**HALLORAN:** Because it seems like there's a, there is, there appears to be a, there appears to be a lapse somewhere. But I'm sure that from, from the federal level they have tremendous authority over the safety on job sites. It's just a question, I don't have a--

**VARGAS:** Yeah. Yeah, I would, and again, without having the information in front of me, I don't want to misspeak. But I think there might be an issue, a difference in issues regarding those two different things. But I'll look into it.

**HALLORAN:** Thank you.

**B. HANSEN:** Any other questions? All right, thank you, Senator Vargas.

**VARGAS:** Thank you very much.

**B. HANSEN:** That will close the hearing on LB577 and we'll now open the hearing on LB428. Welcome, Senator Friesen.

**FRIESEN:** Chairman Hansen, good to see you guys. Chairman Hansen, members of the Business and Labor Committee, my name is Curt Friesen, and I represent District 34 of the Legislature. And I appear to you today for LB428. Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I introduced LB428 because of an issue affecting our highway construction work force. As you might suspect, Nebraska's weather conditions only allow

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roads and bridges to be built during part of the year, typically April through the middle of November. During that time period Nebraska's highway contractors are employing thousands of Nebraskans. However, when the projects finish in November there is not enough other work to keep many of the employees busy. So many of the employees are laid off over the winter. The contractors cannot afford to lose this skilled work force to other jobs or other states with warmer weather so they do what's something that's called attachment. This allows the employee to receive unemployment benefits for that period of time when the employer has no work but to then be scheduled to return to work when spring comes and road construction begins again. An issue arose this winter when our State Department of Labor announced that they were going to shorten the attachment period to just eight weeks. This became a major problem for highway contractors because the construction off-season is far longer than eight weeks. And I should note here that the construction season is set by our Department of Transportation. Contractors are not permitted to work on projects outside of that season. The change announced by the Department of Labor resulted in ongoing conversations with the industry, the Governor's Office, and the two departments. In January, I introduced a placeholder bill to have a vehicle to solve this issue. In the meantime, the conversations have been productive and the result is that the amendment that I have passed out to you today approach-- proposes to maintain the longer attachment for highway construction workers while at the same time increasing the contributions into the unemployment fund that those employers would make. It increases contributions by expanding the wage base to \$24,000 that these employers would contribute to the unemployment insurance premiums on. I want to emphasize that the amendment is drafted to only impact a very small number of employers and it should take care of the fiscal impact associated with the original version of LB428. And there will be representatives from the Department of Labor and the construction industry to discuss this further. And I would be glad to answer any questions, if I could.

**B. HANSEN:** Thank you, Senator Friesen. Are there any questions for Senator Friesen? Yes, Senator Crawford.

**CRAWFORD:** Thank you. Thank you, Vice Chair Hansen. And thank you, Senator Friesen. So this bill allows, allows us to address the problem with the application period just being eight weeks. Does it change the application period or it changes something else to address that?

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**FRIESEN:** It just, what they tried to do was they shortened up that attachment period, they call it. And so that wasn't near long enough for the construction industry. So this bill lengthens that back out but they contribute more money in order to cover the cost of it to take care of the fiscal note that was attached to it.

**CRAWFORD:** The employer contributes more money?

**FRIESEN:** Yes.

**CRAWFORD:** To take care of that [INAUDIBLE]? Thank you.

**B. HANSEN:** Are there any other questions? Seeing none, thank you, Senator Friesen. Are you staying to close? OK. All right, and we will take our first proponent testimony for LB428. Welcome.

**SHARI SANNE:** Good afternoon, Vice Chairman Hansen and members of the Business and Labor Committee. My name is Shari Sanne, that is spelled S-h-a-r-i S-a-n-n-e. I am the human resources director at NEBCO, Inc. My duties include recruiting, hiring, training, and performance management of employees, inclusive of heavy highway construction employees. NEBCO is a member of the Associated General Contractors Nebraska Chapter, also known as AGC. And I am a member of the AGC Workforce Development Task Force committee. I am testifying in support of LB428 as amended by AM699 on behalf of AGC. AGC is a trade association of highway contractors who perform highway, bridge, and municipal utility infrastructure work across the state. The heavy highway construction industry lays many of their field employees off at the end of the construction season, which is typically mid to late November. During the layoff season employees are considered attached to their employer, then the attached employees are called back to work prior to the spring construction season. Last fall when the construction season ended and layoffs began, it was brought to our attention that the Nebraska Department of Labor changed their attachment period from what had been in effect for many years. This attachment rule allowed employees to be laid off during the off season and receive unemployment compensation. When the new construction season begins, the employees would be called back to work. The rule to be imposed by the Department of Labor, Labor would significantly reduce the attachment period. The Department of Labor rule is a major concern for employers and employees. The major concern of employers is they would lose a good percentage of their work force beginning with the new construction season. The major concern of the employees is they would have to search for new employment when many have worked for

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their current employer for several years. AGC Nebraska quickly began to talk with the Nebraska Department of Labor and the Governor's Office to discuss the negative impacts and the agency's rule change has on the high, heavy highway construction industry, as well as their work force. Fortunately, the Department of Labor understood those concerns and agreed to delay the enforcement of the rule until April 1, 2019. AGC Nebraska, the Department of Labor, and the Governor's Office have met numerous times during the winter and agree upon a compromise, which is LB428 as amended by AM699. The heavy highway construction industry has agreed to pay a little more in unemployment insurance contributions and, in return, their laid off employees will receive attachment status during the off season. The AGC Nebraska strongly supports the passage of LB428 as amended. This concludes my comments and I'd be glad to answer any questions that you may have.

**B. HANSEN:** Thank you, Ms. Sanne. Are there any questions from the committee at all? Seeing none, thank you for your testimony. Are there any other proponent testimony? Welcome.

**JUSTIN GRUSING:** Vice Chairman Hansen and members of the committee, my name is Justin Grusing, J-u-s-t-i-n G-r-u-s-i-n-g. I manage the Nebraska division of Dustrol, Inc. Dustrol is a heavy highway contractor. Well, I also served as a vice president, or as a past president for the Association of General Contractors of Nebraska. I'm testifying in support of LB428 on behalf of the AGC. AGC supports AM699, which becomes the bill. Due to our ongoing challenges in finding and keeping good employees, we believe this is the right thing to do. The heavy highway construction industry lost a good number of their work force a decade ago due to the recession. Much of our current work force is reaching retirement age. AGC Nebraska has been working hard to help inform young people about the benefits of pursuing a career in construction. AGC sponsors a trade school program, scholarship program; the AGC has also invested heavily in the Central Community College Hastings Equipment Operator Program and our members visit high schools to promote the many opportunities in the construction industry. Training is a major investment in our construction companies. It would be detrimental if we had to factor in replacing our seasonal work force every year. The construction season is set in Nebraska by air temperatures since concrete and asphalt can't cure when it's cold and wet. Thus, the specifications restrict our work to April through November. AGC strongly supports the passing of LB428 and AM699, which becomes the bill. Once again, thank you,

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Chairman Hansen and members of the committee. I'd be happy to answer any questions you might have.

**B. HANSEN:** Thank you, Mr. Grusing. Is there any questions at all from the committee? Seeing none, thank you for testifying. Appreciate it.

**JUSTIN GRUSING:** Thank you.

**B. HANSEN:** Are there any other proponents that wish to testify? Welcome.

**BRAD WEGNER:** Good afternoon. Senator Hansen and fellow members of the Business and Labor committee, my name is Brad Wegner, B-r-a-d W-e-g-n-e-r, and I am the vice president of Midlands Contracting in Kearney, Nebraska. I'm also a past president of the Nebraska Chapter of the National Utility Contractors Association and on behalf of 84 members of that association I'm here to testify in support of LB428. Our members build the sewer and water mains and also the electrical systems for you and your constituents all over the state. And we want to throw our name in the hat, too, for the issues that AGC members have already talked about. We have a number of members who have to go through the layoff process during the winter for the same reasons, especially this winter has been a long one. We go through the same training and we fight every day to find work force and let alone keep it. So we just want to reiterate what they've said. It's not just heavy highway construction, it's also a lot of other construction beyond just underground or heavy highway. There's even some vertical construction that is affected by this. So with that, if you have any questions, we throw our support behind the amendment also.

**B. HANSEN:** Thank you, Mr. Wegner, for coming. Is there any questions from the committee at all? All right, seeing none, thank you.

**BRAD WEGNER:** Thank you.

**B. HANSEN:** All right, any other proponents that wish to testify? OK, seeing none, are there any opponents that wish to testify? Seeing none, are there any that wish to testify in a neutral capacity?

**JOHN ALBIN:** Vice Chair Hansen, members of the Business and Labor Committee, for the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I'm the Commissioner of Labor and I'm appearing here today in a neutral position to LB428. The Nebraska Department Labor is aware that an amendment to LB428 has been drafted. But as the amendment has not

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yet been adopted by the committee, my testimony will first address LB428 as introduced. The unemployment system is a state and federal partnership. In order to receive federal dollars to administer Nebraska's unemployment program the state must meet certain federal conformity requirements. In its introduced form, LB428 creates the United States Department of Labor conformity issue. USDL has provided an informal opinion that LB428 as introduced does not conform with federal requirements because it treats employees in a specific industry differently. And the length of work search waiver, 120 days, is unreasonable. If LB428 passed as drafted, NDL would lose approximately \$14 million annually in federal grant funding for Nebraska's Unemployment Insurance Program. In order to keep an unemployment program running the state would have to use General Funds to cover the administration of the program. Further, Nebraska employers would lose their federal unemployment tax credit. The future tax credit is six, future tax is 6 percent of the first \$7,000 employee earns. Any earnings beyond that are not taxed. Currently, the tax credit is 5.4 percent. Losing in the tax credit would increase taxes on Nebraska employers in excess of \$400 million. Because of the conformity issues the department opposes LB428 as introduced. However, the department's work with the parties involved on an amendment. After review of the proposed amendment the department believes it eliminates the USDL conformity issues currently in LB428. The department is here today in a neutral position because the amendment addresses the conformity issues and eliminates the department's fiscal impact. That concludes my testimony and I'll be happy to answer any questions.

**B. HANSEN:** Thank you, Commissioner, for coming. Is there anybody, any questions from the committee at all? Seeing none, thank you. Anybody also wish to testify in a neutral capacity? Seeing none, Senator Friesen, you're welcome to close.

**FRIESEN:** Well, thank you, Vice Chairman Hansen. And really, I have no closing. If anybody has any questions, I'd be glad to answer them. But we'll keep it short.

**B. HANSEN:** Any questions. All right, seeing none, thank you. Oh, yeah, Senator Crawford. Sorry.

**CRAWFORD:** So I was just trying to look through the amendment quickly. What, what all construction workers would be covered by your amendment?

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**FRIESEN:** I think it's tied to kind of the road construction industry. It's not, they're, they're the ones that have the wider window, so to speak. The building trade, some of those, I think, they, they can fluctuate. But here, since the time window is set basically by the Department of Transportation, there's not much flexibility there.

**CRAWFORD:** I just wondered. We had the one supporter come and talk about the importance of sewers and other construction like that. Is that included?

**FRIESEN:** Not that I know of.

**CRAWFORD:** OK. All right, thank you.

**B. HANSEN:** Any other questions? All right, thank you. That will close our hearing on LB428. And then we will now open the hearing on LB576.

**LATHROP:** That's me.

**B. HANSEN:** Welcome, Senator Lathrop.

**LATHROP:** Good afternoon, Vice Chair and members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, State Senator from District 12. And it's good to be back here presenting a bill to this committee. I've been away for a few years, as you know. This bill was brought to me by the Omaha Firefighters Union Local 385. And the goal of LB576 is to align Nebraska's workers' compensation laws with the reality that our firefighters, as a result of their work protecting our communities, face elevated risks of cancer and heart disease. Firefighters breathe in more than just burning wood when they enter a smoke-filled home. Modern houses contain numerous toxins and carcinogens, many of which can't be properly mitigated by a firefighter's breathing apparatus and other protective gear. The same goes for the chemicals that can threaten their health through skin absorption. Cancer and other illnesses caused by exposure to hazardous substances are the leading cause of line-of-duty death, deaths among firefighters today. In fact, there is already a rebuttable presumption for most post-employment benefits that Nebraska firefighters who suffered death or disability as a result of cancer, hypertension, or heart or respiratory defects or disease did so as a result of their work. LB576 would apply the same rebuttable presumption for purposes of the Nebraska Workers' Compensation Act. This bill acknowledges the

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hidden dangers involved in the work of these first responders. And with that, I'd ask for your support of LB576.

**B. HANSEN:** All right, thank you. Are there any questions for Senator Lathrop? Seeing none, thank you. You're, I'm assuming you'll stay to close.

**LATHROP:** I'll stick around to close.

**B. HANSEN:** Are there any proponents that wish to testify? Welcome. Yes, welcome.

**STEVE LeCLAIR:** Good afternoon, Mr. Vice Chairman, members of the Business and Labor Committee. My name is Steve LeClair, L-e-C-l-a-i-r, I am the president of the Omaha Professional Fire Fighters Association, IAFF Local 385. Thank you for the opportunity to testify in favor of LB576 this afternoon. And Senator Lathrop, thank you for support, sponsoring this important piece of legislation. As Senator Lathrop mentioned in his opening, currently, a rebuttable presumption exists and is only applicable to a pension or retirement system. LB576 would provide that same rebuttable presumption for a firefighter or firefighter paramedic who has a proven, job-related cancer to the workers' compensation court of Nebraska. Fighting fires is more dangerous than people know. In fact, the number one cause of death among firefighters is not from the fire itself but from the occupational exposures to many toxins and carcinogens at the fire scene and additionally to the exposure to diesel exhaust. When firefighters attack a structural fire they are exposed to many hazardous chemicals, including carbon monoxide, hydrogen cyanide, benzene, styrene, formaldehyde, and vinyl chloride, just to name a few. All of these chemicals can be found in household products. A century ago furnishings were made from raw materials, such as wood, cloth, metal, and glass. Today, more products are made from synthetic materials: plastics, foams, and coatings that contain numerous carcinogens and toxins. And when they burn, it makes them hundreds of times more toxic. The mixture of these hazardous chemicals is different with every fire, with many substances acting as co-carcinogens. Recent studies have found an association between firefighting and a significant increase risk for specific types of cancers. For instance, a study conducted by the National Institute of Occupational Safety and Health, NIOSH, in 2013 found that firefighters have a 15 percent higher risk of dying from cancer as compared to the general population. We actually think this percentage is much higher. But due to the lack of a bill available historic data on the subject,

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the U.S. Congress passed a law establishing a cancer registry database which will gather information from around the nation and across demographics to help get a clearer picture of how cancer is affecting firefighters across the spectrum. Bottom line, we assume these risks every day as we serve our communities. The risk isn't just anecdotal. In the city of Omaha, two very good friends of mine, women in the fire service, have had their struggles with job-related cancer. In 2014, Captain Laura Larson succumbed to job-related ovarian cancer, making the ultimate sacrifice. And we recognize her sacrifice every year in Colorado Springs at the National Fallen Firefighters Memorial. Fire apparatus engineer, Laura Kitzman, was diagnosed with breast cancer in 2018, having tested negative previously for all 43 gene markers. She underwent a double mastectomy reconstruction and faces regular testing for the rest of her life. We, we can recognize both Lauras' sacrifices today by voting this bill out of committee and onto the full Legislature for debate. I know what opponents of this bill, I'm guessing our employers, are going to say: This legislation would expose us to too much liability, too much possible cost. My response to that is simple: It should be their responsibility. These job-related cancers are still rebuttable. And if our employer can prove that they aren't job-related they have no liability. There is no disputing that firefighters are getting cancer and dying because of the jobs we do. It is the responsibility of our employers to share in that burden. Don't let the opponents' sole concern here be costs or money. My members have something of value at risk here too: their lives. Thank you for your time. I'm happy to answer any of your questions.

**B. HANSEN:** OK, thank you, Mr. LeClair. Are there any questions at all? Yes, Senator Chambers.

**CHAMBERS:** I just, this is kind of a statement and a question. And I'm not being sarcastic.

**STEVE LeCLAIR:** Yes, Senator.

**CHAMBERS:** But I will often see on the news where firefighters or law enforcement officers, when they have intervened in a situation are referred to as heroes and, you know, people who are really rescuing society. So if that really is how people feel and it can be shown that the kinds of circumstances they are in daily-- I don't mean every single day bad situations-- but it's a part of the overall work. It doesn't seem to me unreasonable to conclude that if it's recognized that this kind of work produces these results then we can put a

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rebuttable presumption into the law without harming society, the workers' comp program philosophy. Because if it's shown in a specific case that there is another cause for the death, then this bill doesn't apply, correct?

**STEVE LeCLAIR:** That's correct. If, by a preponderance of the evidence, the, the cancer is proven to not be related to their job or their occupation as a firefighter, firefighter medic, then you're correct. Then this bill wouldn't apply.

**CHAMBERS:** And probably is pleasing to be referred to as a hero constantly, but when we get down to real life--

**STEVE LeCLAIR:** Well, you know how that feels.

**CHAMBERS:** --it would be nice to have something concrete like this to replace just the accolades verbally. In other words, we should back up those words with some kind of action. And this bill, to me, seems very reasonable.

**STEVE LeCLAIR:** Thank you, sir.

**CHAMBERS:** I'll just put that into the record.

**STEVE LeCLAIR:** Thank you. The rebuttable presumption exists presently but it is only applicable to other post-employment benefits meaning, if you're fortunate enough to have a retirement or a pension system, you enjoy this rebuttable presumption. But in Spangler v. State it is, it is explicitly not applicable to workers' compensation benefits.

**CHAMBERS:** That's all I have.

**STEVE LeCLAIR:** Thank you, sir.

**B. HANSEN:** Any other questions? Seeing none, thank you for your testimony.

**STEVE LeCLAIR:** Thank you, Mr. Vice Chairman.

**B. HANSEN:** There anybody, anybody else that wish to testify as a proponent?

**JERRY STILMOCK:** Mr. Vice Chairman, members of the committee, my name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters

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Association and the Nebraska Fire Chiefs Association in support of LB576. Volunteer firefighters and volunteer rescue personnel are already covered under the Nebraska workers' compensation law. That was done many years ago, thankfully. What, what we don't have in benefit for the volunteer firefighters is a pension plan, what's recited in these two sections of Senator Lathrop's legislation. The one section of the law dealing with hypertension and heart disease, it's possible to bring in volunteers into that section of the law cleanly because it just references the, the rebuttable presumption that could-- it doesn't say it in the bill right now-- but it could be amended to include also volunteers. Section 2 deals with cancer. And right now the difference between volunteers and paid staff in the firefighter category is that paid staff have a cancer benefit that references their pension plan. Because volunteers do not have a pension plan, we don't presently have a cancer benefit that, that trips over into the, into the pension plan. The other part that volunteers do not presently have is a prescreening preemployment screening process for the show of cancer. So as where a paid firefighter, in order to receive benefits under the pension plan that they would have as paid firefighters, under the category of cancer they would have to establish as a prescreening or at least after their employment began as a paid firefighter that there was zero evidence of cancer. That's the piece that we do not have right now as volunteers. We're working at it to bring legislation in the near future to ask that the Legislature consider it. But I don't think right now we're in a position to ask for that cancer position because we don't have the prescreening already set up. Volunteers would fit neatly into Section 1, having to do with heart disease and hypertension. And that would be the item or the area that my clients would ask Senator Lathrop to consider, as well as you as members of the committee, to consider as an amendment. Thank you, senators.

**B. HANSEN:** Thank you, Mr. Stilmock. Is there any questions at all from the committee? Yep, Senator Chambers.

**CHAMBERS:** Mr. Stilmock, when I saw you sitting over there with the expression you had on your face, it seemed like I must be mistaken. But I thought you were gonna speak against this bill so I was trying to head you off at the pass. No, I'm just kidding. But, really, we're not talking about a large number of people anyway at most, are we?

**JERRY STILMOCK:** No, we're not. And Senator Hansen has one of the following bills here and I'm going to have a handout for you and the

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members of the committee that show actually in the line-of-duty death that had to deal specifically with cancer. And, sir, I represent there, there are few that are because of cancer, following your earlier statement to President LeClair of the Union. It's, it's somewhat-- if I can use the word-- the least of what society can do for these men and ladies.

**CHAMBERS:** That's all I have. Thank you.

**JERRY STILMOCK:** Yes, sir.

**B. HANSEN:** Any other questions at all? Seeing none, thank you.

**JERRY STILMOCK:** Very good, thank you.

**B. HANSEN:** Are there any other proponent testifiers? Seeing none, are there any-- actually, we do have one letter for the record from Sue Martin from the Nebraska State AFL-CIO in support of LB576. Is there anybody wishing to testify in opposition to LB576? Welcome.

**KORBY GILBERTSON:** Good afternoon, Vice Chair Hansen and members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the League of Nebraska Municipalities in opposition to LB576. As you know, LB576 create a presumption for firefighters. The League is opposed to this presumption because the current burden of proof in workers' compensation cases is sufficient. Under Nebraska Workers' Compensation Act Section 48-101, when personal injury is caused to an employee by an accident or occupational disease arising out of and in the course of his or her employment such employee shall receive compensation therefore from the employer. Under Section 48-151, this includes both injuries and diseases that result and dis, disabilities resulting from occupational diseases arising out of and in the course of employment. To recover under the Nebraska Worker's Compensation Act, the Nebraska Supreme Court has held that a claimant must prove by a preponderance of the evidence that an accident or occupational disease arising out of and incurring in the course of employment approximately caused an injury which resulted in disability compensation full under the Act. That's riser versus Nebraska boiler in 2009. I read that because it's unclear under Section 48-151. It specifically talks about preponderance of. The evidence. When you look at a specific injury does not specifically deal with it as far as a disability preponderance of an evidence a preponderance of evidence is lowest a level of proof used in legal

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proceedings. Preponderance of evidence simply requires that the party bearing the burden of proof to present evidence which is more credible and convincing than present presented by the other party or which shows that the fact to be proven is more probable than not. In other words, currently it must be shown that is more likely than not that a firefighter's disability or death due to cancer hypertension or heart or respiratory defect or disease was work related. The league believes that this is a reasonable standard that should be maintained. I'd be happy to answer any questions.

**B. HANSEN:** Thank you for your testimony and the questions from the community. Seeing them.

**KORBY GILBERTSON:** Thank you.

**B. HANSEN:** Are there anybody else that wish to testify as an opponent? All right, seeing none, is there any that many that wish to testify in neutral capacity? All right, seeing none, Senator Lathrop did have another bill that he had to attend to in another committee. So he is waiving closing. So that will close a hearing on LB576. And we will welcome Senator Hansen to open hearing on LB360.

**M. HANSEN:** Thank you.

**B. HANSEN:** Welcome.

**M. HANSEN:** Thank you. Good afternoon, Vice Chair Hansen and members of the Business and Labor Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here to introduce LB360. LB360 addresses a very specific issue in Workers' Compensation Court process. Under current statute, if an employee who is a citizen or subject of another country dies and there is a workers' compensation claim as a result, the consular officer of that country is regarded as the sole legal representative of any alien dependents of the employee residing outside the United States. It has come to my attention that there are situations where these consular officers will not engage and will not communicate with attorneys who represent the deceased employee. This makes the settlement difficult and distribution of the funds to the dependents impossible. LB360 would allow Workers' Compensation Court to appoint a power of attorney here in the state of Nebraska for the alien dependents if the court believes that person would be better serve the dependents than their consular officer. There's also language in LB360 that would require the person appointed as the power of attorney to

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furnish a bond for the money owed to the dependents to account for the receipt and disbursement of the money. The idea here is to ensure that the money is being paid out to the dependents. But I am open to replacing and changing the bonding language. At some point there will be an amendment forthcoming that will address some questions raised by stakeholders, including the Workers' Compensation Court. With that, I thank the committee for their time and would be happy to take any questions.

**B. HANSEN:** Thank you, Senator Hansen. Are there any questions from the committee at all? Seeing none, I'm assuming you're gonna stay and close?

**M. HANSEN:** Of course.

**B. HANSEN:** I will take any test, testimony as a proponent. Welcome.

**DAN THAYER:** Dan Thayer, I'm an attorney in Grand Island. It's D-a-n T-h-a-y-e-r, and I have the privilege to be president of Nebraska Association of Trial Attorneys this year. This is a bill which fixes a minor legislative glitch. I represent a fellow who was killed at Gibbon Packing, which is about 20 miles west of Grand Island. He was a single man, a first generation American Cuban immigrant. As any good son would do, he wired \$100 a month-- excuse me, \$100 a week back to his mother in Cuba. And after he was killed, his mother, through a relative, contacted me. Under Nebraska law presently to proceed I have to get the signature of the Cuban Consulate, either the consul or the vice consul to proceed. I have written, I have phoned. I have gone to Cuba with the State Bar Association trip last year. I've been to Washington, D.C. and to the Cuban Consulate there, arranged by Senator Deb Fischer, and I have begged and pleaded. And the Cuban government will not sign off on proceeding with this lawsuit. We'll look at it, is their common response. Today we have immigrants, senators, all over the planet. We have Syrians in Nebraska. But, you know, that Assad is not going to sign off on this. We have Iranians in Nebraska but the Ayatollah is not going to sign off. We have Koreans but we know that Kim Jong-un is not going to sign off on a lawsuit like this to proceed. And I cannot get the Cuban government to sign off to proceed. So I looked at other state statutes in the area and settled upon Minnesota's. In a nutshell, in this case the mother, who is the dependent, would file for a motion, a motion for a power of attorney to be appointed. And if the court, the presiding judge in that case, believed that the agent who received the power of attorney would be better served to serve as that agent rather than the consul or vice

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consul of the foreign dependent then the judge appoints that power of attorney. A protection, though, is added that the agent of that power of attorney has to take out a bond. We take out insurance for ourselves, a bond is for the protection of another party. And so the power of attorney individual would have to post a bond approved by the court. Before there was any distribution of proceeds there must be an accounting of receipts as well as disbursements approved by the court before the judge would release that bond. And bonds, by the way, right now are expensive. So there's skin in the game for this agent who receives the power of attorney to act honestly. After that is to the satisfaction of the court then the bond is discharge, discharged and the claim, case is closed. And that's it. Thank you.

**B. HANSEN:** Thank you, Mr. Thayer. Are there any questions from the committee? Yes, Senator Halloran.

**HALLORAN:** Thank you, Vice Chair Hansen. Would you define what a nonresident alien is?

**DAN THAYER:** A nonresident alien in this case would be the dependent mother living in Cuba. She's not a resident of the United States. She was dependent upon the son, in my case, who was killed. And that's your definition, Senator.

**B. HANSEN:** Any other questions? Seeing none, thank you for your testimony.

**DAN THAYER:** Thank you.

**B. HANSEN:** Any other proponent testimony?

**ROBERT J. HALLSTROM:** Vice Chairman Hansen and members the Business and Labor committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness in support of LB360. Mr. Thayer has done a nice job of describing the need for this. I don't think these are cases that, that occur on a regular basis. But when they do occur and when there has been a resolution and a settlement of the issues contained in these cases, if we are having difficulties in getting final resolution because of the counselors not cooperating, we ought to have an alternative to allow these proceedings to be finalized. And with that, I'd be happy to address any questions of the committee.

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**B. HANSEN:** Thank you, Mr. Hallstrom. Are there any questions from the committee? Yes, Senator Chambers.

**CHAMBERS:** Mr. Hallstrom, your, who are you representing today?

**ROBERT J. HALLSTROM:** I'm representing the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness.

**CHAMBERS:** And you're testifying for the bill?

**ROBERT J. HALLSTROM:** Yes, Senator.

**CHAMBERS:** That's all I have. Thank you. I wanted to be sure that I heard what I thought.

**ROBERT J. HALLSTROM:** It must be the new location of the committee perhaps.

**CHAMBERS:** OK.

**B. HANSEN:** Are there any other questions from the committee? Seeing none, thank you, Mr. Hallstrom.

**ROBERT J. HALLSTROM:** Thank you.

**B. HANSEN:** Are there any proponent, other proponent testimony? All right, seeing none, is there any other, is there any opponent testimony? Seeing none, is there anyone that wishes testify to a neutral capacity? All right, well, Senator Hansen, you're welcome to close.

**M. HANSEN:** Thank you, Vice Chair Hansen and members of the committee. And thank you to Mr. Hallstrom and all the other supporters of this bill. This is just a simple fix where there's kind of a bureaucratic loophole that occasionally a few workers' comp. Senator Halloran told me to waive, so I will waive. Be happy to take any questions.

**HALLORAN:** I do.

**B. HANSEN:** Did anyone have any questions?

**HALLORAN:** No, I asked him to waive and he's waiving.

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**B. HANSEN:** OK, good. OK, just wanted to make sure I heard that right. All right, thank you. OK, well, that will close the hearing on LB360. Now we will open the hearing on LB363.

**M. HANSEN:** Good afternoon, Vice Chair Ben Hansen and members of the Business and Labor Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 and northeast Lincoln. I'm here today to introduce LB363, which would adopt the In the Line of Duty Compensation Act. LB363 does the following: It provides for a family member or designee to receive compensation if a firefighter or police officer dies while in the line of duty. This is common practice in other states and I believe long overdue here in Nebraska. All of our neighboring states have some form of compensation for those that die in the line of duty and I believe it is time for Nebraska to join our neighbors in making sure that our first responders know that we value their work, their service, and their lives. LB363 would be, include paid and volunteer firefighters, emergency medical service ambulance squad members, and law enforcement. This bill allows for a one-time payment starting at \$50,000 in 2019 and indexed for inflation each year following to the family of a person killed. Each employee has the opportunity to designate a beneficiary, or, if they do not, it will follow their will or their other procedures of an inheritance. As it introduced, the claim must be made for compensation with a Nebraska risk manager with one year of the date of death of the law enforcement officer or firefighter who was killed in line of duty. The State Claims Board shall first investigate the claim and then approve or deny the claim. I think LB363 is an important bill and I will continue to work to make sure that we're taking care of our firefighters' and police officers' families while they are taking care of ours. With that, I will close by noting that there will be several people coming to testify behind me. And thank you for the committee for the consideration of this bill.

**B. HANSEN:** Thank you, Senator Hansen. Are there any questions from the committee? I have one question. You said we join our neighbors in doing this. What other states do something similar to this?

**M. HANSEN:** I believe the six states that surround us have some form of state, either life insurance policy or death benefit for firefighters.

**B. HANSEN:** OK, and this is for all volunteer fire, firefighters in the state of Nebraska? Or is it just voluntary and nonvoluntary?

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**M. HANSEN:** All, all. Both volunteer and paid.

**B. HANSEN:** OK, good. Thank you. Yes, Senator Slama.

**SLAMA:** Do you have any estimates, like in 2018, how many of these fatalities we had?

**M. HANSEN:** I do believe we track that, and I apologize, I actually don't have the numbers with me. But that was-- I introduced a similar bill two years ago and at that time we had updated figures. But I just don't have them with me.

**B. HANSEN:** Any other questions? All right, thank you, Senator Hansen.

**M. HANSEN:** And I might actually run down to close on a bill I still have going in Banking, so I will keep the committee updated. But thank you for your consideration.

**B. HANSEN:** Thank you. All right, and with that we will start any proponent testimony for LB363. Welcome.

**DAVE WORDEKEMPER:** I'd like to first start to address Senator Chambers. You made the comment of heroes. I'm a firefighter paramedic for the city of Fremont, I'm an employee. I do not consider myself a hero. I appreciate the reference, as I believe many firefighters do, whether they're paid or volunteer. So thank you. My name is Dave Wordekemper, D-a-v-e W-o-r-d-e-k-e-m-p-e-r. I'm the president of IAFF Local 1015 Fremont Firefighters. Senator Lynn Walz, as you know, we've had a lot of issues in Fremont. She's a colleague of yours. She has stepped up and offered her services and help for us. I don't believe it has been received. I'm going to try to get through this testimony. I think I can because I cried for 15 minutes in my pickup before I come up here. Mr. Chairman and members of the Business and Labor Committee, thank you for your opportunity to speak this afternoon as a proponent of LB363. Thank you, Senator Matt Hansen, for the introduction of LB363. My career as a firefighter spans 32 years, 8 years as a volunteer, 24 years as a firefighter for the city of Fremont. Over the years, I have tried to make, to take a more proactive role in what happens with the issues that are important to firefighters, whether they're my brothers or sisters from across the state at this State Legislature. Issues that make a difference in the lives of firefighters I represent and their families. In 2015, we were in support of LB655 with AM2178. A change to the first-class cities' retirement benefit. If that bill was voted out of committees and passed it would have had a positive impact

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on myself and my family. In the past we were successful, thanks to the Legislature, in getting cancer legislation passed. This benefit is available if you die in the line of duty. And I truly thank you for thinking of our families. I'm going to backup. I wrote this on May-- sorry, March 18. In preparing for this testimony, I realize that the majority of the legislation that we as firefighters advocate for does not directly impact us. Let me explain this, because it might be confusing. The reality of our jobs are inherently dangerous and we are inclined to figure out how our families will survive a line-of-duty death. As firefighters we dedicate our careers and the better part of our adult lives to serving others, the public, and ensuring that the citizens we serve are safe 24/7, 365. This legislative session carries on that theme. In order for a benefit to be awarded to a firefighter, to be awarded, a firefighter has to be injured, disabled, or die in the line of duty. God forbid we meet any one of these criteria. But in the event we do, there must be benefits available to our surviving spouse and children. Therefore, we continue at the time of our death to give of ourselves. All firefighters know the dangers associated with firefighting and the sacrifice our families take throughout our career. I ask this committee to support our families and ensure that a good benefit is available in the event one of us makes the supreme sacrifice. LB363 aims to do just that. A person that lays down their life for others while in the performance of their employment should have the comfort of knowing that they do not make it home at shift change their family is going to be taken care of. Thank you for the opportunity. And I thank each of you for your service to our great state. That was dated March 18. You're not off the hook yet. March 16. After the events that we were dealing with in this flooding I felt compelled to add this for those that we recently almost lost. Wednesday, March 13, 2019, flooding started in and around Fremont. Our firefighters were called into work, extra duties to assist in evacuating the citizens of Fremont and Dodge County. Thursday was my shift day. After evacuating people all day along with our answering all 911 calls, at approximately 6:00 p.m. we were called to rescue four adults and a 2-year-old child whose basement wall collapsed. We are surrounded by floodwaters. This was approximately seven miles east of Fremont. Airboats and crews were sent, there were 40-mile-an-hour winds, 35 degrees temperatures. The boats had to go three to four miles to reach them because we can't get vehicles in there. We were updated on the way. Dispatch: three basement walls collapsed, one beam in the center of the floor holding up our house. Airboats were launched. Shortly after en route a distress call was sent out. Both airboats sunk, seven rescuers in the water. We need help. Rescuers

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were able to gather themselves and hold onto their boats. Blackhawk helicopters were sent from Columbus to rescue. Arrival: 20 to 30 minutes. With the heroic efforts of those individuals, the original seven rescuers were saved. The Blackhawks refueled, returned to rescue the original victims that we were sent to rescue. They refused rescue. The helicopters left and returned to Columbus to continue lifesaving efforts. I remind you, they called us to help. You may find this unbelievable. This is what we do for others. Three of these firefighters from Fremont, along with three from surrounding volunteer departments, all have children, were within a glimpse of death, returned within 24 hours to assist in rescuing more flood victims. I am so grateful and thank God I did not have to face their families at a funeral. This benefit we're asking for, I think can be compared to a bouquet of flowers. Great for a short time, but it won't last very long. Please pass LB363 for those that risked all for all. I'll try to answer any questions.

**B. HANSEN:** Thank you, Mr. Wordekemper. And especially with the recent events with all the flooding, we're especially grateful for all that you do and everyone else out there who's saving everyone's lives and, you know, like you said, giving all they can to help us out. So I appreciate your testimony.

**DAVE WORDEKEMPER:** Thank you.

**B. HANSEN:** Is there anybody that has any questions from the committee? Seeing none, thank you for your testimony. Appreciate it.

**DAVE WORDEKEMPER:** Thank you.

**B. HANSEN:** Next proponent.

**JERRY STILMOCK:** Mr. Vice Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association. Mr. Wordekemper, you know, referenced of course what's happening now as we are in this protected room. There's no difference, paid, volunteer. Men and ladies across the state have been placing their selves on the line for years on end. And we will continue, they will continue-- pardon me. They will continue to do that. The handout that I'm sharing with you is intended to show the reported anyway. It's not an official governmental document, it's an agency that puts together a LODD, line of, line of duty death information. And within that you see the names of the men

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and ladies for the past several years. I don't have 2018 or 2017 information but I, I start with the year 2016. And it's self-explanatory, but if I may, four, four in-the-line-of-duty deaths in 2016, one in 2015, one into a two-- excuse me, two in 2014, one in 2013. For the years 2012 going back to 2008, no line-of-duty deaths. And it goes on and on. But on and on is such a poor choice of words by me just now because the men and ladies that have sacrificed their lives should not have been referred to me by my, by my words "on and on." Those are men and ladies that are no longer with us, that have left their families. There are approximately 32 states that have similar legislation. Some at \$50-- excuse me, \$50,000 a year, some at \$100,000 a year, some at \$150,000 a year. The cancer presumption for workers' comp that was discussed earlier, you also have that information. I have not highlighted it, but it's self-evident in the, in the handout. Two cancer victims in 2016, 1 in 2014, 1 in 2007, 1 in 2006. They are not great in number, thank goodness, the lives that have been lost. But to reflect upon volunteers, the men and ladies that I represent, that they do this for no compensation. They do it for their communities and they're doing it right now. I would ask you to consider advancing LB363. Thank you.

**B. HANSEN:** All right, thank you, Mr. Stilmock. Is there any questions from the committee? Seeing none, thank you for you testimony.

**JERRY STILMOCK:** Thank you, Senators.

**B. HANSEN:** Anybody else wishing to testify as a proponent? Welcome, again.

**STEVE LeCLAIR:** Mr. Vice Chairman, thank you. My name is Steve LeClair, L-e-C-l-a-i-r. I didn't have any intention of testifying as a proponent, although I do. I didn't have any intention of testifying as a proponent of LB363, especially after the compelling testimony that Dave Wordekemper gave from Fremont. I did want to add though that, you know, there are different models of fire service delivery across the state of Nebraska. Some are paid, some are volunteer. This truly is an issue that crosses those lines between paid and volunteer and is applicable to both. And one thing that Mr. Wordekemper wanted to make sure was on the record that when the city of Fremont did make a call out today for some assistance on the fire service side, four volunteer companies showed up. So many of those folks are putting themselves in grave danger every day. And this is a piece of legislation that will

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certainly help their families also in these very difficult times.  
Thank you.

**B. HANSEN:** Thank you. Any questions at all of Mr. LeClair? Seeing none, thank you for your testimony.

**STEVE LeCLAIR:** Thank you. Thank you, senators.

**B. HANSEN:** Anybody else wishing to testify as a proponent? All right, seeing none, is there anybody wishing to testify in opposition? Seeing none, is there anybody that wishes to testify in a neutral capacity? All right, Senator Hansen, you're welcome to close.

**M. HANSEN:** Thank you, Senator Hansen and members of the committee. Let me start off by thanking all the first responders who have been working in the past week or so with all the events that we're having, especially those, those in the Fremont and Dodge County area. That's where my in-laws live and they actually had the fortune of being out of town, so they're not there. But they're not sure what their neighborhood is going to look like when they come back. And actually, my legislative aide is there in Fremont with her family today. And that's why I'm kind of out of breath running up in between here and Banking because I had to cover three bills in two different committees, and my only two staff members have been in this room the whole time. So it's been an eventful day for me too, because I thought it was very important and very supportive of her going and spending time and helping out family who had, who had a death in the family immediately prior to the flooding. And so naturally there's levels of chaos there. And I share all of that just to kind of really reaffirm what first responders do to our community and how much, how much when in times of crisis. I really appreciate their efforts, especially this past weekend. Be happy to work with any and all interested stakeholders and committee members for any questions or concerns in this bill and we can go on from there. Thank you.

**B. HANSEN:** Thank you. And before we get to questions, I forgot I want to read, we do have two letters of support LB363. One from Shane Smith with the McCook Professional Firefighters Association; and Sue Martin with the Nebraska State AFL-CIO. Just wanted to make sure I got those on the record. Are there any questions at all for Senator Hansen? All right, seeing none, thank you.

**M. HANSEN:** Thank you.

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**B. HANSEN:** All right, and that closes a hearing on LB363 and then closes the public hearing for today.

**M. HANSEN:** Thank you.

**B. HANSEN:** Thank you.