

Transcript Prepared by Clerk of the Legislature Transcribers Office
Business and Labor Committee April 29, 2025

KAUTH: Welcome to the Business and Labor Committee. I'm Senator Kauth from Omaha, representing the 31st Legislative District, and I serve as the chair of the committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you're planning on testifying today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it's your turn to come forward to testifying-- to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are yellow sign-on sheets at the back of-- on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and followed by-- and followed finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to get one. We will be using a light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining, and the red light indicates your time has ended. Questions from the committee may follow. Since today we only have one person testifying, we're gonna let you get all the way through all of your material. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard; it's just part of the process, as senators may have bills to int-- other bills to introduce in other committees. If you have handouts or copies of your testimony, please bring up at least 12 copies, give them to the page; if you don't have enough copies, the page will make them for you. Please silence or turn off your cell phones. You may see committee members using their electronic devices to access more information. Verbal outbursts or applause are not permitted in the hearing room; such behavior may be cause for you to be asked to leave. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on

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the committee statement. I will now have the committee members with us today introduce themselves, starting on my right.

McKINNEY: Thank you. Good afternoon. Senator Terrell McKinney, District 11; north Omaha.

IBACH: Teresa Ibach, District 44.

SORRENTINO: Tony Sorrentino, Legislative District 39; Waterloo and Elkhorn.

McKEON: Dan McKeon, District 41; eight counties in central Nebraska.

RAYBOULD: Jane Raybould, Legislative District 28, which is in the center of Lincoln.

KAUTH: Thank you. And Senator Sorrentino is our vice chair, and he will be taking over for me as I open on this bill.

SORRENTINO: Thank you. Chairwoman Kauth, you are free to open on AM-- look at my number off here-- yep, AM491 to LB534.

KAUTH: Thank you, Vice Chair Sorrentino. My name is Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h, and I'm here to introduce LB534 with AM491, and this is the settlement of claims against the state. And with that, I will allow our first testifier to begin.

SORRENTINO: Good afternoon.

PHOEBE LURZ: Good afternoon, members of the committee. My name is Phoebe Lurz, that's P-h-o-e-b-e L-u-r-z, and I'm an Assistant Attorney General for the State of Nebraska in our Civil Litigation Bureau. I also serve as legal advisor to the State Claims Board and the state's risk manager. AM491 updates LB534 to include payment of claims against the state that were either settled by the Attorney General's office or approved by the Claims Board after LB534 was originally introduced. This amendment becomes the bill, and adds 11 new claims for review and appropriation. Rather than going through all of the claims that I previously went through with you at our last hearing, I'm just going to speak to the new claims. So, Section 1 of AM491 contains three new claims; they are two Line of Duty claims and one miscellaneous claim. Claim 2025-00607 is a Line of Duty claim filed by Tina Bartlett following the death of her husband Ross Bartlett, who died in the line of duty; the total amount of this claim is \$280,932.50. Claim 2024-00109 is a Line of Duty claim filed by Tamara Marcello following the death of her husband Christopher Marcello, who also died in the

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line of duty; the total amount of this claim is \$250,000. The final claim in Section 1 is Claim 2024-00040. This is a miscellaneous claim that was filed by Johnson County under Nebraska Revised Statute 81-8,236 for prosecution costs that were associated with the correctional institution incident; the total amount of the claim is \$182,058.97. Moving to Section 2 of AM491, there is one new indemnification claim that is being added, and that is Indemnification Claim 8:23-cv-485. This is a settlement that the Attorney General's office entered into on behalf of the Department of Correctional Service-- Services. Paige Carter is the special administrator of the estate of Kevin Carter who died while in custody of the Department of Correctional Services. She filed a Section 1983 claim against several NDCS employees. This claim was settled for \$445,000; \$50,000 of that total settlement has been paid to the plaintiff already, and the remaining \$395,000 has been put into AM491. Section 3 contains the most new claims: six workers' compensation settlements. These are settlements that were entered into by our office, and that have all been approved by the Nebraska Workers' Compensation Court. The first new claim was filed by Reginald Borzekofski; he filed a compens-- a workers' comp suit against the state, alleging he sustained injury arising from his employment with DHHS. This settlement resolves all claims for indemnity and past and future medical expenses. The total amount of the settlement was \$125,000; under the Nebraska workers' compensation statutes, we are allowed to pay \$100,000 of the settlement prior to seeking legislative approval, so \$100,000 has been paid and \$25,000 remains in the bill for review and appropriation. The second claim is a workers' compensation settlement with Zachary Coulombe against the state of Nebraska who sustained an injury from his employment with NDCS. This settlement resolves all indemnity and past and future medical expenses. The total amount of the settlement was \$170,000; \$100,000 has been paid, and \$70,000 is in AM491. The third claim is Jeffrey Pelowski; he filed a workers' compensation suit against the state of Nebraska, alleging an accidental injury from his employment with the Nebraska State Patrol. This settlement resolves all claims for indemnity, but leaves future medical expenses open. The total amount of the settlement was \$150,000; \$100,000 has been paid, and \$50,000 is in AM491. The fourth workers' compensation claim is with Bobby Green. He alleged accidental injury arising from his employment with DHHS. This is again a settlement that resolves all indemnity and past medical expenses, but leaves future medical expenses open, and the total amount of the settlement was \$250,000; \$100,000 of that has been paid, and the remaining \$150,000 has been placed into AM491. The second to the last worker's compensation claim is with Jeanann Duke, formerly known as Jeanann Jelinek. She filed a

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worker's comp suit against the state alleging accidental injury from her employment with DHHS. This settlement resolves all indemnity and past medical expenses, leaving future medical expenses open. The total amount of the settlement was \$150,000; \$100,000 has been paid, and \$50,000 is been placed into the AM4-- AM491. The final workers' compensation claim was filed by Maureen Scanlon. She filed suit against the state of Nebraska alleging an injury arising from her employment with the Department of Veteran(s) Affairs. This again leaves future medical expenses open, but resolves all other claims, and the total amount of this, this settlement was \$350,000; \$100,000 has been paid, and the remaining \$250,000 is in the bill-- in AM491. Finally, Section 4 of AM491 adds a new tort claim to be paid from the State Insurance Fund. Claim 2023-22836 is a tort claim that was approved by the State Claims Board; it was filed by Trelon Ross for injuries sustained in a motor vehicle accident. The claim was recommended to be approved in the amount of \$70,000; it was approved in that amount. Three other tort claims arose from this motor-- same motor vehicle accident. They were approved and paid in the aggregate amount of \$29,826.83. Because all four of these claims arise from the same accident, they have to be aggregated and presented to the Legislature before more than \$50,000 can be paid. As a result, \$20,173.17 has been paid to Mr. Ross, and the remaining \$49,826.83 has been placed into AM491 on his total \$70,000 settlement. I should also add that because this claim exceeded \$25,000, it's also been approved by the district court. We recommend that each of these claims be approved, and I would be happy to take any questions you might have

KAUTH: Thank you very much. Are there any questions from the committee? Senator Ibach.

IBACH: Thank you very much. And thanks for your very efficient and thorough overview of these cases.

PHOEBE LURZ: Thank you.

IBACH: Can you just give me an idea, when we talk about leaving future medical expenses open, can you give me an idea of how we actually analyze those, and if there's a cap on them?

PHOEBE LURZ: Sure. So, there are a couple different ways that a workers' compensation can be settled. It can resolve all claims. Indemnity is the amount of-- that represents, like, lost wages. And medical expenses are a separate type of benefit under the Comp Act. When we are looking at settling cases, sometimes it's a matter of the claimant's-- or, the plaintiff's age. They might need to-- they might

be Medicare eligible, or on social security, and so we need to account for Medicare's interest. So, in order to do that, you'll have what's called a Medicare set-aside account, and oftentimes, depending on the amount of the settlement, you'll need to have that approved by CMS. So sometimes, these settlements don't-- or they leave future medicals open either because the amount of the proposed Medicare set-aside account was too high to justify settlement, and so they leave future medicals open and approve those on a case-by-case basis, and sometimes it's-- they're waiting on approval for the MSA, but the parties wanted to resolve indemnity, and so they intend to resolve the future medicals at a later time.

IBACH: OK. And how much time does that typically-- I mean, is there a-- is there a cap on, on how far into the future those actually qualify?

PHOEBE LURZ: So, to the extent that-- I guess, do you mean how long they might get treatment for?

IBACH: Or is the case just left open indefinitely?

PHOEBE LURZ: So, the cases-- typic-- so, it-- these cases have all been resolved by the compensation court. Once the Legislature approves those-- approves the amounts in this bill, there will be-- the case will be essentially closed, and the parties can refile the suit if there's a dispute about the future medical expenses.

IBACH: OK. OK, perfect. Thank you.

PHOEBE LURZ: But then, it's handled by our third-party administrator in the meantime, until a dispute arises.

IBACH: OK. Great. Thank you very much. Thank you, Madam Chair.

KAUTH: Any other questions? Senator Raybould?

RAYBOULD: Yes. Thank you for the hand out.

PHOEBE LURZ: Yes. You can thank the risk manager for that.

RAYBOULD: Thank you very much. So, just to help me with your color-coding, the new claims are in the pink?

PHOEBE LURZ: In, in pink, yes.

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RAYBOULD: OK. So-- and then, on the very last page, you have a number of \$4,434,645.87. That is what we can anticipate being included in the, the budget payout for 2025, correct?

PHOEBE LURZ: This is the total amount of all the claims from AM491, which becomes LB3-- or, LB534. This is the total amount that needs to be reviewed and appropriated along with the budget bill.

RAYBOULD: OK. So-- but does it reflect just 2025-2026 of our budget, or 2026 and 2027?

PHOEBE LURZ: Just 2025. So, we-- I-- we bring this bill every year because we continue to settle cases, or the Claims Board continues to approve them.

RAYBOULD: So, I guess--

PHOEBE LURZ: So, this is just for this fiscal year.

RAYBOULD: And since you and the, the-- I guess other of your legal colleagues have already put placeholders for these amounts so that it's already somewhat in the budget already. So, this is not an unanticipated cost. Like, they, they should be expecting on-- the question is, how much every year do they expect to put in as a placeholder for these type of claims?

PHOEBE LURZ: You know, I'm not certain of the answer to that. The risk manager might be able to speak to that.

RAYBOULD: OK.

PHOEBE LURZ: We typically try and give the Legislature a heads-up of "here are the claims that we're anticipating could be settled by the time the claims bill comes around for debate." We usually hesitate to give numbers on that because we don't want to inadvertently waive attorney-client privilege or work product, and it can-- it could potentially be used by other people to see what we actually value it at prior to going to, like, mediation, or something to that effect. But we usually try and give an idea of the-- at least the number of claims. And I will say for-- with respect to the workers' compensation claims that are in this bill, those are paid out of the revolving fund which is funded by agency assessments, so that's not in addition to funds that you have to fund.

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RAYBOULD: OK. So, I guess the question, as we're dealing with our budget deficit, the number that is the total should come as no surprise. It won't be, like--

PHOEBE LURZ: I don't think it's a surprise, but I certainly don't want to speak for the members of the Legislature.

RAYBOULD: OK.

KAUTH: Good question. Thank you, Senator Raybould.

RAYBOULD: Well, because it's my first year on Business and Labor, so I don't know how it's typically handled as--

PHOEBE LURZ: You know, the Legislature always anticipate-- and I believe the chair usually anticipates that we will be paying out in, in a seven-figure number.

RAYBOULD: OK. OK. Thank you.

PHOEBE LURZ: More than that, I, I don't--

KAUTH: And I did share with Senator Clements, so--

PHOEBE LURZ: I thought so.

KAUTH: --it won't be a huge shock.

RAYBOULD: OK. Thank you.

KAUTH: Any other questions? Seeing none. Thank you for your testimony.

PHOEBE LURZ: All right. Thank you very much.

SORRENTINO: That would conclude our testimony. There were-- Senator Kauth has waived her close. There were no letters for the record. So, at this point, that concludes our testimony on AM491 to LB534.

KAUTH: Thank you very much.