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Government, Military and Veterans Affairs Committee
February 15, 2007

[CONFIRMATION LB256 LB388 LB396 LB408]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 15, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB256, LB388, LB396, LB408, and for gubernatorial appointments. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: None.

SENATOR AGUILAR: Welcome, everyone, to the Government, Military and Veterans Affairs Committee. My name is Ray Aguilar, represent District 35 in the Nebraska Legislature; I'm chair of the committee. On my far right is Senator Mick Mines of Blair, Nebraska, the vice chair; next to me is our legal counsel of the committee, Christy Abraham; on my immediate left is Sherry Shaffer, the committee clerk; followed by Senator Mike Friend of Omaha; Senator Rich Pahls of Omaha; Senator Greg Adams of York; and just walking in right now is Senator Kent Rogert of Tekamah, Nebraska. Bills will be taken up in the following order, first of all, there are two gubernatorial appointments we will deal with, followed by LB256, LB388, LB396, and LB408. Sign-in sheets are at both entrances, those are the yellow sheets. Sign in only if you're going to testify and then put the sheet in this box up here on the table. If you're not going to testify but would like to be on the record, either as a proponent or an opponent of the bill, there is another sheet you can fill out; those are also on the table at the entrances. Before testifying please spell your name for the record, even if it's a simple name. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for introducing senator only. Listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or exhibit, give it to the page and they will distribute them or make copies. Turn off your cell phones and pagers. Joining us now is Senator Russ Karpisek of Wilber, Nebraska. And our pages for today are Adam Morfeld of Sioux Falls, South Dakota; and Kristin Kallsen of Big Springs, Nebraska. Clerk tried to fool me. Mr. Keith Hansen, would you please come forward. Welcome.

KEITH HANSEN: (Exhibit 1) Thank you. My name is Keith Hansen, I am...that's spelled H-a-n-s-e-n. I am currently with the Center for Biopreparedness, which is a collaborative organization, collaborative between the University of Nebraska Medical Center and Creighton University. And I am here to, hopefully, be appointed to the State Emergency Response Commission. [CONFIRMATION]

SENATOR AGUILAR: Thank you. For the new people in the audience, this confirmation hearing is for the State Emergency Response Commission; that's a governor's appointment, and these gentlemen come before this committee and we'll question them and then vote on whether or not to approve them for these positions. Are there any questions from the committee for Mr. Hansen? Let me ask you one. How would you

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describe the role of the position to the agency which you have been appointed?
[CONFIRMATION]

KEITH HANSEN: The role of the State Emergency Response Commission is to work with the local emergency planning committees on the Emergency Right to Know Act that the Congress passed in, I believe, it was 1986. Our job is to work with the LEPC's or Local Emergency Planning Commissions, to assure that any hazardous materials in the communities are known to the community, and that they have appropriate action plans and response plans in case something should happen with those chemical materials. [CONFIRMATION]

SENATOR AGUILAR: Thank you. Further questions? Senator Rogert.
[CONFIRMATION]

SENATOR ROBERT: Thank you, Mr. Chair. What would you view as your biggest challenge in this position you're being asked to fill? [CONFIRMATION]

KEITH HANSEN: I would say that the biggest challenge with this commission is working with the large number of local emergency planning committees that are out there. They have a much better grasp of their local community, of course, and trying to keep, not necessarily oversight, but a big picture view of that with so many companies and LEPC's out there, I think, will be a large challenge. [CONFIRMATION]

SENATOR ROBERT: Thank you. [CONFIRMATION]

SENATOR AGUILAR: Further questions? Senator Friend, please. [CONFIRMATION]

SENATOR FRIEND: Thank you, Chairman Aguilar. Chairman Aguilar, that was for Senator Mines, Keith. (Laughter) Senator Mines messes that name up a bit. Keith, in the Urban Affairs Committee we deal a lot with...and this might not necessarily be the purview that you like to delve into that much, but a lot of volunteer fire departments and EMS services associated with, you know, we're dealing with response times and attitudes towards response times between paid fire departments and the volunteer rural fire departments. And again, maybe not down your road, but I wanted your opinion on it. Are you...is it something that you have difficulty, as much difficulty as maybe we do getting your hands around the differences, the attitudes, the ideas about how they should approach their job or is it really that significant? I mean, are you dealing with those things on a daily basis in this role? [CONFIRMATION]

KEITH HANSEN: The State Emergency Response Commission isn't really, to my knowledge, has not and does not deal with that to any great extent. [CONFIRMATION]

SENATOR FRIEND: And, Keith, the reason I ask that is because there are times where

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I would imagine that there is a...that you're working in conjunction with and in correspondence with the local entities. And I guess I just wanted your opinion more or less if it was appropriate on some of the challenges that those, you know, rural fire departments, especially in larger communities, are dealing with? [CONFIRMATION]

KEITH HANSEN: From...not necessarily from the work that I'm in now, but from my past, one of my past lives, I should say, we dealt extensively with emergency medical services, and especially volunteer emergency medical services. And I think some of the challenges that they have, especially nowadays, is recruiting and retention. A lot of the volunteer departments are finding that their volunteer EMT's and EMTA's, EMTB's, whatever the case might be, are growing older and starting to retire, and they're having a difficult time fulfilling those empty slots. In terms of the profit or excuse me, the professional versus volunteer services, what I have seen in terms of HAZMAT or hazardous materials and local communities is that not every local community can afford to have that type of expertise or that type of equipment around. So I believe what the Nebraska Emergency Management Agency has done is to create 13 local HAZMAT teams to try and cover areas regionally. I believe that many of the local emergency responders are more than happy, especially the volunteers are more than happy to call in some of those professional HAZMAT folks because it's dangerous when they're responding to some things like that. Although that's not to say that they won't go in, regardless. But in terms of hazardous material and the Emergency Response Commission, I think they're trying to regionalize that to some extent and have assistance for the local volunteers rather than trying to fund all local volunteers to be able to perform at that level. Does that address what you're... [CONFIRMATION]

SENATOR FRIEND: Your answer was better than my question. (Laughter) Thank you, that's good info. [CONFIRMATION]

KEITH HANSEN: That doesn't happen, that doesn't happen very often, so thank you. [CONFIRMATION]

SENATOR AGUILAR: Further questions? Seeing none, thank you for joining us today, Mr. Hansen. [CONFIRMATION]

KEITH HANSEN: Thank you. [CONFIRMATION]

SENATOR AGUILAR: Mr. Johnson. Welcome, Larry. [CONFIRMATION]

LARRY JOHNSON: (Exhibit 1) Thank you. Good afternoon, everyone. My name is Larry A. Johnson, J-o-h-n-s-o-n. I work for the Nebraska Trucking Association, and we're a...the trade and lobby group for the trucking industry in Nebraska. My hope is to bring some transportation and hazardous material information as it relates to transportation by truck to the commission. And I'm anxious to get started on that. [CONFIRMATION]

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SENATOR AGUILAR: Thank you. Larry, I have a question. Now we had a little discussion a little bit earlier about HAZMAT and HAZMAT training. Is there enough HAZMAT training available in Nebraska for anybody, an emergency responder that would require it, to your knowledge? [CONFIRMATION]

LARRY JOHNSON: You know, as I'm fairly, obviously, new to the commission, but in terms of what we're seeing as an industry, we are not experiencing problems if it were to occur on the highway or those kind of opportunities. [CONFIRMATION]

SENATOR AGUILAR: Okay. Thank you. Further questions? Senator Pahls. [CONFIRMATION]

SENATOR PAHLS: Mr. Johnson, my...senator over here, he pointed at the references, and he questioned one of your references. (Laughter) I don't know how to take that, since I do know you. And I just wanted to add a little bit. I have served with Larry on lots of different organizations, commissions and things, I shouldn't say commissions, but groups. I'm extremely impressed with his knowledge, his energy. And the state of Nebraska needs to find a place for this guy. I'm not talking about the Correctional Center here (laughter). No, I just needed to say I'm totally impressed with him. [CONFIRMATION]

LARRY JOHNSON: Thank you, Senator Pahls. [CONFIRMATION]

SENATOR AGUILAR: Thank you, Senator Pahls. And, Larry, you know it's my responsibility to tell you we're not going to hold that against you. [CONFIRMATION]

LARRY JOHNSON: Okay, thank you. (Laughter) [CONFIRMATION]

SENATOR AGUILAR: Further questions? Seeing none, thank you for joining us today. [CONFIRMATION]

LARRY JOHNSON: Thank you, appreciate it. Thanks. [CONFIRMATION]

SENATOR AGUILAR: That will close the confirmation hearings. And we're now ready to open LB256. Senator Mines, would you take the chair? [LB256]

SENATOR MINES: I will. As Chairman Aguilar takes his seat, could I see a show of hands, those that are going to testify in support of the bill? I see one. How about those in opposition to the bill? I see none. Neutral testimony? We have one testifier after you, Senator. It's all yours. [LB256]

SENATOR AGUILAR: Thank you, Chairman Mines. Members of the Government,

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Military and Veterans Affairs Committee, my name is Ray Aguilar, represent District 35. I'm here before you today to introduce LB256 at the request of the Department of Administrative Services. LB256 makes several cleanup and technical changes to provisions relating to state government and the Department of Administrative Services, DAS. A complete section-by-section summary of this bill has been provided to you, so I want just to highlight some of the provisions of this bill. The bill makes three changes to the construction contract statutes for DAS. First, it increases the dollar threshold for bidding from \$40,000 to \$50,000 to match the statutory requirement for other types of service contracts. Second, it increases the dollar threshold for requiring a performance bond for the contract from the current \$40,000 to \$100,000. This will allow additional, primarily small, local contractors to bid on small jobs under \$100,000. Third, it eliminates the requirement for the Attorney General's Office to review all construction contracts. DAS has a standard construction contract form which is used for these contracts and which has been reviewed by the Attorney General's Office. The Attorney General's Office will still be available to DAS if they need assistance in contracting. But the review is simply perfunctory now that a standard state contract form is used. This provision has been discussed with the AG's Office, and they have no objection. The bill makes similar changes in the Department of Corrections construction statutes. Another change involves the Self-Insured Indemnification and Liability Fund. The statute has clear provisions for handling self-insured indemnification claims, but it is silent as to the handling of self-insured liability claims. The bill separates the one Self-Insured Indemnification and Liability Fund into two separate funds, the Self-Insured Indemnification Fund, and the Self-Insured Liability Fund. The bill also establishes internal reporting and handling provisions for the Self-Insured Liability Fund. Additionally, the bill requires agencies and/or the AG's Office to report liability claims to be paid to the Risk Manager. If a state agency has insufficient funds to pay, the agency will notify the Risk Manager, who will submit the settlement or judgment to the Legislature in the same manner as the State Miscellaneous Claims Act. Finally, the bill repeals the Forms Management Program Act. This act was passed when all government forms were printed. The purpose of the act was to review forms, reduce duplication and save money by eliminating unnecessary forms. Government is becoming increasingly electronic, and with that shift, the need for the act is no longer present. Although the act mandates that DAS have individuals collect and review all government forms, this program was discontinued and defunded some time ago. Laura Peterson, of DAS, is here to provide further details and answer any questions you might have, and hopefully make me not have to pronounce indemnification anymore.
(Laughter) [LB256]

SENATOR MINES: Thank you, Senator Aguilar. Questions by the committee? Senator Friend, I see you have your hand up. [LB256]

SENATOR FRIEND: If I did, Chairman Mines, it was a mistake on my part. I apologize.
[LB256]

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SENATOR MINES: I apologize, I apologize. Any other questions? I see none. Thank you, Senator. Laura, I think you're the only proponent. Come on up. [LB256]

LAURA PETERSON: (Exhibits 1, 2) Good afternoon, Senator Mines, members of the committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services. And I'm here to testify in support of LB256 which, as Senator Aguilar said, is a DAS cleanup bill intended to add clarification and efficiency to various state processes. It's a somewhat lengthy bill and also a technical bill, so my plan was to quickly summarize the substantive sections, and then entertain questions. But as you'll see from the testimony I distributed, it's...some of it's very similar, in fact, word-for-word from what Senator Aguilar had to tell you. So I'm going to kind of skip over and highlight the parts that he might not have mentioned. Particularly Section 2 of the bill makes it clear that agencies must submit requests for utility easements on state land to the Vacant Building and Excess Land Committee. I am also distributing an amendment to that section for the committee's consideration. The Game and Parks Commission currently has separate statutory authority to grant easements across state land. It was not our intent to change that in any way, and so the amendment would allow that grant of authority to continue. Sections 3, 4, and 5 of the bill contain cleanup provisions related to purchasing. Those sections add clarity to service contract sole source bidding, and bidding between the thresholds of \$25,000 and \$50,000. It's truly a cleanup from the provisions of LB626, from 2003. These sections also increase the dollar threshold for informal bidding and agency direct market purchase of goods, so that all of the statutes governing goods match each other. Again, that's just a cleanup from LB626. I think that covers all the sections that Senator Aguilar did not testify to. And I would be happy to answer any questions that you have. [LB256]

SENATOR MINES: Thanks, Laura. Committee, any questions for Laura? I have one. [LB256]

LAURA PETERSON: Okay. [LB256]

SENATOR MINES: Just one. In...as long as we are on page 3, 72-818, it says, "a state agency shall submit any requests for granting utility easement," and then the next section says, "the committee may approve utility easements." Why don't we remove the permissive language in that statement as well? [LB256]

LAURA PETERSON: I think what you would be creating, if you made the second sentence a "shall", was a situation where an agency would submit a request to the Vacant Building and Excess Land Committee; they would not have the discretion to disapprove that request. The idea is you would submit your...you have...in order to get an easement, you would have to submit it... [LB256]

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SENATOR MINES: Oh, I see, I see. May only approve. Okay. [LB256]

LAURA PETERSON: ...and then they would review it, decide if it was a good idea or not, and then they may or may not approve it. [LB256]

SENATOR MINES: Okay, okay. Thank you. [LB256]

LAURA PETERSON: You're welcome. [LB256]

SENATOR MINES: Great answer. Good job. Any questions? I see none. Thanks, Laura. Any other proponents? I see none. Opponents? There are none, and I assume there's no neutral either. Senator Aguilar, to close. Senator Aguilar waives closing. He has one more, Senator. Now we have LB388, introduced by Senator Aguilar. And then you've got a very anxious gentleman behind you. (Laughter) The floor is yours. [LB256 LB388]

SENATOR AGUILAR: And I'm not trying to pull rank or anything like that. This is the way the agenda was set. Good afternoon. Again, I'm still Ray Aguilar, still representing District 35. And I'm here to introduce before you LB388 at the request of the Department of Economic Development. As many of you know, the Government Committee is required to provide a report on every board and commission in the state, every four years. Currently, there are over 250 boards and commissions operating. The Government Committee has worked hard over the years to eliminate any board or commission which is no longer active or needed. This is a difficult process, so I am always grateful when a board recognizes themselves when they are no longer necessary. This is what happened with the Nebraska Industrial Competitive Alliance. The alliance decided their work could be incorporated by the Economic Development Commission, and asked to be eliminated. Therefore, LB388 eliminates the Nebraska Industrial Competitive Alliance and provides that the Economic Development Commission will take over their primary responsibility which is oversight of the Nebraska Manufacturing Extension Partnership. The bill also adds some members to the commission to ensure the expertise of NICA will continue on the Economic Development Commission. I believe Richard Baier is here, from the Department of Economic Development, to answer any technical questions you have, and I also think he wants to discuss a possible technical amendment to the bill that you have before you. Thank you for your time. And I'd be happy to try to answer any questions you may have. [LB388]

SENATOR MINES: Thank you, Senator. Questions for Senator Aguilar? I see none, Senator. Thank you. Could I see a show of hands of those that are in support? I see one. Those in opposition? I see ten. (Laughter) Those in a neutral capacity? Please come forward, and I'll give the chair back to Senator Aguilar. [LB388]

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SENATOR AGUILAR: Welcome, Mr. Baier. [LB388]

RICHARD BAIER: (Exhibits 1 and 2) Good afternoon. Chairman Aguilar, members of the committee, my name is Richard Baier. For the record, the last name is spelled B-a-i-e-r. For the last three plus years, I've had the pleasure as serving as the director of the Department of Economic Development and I'm here today to testify in support of LB388. I'd like to thank your chairman for introducing our bill that's before you today. As the senator outlined, this really is a minor, technical cleanup. Right now our statute includes the Nebraska Industrial Comparative Alliance, which in a mouthful is a bit like indemnification, so we refer to it as NICA for simplicity purposes. NICA was created in the early 1990's to oversee the MEP program, and it was also put in place to assist with policy and programs in a variety of other activities, including School to Work and some other federal programs that have since ceased to exist in our agency. Because of the limited activities of the board to date, the board voted last year to ask that they no longer be retained, and that their services be moved over to the Economic Development Commission. The change that we're looking at in terms of NICA are reflected on page 4, line 23. They also met and have visited with the Economic Development Commission in terms of them accepting responsibility for our ongoing MEP program. The second item of note in this bill is the expansion of our department's commission. This commission works with us in an advisory capacity, finding ways to grow and prosper our state's economy through programs and policy changes. The commission would assume the responsibility for our MEP program. We believe they would provide more adequate oversight, and we're also looking at a couple of other changes in terms of makeup of the committee. We did go in and identify, for example, some change in our target industries to better reflect the members of our commission as we appoint new members and they come on and reflect our target industries in Nebraska. It's basically a modernization from the early nineties, and in some cases from the mid-eighties. I'd also like the committee to consider one change, which I've forwarded to you as part of your handouts. NICA's current chairman, Mike Baldino, who would have been here to testify today, is actually over doing a consulting project in Iowa, suggested that we take a look at...we're requiring, under the proposed bill, two manufacturers to sit on our commission. He has talked with the federal folks who oversee our MEP program and our MEP effort. They are suggesting that we look at someone that has a background in the small manufacturing business. Now it gets a little fuzzy. The federal government refers to small businesses as 500 or less employees. From our case, that's pretty much everybody in the state. And so for purposes of Nebraska's economy we think a small manufacturer should be a business with no more than 75 employees. Any other changes that you see really are technical and are really cleanup language from prior years. And I would encourage your prompt approval of the bill, so we can get it moving forward. I'd be happy to take any questions. [LB388]

SENATOR AGUILAR: Questions for Mr. Baier? Seeing none, thank you. [LB388]

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RICHARD BAIER: Thank you, Senator. This group is a lot more fun than some of the other places I've been recently. So it's been a pleasure. (Laugh) [LB388]

SENATOR KARPISEK: Yes, we are. [LB388]

SENATOR AGUILAR: Thank you for that. Are there further proponents of the bill? Seeing none, are there any opponents of the bill? Neutral? Seeing none, I will waive closing. And that closes the hearing on LB388. We're now ready to open with Senator Johnson, LB396. Welcome. [LB388 LB396]

SENATOR JOHNSON: Thank you. Senator Aguilar and members of the committee, as you can see, I've been in the Legislature for four years, and I just couldn't wait to appear before this committee. One other little side note is that one of the people who just testified a few minutes ago, they say Nebraska has only two degrees of separation rather than six; our fine attorney who testified used to be our babysitter. (Laughter) Well, Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee, really have quite a simple bill before you here today; I guess, to some people that turns on a red light, but this one really is. And what it does is it just raises the range of fees that the Nebraska Board of Landscape Architects may be charged, there's approximately...and there's about 85 of these people in the state of Nebraska. What the range has been set at now has been from \$20 to \$100, that was set some time ago. Now all the fees are set at \$100, and this maximum amount doesn't...it isn't sufficient to cover the costs involved in this licensure. Without the increase therefore the Board of Landscape Architects wouldn't collect enough to fund their budget this next biennium. Therefore, LB396 makes the increase in the range permissible from \$100 to \$300. This will allow the board to continue to function, license and regulate Landscape Architects in the state, obviously, to protect the health, safety and welfare of the public. So it gives a wide range for them to work with. And I would suspect it won't be much above \$100 that it will go to, but it does allow them the leeway that they need to fund their operation. [LB396]

SENATOR AGUILAR: Thank you, Senator Johnson. I'm going to start off with the first question and ask you, without this fee increase, you said they don't have enough money in their budget. Is there any other way that money would be supplanted? [LB396]

SENATOR JOHNSON: Well, as I am aware of, Senator Aguilar, there are a range, you know, a whole myriad of different license fees and so on. And I think that there is some provision in there where you can transfer fees within that cash system. But as much as possible they like each entity to fund their own operation. [LB396]

SENATOR AGUILAR: To be self-funded, in other words? [LB396]

SENATOR JOHNSON: Yes. [LB396]

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SENATOR AGUILAR: Thank you. Further questions? Senator Karpisek. [LB396]

SENATOR KARPISEK: Thank you, Chairman Aguilar. Senator Johnson, I guess I don't know, how do they decide from the \$100 to \$300? Is it different? [LB396]

SENATOR JOHNSON: The...basically, what they do, Senator Karpisek, is to...they have their budget, and then I'm sure, but I don't know the exact mechanism, but they present their budget and their request in fees to some group where they get the final approval. But basically,... [LB396]

SENATOR KARPISEK: Oh, okay. So it's not different on... [LB396]

SENATOR JOHNSON: Yeah. [LB396]

SENATOR KARPISEK: ...what you're asking? Everybody gets the same... [LB396]

SENATOR JOHNSON: Yeah. And there would be no reason for them, say they automatically skip to the \$300, that's why I say, most likely it will go to something like \$125 or \$150 or something like that. [LB396]

SENATOR KARPISEK: And everybody gets the same fee,... [LB396]

SENATOR JOHNSON: Right. [LB396]

SENATOR KARPISEK: ...not a sliding scale? Okay, good. Thank you. Thank you, Mr. Chairman. [LB396]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB396]

SENATOR JOHNSON: I will waive closure. [LB396]

SENATOR AGUILAR: Very well. [LB396]

SENATOR JOHNSON: And there is someone from the department behind me that will be able to answer those questions with certainty. [LB396]

SENATOR AGUILAR: Thank you, Senator. We'll have the first proponent coming up. And while they're doing that, I'd like to announce that Senator Bill Avery of Lincoln has joined us. Welcome, Senator. He's been busy introducing legislation in another committee. Welcome. [LB396]

DENNIS BRYERS: (Exhibit 1) Good afternoon. My name is Dennis E. Bryers, that's

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B-r-y-e-r-s. I'm a licensed landscape architect in Omaha, Nebraska, I'm also the current chairperson of the Nebraska State Board of Landscape Architects. Good afternoon, Senator Aguilar and members of the committee. Thank you for this time. I'd like to offer some testimony on behalf of the board regarding LB396. The Nebraska State Board of Landscape Architects was created by the passage of the Professional Landscape Architects Act in 1967, to regulate the practice and profession of landscape architecture in order to protect the health, safety and welfare of the general public. This remains the board's first priority as it continues its oversight of the licensure and regulation of professional landscape architects in Nebraska. The board is a self-funded agency, operating solely from a cash fund derived from fees collected for application and licensure of landscape architects. Its members serve without compensation except for necessary travel and incidental expenses incurred in the discharge of their duties. In 1996, after an unsuccessful attempt to combine the Board of Landscape Architects with the Board of Examiners for Engineers and Architects, the Board of Geologists and Interior Designers, the Landscape Architect Board realized fees would need to rise to cover operating expenses. In June of 1997, rules and regulations were approved that changed application, licensing and renewal fees to the maximum of \$100 allowed in the statute. Expenses have continued to increase over the last ten years. Because of the inability to cover operating costs, the board was administered part-time, using a member's home and office until the year 2000, when an agreement was made with the Nebraska Board of Engineers and Architects for administrative assistance part-time, and use of office space and equipment. This agreement allowed the Landscape Architects Board to get on their feet and was an important step toward attaining internal control procedures in line with state requirements. In addition to expenses incurred in the agreement, the board is also responsible for paying accounting and auditing expenses, postage, publication and printing expenses, dues and subscriptions to the Council of Landscape Architectural Registration Boards, examination expenses, conference registration, and reimbursement of meeting and travel expenses for board members. The projected Memorandum of Understanding with the Board of Engineers and Architects will sharply increase over the next two fiscal years to implement actual costs for administration and use of facilities and equipment. Unless the fees are increased, the projected Memorandum of Understanding expense and the annual dues for the Council of Landscape Architectural Registration Boards alone would be over 90 percent of projected revenue for the next two fiscal years. The cash fund would be depleted within the next few years without an increase in revenue. The original 1967 statutes listing the range of fees must be revised to allow a range of \$100 to \$300. This revision will allow the board to have sufficient revenue to continue regulating the practice and profession of landscape architecture and protect the health, safety and welfare of the general public in Nebraska. I urge you to support LB396 and advance it to the floor. Thank you. [LB396]

SENATOR AGUILAR: Thank you. Questions for Mr. Bryers? Seeing none, thank you. [LB396]

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DENNIS BRYERS: Thank you. [LB396]

SENATOR AGUILAR: Any further proponents to LB396? Are there any opponents? Any neutral testimony? Seeing none, Senator Johnson has waived closing. That closes the hearing on LB396. We're ready to open on LB408. Senator Preister. Welcome. [LB396 LB408]

SENATOR PREISTER: (Exhibit 1) Chairman Aguilar, thank you for the welcome. Members of the Government, Military and Veterans Affairs Committee, I am Don Preister, here as the primary introducer of LB408. And I do have a handout, and it's on both sides. In 1993, Senator Jerome Warner introduced a bill that would have established standards and procedures for the Department of Administrative Services to use when approving or disapproving a proposed contract for service. In '95, Senator Warner reintroduced and passed a similar bill; this time it was more narrowly drafted. The review of the proposed contract for service was only required if a contract would replace a permanent state employee. This '95 version of the bill passed and remained in statute until the passage of LB626 in 2003. LB626 revised this provision so the review only applies to contracts over \$50,000. A number of agency contracts are also exempted from this provision. And in my bill, on the one side of what you have for the handout, shows that we have exempted out many of those same agencies. In 1999, I introduced legislation and interim studies to examine the issue of contracts for services. This joint study and review, which included Government, Health, Labor and the Appropriations Committees and their chairs worked collaboratively, culminated in the passage of LB626 in 2003. From the beginning, my main goal has been and remains to make sure that state government knows whether the state saves money by choosing to use state employees or by entering into a contract for a specified service. At the time LB626 was passed my main policy priority, the cost-benefit analysis, was deleted from the bill with the understanding that this issue would be considered at a later time. It was agreed that the first phase of this enormous undertaking was to identify all the contracts for services and to get the contract information entered into the new Nebraska Information System so contracts could be tracked. All contracts should now be entered into the NIS system, and have been there for the past three years. At the hearing on the interim study in 2005, on contracts for service, we learned that there are over two, and I say this clearly, \$2 billion in contracts for services. We still don't know how much the state pays for contracts for service annually because some of these contracts are multiyear contracts. However, the expenditure is a sizable portion of our state budget and I believe certainly worthy of some oversight. Currently, under 73-509, which was passed in LB626, a limited preprocess analysis was enacted. However, it only is triggered if a proposed contract for service is over \$50,000, and will displace a current state employee who was performing the same service within the past 12 months. In 2005, we sent letters to all the major state agencies asking them to send copies of all the preprocessed documents they've completed since the passage of LB626 in 2003,

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essentially, over a two year period. In response to the letter, and we did follow up with phone calls, so we got every, single agencies response, not a single agency has completed a cost-benefit analysis because the need was never triggered, since the statute is currently written meaning agencies have determined no employee was ever displaced. Clearly, the current statute, in its limited form, is not providing any branch of government with any information regarding cost-savings related to contracts for service. With that in mind, I've redrafted this provision so it applies to all proposed contracts for services over \$50,000, regardless of whether or not the contract would displace a state employee. However, not all contracts over \$50,000 will be affected. Because of all the agency contacts that we've had over the years, we've continued to add more agencies, and more exemptions so that all of those that are exempted out are listed on the handout. In addition, this bill is responsive to the concerns expressed by DAS at past hearings. They testified that they did not want to be placed in the position of second-guessing the decisions of state agency directors by having to review and approve their need for a contract. In response, LB408 does not contain a requirement that DAS or any other entity either review or approve any agency's decision to enter into a contract. It is also not my intent to prevent agencies from entering into contracts, even if the cost-benefit analysis shows there would not be a benefit to the state if the agency entered into the contract rather than using state employees. Finally, there's only one requirement in this legislation that state agencies must comply with once they've completed the cost-benefit analysis. Once that's done, the agency must send a copy of the document to the Legislative Fiscal Office. They do the document, they send it to Fiscal, and then our Appropriations Committee at least has the information as they're questioning agencies, and as they're going through the budgeting process. So it's pretty simple and I think fairly easy to comply with. DAS is given the authority to provide guidelines for agencies to use in drafting their cost-benefit analysis. I've tried to keep the text of the bill and the requirements placed on state agencies as brief and limited as possible. This should translate into little or no fiscal impact, since there will be no need for additional DAS staff to review or approve the cost-benefit analysis. I've spoken with Mike Calvert in the Fiscal Office, and he is willing to have the Fiscal Office as the recipient of these documents. In conclusion, I believe the cost-benefit analysis requirement contained in this bill accomplishes the following goals: it provides guidelines for agencies to use to compare the cost of a proposed contract for service to the cost of using state employees to carry out a service; documentation of the cost-benefit analysis will be available for review by the members of the Legislature through it being given to the Fiscal Office; it is responsive to concerns raised by DAS and does not require DAS or any other agency to review or approve the analysis; no agency is precluded from entering into a contract, even if the analysis does not show a cost-benefit to the state; it only requires justification to be included in the analysis. When LB626 was enacted four years ago, we knew that it was just a first step we were undertaking in order to get a handle on the fastest growing portion of the state budget. This is the next logical step to document whether we are in fact spending our tax dollars wisely and making the most cost-effective choices when entering into contracts for

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services. [LB408]

SENATOR AGUILAR: Thank you, Senator Preister. That's quite an impressive time line sheet you have here. My only question is, do you have it right this time? [LB408]

SENATOR PREISTER: Do I have what? [LB408]

SENATOR AGUILAR: Do you have it right this time? (Laugh) [LB408]

SENATOR PREISTER: Well, we have added and added to it, and I think this is the last component as I view it. And the information now on the NIS system is available, so people...senators can look at it and see what the contracts are, and some dollar amounts. We've at least compiled that. That was a major step, and the agencies did quite a job in compiling all that. So we're taking it kind of a mouthful at a time. And now, hopefully, this will be the... [LB408]

SENATOR AGUILAR: I understand. [LB408]

SENATOR PREISTER: ...the last component [LB408]

SENATOR AGUILAR: Thank you for that. Further questions? Senator Karpisek. [LB408]

SENATOR KARPISEK: Thank you, Chairman Aguilar. Senator Preister, compared to last year's, did last year's not...did it go through? It looks the same to me. [LB408]

SENATOR PREISTER: We did have a bill that I introduced last year on this. And it did not go through. And I can't tell you exactly what happened. I think we ran out of time. [LB408]

SENATOR KARPISEK: Time, that's what I was just guessing. But that's why I wanted to know. Thank you, Mr. Chair. [LB408]

SENATOR AGUILAR: Thank you. Further questions? Seeing none, thank you, Senator Preister. [LB408]

SENATOR PREISTER: Thank you. And I'll waive closing. [LB408]

SENATOR AGUILAR: Very well. First proponent, please. Welcome. [LB408]

MIKE MARVIN: (Exhibits 2, 3, and 4) Good afternoon, Chairman Aguilar, senators. My name is Mike Marvin, M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees, representing about 11,000 state workers. I'm here today in support of LB408. Many people believe that by simply shrinking the size of government

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you make it less costly and more efficient. I don't believe this is so. I believe that the current dedicated state employees provide quality, cost-effective results every day for the citizens of Nebraska. I believe the state loses control when they abdicate their authority and/or responsibility to a private contractor. Today at the Thomas Fitzgerald Veterans Home in Omaha, we have about 80 percent of the workers there who do not work for the state, they work for private contractors or temp agencies. Many of these workers make more money and have better benefits than state workers right next to them. There's no way this can be more cost-effective for the state. This also leads to less continuity of care for our veterans. Reducing the number of full-time state employee slots does not guarantee reduced costs. It makes sense and I believe it is your obligation to make sure that before contracting out of any services is done, those contracts must result in better, more efficient services, and reduced cost to the people of the state of Nebraska. I would urge you to move LB408 forward. Thank you. I also have submitted to you a copy of an editorial I wrote last fall. And on the back, there is a federal deficit report about the veteran homes deficiencies. And then there is an article from the Omaha World-Herald that talks about the problems at the Beatrice State Developmental Center and at the Thomas Fitzgerald Veterans Home. I really believe that while no jobs have been shown to be reduced, yet by contracting out you're holding the number of jobs down. And I don't believe that it is very cost-effective for the state and the people of the state. I would really urge you to move this bill forward. [LB408]

SENATOR AGUILAR: Thank you, Mr. Marvin. Questions for Mr. Marvin? Senator Pahls, please. [LB408]

SENATOR PAHLS: Thank you, Mr. Chairman. Mike, I'm reading the articles. And it does show some flaws. The question I have is, by reading from your testimony, you said 80 percent of the workers do not work for the state. At least 20 percent work at the veterans home? Is that true? [LB408]

MIKE MARVIN: Yes, well that was 80 percent of the nurses. I shouldn't have said workers, I should have said nurses; 80 percent of the nurses come from contractors and private temp agencies. [LB408]

SENATOR PAHLS: Okay. But at least some of them work for the state? [LB408]

MIKE MARVIN: Some do work for the state, yes. [LB408]

SENATOR PAHLS: I mean, if they would see errors being made, I'm surprised they were not more critical of what's going on. [LB408]

MIKE MARVIN: I think there has been some criticism, but I can't answer that for sure. [LB408]

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SENATOR PAHLS: Okay. [LB408]

MIKE MARVIN: I don't know how it got to the state that it is in, but I know the state that it is in is not good. [LB408]

SENATOR PAHLS: Okay, thank you. [LB408]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Marvin. [LB408]

MIKE MARVIN: Thank you very much. Good afternoon, senators. [LB408]

SENATOR AGUILAR: Good afternoon. Next proponent. Any opponents? Welcome. [LB408]

LAURA PETERSON: (Exhibit 5) Good afternoon, Senator Aguilar and members of the committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager and the general counsel for the Department of Administrative Services. I'm appearing here today to testify on behalf of the administration in opposition to LB408 which, as you've heard, makes changes to the contract statutes. For the most part, our position on this bill is that it's unnecessarily detailed, removes administrative flexibility to respond to changing market conditions, and responds to a problem that doesn't exist. The primary focus of the bill is to require agencies to complete a cost-benefit analysis on using state staff to complete work versus services proposed to be contracted. Nebraska currently has two provisions of law governing this subject. The first is found in Section 73-301 through 73-307. Section 73-301 requires the DAS director to review and approve or disapprove of any contract for services when, on the effective date of the contract, the services are performed by permanent state employees and will be replaced by a contract for services. The subsequent sections there discuss requirements for the agency to request such approval, including completing a cost-benefit analysis and providing a plan of assistance to the displaced state employees. There is no dollar threshold in this first requirement for the cost-benefit analysis. It applies any time an agency would replace a current employee with a contractor, regardless of the contract amount. Should a state employee be displaced due to a contract, which incidentally hasn't occurred in the entire time I've been here, in addition to the plan of assistance that the agency is required to complete, the state maintains a reemployment process which provides hiring processes to quickly find another place for these employees. The second current provision is found in Section 73-509. This requirement applies to all contracts for services in excess of \$50,000 and in cases where the services are currently performed by or have in the previous 12 months been performed by a state employee. In those cases, the agency has to complete a pre-process that's established by the DAS Materiel Division. That pre-process includes a cost-benefit analysis which must be maintained by the agency in their contract file. LB408 would replace the two current provisions with the provisions of LB408, and would expand it from contracts

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where the duty is performed by state employees are being replaced to also include new programs or programs not being contracted in the prior 12 months. The new language is very detailed in identifying what must be contained within the guidelines, without any additional benefit to the state. It is unnecessary to give DAS Materiel Division discretion to create a process and then define the process statutorily in such detail that there is little flexibility to change the process as times, purchased services and contracting procedures change. For example, we would be required to complete this cost-benefit analysis for business functions the state would never complete in-house, such as providing telephone service, life insurance benefits or providing express mail delivery, like UPS or DHL. Moreover, among the using agency, DAS Materiel Division, and the DAS director, these contract bids are checked to ensure necessity and compliance with state law while striking the balance of allowing agency directors to manage the function and duties of an agency's responsibilities. There is accountability, as the agency directors are subject to the scrutiny of the Legislature, Governor, and the public. The administration has a different viewpoint on how efficiency and cost-savings can be achieved. In our view, these ends are not achieved by LB408, as it proposes to add yet another layer of bureaucracy to an already bureaucratic process. We suggest that the current process is working. And so we respectfully ask that the committee indefinitely postpone LB408. I'd be happy to answer any questions. [LB408]

SENATOR AGUILAR: Questions for Laura? Senator Pahls. [LB408]

SENATOR PAHLS: Thank you, Mr. Chairman. Why does it seem that we keep...this thing just keeps reappearing? There must be some disconnect somewhere. [LB408]

LAURA PETERSON: I think the question that we've asked that we don't really know the answer to is, what problem we're trying to address? And we're talking about instances where there seems to be concern that state employees are being replaced with contractors. But we haven't had any examples of that happening. And the current law says, if you replace an employee or function that's been done by employees with contractors, then you need to do this analysis already. And as, you know, Senator Preister told you, they did a request from all the agencies. And as I can tell you as they're filed with my agency, we're just not doing that. So I don't know if there's a belief that we're doing that. And the other thing, we haven't had anyone say...had an instance where people say, we think you've contracted, and it would have been more efficient or better or whatever to do that service in-house. Now there are maybe instances where we'd like to be able to hire employees and can't, and so we're contracting. But that's not covered in this bill anyway. [LB408]

SENATOR PAHLS: You're just saying this is not happening? [LB408]

LAURA PETERSON: We're not aware of it. I mean we've had this bill now for a number of years, and LB902 last year was very similar, there are some technical changes, but

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very similar to this bill. And at that time the same thing is we're just not aware that we're taking state positions and replacing them with contractors. [LB408]

SENATOR PAHLS: Okay. Then if that could be proven, then you probably could accept this? [LB408]

LAURA PETERSON: Well, I mean we might want to talk about language of the bill. But we really do believe that we're fixing a problem that doesn't exist with this bill. [LB408]

SENATOR PAHLS: Okay, thank you. [LB408]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Laura. Further opponents of the bill? Seeing none, is there any neutral testimony to LB408? Seeing none, Senator Preister waives closing. And that closes the hearings for today. Thank you. [LB408]

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Disposition of Bills:

LB256 - Advanced to General File, as amended.
LB388 - Advanced to General File, as amended.
LB396 - Advanced to General File.
LB408 - Held in committee.

Chairperson

Committee Clerk