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Appropriations Committee
February 24, 2017

[LB416]

The Committee on Appropriations met at 1:30 p.m. on Friday, February 24, 2017, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB416. Senators present: John Stinner, Chairperson; Kate Bolz, Vice Chairperson; Rob Clements; John Kuehn; Mike McDonnell; Tony Vargas; Dan Watermeier; and Anna Wishart. Senators absent: Robert Hilkemann.

SENATOR STINNER: Good afternoon. Welcome to the Appropriations Committee hearing. My name is John Stinner. I'm from Gering and represent the 48th District. I serve as Chairman of the committee. I'd like to start off by having members do self-introductions, starting with Senator Clements.

SENATOR CLEMENTS: I'm Rob Clements. I'm from Elmwood, Nebraska, District 2.

SENATOR McDONNELL: Mike McDonnell, LD5, south Omaha.

SENATOR STINNER: Senator Kuehn will be joining us later. Senator Hilkemann is excused. My name is John Stinner. I'm with District 48, Scotts Bluff County.

SENATOR BOLZ: Senator Kate Bolz. I represent District 29 in south-central Lincoln.

SENATOR WISHART: Senator Anna Wishart, District 27 in west Lincoln.

SENATOR VARGAS: Senator Tony Vargas, District 7, downtown and south Omaha.

SENATOR WATERMEIER: Dan Watermeier, District 1 from Syracuse.

SENATOR STINNER: Assisting the committee today is Jennifer Svehla, our committee clerk. To my left is our fiscal analyst, Doug Gibbs. On the cabinet to your left...or to your right, I guess it's to my left, you will find green testifier sheets. If you are planning to testify today...testifying today, please fill out a green sheet and hand it to the page when you come up to testify. If you will not be testifying at the microphone but you want to go on record as having a position on a bill being heard today, there are white sign-in sheets on the cabinet where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. To better facilitate today's proceedings I ask that you abide by the following procedures. Please silence or turn off your cell phones. The order of

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testimony will be introducer, proponents, opponents, neutral, closing. When we hear testimony regarding agencies we will first hear from the representative of the agency or the introducer of the bill. We will then hear testimony from anyone who wishes to speak on the agency's budget request. Spell your first name and last name for the record before you testify. Be concise. It is my request that you be...that we will limit your testimony to five minutes. That would be after the agency's director. Written materials may be distributed to the committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come to testify. We need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will begin today's hearing with LB416. Senator Vargas. Welcome, Senator. [LB416]

SENATOR VARGAS: Thank you very much. Thank you, Chairman Stinner, fellow Appropriations Committee members. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. LB416 is a bill to provide funding for the Department of Labor to hire bilingual investigators for misclassification claims. I'll give a brief overview of the misclassification act...the Employee Classification Act for context on this bill. The Employee Classification Act was introduced and passed by Senator Steve Lathrop in 2010 to address an identified problem with employers paying their workers as contractors rather than employees in the construction and service delivery industries. This misclassification of employee status is a problem for a number of reasons. One, for workers, being classified as a contractor means you aren't entitled to employer health insurance and unemployment, workers' compensation, and Social Security benefits, among other many labor law protections. For the state the loss of revenue has a negative effect on our ability to fund essential programs. And for other businesses in our communities, it puts businesses that violate the law on an unequal footing when it comes to bidding for projects. Though there is currently one bilingual investigator for misclassification claims, we are hearing from people in the industry, in construction and delivery, that there is a need for more bilingual support. My intent with LB416 is to provide funding so that the Employee Classification Act can be fully and appropriately enforced. LB416 directs \$250,000 each year for the next two years from an existing cash fund, the Employee Security Special Contingent Fund, so the Department of Labor can hire additional bilingual inspectors. I would also point out that in other states with similar populations, for example, Maine, vigorous enforcement of the employee misclassification laws has proven to be revenue neutral, meaning that the appropriations to hire investigations were earned back in enforcement actions and fines. With that, I will be happy to answer any questions. [LB416]

SENATOR STINNER: Any questions? Senator Wishart. [LB416]

SENATOR WISHART: So how...so you're asking \$250,000 each year? [LB416]

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SENATOR VARGAS: Correct. [LB416]

SENATOR WISHART: And then how many staff members, how many inspectors would that be? [LB416]

SENATOR VARGAS: This would be two additional bilingual investigators. [LB416]

SENATOR WISHART: And how many are there currently? [LB416]

SENATOR VARGAS: We have one person that is doing...that's bilingual that is doing these investigations. [LB416]

SENATOR WISHART: Okay. [LB416]

SENATOR STINNER: Any further questions? Senator Bolz. [LB416]

SENATOR BOLZ: Thank you, Senator Vargas. I've pulled up the cash fund book. It's in front of me. It looks like it's a pretty healthy cash fund, highest ending balance of \$4.2 million, lowest ending balance of \$1.5 million. I assume you wouldn't have brought the bill if you didn't think that the cash fund had the capacity to serve this project. Correct? [LB416]

SENATOR VARGAS: That is correct. Based on the projections, we believe that this has the capacity to support these positions. [LB416]

SENATOR BOLZ: And there's no reason into the future for us to think that the cash fund flow wouldn't be able to support this expenditure. [LB416]

SENATOR VARGAS: To our knowledge, the research, no. [LB416]

SENATOR BOLZ: Great. Thanks. [LB416]

SENATOR VARGAS: Thank you. [LB416]

SENATOR STINNER: Senator Clements. [LB416]

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SENATOR CLEMENTS: Does the Department of Labor agree with this bill? Are they in support of it? [LB416]

SENATOR VARGAS: The Department of Labor will speak to their testimony on this. [LB416]

SENATOR CLEMENTS: Oh, all right. [LB416]

SENATOR VARGAS: So I'll let them speak for themselves. [LB416]

SENATOR CLEMENTS: All right. There's some stricken language. Is that outdated language? [LB416]

SENATOR VARGAS: Yes. This was just updating outdated language. This was... [LB416]

SENATOR CLEMENTS: Okay. [LB416]

SENATOR VARGAS: ...that wasn't the most pertinent. The most important parts were Section 2 on the last page 6 stating where the money is appropriated from and (2) for the enforcement and then on page 4, section (iv) just to employ bilingual investigators for enforcement of the Employee Classification Act, allowing this rationale for this fund to be used for this reason, and statute changing that. [LB416]

SENATOR CLEMENTS: And who set the \$250,000 limit or how was that derived? [LB416]

SENATOR VARGAS: That was derived from the need for the full funding for the two positions, what would be needed to do the investigations and anything that's going to...to further support the ability to go from investigating claims to fully enforcing them. [LB416]

SENATOR CLEMENTS: Okay. It's not just salaries for two people, right? [LB416]

SENATOR VARGAS: No. [LB416]

SENATOR CLEMENTS: It's office expense and... [LB416]

SENATOR VARGAS: Correct. [LB416]

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SENATOR CLEMENTS: Thank you. [LB416]

SENATOR STINNER: Any further questions? Senator Watermeier. [LB416]

SENATOR WATERMEIER: Thank you, Chairman Stinner. Senator Vargas, I guess the intention is that cash funds in the next biennium and then that's going to be built into the base. After that, it will come out of General Funds after that. [LB416]

SENATOR VARGAS: So, no, this...so, a clarification, I know I had this previous conversation with you about this. This would be included in the change in statute for this fund right now. This is only for the biennium budget for this next year. We've had conversations about revisiting and make sure we are evaluating the effectiveness of these two positions, but we...what we're seeing is that this fund can support these two positions in the long term. [LB416]

SENATOR WATERMEIER: Okay. So it's your intention to have the cash fund indefinitely support the two positions. [LB416]

SENATOR VARGAS: Right now I want it to be able to support it for the next two years. I...as long as this is and we're forecasting that this fund can support this position, I want to see what we can do with this fund. [LB416]

SENATOR WATERMEIER: Okay. Thank you. [LB416]

SENATOR STINNER: Senator Bolz. [LB416]

SENATOR BOLZ: Thank you. Just to play off of what Senator Watermeier was saying, the source of funds for the cash funds from the cash fund book is fee, fines, forfeits, and penalties. And so it's your contention that by having these additional officers they will identify additional fines, fees, and penalties and become self-sustaining. So that's why you think that it can be sustained in the cash fund. Is that correct? [LB416]

SENATOR VARGAS: That's one component. The other component is we just historically have seen this has been a healthy fund... [LB416]

SENATOR BOLZ: Great. [LB416]

SENATOR VARGAS: ...and it could sustain it. [LB416]

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SENATOR BOLZ: Okay. Thanks. [LB416]

SENATOR STINNER: Okay. Further questions? I have a couple questions. Where will these people be located, the inspectors? [LB416]

SENATOR VARGAS: We were not designating in this where they would be located. I think that's going to be dependent on...leaving that up to the Department of Labor to determine where they would best be located. [LB416]

SENATOR STINNER: So tell me the procedure. Some...a contractor, a general contractor is out in the field... [LB416]

SENATOR VARGAS: Uh-huh. [LB416]

SENATOR STINNER: ...hiring subs. Tell me how this... [LB416]

SENATOR VARGAS: Investigation happens. [LB416]

SENATOR STINNER: Go through the process for me, would you, please? [LB416]

SENATOR VARGAS: I think we'll hear from different perspectives of both individuals that are workers and the Department of Labor. What I can tell you is a lot of this is based off of input. I'd say it tends to be more reactive. So they get violations are reported anonymously through tips, through phone, through written, and then there also are investigations that are happening to some repeat offenders. Some employers are repeat offenders in this industry. It's not as proactive as going on visits to where we may see a need. And so as a result of the tips incoming and the input that they're getting, that is what determines where the investigations are happening. I know there's been conversations about more site visits so that they're proactively seeking out where these violations are happening, but that's where the process starts and ends. [LB416]

SENATOR STINNER: This is a group that's a cement crew that they're treating like a sub but that they're really employees. That's what you're seeking. [LB416]

SENATOR VARGAS: Yes. Correct. [LB416]

SENATOR STINNER: Okay. Thank you. [LB416]

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SENATOR VARGAS: Thank you. [LB416]

SENATOR STINNER: Any further questions? Seeing none, thank you. [LB416]

SENATOR VARGAS: Thank you very much. [LB416]

SENATOR STINNER: Any additional proponents? Welcome. [LB416]

STEVEN MULCAHY: (Exhibit 1) Thank you, Mr. Chair, committee members. My name is Steven, S-t-e-v-e-n, E. Mulcahy, M-u-l-c-a-h-y. I'm here today as a proponent for LB416. I'm going to give you four reasons why it makes economic sense to pass LB416 and hire two bilingual enforcement officers with experience visiting construction sites with the specific intent to enforce the Employee Classification Act. But I think it's important first to clarify what misclassification is and its structure and that of payroll fraud. Also note that I will be largely speaking today about the drywall construction industry. Your first handout, there's a simple flowchart that illustrates the path of control on a payroll fraud project where workers are misclassified that may clarify some of those questions you had. The second page is a graphic showing the flow of money on a payroll fraud project where workers are misclassified. You can see that all along the way people are skimming money and the worker at the top of the ladder is taking all of the risk but only receiving chump change for his hard day's work. There's a few additional handouts in that section that...with some more information on payroll fraud and misclassification for you to review at a later time. The first reason that it makes economic sense to pass LB416 and hire two bilingual enforcement officers with the specific intent to enforce the ECA is on your second handout. It is a white paper from the OpenSky Policy Institute, a nonpartisan research organization. This states that misclassification of workers in Nebraska not only exists but the state of Nebraska misses out on \$18 (million) to \$23 million annually in combined unemployment insurance and income tax revenue. The report also states that misclassification of workers was most prevalent in certain industries, including construction and farming. Conservatively estimating that construction represented just 5 percent of the misclassified workers in this report in Nebraska, enforcement would provide a \$900,000 addition to Nebraska's revenue, which would be 5 percent of the \$18 million at the lowest spectrum. Again conservatively, let's say that we only find one third of those. So one third of \$900,000 is \$300,000. The bill would pay for itself. The second reason that it makes economic sense to pass LB416 and hire two bilingual enforcement officers with the specific intent to enforce the ECA has not yet come to fruition. Let's see what would happen if full fines were levied on three recently completed jobs in Omaha. Job one was a privately funded job with 60 misclassified workers for a period of 12 months. Job two was a university project with 60 misclassified workers on the job for nine months. Job three was a UNMC project with 20 misclassified workers on the job for eight months. Over 90 percent of these workers were Latino. Most of

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them don't speak English. Misclassification is a discriminatory practice in the drywall industry. With just one visit to each job by a bilingual enforcement officer that's 140 misclassified workers times \$500 per fine, which is the fine for the first offense according to the ECA. That equals \$70,000. With a subsequent visit within eight months that would be 140 misclassified workers times the repeat offender \$5,000 fine per worker. That equals \$700,000. So you have three investigations, six job site visits, and \$770,000 in the bank. Some say this is bad for business and the fines should be negotiated down or that the fines are infeasible to pay. I disagree. Let's go to my third point. Let's see what a labor broker really makes. They're the supplier of the misclassified workers. According to interviews with them, with 30 misclassified workers they net \$2,500 per week. So for one job with 60 workers they make \$5,000 a week; \$5,000 times 52 weeks equals \$260,000. And they're never even on the job. Using the same math for job two, \$193,000. For job three, a paltry \$57,333. And again, oftentimes these brokers are never even or rarely on the jobs. I believe if the ECA was enforced as intended to be an economic deterrent, the last sentence of the last paragraph of the NDOL's annual report to the Legislature would read differently than, "The results of the investigations of the NDOL referrals to date do not warrant an independent enforcement effort beyond the current enforcement activities of NDOR because of the minimal amounts of unreported wages included in the referrals and the small number of employees misclassified under the Employee Classification Act per referral." I've included the most recent report for your review. The fourth reason that it makes economic sense to hire...to pass LB416 and to hire two bilingual enforcement officers with the specific intent to enforce the ECA is it's good for business and the economy. By ebbing the tidal wave of misclassification, contractors will be able to compete in a fair and equitable market. By hiring two bilingual enforcement officers, NDOL may be able to better monitor Section 11 of the ECA which mandates that any state entity or "sub-entity" require contractors and all subcontractors to sign affidavits stating that they will properly classify their workers. A violation of this affidavit is perjury. The bill and committee statement are included in your handout for your review. To my knowledge, there are very few boards that have been educated regarding this section. Some that are aware believe that having the...they're compliant just by having the general contractor sign an affidavit, leaving the subcontractors and labor brokers--where the real problem is--off the hook. In fact, the only board I found with Section 11 compliant bid spec language is Douglas County. I'm sure there may be others but I'm not aware of them. I've included in your handout the sample that they include in their bidding process...the language they include in their bidding process as a sample. So therefore, most school board projects, public work projects, university projects, municipal projects are all performed with misclassified workers. Legitimate contractors are bidding at a 38 percent disadvantage on payroll costs, oftentimes the most expensive cost of the bid. They are rarely selected to perform this work because it is nearly impossible for a legitimate contractor to be the low bid. For these reasons, we believe that it makes economic sense to pass LB416 and hire two bilingual enforcement officers with experience visiting job sites with the specific intent to enforce the Employee Classification Act. I've shown that it makes economic sense for this just in one aspect of the construction industry--the drywall industry--where

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misclassification and payroll fraud are discriminatory practices. There are others as well: concrete, rebar, roofing and more, just to name a few. Again, we stand in support of LB416 as a vehicle to enforce the ECA as it was intended. We would ask for your recommendation to move this bill forward and support it on the floor. Thank you. [LB416]

SENATOR STINNER: Thank you. Questions? [LB416]

STEVEN MULCAHY: (Exhibit 2) I also have a recommendation from a contractor that support the bill who employs 240 drywallers legitimately. [LB416]

SENATOR STINNER: Questions? Senator Bolz. [LB416]

SENATOR BOLZ: Thank you. You put this in your packet of information but I thought it might be a nice topic for the record. The inspectors would potentially bring in additional revenue through fines and fees, but there's also an impact on unemployment insurance taxes. And because...your information illustrates that because the underrepresented wages result in lost unemployment insurance, there would also be additional revenue through that funding stream as a result of these inspectors. Is that your analysis? [LB416]

STEVEN MULCAHY: Yes, and work comp. [LB416]

SENATOR BOLZ: And work comp as well. So just for the record, I thought that that point in your packet of information was important to (inaudible)... [LB416]

STEVEN MULCAHY: Thank you. [LB416]

SENATOR BOLZ: ...out. I think it's useful. Thanks. [LB416]

SENATOR STINNER: Thank you. Additional questions? I have one. Who pays the fine? Is it the subcontractor? Is it the school or... [LB416]

STEVEN MULCAHY: Yes, it is the subcontractor that intentionally misclassifies the worker. It's not the general contractor. [LB416]

SENATOR STINNER: Is this kind of a legal proceeding, an administrative court proceeding where the person comes in and is able to defend themselves or appeal? [LB416]

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STEVEN MULCAHY: I'm not aware of the process. I've asked what the process is but the Department of Labor determines that, I believe. [LB416]

SENATOR STINNER: Okay. Thank you. Any additional questions? Thank you very much. [LB416]

STEVEN MULCAHY: Thank you. [LB416]

SENATOR STINNER: Any additional proponents? Thank you. Welcome. [LB416]

KENNETH OSTRONIC: Thank you. [LB416]

SENATOR STINNER: We are going to try to hold you to five minutes. I let the last speaker go. [LB416]

KENNETH OSTRONIC: I'll be good. (Laughter) [LB416]

SENATOR STINNER: Go ahead. [LB416]

KENNETH OSTRONIC: (Exhibit 3) Senator Stinner and members of the committee, my name is Ken Ostronic, K-e-n O-s-t-r-o-n-i-c. I am here on behalf of the International Brotherhood of Teamsters, Local 554, to testify in support of LB416. Teamsters Local 554 represents many employees throughout Nebraska, throughout various industries and public services. Many of our members have seen firsthand the implications of how employee misclassification can negatively impact workers. Employee misclassification is simply when workers are classified as independent contractors instead of employees. This hurts those workers as they are often ineligible for unemployment or workers' compensation benefits. They must pay a larger share of their payroll taxes, and they often do not have any sort of employer-sponsored health coverage choices available. Employee misclassification is an underhanded technique that employers could use to keep from having to pay their fair share of taxes, insurance premiums, from having to provide adequate pay or Social Security benefits, among many other things. Further, too often these problems are made only worse when there is a language barrier involved, and these same underhanded contractors may try to take advantage of this language barrier to deny workers proper classification. Now there is already a law in place to help address these problems--the Employee Classification Act created in 2010 through the passage of LB563 which provides for civil penalties against contractors guilty of employee misclassification. But the Department of Labor doesn't always have the resources or funding available to fully enforce the law as necessary. LB416 would help address this by providing additional funding to help enforce the

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laws that are already on the books and then also to address language barrier issues by providing for bilingual investigators to help with the enforcement. I want to bring up a few points about the severity of employee misclassification and how it really impacts workers. A report done for the Maine Department of Labor by the Construction Policy Research Center, which examined "The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry," demonstrated this clearly. The report found that at least one in seven, or 14 percent annually, of construction employers are estimated to have misclassified workers as independent contractors. Further, the study found that misclassification is a common occurrence rather than an isolated incident in construction companies where misclassification occurs, where over four in ten workers, or 45 percent, are misclassified annually in construction employers found to be misclassifying employees. Finally, the study shows that misclassification has serious economic impacts as well. The study further estimated that 30 to 50 percent of incomes of the misclassified workers are not reported. This means that for the state of Maine, annually there are \$314,319 in unemployment taxes not levied; \$4.3 million in income taxes not collected; \$6.5 million in workers' compensation premiums not paid, nearly \$10.3 million in FICA taxes not collected. These are significant numbers and this is a significant issue for Nebraska as well. To close, this legislation is a much needed step forward to demonstrate that we are ready to stand with our workers and make sure they are getting the protections they need and deserve from the unfortunate practices of contractors who choose to try to work around the law. I'd like to thank Senator Vargas for introducing this bill, and for all the senators who are cosponsoring, for their support as well. This is an important piece of legislation and we hope you consider supporting it. I thank you for the opportunity to testify today and be happy to answer any questions. [LB416]

SENATOR STINNER: Questions? Senator Wishart. [LB416]

SENATOR WISHART: Well, first off, thank you for being here today... [LB416]

KENNETH OSTRONIC: You're welcome. [LB416]

SENATOR WISHART: ...on this snowy day. You mentioned a Maine Department of Labor study on the impacts of employee misclassification. [LB416]

KENNETH OSTRONIC: Yes, Senator. [LB416]

SENATOR WISHART: Are there any similar studies in Nebraska? [LB416]

KENNETH OSTRONIC: Not that I'm aware of. [LB416]

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SENATOR WISHART: Okay. [LB416]

SENATOR STINNER: Okay. Any further questions? Seeing none, thank you very much. [LB416]

KENNETH OSTRONIC: Thank you for your time. [LB416]

SENATOR STINNER: Any additional proponents? [LB416]

JASEL CANTU: (Exhibit 4) Good afternoon, Chairman Stinner, members of the committee. Thank you for receiving me today. I am here on behalf of our director, Lazaro Spindola, from the...he's the executive director of the Latino American Commission. My name is Jasel Cantu, J-a-s-e-l C-a-n-t-u. I am the public information officer with the Latino American Commission. I'm here representing him today. The weather kept him from traveling. I am here in support of LB416. For the last six...for the last few years we have heard reports from both constituents and commissioners about a situation that affects disproportionately the construction, janitorial, and hospitality industries but also the agricultural and other industries. The situation is always the same: A contractor will hire a subcontractor to do a certain part of the job. The subcontractor will hire individuals that, due to financial hardship, cannot hire a lawyer to represent them. The subcontractor will then pay less than what was agreed upon or not pay at all. This exploitation is worsened when the affected individual's immigration status is questioned. Subcontractors will routinely threaten their workers with reporting them to immigration authorities if they complain. The recourse that the affected individuals have is to seek help from the Department of Labor. Unfortunately, most of the complainants are individuals without fluency of the English language. The Department of Labor officer will typically do an excellent job in tracking these predators and make them fulfill their obligations. Unfortunately, we have seen during these years the Department of Labor has only one bilingual investigator who is simply overwhelmed by the number of cases. When we refer constituents to the Department of Labor, they must wait to have their case investigated, and in many labor disputes there is a time limit when their complaint may be filed. This exploitation performed by dishonest individuals must stop and, therefore, I urge you to advance LB416. [LB416]

SENATOR STINNER: Thank you very much. Questions? Seeing none, thank you. Any additional proponents? Any opponents? [LB416]

JOHN ALBIN: (Exhibit 5) Good afternoon,... [LB416]

SENATOR STINNER: Afternoon. [LB416]

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JOHN ALBIN: ...Senator Stinner and members of the Appropriations Committee. For the record, my name is John Albin, J-o-h-n A-l-b-i-n. I am the Commissioner of Labor. I'm appearing here today in opposition to LB416. The department's opposition to LB416 is twofold. The Employee Classification Act is administered through the Department of Labor's Labor Standards Unit, which is comprised of 12 employees. Enforcement of the ECA is shared among seven labor law specialists and is budgeted at two FTEs. One of the seven labor law specialists who currently work in Labor Standards is bilingual and is available to assist if a bilingual speaker is needed in an ECA investigation. There is also an existing vacancy for a labor law specialist and hiring a bilingual candidate for that position was a priority even before LB416 was introduced. The current workload for the program does not justify two additional positions. However, from an administrative aspect, an even bigger issue with LB416 is the fund source that it proposes that the appropriation be made from--the Employment Security Special Contingent Fund. The Contingent Fund is comprised of penalties and interest assessed on the late payment of unemployment taxes. LB416 would take \$500,000 from the Contingent Fund during this biennium. That is basically an entire year's income to the fund. The Contingent Fund is critical to the department. Federal funds were used to purchase the two NDOL buildings and the federal grant fund...and federal grant funds cannot be paid into a sinking fund such as the state's Building Renewal Fund. The department is self-funded when it comes to deferred repairs, fire/life safety code compliance, ADA compliance, and energy conservation. Those costs are paid from the Contingent Fund. Our building is nearly 70 years old so we have a maintenance plan to address critical infrastructure needs in which the Contingent Fund will be used. Department currently has bilingual staff working in Labor Standards so the purpose of LB416 is already being served. I would respectfully ask that LB416 be indefinitely postponed. I would be happy to answer any questions you might have. [LB416]

SENATOR STINNER: Thank you, Director. Senator Wishart. [LB416]

SENATOR WISHART: Yeah, I have a few questions. So do you see a need for additional bilingual staff members? [LB416]

JOHN ALBIN: We're trying to hire one, so yes. [LB416]

SENATOR WISHART: Okay. [LB416]

JOHN ALBIN: And we're doing that within the current fund...or funding structure. [LB416]

SENATOR WISHART: So if...I mean do you see a need for two if, you know, not thinking about some of the other constraints that you're working within. Do you...would there be...would two be beneficial to the work that you're doing? [LB416]

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JOHN ALBIN: If when the hiring is accomplished, we will have two. But two additional... [LB416]

SENATOR WISHART: Two additional. [LB416]

JOHN ALBIN: ...at the current 85 complaints that we receive per year, the caseload wouldn't, I don't think, just that caseload wouldn't justify two additional positions. And it's really kind of speculative as to if you start making just cold calls to various construction sites whether you will in fact find misclassified workers or not. So it's kind of conjecture to say, okay, you're going to bring in all these dollars in penalties. And more importantly perhaps is, while one of the previous testifiers referred to it as paying for itself, all those penalties go to the common schools fund, so the department doesn't get them back. This body doesn't get them back to appropriate. And it's like \$300,000 in unemployment taxes we collected last year through this program. Unfortunately, the federal government will not let us tap that fund source of amounts that we've recovered. So in effect, we've spent \$100,000 to get \$300,000, which is a good return, no complaint about that, but those monies don't come back to the department for use in hiring and paying for the cost of staff and paying for the cost of this program. [LB416]

SENATOR STINNER: Thank you. [LB416]

SENATOR WISHART: I have another question. So you mentioned that you have some other financial obligations to use these cash funds for. [LB416]

JOHN ALBIN: Yes. [LB416]

SENATOR WISHART: Can you explain a little bit more what that...what those are? [LB416]

JOHN ALBIN: Okay. Basically, the Department of Labor is entirely responsible for the maintenance, upkeep, improvements, etcetera, for its own two buildings. They are not part of the state system and that's due to the fact they were purchased with federal funds and you cannot use federal grants to pay for deferred maintenance programs like the 309 Task Force. So right now we have three floors in the 550 Building that are in serious need of updating but you can't move a wall because there's asbestos involved and it would be \$275,000 per floor to remove that. The elevator in there, when I came to the department 27 years ago they told me it was on its last legs. It's still on its last legs. But at some point in time the luck will run out. The department has to replace that. It doesn't not come from DAS-Building. The HVAC system in the 550 Building is original equipment so, you know, the boiler seems to be in good shape. We try and keep it very

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well maintained. But if we have to replace or maintain anything in the HVAC system, that again comes out of the Contingent Fund. [LB416]

SENATOR WISHART: And so do you not think that you have enough to do what is requested in this legislation and those maintenance needs? [LB416]

JOHN ALBIN: Well, I spoke to Senator Vargas earlier today. I talked to him a little bit about it. That Contingent Fund is basically our rainy day fund. The Cash Reserve Fund that this body tries to protect because you need it in the event of unexpected contingencies, this fund, the Contingent Fund, is the agency's rainy day fund because there is no...like I said, we can't go to DAS-Building and say the elevator is broke, it needs to be replaced, because we're not part of their program. So we would have to replace that out of our own. So you know, \$4 million doesn't really go very far if you have to start redoing a lot of work in a building, and especially the 550 Building, which is in substantial need of updating. And that \$750,000 or more for the asbestos removal is just the first step in that process. [LB416]

SENATOR WISHART: Okay. [LB416]

SENATOR STINNER: Senator McDonnell. [LB416]

SENATOR McDONNELL: Thank you for being here. The current vacancy you have, how long have you been trying to fill it? [LB416]

JOHN ALBIN: Oh, I can't honestly say. It's been several months now and it's kind of behind schedule. One of the thoughts was it was based out of Grand Island and so the question was whether we bring that back into Lincoln and can use it more efficiently there. I'm hoping we get it posted within the next month or so because it's on...it's been open longer than I would prefer. [LB416]

SENATOR McDONNELL: If you get it posted in the next month, how long would be the process before it would be filled? [LB416]

JOHN ALBIN: We should...the advertising takes a couple weeks, a couple weeks for interviews, so you're within a month to six weeks of that when you can fill the position, assuming that we can get the bilingual candidates. One of the problems has been even finding qualified bilingual candidates. We used to have one of the two staff assistants used to be bilingual. For reasons that aren't pertinent here, she's no longer with the agency. And we advertised I think at least two times trying to find a bilingual replacement for her because we have a substantial intake of

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Spanish-speaking contractors who come to register for the Contractor Registration Program. We finally gave up because we could not find anyone with sufficient Spanish-speaking skills to fill that position so we filled it with a non-Spanish speaker. So that's kind of the wild card in the process. Our unemployment program faces the same issue. Fortunately for them, they're larger so they can have two or three Spanish-speaking people on staff at any given time. And so if one leaves they aren't quite as short as in a program like Labor Standards, where they've only had two at most in the past. [LB416]

SENATOR McDONNELL: Thank you. [LB416]

SENATOR STINNER: Any additional questions? Senator Clements. [LB416]

SENATOR CLEMENTS: This bill is appropriating funds for the Department of Labor, but you're saying you're going to hire people without this appropriation. Do you have a budget to hire one or two people available? [LB416]

JOHN ALBIN: The ECA program has been budgeted at about \$100,000, which contemplates two positions being filled for the ECA program. Because it's so small and the Labor Standards program does so many programs, we kind of share within the work. So some person may do Contractor Registration and ECA and Wage and Hour and Child Labor, so we budget for two FTE equivalents, not basically two positions but two FTE equivalents. And, yes, we do have the budget for adding that second position. And it was in the Governor's recommendation; it's in the committee's recommendation. [LB416]

SENATOR CLEMENTS: All right. Thank you. [LB416]

SENATOR STINNER: Thank you. Senator Wishart. [LB416]

SENATOR WISHART: Well, you mentioned the desire to hire in Grand Island potentially and so that piqued my interest a little. Do you think there might be some benefit of having one staff member on the sort of eastern side of Nebraska and another bilingual staff member or maybe two others in other portions of Nebraska just so that they're closer to some of the businesses that are out there? [LB416]

JOHN ALBIN: That was the original intent when we put a person in Grand Island because traditionally the entire staff have been in Lincoln. We moved the...we had the one. We had an opening and we moved the position to Grand Island. The traffic for the work out there has not been what we thought it would be, so...and when you think about it, maybe it makes sense. I

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mean Grand Island certainly is a large pocket of Spanish speaking and that's where we have our Spanish-speaking UI, one of our Spanish-speaking UI employees is in Grand Island. But 53-54 percent of the state now is in Douglas, Sarpy, and Lancaster Counties so it may make more sense to base the people here because that's where the contracting work is more...more of the contracting work is going on, and then travel to Grand Island. [LB416]

SENATOR WISHART: Okay. And then do you see in terms of trends, work force trends, do you see an increasing amount of bilingual people working in these trades? I mean do we...can you foresee that us adding an additional staff member may be us getting ahead of a trend? [LB416]

JOHN ALBIN: It is an industry that I think, going back to forever, has been...always been a minority immigrant dominated population, whether you go back to the days of the...even going back to the days of the meat packing plants, which were predominantly Eastern European workers at one time. And I think, yes, the construction industry, because it doesn't require a lot of educational background and the English skills aren't really relevant to how good of a carpenter you are or a drywaller you are or whatever. So it's been attractive to the immigrant populations. We've been trying to stay on top of it. We, like I said, we have the bilingual on staff. We're trying to add more within our current budget without expanding beyond that, so. [LB416]

SENATOR WISHART: Because, you know, I'm just thinking that while we spoke a lot about the Hispanic population in this state, there are other immigrant groups as well. And so being able to have a multitude of staff members who speak different languages, you know, may be beneficial for you to be able to accomplish the goals that you have in upholding some standards. And then the last question I have is, is there any sort of help that we can give you in terms of flexibility with this, with your fund, in terms of being able to hire the amount of people that you need to carry out your mission? [LB416]

JOHN ALBIN: Well, I think we're fully funded. As I told Senator...and adequately funded. As I told Senator Vargas, I think it's a program that needs an upgrade in performance. And you probably all read about the Governor's performance and improvement coordinators and process. Labor Standards was one of our first two that we picked out to do those improvements because, you know, we work hard but sometimes I'm not sure we work as smart as we should and we need to do a better job of targeting complaints and targeting areas to work in. So I'd really like to let our own process work for a year and then see where we're at the end of that year. I mean it's not like they haven't done anything. If you look at the \$311,000 in unemployment taxes that were collected as a result of their efforts, they are making an effort and we're getting results with that effort. [LB416]

SENATOR WISHART: Okay. Thank you. [LB416]

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SENATOR STINNER: Thank you. Any further questions? Seeing none, thank you. [LB416]

JOHN ALBIN: Uh-huh. [LB416]

SENATOR STINNER: Any additional opponents? Seeing none, anybody in the neutral capacity? Seeing none, would you like to close, Senator Vargas? [LB416]

SENATOR VARGAS: Thank you, Chairman Stinner. Thank you, members of the committee. I just want to clarify for the intention of this bill is to continue to reinforce the Classification Act. I think we've heard from the testimony there is a genuine need. And there probably are more barriers to why we might not be seeing more of the violations. I don't think we should solely use the number of...sorry, the number of complaints to be the determinant on whether or not this issue is actually happening, because we're hearing it happened. You're hearing in other political subdivisions that it's happening. You're hearing it from workers. You heard from the drywallers an example. You heard from the testimony from our carpenters and the Teamsters that this is an issue that's happening and it is detrimentally impacting Latino Hispanic workers across the state. That's why this was put into place. And something that we have in place I want to make sure is having its due process, is being enforced and doing so correctly. I think what we've also heard is that I think the department is doing everything they can. I think oftentimes in our conversation it is reactive, and reactive in that we're relying on the information we get. We know that that's not a full picture on to what we're seeing and that we're going to need to be more proactive in the way that we do site visits, in the way that we are looking for these violations so that workers are protected and to make sure that we are getting the most out of labor law protections for our communities, for individuals, and for our economy. And that's why I'm in support of this. And I know that there was a conversation, a question that Senator Wishart brought up around what would they...what would the Department of Labor need. We did have a conversation that under the...with the current amount in this fund and the needs that they need to be able to, in their plan to improve infrastructure for their buildings, that they do have some funds that they are planning to use already. The time line for that is a question on how they could be prioritized, but more importantly, what more would they need. There was a conversation about potentially increasing the limit to their cash funds so that they can utilize more of the funds. We know it's sustainable and that's probably the most important piece of information. They have a sustainable fund that they are using and they're trying to proactively make sure they are improving these buildings. If we are able to potentially increase that cap, it could also support both of these initiatives while we're being proactive and changing the way that we enforce this act and making sure that they can do the due renovations they need, the due upkeep they need for their buildings, and make sure this is a win-win. And at the end of the day, this...we're seeing misclassification. We know it hurts employees. We know it is undermining the process and it is pitting those that are doing right when they're doing the bidding process against those that aren't, and we want to make sure

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we are creating a more equitable, even playing field, protecting workers and supporting our economy. And so I thank you and I appreciate you taking the time. [LB416]

SENATOR STINNER: (Exhibit 6) Thank you. For the record, I do have a letter of support from the Nebraska State AFL-CIO. And so that concludes the testimony today on LB416. [LB416]