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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

[LB141 LB345 LB641]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, March 6, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB641, LB345, and LB141. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Roy Baker; Tom Brewer; Joni Craighead; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: None.

SENATOR LINDSTROM: All right, we'll go ahead and get started here. I know it's hot. I apologize. We're doing the best we can. We're going to keep the doors open, see if we can't get some airflow in here. Can't open the window, so I apologize for that. Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Brett Lindstrom. I chair this committee and I'm from Omaha and represent Legislative District 18. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members will come and go during the hearing. We have to introduce bills in other committees and are called away. It is not an indication that we're not interested in the bill being heard, just part of the process. To better facilitate today's proceedings, I ask you abide by the following procedures. The information is posted to the chart on your left. Please silence or turn off your cell phones. Please move to the front row when you're ready to testify. The order of testimony will go introducer, proponents, opponents, neutral, and closing. Testifiers, please sign in. Hand in your pink sign-in sheet to the committee clerk when you come up to testify. Please spell your name for the record before you testify. We ask that you be concise. And we do use the light system in this committee, which means the green light will be on for four minutes, one minute...your one-minute warning will be the yellow light, and when your five minutes are up you will see the red light come on. If you will not be testifying at the microphone but want to go on record as having a position on the bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in our permanent record at the end of today's hearing. Written materials may be distributed to 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 up to testify. We'll need ten copies. If you have written testimony but do not have ten copies, please raise your hand now and we will assist you in that. To my immediate right is committee counsel, Bill Marienau; to my far left is committee clerk, Jan Foster, and we will have senators introduce themselves, starting with my far right.

SENATOR SCHUMACHER: Paul Schumacher, District 22. That's Platte, parts of Stanton and Colfax County.

Transcript Prepared By the Clerk of the Legislature
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Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR KOLTERMAN: Mark Kolterman, District 24, Seward, York, and Polk Counties.

SENATOR BREWER: Tom Brewer, District 43, western Nebraska.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson, Custer, and the north part of Buffalo Counties.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR BAKER: Roy Baker, District 30, Gage and Lancaster Counties.

SENATOR McCOLLISTER: John McCollister, District 20, one-eighth of Douglas County.

SENATOR LINDSTROM: And our page today is Phillip Levos from Columbus. The committee will take up the bills in the following order: LB641, LB345, and LB141. The first bill today is LB641, introduced by Senator Morfeld. [LB641]

SENATOR MORFELD: (Exhibits 1 and 2) Thank you, Chairman Lindstrom. And I have some copies here for the pages before I begin. Senator Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Adam Morfeld, for the record, A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB641. LB641 is the next step in developing Nebraska's innovation and entrepreneurship ecosystem and one of the recommendations from the Biosciences Steering Committee that I chaired during the 2016 interim. Knowing the fiscal climate, we worked hard to craft recommendations that would grow the biosciences industry but were also fiscally prudent, which is why the amendment that I just passed out and that I will discuss in a moment will have no fiscal impact on the General Fund. One of the reasons why I led the Biosciences Steering Committee and I am passionate about advancing the industry is my work with Senator Lindstrom and many other legislators, both young and old, to recruit and retain young Nebraskans. Given Nebraska's strong agricultural industry and because of other key investments outside that industry, there is incredible untapped potential in the biosciences industry, particularly with start-ups, which is a career field that attracts countless young Nebraskans, both current and new. The biosciences industry creates a high-wage, high-growth jobs. The average wage is \$68,000 annually, which is approximately \$20,000 higher than the average Nebraska wage. Biotech companies are located throughout the state; build on natural economic strengths of agriculture, agribusiness, and food production; and are growing at an exponential rate. I can't think of a better investment to retain our most talented students and to attract to Nebraska. As background, in 2011 this committee unanimously approved the Nebraska Business Innovation Act as introduced by then-Speaker Hadley to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

provide \$7 million of financial assistance to the state's early stage businesses. The legislation was ultimately approved unanimously by the Legislature and signed into law by the Governor. Administered by the Department of Economic Development, these programs provide various types of funding to early stage companies with unique innovation solutions or intellectual property. The results from these programs are remarkable, given that the Business Innovation Act was implemented just five years ago. The Business Innovation Act is proven to pay dividends. A 2016 independent economic impact analysis conducted by Dr. Eric Thompson of the UNL Bureau of Business Research, with data from the Nebraska Department of Economic Development, found that among the following participating businesses receiving support under the BIA have raised \$6.27...or, excuse me, \$6.72 of follow-up on...follow-on capital for every \$1 of state funding. Participating businesses earned \$7.21 in revenue for every \$1 of state support under the BIA. This is far greater than the \$2.32 in revenue that was estimated in the 2014 analysis of these programs. Participating businesses have added 468 new direct jobs in the state with annual wages averaging \$56,325. The total annual state economic impact is \$188.40...or, excuse me, \$188 million. What LB641, though, does is create a new bioscience program under the Business Innovation Act. Similar to the value-added agricultural program under the act, this proposal would utilize the existing financial assistance programs under the Business Innovation Act, but create a specific program and fund for biosciences related to early stage businesses. Just so you're aware, there are five different options to provide financial assistance under the BIA: first, prototype grants; second, academic R&D grants; third, matching grants for businesses receiving a federal SBIR/STTR grants; seed investment; and the value-added ag program. There are people behind me that can discuss some of the details of each of those programs and how they benefit. Based on data collected by SRI for the Governor's Economic Development Summit in July 2016, the demand for financial assistance under the BIA greatly exceeds the amount of funding available, and I think I passed out a chart to that effect. In 2016, there were three independent recommendations to increase funding under the Business Innovation Act: SRI International's Governor's Economic Summit; the Nebraska Legislature's Biosciences Steering Committee, which I mentioned earlier; and the Nebraska Legislature's Venture Development Entrepreneur Task Force in December 2016. As the Chair of Nebraska's Biosciences Steering Committee, last year we heard repeated testimony about the importance of financing options for early stage biosciences businesses. Some of these businesses will testify after me about the importance of the BIA financing from the department to either grow their business or relocate their businesses to Nebraska. The amendment to the bill that I passed out would fund this biosciences program with no General Funds. In 2011, the Nebraska Department of Economic Development received funding from the U.S. Department of the Treasury as stimulus funding under the Small Business Credit Initiative. At the time, the federal purpose of providing these funds was to offset the difficulty that small businesses had in receiving adequate credit after the tightening of bank regulations after the recession. The department provided loans to companies in coordination with bank loans, often taking second position to the bank. The issue now is that the funds will be paid back to the state of Nebraska and the federal program ceases to exist on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

March 31 and there is no mechanism to use these funds for small businesses, as was intended by the federal legislation in Congress. The proposed amendment would create a cash fund whereby the loans are paid back to the state. They would then be deposited into this cash fund and deployed through the BIA. That cash fund would then support the biosciences programs and applicants under the Business Innovation Act. It is expected that the state will receive \$2.4 million between July 1, 2017, and June 30, 2020, of the recycled loan funds. Using these non-General Funds during a downturn would continue stimulating our entrepreneurial and innovation-based economy in the biosciences sector through the Nebraska Business Innovation Act, a program that has clearly demonstrated its effectiveness for the state's economy. I urge your favorable consideration of this bill and would be happy to answer any questions you might have. And I'd like to note that there are several people behind me today that can speak more on the technical aspects and how it's benefited them through the BIA. Thank you. [LB641]

SENATOR LINDSTROM: Thank you, Senator Morfeld. Any questions from the committee? Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you, Senator Morfeld. One of your opening remarks indicated that this was a recommendation of the committee. [LB641]

SENATOR MORFELD: Uh-huh. [LB641]

SENATOR SCHUMACHER: Did the committee ever vote on recommendations? [LB641]

SENATOR MORFELD: I believe we did. [LB641]

SENATOR SCHUMACHER: Was a report filed with the Clerk, as required by statute? [LB641]

SENATOR MORFELD: Yes, there was a report that was filed with the Clerk. [LB641]

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR MORFELD: Thank you. [LB641]

SENATOR LINDSTROM: Senator McCollister. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR McCOLLISTER: Yeah, thank you, Chairman Lindstrom. And welcome, Senator Morfeld. How exactly will the money be spent? [LB641]

SENATOR MORFELD: So that would be determined through the application process through the BIA, the Business Innovation Act, and determined by the Department of Economic Development on who would be eligible for the funding and who would get funding. So they have an application process. [LB641]

SENATOR McCOLLISTER: So it's a grant rather than a loan? [LB641]

SENATOR MORFELD: You know, that's a good question. I don't know if there's a particular distinction but I think somebody behind me would be able to answer that question. It would be done through the current framework of the Business Innovation Act and through those five different grant programs. [LB641]

SENATOR McCOLLISTER: But it doesn't utilize any federal money through Economic Development, correct? [LB641]

SENATOR MORFELD: No. I mean the loans originally I think were federal money and then they're being paid back to the state, but I don't...my understanding is that the feds are not expecting the money back so we need to do something with it. [LB641]

SENATOR McCOLLISTER: And this will be done on the Innovation Campus? [LB641]

SENATOR MORFELD: No. It could be done anywhere. I mean it could be any business in the state of Nebraska. There's biosciences businesses across the state. And it could be done by a state...or, excuse me, by a business that's maybe looking at relocating to Nebraska. [LB641]

SENATOR McCOLLISTER: Thank you, Senator. Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Senator Baker. [LB641]

SENATOR BAKER: Thank you, Chairman Lindstrom. Senator Morfeld, you said in your...I believe you said in your introductory comments you've worked with senators young and old. I wonder if you could clarify that for me. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR MORFELD: (Laugh) I think that there's a lot of senators that I have worked with in his body who care about making sure that we retain and recruit young Nebraskans, so...and I think you're one of them, Senator, unless you're not, unless you're opposed to young Nebraskans. (Laughter) Then we can have that discussion later. (Laugh) [LB641]

SENATOR LINDSTROM: Any other questions of the committee? Seeing none, thank you, Senator Morfeld. [LB641]

SENATOR MORFELD: Thank you very much. [LB641]

SENATOR LINDSTROM: We'll now have proponents to LB641, proponents. Afternoon. [LB641]

EVAN LUXON: Good afternoon, Chairman, members of the committee. Thank you for taking the time. My name is Evan Luxon, E-v-a-n L-u-x-o-n, and I'm the president and CEO of Esculon, which is an early stage medical device company located in Omaha. We are developing devices to address preventable complications in cardiothoracic surgery in order to improve outcomes for patients and reduce costs for hospitals. I'm a Nebraska native myself. Went to the university here in Lincoln before heading to both Coasts for graduate school and then ultimately ending up in San Francisco, where I spent the past few years. Before founding Esculon I was a partner in TheraNova, which is a medical device incubator in San Francisco that has spawned seven companies in the medical device industry since 2005. I've always had a longing to return to Nebraska to do this type of work, and so in 2015, when me and my business partner were looking to start our next company, I looked for reasons to come back to Nebraska. And a lot of the programs that are offered through the BIA allowed me to convince my business partner from San Francisco that Nebraska was, in fact, a great place to start a company like ours. Specifically, we've been able to make a lot of progress with early funding from the prototyping grant. We leveraged that in order to receive a Phase I NSF Small Business Innovation Research grant for \$150,000 that we then receive the match from the BIA to make additional progress. This funding has been instrumental for us to hire--I've got an additional engineer working with me in Omaha, get mostly through our R&D work, and even demonstrate initial feasibility in animals. Based on that progress we've been able to raise additional capital from private investors. Invest Nebraska has invested and we're now wrapping our Series A with a mix of investors, mostly around the Midwest. We've also been recommended for award for our Phase II SBIR grant from the National Science Foundation for \$750,000. The aggregate of this funding will allow us to get through the rest of our R&D and to market next year and ultimately to continue to grow both our R&D and manufacturing operations in Nebraska. I'm excited about this bill because it continues to expand a program that works to grow Nebraska and recruit additional businesses like mine. It prioritizes bioscience businesses at a time when Nebraska can become a leader in this area,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

which provides high-wage, high-growth jobs requiring a well-educated work force. Early funding like that provided by this bill can go a long way in the bioscience industry, allowing entrepreneurs like myself to generate early significant value in order to attract additional follow-on funding in order to grow our businesses. Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator Kolterman. [LB641]

SENATOR KOLTERMAN: If you're successful and you start, get your prototype built and start manufacturing, how many jobs would that create and what kind of pay scale would we be looking at with those types of jobs? [LB641]

EVAN LUXON: So there's really two tiers of jobs that we'll be creating. The first is engineering jobs. We still have a couple of those to fill. Just posted a job posting for another position this week. Those are around \$70,000, on average. And then as we continue to grow and transfer more into manufacturing, which will employ a dozen or so, that's more in the range of \$40,000 to \$50,000. [LB641]

SENATOR KOLTERMAN: Okay. Thank you. [LB641]

EVAN LUXON: Uh-huh. [LB641]

SENATOR LINDSTROM: Thank you. I think I missed it. Where are you based out of? [LB641]

EVAN LUXON: Omaha. [LB641]

SENATOR LINDSTROM: Here in Omaha. [LB641]

EVAN LUXON: Uh-huh. [LB641]

SENATOR LINDSTROM: Okay. Any other questions from the committee? [LB641]

SENATOR KOLTERMAN: I have another question. [LB641]

SENATOR LINDSTROM: Yeah. Senator Kolterman. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. You indicated that you had a partner that was in San Francisco. [LB641]

EVAN LUXON: That's right. [LB641]

SENATOR KOLTERMAN: Did your partner come here as well or is he...he or she still in San Francisco? [LB641]

EVAN LUXON: He's still there. He runs the incubator in San Francisco,... [LB641]

SENATOR KOLTERMAN: Okay. [LB641]

EVAN LUXON: ...so that's...he'll be there for the foreseeable future. But he's been to Nebraska on two occasions now to check it out and he's been very impressed with what he's seen. So he's very excited about us being here now. [LB641]

SENATOR KOLTERMAN: Thank you. [LB641]

EVAN LUXON: Uh-huh. [LB641]

SENATOR LINDSTROM: Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Senator...or Chairman Lindstrom. Thank you for your testimony. So initially you got some state money to start you off? [LB641]

EVAN LUXON: That's right. We...the first funding that we had for Esculon was a prototyping grant, which is part of the BIA. That required a match which we had from private investment out of San Francisco. [LB641]

SENATOR SCHUMACHER: Is that the \$50,000 grant? [LB641]

EVAN LUXON: That's correct. [LB641]

SENATOR SCHUMACHER: And then did you get any other money from the state? [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

EVAN LUXON: Yes. So then once we successfully received our Phase I SBIR grant of \$150,000 from the NSF, the state provided a match of \$97,500. [LB641]

SENATOR SCHUMACHER: So you had a total of \$50,000 plus \$97,000? [LB641]

EVAN LUXON: That's right. [LB641]

SENATOR SCHUMACHER: And that's what you got from state programs? [LB641]

EVAN LUXON: That's correct, through grant programs. Invest Nebraska, which is also within the program but operates more as an investor rather than a granting agency, they've also invested in the company directly. [LB641]

SENATOR SCHUMACHER: How big a piece of the action do you have to give them? [LB641]

EVAN LUXON: They've invested \$250,000. [LB641]

SENATOR SCHUMACHER: For how much of the company? [LB641]

EVAN LUXON: It's a convertible note so it will convert when we close our Series A round. So right now it's a convertible loan, essentially. [LB641]

SENATOR SCHUMACHER: And your Series A round is for how much equity? [LB641]

EVAN LUXON: We're planning on giving up around a third of the company within our Series A round. [LB641]

SENATOR SCHUMACHER: And hoping to get how much money? [LB641]

EVAN LUXON: We're raising \$2.5 million total. [LB641]

SENATOR SCHUMACHER: Okay. So why is it that you could not go to private sources originally for the \$50,000 and the \$97,000? Why does the state need to be involved? [LB641]

EVAN LUXON: Because, honestly, investors have moved away from early stage device companies. There's really a dearth of investors that are willing to jump in early and say, this is a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

great idea, I want to see it come to fruition. What they tend to do in the medical device industry, mine specifically, is wait until you've mostly gotten through FDA so you should...you've gotten clearance and now you can sell the device. So a lot of the risk is gone, but there's a big need for funding like this to take a concept and show the feasibility so that you can then raise the additional capital. [LB641]

SENATOR SCHUMACHER: But wouldn't that be a really fruitful investment for just \$140,000 for an investor to come in if the idea was good and got a nice percentage of the company to start with? [LB641]

EVAN LUXON: It would be. Yeah. You would think that there would be more people doing it, and actually that's something my partner and I have talked about is there probably is a great opportunity to start a fund, a venture fund, that is focused on early stage medical device companies. We think it's overlooked. But the reality is, you know, I've been out there raising money now for almost a year, talking to as many investors as I possibly can, and most of them are just not willing to invest until you've shown that basically there's no risk left. [LB641]

SENATOR SCHUMACHER: So by passing something like this and making this state money available for no share of the action, just basically a grant of money, are we in fact dissuading or deterring the emergence of a venture capital early stage thing like you describe, which would be (inaudible) limited to what the state cannot afford to addressing folks' considerable private market money that's out there? [LB641]

EVAN LUXON: Well, it's a fair point. I don't think it is true because I think the best analogy is the federal Small Business Innovation Research Program. It's a federal program that awards grants across all the federal agencies. It's just like this, nondilutive capital, purely grant, essentially free money, but the track record of that program is pretty impressive. I mean those companies go on to raise a lot of additional funding and become some of the top companies you see. So I don't think it dissuades investment. I think it fills a gap that's needed. [LB641]

SENATOR SCHUMACHER: If, as a condition of that \$140,000-some, there were provisions that required it to be cycled back into a fund, kind of a revolving fund--you got yours, pay it back, give somebody else theirs--would that give you big heartburn? [LB641]

EVAN LUXON: Not necessarily. You know, I think the best example of that is the Invest Nebraska branch of the BIA because they do come in as an investor. And so if Esculon is wildly successful, which I hope it is, then Invest Nebraska will see a piece of that action and be able to invest in additional companies here in Nebraska. So that's the goal of that part of the program. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR SCHUMACHER: But if it was wildly successful then would it give you much heartburn if part of that program or this program was that that money was recycled in to fund future investments from future grants so they could be wildly successful too? [LB641]

EVAN LUXON: It wouldn't give me heartburn. I just...I mean they're structured as grant programs now so I'm not sure if you're proposing a grant payback or an equity situation. But like I said, that's, you know, the Invest Nebraska piece of it, it handles that at this time. [LB641]

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR LINDSTROM: One final question: If you didn't have the program, would you be operating in Nebraska? [LB641]

EVAN LUXON: No. (Laugh) No, I can say that definitively. If we hadn't received the prototyping grant and if the SBIR matching program wasn't here, that one in particular is unique and, you know, you can't go to California and get a match for SBIR grants. So if we wouldn't have had that, we would have started the company in San Francisco. I'd still be there. So I'm very grateful for the program and hope that it continues to expand. [LB641]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. One follow-up then: What's stopping you, after you've gone through the system here, from heading on back to California where your partner is? [LB641]

EVAN LUXON: Honestly, nothing. But I love being here. It's where my family is, a lot of ties to Nebraska. And we've had the opportunity, honestly, for investors who are based in the Bay area who, you know, were potentially willing to invest, but would have liked to see us be closer to them. And I was not willing to do that, so I'm here to stay. [LB641]

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Any final questions? Seeing none, thank you very much. [LB641]

EVAN LUXON: Thank you. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR LINDSTROM: Next proponent. [LB641]

MICHAEL FROMM: Hi. My name is Mike Fromm, F-r-o-m-m. I'm CEO of a company called Epicrop here in Lincoln, Nebraska. Epicrop got its start from UNL research, so we're a classic spin-out from UNL. Our mission, too, is increase crop yields through kind of a new aspect of biology called epigenetics, that I won't get into too much but it's a little bit like heterosis or hybrid corn. That vigor that comes from a hybrid plant, our technology is related to that. And we've benefited from a number of ways of starting here in Nebraska, first and foremost of course, spinning out of the university. Early in that process, we worked with the Nebraska Department of Economic Development. And again, I'm not exactly sure which program, but it was targeted for rural economic development, which our enhanced yield crops fit under. This was a \$100,000 grant that went to the university, our scientific founder there, with a \$25,000 match from the company to fund more research that we could license to try to create a business with. So that was the first step that really helped the company at a very early stage. Subsequently, we also got an SBIR grant, actually plural, from NSF and USDA. Under the USDA grant, there was a \$65,000 match from, from again, the Department of Economic Development and that was quite helpful to span the bridge. The USDA grant was for 12 months and then there's a gap for up to a year, year and a half before you might get Phase II. We're submitting for that now so the matching funds help continue the pipeline to get the results to try to apply for that grant. The other way we're connected through Nebraska is through Jeff Raikes. You're probably familiar with his history here at the university as a major donor. He was familiar with the professor that made these discoveries and helped fund the company. And so that's one of the relatively rare examples of investment capital here in Nebraska targeted on Nebraska start-ups. And so as the previous speaker noted, it's a quite difficult thing bridging the gap from basic research to something that's proven enough that investors really want to fund it, and so any funds that helps make the science more compelling to the investor that "de-risks" it, convinces them they're going to make a lot of money without a lot of risk, is tremendously helpful, and that's the hardest stage of starting a company. As the basic research coming out of the university typically is quite interesting at a basic level, but needs a lot more work to say this could be a commercial product, and that's really the key purpose of both the federal SBIR grants and anything the state can do to help start these companies. I'll also mention we were a little bit before Innovation Campus started. We started two years ago, but we are currently in the greenhouses. Greenhouses are quite hard to come by in Nebraska. We built one on-site over here on North 58th Street where we are operating, but we didn't have enough room. And we also leased one at Innovation Campus, which was quite helpful. I'll stop there and take any questions. [LB641]

SENATOR LINDSTROM: Thank you for your testimony. Any questions from the committee?
Senator Williams. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Mr. Fromm, for being here. Want to talk just a little bit about the difference between bioscience and those types of innovation and jobs for a state like Nebraska versus the traditional manufacturing jobs. Would you just generally talk about that a little bit, what you see as those types of opportunities that we're creating, who fills them, what their pay levels are, what their education is? [LB641]

MICHAEL FROMM: Absolutely. So we're definitely in the bioscience space. We grow crops in the greenhouses. In the summer we field test them. We're currently eight people. I think six of them have Ph.D.s. Those six make \$75,000 or more per year. We have also a bachelor's level UNL graduate and a master's level non-UNL graduate make \$45,000 and \$55,000, so that's the low end of our pay scale. So these are really highly trained, usually postgraduate scientists that continue their career by trying now to develop products instead of doing academic research. [LB641]

SENATOR WILLIAMS: One of the things that we have seen historically with Nebraska Advantage and other forms of investments that we've had is that we sometimes are incenting a larger number of jobs but lower paying jobs. How would that comment fit with the bioscience area? [LB641]

MICHAEL FROMM: It's a much higher skill base with much higher job pay. Again, our lowest level was a graduate student, sorry, undergraduate, \$45,000 a year starting pay. That's our lowest salary. [LB641]

SENATOR WILLIAMS: The other side of the coin could be that the risk level on the front end of some of the endeavors that you and the previous testifier would be in might have a higher failure rate. Would that be true? [LB641]

MICHAEL FROMM: It's a fact of life in start-ups. Most of them do not succeed. They're working with cutting edge science, trying to commercialize it. It's not always successful. [LB641]

SENATOR WILLIAMS: Recognizing that the climate we are in is interesting because with the low interest rate environment that we have across the country, you would think there would be more money for investment, but those investments are still chasing less risk. Is that what you would find in your...? [LB641]

MICHAEL FROMM: Yes. I think in general that's true. In our case it's our science is quite unique and everybody is not quite convinced. So the struggle to fit into a more beaten path or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

well-known path is more difficult for us. We're really a brand new area of applying biology to agriculture and people are more skeptical. So it's quite difficult. [LB641]

SENATOR WILLIAMS: Okay. Thank you. [LB641]

MICHAEL FROMM: Okay. [LB641]

SENATOR LINDSTROM: Thank you. Senator McCollister. [LB641]

SENATOR McCOLLISTER: Yeah, thank you, Chairman Lindstrom. And thank you for your testimony. You indicated there are a couple of federal programs that you utilized. Could you review those for me? [LB641]

MICHAEL FROMM: Yeah, these are the federal Small Business Innovative Research grants program. NIH, NSF, USDA all have like 1 percent of their budget dedicated towards commercial activities to transition from basic research to products. So these are competitive, national grants that I think are quite well administered and quite helpful in starting companies with a demonstrated success of a number of those companies. [LB641]

SENATOR McCOLLISTER: How large are the grants that they offer? [LB641]

MICHAEL FROMM: The phase...they come in kind of Phase I and Phase II. Phase I typically is \$100,000 to \$200,000 over 6 to 12 months. Phase II, which is a second competition to obtain that, is typically \$500,000 to \$750,000 over two years. [LB641]

SENATOR McCOLLISTER: Thank you. If you have information on that, shoot it to me if you would. [LB641]

MICHAEL FROMM: Sure. [LB641]

SENATOR McCOLLISTER: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you for your testimony. Next proponent. [LB641]

MICHAEL DIXON: Hi. Greetings. My name is Michael Dixon, M-i-c-h-a-e-l D-i-x-o-n. I'm here on behalf of the Bio Nebraska board of directors, testifying in support of LB641 today. A

brief background on me; I've had fairly eclectic experiences: a former biomedical researcher, I spent five years at the Cancer Center at UNMC getting a Ph.D. in molecular biology. From there I transitioned to focus on technology commercialization, so starting companies, developing technology created at the university. I've been doing that now for 14 years. I spent nine years on the Invest Nebraska board of directors and helped chair the Investment Committee as we started the Business Innovation Act and making investments in high-growth, high-wage companies. I've been a director for a biomedical start-up that has been out raising money, trying to get off the ground. I've been an adviser/mentor for Pipeline, a group that helps mentor and helps start-up companies grow. And I've created and taught bioscience entrepreneurship courses at both Creighton and UNMC. So in the past 19 years, I've been able to see this environment from a lot of different angles, both as a researcher, scientist, technology commercialization director, as well as an investor. And I've seen the impact that these funds for the Business Innovation Act can have on biotechnology companies, companies like Esculon, Epicrop, Terrace Ag out of York, Blue Prairie Brands out of Scottsbluff. These are not just Omaha or Lincoln companies. These are across the state and they're companies that are growing very significantly in their spaces. I had a few points. I'd like to encourage that this returned capital be reinvested specifically in bioscience-based technologies because they're very different than the tech-based investments that occur on the other side of the ledger when we look at high-growth companies. First, Nebraska is really well positioned right now to put investment into biotech. We have a very strong university, over \$350 million in research created at the university. It's creating a lot of new ideas and a lot of new potential innovations. What we need is more talent, human capital, and more financial capital. And those are things that this program helps to get. When we put money on the table, as Mister...as Evan Luxon has told us about, when we put that money on the table we can recruit some of that talent back to the state that we desperately need to help grow these companies. In addition, as we get more companies, growing that footprint allows these companies to work with each other and grow some of their own products. Bioscience has been identified as one of the key industries for Nebraska so the SRI report as well as the Battelle report that was done several years ago both identified bioscience as one of the key drivers for Nebraska's economy and one that needs to continue to grow for us to be diverse and strong as we want to be. It's been said before, these companies are all going to be high wage, high growth. In biomedical science, it takes a high level of education, but your returns are significant if you're working in these fields. The Business Innovation Act, again, it's been great. This has been something that's made a huge difference in the economy that I've seen. When I started doing technology development 14 years ago, we didn't have programs like this. It was very tough to get anything started up. When these programs came on board, we saw a big swell of companies come here. Right now we've seen a lot of success in the tech space. We're starting to see some success in the biotech space, but it's difficult for biotech companies to compete with tech companies in the Business Innovation Act because the numbers are different. That's why it would be excellent to have a set-aside amount for biotech that could really focus on the needs of biotech companies, which are inherently different than tech companies. So in UNMC we've seen several start-up companies come out

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Banking, Commerce and Insurance Committee
March 06, 2017

over the past few years and one of the things I think that's been really critical is that when they go out and raise money, they don't just raise money in Nebraska. They raise money out of state. So the companies that we started have brought in over \$20 million over the past four years to invest in Nebraska companies and Nebraska jobs to develop the technology that will ultimately be a business here in Nebraska. And one of the things that's really important is that these are companies that get anchored in Nebraska. So when you create a company somewhere else, whatever (sic) that company sets its roots down, it's really important that it will grow there and that's what we want to do with these programs here--get these companies growing here and invested here so that they continue to do well. These small bets make a difference. So I know biotech companies take a lot of money but, as Evan said, the first dollars in are critical and allow these companies to grow and become successful. So we don't need to make large bets. We can continue to make small bets over lots of companies and see success coming out of this. So in summary, I want to just highlight the fact that the economic impact study that the Governor and the Department of Economic Development did really indicated that we were behind our peer states when it came to investment in high-growth, innovative companies. This is another opportunity for us to take capital that's already being returned and put it into these key drivers that the economic impact studies show provide a positive return on investment, retain high-wage, high-growth jobs, and keep our best and brightest here in Nebraska. With that, I'm open for any questions. [LB641]

SENATOR LINDSTROM: Thank you, Mr. Dixon. Any questions from the committee? Senator Williams. [LB641]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Mr. Dixon, for being here. So that we can understand maybe a little more fully, could you just describe basic difference between biotech company and a tech company? [LB641]

MICHAEL DIXON: Sure. So tech company is a broad term, but it's often referred to an Internet-based or app-based, technology-based company. So they're creating software. They're creating tools that we use every day on our phones or Websites, browsers. Biotech or biomedical companies can be anywhere from therapeutics, diagnostics, to medical devices. The biggest difference is they're regulated. So for a biotech company to grow, it's got to go before a board and prove that it's safe and effective, whereas a tech company, once it has a product, it goes and tests that with its market. So it sends its app out, it gets feedback, and it creates more. Biotech companies don't have that luxury. We need to make sure that our products are safe and effective before we send them out for people to use them. [LB641]

SENATOR WILLIAMS: And maybe that leads to the second question. You mentioned in your testimony that the numbers are different... [LB641]

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Banking, Commerce and Insurance Committee
March 06, 2017

MICHAEL DIXON: Uh-huh. [LB641]

SENATOR WILLIAMS: ...between...would you explain that a little bit more? [LB641]

MICHAEL DIXON: Yeah. So tech companies can often get started on a very small amount of money and a lot of time to just code and develop and then they can send it out. A biotech company really needs to develop. All of the background science they need to do. If they need to do clinical testing, there's a lot of expense that goes along with that. So that the time frame from first idea to product in the market in a biotech company typically takes longer and it takes more money because you've got to do your human studies tests and have all of your safety and efficacy documented, whereas a tech company puts its software out. If someone likes it they buy it and then they can sell more of it. So the requirements for the biotech company usually is more capital and a little more time, sometimes in different tools, in order to get their technology tested. [LB641]

SENATOR WILLIAMS: Is the staying power better for a biotech company then? [LB641]

MICHAEL DIXON: I think so. Personally, a tech company can pick their software up and go anywhere. They're much more virtual than, you know, typically a biotech company, once it sets its roots and starts to develop its products, it tends to stay where it's at because it has its manufacturing and all of its testing and relationships established in that local community. Any company can move at some point, but I think biotech companies tend to stay where they're at more than tech companies. [LB641]

SENATOR WILLIAMS: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. You just mentioned that it's difficult for a biotech company to pick up and move out. [LB641]

MICHAEL DIXON: Uh-huh. [LB641]

SENATOR SCHUMACHER: A couple of years ago we had a company, a biotech company. It was grown here in Nebraska and basically told us they were...they had a couple of rooms the size of this room with all kinds of gizmos and centrifuges and everything else and it basically told us if we did not give additional tax breaks to them and do some things that they would pack up and

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Banking, Commerce and Insurance Committee
March 06, 2017

move off. It would just take a couple of semis and they could be gone. Why wouldn't that same rule apply to what you're describing? [LB641]

MICHAEL DIXON: Again, I think they can. A biotech company can do that also, but having to pack up and move is more problematic for a biotech company than it would be for a tech company that's just developing software or technology like that. In addition, I think one of the strong advantages of having biotech companies planted, as someone who works at the Medical Center, having relationships with the local physicians and clinical staff allows them a lot more access to expertise that would be valuable. So as these companies tend to weave their networks, the biotech companies are much more reliant on their local expertise than necessarily a tech company would. [LB641]

SENATOR SCHUMACHER: Which leads to the next question. The biotech industries are extraordinarily strong in the Bay area, in the Boston area. Seems like we're a dollar late and...or a day late and a dollar short in getting involved in it. [LB641]

MICHAEL DIXON: You know, I think there definitely are strengths there. I think we punch at or above our weight in a lot of cases here in Nebraska. We do very well. We're very competitive. In addition, having a diverse economy is really important for Nebraska. There can be downturns in tech cycles. There could be downturns in insurance. Having a nice, diverse economy with high-growth, high-wage jobs is really important for us. So as a Nebraskan, I'd like to see us have a good incentive package for the entire scope of the economy so that if there is a downturn in any one of the sectors, the other sectors help keep us strong. [LB641]

SENATOR SCHUMACHER: And then finally a last question: One of the...certainly I think it's a tech area has very little to do with just developing apps for phones, is the energy business. We have a couple, three large energy companies, they're large at least for us, that are already here. And we've (inaudible) if we were going to put money into investment in some type of a new product would not we be better off investing into energy where the market is really pretty open? Nobody is going gangbusters on nuclear or quasi-nuclear energy anyplace else. [LB641]

MICHAEL DIXON: You know, I think having investments again in a diverse set of industries is important. Actually for the energy different than the tech sector, that's a different set of investments just as the financial investment sector would be different also. But I think one of the things we want to do here in Nebraska is build on our strengths and we do have strengths in bioscience, in biotechnology, and continuing to build on those strengths is really important. So I haven't looked at the energy sector, but if we did have some expertise, both science and businesswise, then there could be good investments in that space also. [LB641]

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you for your testimony. [LB641]

MICHAEL DIXON: Thank you very much. [LB641]

SENATOR LINDSTROM: Next proponent. [LB641]

TYLER MARTIN: (Exhibit 3) Good afternoon, Chairman. My name is Dr. Tyler Martin, it's T-y-l-e-r M-a-r-t-i-n. I grew up in Hebron, Nebraska; did my undergrad at Kearney; went to UNMC for medical school; trained in pediatrics at Nebraska; went to Washington University in St. Louis to do a postdoctoral fellowship in molecular microbiology and infectious diseases; came back to Nebraska; built a research institute here for five years; and then moved to the Bay area in 1993 to work in biotech. Last summer when the SRI report was released, they talked about these ex-pats from Nebraska who come back and that's...I'm one of those. I was in the Bay area from '93 till 2013; led a variety of companies out there, the most recent being a company called Dynavax, which I joined in 2008 when it had a market cap of \$25 million. We raised \$400 million from investors and five years later had a market cap of \$1 billion. When my time there ended, I came here thinking this would be a good place to start life science companies fundamentally because of the cost of operations here. Developing a biotech company is fundamentally about testing a hypothesis, determining does the product have the characteristics we are looking for or not, and then moving it to the next step, to the next step. Our cost of operations here makes this a very nice place to test those hypothesis. In addition, we have excellent what I would call operational talent. Companies like Novartis, now GSK, out on the edge of town here in Lincoln provide tremendous resources for people who are trained in FDA-regulated principles and procedures of drug development, and they provide a very good talent pool from which someone like me can come in and recruit. So it was a...seemed like a really good idea to come here. After three years, I am pleased to report that I've been able to start four companies here in town, the first one is called Great Plains Biotechnology. All of our offices, we office all these companies out at 70th and A right now. The second one and the one I'm here to report on today is called Adjuvance Technologies. I have a third one called Hudson Biotechnology. And then I chair a company in Belgium called UNIVAC; so three here, one there, which I'll run from profits here. You may have read this morning in the paper or seen on the news last night that Adjuvance Technologies received a \$1.5 million SBIR award from the National Institutes of Health. Part of the money that we're using from that award is to establish a laboratory at the Innovation Campus. There's a group that includes the university that's put together a place called the Biotech Connector which is wet-lab space on the Innovation Campus. We'll be the first occupant of said space. Other parts of our SBIR award go to support a collaboration we have with the Nebraska Center for Virology.

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

And in addition, we have relationships with Vanderbilt University and Memorial Sloan Kettering Hospital in New York, which is where our intellectual property was developed. So this has been...Nebraska is a great place to start biotech companies. I represent a little bit of the extreme edge because since I develop therapeutics, we're very expensive. It takes a lot of time. The average paid in capital from the time an idea starts until it gets approved by the FDA is \$800 million. The average time is 15 years. So you can imagine trying to run a business where for 15 years you make no money and you soak up \$800 million of other people's money. It could be a rather difficult thing to take on, whereas companies like Evan's, that you heard about before, he's faster to market, takes less paid-in capital. And so I would recommend that as we think about how to best grow the culture here, we think about companies like his that require less capital and are faster to revenue, rather than companies like mine. Again, we represent a great opportunity here based on the cost of operations for quick, relatively quick win companies to be able to create substantial value and create jobs here. Companies like mine will come around eventually. I'm here because I want to live here and it works out for me. But we're not really a very good pitch to people like me who aren't already...don't have...already have some attraction here. On the other hand, I have some friends who are starting a company. It's a spin-out from the University of Kansas. I was an investor in that company. They became engaged with Michael Dixon and UNMC and UNeMed. They've used the BIA process to move some of their operations here, so that's an example of a company that we attracted here that has no connection to us at all, we attracted here because of programs like this one. And that's where I think our sweet spot is to develop this industry here in Nebraska. So with that, I'm happy to answer any questions.
[LB641]

SENATOR LINDSTROM: Thank you, Doctor. Senator Kolterman. [LB641]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Dr. Martin, you said you're from Hebron originally. [LB641]

TYLER MARTIN: I am. [LB641]

SENATOR KOLTERMAN: Welcome back. [LB641]

TYLER MARTIN: Thank you, sir. [LB641]

SENATOR KOLTERMAN: My question deals with that aspect of the business market. As you look at Hebron and Gothenburg and Beatrice and Seward and all the smaller communities around, what are the possibilities of doing manufacturing in these smaller communities?
[LB641]

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

TYLER MARTIN: Yeah. That's a great question. I can really speak to it only from my own perspective with my companies. For Adjuvance Technologies, our most likely acquirer of our technology is GSK. My aspiration for GSK would be that we would build a new manufacturing facility for my technology on their campus. You may notice they've got some extra space out there. And at Dynavax, my last company in California before I came here, we employed 200 people, about 60 of whom were either M.D.s or Ph.D.s. So they're, again, high-growth jobs but it does require a location for your manufacturing sector in a relatively large community where you have a better than average educated talent pool from which to recruit people. So I'm not quite sure that places like my hometown are going to be the places where companies like us grow. On the other hand, if you think about devices, there are opportunities for device companies or diagnostic companies to have a smaller footprint that could grow in a smaller community. But for my companies, it doesn't really fit very well. [LB641]

SENATOR KOLTERMAN: Okay. Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Senator McCollister. [LB641]

SENATOR McCOLLISTER: Yeah, thank you, Chairman Lindstrom. Let's discuss that human capital situation. Could you elaborate on whether Nebraska could develop its educational facility such that we would have adequate personnel for your kinds of companies? [LB641]

TYLER MARTIN: Yeah. Well, you know, one of the interesting things about companies like mine is, while we do require these super-high specialized roles, we also have roles within the company that are traditional roles, so for instance finance roles, other administrative roles. There are those kinds of jobs as well. And in our manufacturing sector, what we're required to show the FDA is that we have a well-characterized product, manufactured by a well-controlled process that's safe and effective for its intended use. And the FDA's definition of a well-controlled process is one that when you flip the switch on, if you follow your recipe, what you get out at the end is always the same. And one of the criteria that they use to measure that is can an operator who has a high school degree run your process. Now I can leave you all the tweaks and the fancy things to make it work, but when you get to where it's a process, can a normal operator with a high school degree turn it on, follow your instruction, turn it off, and you get your product. So those are jobs that can be filled with people who aren't Ph.D.s and M.D.s. [LB641]

SENATOR McCOLLISTER: Thank you. [LB641]

SENATOR LINDSTROM: Senator Schumacher. [LB641]

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you for your testimony. I mean you describe a product, \$800 million of other people's money to bring to market, and then you don't know if it's going to work or not, and a lot of contacts and networks with folks who have some experience in the bioscience business. And yet we're sitting here pretty much strapped for cash, taxpayers screaming about wanting tax cuts. We're talking \$2 million which is pretty paltry for any kind of a loan operation. Why not have us try to help, if we can, in organizing some way to tap the capital and the expertises out there rather than just throw a few peanuts at a project? [LB641]

TYLER MARTIN: Yeah. Well, it's a really great question, Senator Schumacher, and I want to make the point that companies like mine are not the sort of companies I think these activities should be directed towards. Instead it's companies like Evan's or the other companies that Michael Dixon told us about this morning. Those are companies where seed funding can be really important. And the issue about seed funding is that, to the extent we use these SBIR matching awards here in Nebraska, somebody else--the NIH or the National Science Foundation--does the quality check to say is this a quality idea versus, you know, just an idea? And if they do that then there's a real advantage to making a small investment to further able that company and to establish a footprint here that can potentially grow. Companies like mine, we're too big. Our capital needs are too big. You shouldn't target me. I'm an investor in companies like that and I tell those companies, this is a good place to come to and programs like this are critical to enabling that. And people understand that because these...particularly this SBIR matching award program that we have here in the state of Nebraska is not something that other people do. So that's a...it's a really unique differentiating factor that causes start-up life science companies to be interested in coming to Nebraska when they don't otherwise have any connections here. [LB641]

SENATOR SCHUMACHER: But the bioscience area is huge and so a few million, if it makes a difference in starting up this, why wouldn't the private sector just do the same kind of review and saying, you know, this looks like an idea that has legs? [LB641]

TYLER MARTIN: Yeah. [LB641]

SENATOR SCHUMACHER: Let's throw, what did we hear a bit ago, \$140,000 toward it to get it off the ground. [LB641]

TYLER MARTIN: Yeah. Well, they do. Again, the question or the response, as we heard Evan discuss earlier, is that there's a lot of competition in that space. Nebraska has a unique opportunity to compete in that space based on our cost of operations and the operational talent that already exists here. So when somebody like an Evan comes here to start something with that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

extra sweetener that can be provided by programs like this, it's very attractive to those kind of companies and very meaningful to them. And not all of them will stay here. I thought your question was an appropriate one that you asked earlier. Some will leave. But some will stay and it's an opportunity to make that investment to change that operating characteristics curve to favor life science companies starting and growing here in Nebraska, as opposed to San Francisco or Boston or New York. It's very easy to start a company there but you still have to get past this early seed stage, and that's where the competition is. So there's a place for us to welcome those kind of companies into a unique environment, provided the quality checks that we get from places like NIH and National Science Foundation. That's what I think is attractive about this idea. [LB641]

SENATOR SCHUMACHER: So our calling card is "we're cheaper"? [LB641]

TYLER MARTIN: We are. Well, that's an important calling card. We're cheaper. We have good operational talent. You need to bring your expertise to bear, but we can help you advance your idea here. We can do it in a manner that then makes it easier for you to get your product to the next stage and to acquire the next round of capital and the next round of capital and the next round of capital. [LB641]

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you for your testimony. [LB641]

TYLER MARTIN: Thank you. [LB641]

SENATOR LINDSTROM: Next proponent. Afternoon. [LB641]

R.J. JERRICK: Good afternoon. Chairman Lindstrom and members of the committee, I am R.J. Jerrick, R.J. J-e-r-r-i-c-k. I'm manager of business development for the Greater Omaha Chamber and here today on behalf of the Omaha Chamber and the Nebraska Chamber of Commerce and Industry to offer our support for LB641, legislation to provide funding for a Bioscience Innovation Program within the Business Innovation Act. We thank Senator Morfeld for bringing this proposal to the committee. A major focus of the chamber's economic development effort is increasing employment opportunities in fields that provide both high-paying positions and further growth in industries that provide for a solid and growing sector nationally and globally. Bioscience industries offer high potential, high-return development opportunities, often with relatively modest seed capital. The return on this investment is broad. This goes to the quality

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

high-wage jobs that are central to our recruitment and development efforts. This goes to keeping people in Nebraska. It will provide career paths for Nebraska's youth. It will help keep graduates here in Nebraska. It provides opportunities for those who we would like to bring home. I thank you for your time and consideration and would be happy to answer any questions. [LB641]

SENATOR LINDSTROM: Thank you for your testimony. Any questions from the committee? Seeing none, thank you very much. [LB641]

R.J. JERRICK: Thank you. [LB641]

SENATOR LINDSTROM: Next proponent. [LB641]

BRUCE BOHRER: (Exhibits 4 and 5) Good afternoon, Chairman Lindstrom, members of the committee. I'm Bruce Bohrer with the Lincoln Chamber of Commerce. For the record my name is spelled B-r-u-c-e B-o-h-r-e-r, appearing this afternoon on behalf of the Lincoln Chamber of Commerce and also the city of Lincoln. I've got a written testimony that's being handed out right now, but I think I'll just summarize, in the interest of time, just to say we believe that, you've already heard, this is a small cluster that's already growing on a growth path in Nebraska, bioscience, medical bioscience, ag biosciences. It's clearly shown that it's high-wage, high-impact economic growth. And we view bioscience as an important strategic cluster that has very positive, high-value impacts, including the promotion and cultivation of our bioscience sector, leveraging our education assets, our agriculture assets, our innovation ecosystem, and our talent assets as well as our goals. The Lincoln Chamber supports LB641 because it takes a measured step toward correcting a shortcoming identified under recent analysis. I think Senator Morfeld referenced the study, the interim study, earlier in his opening and it shows that Nebraska underfunds its state innovation programs by a fairly wide margin. Like any Nebraska community, we strive in Lincoln to create an opportunity for our residents and developing a competitive edge is instrumental to our collective success. In closing, we would extend our thanks to Senator Morfeld and to the many supporters and proponents of bioscience companies in Lincoln and across the state. We urge the committee's support and favorable consideration of LB641. Thank you. And I would answer any questions you might have. [LB641]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. And thank you for your testimony. If I understood Senator Morfeld right, there won't be any additional expense. This is going to be an internal shuffle if this were to pass. And I guess the line appears on page 5 that it's the intent of the Legislature to appropriate \$2 million from the Bioscience Innovation Cash Fund to the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

department for the Business Innovation Act for each of the two years. What would the...I take it then there would be less money in the Bioscience Innovation Cash Fund. What would...what is this costing us? Who's...we've looked at what might be the bright side of this coin. [LB641]

BRUCE BOHRER: Uh-huh. [LB641]

SENATOR SCHUMACHER: Who's going to get less? [LB641]

BRUCE BOHRER: Well, I don't think anybody is going to get less, Senator. I think what we're doing really is creating a directed fund I think similar to a directed fund right now that's under value-added agriculture under the Business Innovation Act. And I might have...I think I've got that correct and, if not, maybe Senator Morfeld correct me in the closing. [LB641]

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Seeing no further questions, thank you. [LB641]

BRUCE BOHRER: All right. Thank you. [LB641]

SENATOR LINDSTROM: (Exhibits 6, 7 and 8) Next proponent. Seeing none, I do have two letters of support, one from Dr. Abraham Oommen with MatMaCorp, and Terry Haverkost, both in support of LB641. We'll now move to opponents. Opponents of LB641? Seeing none, we will now move to neutral testifiers. Anyone wishing to testify in a neutral capacity? Seeing none, I do have one letter from a neutral individual, Nathan Leach. And with that, we will invite Senator Morfeld to close. [LB641]

SENATOR MORFELD: Thank you, members of the committee. I won't repeat much of what was already said. I know you guys have a lot more bills after this and it's warm in the room. I'm hoping it's not this warm in Education Committee. But I just wanted to follow up very briefly to Senator Schumacher's comments. I did talk to my legislative aide. We actually have 44 more legislative days to drop that report and report it to the Legislature. I do have a final draft of it that I looked over, but it hasn't been formally submitted yet, but it's supposed to be, pursuant to the statute that we passed, by the end of this legislative session. Also, the four different things that we recommended in that report were: job training opportunities, so looking at making sure that we have a pipeline for job training opportunities for biosciences; establishing a new tier in the Nebraska Advantage Act, which I think that there's a new tier that accommodates the biosciences industry in the proposed legislation this year; creating a biotechnology venture fund, which is essentially what we're trying to do here; and then also creating more opportunities for STEM

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

education K through 12, again, creating a skilled pipeline of work force. I would note that there was...we note in the report that there was consensus among all the committee members with the exception of Senator Schumacher, so that was noted during our discussions and noted in the report, Senator Schumacher. So with that, I'd be happy to answer any questions the committee may have. [LB641]

SENATOR LINDSTROM: Thank you, Senator Morfeld. Senator Kolterman. [LB641]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Senator Morfeld, the amendment, AM434,... [LB641]

SENATOR MORFELD: Uh-huh. [LB641]

SENATOR KOLTERMAN: ...talks about the money that's coming. This money is actually coming from the Nebraska Progress Loan Fund,... [LB641]

SENATOR MORFELD: Yes. [LB641]

SENATOR KOLTERMAN: ...and it's payback money... [LB641]

SENATOR MORFELD: Yes. [LB641]

SENATOR KOLTERMAN: ...to pay back loans, grants that have been given. How much...do you know how much money was loaned out originally? [LB641]

SENATOR MORFELD: You know, that's a good question, Senator. I don't know that. I'm sure we could find it fairly easily. [LB641]

SENATOR KOLTERMAN: And we're talking about capping this at \$2 million. Is that not correct? [LB641]

SENATOR MORFELD: Yes. And I believe that that's the amount that they expected to get back. So if some people default on loans, it would just be less money that would go into the cash fund. [LB641]

SENATOR KOLTERMAN: That was my next question, is how accurate or how well are those loans working and what's our possibility of getting those all paid back? Because the way I

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Banking, Commerce and Insurance Committee
March 06, 2017

understand it, many of those are going to get paid back soon, sooner than later from what it sounds like to me. [LB641]

SENATOR MORFELD: Yeah. [LB641]

SENATOR KOLTERMAN: I'd just be curious how those funds are working right now. [LB641]

SENATOR MORFELD: You know, that's a great question, Senator. I'll look into that and get back to the committee on that. And to go to Senator Schumacher's question of Bruce earlier, again, these are unallocated funds that don't have a place or a home yet, but we know we're going to be receiving them. So I don't think anybody else is...nobody is scheduled to miss anything out or intended to miss anything out that otherwise would have gotten some kind of funding. [LB641]

SENATOR LINDSTROM: Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you, Senator Morfeld. So the report that hasn't been written yet has consensus. [LB641]

SENATOR MORFELD: No, Senator. So...and my legislative aide was the de facto committee clerk when we sat down and discussed. You were part of those conversations. I outlined four things that we as a committee discussed and that we had seen in the committee hearing and testimony as being common themes, and four things in particular that wouldn't cost a lot of money, because we knew the fiscal situation was not looking good. We discussed those four things and there was consensus among everybody, except for you, and you were very vocal about that consensus and I certainly respect that, and I brought that back to the committee members and I said these are the four things. You disagreed with two of them in particular, as I recall, establishing a new tier in the Nebraska Advantage Act and creating a biotechnology venture fund. You didn't comment very much on the job training opportunities or the STEM. And so that's where we left that and I was sure to note that in the final report that we're going to be submitting to the Clerk of the Legislature soon. [LB641]

SENATOR SCHUMACHER: Thank you. [LB641]

SENATOR MORFELD: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Senator McCollister. [LB641]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR McCOLLISTER: Yeah, thank you, Chairman Lindstrom. I just wanted to point out, Senator Morfeld, that ADM has a similar effort ongoing. [LB641]

SENATOR MORFELD: Uh-huh. [LB641]

SENATOR McCOLLISTER: And, you know, they have a big production plant in Columbus and so, you know, this could very well dovetail into what they intend to do. [LB641]

SENATOR MORFELD: Certainly. And they've talked to us about some of the potential opportunities and those are some of the things that we're seriously considering too. We just wanted to keep it to four narrowly tailored efforts. [LB641]

SENATOR McCOLLISTER: What can you...will \$2.5 million move the needle? [LB641]

SENATOR MORFELD: It could move the needle and, I mean, I think the bottom line is if we do nothing we know it won't move anything. You know I'm sure there's lots of people that question whether or not we needed to have incubators like the Raikes School that started Hudl. Maybe Hudl would have gotten started somewhere else; maybe it would have started here either way. We'll never know. But we made that investment at the Raikes School, "we" as in I think a lot of donors did to the University of Nebraska, and maybe the state did a little bit too. But we have to invest money to make money in many cases. [LB641]

SENATOR McCOLLISTER: What would the average size grant be? [LB641]

SENATOR MORFELD: That's a good question. I don't know what the average size grant is on the Department of Economic Development, so I'll look into the average BIA grant and get back to you, along with Senator Kolterman's question. [LB641]

SENATOR McCOLLISTER: Thank you. [LB641]

SENATOR LINDSTROM: Thank you. Any final questions? Seeing none, thank you, Senator Morfeld. And that will end the hearing on LB641. [LB641]

SENATOR MORFELD: Thank you. [LB641]

SENATOR LINDSTROM: We'll now move to LB345, introduced by Senator Craighead. [LB345]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR CRAIGHEAD: Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 of Omaha, in Douglas County. I come before you today to introduce LB345 at the request of the Governor. The bill is part of the Governor's occupational licensing reform package for this session. LB345 strikes the requirement that abstracters have at least one year of experience prior to licensure or temporary certification to be able to work in Nebraska. Our state is only one of six states to even license abstracters and the only state with this experience requirement. The exam that one must pass to be an abstracter is rigorous and extensive, covering sections such as: General knowledge--this section contains questions from the manual evidencing land titles published by the Nebraska Land Title Association. In this section the applicant is asked to abstract entries for the compilation of an abstract of title. County clerk section--requires that applicants show they know how to abstract proceedings filed in county courts such as probate, conservatorship, determination of inheritance tax proceeding, etcetera. There may also be questions testing the general knowledge of probate laws in county court and also questions relating to the preparation of a report of title. District court section--the applicant will demonstrate an ability to abstract proceedings filed in the district court such as tax foreclosure, dissolution of marriage, mortgage foreclosure, quiet title proceeding, partition action, etcetera. The applicant will be asked to abstract the judgment as it would be reflected on an abstract of title or report of title. Legal description sections--this section is written in three parts: General knowledge of abstracting terminology, such as metes and bounds; government lot; rectangular surveying; linear measurements. Recognizing legal descriptions in context and applying them to the surveyed legals. And actually plotting legals on paper or into electronics, taking this information from test materials. Legal descriptions are the heart of what the abstracter does. In searching and writing legals the abstracter must be accurate. There is no room for error and, thus, this section of the examination prepares the abstracter for quality services to this profession. Once someone has passed the exam they have the knowledge needed to begin work in the field right away in another state if they could. With the one-year experience requirement in our state, it can force an otherwise qualified, newly licensed abstracter to move to a different state to be able to work and get paid while getting the one year of experience required by Nebraska. With that, it opens a possibility of losing great talent to other states, creating a drain on our tool of our homegrown talent that we are so proud of. One of the challenges for our state has been keeping valuable work force members in Nebraska and unnecessary requirements like this only contribute to that further. In closing, I want to convey that it is important that we work to remove excessive barriers that keep people from entering the work force in Nebraska. When we are competing with other states to have the best work force in an industry we need to be diligent in keeping our requirements in line with what other states are doing. I want to share that this bill has the support of the state of Nebraska Abstracters Board of Examiners and practicing abstracters in our state. Thank you for your consideration of LB345 and I ask you to vote it to General File. I'm happy to take any questions and there will be other experts behind me. [LB345]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR LINDSTROM: Thank you, Senator Craighead. Any questions from the committee? Senator Schumacher. [LB345]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. And thank you, Senator, for introducing this. Is there any formal course of study that somebody who applies for one of these licenses has got to take? Do they have to have a degree in anything? [LB345]

SENATOR CRAIGHEAD: You know what, that is a great question and I do not know the answer. [LB345]

SENATOR SCHUMACHER: Now as far as the consumer is concerned, it's hard to believe that somebody 21 years old and not being a felon that somehow passes that test, but is...because as I understand it they give...they do work for a title company which then issues insurance. And is that where the check and balance is on whether or not they make a mistake due to inexperience that the insurance company would protect the consumer from the inexperience? [LB345]

SENATOR CRAIGHEAD: Yes, they do. There's errors and omissions insurance. [LB345]

SENATOR SCHUMACHER: Or title insurance. [LB345]

SENATOR CRAIGHEAD: Yes. Well, for title insurance, yes. But there's E and O insurance for title. [LB345]

SENATOR SCHUMACHER: But the title insurance protects the consumer in case an abstracter doesn't do the metes and bounds right or forgets to see... [LB345]

SENATOR CRAIGHEAD: Yes. And always in a closing statement there is a form that is signed that says, if, by some chance, we have forgotten something or made an error, we will come back to you to correct that. That's part of a closing statement at a real estate transaction. [LB345]

SENATOR SCHUMACHER: Thank you. [LB345]

SENATOR LINDSTROM: Senator Kolterman. [LB345]

SENATOR KOLTERMAN: Thank you, Senator. Can you tell me, Senator, if an abstracter is the only person allowed to sell title insurance or if just anybody licensed to sell insurance can sell title insurance? [LB345]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR CRAIGHEAD: To my knowledge, an abstracter cannot sell title insurance. [LB345]

SENATOR KOLTERMAN: The abstracter cannot? [LB345]

SENATOR CRAIGHEAD: That's to my knowledge. You may...do you have... [LB345]

SENATOR KOLTERMAN: I was under the impression they were the only ones that could sell it, but maybe I'm incorrect on that. Thank you. [LB345]

SENATOR LINDSTROM: Senator McCollister. [LB345]

SENATOR McCOLLISTER: Yeah, thank you, Chairman Lindstrom. Thank you, Senator. Is Nebraska unusually restrictive on experience? [LB345]

SENATOR CRAIGHEAD: Yes. There are only six states that require what we require. [LB345]

SENATOR McCOLLISTER: Thank you, Senator Craighead. [LB345]

SENATOR LINDSTROM: Thank you. Any final questions? Seeing none, thank you, Senator Craighead. We'll now move to proponents. [LB345]

JASON WHITE: Chairman, Senators, I'd like to thank you for allowing me to speak briefly here today. I may be able to answer a few of those questions. It's the first time I've ever testified here and I asked what I could expect. And the heated discussion is what I thought the temperature of the room is not as what I was expecting today. However, my name is Jason White, I come from Senator Williams' district. I'm an attorney there... [LB345]

SENATOR LINDSTROM: Could you spell your name for the record, please? [LB345]

JASON WHITE: Sorry. J-a-s-o-n W-h-i-t-e, like the color or lack of color if you want to go that way, too. [LB345]

SENATOR LINDSTROM: Thank you. [LB345]

JASON WHITE: I'm an attorney in Broken Bow and I'm the city attorney in Broken Bow, but I also own and operate a title insurance company. I come to you today as the current president of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

Nebraska Abstracters Board of Examiners, the people that actually create and administer the test that you were referring to. We had a meeting about a month ago concerning this. And, frankly, the test is a four-part test, as Senator Craighead said. It's about...I have to say over the five years I've been on this board is about a 50 percent passing rate. It's a very arduous test. Most people that take it are gladly willing to pay the fee every year to not have to take it again. That said, the Abstracters Board has essentially said, this...we fully support the removal of the one-year requirement for the mere reason that if you can pass that test, you do possess the required knowledge to write abstracts, although not very many people nowadays are actually been writing abstracts. Title insurance is essentially where this is coming through. And I daresay at the moment, that if you're going to come and you're just going to be an abstracter, you're going to be hungry most of the time. So you are signing on with title companies, those sorts of things. And there's going...you're not going to start at the top. There's going to be some tutelage as you go. And, therefore, when we examined this particular removal of the requirement of a year's worth of experience...we felt that the test itself and the practical means by which you become an abstracter, most of time becoming the title insurance salesman also comes with it. So we totally support this and we'd be happy to answer any questions. [LB345]

SENATOR LINDSTROM: Thank you for your testimony. Any questions from the committee?
Senator Schumacher. [LB345]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. And thank you for your testimony. So the abstracter's client, so to speak, is that the title insurance company in most cases? [LB345]

JASON WHITE: You know, yes, for the most part it is. We usually have an abstracter in most title insurance companies. And I'm somewhat proud to say they're mostly...they're going to be the experts, because this is the type of knowledge that you need to possess to actually go through the register of deeds to go through the numerical index, the alphabetical index and be able to tell whether or not a piece of property is the right description, the legal description, being able to tell whether there's liens on there. So as far as your questions concern...for the most part, you're going to be in a title company. So I hope I answered the question. I don't know that I fully have yet. You can certainly ask it again. [LB345]

SENATOR SCHUMACHER: Well, no. Basically, the way we do it now--not the way we did it 30 years ago--but the way we do it now is at a real estate closing, the buyer gets the title insurance policy and usually the banker who's advancing money gets a policy. And the customer, so to speak, the person who's buying the property, they look to the title insurance company if there's a screwup. [LB345]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

JASON WHITE: That's correct. [LB345]

SENATOR SCHUMACHER: And the title insurance company isn't just going to blindly issue title insurance upon payment of a fee. They will have an abstracter then go to the courthouse and look through all these records so they know whether they're making a good bet or not, doing the policy. [LB345]

JASON WHITE: That is correct, although it's not required to have an abstracter to sell the title insurance, which I think goes to your question. Under the Nebraska Department of Insurance you have to have the requisite producer's license and the agency license to actually sell it, but to an extent, most of the searchers are going to take this test and they're the ones going to the courthouse. [LB345]

SENATOR SCHUMACHER: Who would a title insurance company use to base its opinion that it's an insurable piece of property if they didn't have an abstracter or maybe an attorney go to the courthouse? [LB345]

JASON WHITE: The searchers are generally going to be starting at the bottom and they're going to learn to do their searches, somewhat dependent upon how good a searcher you have. And that's one of the reasons why the Abstracters Board is one that a lot of people don't really realize it, is that bank of knowledge that protects this country's, this nation's personal property. I mean, we're one of the first countries in a long time when we were founded that was founded on the right to own real estate...a person owning the real estate. Those records, they are something that the Abstracters Board takes very seriously. You don't necessarily have to have this to go sell the insurance. Most of the good title insurance companies are going to have one or two abstracters on board. They're going to be training those searchers to go search the records. [LB345]

SENATOR SCHUMACHER: Thank you. [LB345]

SENATOR LINDSTROM: Senator Kolterman. [LB345]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Thanks for coming today from Broken Bow. [LB345]

JASON WHITE: I blew in, so to speak. [LB345]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR KOLTERMAN: Yeah. I did, too, this morning. It wasn't near as far. I'm just a little bit confused. So you're saying that there's researchers. Those don't necessarily have to be abstracters? [LB345]

JASON WHITE: They do not. [LB345]

SENATOR KOLTERMAN: But when a title company issues a title insurance policy, are they relying on just the researchers or are they relying on the word of the abstracter that this does, indeed, meet the title requirements to issue a policy? [LB345]

JASON WHITE: I can't necessarily speak for all of them. And I think I tried to speak for most of them, that they're going to be relying on that searcher to do their job correct. Most of them are going to have an abstracter that teaches those searches to go to the courthouse. Behind that, though, my company, I'm going to have an errors and omissions and I'm also going to be bonded. So there's several layers of protection if something goes wrong. And, essentially, that's what a title policy is, it's guaranteeing that the title insurance company will defend the title. So if there's errors made in the search, that title policy is now going to stand behind that. [LB345]

SENATOR KOLTERMAN: So the person that sells the title insurance policy, in essence, has to have a property casualty license through the Department of Insurance in order to do so, but that doesn't necessarily qualify them to meet the requirements of the title company. Is that accurate? [LB345]

JASON WHITE: I would agree. I would agree, yes. [LB345]

SENATOR KOLTERMAN: Because I have all those licenses. I wouldn't begin to know where to search. [LB345]

JASON WHITE: It's a little scary when you walk into the register of deeds. Yeah, I agree with you. [LB345]

SENATOR KOLTERMAN: I know where to go look, but that's because I had a real estate license. [LB345]

JASON WHITE: Your assumptions are correct. However, I believe the market itself, you know, your errors and omissions and the bonding behind it is essentially what's guaranteeing those types of things. I think maybe the push behind this is essentially you could come from another state and you could start doing that abstracting business. Our board discussed those types of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

things. It would be a daunting task if you came from another state and started actually just writing opinions. There are some other statutes that come into effect and you need an abstractor's license; for example, title certificates. Only abstractors can write title certificates. So if we have some of these on-line companies e-mailing us, sending us a search request, and all they really want is to know is the status of that title, who's the record holder, if there's liens, that sort of things on it, only registered abstractors can sign those certificates. Title insurance salesmen, so to speak, can't do that. And you're not going to be around very long if you don't possess this knowledge. There's going to be some errors and omissions that are going to be found and claimed against if you don't possess this knowledge. But knowing and now having administered the test--this is my fifth year out of five-year appointment by the Governor--if you know that test, you're going to know most of what you need. [LB345]

SENATOR KOLTERMAN: So is it fair...thank you, Senator Lindstrom. Is it fair to say that if we would eliminate this aspect of the law, this waiting period for abstractors, we're not really going to weaken the consumer's protection because the companies are going to require a lot of evidence that the people that are doing the search are indeed qualified to do the search. Is that a fair statement? [LB345]

JASON WHITE: It's a fair statement. I'd say it makes our test even more important. [LB345]

SENATOR KOLTERMAN: Thank you. [LB345]

SENATOR LINDSTROM: Senator Schumacher. [LB345]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. So say that five years ago I bought 80 acres for a million bucks. It's now worth \$3 million and I'm complaining about my property taxes something fierce--which probably is a real situation--but, so...and we find a flaw. The title was no good. Okay? The title insurance company pays me my million dollars and whoever it is shows up to take the 80 acres back. I, as a consumer, then somehow just lost out on two million bucks. And if that was due to the title company not having a good searcher or having it properly reviewed by an abstractor, I have no recourse against them because I have no privity with them. My banker may have even lost money. That's unusual when that happens. But nevertheless, so what's protecting the public if at some point along this line there isn't a requirement that somebody that really, really knows something and has got experience is at least giving input to that title company so they're just not off the hook for a third? [LB345]

JASON WHITE: To an extent there's probably...you jump to being...in your example, you jumped to being paid the million dollars for the proper owner of the property. It's not necessarily how it's going to happen. Of course, the title insurance company is going to come and defend

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

that lawsuit and hopefully it's going to get settled. But the errors and omissions and the bonding behind that is going to be further insurances. [LB345]

SENATOR SCHUMACHER: But I don't have privity with anyone who has the errors and omissions policy. I didn't hire a lawyer, because those lawyers are too high priced, particularly the ones in Broken Bow. [LB345]

JASON WHITE: That's exactly right. And I guess I don't know if I can answer completely your questions. But you not having privity, I don't know where you're going to get your claim to begin with. If you didn't own the property to begin with even prior to the mistake, then you're not going to be able to make the claim (inaudible). [LB345]

SENATOR SCHUMACHER: Thank you. [LB345]

JASON WHITE: And I'm not going to stand on that legal opinion. [LB345]

SENATOR SCHUMACHER: We didn't pay anything for it either, so you're fair. [LB345]

JASON WHITE: Thank you. [LB345]

SENATOR LINDSTROM: Seeing no more questions... [LB345]

JASON WHITE: If you have some more questions, I'd be happy to answer them. [LB345]

SENATOR LINDSTROM: Seeing none, thank you very much. Thanks for coming down. Next proponent. Afternoon. [LB345]

NICOLE FOX: (Exhibit 1) Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Nicole Fox, N-i-c-o-l-e F-o-x, and I'm director of government relations for the Platte Institute and I'd like to thank Senator Craighead for introducing LB345. I'm here today to testify in support of this bill. According to the Nebraska Abstracters Board of Examiners, a registered abstractor is an individual registered under the Abstracters Act holding an operative certificate of registration, who for a fee or other valuable consideration, compiles and certifies abstracts of title or prepares reports of title for real property in any county within the state of Nebraska. To become a registered abstractor in Nebraska, current law states that an individual must complete an application and successfully pass an exam administered by Abstracters Board of Examiners. In order to be eligible to take the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

exam the law requires the applicant have one year of land title-related experience. There are no required courses of study nor is there a school that an applicant must attend in order to qualify for the exam. The board suggests that the applicant study the manual evidencing land titles published by the Nebraska Land Title Association. The annual licensing fee for a registered abstractor is \$150, which is billed every two years at \$300. According to the Institute for Justice a registered abstractor is required... license, I should say, is required in six states. The following neighboring states do not require this license: Wyoming, Colorado, Kansas, and Missouri. Nebraska is the most regulated because it was the only state requiring one year of experience before one is eligible to sit for the exam. Nebraska faces a work force shortage and occupational licensing creates a significant labor force issue. Nearly 200 different occupations in Nebraska require a government license affecting nearly one in four workers. This is negatively impacting individuals seeking the means to earn an honest living. Reform of occupational licensing laws to lessen burdensome regulation is an economic issue that needs to be addressed. Occupational licensing laws were initially created as a means of protecting the public from negligent and unqualified practitioners, but more and more instead of protecting the public from harm, we now understand that occupational licensing is making it difficult for new workers to enter the work force. The licensing requirements for registered abstractors in the state of Nebraska are burdensome in two ways. First, there is the time a worker must invest to meet the experience requirement just to sit for the exam. And during this period the worker may have to settle for a job of lower pay. Second, the \$300 fee one must pay every two years after becoming licensed is essentially a tax to work. This cost is often passed on to consumers by raising the price of services. A study by The Heritage Foundation showed that occupational licensing reform could save Nebraska households over \$900 annually. LB345 strikes the requirement that abstractors have at least one year of experience prior to licensure or temporary certification. Nebraska is only one of six states to license abstractors and the only state with this experience requirement. LB345 makes Nebraska's job licensing requirements more consistent and competitive with our neighboring states. The Platte Institute strongly supports occupational licensing reform as a means of lessening burdens to those trying to enter the state's work force. I ask that you advance LB345 out of committee. And with that, I thank you for the opportunity to testify and I'm happy to answer any questions. [LB345]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator Schumacher. [LB345]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom, Chairman Lindstrom. And thank you for your testimony, Senator Fox. So would you feel comfortable if you bought a house and you got title insurance and say you paid \$100,000 for the house and the house went up in value to \$150,000 and at the core of your protection was that title insurance policy for \$100,000 and you found out that you didn't have title to the house, your realtor--who has a two-year statute of limitations and arguably this was three or four years ago--and now your house has an extra

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

\$50,000 of value, that this is really your basic security--even though it isn't worth any money--but your peace of mind comes from somebody who's passed an exam, but it may be the first day on the job when they did the search on your house, do you feel comfortable that that's all that's between you and losing your \$50,000? [LB345]

NICOLE FOX: Well, I think that part of hiring employees for a business is an adequate screening process and an interview process. And so my hope would be that in the fact that as I understand it, the exam is pretty rigorous. And I would hope that through the interview process, that company is hiring somebody that they feel is qualified. I mean, I don't...in all honesty, I don't know that a year is really...you know, I mean, it's not like it's 10 years of experience or 20 years of experience. So I guess I would feel...I guess in times when I've bought real estate I relied on the people there. I'm coming there with the understanding that they're qualified to do the job that they're to do and provide the services they're providing. [LB345]

SENATOR SCHUMACHER: Thank you. [LB345]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB345]

NICOLE FOX: Thank you. [LB345]

SENATOR LINDSTROM: (Exhibits 3, 4) Next proponent. Seeing none, any opponents? Seeing none, any neutral testifiers? Seeing none, I do have two letters of neutral testimony, one from the ACLU; and the other from Nathan Leach. And with that, we'll invite Senator Craighead to close on LB345. [LB345]

SENATOR CRAIGHEAD: Thank you very much. I would just like to address Senator Schumacher's question. Again, there's errors and omissions insurance that is required, which is a protection. Okay? And also the appraiser, not the abstracter, is the one who's going to appraise the value of the house. Okay? I would just like to say that I hope you will consider voting this out of committee and passing this on to General File so that we can keep our abstracters with less than one year of experience here in the state of Nebraska. [LB345]

SENATOR LINDSTROM: Thank you. Any final questions for Senator Craighead? Seeing none, that will end the hearing on LB345. We're going to take a quick five-minute break to grab some air, go to the rest room. Five minutes. [LB345]

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Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR LINDSTROM: We will now open the hearing on LB141, introduced by Senator Williams. Whenever you're ready. [LB141]

SENATOR WILLIAMS: Good afternoon, Chairman Lindstrom and fellow members of the Banking, Commerce and Insurance Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. I am here today to introduce LB141 on behalf of the Uniform Law Commission. LB141 attempts to modernize the Uniform Disposition of Unclaimed Property Act and its predecessors that have been enacted in Nebraska since 1969 and in one form or another in every other state. These acts allow the State Treasurer to assume custody of property of various kinds when presumptively abandoned by the rightful owners, some forms of property that are held by a third party for the account of the rightful owner. For example, an individual may forget about some traveler's checks which represent funds held by the insurer until the check is cashed. Or a person may die without telling beneficiaries of the existence of a life insurance policy. The types of property can vary from funds in inactive bank accounts, the unspent value of a stored value card, funds held by an employer in a health savings account, and tangible property of abandoned safe deposit boxes. The act defines the property subject to the act and the time period of inactivity that makes the property presumptively abandoned. Without the Unclaimed Property Act, the value of presumptively abandoned property would be captured by the third-party holders of that property. With the Unclaimed Property Act, the state receives the benefit of the unclaimed property and in return assumes an obligation to make reasonable efforts to locate the rightful owner. The act is important because it benefits Nebraska citizens who may have unknown claims to property. The act also generates important revenue for the state of Nebraska. Uniformity in these provisions among the states is important because often large holders of presumptively abandoned property--generally banks, insurance companies, securities brokers--may hold abandoned property of citizens of numerous states and uniformity creates efficiency for them to comply with unclaimed property acts. The administration of unclaimed property acts is funded exclusively by the proceeds from abandoned property for which the rightful owner cannot be found. Over the last five years the state treasury has returned \$57.6 million of unclaimed property to Nebraskans who were the rightful owners. The Treasurer has also transferred \$55.7 million to the permanent school fund pursuant to Nebraska law. Harvey Perlman, representing the Uniform Law Commission, will follow me and explain the various provisions of LB141. It is understood that some provisions of this bill have raised concerns by the bankers association industry, the insurance industry, and possibly the bar association. Therefore, I will ask the committee to hold the bill so that additional discussions can be held to resolve these issues. Thank you, Mr. Chairman. [LB141]

SENATOR LINDSTROM: Thank you, Senator Williams. Any questions from the committee? Seeing none, thank you very much. First proponent. [LB141]

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Banking, Commerce and Insurance Committee
March 06, 2017

HARVEY PERLMAN: (Exhibit 1) Thank you, Mr. Chairman, members of the Committee. I am Harvey Perlman, H-a-r-v-e-y P-e-r-l-m-a-n, and I'm currently a professor of law at the University of Nebraska and a member of the Nebraska Uniform Law Commission. I understand, Mr. Chairman, that you would give me a few minutes to describe what the Uniform Law Commission is, because so many of you are new senators and this committee plays a pretty significant role in many of the projects that the Uniform Law Commission proposes. The commission was formed in 1892 by the states, by the various states of the United States, so it's 125 years old. Its purpose was to recognize that commerce among the states and citizens of different states was increasing. That's in 1892, you can imagine what it is today. Mobility of persons across state lines was significant and has continued to be so. And the question was, because there was enormous pressure to have the laws of the various states uniform, how could the states preserve their own sovereignty in making law for their citizens and resist the intrusion of the federal government and yet create as reasonably uniform laws across the United States as could be possible where that's appropriate? And that was the purpose of this commission. Each state...this is a commission that is funded by the states and so I directly work for you. The structure, each state selects uniform law commissioners to represent that state. In Nebraska, they're appointed by the Governor. There are three commissioners appointed by the Governor, but some of us who exist in the commission for 20 years--which means you've got to be appointed by a lot of different Governors--become life members and we're allowed to stay as long as we're able to serve. Nebraska thus has seven active and life commissioners; three of us are from the law school, Professor Willborn, Professor Lenich, and myself, Larry Ruth serves, John O'Connor is a practicing lawyer in Omaha, Joanne Pepperl, your Revisor of Statutes as a full voting member of the commission, and Arlen Beam, who is senior judge on the Eighth Circuit Court of Appeals is a member. There is an annual meeting every year in which all the commissioners from all the states and territories come together and approve uniform legislation to be recommended to the states. Initially, we solicit ideas for possible uniform legislation. A committee of the national organization studies that proposal to assure that it is one, appropriate for uniformity and two, that it has a fair chance of being adopted. A drafting committee of commissioners from a variety of states then come together. They draw on the expertise nationally of people that understand the field, they reach out--this is the important part--they reach out to special interests and invite them to participate in the drafting process. So this isn't done behind closed doors. The natural groups that would be interested in such legislation on a national level are invited to participate. And they generate a draft that is then submitted to the annual meeting of the conference. It's read line by line. It's much like a legislative process. And if it gets approved in two successive annual meetings of the conference, it comes then back to the states for adoption. So all we do is we try and create a uniform piece of legislation that's well drafted, well thought out, we try and strike some of the inevitable compromises that are necessary when special interests look at a piece of legislation, and we bring it to you for your adoption. So you have the final say. Nebraska has been an active participant in formulations in these proposals, an active consumer of proposed uniform laws. The Uniform Commercial Code, which governs all

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Banking, Commerce and Insurance Committee
March 06, 2017

commercial transactions in the state of Nebraska from sales of goods to banking transactions to installment sales to secure transactions are all governed by the Uniform Commercial Code, which was a product of the commissioners. Child custody legislation, as families moved back and forth across state lines, becomes critically important. And you've adopted the uniform custody statute. The Uniform Probate Code, the Uniform Trust Code, and most recently you adopted the Fiduciary Access to Digital Assets, the question of how if I die who gets access to my Facebook account and my social media accounts and how do you get the passwords and those kinds of things. So there are many others. There are probably 50 or 60 uniform laws sprinkled across the statutes of the state of Nebraska. The value to Nebraska? It allows you to draw on national expertise in drafting some legislation. You receive legislative drafting that has been reviewed and fashioned by expert draftsmen. And, in many instances, political compromises have been fashioned to secure their support. The most important--I can't emphasize this enough and the pressures are increasing as we see them--is that it protects state sovereignty from federal encroachment. There is increasing pressure to make laws uniform through federal legislation. There is increasing pressure to make laws uniform by the federal government engaging in private treaty negotiations to impact private law. And the way that we've been able to...the states have been able to respond is through the adoption of uniform state laws. So I hope that in just a nutshell tells you what this commission is about and why we come often to you for your review of our work. Now with respect to LB141, the Revised Uniform Unclaimed Property Act, it is a product of the national conference. It's undergone the process that I just described. Our State Treasurer, Don Stenberg, as past president of the National Association of Unclaimed Property Administrators, played an active role during our deliberations and has driven back from Boulder, Colorado, to be with us today. As Senator Williams has explained, this is a revision of laws currently in Nebraska and in every other state's attempt to modernize those provisions. I want first to make clear how the system of unclaimed property works. A variety of institutions in our society hold property, both tangible and intangible, on behalf of the owner of that property. My bank holds funds in my checking and savings account as well as property in my safety deposit box. My broker may hold my stock certificates. American Express holds the funds until I spend them when I sign the traveler's checks. An insurance company may hold the principal of my annuity or the proceeds of my life insurance policy after my death until claimed by my beneficiary. What the unclaimed property laws do is regulate what happens when property held by another appears to be abandoned because the real owner makes no claim for its return. What happens if I forget about that small amount of money sitting in a now unused checking account or the funds represented by the traveler's check that I forgot to cash and misplaced years ago? Indeed, in cleaning out my files recently I found a U.S. savings bond, long past its maturity, that I had purchased for my daughters probably 30 years ago. In the ideal world, the holders, the banks, for example, or insurance companies would aggressively seek to find the owners of property they hold. Many of them do so. But what happens when those efforts fail? Prior to unclaimed property acts, the holders were able to use these funds for their own benefit. With the unclaimed property acts, these unclaimed funds were turned over to the state. The state takes an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

obligation to seek the true owner, but if that were unsuccessful the funds were utilized by the state for public purposes. In Nebraska excess funds are deposited in the perpetual school fund. This is not an insignificant amount of money, as Senator Williams indicated. For example, nationwide in 2011 it's estimated the states held more than \$40 billion in unclaimed property. You may have seen the insert in the Omaha World-Herald this Sunday. By pure coincidence, it has a long list, by county, produced by the State Treasurer of names of people who have property that Treasurer Stenberg is holding, waiting for them to make a claim for it. It was reported, as Senator Williams said, \$16 million was returned to owners last year, approximately \$170 million is waiting to be claimed in Nebraska. So let me emphasize that nothing in this act deprives the true owner of his or her entitlement to the property. Simply, the unclaimed property acts declare that at some point the holder of the property must turn over the property to the State Treasurer. And then the essential elements of such a statute are: the definition of the property subject to the act; a determination as to when the property is deemed abandoned and thus subject to be turned over to the state; and establishing the procedural process to assure the property is transferred to the state and the rights of all parties are protected. The revised act, LB141, addresses additional forms of property not specifically included in existing Nebraska law. Thus, the act now addresses specifically: virtual currency; tax advantaged accounts, such as health savings accounts and 529 college savings plans; commissions and payroll cards owed to employees; stored-value cards; custodial accounts for minors. The revised act in many instances shortens the period of time that must expire, called the dormancy period, before the property must be deemed abandoned and turned over to the state. Normally, that period is three years after it's clear that the owner doesn't make a claim to the property. There are some differences of opinion, in all candor, on this matter. The banking industry, I'm informed, has traditionally resisted shortening the dormancy period. And Bob Hallstrom and I have had initial conversations about the matter. It would be an issue to be addressed. It certainly is true that if an owner suddenly discovers he has a forgotten account, he is more likely to go to the bank where the account exists and make inquiry. So long as the funds remain at the bank, it would be easier for him to get his money back. On the other hand, the sooner the funds are transferred to the state, they are subject to the publicity and efforts of the State Treasurer in addition to the efforts of the bank to find him. And the owner can always make a claim with the State Treasurer to get his money back. Remember, nothing here deprives the owner of his entitlement to the property. Whatever the dormancy period, one has to know when to start counting. In general, the acts start counting from the last indication of interest by the owner in the property. So the act details how that interest can be expressed, initiating activity with the account by corresponding with the holder. The act also provides that the holder can initiate correspondence with the owner and if mail is returned or unacknowledged this may be evidence that the dormancy period should begin. In the life insurance industry, beneficiaries of policies may not know about the policy and thus not be in a position to file a notice of death of the insured in order to access the proceeds of the policy. The act worked out with the insurance industry a calibrated use of the death master file--something I learned about in this process--maintained by the Social Security Administration to establish the dormancy period in such

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

circumstances. So, in fact, you can go to Social Security and find a list of all the people that are dead. This is a comfort to all of us, I'm sure. It is a difficult question for the insurance industry. The insurance industry, national insurers are subject to a legal settlement that dictates how they do that and this act pretty much reflects that settlement. It also adopts most of the provisions that the insurance companies wanted, to determine when a match is made, because I can be Harvey S. Perlman, I can be Harvey Perlman, I can be S. Perlman, and you have to know when those matches are legitimate. In tax-advantaged accounts, like IRA, the owner must begin to take mandatory withdrawals when he reaches a particular age. Failure to do so can serve as a signal that the account has been forgotten. The practice is that state unclaimed property administrators often audit large holders to assure that property deemed abandoned is being turned over to the state. LB141 builds an additional protection for holders who want to contest a decision by the State Treasurer. The act also deals for the first time with the issue of confidentiality of private information during all of these disclosure issues. So LB141 would modernize unclaimed property statutes in Nebraska, may provide in the long run the return of unclaimed property to Nebraskans, and increase the income to the state of Nebraska. I should alert the committee, in all candor, to some objections to the act by the American Bar Association. I don't know what our state bar association's views are. I will tell you that if the ABA had their way, it would significantly reduce the collections in Nebraska. And this is not a formal ABA position, it's by one of their subcommittees. They want to prohibit the state treasurer to use auditors that work on a commission basis on the recovery of unclaimed property. As a small state this would make auditing an expense probably beyond what would be reasonable for Nebraska. They also want to exempt business to business transactions. With the number of small businesses in Nebraska, it seems unreasonable not to provide the benefits of the act to them. I am uncertain how these issues will be viewed in other states, but they were explicitly rejected at our annual meeting. So this is a complex statute. I laughed when Senator Williams said I will explain the 60-some provisions to you, because I'm not going to and you wouldn't stay here if I did. But I would be happy to respond to as many questions as I can. Thank for, Mr. Chairman. [LB141]

SENATOR LINDSTROM: Thank you. Thank you for your testimony. Any questions from the committee? Senator Brewer. [LB141]

SENATOR BREWER: Thank you, Mr. Chairman. Actually, we have to stay here for however long you stay with us. The first 65 pages here that is all new, you had a part in that? [LB141]

HARVEY PERLMAN: Yes. I had a small part. I was a commissioner. [LB141]

SENATOR BREWER: I started reading through it and it is mind-numbingly interesting. But other than the changes you talked about, I mean, it seems pretty basic. There's...normally the

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Banking, Commerce and Insurance Committee
March 06, 2017

thing you ask is, what bad thing happens if we don't pass LB141? How would you explain that?
[LB141]

HARVEY PERLMAN: It would be hard to identify some terrible thing that's going to happen. As I said to Senator Williams, neither his or my career depends on whether you approve this; I'm being honest with you. But it does incorporate and clarifies the ways in which different kinds of property that have emerged since the last time that you looked at this issue are handled. And it may well then increase the amount of property that is returned to Nebraskans or to the state of Nebraska, whatever takes place. It is more detailed in its processes and procedures, providing protection for general holders and also assuring that the State Treasurer acts aggressively in terms of locating the proper owner. But we have an unclaimed property administration in Nebraska and it would obviously continue if this were not adopted. [LB141]

SENATOR BREWER: All right. Thank you. [LB141]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much. [LB141]

HARVEY PERLMAN: I'm sure Senator Schumacher will have many questions for me later in private. [LB141]

SENATOR LINDSTROM: Thank you. Next proponent. Good afternoon. [LB141]

DON STENBERG: Afternoon, Mr. Chairman, members of the committee. For the record, my name is Don Stenberg, D-o-n S-t-e-n-b-e-r-g, Nebraska State Treasurer. Let me begin with a little bit of an overview of the process and my involvement in it. I think Mr. Perlman did a good job of describing the overall picture. During the time the Uniform Law Commission committee met--and they met several times all over the country; I attended all those meetings for the reason that during the time this was being drafted I was at one time the senior vice president, president, and immediate past president of the National Association of Unclaimed Property Administrators. So I was one of the three principal representatives of NAUPA, as it's called, at all these committee hearings. And these were very widely attended. Pretty much any interest group that had an interest in unclaimed property or in not returning unclaimed property, as the case may be, were represented and presented testimony and argument at these numerous committee meetings held all over the country. States were also well represented. We had anywhere from 18 to up to 27 states represented at the various committee meetings. If NAUPA was writing this bill it would not be what it is. It would be more pro consumer than what it is, frankly. But it...basically, it represents a compromise between all of those interest groups that attended these meetings and made their presentations and the NAUPA representatives, which tend to be more pro consumer,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

getting money back to the consumers. And I make that point because what's before you is already a compromise. Now that's not to say that interest groups can't come and lobby you for some changes. And, of course, you can make those changes if you're persuaded. But I think it's important to keep in mind that what you're working with here is a nationwide compromise, where all the national interest groups, whether it's the bankers, insurance, unclaimed property holders of all kinds, they were all represented if they wanted to be and many, many of them were and repeatedly made presentations to the commission. And then after that, as Mr. Perlman described, the commission itself met and made some amendments as well on the floor and that's the product that is before you. There are a lot of provisions here. I'm going to just touch on a few and then take questions. One significant change is, under our current law we have the money and if it's claimed we return that amount of money. But if it came from a bank account we don't return the interest. That interest basically goes to the perpetual school fund. If there are dividends from stocks, we will return the stock or at the owner's request sell the stock and provide them whatever amount of money the stock sells for at the time they make their claim. But if there's been dividends collected in the meantime, those dividends go to the perpetual school fund. Under this act, it provides that if the money came from an interest-bearing account, like a checking account if it's interest bearing, savings account, a bond, that the owner when they claim the money would get 3 percent interest from the time the money was received until their claim was made. Same way with dividends up to the first six years that the state holds it. Right now those dividends go to the perpetual school fund, under this bill they would go to the owner of the property when the property was claimed. So that is a pro consumer approach. It does reduce to some extent the amount of money going into the perpetual school fund. Mr. Perlman mentioned the dormancy period. I want to talk about that a little bit, because this was a subject of considerable discussion at the uniform law committee meetings that I attended. A number of states have a three-year dormancy period. And just to refresh your recollection from what Mr. Perlman told you, dormancy is a period of time basically from the time the corporation that is holding the person's money loses track of that person until they're required to turn it over to the state. So that's the dormancy period. Right now, for many things in Nebraska it's five years; the bill moves that to three. And this was much discussed at the national level and I think there were two basic reasons that the Uniform Law Commission went with the three. Number one, there are a number of states that already have a three-year dormancy period. And the other thing, there was much discussion, but a holder is required to provide notice. So if you're the bank...let's say you're a bank, you've lost track of your depositor, you mail out monthly statements and they all come back and so you've lost track of them. The law requires you, before you turn the property over to the State Treasurer, whether it's three years or five years, to attempt to find your customer. Send a mailing, do whatever other investigation you wanted to do, that's a requirement before you turn the property over to the state. And you're required to send a letter that basically says, if you don't contact us in 30 days we'll turn this money over to the state. So there's a greater chance that the holder is going to find their client or their customer, if they've only been missing for three years than for five. It's also the experience of unclaimed property administrators

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

nationwide that the sooner you have the property the more you are likely to be able to locate the person who it really belongs to. The longer they're missing, the more they've moved around to different states, different places, maybe died, they're just...they're harder to find. And that's why the commission went with the three-year in trying to establish a uniform policy. And that's a point I want to make on the dormancy and all these other provisions. It's very much in the interest of companies that do business nationwide, whether it's Walmart, whether it's Wells Fargo, whether it's U.S. Bank, to have the same laws in every state. So otherwise, it's five years here and three year there and two years there and it's a big administrative burden. And that's really the benefits of your uniform law is that it simplifies it. And a lot of the unclaimed property we receive does come from businesses that do business in multiple states. And so that's kind of the basis of that. I've got more I could say, but I see my red light is on. So I'll stop and take questions at this point. [LB141]

SENATOR LINDSTROM: I'm sure we've got some questions here. Any questions? Senator Kolterman. [LB141]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Welcome, Mr. Stenberg. [LB141]

DON STENBERG: Thank you. [LB141]

SENATOR KOLTERMAN: I got the book yesterday in the World-Herald. [LB141]

DON STENBERG: Yes. [LB141]

SENATOR KOLTERMAN: And, of course, when you're on the campaign trail you go to county fairs and you've done a good job of sending your people to county fairs and various things throughout the state to promote collecting unclaimed property. [LB141]

DON STENBERG: Right. [LB141]

SENATOR KOLTERMAN: So I compliment you for that. [LB141]

DON STENBERG: Thank you. [LB141]

SENATOR KOLTERMAN: One of the concerns that I have though is...and this talks about the process a little bit. I probably know a third of the people that are in that book. [LB141]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

DON STENBERG: Yes. [LB141]

SENATOR KOLTERMAN: And I've reached out to them and said, hey, you got some money sitting there. You need to go find out about it. But at the same time, there are people in that book that maybe are part of an estate. And in many instances, you'd have to reopen the estate to collect the money and process a \$150 or \$200 claim. And so I just...they ask me what to do and I'm not an attorney, I suggest they see their attorney. But nine times out of ten, it (inaudible). [LB141]

DON STENBERG: Well, that's a great question. That's a great question. Generally, for the example you described, if it's a relatively small amount of money...and there are several cases. If it was already probated, even though the probate is closed, it's very simple. We can just go to whoever the rightful owners are, because the judge's order tells us that. And so you don't need to reopen the estate. I mean, if you're talking \$100,000 and there might be some dispute we will sometimes require reopening an estate, but that is very rare. If there has not been a probate estate, we will... number one, the claimant is supposed to tell us who the relatives are if there was a will, even if it wasn't probated, who the relatives are. And then there are great on-line databases that we use to find people. And we can use those to basically determine brothers and sisters. We do ask for death certificates and that kind of thing. But we very, very rarely require the reopening of an estate. It's only if it's a very significant amount of money and/or there's some reason to think there may be some dispute among the heirs as to whose money it is. [LB141]

SENATOR KOLTERMAN: Okay. Thank you. [LB141]

SENATOR LINDSTROM: Senator Schumacher. [LB141]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. In those cases, does the statute that provides that if there's been no probate and the heirs assign that they are truly the heirs--I think there's an affidavit, maybe a \$25,000 or \$50,000 limit--does that work to get that money out? [LB141]

DON STENBERG: Yeah, again, it depends on the dollar amount. And the statute really...current statute and this new proposal basically leaves the determination to the State Treasurer, to the unclaimed property administrator, as to what sufficient proof is in the judgment of ultimately the Treasurer. And so if anybody is unhappy with that they can go to court. I can say that during my six years as Treasurer nobody has gone to court to attempt to pay money if we felt it wasn't turned over. [LB141]

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

SENATOR SCHUMACHER: Does this also cover old lost savings bonds? U.S. savings bonds, yeah. [LB141]

DON STENBERG: U.S. savings bonds? Ah, I'm glad you asked that question, because that was one thing I was going to talk about before my red light turned on. It is not in the uniform act done nationally, but we have put in this bill some language that I put in that I introduced as a bill last year...had introduced as a bill last year on U.S. savings bonds. Right now it's estimated that between \$75 million and \$85 million in U.S. savings bonds that are owned by Nebraskans have gone unclaimed. And under this bill there's a procedure for the state to take custody of that from the U.S. government and then we can put it on our Website and in our publications so that we can return some of that money to Nebraskans that it rightfully belongs to. We had that bill last year. I testified, there was no opposition, it basically ran out of time. So Mr. Perlman was agreeable to putting that in here. Seventeen states or more have already passed that provision on claiming U.S. savings bonds so that we can help find the rightful owners here in Nebraska. Frankly, the U.S. government doesn't want to find people. They want to keep the money and they don't make any significant effort to find the rightful owners of those savings bonds of their heirs in return. So that is one thing we did add to the uniform act that is in here and that will enable us to eventually, through a fairly drawn out process with the federal government, bring in \$75 million to \$85 million in unclaimed U.S. savings bonds so that we can attempt to find the rightful owner. [LB141]

SENATOR SCHUMACHER: Can you just put that in the General Fund to help us out? [LB141]

DON STENBERG: There's a constitutional issue, because escheats are supposed to go to the perpetual school fund under the state constitution, but if you want to know more than that ask the Attorney General. I got out of that business. [LB141]

SENATOR SCHUMACHER: It's okay. [LB141]

SENATOR LINDSTROM: Thank you. Any other final questions? Seeing none, thank you very much for your testimony. [LB141]

DON STENBERG: Okay. Thank you. [LB141]

SENATOR LINDSTROM: Next proponent. Seeing none, any opponents? Good afternoon. [LB141]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

JIM HEMPEL: (Exhibit 2) Good afternoon. Mr. Chairman, members of the committee, my name is Jim Hempel, for the record, that's spelled J-i-m H-e-m-p-e-l. I'm associate general counsel employed by and appearing on behalf of Blue Cross and Blue Shield of Nebraska, here today to testify in opposition of LB141. As introduced LB141 removes an important safeguard from the unclaimed property audit standards that allows the State Treasurer discretion to structure contracts for audit services in ways that aren't appropriate. It would also allow the State Treasurer to, under the guise of an unclaimed property audit, act in areas that are currently reserved to other state agencies, in our case the Nebraska Department of Insurance. Blue Cross and Blue Shield of Nebraska is currently undergoing an unclaimed property audit. I'll briefly touch on a couple of the concerns that this bill will create for potentially any Nebraska industry based on our experience in the current unclaimed property audit. First, the bill removes the "reason to believe" standard currently found in Nebraska Revised Statute 69-1322, which allows the State Treasurer at a reasonable time and upon a reasonable notice to examine the records of any person if he or she has reason to believe that such person has failed to report property that should have been reported pursuant to the Uniform Unclaimed Property Act. LB141, section 59 eliminates the standard and states: The State Treasurer, at reasonable times and on reasonable notice, may examine the records of a person if the records are reasonably necessary to determine whether a person has complied with the Revised Uniform Unclaimed Property Act. Under this bill the Treasurer is no longer required to establish that there is a reason to believe that that person has failed to report unclaimed property before auditing them. Instead, it grants the State Treasurer complete discretion to perform an audit of any person at any time. These audits can occur regardless of a person's recent demonstration of compliance with the act through other state agency exams. Second, unlike exams performed by the Nebraska Department of Insurance whereby we, the carrier, pay the department the actual costs of the audit plus additional fees to support the activities of in-house auditors to review the findings, the Treasurer has begun hiring contract auditors to perform work on a contingency basis. The bill before you explicitly allows the Treasurer to contract on a contingency fee basis. During our current audit, when we asked about the nature of the contract between the Treasurer and the contract auditor we found that the contract auditor was entitled to 10.25 percent of the recovery. We believe that this contract structure potentially yields conflicts of interest for the auditor. If LB141 passes as written, the potential for the number of treasury audits to increase across any and all Nebraska industries is probable, as is the continued use of contingency-based audit contractors. As stated previously, a better approach is that adopted by the Nebraska Department of Insurance in which we pay the department the actual cost of that audit. Such an approach helps alleviate the burden on the Nebraska citizens faced with an auditor who has a financial motivation in the audit's findings. According to a report from the U.S. Chamber of Commerce Institute for Legal Reform dated April 2014, in recognition of the problematic incentive structure, Illinois, North Carolina, and Virginia have enacted statutes that limit or bar the state's unclaimed property administrator from relying on contingency-fee auditors to collect unclaimed property. For example, Illinois and Virginia banned the use of contingency-fee audits for in-state companies and North Carolina

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

bans the use of contingency fee auditors, except in regards to life insurance industry. Third, the Treasurer's activities in this area overlap substantially with functions already carried out by the Nebraska Department of Insurance, leading to government inefficiency. Through a public records request to the Treasurer's Office in January 2017 we obtained information regarding how the contract auditor proposes to scope the Blue Cross and Blue Shield unclaimed property audit. The State Treasurer's approved scope states the audit shall include: examination of health insurance claims payments alleging mistakes in claims processing; improper out-of-network determinations; and inaccurate medical loss ratio refund calculations by the health insurer. All such items are typically in-scope items of a Nebraska Department of Insurance exam. We agree that it's proper for our government to audit claims payments practices, but believe this role should be carried out by the Department of Insurance. They have the staff, the expertise to make certain that we and our competitors are abiding by our contracts. Bringing in another government agency duplicates this work and really adds one more layer of government, even if it is government by contract. It should also be noted that as part of our audits by the Department of Insurance, they review our compliance with the Nebraska unclaimed property requirements, as demonstrated by our most recent audit we passed. As LB141 removes a provision of Nebraska law that's an important protection for Nebraskans, it does not prohibit the Treasurer from structuring on-site contracts in problematic ways and allows duplication of government efforts. We ask the Legislature to give these issues a very close consideration. Thank you. [LB141]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Seeing none, thank you very much for your testimony. [LB141]

JIM HEMPEL: Thank you. [LB141]

SENATOR LINDSTROM: Other opponents. Seeing none, we'll now move to neutral testifiers. [LB141]

JERRY STILMOCK: (Exhibit 3) Thank you, Chairman Lindstrom. Members of committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of the Nebraska Bankers Association in a neutral capacity. We've had the opportunity to work with Senator Williams and Professor Perlman and appreciate their willingness to hold this item while we discuss and work out the details of what's been presented in LB141. Without further delay in your afternoon, but just a couple of tidbits, yes, as to the holding period being reduced for the most part for financial institutions from five years down to three years. We hope to have that conversation. Also, there's discussion and perhaps a disagreement of opinions on what Nebraska law presently is when there's an account...multiple accounts at a financial institution versus what's in LB141. The point being is if there is a touch by that customer, the owner or the apparent owner of those funds in that one account and there are multiple accounts in that financial institution, we just want to

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Transcriber's Office

Banking, Commerce and Insurance Committee
March 06, 2017

make sure that if there's a touch for the financial institution out to that apparent customer, that apparent owner, that a touch on one of the accounts would also equally be spread out to all of the accounts. And as I've said, there's a matter of disagreement among ourselves and what the uniform law would present. And that would be just one example of what we're trying to hope would work out. In the interest of time and heat exhaustion I'll just ask you to allow us time to work, please. Thank you. [LB141]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Seeing none, thank you very much. [LB141]

JERRY STILMOCK: Thank you, Senators. Yes, sir. [LB141]

SENATOR LINDSTROM: (Exhibit 4) Next neutral testifier. Seeing none, I do have one letter in a neutral capacity from Mr. Nathan Leach. And with that, we will now have Senator Williams close. [LB141]

SENATOR WILLIAMS: Thank you for taking your time this afternoon to listen to this. And I would like to thank all the people that took their time to be here to testify, in particular Professor Perlman. Nearly 50 years ago I started calling him professor. Then I started a few years after that after I'd passed torts class, I called him friend and then, of course, dean, and then chancellor, commissioner, and now back to law professor. His performance is about like mine at this point. Senator Brewer, you asked a great question, what's going to happen if we don't do this? And the thing I would tell you that both Treasurer Stenberg and Mr. Perlman talked about is the uniformity issue. For instance, our bank only deals...we don't have banks in other states so we only deal with the laws that are in Nebraska. But there are many institutions holding thousands of accounts and thousands of dollars that are held at the Wells Fargos of the world that have to deal with multiple states. What I would remind each of us with this legislation is the goal. And whether you are the person that has the unclaimed property or you are the third party that happens to be in possession of it, our goal should be to get the property to the right owner and keep it available for them. And that's what, as you heard, we're doing a pretty darned good job of right now. And the attempt of LB141 is to fine tune that and move that another way. I know there is a concern by...in particular, that's been raised by the insurance industry about the audit itself and whether that should ever be done on a contingent-fee basis. I think you would find out if that question were asked to Treasurer Stenberg, I think they feel strongly that without that tool they would not be able to conduct audits at a price that would make it worth conducting the audit. I don't know that that's the case or not, but I think that's what it's up to us over the course of the next several months and this summer to work on and find out. I do know that in audits, like anything else, like when you go fishing you go fishing where the fish are. And there are thousands of accounts at the large financial institutions and we need to be sure those owners are

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Banking, Commerce and Insurance Committee
March 06, 2017

treated the right way. So with that, I appreciate your time, would try to answer any questions. But you have my commitment we will move forward and find that area of compromise that makes us all proud that we can do it the Nebraska way. Thank you, Mr. Chairman. [LB141]

SENATOR LINDSTROM: Thank you, Senator Williams. Senator Baker. [LB141]

SENATOR BAKER: Thank you. Senator Williams, do I interpret your remarks to mean you're going to work over the summer, so this is not something you expect to happen to this bill this year? [LB141]

SENATOR WILLIAMS: No, I specifically request that the committee just hold this right now... [LB141]

SENATOR BAKER: Thank you. [LB141]

SENATOR WILLIAMS: ...so that we can work and then it can still be in committee. And if we arrive at a path forward with the interested parties, we'll be back next year. [LB141]

SENATOR LINDSTROM: Very good. Any final questions? Seeing none, thank you, Senator Williams. And that will end the hearing on LB141. And that will end the hearings for today. Thank you very much. [LB141]