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Appropriations Committee
November 05, 2009

[LB1 LB2 LB3]

The Committee on Appropriations met at 1:30 p.m. on Thursday, November 5, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1, LB2, LB3, and Agency reports. Senators present: Lavon Heidemann, Chairperson; John Harms, Vice Chairperson; Tony Fulton; Tom Hansen; Heath Mello; Danielle Conrad; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: None.

SENATOR HANSEN: (Recorder malfunction)...District 42, Lincoln County. [LB1 LB2 LB3]

SENATOR CONRAD: Hi. MY name is Danielle Conrad. I represent north Lincoln's "Fightin' Forty-Sixth" Legislative District [LB1 LB2 LB3]

SENATOR WIGHTMAN: John Wightman, District 36. Most of Dawson and much of Buffalo County. [LB1 LB2 LB3]

MICHAEL CALVERT: Michael Calvert, Legislative Fiscal Analyst. [LB1 LB2 LB3]

SENATOR HEIDEMANN: State Senator Lavon Heidemann. I am Appropriations Chair. [LB1 LB2 LB3]

SENATOR HARMS: John Harms. I represent the 48th District, about as far west as you can go: Scottsbluff, Nebraska. [LB1 LB2 LB3]

SENATOR NELSON: John Nelson, District 6, in central Omaha, about as far east as you can go. [LB1 LB2 LB3]

SENATOR FULTON: Tony Fulton, District 29, southeast and south-central Lincoln. [LB1 LB2 LB3]

SENATOR MELLO: Heath Mello, District 5, south Omaha and north Bellevue. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Also today we have Committee Clerk Anne Fargen. Our page for today is Jamie. If you ever need anything she might be able to help. At this time we ask that you please, if you have cell phones, to please shut them off. Thank you, Larry. Testifier sheets are on the table or near the back doors. We ask that you would please fill them out completely and put them on the box on the table when you testify. You do not have to fill out this form if you aren't publicly testifying. At the beginning of the testimony, for the transcribers following, we ask that you would please state and spell your name. Nontestifier sheets near the back doors. If you do not want to testify but

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would like to record your support or opposition, you would need to fill this out. Only fill it out if you will not be publicly testifying. If you have printed materials to distribute, please give them to the page at the beginning of your testimony. We need 12 copies. We ask, in order of time, please keep your testimony concise and on topic. We are in a special session. Normally, in a regular session, we take a lot of time to hear input from the public. We encourage that. We are in a very compressed time frame because it's special session. We are going to hear 70 bills...70 agencies and bills over almost a four-day period. Very compressed. Because of that time, we are going to be doing things that we have never done in Appropriations before. You'll notice a light system up here, and we'll just briefly go over that. We will be using the light system. It's not something we normally do, however due to the number of hearings and time constraint it is necessary during the special session. For bills, the principal introducer and agencies and the principal agency representative will be giving up to 10 minutes. All testifiers will be given 3-5 minutes, depending on how many people plan to testify at the hearing. I will ask, after the principal introducer or the agency director, how many people want to testify. If there's one or two, we'll probably give you 5 minutes. If there's three, four, or five, we'll be down to 2-3 minutes. If there's a whole bunch of you, you better get together and decide who is the most important to come up here, because we might not be able to hear you all. I will take a hand count at the beginning of each hearing. We will begin hearings with the introduction of the Governor's primary budget bills and his budget recommendations by Mr. Gerry Oligmueller, the Governor's Budget Administrator. The bills are LB1, LB2, and LB3. We will hear them all at the same time. I will, after his opening, offer the opportunity for proponents, opponents, and neutral testimony regarding the bills. I ask that anyone wishing to speak now from those respective positions please keep your comments general and brief. It is my hope that the testimony for specific items will occur at the time these items are before us, in conjunction with the specific agency hearings that will follow today and through next Tuesday. Notice has been published in the Legislative Journal of these hearings. With that, we will open up the public hearing on LB1, LB2, and LB3. Gerry. [LB1 LB2 LB3]

GERRY OLIGMUELLER: (Exhibits 1 and 2) Thank you, Senator Heidemann and members of the Appropriations Committee. For the record, my name is Gerry Oligmueller. My name is spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I am the State Budget Administrator and administrator of the Administrative Services State Budget Division. As you are aware, this past week on October 27, 2009, the Nebraska Forecasting Advisory Board revised state tax receipt projections for Fiscal Year '10 and '11, downward by \$297 million. That revision, combined with the earlier \$37 million shortfall in tax receipts for Fiscal Year '09 caused a \$334 million budget gap for the current budget biennium. The same day the board made its revision to tax receipt forecasts, the Governor announced that he would officially call the Nebraska Legislature into a special session to commence on November 4 to recommend specific changes to the state budget to address the budget gap. I'm appearing here today on behalf of Governor Heineman in support of LB1, LB2, and LB3, which contain the Governor's budget recommendations

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for this special session of the One Hundred First Legislature. The contents of this legislation have been summarized and presented to you in a printed publication entitled "Governor's Budget Recommendations: One Hundred First Legislature Special Session," and dated November 2, 2009. I have provided a copy of that printed publication, along with my prepared remarks to the committee clerk for your record. In addition, we have posted this publication on the State Budget Division Web site. The budget adjustments recommended by the Governor total \$336 million. Of that amount, \$299 million, or about 89 percent of these adjustments, relate directly to recommendations for reduced spending. All areas of state government have been asked to help in addressing the fiscal challenge caused by this \$297 million downward revision in the tax receipt forecast. The spending related budget adjustments include: \$65 million reduction in General Fund reappropriations, or carry-overs from the prior biennium; \$61 million in across-the-board reductions to General Fund appropriations; \$19 million in across-the-board reductions in Cash Fund appropriations with corresponding cash transfers to the General Fund; and \$154 million in specific General Fund appropriation reductions. In addition to these spending-related adjustments, the Governor's recommendations include changes to existing transfers or make new transfers to the General Fund totalling \$37 million, or about 11 percent of the recommended \$336 million in total budget adjustments. The 2009-2011 biennial budget enacted in the 2009 legislative session already includes the use of \$246 million from the state's Cash Reserve Fund. The Governor's recommendations do not make additional transfers from the Cash Reserve Fund. The 93-page publication containing the Governor's recommendations provides a considerable amount of information to aid your consideration of LB1, LB2, and LB3. We've shared an electronic version of this information with your staff, and remain available to assist you and your staff as you conduct further review, analysis, and make your recommendations to address the serious fiscal challenge that faces the state of Nebraska. There will also be many agency directors to appear in the next several days to offer further explanation and detail regarding these recommendations. I would be remiss not to advise you about nine very committed, hardworking persons in the State Budget Division who have given the better part of every day, evening, holiday, and weekend this past month, without further consideration, to ready in an extremely timely manner for the Governor and the Legislature the very serious matters that are a part of your deliberations during this special session. These staff have served Nebraska in an exemplary manner and continue to do so as you commence your deliberations. We also recognize the challenge and importance of the work of the Appropriations Committee and the entire Legislature, and wish you the best during these difficult times. Now, may I answer questions before you proceed with the balance of your hearing today? [LB1 LB2 LB3]

SENATOR HEIDEMANN: Are there any questions for Gerry? Senator Harms. [LB1 LB2 LB3]

SENATOR HARMS: First of all, thank you very much for coming and testifying, Gerry.

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[LB1 LB2 LB3]

GERRY OLIGMUELLER: Sure. [LB1 LB2 LB3]

SENATOR HARMS: Just two questions. When you look at LB1, LB2, and LB3, what are estimates in the number of staff that would have to be released to balance this out? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I think you'll hear some testimony from individual directors with regards to the specific plan for Fiscal Year '10. And most that I've talked to have indicated they're in a position to manage in 2010 in the context of eliminating vacant positions and other reductions or improvements they've made in how they operate their organizations. I think you'll probably anticipate and see maybe an articulation of some possible reductions or layoffs in positions in 2011. If you made all of the across-the-board reductions. If you made all the across-the-board reductions in their entirety on the employee side of state government, you probably are looking at layoffs that might approximate 400 positions in the second year of the biennium. But that's simply running through a mathematical estimate or calculation as to what might be the potential effects of... [LB1 LB2 LB3]

SENATOR HARMS: The second question I have for you then would be, would you and would the Governor show any interest in furloughs? Rather than taking the 400 people and releasing them, actually using furloughs to bring that cost down so we can still keep these people employed? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, furloughs can be a temporary, I guess, tool if you will, for management in particular, because ultimately you have to deal with the end of the furlough, if you will. And then the cost associated with a full work schedule related to whatever positions are being furloughed. So it has the potential of being a practical short-term tool but not necessarily one that's going to provide any permanence of solution in terms of reduced appropriations going forward. So... [LB1 LB2 LB3]

SENATOR HARMS: You just generated another for me. Would you then be interested...since furloughs...I'm assuming you don't have an interest, but maybe you do for short term. For long term, would you be interested in opening back up negotiations and lowering the salary to like the 5 percent decline again to balance this out? Now that would have an impact long-term. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I would say that early on in our discussions we put the question to the bargaining...the union that represents the employees that are subject to collective bargaining in the executive branch of state government. And that wasn't one of the items on the list of ideas they brought back. We posed the question to them, what ideas might they have with regards to how to resolve the fiscal challenge in front of us?

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And opening the contract up and negotiating down the impending, if you will, July 1, 2010, salary increase wasn't on the list. [LB1 LB2 LB3]

SENATOR HARMS: Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Conrad. [LB1 LB2 LB3]

SENATOR CONRAD: Hi, Gerry. Thank you. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Hi. [LB1 LB2 LB3]

SENATOR CONRAD: I have a couple of different questions related to some different areas involved in your testimony on the Governor's proposal. The first realm really deals with the figures and the calculations underlying the reappropriation portion of the Governor's proposal. And I know, at least in our preliminary discussions as a committee, we just had a lot of uncertainty as to how some of those numbers were developed. And I was wondering if you want to just talk generally, if you went through, agency by agency, to figure out how to best utilize those dollars and capture savings, and did you take into account things like the potential for a 27th pay period, that they may have already been allocated for? And I think there was a concern amongst the committee that if we were to take the across-the-board cuts and the reappropriations, which could add up to be significant dollars to help us to meet our target, our shared target, that it could in essence be a double or a triple cut for some agencies. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Okay. Well, I would begin by saying that \$336 million is a large number. [LB1 LB2 LB3]

SENATOR CONRAD: It is. [LB1 LB2 LB3]

GERRY OLIGMUELLER: So you obviously look everywhere you can to, if you will, share that sacrifice or lighten that burden that might otherwise fall to only a few who remain, if everyone is let out, if you will, for consideration. On reappropriation specifically, there was I think about \$244 million of reappropriations from the prior biennium into the current fiscal biennium. And we went down through, as staff, on an agency-by-agency basis and reviewed the information available to us in the Nebraska Information System, the accounting system with regards to what expenses were being paid in the current year that were obligations of the prior fiscal biennium. We took a look at the level of salaries that have been encumbered from the prior biennium to be paid in the current biennium. We actually inflated that to account for the cost of benefits. We took a look at the existence of any open purchase orders that might also be reflected in the state accounting system. And then we had conversations with individual agencies, and the reason for that would be that there may be plans or obligations in some context that an individual agency might feel it has with regards to monies reappropriated from

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the prior biennium. In a sense, reappropriations become fungible, if you will, with your new appropriation for Fiscal Year '10. So the extent to which you don't place a reliance on trying to reduce reappropriations perhaps that don't have a hard obligation against them. The extent to which you don't do that simply means a deeper across-the-board cut in the context of trying to package the recommendation, so. But that was our approach and, you know, in a budget process you get into some debate and consideration about what constitutes a valid obligation against reappropriated funds. And so when you get to that point it's a bit more of an art and a different kind of science, than I have encumbered appropriations from the prior biennium and I need to recognize those encumbrances. So a combination of looking at the accounting books, understanding what had been technically encumbered or obligated in an accounting sense, and then touching base with individual agencies to talk about to what extent do they view those reappropriations have been committed. And I'd say this, maybe much like the vacancy game that arose this past week, there's a game associated with the extent to which I feel I've obligated my appropriation. So we deal with that as do your fiscal analysts as they analyze budgets. And, you know, there are probably many who thought their reappropriations were 100 percent obligated. And we took a different view on some of those situations, so.. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. Can I continue? [LB1 LB2 LB3]

SENATOR HEIDEMANN: Continue on? [LB1 LB2 LB3]

SENATOR CONRAD: Thank you. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Sorry for the long answer, but. [LB1 LB2 LB3]

SENATOR CONRAD: No, that's helpful, and I know it's a broad question because it cuts across so many aspects of the Governor's proposal and so many different state agencies and I imagine it impacts different state agencies differently. But in terms of general information, I think that's helpful, because I know it's an initial question that this committee had in trying to get a reaction and to digest the Governor's proposal. The second question that I wanted to ask you was there had been a lot of uncertainty, at least early on. I think it's become clear at this point in time, at least for members of this committee, but colleagues within the body and the members of the general public are also asking questions about the cost savings associated with removing funds from the BSDC situation and putting them back into the General Fund. I think that we're all very sensitive to ensuring that we meet our obligations of our state's most vulnerable, and want to ensure that we don't have additional negative impacts on that population and their families. So if you could talk about that particular piece of the budget, I think it would be helpful. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Okay. Well, we share that concern, exactly. And the loss of

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federal funds at Beatrice came at a later date than was anticipated by us when we offered our recommendations last session, and by yourselves as a committee and the Legislature as you enacted appropriations for the current biennium. Essentially I think the actual loss came later, in September, and as a consequence there's about \$2 million a month of the additional General Fund appropriation that had been appropriated as a contingency that isn't needed for about a three-month period of time. So about \$6 million isn't needed of that contingency appropriation to in effect replace federal funds. And closing out the federal fund account involved about another \$4 million that isn't needed to finance services at BSDC as the Appropriations Committee viewed it and as the Legislature appropriated money for Fiscal '10 and Fiscal '11. So there should be no impact on BSDC as a consequence of the Governor's recommendations. And in fact they were excluded from the application of the across-the-board reductions, as were all 24-hour care and treatment facilities. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Fulton. [LB1 LB2 LB3]

SENATOR FULTON: For clarity--thank you for being here--the 27th pay period that Senator Conrad has brought up. Just I'm hearing that we should have a level of comfort that those agencies that were selected, indeed there has been some thought going into that 27th pay period. Can you give...? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I'd offer this. You had some situations during the biennial budget process where agencies specifically asked for additional appropriations to deal with an additional pay date in the fiscal year. I think Health and Human Services, in particular, was one that made that request, and you funded it. And so it's part of the biennial appropriations for the current year. They would be obviously a significant...that would be a significant cost center, if you will, within the state budget related to an additional pay date. We did not reduce 100 percent of the reappropriations available to state agencies. And part of our thought and working on reappropriations took into consideration the kind of flexibility that might be needed for something like that or other things that weren't particularly known to us at a detailed level as we worked on this budget package. But that said, I'd say as a manager, you know, I plan for things like that. We specifically make a point to, at the end of each fiscal period, encumber payroll in the State Budget Division and to encumber the money on the benefit side associated with paying our employees. So it's something I plan for, for example, as an administrator, and I hope that the balance of administrators and managers throughout state government do the same. That is a cost item. It is one of many cost items I have to deal with in the context of managing to their appropriate level of funding. And I hope they're planning accordingly. [LB1 LB2 LB3]

SENATOR FULTON: Thank you. [LB1 LB2 LB3]

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SENATOR HEIDEMANN: Senator Mello. [LB1 LB2 LB3]

SENATOR MELLO: Thank you, Director Oligmueller, for your testimony. I have a few questions. First, reporting to what you just discussed about the vacancy game story and story that was in a newspaper recently regarding the report that the Legislature, through the budget bill, requested the Department of Administrative Services to provide a quarterly report of all job vacancies in state government. Through your public comments, as well through mine and our Chairman's, it appears that there seems to be a general agreement that the report that was issued to the Legislature is very inaccurate. Can you provide some more insight of why we would see such great inaccuracies from a report that your department actually produced for the Legislature? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Yeah, I think the report was produced accurately. It was produced from the Nebraska Information System and it actually was produced accurately. Of course, it's dependent on the information that is put into it by a variety of independent, in many cases, state agencies that don't necessarily take direction from the Governor, given our government structure in Nebraska, and from other agencies, you know, under our direct supervision--and then as we've discovered, from an institution of higher education who does not even participate any longer in the system. So it's much like any other computer application, if you will. It was a well-designed report, accurately coded, and it is reporting exactly what individual agencies have put into it. And so it has some information that's not good in it, and hopefully the next time, and particularly maybe as a consequence of our comments, there is going to be a bit better job on the part of some individuals in terms of what's inputted on the front end of that kind of reporting system. But that said, I'd just say from my perspective in the budget process, a vacancy report is but one tool, obviously, you can look to make decisions. The vacancy report, in particular, doesn't necessarily ensure that the vacant positions we're looking at are actually budgeted or funded. It doesn't tell you whether or not an agency has maintained that vacancy in anticipation of a special session of the Legislature, for example, to be prepared to respond accordingly if there's a reduction in their appropriations. And I for one would say that I have a position identified in that report that's vacant, and it's a position that is funded but I have not filled it, knowing what I know about the fiscal challenge the state of Nebraska faces. And so in my case it's a budgeted position. It's something as a manager I would use to try and reach and satisfy an across-the-board reduction of 2.5 and 5 percent to my appropriation. That would be one way I would accomplish meeting that objective. What I'd hope you not do as a committee is make a decision to lower my appropriation and say, oh, by the way, we're going to add to that what you have been saving and hoping to use as a tool for accomplishing that reduced level of appropriation. So we need to be careful with those reports--but a good tool, good report. It's just dependent upon getting some good input. [LB1 LB2 LB3]

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SENATOR MELLO: Would that...just kind of a quick follow-up then. So the agencies, you would say that it's incumbent, I guess, upon the agencies to make sure that they correct this information if there is misinformation. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Absolutely. [LB1 LB2 LB3]

SENATOR MELLO: And particularly as we go through the public hearings of most state agencies. And I will be bringing this up to every agency. It's more incumbent upon them, then, to fix this, than DAS. [LB1 LB2 LB3]

GERRY OLIGMUELLER: I think that's a fair statement, yeah, and that's not an unreasonable expectation to have. [LB1 LB2 LB3]

SENATOR MELLO: Okay. A couple other questions. When discussing job vacancies, did it come across at all in the preparation of LB1, LB2, or LB3, of the Governor issuing an executive order, at all, to require a hiring freeze statewide? I know he sent a memo discussing concerns about rehiring positions. But was there any discussion or any movement at all about just initiating a flat hiring freeze across state agencies? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I think, you know, the Governor has had a couple of communications along the way. One as back as far as 2008, that asked the administrators and managers throughout state government to exercise some pretty conservative fiscal practices. And the Budget Division didn't specifically recommend a hiring freeze. They sometimes have a little bit more buzz than they do bite, if you will, and they sometimes get in the way of good decisions being made at the front line where services are provided. I am certainly not equipped as a State Budget Division to be daily engaged in reviewing every vacant position that develops, and giving an approval or denial on whether it could or should be filled. And so pretty strict message, if you will, to code agency directors, in particular, shared with noncode agencies that they need to think before refilling positions and refill those that are essential to the core mission the individual agency is attempting to accomplish. So I think at some point in time you place a reliance on people to make good judgments, and hopefully my vacant position is an example of making a good judgment not to fill a position necessarily that I may feel is essential, but understand that I'll have to do work differently given an impending reduction, so. [LB1 LB2 LB3]

SENATOR MELLO: When looking through LB1, LB2, and LB3, particularly looking at the transfers from cash funds to the General Fund, what was the thinking in regards to why LB1, LB2, and LB3 didn't seek deeper cuts in general-funded agencies, knowing that we see even a larger fiscal crisis two years from now, which larger General Fund cuts in agencies, code agencies or otherwise, would help save us more funding in the

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long term, not just to get through this immediate special session but to also set the stage for what we will be dealing with come 2011? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, there's a couple of things to consider. One is we're six months into the first year of the biennium, so we have six months behind us. So what we do in the current biennium, you know, in a sense, can almost be multiplied by two. So you've got to be a little bit measured in terms of how you approach your work with regards to the first year of this biennium. And it's out of recognition for the time that has elapsed and that there's 18 months left in the budget biennium. The view towards cash funds is that the broader or the greater breadth, we look through state government as an organization, keeping in mind that, you know, ultimately it's one larger enterprise, one large organization. And the broader we look through this organization for opportunities to share the adjustment that needs to be made in the state budget, the less dramatic it would have to be for any one particular element of the organization. It also presents the opportunity to seriously consider excluding elements of the budget from a reduction, such as a 24-hour-care facility such as Beatrice State Developmental Center. And in some states--maybe just to diverge for a second--in some states there is not this much compartmentalization of state resources, i.e., there is not this much segregation of funds. I don't know how many funds we have. I know the Fiscal Office is posting a publication here shortly, and maybe they already have, that is an updated report with regards to the cash and revolving funds within state government. But Nebraska has a long history, a tradition if you will, maybe culture--I'm not sure--but we have this abundance of this segregated public resources within our state government. In some states all of this money goes to the state general fund, and then there is a spirited discussion and deliberation about the priorities, if you will, between the various agencies and interests and public regarding the use of all of the state's resources to enact its annual or biennial budget. So we simply have to deal with the fact that we have this compartmentalization within our financial structure in Nebraska state government. And if we are to have access to and make use of all the resources to face the fiscal challenge that's presented to the Governor and to the Appropriations Committee, and ultimately to the full Legislature, then we have to introduce some mechanisms to accomplish that. And one of those is LB3, which simply introduces language onto specific funds, which says not that the Governor or the budget administrator can take money or transfer money from those funds, but that money can be transferred from those funds at the direction of the Legislature. So this isn't a grab, so to speak, on the part of the Governor, from an authority perspective, or from the budget director, necessarily from a financial perspective. The Legislature, I suppose at least theoretically, always has that power to make those adjustments in terms of how many funds there are and what their purposes are. But we have a lot of them, and LB3 is a mechanism for this fiscal challenge to the state to be looked at in a broader context and for the depth of the adjustments and the sort of dramatic nature of the adjustment to be less than it would otherwise have to be. [LB1 LB2 LB3]

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SENATOR MELLO: For right now, maybe this is my, probably, final question for right now. I know Senator Harms mentioned furloughs, which is something that we've discussed. Anywhere in LB1, LB2, or LB3, is there--I can't find it at all--that specifically discusses agency directors or state employees that make, let's say, \$100,000 or more, taking any kind of salary decreases? I know the Governor, in a meeting, said that he was not going to take a salary decrease, that other state constitutional officers weren't asked to take salary decreases. But what about other state employees, such as agency directors, deputy directors? Has that been discussed? I couldn't find it specifically in LB1, LB2, or LB3. Is that something that has been laid out, at least maybe within code agencies, to explore, or is that not on the table at this point? [LB1 LB2 LB3]

GERRY OLIGMUELLER: It is not part of LB1, LB2, or LB3. There is not a recommendation in there specific to state employee compensation. I mean, it's a pretty complex subject, if you can imagine, given the government structure we have in the state of Nebraska. A lot of agencies with independent authorities, some elected boards for governance, constitutional agencies, quite frankly, where I think there is a constitutional barrier with regards to what can and cannot be done vis-a-vis compensation. I think the legislative branch probably has the most freedom, if you will, with regards to what you can do and how much you pay your employees for their service on behalf of the state of Nebraska. And so there's some...you know, collective bargaining obviously is something that comes into consideration. So pretty complex issue. Pretty...quite a difficult one to simply articulate in the context of a budget bill, on the face of it, at least. And, quite frankly, there may be some \$100,000 employee somewhere along the line who will not be employed with the state of Nebraska as a consequence of decisions that an agency needs to make to manage within a reduced appropriation. So those choices will avail themselves, to one degree or another, within a constitutional agency, within an agency that has an elected governing board, and within these independent noncode agencies. Now I will tell you that they call themselves independent agencies. I met with them last week and that's the name of the meeting: the independent agency directors meeting. And so there are certain limits to which we can effectively articulate, at least, in a package of budget recommendations on the issue of compensation. So not necessarily a tool that might not be used at some point, but a pretty complex issue. [LB1 LB2 LB3]

SENATOR MELLO: Just to drill down though, at least, and I think I understand what you're saying, but at least within code agencies that directly answer to the Governor, and drilling down even further possibly, nonunion contracted employees where you would not have to change a labor contract to renegotiate their salary. Has that been discussed? And so it would be the at-will or as we term them, political appointee positions in state government, that could take a pay decrease, salary decrease, so to speak, without any negotiation, so to speak. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I guess what I would wonder is why you would pick on

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code agencies, simply because government has been organized with just a very few number of agencies reporting directly to the Governor. The vast amount of resources expended in the area of wages and benefits aren't even under the Governor's direct supervision. It's an interesting question. It's a pretty complex issue and, you know, there's... [LB1 LB2 LB3]

SENATOR MELLO: How many, agencywise? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I mean, there are more at-will employees in the legislative branch that there are in the executive branch, probably, under the Governor's supervision. [LB1 LB2 LB3]

SENATOR MELLO: Under the Governor's Office but not the executive branch. I was just going to ask you how many agencies fall with under the executive branch or code agencies, so to speak? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I'd have to count them up, but probably 20 or so. [LB1 LB2 LB3]

SENATOR MELLO: Twenty. Do you know how many employees, give or take, roughly, estimate? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I don't know. Don't know. [LB1 LB2 LB3]

SENATOR MELLO: Fifteen thousand? Sixteen thousand? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I doubt it. [LB1 LB2 LB3]

SENATOR MELLO: Okay. [LB1 LB2 LB3]

GERRY OLIGMUELLER: That sounds like a number closer to the total number in state government, excluding higher ed. So I'd have to take a look. It would be lower than that. [LB1 LB2 LB3]

SENATOR MELLO: Okay. Lower than that. Okay. Thank you, Gerry. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Wightman. [LB1 LB2 LB3]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Just a couple of questions. Number one, we have a number of employees that probably the largest number are under union contracts, am I correct? That's the total state employees. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Probably. Maybe half and half. I don't know, I just haven't

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stopped to sum it up, but, yeah, a large number. [LB1 LB2 LB3]

SENATOR WIGHTMAN: And, of course, as far as renegotiating contracts, that's no doubt easier with nonunion contract employees. I don't think there's any question and there will probably will be cuts, agency by agency, rollbacks of wages. And if that happens it's always a concern of mine that we get a disparity of wages when we do things like that, that the union contract employees continue with their wage hikes that they were entitled to as a result of their negotiations, and then if some of the others are rolled back we end up with a disparity. And what happens as far as that disparity continuing if we come out of...? If. I shouldn't if; I better say when. [LB1 LB2 LB3]

GERRY OLIGMUELLER: When we come out. Yeah. (Laugh) [LB1 LB2 LB3]

SENATOR WIGHTMAN: When we come out of this economic downturn. That sounds a little too negative to say "if." You know, my concern is that that disparity continues, and I don't know if that's true or not, but we look maybe at the same rate of increase that the union employees get, but we don't take into account the rollback, perhaps, that they suffered during this time. Can you address that? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, yeah. I probably brushed over it by simply saying the complexity of the issue. But I think you're onto something, Senator, because in the collective bargaining process, for example, we inevitably are involved in a comparability consideration with regards to how we're compensating employees. And the extent to which we can maintain our position awhile in that regard will, you know, position us better in future efforts at collective bargaining, maybe vis-a-vis other states. But as it relates to employees that are part of the union and employees who aren't, yes, we have a salary structure within state government that in some context could be compromised, some disparities created if there are reductions in certain classes of employees and not others. So I think we have been careful in our recommendations to the Legislature, and you have been equally, as well, in your decisions regarding appropriations, to maintain proper relationships between, from a pay structure perspective, employees and the types of work they do and how they're compensated for that work based on a lot of considerations. And so that gets compromised when we start making disparate decisions about pay. [LB1 LB2 LB3]

SENATOR WIGHTMAN: And that's my concern, is so often it seems like we look at just an annual basis and what the rate increase is going to be, instead of looking back and saying this segment took a cut on some rollbacks during the times that we were trying to make budget cuts. [LB1 LB2 LB3]

GERRY OLIGMUELLER: It catches up with us, it's been our experience when that occurs. [LB1 LB2 LB3]

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SENATOR WIGHTMAN: And that brings into another element of this, and that's provider rates and I know the Governor's budget is suggesting a budget cut of about \$20 million in the second year of the biennium. On provider rates, I think the figure is more like \$19,844,000, but for all practical purposes it's \$20 million. And I think that same disparity sometimes exists on employees of providers, that as we cut those back and it seems to me sometimes they happen to be the employees of these providers become the poor orphans who don't get much consideration, and many times we balance the budget and certainly that has been true in the two or three years I've been here--not so much the last year--balance the budget on the back of the providers. And frequently we'll see 4 percent and 5 percent increases in good times for union employees and maybe other employees, but we give a 2 percent increase to providers. And then if we move them back by \$20 million and taken away all of their proposed increase for the second year of the biennium, which is basically what the Governor is proposing to do, this is going to create a real inequity down the road if we don't keep that in mind as we come out of this economic downturn. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I have some friends I doubt who will make sure I have to keep that in mind, you know, as the economy recovers. I don't disagree. I mean, that's a tough...that's tough to do. It's...we're somewhat limited in what we can do to reduce the appropriations, in Medicaid in particular. And so it's a difficult decision and one that has significant value, given the size of that program in particular, and other programs that involve provider rates. So not an easy decision. One you have to recognize you probably have to make some ground back up on, at a later date. [LB1 LB2 LB3]

SENATOR WIGHTMAN: And so often it seems to me we fail to do that, and that's a real concern of mine, in that I think, at least my first two years here, we tended to balance the budget by lowering those provider rates far below what the employees were getting. [LB1 LB2 LB3]

GERRY OLIGMUELLER: I think we've done...we've probably done better than most states, of recent, in that regard, so there's a little bit of a silver lining in that context. But, yeah, I can't not recognize the significance of that decision, so. [LB1 LB2 LB3]

SENATOR WIGHTMAN: Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Nordquist. [LB1 LB2 LB3]

SENATOR NORDQUIST: Thank you, Mr. Chairman, and thank you, Mr. Oligmueller, for being with us today. The Governor, when he announced his recommendations, said he was...talked about how working families and their families have to tighten their belts in a tough economy and the state has to tighten their belt. My concern is when the state tightens its belt, in some areas it certainly can get passed on to those families that are already tightening their belts through higher property taxes. And one area, in particular,

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is the \$47 million reduction in funding for K-12. When the Governor worked through this with the lobbyists in the education community, was there any discussion...even maybe beyond a discussion, was there any commitment from those people or indication from those people that this reduction will not result in higher property taxes from the education community? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, that's always a little bit of a difficult one to ascertain, I'll just be up-front about it. The...I think our sense is that there isn't any reason that it should. We're talking about shared sacrifice in the context of just a variety of decisions that are embodied in LB1, LB2, and LB3. And I...you know, the \$47 million probably represents somewhere around 1 percent of total General Fund disbursements by our school systems across the state of Nebraska. Somewhere around 1 percent. I don't have the exact percent but you take all the resources available and accessible to deal with that adjustment, and maybe looking at it in that context. I know the schools maintain some reserves and I understand they have purposes for maintaining those reserves. I know at the end of the last fiscal period those reserves were double the current fiscal challenge faced by the state of Nebraska today. Now I'm not suggesting that, you know, that's something you can grab and thrown on to this \$336 million, but there are some mechanisms and there is some flexibility. And the schools do have a capacity to manage a \$47 million reduction in school aid payments that was...and it's, in a sense, not a reduction. I mean, it was a planned increase if you will. Total payments remain the same in the Governor's budget recommendations to schools, so...as they are in the current fiscal year. So it's...you know, I get into this argument sometimes with some people asking about why we characterize things in certain ways within state government, and I got continually questioned on why we're calling this a cut, by some individuals in the media in particular, when actually it represented an increase from the current fiscal year. [LB1 LB2 LB3]

SENATOR NORDQUIST: Sure. But as the school districts receive the same amount of money next year that we all know that costs for providing that education are most likely to go up. They have contracts with their employees that they have to meet. So that puts them in a pinch. And not all school districts have adequate reserves to get through it, so I do have some concern about that. You mentioned the abundance of segregated funds, and one of these bills addresses that by putting language in statute. Does the Governor have any plan long-term to come and make recommendations for consolidating these funds or maybe bringing some of these revenue streams into the General Fund, or? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I think that's something the Governor would consider. [LB1 LB2 LB3]

SENATOR NORDQUIST: Okay. And then on provider rates, I share Senator Wightman's concern on that. And you mentioned we may have to come back and make

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ground up. My concern is at this point in time, though--correct me if I'm wrong--we're receiving an enhanced FMAP from the federal government through the stimulus package, so we're actually going to be losing out more now when that enhanced FMAP goes away. That's additional money we could be pulling down from the federal government. But by reducing provider rates, that's money we're going to leave on the table? [LB1 LB2 LB3]

GERRY OLIGMUELLER: You know, I hear that argument with regards to just about every program that is joint state/federal financed. And the analogy I tend to use in my personal discussions on that is I can save a whole lot more money at Kohl's this weekend if I buy five suits instead of two. And so I hear them using that sort of marketing approach, if you will, with regards to some decisions that sort of have an analogy to, if I spend more state appropriations I'll pull down more federal money. And that's true, but there's a limit to how much state appropriations can be expended. So I don't necessarily disagree with the thought, but there's a practical side to it as well. [LB1 LB2 LB3]

SENATOR NORDQUIST: Okay. Sure. In the decision making on this package, was there consideration given to those areas where cutting provider rates isn't a dollar-for-dollar cut. It's actually, you know, more than twice now, a cut, in what providers are going to be receiving, because we're not getting that, not only just the federal match but the enhanced federal match as well. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Yeah. I mean I recognize it, and there are a lot of difficult decisions that have to be made, obviously, when you're trying to confront this size of a fiscal challenge. So it's recognized and nonetheless there's the bottom line that has to be reached. [LB1 LB2 LB3]

SENATOR NORDQUIST: Well, thank you for all your work on this. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Hansen. [LB1 LB2 LB3]

SENATOR HANSEN: Thank you. Gerry, I have a quick question on a historical perspective on cash funds. And I think the Speaker told us yesterday there's been ten special sessions on budget concerns since 1975. Is there a precedent where the Governor writes new statutes so it gives him the ability, gives the administration the ability to go in and--I think it was your word--was "grab" cash funds from agencies? And I'm talking about the strict cash agencies. No general, no federal appropriations. Strictly cash funds, and mainly those ones that are from checkoff funds in an industry. Is there any precedent for that? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I have been around here awhile, but I'll have to think a little bit to answer your question. You know, I think back to actually when I worked in the

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Legislative Fiscal Office in the late '70s, early '80s. I seem to recall, at least the discussion at that time in Appropriations Committee with regards to the commodity boards. I don't know if it was the Governor's recommendation. I don't know if it was an analyst-presented issue at the time. I do remember the hearing room being filled up as a consequence of the issue being on the table, so. [LB1 LB2 LB3]

SENATOR HANSEN: I think we're going to fill it up in the morning, too. But historically...I mean, the discussions are one thing. We're discussing it again here. But historically has that been a precedent? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I don't know the answer. I do not remember. [LB1 LB2 LB3]

SENATOR HANSEN: Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Conrad. [LB1 LB2 LB3]

SENATOR CONRAD: Thanks, Gerry. Some of your dialogue with the other senators prompted some follow-up questions. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Oh, boy. [LB1 LB2 LB3]

SENATOR CONRAD: Oh, no worries. I want to go back and talk about time line and process. You laid that out a little bit at the opening of your comments, from when the Governor first decided to contemplate the need for a special session, to the time that lapsed until we got the targets from the revised economic forecast, to where we are today. Could you tell me a little bit more detail about decisions that were made in putting together the Governor's proposal as we ultimately saw it? For example, did you or your staff run any projections that could meet the budget targets while exempting K-12 education? [LB1 LB2 LB3]

GERRY OLIGMUELLER: I don't remember doing anything specific about that. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. My question is just simply I've heard the Governor say, and I know he says it sincerely, that education is a priority for him. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Right. [LB1 LB2 LB3]

SENATOR CONRAD: And I think that's a fair statement. [LB1 LB2 LB3]

GERRY OLIGMUELLER: And it's reflected, I think, in his recommendations. [LB1 LB2 LB3]

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SENATOR CONRAD: And I guess my question would be, if that is in fact a priority issue--that I think many of us share in this state--why wouldn't we try and run some projections or scenarios that exempt education cuts from this dynamic? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I thought you were asking about tax receipt projections. What projections are you...? Maybe I'm misunderstanding, I guess. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. Maybe I'm asking a convoluted question. [LB1 LB2 LB3]

GERRY OLIGMUELLER: I'll listen more closely. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. We'll try again. The Governor said a few weeks ago that tax receipts were coming in below projections, so that was causing disorder in terms of ensuring a balanced budget for the biennium, and talked about if things continued to worsen after the economic forecast in October it may necessitate a special session. Is that right? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Sometime during the month of October, yes. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. So the Economic Forecasting Board met and said that we're about \$360 million-plus off of our projections for the biennium. Is that right? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Two hundred and ninety-seven. [LB1 LB2 LB3]

SENATOR CONRAD: When you take into account the additional... [LB1 LB2 LB3]

GERRY OLIGMUELLER: Thirty-six and a half. It's...yeah. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. So now we all are working under the same target, the same number in terms of what we need to do to reduce spending to get our budget back in balance. Is that right? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Right. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. So in crafting a proposal to do that, the Governor, I'm sure, ran a variety...or your office in conjunction with the Governor's direction and leadership, ran a variety of different scenarios about how to accomplish that, which resulted in the proposal that you're here to present and defend, which utilizes across-the-board cuts, in some circumstances; transfers from cash funds in some circumstances; reappropriations in some circumstances; and a variety of approaches. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Sure. [LB1 LB2 LB3]

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SENATOR CONRAD: Was it ever contemplated, during the course of putting together this package and this proposal, a way to balance the budget without reducing any dollars in the school funding formula? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I think we probably looked at it from the beginning in the context of how big might the problem be and is there an ability to not cut anything or cut...you know, what might be in discussion at a lesser rater, if you will, than ultimately you had to because of the Forecast Board's determination of what the receipt forecast would be. So, you know, I'm having a hard time following it because there's simply just a lot of things in play, if you will, as you contemplate how big the action of the Forecast Board might be and ultimately what it is. And, quite frankly, I'd just say we ended up with a package that needed to be quite broad to deal with a problem as significant as \$336 million. And so there's not much opportunity to leave anything outside this package, with the exception of you get into 24-hour-care and treatment environments, and you get into some specific public assistance programs, were we able to do that. So, you know... [LB1 LB2 LB3]

SENATOR CONRAD: Well, I think that Senator Adams and his committee are working hard and have been working hard over the past couple weeks to try and figure out an equitable way to deal with a loss in K-12 funding. But I guess I'm just not clear if the fundamental question about why...why K-12 funding is on the table and should be slated for cuts, has been adequately answered. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, you know, I think if the Forecast Board had dealt us a better hand and the economy had dealt us a better hand, then perhaps it might not have been. These are big... [LB1 LB2 LB3]

SENATOR CONRAD: But no scenarios were run that exempted K-12 funding from the proposal at any time. [LB1 LB2 LB3]

GERRY OLIGMUELLER: I mean, we did calculations along the way, obviously, that excluded a lot of things. I suspect that somewhere along the way, yeah, we probably didn't have that in. We may not have had provider rates in at some point. We may not have had a number of things that are included in this publication that summarizes what comprises LB1, LB2, and LB3. So I guess my answer would be, as good staff we take a look at just about all the angles possible in terms of what can be accomplished. And, quite frankly, what we're presented with is a huge fiscal challenge: \$336 million. And it's taken very seriously and analyzed from a lot of different perspectives. [LB1 LB2 LB3]

SENATOR CONRAD: Please finish. And not to belabor the point, but I think that there's a general understanding and a definite correlation between the fact that each dollar the state sends out to local school districts through the K-12 funding formula lessens their

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need to increase property taxes at the local level. Would you agree with that as a general statement? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I don't remain convinced that they need to go to property taxes to deal with \$47 million. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. But we don't have any commitments otherwise. And, of course, that's beyond your control. [LB1 LB2 LB3]

GERRY OLIGMUELLER: I think, you know, the Legislature will probably be a major determinant on, you know... [LB1 LB2 LB3]

SENATOR CONRAD: And then just finally I have another question to kind of go back and make sure that my memory is accurate in terms of some of the dialogue that this committee had with your office during the deliberation surrounding the stimulus funds last session. And I know that there were a lot of moving parts there and everybody was working very diligently to try and make sure we had the appropriate processes in place to apply for and utilize those funds. And I know that...and we definitely appreciate the hard work that you've done in regards to those issues. I remember having a discussion within the context of this committee brought forward by the Governor's Office for a proposal to create some positions to deal with the accounting of those funds to ensure that we were meeting all of our transparency and other requirements. And can you tell me, were those positions filled and how have they been operating? It seems like we're meeting all of our targets and deadlines for complying with the use of the stimulus funds. And exactly how many folks are charged with that? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I think the Accounting Division has moved to fill positions related to that, principally to address issues of internal control. I have not moved to add positions in the State Budget Division. The staff in the State Budget Division basically took on the work and it has been huge related to the sort of coordinative responsibilities with regards to the stimulus act. I believe there's been a position added, for example, at the Crime Commission, associated with the grant management aspects of the awards they're receiving. And there will be some in the State Energy Office as a consequence, too. So we concentrated on bearing the freight, so to speak, there, and we've used the resources we were provided to underwrite the continuing costs of the Web site to make information available regarding awards to Nebraska, and also to facilitate the development of an application with the CIO to facilitate the Section 15.12 reporting. So we've tried to minimize our costs with regards to, central costs, if you will, with regards to ARRA implementation. [LB1 LB2 LB3]

SENATOR CONRAD: But...and I think you guys have done a really great job in terms of that work, and I want to commend you on that. So just a final question to follow up. It would be fair to say that the executive branch is primarily in charge of the oversight of

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those funds, if not solely in charge of the oversight of those funds. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, there's about \$1.7 billion that could potentially come to the state, not state government, of Nebraska. [LB1 LB2 LB3]

SENATOR CONRAD: Right. Of course, different cities and counties would have their own reporting and technical requirements associated with direct grants. [LB1 LB2 LB3]

GERRY OLIGMUELLER: And the sort of unfortunate side of the Recovery Act is that the federal government provided millions of dollars to the federal bureaucracy to deal with the issues of internal control and reporting and inspector generals, and provided nothing to state governments in that regard. They've made available the opportunity to pursue federal funding through what's called your statewide cost allocation plan, which is a pretty complex and bureaucratic process to recover money for the central costs of coordinating those activities. I actually asked the committee for authority to pursue that an expenditure authority to pursue that, and you declined that. [LB1 LB2 LB3]

SENATOR CONRAD: Right. [LB1 LB2 LB3]

GERRY OLIGMUELLER: So that has not been pursued, to try and enhance our capacity to monitor the use of Recovery Act funds in Nebraska. But the individual recipients of those grant awards are the entities responsible, and that could be an executive branch agency within state government; it could be the mayor of Omaha or the mayor of Lincoln; or other entities throughout the state of Nebraska. But that's kind of how that cookie falls. [LB1 LB2 LB3]

SENATOR CONRAD: Okay. Thank you. That's helpful. Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Mello. [LB1 LB2 LB3]

SENATOR MELLO: Thank you, Gerry. Real quick, just to make sure we clarify it. I don't think the Legislature did not approve your request. I think we gave you less than what you requested for the oversight of the stimulus funding, the stimulus funds. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, no. I would offer this correction. I asked for some additional resources that would have been recoverable from the federal government to aid in that regard. And that was disapproved. So yeah, I'd have to... [LB1 LB2 LB3]

SENATOR MELLO: Okay. We might need to talk off the mike then, but maybe I'm misunderstanding something that we did. [LB1 LB2 LB3]

GERRY OLIGMUELLER: That's fine. We're doing fine, all that said. Okay? [LB1 LB2

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LB3]

SENATOR MELLO: Okay. Well, that's good then. Two questions. One, did the Governor's Office or the Budget Office look at all at the potential of early retirements within state government to help find longer-term cost savings...short-term and longer-term costs savings for the special session and/or beyond? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Now, I'm wondering if that question is directed at me personally, or...? (Laughter) I've thought often about early retirement over the past month. [LB1 LB2 LB3]

SENATOR MELLO: No, we're not asking you to retire, Gerry. (Laugh) [LB1 LB2 LB3]

GERRY OLIGMUELLER: The thought has occurred to me several times over the last three or four weeks. But we...you know, given what we're attempting to address and the time frames in which we need to respond and get ahead of what we're experiencing, our division did not lay that issue on the table for consideration. [LB1 LB2 LB3]

SENATOR MELLO: One other kind of, I guess, main question, is I know it's been brought up in committee this last week, which was looking for efficiencies through moving a five-day work week to a four-day work week. I know the city of Utah has done this and they've done it with great success and have saved millions of dollars by extending their four-day work week to 10-hour days for employees to fill in that 40-hour work week. Is it something that came up across your radar or the Governor's radar, at all, coming up with a proposal to present today? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, I've...you know, I've studied the Utah situation a little bit, and I'm not entirely convinced about the savings they're presenting associated with that. I'll just be up-front about it. And I've sat and personally discussed this over dinner with the budget administrator from the state of Utah. Not to put him in a bind necessarily, but I listened to exactly how that works in the state of Utah. One of it's principal motives was obviously to deal with energy, a reduction in energy consumption. And I have more questions about whether or not that practically has resulted in savings for, maybe not only the state of Utah, but Utah in the context of a larger issue, which is energy consumption. Because I, for the life of me, don't think those employees are sitting at home with their lights off on that day they're not working. So just a lot of details related to that one. But no, we didn't offer for consideration an alteration of the work week, if you will. [LB1 LB2 LB3]

SENATOR MELLO: That brings up another question regarding energy efficiency, and I'll ask it of the Energy Office, as well. Has the Governor, at all, considered issuing an executive order to state agencies to lower their energy usage maybe 5-10 percent? I know other governors, Midwestern governors have done that recently to save state

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dollars. [LB1 LB2 LB3]

GERRY OLIGMUELLER: I don't know of a recent order, but it sort of had been the order of the day, if you will, with regards to state government for some time. So I think there's a consciousness in that regard amongst state employees, maybe a little bit more on the part of some than others. But I'm not aware of a recent order in that regard. [LB1 LB2 LB3]

SENATOR MELLO: Thank you, Gerry. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Nordquist. [LB1 LB2 LB3]

SENATOR NORDQUIST: Just a quick question here. First, you mentioned that the federal government didn't give us any resources to do tracking, not specifically. But we did get \$50-some odd million in general state operation, and we use it to offset Corrections. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Right. General purpose stabilization funds. Yes. [LB1 LB2 LB3]

SENATOR NORDQUIST: Maybe it was last week you issued a report that...as our stimulus czar, I don't know how big a role you had in this, but of the number of jobs created in Nebraska with stimulus money, did you do calculations on that? Did you receive that from other entities? How did that come together? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Well, what we did is we established a process of having the Section 15.12 reports...and they're not required related to every federal grant award under the Recovery Act. But we established an application, running on a server at the CIO department, that simply captures the reports as they're sent in to the federal government. We do not review them and approve them or otherwise try and add value in any way to the report that's filed, but we do capture it. And it is that data warehouse, if you will, that generated the report regarding what Nebraska had reported to the federal government. [LB1 LB2 LB3]

SENATOR NORDQUIST: All right. With the way we did TEEOSA last year, we essentially--and correct me if I'm wrong--held our state support flat, and used stimulus money to increase us off of the previous fiscal year. It would have been 8 off of...are we still at Fiscal Year '08 levels, roughly? [LB1 LB2 LB3]

GERRY OLIGMUELLER: Fiscal Year '09. [LB1 LB2 LB3]

SENATOR NORDQUIST: Fiscal Year '09, and then we added stimulus. [LB1 LB2 LB3]

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GERRY OLIGMUELLER: And then the increases that are designed into the school aid payments are financed with stimulus money in '10 and '11. [LB1 LB2 LB3]

SENATOR NORDQUIST: Okay. In that report that was...the report that was put up on the Recovery.Nebraska.gov Web site said that the education stimulus money created roughly 300-some odd jobs, I think was the number. Do you...? I mean... [LB1 LB2 LB3]

GERRY OLIGMUELLER: I could look. I have it with me, but... [LB1 LB2 LB3]

SENATOR NORDQUIST: Okay. Yeah, that's all right. No, I'm not trying to pin you down on a number here. The question is, has there been any analysis or any look at what this reduction in \$47 million will do as far as lost jobs or potentially lost jobs around the state of Nebraska in education? [LB1 LB2 LB3]

GERRY OLIGMUELLER: We have not asked them to report that information. [LB1 LB2 LB3]

SENATOR NORDQUIST: Okay. Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Are there any other questions? I appreciate all the work that you yourself, DAS budgeting has done, and also at this time I'd like to note all the work that the Fiscal Office has done up to this point and that they're going to have to do. So thank you. [LB1 LB2 LB3]

GERRY OLIGMUELLER: We will offer to give Mike whatever assistance he would need, because we...it's a serious issue and we understand the seriousness of it. And I suspect that many items that are included in these recommendations, you know, cause great concern and discomfort, and you're going to hear about it in one context or another over the next several days. But we will be listening and certainly available to offer any further assistance that you might need. So thanks very much. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Thanks, Gerry. [LB1 LB2 LB3]

GERRY OLIGMUELLER: Thanks very much. [LB1 LB2 LB3]

SENATOR HEIDEMANN: At this time, to get a general idea of about how many people want to testify on LB1, LB2, and LB3, whether you're going to testify in support of, opposition, or in the neutral position, would you please raise your hand if you plan to testify on any of these three bills in any position? Okay, thank you. We'll probably go generally about 4 minutes, the way it looks. We will take testimony in support at the present time on LB1, LB2, and LB3. Seeing no one wishing to testify in support...is there anybody wishing to testify in support of these three bills? Seeing no one wishing to testify in support of these three bills, is there anybody wishing to testify in opposition on

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LB1, LB2, or LB3? Come forward, one at a time. [LB1 LB2 LB3]

DAVE PANTOS: I had no idea I'd be going first. I'm Dave Pantos. I'm the executive director of Legal Aid of Nebraska. And it's pretty rare for Legal Aid to testify at the Legislature, but when our funding is at stake we do make an appearance, and that is the case today. LB3 amends, among other things, Section 25.3002 of the Nebraska Revised Statutes. In 1997, the Legislature created the Legal Aid Services Fund. They did so in response to massive federal cuts in funding to legal services programs, like Legal Aid of Nebraska. Legal Aid of Nebraska provides free legal services to the poor and Nebraska folks who are under 125 percent of the poverty level. These are struggling folks. And the number of people today that are eligible for our services grows with the economic situation. Right now, about one-fifth of Nebraska is eligible for our services, so that's what's at stake. The Legislature said, in 1997, with federal funding down, we need to find state support for legal aid. Rather than going through the appropriations process, what was created was the Legal Aid Services Fund. This is a filing fee on civil transactions in courts. Right now, that filing fee is \$5.25. That fund directly goes to the...well, it goes eventually to Commission on Public Advocacy, and through a competitive grant process the Commission on Public Advocacy awards grants to legal services providers. Legal Aid of Nebraska is the largest recipient of those funds. We receive approximately \$1.5 million each year from that fund, and it comes every month. The great thing about this fund is that it's based on your performance, in a lot of ways. We have to competitively apply for these grants, and it's based on the services we provide. These funds are about 30 percent of our budget, and just in real people that means about 3,500 of our clients. And Legal Aid provides services in all the counties of Nebraska, so everyone here has constituents that have received legal representation from Legal Aid. This includes victims of domestic violence who are seeking to defend a protection order, get child custody, child support. These include folks who have been unfairly evicted from their homes, people who are being foreclosed upon, victims of predatory lending, veterans who have applied for benefits and were disabled and been denied. That's what we do every day. What's at stake here is now a proposal to basically give the Legislature discretion over these funds every year, and there are cuts that are directly associated with that in LB1, right away, which will affect our operations and our ability to provide these services. And what I'm asking is basically to consider removing the Legal Aid Services Fund from LB3, so that these funds for essential legal services, for poor people in Nebraska, are not subject to the cutting block every year. I think the Legislature did the right thing, in 1997, by creating this separate fund that was not up to consideration by the Legislature each year. I think it's really important because right now Legal Aid is facing cuts all across the board. Anyone who is an attorney knows about the Lawyers Trust Fund, interest of which funds Legal Aid, that's down \$300,000 since 2007. Any additional cuts to Legal Aid, which already lost its federal funding for domestic violence representation--there was an article in the World-Herald about that recently--would know that we're already struggling. And to make additional cuts and subject 30 percent of our funding to this body's discretion every year is a huge

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risk to poor people in Nebraska who have legal needs. Thanks. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Thank you, Dave. Just a reminder to you and to everybody else, we are underneath a light system. If you see the green light, you're good to go. I'm going to have to ask the committee clerk...the yellow light is a minute, one minute. And if you see the red light on, if you could please conclude. Also for the transcribers, we need to have you spell your name. [LB1 LB2 LB3]

DAVE PANTOS: Sorry. I don't do this very often. It's Dave Pantos, P-a-n-t-o-s. And if there's any questions I'd be happy to answer them. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Thank you very much. Are there any questions? Senator Conrad. [LB1 LB2 LB3]

SENATOR CONRAD: Hi, Director Pantos. Thanks for joining us here. And you did a great job, first out of the gate, so. [LB1 LB2 LB3]

DAVE PANTOS: I just found out about this hearing, like, three hours ago, so. [LB1 LB2 LB3]

SENATOR CONRAD: All right. I just wanted to talk with you a little bit about not only the work that you do at Legal Aid of Nebraska, but about how we as a state and our justice system has an obligation to ensure that all of our residents have equal access to the courts to pursue their legal rights. I think that's something that all of us who are lawyers and all of us are Nebraskans could agree that it would be a good public policy to pursue. Would you agree with that? [LB1 LB2 LB3]

DAVE PANTOS: Absolutely. [LB1 LB2 LB3]

SENATOR CONRAD: And it has been some time since I've seen updated statistics in regards to this issue. But I know that, at least in the past 5-10 years, operating under optimal funding for Legal Aid and other partners that provide representation for low-income Nebraskans, that we were only serving about 15-20 percent of low-income Nebraskans' legal needs under full funding in that context. Is that still about the same amount? [LB1 LB2 LB3]

DAVE PANTOS: It's barely 15 percent at this point. [LB1 LB2 LB3]

SENATOR CONRAD: So there currently exists a disparity wherein over 85 percent of low-income Nebraskans are not having their legal needs met, particularly in the civil context, of course. [LB1 LB2 LB3]

DAVE PANTOS: That's correct. [LB1 LB2 LB3]

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SENATOR CONRAD: Does that equate to full access to justice, in your mind? [LB1 LB2 LB3]

DAVE PANTOS: It's quite the opposite. I think it's a real crisis. And there are studies that are showing that more and more people are going to court without an attorney, and it has a large impact on the entire court system, not just for low-income people but for everyone. So I think it's a real crisis. [LB1 LB2 LB3]

SENATOR CONRAD: Well, and I think that you would probably agree that the legal system hasn't been standing idly by and just accepting these dollars. I know that the Supreme Court and the Bar Association have worked very, very hard to develop pro se materials for litigants who maybe have more simplified legal needs so that they can peruse some activities on their own and have done a variety of other outreach and education activities to conserve these dollars. And they're still a great need that exists, is that right? [LB1 LB2 LB3]

DAVE PANTOS: That's correct. And everyone is stretching limited resources and using innovations and technology in other areas to provide access to justice to as many people as possible. [LB1 LB2 LB3]

SENATOR CONRAD: Thank you. [LB1 LB2 LB3]

DAVE PANTOS: Thanks, Senator. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Any others? Senator Mello. [LB1 LB2 LB3]

SENATOR MELLO: Thank you, Mr. Pantos. It might be a question that I might look to ask most folks who come in to testify. If we choose not to follow the Governor's recommendation and take funding from Legal Aid of Nebraska, where should we make up the funding cut at? [LB1 LB2 LB3]

DAVE PANTOS: Well, I'll say that the dollars at stake in the great context of things for Legal Aid and for legal services providers to the poor, generally, is fairly small, and it's a very, very small percentage of that \$330 million-plus amount. However it's a huge deal for Legal Aid. I mean, it's really...what we'd be looking at is probably losing staff, which would result in more people going without legal representation. But the fact is, is that these funds are not...this is not tax revenue. This is a filing fee on civil cases. So there's actually a direct connection there. The more people that file civil cases means there's more legal need, and so then the fund goes up and then there's more help for people who need these services. And the great thing is for very low-income people, they can file and in forma pauperis, and not pay the fee. So it's really...you know, you're providing...you know, based on the number of people using the services, are using the

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courts, you're providing more funds for civil legal services. So this is not tax revenue. This is a fee that was set up specifically for this purpose. And, you know, I think, frankly, it works pretty well. It's well administered. Again, it's grant-based so it's competitive. We're required to file quarterly reports on our activities, as are the other grantees. So it's something that's already like really efficient and really well-scrutinized and regulated. So I think for all those reasons, it's a good deal for Nebraskans. [LB1 LB2 LB3]

SENATOR MELLO: Well, I guess maybe...and if you don't have a comment, that's fine, on this. But I think the question...I mean, more than anything else, I'm not challenging the need of what Legal Aid does or the purpose, so to speak. But if we as a committee would have to vote and say we will not take the Governor's recommendation and not take the funding from Legal Aid, do you have any recommendations of where we could go get that funding to make up for that amount, that would fit within the \$336 million budget deficit that we're going to be in?. [LB1 LB2 LB3]

DAVE PANTOS: Well, you know, that's...it's not my place to really advocate for things beyond advocating for Legal Aid per se. I know there's a big rainy day fund and it could certainly come out of that, but that's just me personally speaking; not as executive director. You know, and I will say though, that for every person we can't represent, that actually adds an additional burden to state finances. Every year we have a study done by Jerry Deichert at UNO, and he says that for every dollar of state funds that go to Legal Aid of Nebraska, \$5 are generated to the state. Just for example, if we turn away an individual who is applying for Social Security disability or SSI disability, and they go without an attorney and they lose their case, well, that's federal dollars that could be coming to that person if we won that case and they got their benefits. If we have an elderly lady who is in her home, and abusive predatory lenders are going after her for some debt that wasn't even hers, and Legal Aid can't provide representation of that person and she loses her home, well, that burden then goes on the state in two ways. One, tax is lost in terms of property taxes; second, she may end up in public housing or in some other kind of situation. So Legal Aid actually is an economic engine in that sense, so there is a...just by keeping us where we're at, you know, there's revenue raised to the state. And I could certainly give anyone a copy of Professor Deichert's report if they are interested. [LB1 LB2 LB3]

SENATOR MELLO: Last follow-up question. Just you mentioned to Senator Conrad that you provide, is it statewide services that would include...in all 93 counties, or...? [LB1 LB2 LB3]

DAVE PANTOS: That's right. [LB1 LB2 LB3]

SENATOR MELLO: So Buffalo and Adams County would be included in that? [LB1 LB2 LB3]

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DAVE PANTOS: Absolutely. We have offices in seven counties. We're in Scottsbluff, we're in North Platte. We're in Grand Island, Norfolk. We're in Bancroft and Omaha and Lincoln. And through our network of private attorney contractors, we provide representation in every county. When I say private attorneys, we use some of our federal funding to pay private attorneys a reduced rate--about \$60 and hour--to represent clients in counties that are so far away from our offices, like Cherry County, or what have you, that those clients couldn't get to our offices. But the clients pay nothing, so it's still free legal aid, whether it's one of our staff attorneys that are situated in those offices I told you about, or the private attorneys. So we are everywhere. And cuts to Legal Aid means kind of a difficult decision making as to where those should be felt. Right now, we have two attorneys...at least two attorneys in each of our offices, except for Lincoln and Omaha, where we have nine or ten. And then we have a statewide access line that provides advice and brief service and referrals to callers. It's toll-free and, you know, it's a great service and I'd hate to lose something wonderful like that, or at least subject it to annual appropriations. And that's a real risk. [LB1 LB2 LB3]

SENATOR MELLO: Thank you so much. [LB1 LB2 LB3]

DAVE PANTOS: Thank you, Senator. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Harms. [LB1 LB2 LB3]

SENATOR HARMS: Thank you, Senator Heidemann. Dave, I first of all want to thank you very much for what you do for Nebraska. I'm very familiar with Legal Aid, particularly from the region that I come from. With out it, it would be a real loss. Let me ask you a couple questions. If we would accept these recommendations, how many staff would you actually lose? [LB1 LB2 LB3]

DAVE PANTOS: Well, looking at just the numbers of proposed reductions...and again, I just learned about all this stuff in the last few hours, so I'm doing my best here. But if you look at the combination of what may be at stake here and the drop IOLTA funds and our recent loss of our Violence Against Women grant, there could be anywhere between four and six attorneys at stake. And just to give you the example in Scottsbluff, we have two attorneys there. For many years we didn't...we only had one attorney there, and we were able to leverage funds to provide that, and that's always been a commitment of mine is to ensure that the rural areas are appropriately covered. But it will force us to make some hard decisions. [LB1 LB2 LB3]

SENATOR HARMS: My greatest fear is that out of this, rural Nebraska will be hurt in this whole process. The second question I want to ask you, in your system do you have a backlog in cases? I mean, are you with the present funding that you have, are you able to keep abreast with the number of cases or the number of clients that are coming to you? [LB1 LB2 LB3]

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DAVE PANTOS: Well, as I responded to Senator Conrad, there are a lot of folks that probably just don't get to us because they call our hotline, which is our intake, and they are just are waiting so long they give up, because we get so many calls. But everyone that does get through the door and who we say, yes, we're going to accept your case, we act on those cases right away and they get an attorney right away. What happens is, they may get to our access line and we may say to that person, well, look, we're so backed up right now that we can't get you an attorney. So what we'll do, is we'll triage you. We'll give you the advice you need to respond to that complaint or file what you need to file to get going down the road. So it's not the same as extended representation, which is...you know, if you have a lot of money, you can get an attorney and go into court. If you don't, you may get an attorney from us or you may only get advice, and then we refer the person who doesn't get our help to, say, the volunteer lawyers' project, as part of the bar, and then they try to find a pro bono representative. And that process is necessary, but I know they struggle to find private attorneys to step in on those cases. [LB1 LB2 LB3]

SENATOR HARMS: Do you have any records at all, any documentation that shows where you are with that process? If you get a phone call, do you document that saying, hey, there is...we had 25 calls today and none of them we can handle. [LB1 LB2 LB3]

DAVE PANTOS: Um-hum, um-hum. Yeah, we're probably, of nonprofits, we can generate data on pretty much anything. And the reason why is because we receive so many different kinds of funds that we have to report to so many people. So our toll free number, if someone calls and hangs up that's recorded. If someone calls and presses 1 to find out information about domestic violence, that's recorded. If they get through and we turn them away, that's recorded. Everything is recorded for every possible reason. So we can generate that data pretty easily. [LB1 LB2 LB3]

SENATOR HARMS: It would be very helpful, I'd really like to look at that. [LB1 LB2 LB3]

DAVE PANTOS: Sure. [LB1 LB2 LB3]

SENATOR HARMS: I don't know how anybody else feels, but it gives me a better handle on what your issue is and how severe. I know what it is where I live. [LB1 LB2 LB3]

DAVE PANTOS: Um-hum. [LB1 LB2 LB3]

SENATOR HARMS: The other question I wanted to ask you, with the economy the way that it is are you seeing any increase at all with cases coming to Legal Aid? [LB1 LB2 LB3]

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DAVE PANTOS: Absolutely. In 2007, we provided legal assistance to 9,800 people; in 2008, that rose to 10,800; 2009, it's going to be about 11,500 to 11,800 based on where we're at right now. But those people that we've actually been able to help because of keeping expertise inhouse and just providing more with the same amount of funding. So the numbers are definitely going up. And part of the reason why is it's not just that more people need our help, more people are eligible for our services now. When your income goes down you become eligible for legal aid. And that's something that we're really seeing is that there are more and more people, the new poor, the new working poor that can get our services. So, as I mentioned before, in 2000, actually in 2000, one-eighth of Nebraska was eligible for our services. And it's getting close to one-fifth right now. So that's a real big thing. So it's more and more of your friends, your neighbors, folks you see at church are coming to Legal Aid, they are eligible for our services. [LB1 LB2 LB3]

SENATOR HARMS: With that number of cases that you have what's your staffing? I mean, what's your...how many attorneys do you have in the system and...because that a phenomenal number of people. [LB1 LB2 LB3]

DAVE PANTOS: Sure. [LB1 LB2 LB3]

SENATOR HARMS: And if it continues to increase, how...what's your staffing? [LB1 LB2 LB3]

DAVE PANTOS: Well, we have a total of about 68 employees statewide, a few of those are part-time, most of them are full-time. As I mentioned, each one of our litigation offices outstate have two attorneys. Our Omaha litigation office has about ten attorneys, Lincoln has about nine or ten attorneys. And then in our...we have an access line which provides advice to folks that we can't provide extended representation to, although we actually give advice to everyone that we help. That has about four attorneys. And there's also support staff, like paralegals, litigation support, and then administrators like myself. But about 86 percent of our expenses goes to direct services, so only 14 percent is administration. And that puts us about where most legal aid programs are, we're a little bit better than most in terms of in terms of that admin. to direct services ratio. So, I think, we're pretty good in those regards. [LB1 LB2 LB3]

SENATOR HARMS: Thank you very much, Dave. [LB1 LB2 LB3]

DAVE PANTOS: Thanks, Senator. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Wightman, for a short question he said. [LB1 LB2 LB3]

SENATOR WIGHTMAN: Well, first of all, I didn't hear how many personnel you had, 68 did you say? [LB1 LB2 LB3]

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DAVE PANTOS: About 67 or 68, yeah. [LB1 LB2 LB3]

SENATOR WIGHTMAN: And what percentage of cases do you handle with those staff members or the attorneys and how many do you farm out through attorneys? You talked about doing it at \$60 an hour. [LB1 LB2 LB3]

DAVE PANTOS: Yeah, I'd say, gosh, probably 95 percent are inhouse, 90 to 95 percent. [LB1 LB2 LB3]

SENATOR WIGHTMAN: Only about 5 percent are done through private attorneys. [LB1 LB2 LB3]

DAVE PANTOS: That's right, but that...those are mostly in those areas of the state that are further away from our offices in the rural parts of the state. [LB1 LB2 LB3]

SENATOR WIGHTMAN: Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Senator Nelson. [LB1 LB2 LB3]

SENATOR NELSON: Thank you, Senator. Some of my questions have been asked, Mr. Pantos. Sixty-eight employees, how many of those are attorneys and how many are paralegals, if you know? [LB1 LB2 LB3]

DAVE PANTOS: Okay. I think 34, 35 are attorneys and we have paralegals, receptionist, CFO who is not an attorney, a tech guy who's not an attorney, grants manager. But at least half of the staff are attorneys practicing every day. [LB1 LB2 LB3]

SENATOR NELSON: And those...that's...their salaries are represented in the 84 percent that you're talking about? You're saying 16 percent for administration. [LB1 LB2 LB3]

DAVE PANTOS: Yeah, 86 percent of our expenses goes to direct services to clients. So folks who fall under the salary scale that are not providing direct services are like me, our CFO, our accountant, but the rest is directly for attorneys and staffing. And anyone who's worked with Legal Aid knows that Legal Aid attorneys are probably the lowest paid attorneys in the bar. Starting salary at Legal Aid right now is about, for an attorney, is under \$40,000, which is, you know, not very much for someone who's coming out school with \$120,000 debt from... [LB1 LB2 LB3]

SENATOR NELSON: Next to senators, they sacrifice the most. (Laughter) [LB1 LB2 LB3]

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DAVE PANTOS: It is, it is, we feel your pain every day. [LB1 LB2 LB3]

SENATOR NELSON: I'm sorry I missed the earlier part of your testimony. What is your total budget, if you gave that figure. [LB1 LB2 LB3]

DAVE PANTOS: Okay. No, I didn't. Our budget is about, I think, for 2010 is about \$5.2 million, \$5.3 million, and \$1.5 million of that, approximately, is funding from the Legal Aid Services Fund. A smaller amount is from the Civil Legal Services Fund, which just goes to legal aid, which is also at stake in LB1. [LB1 LB2 LB3]

SENATOR NELSON: The 11,500 measures of assistance, part of that is over the phone, advice over the phone? [LB1 LB2 LB3]

DAVE PANTOS: Yeah, absolutely. [LB1 LB2 LB3]

SENATOR NELSON: You're counting that, not one-on-one contact and that sort of thing. [LB1 LB2 LB3]

DAVE PANTOS: You're right. Yeah, that's not all extended representation. [LB1 LB2 LB3]

SENATOR NELSON: If you know, what part of your work is basically defense work, representing defendants of all the cases that you have? [LB1 LB2 LB3]

DAVE PANTOS: You mean criminal defendants? [LB1 LB2 LB3]

SENATOR NELSON: Criminal, civil. [LB1 LB2 LB3]

DAVE PANTOS: Okay. Well, we don't do any criminal law just to... [LB1 LB2 LB3]

SENATOR NELSON: You don't do any criminal. [LB1 LB2 LB3]

DAVE PANTOS: Uh-huh, no. [LB1 LB2 LB3]

SENATOR NELSON: But it's all civil. [LB1 LB2 LB3]

DAVE PANTOS: It's all civil. [LB1 LB2 LB3]

SENATOR NELSON: But defending cases say, do you know, is it half of your work or six-tenths? [LB1 LB2 LB3]

DAVE PANTOS: The largest number of our cases are family law cases. And the most of those cases are victims of domestic violence who we're trying to help get away from the

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abuser so they can get safety and... [LB1 LB2 LB3]

SENATOR NELSON: So you are representing the petitioner in those cases. [LB1 LB2 LB3]

DAVE PANTOS: Largely, yeah. Now the defense work we do is evictions, garnishment proceedings. We also do a lot of work helping file bankruptcies for people who are...who have some assets to protect. And then we help a decent amount of folks with their appeals of federal benefit denials, mostly SSI. We don't do as much Social Security disability since the private bar has got a good handle on that. [LB1 LB2 LB3]

SENATOR NELSON: One final question. You mentioned doing Social Security disability representation? [LB1 LB2 LB3]

DAVE PANTOS: Um-hum. [LB1 LB2 LB3]

SENATOR NELSON: Why would you take that on when there are private attorneys who do that on a...not a fee basis but a... [LB1 LB2 LB3]

DAVE PANTOS: Contingency. [LB1 LB2 LB3]

SENATOR NELSON: ...contingency. [LB1 LB2 LB3]

DAVE PANTOS: Contingency fee, yeah, but we don't do very many Social Security disability cases, mostly...in Social Security what we do is SSI. And a lot of those are actually cessation cases, where someone has been receiving benefits, like as a child, and then they hit 18 and Social Security kicks them off. [LB1 LB2 LB3]

SENATOR NELSON: You have to go in and try and recover that or get them to change their... [LB1 LB2 LB3]

DAVE PANTOS: Right. And there's no...there are no past due benefits that a private attorney can get fees out of because they've been getting their funds. You know, they may still be getting the funds. What's at risk is they're going to stop getting the funds. Because what happens is Social Security says, all right, we're cutting you off. You can go in there and appeal and say, I'd like to have my benefits continue while I'm pursuing my appeal. That's...if you went to law school and took admin. law, that was Goldberg v. Kelly, and its progeny. So a private attorney who wants to get paid out of a contingency arrangement can get nothing out of that because there is no retroactive underpayment at stake. So those folks have a really hard time getting attorneys if they can't get to Legal Aid and get that help. And again, these are like, you know, those people who are found disabled as children, they got benefits through age 18, age 19. Then the disability standards change when you become an adult, Social Security kicks you off usually. And

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they're faced with not only losing that monthly income, which isn't very much, \$672 a month or less, but loss of insurance. And if those are psychiatric issues and they lose that Medicaid then they lose their medications. And then they can go crazy and commit crimes and we understand what happens with that. So that's why Legal Aid is there is to keep people from going crazy and committing crimes and other things like that. [LB1 LB2 LB3]

SENATOR NELSON: Thank you, appreciate your testimony. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Any other questions? Thank you, Dave, for your testimony. [LB1 LB2 LB3]

DAVE PANTOS: Well, thank you. I didn't expect to be able to answer all these questions about Legal Aid, so this was great for me. Thank you. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Welcome. [LB1 LB2 LB3]

KITCKI CARROLL: Chairman Heidemann, senators, good afternoon. My name is Kitcki Carroll. That's K-i-t-c-k-i, last name Carroll, C-a-r-r-o-l-l. I am the director of Community Services with Lutheran Family Services of Nebraska. At this time I want to highlight and underscore a couple of points that Mr. Pantos made, as we are also a recipient of the Legal Aid Services Fund. And I am here in opposition of those cash fund transfers. To Mr. Pantos' point, that fund was established in the nineties for low-income individuals. And I believe that there was some logical rationale in setting that up outside the standard appropriations process. My concern is that what's being attempted to do right now is to take that protection away from that. Those dollars are intended for low-income individuals who otherwise would not have access to legal services. In a state where there are significant disparities already, that is of grave concern to myself. As a state we speak to our strong communities, whether it's metropolitan areas of the state or whether it's rural Nebraska, and legal needs of low-income individuals is one of those disparities. I understand that you have a big challenge before you with the situation, the budget situation that you are currently addressing. However, it's too easy to see that these funds are a solution to addressing that. What I heard earlier, when we were talking about LB1, in respect to the discussion on furloughs that was not something that was being embraced, it was viewed as a short-term remedy. My view is the same, looking at the cash fund as an option for that as well in terms of the effect, ripple effect it would have on our communities by not having these services available to low-income families. So I just ask that you consider the impact that this would have long-term, the exponential impact that this would have by taking these dollars away and the harm that would have to communities long-term. So the monies that we are using these cash funds for, for legal services across the state of Nebraska is a proactive investment to help communities that are already experiencing disparities. To your point, Senator, as far as social injustices we will never achieve social justice as long as disparities are

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present. So I think that these dollars are significant and critical to the state of Nebraska, both short-term and long-term. [LB1 LB2 LB3]

SENATOR HEIDEMANN: Thank you for your testimony. Are there any questions? Seeing none, thank you. Is anyone else wishing to testify in opposition on LB1, LB2, or LB3? Seeing none, is anyone wishing to testify in a neutral position on LB1, LB2, or LB3? Seeing none, we are going to close the public hearing on LB1, LB2, and LB3. [LB1 LB2 LB3]

SENATOR HEIDEMANN: And we are going to open up the public hearing on Agency 87, Accountability and Disclosure Commission. Welcome. [AGENCY 87]

FRANK DALEY: Good afternoon, Senator Heidemann and members of the Appropriations Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission and I appear on its behalf. I know you have still a long day and difficult decisions ahead of you so I'll skip the preliminaries and just move right down to business. We've reviewed the proposed budget adjustments and as they apply to the Accountability and Disclosure Commission, it appears that they have three components. The first is a reduction in our General Fund appropriation. The second is a transfer of certain funds from the Accountability and Disclosure cash fund into the General Fund. And the third is a transfer of certain funds from the Campaign Finance Limitation Act Fund into the General Fund. We understand at the Commission the concept of shared sacrifice so we want to tell you first of all that as to the reduction of the General Fund appropriation, we can certainly accept that. As to the transfer of certain funds from the Accountability and Disclosure Commission cash fund, we can accept that as well. Now, this will be difficult for us but we are reasonably confident that we can accept those cuts without lay-offs in the current fiscal year. We are hopeful for the next fiscal year, though not quite so certain. As to the Accountability and Disclosure cash fund there is an additional issue. If you were to look at page 92 of the budget proposal, it shows a reduction in the reappropriation of funds that are already there and not to be transferred. What we are asking today is for a restoration of the ability to spend those funds if necessary. The reason I think this is appropriate is that, number one, it does not affect the General Fund because these are not funds that are going into the General Fund anyway. And as I am sure you can imagine with a small agency such as ours, it doesn't take much of a hit or a change to have significant effect on us financially. We have eight employees so if a single employee switches their insurance coverage because of a marriage or the birth of a child or something like that, that's the amount we're talking about here and so we'd like to preserve that if we can to be able to adjust to different things that may occur. Finally, we are concerned about the legal and other affects of the transfer of certain funds from the Campaign Finance Limitation Act Fund into the General Fund. By law, as you know, these funds are dedicated to the purpose of providing campaign funds to candidates who agree to limit their campaign spending and who meet other

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qualifications. Whether you agree or disagree with the public policy behind the Campaign Finance Limitation Act, we are currently in the 2010 election cycle. And candidates have made commitments and they have mapped out strategies based upon an understanding that there would be a certain level of funding available through the CFLA. In addition, some of the money that's in the Campaign Finance Limitation Act Fund are funds that were voluntarily checked off by taxpayers who support the public funding program. Now having said that, we understand the situation that the state is in and we can certainly accept the proposed movement of funds from the CFLA cash fund to the General Fund. However, in our view, the integrity of this fund is closely tied to the integrity of our electoral process. And so it seems to me it would be bad public policy if dipping into the CFLA fund became part of the standard operating procedure for balancing the budget. Finally, I'd like to make one strong recommendation to you. I strongly recommend that any of your statutory enactments in this Special Legislative Session which authorized the transfer of money from agency cash funds to the General Funds, also include a specific sunset clause. And the reason I say that is because there certainly is a lot of uncertainty going on as to how state agencies are going to operate. It seems to me we would complicate that if we were in a situation which there was a continuing authorization to transfer agency cash funds into the General Funds. And with that, I thank you very much for the opportunity to speak with you today. [AGENCY 87]

SENATOR HEIDEMANN: Thanks, Frank. We appreciate you coming in. I have a question or maybe two on the campaign finance limit. They are taking \$21,588 the first year; in fiscal year 2011 of \$48,495. How much is in that fund? [AGENCY 87]

FRANK DALEY: There is currently \$753,000 in the fund, give or take. [AGENCY 87]

SENATOR HEIDEMANN: And in anyone election cycle, historically, how much on the average has been used? [AGENCY 87]

FRANK DALEY: It's hard to average because, you know, our cycles vary. We have some years in which you do not have constitutional officers up and so forth and so on. But by way of example, I can tell you that since 2000, candidates have qualified for \$800,000 in public funds out of that fund. So that might give you some idea. [AGENCY 87]

SENATOR HEIDEMANN: And how much money comes into that fund on the average in a year's time? [AGENCY 87]

FRANK DALEY: Averages again are hard because they're sort of tied to the electoral cycle. I'm not sure I can answer that question here but I would be pleased to provide you with that. [AGENCY 87]

SENATOR HEIDEMANN: Okay. I appreciate it. Senator Nordquist. [AGENCY 87]

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SENATOR NORDQUIST: Thank you, Mr. Chairman. Thank you, Mr. Daley. So for instance for a large statewide election we have spending caps of...what is the spending cap per se of constitutional office outside of the Governor, a couple hundred thousand, maybe? [AGENCY 87]

FRANK DALEY: If you're talking about, for example, Secretary of State, Attorney General, State Treasurer, and so forth, the spending...the voluntary spending limit for the entire election cycle would be \$215,000. [AGENCY 87]

SENATOR NORDQUIST: Okay. And how about...what is it, does this apply to Governor's races? [AGENCY 87]

FRANK DALEY: No, because there's not enough funds in there for the Governor to be included in the program. [AGENCY 87]

SENATOR NORDQUIST: Okay. Okay. So if we got to a situation where two incumbents, or two anybody didn't abide and their opponents did, and those opponents spent \$400,000 more than the spending limit, the fund would be out of money? [AGENCY 87]

FRANK DALEY: Potentially, uh, that has been a continual worry of the Commission ever since the establishment of the fund. And the Legislature has addressed that at our request in a number of ways. For example, early on it delayed the implementation of this law until the fund built up. The other thing that the Legislature did at our request was that it limited payouts from the fund to three times the amount of the spending limit. So that helps to limit it as well. Having said that, we still sweat the possibility that there will be more claims on the fund than money in the fund. [AGENCY 87]

SENATOR NORDQUIST: Okay. And this fund is generated by fines levied to candidates and... [AGENCY 87]

FRANK DALEY: There is an initial \$50,000 that the Legislature put in in the early 1990's. The rest of it would be late filing fees, civil penalties, voluntary tax checkoffs by Nebraska taxpayers, and then occasionally, just some out-and-out donations. [AGENCY 87]

SENATOR NORDQUIST: I know Speaker, former Speaker Brashear, he said...have concern over whether or not these, how these fines were different than the fines that are dedicated to go to education. If we're pulling these out for...is there a constitutional issue here potentially for pulling these out and using them for just another General Fund purpose? [AGENCY 87]

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FRANK DALEY: I'm not sure that I'm prepared to speak to that because whenever we're in this area I think there are always constitutional issues. [AGENCY 87]

SENATOR NORDQUIST: Okay, well I have a great concern that, you know, essentially the system that we have is based upon that ability to get matching funds and if that, potentially that fund will run out or may run out or may be overtapped in some election cycle, it essentially guts the campaign finance system that we have in place. [AGENCY 87]

FRANK DALEY: Agreed and that's why I really take the position that one time maybe, but standard operating procedure would really be pretty dangerous. [AGENCY 87]

SENATOR NORDQUIST: Thank you. [AGENCY 87]

SENATOR HEIDEMANN: What happens if the fund does run out? [AGENCY 87]

FRANK DALEY: If there are more claims against the fund than of there's money there? [AGENCY 87]

SENATOR HEIDEMANN: Yes. [AGENCY 87]

FRANK DALEY: Well, I think there are two potential affects of that. First of all, number one, you can't require people to limit their campaign spending. That would be unconstitutional. The purpose of the fund is to induce people to voluntarily limit their spending. If the money was not there, then I would assume that an abiding candidate is released from his or her promise. The real problem, however, is that if that candidate has altered his position in reliance on that fund, has detrimentally relied on the state's promise that those funds would be available, I think there's some liability on the part of the state of Nebraska. I'm not prepared to say absolutely, positively, but I think there's at least that issue. And perhaps the experience of our sister state of Massachusetts might be illustrative. There was a public funding program in Massachusetts and a candidate for Governor qualified for the public funds. However, the state assembly decided it was not going to fund the program. So the gubernatorial candidate dutifully filled out all the paperwork, submitted the paperwork, the agency which was somewhat like ours approved the paperwork and said, you've qualified but we don't have any money. A lawsuit was filed. A judgment was secured in excess of a \$1 million and several days later the sheriff went out and found a fleet of state vehicles, levied on them, sold them, transferred the money to the candidate. The matter was finally resolved when the speaker of the state assembly received a set of interrogatories requesting an inventory of the office furniture in his government office. Funding showed up after that. (Laughter) [AGENCY 87]

SENATOR HEIDEMANN: That did happen in Massachusetts and I actually was aware

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of that. You can't say that would happen here though. I mean, it's not impossible, but.
[AGENCY 87]

FRANK DALEY: I just don't know, Senator. (Laughter) [AGENCY 87]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 87]

SENATOR MELLO: Director Daley, the job vacancy report given to the Legislature by the Department of Administrative Services that answers to the Governor lists that you have an administrative assistant position with a minimum hourly rate of \$13.51 that is currently vacant. Is that true? [AGENCY 87]

FRANK DALEY: It is not. [AGENCY 87]

SENATOR MELLO: Okay. Thank you. [AGENCY 87]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 87]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Thank you for being here, Mr. Daley. I guess the only question I have, how low has that fund, historically, been in the past, say in the last five years, last ten years? [AGENCY 87]

FRANK DALEY: How low has it gotten? [AGENCY 87]

SENATOR WIGHTMAN: How low has it gotten? We've never run out of money, I guess. [AGENCY 87]

FRANK DALEY: We have not, no. Because of the way in which different offices were moved into coverage by the Campaign Finance Limitation Act, it has generally been fairly healthy and it's been growing essentially. So we'll go through an election process and by the end of that election process, we'll have less than we have now but then it will continue to build up as well. So I would say that in the past two election cycles, it has not dipped below maybe about \$600,000. [AGENCY 87]

SENATOR WIGHTMAN: And you build it up during the off, nonelection years and then it draws down, like you say, during... [AGENCY 87]

FRANK DALEY: Well, it is actually kind of, it happens at the same time actually because during the election years is when you generate the most in late filing fees and civil penalties. [AGENCY 87]

SENATOR WIGHTMAN: Thank you. [AGENCY 87]

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SENATOR HEIDEMANN: Senator Mello. [AGENCY 87]

SENATOR MELLO: My follow-up question I forgot to ask. Do you have any current job vacancies within the Accountability and Disclosure Commission? [AGENCY 87]

FRANK DALEY: We do not. [AGENCY 87]

SENATOR MELLO: Okay. Thank you. [AGENCY 87]

SENATOR HEIDEMANN: Any other questions? Seeing none, thanks Frank. [AGENCY 87]

FRANK DALEY: Thank you very much, Senators. [AGENCY 87]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 87? Seeing none, we're going to close the public hearing on Agency 87 and open the public hearing on Agency 7, the Governor. Welcome, Larry. [AGENCY 87]

LARRY BARE: Senator Heidemann, members of the Appropriations Committee. For the purpose of the record, my name is Larry Bare, I'm the Governor's chief of staff. Spelling is L-a-r-r-y B-a-r-e. In the interest of time and your long day, we can obviously live with the recommendation that the Governor's Office has made for our budget, (laughter) and I'd be happy to answer any questions this committee might have. [AGENCY 07]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 07]

SENATOR NORDQUIST: Larry, can you give me a description? I've interacted with them but really the role of Policy of Research Office and Governor's Office. [AGENCY 07]

LARRY BARE: The role of the Governor's Policy Research Office is to assist with the analysis and recommendation on all sorts of issues. They are our primary point for coordination during legislative sessions. That is a huge part of their work. That coordination occurs well prior to the beginning of the legislative session in the review of legislative proposals from agencies and extends past the end of the legislative session in terms of the follow-up implementation of legislation that may be passed during the session. They are some of the most highly qualified people around in terms of policy analysis. [AGENCY 07]

SENATOR NORDQUIST: How do you see that role differing from the legislative liaison position that some code agencies have? [AGENCY 07]

LARRY BARE: Every code agency, hopefully, has a legislative liaison and they work,

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and work with policy research office and work on the activities and preparation of testimony and response to requests from senators for the individual agencies.
[AGENCY 07]

SENATOR NORDQUIST: So do both speak for the Governor, or represent the...
[AGENCY 07]

LARRY BARE: Oh, everybody speaks for the Governor, you know that, Senator Nordquist, everybody out there speaks for the Governor. Most of you guys speak for the Governor. [AGENCY 07]

_____: Not me. [AGENCY 07]

LARRY BARE: If you're going to ask me to define who all speaks for the Governor, it's going to be a long day. [AGENCY 07]

SENATOR NORDQUIST: Yeah. Well, do you see a lot of overlap though in there?
[AGENCY 07]

LARRY BARE: No, I don't see any overlap at all. Thank you. [AGENCY 07]

SENATOR NORDQUIST: No, all right. Okay. Thanks. [AGENCY 07]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 07]

SENATOR MELLO: Mr. Bare, according to this job vacancy report that was prepared by the Department of Administrative Services that answers directly to the Office of the Governor, it shows that there were no vacant positions within Agency 07, the Office of the Governor, is that true? [AGENCY 07]

LARRY BARE: Yes, by and large. There was a position that...was not an actual position being held open but there were funds being reserved for a position for an individual who was on full-time military assignment in case he returned and wanted to go back into that position. He has...his term has for his service has ended but he chose to pursue employment elsewhere. But there are no vacancies. [AGENCY 07]

SENATOR MELLO: So there are no vacancies as of right now. [AGENCY 07]

LARRY BARE: That's correct. [AGENCY 07]

SENATOR MELLO: All right. Thank you so much. [AGENCY 07]

SENATOR HEIDEMANN: Senator Conrad and then Senator Harms. [AGENCY 07]

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SENATOR CONRAD: Good afternoon, Mr. Bare. Thank you for joining us and as we've been letting other agencies know brevity is always rewarded, so thanks for trying to get out of here quickly but just a few questions in follow up. Could you tell me, for example, how many employees within the context of the Governor's budget make over \$100,000 a year? [AGENCY 07]

LARRY BARE: Me, and I think Lauren is over \$100,000, yes. [AGENCY 07]

SENATOR CONRAD: One, two. Okay. [AGENCY 07]

LARRY BARE: Oh, well, excuse me, and the Governor. [AGENCY 07]

SENATOR CONRAD: Right. And he would be in a separate program. [AGENCY 07]

LARRY BARE: It would be in a separate program, yes. [AGENCY 07]

SENATOR CONRAD: Right. Right. And in terms of the message that the Governor brings to us in the context of his proposal in this Special Session it's shares sacrifice. Is that a fair characterization? [AGENCY 07]

LARRY BARE: Yes. [AGENCY 07]

SENATOR CONRAD: Okay. Don't you think it's important from a perception standpoint, morale standpoint, or otherwise, for the Governor and his top paid aides to share the sacrifice in terms of how we move forward with their own personal salaries? [AGENCY 07]

LARRY BARE: I'm not sure that...where would you draw that line, Senator? Is it just that their direct appointees that should take a salary...? [AGENCY 07]

SENATOR CONRAD: No, I just want to clarify the Governor's... [AGENCY 07]

LARRY BARE: I mean, a furlough, if you pursue furloughs, that's the same thing as a salary cut. [AGENCY 07]

SENATOR CONRAD: I just wanted to clarify the Governor's position if it was, in fact, shared sacrifice, why aren't we looking for shared sacrificed amongst his top paid aides? [AGENCY 07]

LARRY BARE: Because he has not recommended reducing specific salaries of specific individuals as part of a plan to close this budget gap. [AGENCY 07]

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SENATOR CONRAD: Okay. Thank you. [AGENCY 07]

SENATOR HEIDEMANN: Just to let you know, Larry, that if somebody offered me \$100,000 to do your job, I wouldn't do it. But if they offered me \$100,000 to do my job, I wouldn't do it either, but. (Laughter) Senator Harms. [AGENCY 07]

SENATOR HARMS: Thank you very much, Larry, for coming. With the amount of money that you recommending be removed from the Governor's Office, are there any positions that would be eliminated out of this? [AGENCY 07]

LARRY BARE: In the Governor's Office, we're currently operating with nine people, eleven people total in the Governor's Office and I don't believe I'm going to have to eliminate any positions either this year or next year. It will likely require us to cease membership in the Western Governor's Association next year. Policy Research Office, it's questionable. Hopefully, we won't have to have a staff reduction. [AGENCY 07]

SENATOR HARMS: Could you help me because I don't remember, I've seen the numbers but I don't remember. How many people are in the Policy Research Office? [AGENCY 07]

LARRY BARE: The current staff in the Policy Research Office is eight people. When Governor Johanns came...well, actually, when Governor Nelson left there were fifteen people in Policy Research Office. There are currently eight. In the Governor's Office there were nineteen and a half. There are currently eleven. If you go to The Book of the States published by the Council of State Governments, I think you guys pay dues to that. I don't think we do any more. No, we never did. The Governor's Office in the state of Nebraska is the smallest Governor's Office in the nation. [AGENCY 07]

SENATOR HARMS: Thank you very much. [AGENCY 07]

SENATOR HEIDEMANN: Any other questions? Thanks, Larry. [AGENCY 07]

LARRY BARE: Thank you. [AGENCY 07]

SENATOR HEIDEMANN: Anyone else wishing to testify on Agency 07? Seeing none, we'll close up the public hearing on Agency 07 and open up the public hearing on Agency 08. The Lieutenant Governor, I think he sent a letter that he was not going to come in and testify. Is there anyone else wishing to testify on Agency 08? Seeing none, we'll close up the public hearing on Agency 08 and open up the public hearing on Agency 05, the Supreme Court. [AGENCY 07]

MIKE HEAVICAN: (Exhibits 3 and 4) Good afternoon, Senator Heidemann, Mr. Chairman and other members of the Appropriations Committee. Thank you very much

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for having us here and giving us this opportunity to comment on the budget proposals. My name is Mike Heavican, H-e-a-v-i-c-a-n, I'm the Chief Justice of the Nebraska Supreme Court. My fellow Justices of the Court are here to support Nebraska's judiciary. My remarks would address what the judicial branch has already done to reduce expenditures; how the Governor's proposals will impact the court's system, and the court's proposals for dealing with the revenue shortfall, both now and in the future. The Supreme Court has already taken action to reduce expenditures consistent with the executive branch initiative. We've also restricted hiring, travel, contracts, and equipment purchases. In addition, many court employees received only a 2.5 percent salary increase on July 1 of this year compared to the 2.9 percent norm for most other state employees. You funded a further .5 percent increase for clerk magistrates but we calculated that .5 percent increase from a 2.5 percent estimated base increase, not from a 2.9 percent base increase. Beginning early in calendar year 2009, the mileage reimbursement rate for court employees was reduced to 48.5 cents per mile compared to the 55 cents per mile given to other state employees. We've also indefinitely postponed hiring an interpreter coordinator although this committee gave us the increase in personnel services limit and the demand...but the demand for interpreter services is not decreasing. Because the Supreme Court has already taken action to reduce spending, our remaining options are few. The judicial branch budget is more heavily weighted toward personnel services than the executive branch in other state institutions. Our budget is 95 percent salaries and benefits. The county court and probation systems have no operating budget to cut since those expenses are paid by the counties. There are no building projects that can be delayed or large promotional budgets that can be cut back so budget cuts affect court employees and the access to justice that they provide for citizens. What is the potential impact of a 2.5 percent cut this year and a 5 percent cut next year? A worse case scenario for the courts this year is approximately a \$700,000 shortfall and for fiscal year 2010-11 it is around \$2.5 million. That includes both the court's budget and the probation office budget. The Supreme Court will continue its current efforts to reduce spending. However, if those efforts are not sufficient, the court will be implementing some combination of, first of all, furloughs of probation and court staff that could include courts being closed for businesses on certain days. Possible closing of some rural county courts which means layoffs for those long-term employees. Thirdly, by closing county...excuse me, by closing county courts the estimated savings for fiscal year '09-10, that's this fiscal year, is \$375,000, you know, the handout there with the map of the counties that have the fewest number of case filings. By eliminating fiscal year 2010-2011 salary increases, the estimated savings is about \$1.1 million. By furloughing all nonjudicial employees related to the courts, the estimated savings is about \$80,000 a day. By furloughing all probation system employees, the estimated savings is about \$65,000 per day. The real impact of these options for Nebraska citizens is reduced access to justice, a basic constitutional right. It also means a decrease in the caseload that probation officers can process, hence a decrease in the number of individuals that can be placed in community corrections programs as opposed to incarceration in a state prison facilities. In that

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regard I note that a significant portion of probations funds for services comes from the Community Corrections Council housed in the Nebraska Crime Commission. The Governor's budget reductions to the Council will, as a result, also decrease funding in the Supreme Court budget for services to offenders. The Crime Commission, you'll be seeing them later, and they will also comment on these, the consequences of these cuts. However, there are other short-term and long-term alternatives which would reduce General Fund expenditures but could avoid some of these consequences. Short-term solution is to allow the judicial branch to meet the proposed reductions in its own way. If possible, we would like to be exempt from cuts this fiscal year. If not, we understand that these are not times for business as usual. We can be part of the solution to dealing with the revenue shortfall. We're asking, however, for the flexibility to maximize the resources we currently have through these specific proposals. First of all, amend LB313 to allow any unused General Fund appropriation for judicial salaries to offset reductions to court operations. Secondly, exempt the Council for Discipline Cash Fund and the State Probation Contractual Services Cash Fund from the across the board related cash fund transfers. Revenue for the Council for Discipline Fund comes from an assessment made by the Supreme Court on Nebraska lawyers. A transfer to the General Fund interferes with an essential duty of the court to regulate the legal profession in Nebraska. Such money should not be used for nonjudicial purposes. The State Probation Contractual Services Cash Fund is used to hold funds paid from counties. Currently counties contract with the Supreme Court for certain probation services. It is intended to be only an account for the counties to reimburse the court for those services and not a fund with ongoing balances generated by fees. Also, please note that a transfer from the Dispute Resolution Cash Fund will directly reduce the revenue the statewide mediation centers use to operate, and doom the implementation of the Parenting Act which is to take place July 1 of this year. Further, we would ask you to amend LB3 to change the statutes governing cash funds in the judicial branch so that cash fund balances can be used to continue services and maintain spending authority within the judicial branch. This could include a sunset provision for the end of fiscal year '10-11. The Supreme Court's long-term solution is to ask the Legislature in the future for more tools to allow the judicial branch to make structural changes to produce long-term efficiencies. At our budget hearing in March of this year, I stated the court has been diligent in working to improve its effectiveness and we have begun to see results but we are still at the beginning. This is still true and most evident in the court's initial success in using technology and probations transformation to an organization that measures outcomes and uses research based methods to reduce recidivism. Let me give you two examples. First of all, the court system. You may recall in March we described a program that uses technology to provide remote interpreting. There is great potential to reduce costs in this project but the program is just beginning and the full benefit will probably not be realized in this biennium. An example in probation. Probation recently started a pilot project with the Department of Health and Human Services to provide more effective services to juvenile offenders and reduce the number of state wards. Once again, this has the potential to reduce overall state expenditures but is just getting

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off the ground. This particular project is going on in Douglas County. These projects will bear fruit but we need more time. Unfortunately, as you know, the problem with the across the cut...across the board cuts, is that opportunities such as these that can affect expenditures in the long run, excuse me, such as these that can affect expenditures in the long run and can increase the overall effectiveness in state government are often sacrificed to make up for short-term revenue shortfalls. The Supreme Court has asked the National Center for State Courts for assistance in mapping out our future in the court system. Just last week, at no cost to the state, the National Center had staff in Nebraska working on this project. Again, the Supreme Court is exploring long-term efficiencies but we need time and tools. The current proposals will decrease the effectiveness of the state's judiciary and the burden will be borne by our already underpaid employees. It does not appear that at least some other state employees will be required to make the same sacrifices. However, an exemption from further cuts this fiscal year, or an enactment of our short-term proposals during this Special Session will reduce the immediate consequences and maintain our ability to increase effectiveness in the long run. Thank you again for the opportunity to appear at this hearing. I'd be happy to answer any questions that you may have. The second handout you got was the National Center for State Courts report on futures, the future of the Nebraska courts. [AGENCY 05]

SENATOR HEIDEMANN: Senator Wightman first. [AGENCY 05]

SENATOR WIGHTMAN: Thank you, Mr. Chairman. Thank you, Mr. Chief Justice. You talked about the fact that your employees probably would be impacted different than others. You have very few employees, if any, that are under union contract. Is that correct? [AGENCY 05]

MIKE HEAVICAN: None of our employees are under union contract nor can they be, so they do not have the benefit of being protected by collective bargaining agreements. [AGENCY 05]

SENATOR WIGHTMAN: You passed out the map that shows the counties that are under 650 but I assume many of those counties are probably under 200, aren't they, particularly, a couple of the Sandhills counties? [AGENCY 05]

MIKE HEAVICAN: Some of them definitely are. Now, you should know that we do not have full-time staff in many of those counties now. Nevertheless, if we essentially close those courts which would mean firing all of the people who cover those courts, that's about a \$375,000 savings. [AGENCY 05]

SENATOR WIGHTMAN: So it wouldn't be a big savings in the total? The total scheme, I guess. [AGENCY 05]

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MIKE HEAVICAN: No, it would not. It would not. [AGENCY 05]

SENATOR WIGHTMAN: Can you tell us typically on some of those counties, I think, there are about a dozen in Nebraska that are under 1,000 in population, on those do you have any full-time staff? You have a clerk of the district court that may serve in some other capacities. Is that correct? [AGENCY 05]

MIKE HEAVICAN: I believe we cover almost all of those with part-time people, and some of them very sparsely. [AGENCY 05]

SENATOR WIGHTMAN: Many of them what, only on the days that a district judge would be there, or...? [AGENCY 05]

MIKE HEAVICAN: Or a county court judge. [AGENCY 05]

SENATOR WIGHTMAN: ...or county court. Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 05]

SENATOR MELLO: Thank you, Mr. Chairman. Thank you, Mr. Chief Justice. A few questions for a few of us who are not attorneys in the body. It's my understanding that the Supreme Court we cannot affect judges salaries or essentially we cannot ask to be cut judges salaries due to constitutional restrictions. [AGENCY 05]

MIKE HEAVICAN: Judges are constitutional officers and, yes, that is a legal quagmire. (Laughter) [AGENCY 05]

SENATOR MELLO: I know I, and the committee knows this too, an issue I worked with last session regarding court employees and I think the testimony that was presented to the Appropriations Committee in regards to the very low wages that the court employees make, many have second jobs. A few actually are on Medicaid roles, actually as a state. You mentioned two other areas in regards to possible furloughs. Is there a possibility, are you looking at furloughs with the lower paid court employees as well? [AGENCY 05]

MIKE HEAVICAN: Well, we have, obviously we have different scenarios that we could look at, but because our base is diminished to begin with because judicial officers cannot have their salaries reduced, we're looking at all the nonjudicial people. And we've looked at different methods but obviously it's a big penalty even if we say everybody under \$30,000 doesn't get furloughed. That just means those between \$30,000 and \$100,000, and there aren't many near \$100,000, have to bear more. [AGENCY 05]

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SENATOR MELLO: Okay. One last question and I can go through the entire report but I'll ask you first if you can kind of give me some general direction. According to the job vacancy report provided to the Legislature by the Department of Administrative Services that answers directly to the Governor, it says that there's 171 vacant positions right now within the Supreme Court agency to the tune of \$6,036,000 in change. Is that accurate? [AGENCY 05]

MIKE HEAVICAN: Not that I'm aware of. I think we have 15 vacancies. [AGENCY 05]

SENATOR MELLO: Okay. [AGENCY 05]

MIKE HEAVICAN: And those are mostly in probation. [AGENCY 05]

SENATOR MELLO: All right. Thank you, Mr. Chief Justice. [AGENCY 05]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 05]

SENATOR CONRAD: Thank you, Mr. Chief Justice. And for those members who aren't attorneys, you have no idea what a special opportunity this is to question a judge. (Laughter) [AGENCY 05]

MIKE HEAVICAN: Careful how you do this. (Laughter) [AGENCY 05]

SENATOR CONRAD: In all seriousness, thank you. And thank you for being here and for your thoughtful testimony and initially I'd like to commend you and the court and your staff for engaging in long-term strategic planning in relation to the court's functions. That unfortunately is an exercise that many state agencies do not undertake and so I appreciate the planning and the time that is spent with that and the innovative use of technologies as they become available to increase the efficiencies of court operations. Finally, Mr. Chief Justice, you referenced it earlier in your testimony that when you combine some of their proposed reductions for the Supreme Court with other areas, for example, in Community Corrections or otherwise, those cuts can exacerbate themselves. And it seems to me in looking at this that there's over a million dollars, million and a half reduction to probationary services which I think will halt, if not hinder, our state's expansion to the community corrections model which, I think, our state has made a lot of progress in terms of utilizing our correction dollar more resourcefully and more appropriately in my mind. Can you talk just generally about how these reductions would hinder that policy, that policy course? [AGENCY 05]

MIKE HEAVICAN: Sure. Absolutely. The probation budget is really a public safety budget. Probation officers, many of them are on call 24 hours a day, 7 days a week. They do their darnest to carry the heaviest caseload they possibly can so as many people can be diverted to community corrections as possible and that those folks don't

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end up in the state's penitentiary system or in the county court jails. So they do a great deal to relieve those more costly ways of dealing with crime. So if you reduce those numbers of probation officers, if they're furloughed or if we have to make permanent firings, if you will, there are fewer probation officers to be able to take the cases and there simply will be fewer people in community corrections. [AGENCY 05]

SENATOR CONRAD: Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 05]

SENATOR NORDQUIST: Thank you, Chief. With...if you had to go down the road of court consolidation, \$350,000 figure would be laying off all the employees in the highlighted counties? [AGENCY 05]

MIKE HEAVICAN: Right. That's the only way that you can make savings. Those are typically employees in the county court clerk's offices in those counties. And as I said, most of them don't have even one full-time person but we have somebody who covers, you know, several counties at a time, that sort of thing. [AGENCY 05]

SENATOR NORDQUIST: So do you think the neighboring courts, such as Cherry, or neighboring counties, Cherry County, Lincoln, Scotts Bluff, that are surrounded by several counties that would be seeing closures, would those be able to handle that burden with the staffing that they have there currently? [AGENCY 05]

MIKE HEAVICAN: Well, that's what we would have to attempt to do. Some courts would be more readily available to do that than others. [AGENCY 05]

SENATOR NORDQUIST: Sure. That's certainly a challenge. [AGENCY 05]

MIKE HEAVICAN: Right. You know, as a practical matter what we see in our court system is what you see in many other institutions in Nebraska. Our courts in and around Omaha and Lincoln, Hall County and the counties along the interstate are generally busy. Some of them very, very busy. I really challenge you to go into the Douglas County Courthouse or the Lancaster County Courthouse and see how busy they are. On the other hand, obviously, because of population decreases, and so forth, you don't see that busyness, if you will, out in the more sparsely populated areas. [AGENCY 05]

SENATOR NORDQUIST: Sure. Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 05]

SENATOR MELLO: One kind of, I guess, last question, Mr. Chief Justice. Looking through the Governor's proposed cuts, and with all of us under the understanding that

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the judiciary is an independent branch of government, the third branch of government, so to speak, helping provide checks and balances on the two branches of government. On what level, do you think, percentagewise or cutwise can the judiciary branch take in regards to ultimately ending up losing some of those checks and balances services? [AGENCY 05]

MIKE HEAVICAN: Well, there isn't a black and white place where that cuts off and I don't know if I would describe the pain in terms of checks and balances on the other branches of government. The pain is going to come to the ordinary people who use the court system day in and day out. It's going to come to litigants who have to wait to get things done. It's going to come to everybody who has to use the court systems and frankly, everybody does at least indirectly all of the time. And on the probation side of things, again, it's a public safety issue. [AGENCY 05]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 05]

SENATOR CONRAD: Thank you, Mr. Chief Justice. Just one follow-up question because I think the important aspect of these hearings is helping the public understand the circumstances that we're in and I know I've had this conversation with my colleagues off the record but I want to make sure that we have a chance to discuss it on the record. But it's my understanding that the court system's greatest competition in terms of job recruitment and retention, particularly in the more rural areas for frontline court workers, is folks leaving to go work for fast food and other minimum wage jobs is, or slightly more than minimum wage jobs, is that your understanding as well that's it's really just become a very difficult issue for the court system in terms of recruiting and retaining qualified people to work on the front lines? [AGENCY 05]

MIKE HEAVICAN: Right. We've become less and less competitive over the years. Probably more difficult for us is that in the county courthouses our employees are recruited by the county paid agencies. So people who come to work in the county court clerk's office are hired away by the district court clerk's office which is a county funded kind of thing. Or if they're good, they're quickly hired by other people in the courthouses. [AGENCY 05]

SENATOR CONRAD: Okay. Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Do you see that even in the rural areas? [AGENCY 05]

MIKE HEAVICAN: It happens even in some of the rural areas. Obviously, not in every county but in many counties we're not competitive even in the rural areas. [AGENCY 05]

SENATOR HEIDEMANN: Senator Hansen. [AGENCY 05]

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SENATOR HANSEN: Thank you, Chief Justice. Good to have you here today. Clarification question on the map that you sent out. You said that closing all, taking all the employees out of those offices would only save \$350,000 a year. Are there any probation personnel in any of the highlighted area on the map? Full-time or part-time. [AGENCY 05]

MIKE HEAVICAN: There would be probation employees serving those counties. I can't tell you for sure. It would be rare that you would find a full-time probation officer like in Hooker or Grant County, but there are probation officers assigned to the Sandhills. I think they probably are in O'Neill or Broken Bow, something like that. [AGENCY 05]

SENATOR HANSEN: So they are serving the highlighted counties but still don't live there, right? [AGENCY 05]

MIKE HEAVICAN: Most likely, yes. [AGENCY 05]

SENATOR HANSEN: Okay. Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 05]

SENATOR WIGHTMAN: Thank you. Mr. Chief Justice and thank you for the information you've given us. It's been helpful. Do you maintain any figures on the loss of personnel at county levels, say outstate? And it's hard to define outstate, I understand that, or rural areas. [AGENCY 05]

MIKE HEAVICAN: Yeah, we...you know, I don't know that I would have a document I can give you today but we can get you that information. What we find here is that in rural areas our employees do stay with us for a long time, for years actually. But really many of them stay for the medical benefits. Our turnover happens in Douglas County, it happens in Lancaster County on the court side, and probation turnover is, again, most heavy in Douglas County. But it happens more often around the state. [AGENCY 05]

SENATOR WIGHTMAN: And one of the reasons I asked that is, probably in our area, I think, we're more inclined to see people who leave private law firms and maybe go to work for district and county court than the other way around, but. So if you could get us some of those figures... [AGENCY 05]

MIKE HEAVICAN: We can do that for you. [AGENCY 05]

SENATOR WIGHTMAN: ...I'd be interested in looking at them. Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 05]

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SENATOR NELSON: Thank you, Chief, for spending the time with us today. You made a statement, let the judicial system reduce in its own way. What were you applying that to, the operational costs? If I understood you correctly. [AGENCY 05]

MIKE HEAVICAN: Well, mostly what I meant there was, we've got some cash funds that we don't think you ought to touch at all, so let us make that determination. Obviously, we'd prefer that you not touch any of our cash funds but we're willing to work with you on that, but let us make those selections. And more importantly, if you would give us the authority to move some of the remaining excess in cash funds to cover some things, that would be very helpful to us. In particular, we think we could cover some things in that second year. This first fiscal year, the worst case scenario is not as bad as the worse case scenario the next fiscal year, which I do not think that we could possibly cover without furloughs. And if we had the authority to go into those cash funds a little bit, we could hope to cover the furloughs for probation and really for the other courts too. [AGENCY 05]

SENATOR NELSON: Well, you also spoke about you would prefer just an exemption for the first year here. We show some columns here and I see a long column of cash funds, so you would prefer that those not be interfered with on your...that you could take the across the board cuts, you think, at least you could prepare for the second year? [AGENCY 05]

MIKE HEAVICAN: We would prefer you put the across the board cuts to the second year too. That would be our first preference. Our second preference is, you give us some authority to go into some of those cash funds. [AGENCY 05]

SENATOR NELSON: But you would not want them reduced...the cash funds reduced in part in any way this year around, this year? [AGENCY 05]

MIKE HEAVICAN: That would be our first preference. We had some funds, you know, if you're going to reduce them, we have some funds that we would say, please let us make that determination in some funds where, I suppose, less concerned about. [AGENCY 05]

SENATOR NELSON: Well, I see for instance, computer automation and there would be a reduction of \$100,000 the first year and \$200,000 and so, that you would, what be able to dip into. Is that right in that particular area just as an example? [AGENCY 05]

MIKE HEAVICAN: That's an example. More importantly for us would be the ability to dip into the Community Corrections Cash Fund. [AGENCY 05]

SENATOR NELSON: Okay. The Council for Discipline Cash Fund, does that pay the

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salaries? The councilman, the... [AGENCY 05]

MIKE HEAVICAN: It pays Dennis Carlson's salaries and he's got two people and I think the secretary type person. [AGENCY 05]

SENATOR NELSON: Okay. What else would that cash fund be used for besides salary? [AGENCY 05]

MIKE HEAVICAN: Well, we have expenses every time a lawyer has a serious disciplinary problem. We have to go through an investigation process and there's a whole procedural process we go through that requires money to pay somebody to do that. [AGENCY 05]

SENATOR NELSON: Okay. Do you know what...how much, how great a reduction that would amount to? We're talking all together \$150,000, \$170,000 over the two years. We cut out half of your cash fund there or 25 percent as far...just as an example, the Council for Discipline, if you know or if you have an idea? [AGENCY 05]

MIKE HEAVICAN: I really don't know that figure. I can tell you that those folks out there do their own cleaning. They do their own...they clean their own bathrooms, they do their own vacuuming. That is a very, very lean agency. [AGENCY 05]

SENATOR NELSON: From the looks of the building, it's pretty low rent as well, so. (Laughter) [AGENCY 05]

MIKE HEAVICAN: That is true. (Laughter) [AGENCY 05]

SENATOR NELSON: Thank you very much. [AGENCY 05]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you for coming in today. [AGENCY 05]

MIKE HEAVICAN: Thank you very much for this opportunity. [AGENCY 05]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 05, the Supreme Court? Welcome. [AGENCY 05]

LEN SCHROPFER: (Exhibit 5) Thank you, sir. Good afternoon, Chairman Heidemann, members of the Appropriations Committee. I'm Len Schropfer, farmer in Fillmore County, very grateful to be here. We are suggesting that you could save money by a moratorium on enforcing what many people consider an unconstitutional marijuana prohibition. Alcohol prohibition required a constitutional amendment. Most enforcement people know that alcohol is far more dangerous than marijuana, far more likely to

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contribute to traffic accidents and fights. And as Senator Conrad has observed, you would save a lot of money that is going to prisons. There is no sane reason to lock up people for having marijuana. Thank you for your thoughtful attention. I've passed out a paper there entitled End Cannabis Prohibition, and I do welcome questions. [AGENCY 05]

SENATOR HEIDEMANN: Thank you for coming in today. Are there any questions? Senator Conrad. [AGENCY 05]

SENATOR CONRAD: Mr. Chairman. Thank you for joining us here today and just to clarify for the record, I'm not exactly clear as to what the position is in relation to this budget item, but I'm always in favor of smart utilization of our resources whether they be in the criminal correction system or otherwise. But I don't think I've ever endorsed a decriminalization of marijuana, so just wanted to be clear about that. [AGENCY 05]

SENATOR HEIDEMANN: Are there any... [AGENCY 05]

LEN SCHROPFER: You are not asking for a comment? [AGENCY 05]

SENATOR CONRAD: No. [AGENCY 05]

LEN SCHROPFER: I'm sorry. [AGENCY 05]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you for coming in today. [AGENCY 05]

LEN SCHROPFER: Thank you very much. [AGENCY 05]

SENATOR HEIDEMANN: Are there anyone else wishing to testify on Agency 05? Good afternoon. [AGENCY 05]

MIKE KENNY: Good afternoon, Senator Heidemann, my name is Mike Kenny. I am the current president of the Nebraska State Bar Association. I am here to address one issue in the Supreme Court budget and that is the cash fund for the Council for Discipline. Before doing that, I would like to comment on the presentation from Chief Justice Heavican just a moment ago. In my capacity as president-elect of the State Bar and then now as president, I've had the opportunity several times to meet formally or informally with several of the Supreme Court Justices, including Chief Justice Heavican. And I've always walked away impressed because we've always, without exception, discussed ways to save money and utilize resources in the court system every time. It's on their mind constantly and the one cost-cutting effort that I don't believe he did mention was in addition to the mileage reimbursement was cutting back on allowable mileage itself. And we hear the grumbling from the other side that the Chief Justice may

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not hear, but they continue to go forward and try to find ways to save the money and I applaud them for that. On the issue that I'm here for, the cash fund for the Council for Discipline. Senator Nordquist asked Frank Daley, who is smarter than me in several respects, one he didn't answer the question, whether there was a constitutional issue involved in this. And I would answer that question. I'm not so sure there isn't. And I say that for this reason, the cash fund for the Council for Discipline consists of dues paid by attorneys in Nebraska who are primarily in private practice. It is not taxpayer money. It is not government state money. It is private money paid as dues which is now being asked to...they're now asking to take that money and put it in the General Fund. And I think there might be a constitutional issue involved in that. If not, an illegal taking of perhaps unequal representation because they're going to have to make that up and private people are personally making up a drop in the projections for the federal tax or for the state tax projections. The second point that I want to make, and the last point that I want to make, is the enabling legislation for this fund is Section 24-229 and it states in the statute: The fund shall only be used to pay the costs associated with the operation of the office of the Council for Discipline. I think that that would be another hurdle that would have to be faced for taking basically private funds that have been earmarked by statute for a particular purpose and using them for something else. I will be happy to answer any questions that you might have. [AGENCY 05]

SENATOR HEIDEMANN: Are there any questions? Seeing none, thank you for...Senator Wightman, excuse me. [AGENCY 05]

SENATOR WIGHTMAN: I had one question, I guess. Even if it isn't unconstitutional, or there's a constitutional question, there's certainly a legality question in light of it flies in the face of a statute, I assume, is that...? [AGENCY 05]

MIKE KELLY: That's certainly my first impression. [AGENCY 05]

SENATOR WIGHTMAN: Thank you. [AGENCY 05]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 05]

MIKE KELLY: You're welcome. Thank you. [AGENCY 05]

ROBERT BARTLE: Good afternoon, members of the committee, I'm Robert Bartle, B-a-r-t-l-e, and president-elect of the State Bar Association. My job is also as president-elect to be president of the Nebraska Lawyers Foundation. That is an entity created about five years ago for the sole purpose, among others, of funding things like the Volunteer Lawyers Program that you heard referred to earlier when the Legal Services Foundation was testifying. What I want you to know is that while we are always looking for the voluntary contributions of lawyers throughout the state, as well as the sole funding of our foundation to man the self-help desk in Douglas County or Lancaster

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County, in the farther reaches of the state, in the small courthouses that Chief Justice Heavican talked about, in the smaller towns like little St. Paul, Nebraska, where I grew up, we have a harder time, whether it's volunteer lawyers by force of numbers or the great distances involved in providing volunteer legal services. So by no means when you cut back on things like Legal Services Foundation or those funds that reach those smaller courthouses throughout the state can we step in, even with our Volunteer Lawyers Program. And that's why I want to endorse the testimony of not only the Chief Justice, but the Legal Services Foundation and ask your consideration in that regard. That's all I have. [AGENCY 05]

SENATOR HEIDEMANN: Thank you. Are there any questions? Seeing none, thank you. Is anyone else wishing to testify on Agency 05, the Supreme Court? Seeing none, we will close the public hearing on Agency 05, the Supreme Court, and open up the public hearing on Agency 09, the Secretary of State. Welcome. [AGENCY 05]

JOHN GALE: (Exhibit 6) Thank you, Chairman Heidemann and members of the Appropriations Committee. It's a pleasure for me to be here before you today. I'm John Gale, G-a-l-e, Nebraska Secretary of State. There's just a couple of items that I want to address certainly in the larger issues that are looming before you as member of the Appropriations Committee. Ours are fairly small issues but because government budgeting can be somewhat obscure and somewhat Byzantine and you are the ones who will need to figure that out in your appropriations process, sometimes understanding the smaller issues help you understand some of the larger issues. As you know, we're a small agency. We have some 52 employees in the Secretary of State's Office. We have several major divisions. In the Secretary of State's Office we're very dependent upon five cash funds. We probably don't receive general tax money for more than 13 to 15 percent of the funding for the Secretary of State's Office. We feel that we're somewhat a trustee of fiduciary of the cash funds that we receive. For example, the Corporations Cash Fund amounts to fees paid by some 80,000 corporations, businesses, small and large, across the state of Nebraska, on an annual basis. And they expect good service, prompt service, and very top-notch service. So we try to provide the best information technology we can for our corporations division. The same is also true for the UCC division. Hundreds of banks across the state who are making loans to small businesses and large businesses are only protected by filings with our office so they expect first-class, top-notch, really state of the art technology and rapid service, quick service, safe service, and secure service. So as a result, these cash funds are very, very important to us in providing the service to the people that are paying the fees. Now our cash funds sometimes become somewhat large because that money is a fairly constant flow. So we have been asked to, in the past, contribute a portion of our cash funds toward budgetary crisis of the state of Nebraska. We recognize that. We accept that. We understand that. But we do have a couple of issues that we do want to address. So in terms of the cash funds, we accepted the \$2.9 million that was transferred from our cash funds at the beginning of this biennium. We're now

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being asked to transfer another \$250,000 this year and next year and we understand that and we accept that. This does not deplete our cash funds however. We still have the funds there to continue to operate and provide the services that are expected by the bankers, and by the businessmen and women across the state of Nebraska, as well as thousands of licensees who likewise contribute to these funds. What we're going to simply address real quickly, one, is our revolving fund. Our management services division has a revolving fund which is internal, a revolving fund is charges made to other state agencies who pay fees back to us for the micrographing, the scanning, and for the paper records management. You know of our big warehouse down on 8th and K, the old public utilities building that is full of our records and our services, and we're simply saying, we don't quite understand why we have a 2.5 percent cut on the entirety of that appropriation for this year or 5 percent next year because with revolving funds like the Department of Administrative Services, they take out their fixed costs first before they applied the 2.5 percent and the 5 percent. So for our revolving funds we're saying we just want equity parity consistency on our revolving fund, because two-thirds of that million dollar appropriation is fixed costs. It's our lease, it's our equipment maintenance contracts, it's our software maintenance contracts, it's...it doesn't vary. And if you eliminate that and then apply the percentages, we fully understand that and that's what the Department of Administrative Services has done on its revolving funds. So we're just saying, just please be consistent with us. In terms of the other...in terms of all of our cash funds, this is the first time in the years that I've been Secretary of State where we've gone through other crisis such as after September 11 crisis there was a Special Session as well to address budget. And we've always been asked to contribute cash funds, which we've always been willing to do. But this is the first time where we've had our appropriation cut in terms of our ability to render the services, so for these many, many entities out there that are paying in and expecting top-notch quality service, we can reduce our cash fund as long as we have our appropriation to provide the services. But when you reduce our cash funds and also reduce our appropriation, we're put in a double bind in terms of providing the quality of service expected of the people who pay those fees. So for those reasons we simply ask that you give us a parity on our revolving funds so that we can maintain our fixed costs and that on our cash funds, there's no reason to have a cut in appropriation because it doesn't return any money to the General Fund. It doesn't provide any tax funds to the government budgetary process. These are cash funds. They allow us to provide the services that are expected of us. Thank you, Mr. Chairman, and I'll certainly take any questions. [AGENCY 09]

SENATOR HEIDEMANN: Senator Harms. [AGENCY 09]

SENATOR HARMS: Thank you, Mr. Gale for your testimony. Thank you for what you do for this great state. [AGENCY 09]

JOHN GALE: Thank you. [AGENCY 09]

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SENATOR HARMS: A couple of questions I wanted to ask you. What is, will the funds that the Governor has recommended be eliminated from your budget, will that eliminate staff? I mean, when you're looking at the staffing, will you be short staff or you got to take staff out to cover your costs or what? [AGENCY 09]

JOHN GALE: Well, that's certainly something that we have to look at. We are at will so I don't have labor contracts that I need to be concerned about but I have services I need to provide. Now, I have already eliminated one administrative assistant position this year anticipating that this was certainly a tight economic time. We were advertising for a new electronic records manager and we've cancelled that advertising and we're not going to fill that position. So we're trying to be attentive to particularly management level employment and how we can be as tight as possible and still provide the services. [AGENCY 09]

SENATOR HARMS: Do you paper file your records or you're "digally" digitally, I can't even talk today, filing your records? What are you doing with that and the storage. And it seems like if you would use a lot of paper it could be extremely expensive. Have you looked at anything about putting that electronically into a file? [AGENCY 09]

JOHN GALE: Senator, I'm sure you're familiar with that coming from Western Nebraska Community College. Well, this is our records management revolving fund. This is what we do. We have very, very enormous micrographic equipment and scanning equipment and we provide this service at, we think, a very fair cost to agencies. But it's up to them to choose to do it. And many agencies would rather store their paper records at the K Street property so we have probably 65,000 to 75,000 boxes floor to ceiling in four floors of that building that agencies don't want to digitize because they don't want to pay that. The agencies that are trying to maintain their records in a more modern method...actually it's a much more secure, safer, and more easily preserved records than paper, do go ahead and have us do scanning and digitizing and so that service is what we try to provide, have those funds come back into the revolving fund so we can continue to maintain that equipment and that service. We wish that more agencies would indeed digitize their records so that we could reduce those boxes and get the records on a more permanent status. [AGENCY 09]

SENATOR HARMS: Mr. Gale, what is the total amount of funds that you have in your cash funds, overall just...? [AGENCY 09]

JOHN GALE: I would have to get that to you. I'm not...I can't give you a precise number. Maybe Senator Mello is going to answer that question for me, but (laughter) I don't...you raised your hand. I wasn't sure. But I do have my budget officer with me. We can provide that. They fluctuate, Senator, like the UCC, a corporation fund, and the collection agency fund. They can vary between \$500,000 and a couple million depending on when the service fees are being paid. So like most cash funds, they

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fluctuate from year to year depending on when the money comes in. But they are fairly large cash funds and I can understand why they've been the object of some transfer in the past and why they would be this time. But as long as we still have our appropriation and the cash that's left, we can provide the top quality service that our banks and our businesses and our licensees expect. [AGENCY 09]

SENATOR HARMS: Thank you. [AGENCY 09]

JOHN GALE: Thank you, Senator. [AGENCY 09]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 09]

SENATOR FULTON: Thank you, Mr. Secretary. There is, a while back we had and I don't know if it was last year or if it was the year before, but at one point I understood that there was some statutory provision for the preservation of all media in a durable format. Do you remember that discussion? And my question was, why can't we utilize electronic media for X, Y and Z? And there was a response to that that there had to be some durable format that format being print or microfiche, or microfilm or what have you. Is there still statutory provision or is this more a choice of the agencies? [AGENCY 09]

JOHN GALE: Well, the definition of durable medium was left to my discretion and I had a committee of some 12 who worked on that a year ago and we came up with a final definition that was adopted as a rule. And the intent that we have is right in line with what you're suggesting. When you realize that we have tens of millions of electronic messages being exchanged now by e-mail and, of course, the various means of electronic communication are increasing, so one of the things you provided that is still in the budget is for our electronic content management, RFP, or public bidding to provide us with the opportunity to manage the electronic records just as we manage the paper records. We have to find any single piece of paper within 24 hours in one of those tens of thousands of boxes to get to an agency that needs it. We need to be able to do the same thing with our electronic records, but we're way behind in terms of being able to meet that challenge. The more that we can convert to micrographics, the more we convert to digitizing makes life easier for the Historical Society, makes life easier for us, may not need that great big building in the future if we could get records under control. But right now, we got a lot of them. [AGENCY 09]

SENATOR FULTON: Thank you. [AGENCY 09]

JOHN GALE: Thank you, Senator. [AGENCY 09]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 09]

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SENATOR MELLO: Mr. Secretary, thank you for your testimony today. I only have one question. According to the job vacancy report issued to the Legislature by the Department of Administrative Services that answer directly to the Governor, it says that the Secretary of State's Office currently has 14 vacant positions that equate to \$408,000. Is that true? [AGENCY 09]

JOHN GALE: In terms of desks that are empty that would not be true. We do fill positions because of the volume of work that comes up at the end of every year when you have either 50,000 business entities that are filing their profit reports, or in the off year when the nonprofits are filing some 40,000 of them, we need to bring in temps during that period of time and so that does increase our employment during those periods of time. In terms of where those 14 vacancies, you're saying vacancies? [AGENCY 09]

SENATOR MELLO: Vacancies. I mean we can go through for an example, there are four vacant positions in the commercial code program, number 89. There is two positions that fall within the enforcement of standards records, program number 86. Enforcement of standards, there's one position, director position, program 86. Records technician, vacant position, enforcement of standard, program 86. [AGENCY 09]

JOHN GALE: I would say this, we have been authorized for various positions. For example, we're supposed to provide retention record advice and counsel to political subdivisions. That position was authorized but it's never been appropriated, so that spot is there. The public subdivisions like the counties and the courts really need an assistant who is a trained retention schedule assistant but we can't fill that spot because we don't have the appropriation for that. So that's an empty spot. We also have a deputy spot for the records management. I have a deputy but her assistant deputy spot is open which is the spot that we can't fill because I've cancelled that publication simply for, I think, judicious budgeting purposes. So we do have some vacancies out there like that. I think some of those vacancies are probably resulting simply because of very efficient economic use of our staff and technology. Information technology is the best way to prevent increase of government and also to eliminate and make more efficient the government the staffing that you have. And so we are a very, I would call ourselves, a top of the line agency in terms of use of information technology. So some of those positions may not be filled currently because we've been able to use technology instead. [AGENCY 09]

SENATOR MELLO: Are those positions still funded within your budget then? If they're not filled, are they still funded right now through...? [AGENCY 09]

JOHN GALE: I think that's probably correct. [AGENCY 09]

SENATOR MELLO: So what do those funds go towards? [AGENCY 09]

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JOHN GALE: Well, there's a lot of expenses. For example, we use Northrop Grumman in a very major way because they maintain the quality of our software. And there's a constant need to upgrade that software to accommodate the online services that we provide to banks and corporations. And that's a very expensive undertaking so some of that funding is used for the contracting for external services that we can't afford to have internal. [AGENCY 09]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 09]

JOHN GALE: Thank you, Mr. Chairman. Thank you, members of the committee. [AGENCY 09]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 09, Secretary of State? Seeing none, we will close the public hearing on Agency 09, open the public hearing on Agency 10, the State Auditor. [AGENCY 09]

MIKE FOLEY: (Exhibit 7) Thank you very much, Mr. Chairman, members of the Appropriations Committee. For the record, my name is Mike Foley, F-o-l-e-y, and I'm the Auditor of Public Accounts. I realize that you have yet to hear today from the agency directs, about a dozen or so more agencies, so I will be exceedingly brief in my remarks. I'd like to offer just a few thoughts regarding the impact of the Governor's proposal on the State Auditor's Office. The Governor's proposed cuts fall in three different ways on my agency. First, he proposes \$180,000 in across the board cuts of General Funds. Secondly, the Governor has proposed \$145,000 in recapture of prior cost savings carried over from the biennium. And thirdly, he has proposed taking about \$81,000 in cuts from my office from federal funds for audit work that's already been performed. The total proposed cuts in my office are just over \$400,000. And for a small agency that's pretty substantial money. About 98 percent of my budget is personnel related expenditures. There's no money there for out of state travel, there's no money there for simple things, like replacement of computers, for example. The computer that I use is five years old and that's not unusual in my office. Virtually every member of my staff has a computer that's four or five years old. There's just no money, as there had been in the past, to replace those kinds of things as I would like to do because inevitably they're going to wear out and need to be replaced. So anyway, with 98 percent of my budget devoted to personnel expenses, obviously, the cuts that I will incur are going to result in a reduction of staff, staff furloughs, or perhaps a combination of those approaches. There are no vacancies on the staff, there's none on the horizon that I know of, and therefore a reduction in staff hours is really the only way that I can achieve the magnitude of savings that the Governor is asking of my agency. Naturally, I'm concerned about that. My concerns arise with respect to the need for the state to have good, strong oversight of fiscal issues, particularly at this time as we try to position ourselves for the long term. However, I'm also aware from my personal experience from

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sitting on this committee, in fact just the last time the state went through this economic downturn cycle, I sat on this committee and I know of the need that you're going to...the need that you have to make very significant cuts, as difficult as they will be. After all, that's why the Legislature was called into session. And that's what is going to be happening over the next couple of weeks. I circulated to you just a couple of quick charts that we pulled together that show the impact of the sharp increase in auditing of federal funds that flow through our various state accounting systems, through the various state agencies. Because of the sharp increase in ARRA, or federal stimulus dollars, the number of hours that my staff and I will spend auditing federally funded programs has and will continue to increase significantly. And this additional federal audit burden is coming at the expense of state and political subdivision auditing. The federal government requires that the federal stimulus programs be audited and all that audit work falls on my agency as obviously the state agencies who receive those funds cannot audit themselves. The practical effect of this is that my office has fallen further and further behind on needed state government auditing. The proposed cuts will only serve to make that problem a larger one. As painful as it will be, I can accept the need for the across the board reduction in General Fund appropriations for my agency. If you take that cut I'll reduce my staff and make those cuts work to the best of my ability. However, I ask that you not cut the cash funds that my agency receives as those funds are merely a reimbursement of costs that have already incurred. I cannot reverse those expenditures retroactively. I believe those cuts are not appropriate and should not be taken as I have no choice but to do the federal funds auditing. And the federal government provides monies to cover those costs. In the interest of time, I'll conclude here, unless you have questions of me. Thank you very much, Mr. Chairman. [AGENCY 10]

SENATOR HEIDEMANN: Senator Harms. [AGENCY 10]

SENATOR HARMS: Thank you, Mr. Foley, for coming. And again, thank you for what you do for our state. [AGENCY 10]

MIKE FOLEY: Thank you, Senator. [AGENCY 10]

SENATOR HARMS: You talked about either furloughing or reducing staff. Could you give me just an estimate that, it doesn't make any difference what the combination is, but what's the bottom line here, so it gives us a better picture of what this actually does to our office. [AGENCY 10]

MIKE FOLEY: Sure. The bottom line is if you take every dollar of cut that the Governor's proposed, and I'm not asking you to do that (laugh), but if you did that we're probably talking about four or five people out the door permanently. Or I could perhaps layoff two people and then furlough the rest of the staff, I don't know, 10, 12 days for the next...over the course of the next year, something along those lines. There's probably

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four or five positions or a furlough lesser cut approach. [AGENCY 10]

SENATOR HARMS: Okay, thank you very much. [AGENCY 10]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 10]

SENATOR MELLO: Thank you, Mr. Auditor. According to the job vacancy report that was given to the Legislature by the Department of Administrative Services that answers directly to the Governor, they say you have two job vacancies to the tune of \$103,000. Now you just said that's not true. [AGENCY 10]

MIKE FOLEY: I...yeah, I am...I've not seen that report. I'm not sure exactly how it was developed. I'm a little skeptical of it, to be honest with you. I can tell you that with my budget today, regardless of what might happen in the next two weeks, with my budget today there's not one dollar available to hire anyone else. [AGENCY 10]

SENATOR MELLO: Okay. So there's no vacancies. [AGENCY 10]

MIKE FOLEY: There are no vacancies. [AGENCY 10]

SENATOR MELLO: No vacancies in your department? [AGENCY 10]

MIKE FOLEY: No, we haven't had one in quite some time and... [AGENCY 10]

SENATOR MELLO: Okay. [AGENCY 10]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 10]

SENATOR CONRAD: Thank you, Auditor Foley. I guess, I was just wondering, I read your comments in the paper prior to the start of special session. Then you reiterated the point here today in your testimony. Was it an inaccuracy or an oversight earlier when you heard our dialogue with Director Oligmueller about really their responsibility for additional oversight related to stimulus funds rather than...they didn't mention any for your office. So... [AGENCY 10]

MIKE FOLEY: Well, they certainly do have oversight over the federal stimulus dollars and developing a program, proper expenditure of those dollars. But the federal government requires that they be audited. And Jerry's office does not do auditing. It's something...there's a specific audit report that has to be filed with the feds, it's a 133 audit report is the technical term for it, only my office can produce that report. [AGENCY 10]

SENATOR CONRAD: And how much time has your office been on those functions in

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the past year? [AGENCY 10]

MIKE FOLEY: Well, quite a bit. That's what this chart attempts to address. It's thousands of dollars for all our federal... [AGENCY 10]

SENATOR CONRAD: And that's specifically for stimulus dollars. [AGENCY 10]

MIKE FOLEY: Oh no, no. I would have to break that out for you. [AGENCY 10]

SENATOR CONRAD: Right. Okay. [AGENCY 10]

MIKE FOLEY: And then as you can see the sharp increase, that's probably the stimulus (inaudible). [AGENCY 10]

SENATOR CONRAD: Well, I just wanted to make sure that we didn't have a duplication of efforts or activities and that people weren't hiding behind stimulus funds to protect their own personal budget. So thank you. [AGENCY 10]

MIKE FOLEY: Yeah. [AGENCY 10]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 10]

SENATOR WIGHTMAN: Thank you, Mr. Chairman. Thank you, Mr. Foley, for being here and providing us with good information. You talked about how many employees you might have to lay off or how much staff. How many employees, maybe you said that, total do you have? [AGENCY 10]

MIKE FOLEY: Right, the entire staff is 45 persons, 41 auditors, legal counsel, and 3 support staff. [AGENCY 10]

SENATOR WIGHTMAN: Forty-five total. [AGENCY 10]

MIKE FOLEY: Total. [AGENCY 10]

SENATOR WIGHTMAN: And do you do some of your audits through contracts with... [AGENCY 10]

MIKE FOLEY: No, no longer. We did at one time. When I came into the office there was some of that. And it got to be very, very expensive, so we just... [AGENCY 10]

SENATOR WIGHTMAN: Everything is done inhouse. [AGENCY 10]

MIKE FOLEY: ...we've stopped all that. We're doing it all inhouse. [AGENCY 10]

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SENATOR WIGHTMAN: Thank you. [AGENCY 10]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 10]

SENATOR MELLO: Mr. Auditor, I know from your previous experience sitting on this committee you can share maybe a little insight into this. With what your office currently does is there a possibility maybe to look for the Legislature to look, if not during the special session but well maybe even into next session, about consolidating the State Treasurer's Office maybe within the State Auditor's Office, knowing that we can move most of the work out of the Treasurer's Office into existing code agencies and then maybe consolidate what they have left into your agency? Would that be a possibility or a realm? [AGENCY 10]

MIKE FOLEY: It would be a possibility. It would take a constitutional amendment to do it, but it's certainly a possibility. [AGENCY 10]

SENATOR MELLO: Yes, yes. Okay, thank you. [AGENCY 10]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 10]

SENATOR CONRAD: One quick follow up question. Senator Foley or Auditor Foley, I know that you've talked about this in the past. But (inaudible), and you mentioned the reliance on the personnel costs within the context of your budget. Can you tell me how much your office spends on continuing education for employees? [AGENCY 10]

MIKE FOLEY: I'll get you a good number on that, Senator. It's...we do spend money in that area for sure. The CPAs on my staff are required to have continuing ed. I'm going to throw out a number at you and then I'm going to double check it. I'm going to guess it's \$20,000 a year. [AGENCY 10]

SENATOR CONRAD: Okay. And that's all specifically related to either continuing legal educational requirements for the attorneys or CPAs on your staff? [AGENCY 10]

MIKE FOLEY: Yes. There is one attorney, mostly it's for the CPAs. [AGENCY 10]

SENATOR CONRAD: Okay, thank you. [AGENCY 10]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 10]

MIKE FOLEY: Thank you very much. [AGENCY 10]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 10, the State

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Auditor? Seeing none, we will close the public hearing on Agency 10 and open up the public hearing on Agency 11, the Attorney General. Welcome. [AGENCY 10 AGENCY 11]

JON BRUNING: Thank you. Mr. Chairman, members of the committee, I'm the...for the record, I'm Attorney General Jon Bruning, B-r-u-n-i-n-g. I sat in your chair, I understand your concerns and your burden and this is not easy. And we are here to say that we will shoulder our share of the burden. Now, let me give you my nickel, my elevator speech on what we're doing right, if I may. We don't always control our workload. In the Attorney General's Office the cases get filed and we have deal with them. That's a reality. We have to take on the most complex and difficult legal issues that are out there. Several of them arrive without any doings on our part. Most recently, the Omaha Learning Community, there's a lawsuit surrounding that, we'll deal with it. Metropolitan Community College lawsuit, we'll deal with that. But they require manpower and they require our resources. And these are not people that are sitting around, waiting for cases to come. They are people with full caseloads that are working as many hours as they can. And when a big case comes in we still have to deal with it. But we understand you got to close the budget gap and it's ugly. And so we're not going to disagree with the Governor's budget recommendation at this point. Let me give you a couple of examples of what I think we're doing right. Public protection in the consumer mediation center, before I got there in '02, they handled less than 2,500 cases, recovered \$430,000. Now we're doing twice as much work without increasing the budget at all, 4,700 cases returning \$1 million to Nebraskans on average over the last seven years. How did we do it? We have student interns from the University of Nebraska, mostly they get 3 credit hours for coming over. We train the heck out of them and they handle all these consumer complaints. We don't pay them anything by and large. Medicaid fraud, I came to this committee in 2004, asked for a Medicaid Fraud Unit. We were the 49th state to get a Medicaid Fraud Unit. I promised the Appropriations Committee and the Legislature that it would be self-funding within three years. It is at this point, I'm happy to report we're now returning \$15 for every dollar the state spends. On average the match has been about \$150,000 which Nebraska puts into our Medicaid Fraud Unit. We've recovered \$22 million since the inception. Most of that money goes right into HHS's Medicaid fund. So it's real money. This year \$9.2 million alone, so we're catching doctors, providers, others playing fast and loose with the Medicaid system. And the skill of our people matters. I'll give you an example. We had a tax case that is as arcane as you can imagine. I couldn't possibly begin to tell you exactly the details of it. What I can tell you is if I sent me or 25-year-old Joey, the new lawyer over there, we would get absolutely crushed. The lawyer we sent over, Jay Bartel, is probably one of the best tax lawyers in the state. And the guy is worth his weight in gold, \$1.5 million saved for the state, sales tax dispute with the biggest and best lawyers that money can buy on the other side. And our guy, Jay Bartel, by himself whips a pack of lawyers from pick it, you know, the biggest, strongest law firms in the state. Kansas asks us for \$72 million. You remember that. Our lawyers are extremely skilled. That thing, they end up reducing their

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request to \$9 million, they end up getting \$10,000 out of the nonbinding arbitration, \$72 million to \$9 million to \$10,000. I'm not saying it's all our lawyers, but it's a lot of it. Dave Cookson, Justin Lavene, spent a lot of time down in the valley over those seven years. Almost the time the ink was dry on the previous settlement, our guys were down in the valley telling the NRDs what it is they needed to do to navigate the legal minefield. And had we not been down there providing some guidance I do believe we would have been in bigger trouble. So we tried to help. The NRDs deserve credit for that as well. But I think skilled lawyers do matter. In the Criminal Bureau it's harder to quantify from a dollar standpoint. But I will tell you we had a guy that was just convicted, his name is Jeff Glazebrook. This guy sexually assaulted, in 1977, a 97-year-old woman. This is a 32 year cold case. It's thought to be the oldest cold case ever in Nebraska. This guy was days away from being released again. The prosecutor we put on it, Doug Warner, is widely regarded, along with Don Kleine, of Omaha, as the top two...or Don Kleine now in Omaha, as the top two prosecutors in the state. Doug Warner is that prosecutors name. He's from Scottsbluff, he now works for us. He prosecuted a 32-year-old cold case and got it done. And most people thought it was impossible. So we got this guy, Glazebrook, back in prison. He raped a 97-year-old woman. So you can imagine what kind of guy this is. So the reason I tell you that stuff, I feel like the taxpayers are getting a good value out of the Attorney General's Office. We do have concern with reductions to the Interstate Water Litigation Fund. We asked you for \$1 million, you cut it to \$500,000. We didn't...we just said we'll make do with it. To date, we've used \$100,000 of that. But I'm here to tell you, if Kansas decides to go to the Supreme Court, we're going to have to come back to you for a deficit appropriation. The Governor's request is cutting another \$42,000. We're not going to quibble about...or \$43,000, we're not going to quibble about that. But if Kansas goes to the Supreme Court, this thing is going to get ratcheted up. And I'm going to be back in here telling you we've got to have the resources to prosecute that case properly, because if we don't it's going to cost the taxpayers a massive amount. Kansas, it's our understanding they have \$10 million a year that they're spending on this. Our colleagues in North Carolina and South Carolina are arguing about water, they're spending about \$4 million to \$5 million apiece a year. In Nebraska we're doing it with, you know, \$500,000 that we're spending. And that's actually, is that a two year appropriation or is that.... [AGENCY 11]

_____: Yeah. [AGENCY 11]

JON BRUNING: Yeah, that's a two year appropriation. And I think, you know, a lot of the credit goes to Dave Cookson. I mean, he's the most experienced water guy in the state, and Justin Lavene and that team does a fantastic job. So I'm not here to cry to you and say we're not going to get it done, we will get it done. And I'm not going to ring the bell today. But if they take this to the Supreme Court, I'll have to come in here and ring the bell, there's no way around it. So with that, thank you. I know this the least...the most thankless part of being a senator is coming in here. I tell people all the time, they say, well, just cut the waste out. And I'm like, which waste are you talking about, the little kid

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who wants breakfast or the old lady that needs medicine, which part of that is waste? I know it's not easy to find waste. So I appreciate and admire what you're doing. [AGENCY 11]

SENATOR HEIDEMANN: Thank you for coming in today. Senator Conrad. [AGENCY 11]

SENATOR CONRAD: Thank you, Attorney General Bruning. And it's okay if you don't have specifics. I'm just trying to get a general sense of things. But can you tell me roughly how many staff members you supervise in your office? [AGENCY 11]

JON BRUNING: Yes. In fact we just pulled that number anticipating your question. We have 63 attorneys, we have 46 support staff. So that would be 109. [AGENCY 11]

SENATOR CONRAD: Okay. And just generally, can you describe your management style with your staff. Do you consider yourself to be fairly hands-on or do you delegate a lot of the responsibility? [AGENCY 11]

JON BRUNING: I would say I try to find the most talented people I can find and get out of their way. I'm fully cognizant there are many, many lawyers in our office who are better than me, especially at their particular craft. We have subject matter experts on a number of subjects and we let them...I try to get out of their way and let them do their thing. [AGENCY 11]

SENATOR CONRAD: And would you agree that, regardless of what the current economic conditions may or may not be, that it's important that the state not file frivolous lawsuits at any time in order to be good stewards of the taxpayer dollar? [AGENCY 11]

JON BRUNING: Sure, yes. [AGENCY 11]

SENATOR CONRAD: Okay. Would the same theory hold true in terms of the defenses that the state pursues? [AGENCY 11]

JON BRUNING: Sure. [AGENCY 11]

SENATOR CONRAD: Okay. I want to talk about a case that has garnered some recent attention based on your office's involvement in pursuing what I consider to be a very frivolous defense. And the fact that your attorneys put forward a theory that a 12 year old could in fact consent to a sexual assault. And I think that's unbelievable, frankly. And sadly, it's not the first time that's happened in terms of the defenses that your office has put forward. And I want to know how that happened? How that happened again? And what policies and practices you have put in place to prevent that from happening in the

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future? [AGENCY 11]

JON BRUNING: I actually appreciate the question, Senator. You may think I would be offended by it. I'm actually very appreciative by it. I was offended by... [AGENCY 11]

SENATOR CONRAD: Well, I am offended by the situation. So I'm glad to have a chance to talk about this. [AGENCY 11]

JON BRUNING: Yeah, as am I. Yeah. No, I am too. There are roughly 6,000 cases at any given time in our office that we're handling. Those cases, you know, I don't see the answer that's filed by every attorney. I mean this is a big law office, right? And a case comes in, gets assigned to an attorney, attorney along with their bureau chief files a response. These are attorneys, the defense that they used is available under the law. I think it's horrible policy. It's allowable legally. So it came to my attention...I don't... [AGENCY 11]

SENATOR CONRAD: Where is it available legally? Where is it anywhere in statute or precedent that says a 12 year old can consent to sexual assault? [AGENCY 11]

JON BRUNING: It's...I mean, it's...listen, I'm not going to defend it, Senator. I think... [AGENCY 11]

SENATOR CONRAD: So it's not available legally, is that right? [AGENCY 11]

JON BRUNING: Well, no, it is available legally. It can be... [AGENCY 11]

SENATOR CONRAD: According to what precedent or statute? [AGENCY 11]

JON BRUNING: I mean, Senator, listen, it is...it's not... [AGENCY 11]

SENATOR CONRAD: No, it's not meant to be a trick question. [AGENCY 11]

JON BRUNING: No, it's not a trick question. [AGENCY 11]

SENATOR CONRAD: I couldn't understand. [AGENCY 11]

JON BRUNING: I'm not going to defend it, all right. I'm not going to defend it. [AGENCY 11]

SENATOR CONRAD: Okay. [AGENCY 11]

JON BRUNING: I'm just going to tell you there's lawyers and then there's me who also has the opportunity to decide on good policy. So in no way, shape, or form am I going to

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defend it. And I was outraged when I found out it was filed. And I ordered that the answer be changed, which is fairly unprecedented. I rarely look at our lawyers work and say, you screwed up, change that. In this case, I looked at that answer and I ordered that it be changed. And I ordered that it be the policy of the office, which is my prerogative as the Attorney General and not an assistant attorney general, I ordered that assistant attorney general to refile the brief and take that defense out because I was... [AGENCY 11]

SENATOR CONRAD: And was that an inexperienced attorney on your staff who filed that? [AGENCY 11]

JON BRUNING: It was not an inexperienced. It was a very experienced attorney. [AGENCY 11]

SENATOR CONRAD: And did you have a conversation with him about why he pursued that strategy? [AGENCY 11]

JON BRUNING: Yes. And I was sick about it and outraged by it. [AGENCY 11]

SENATOR CONRAD: Because I think you and I could agree that a first year law student or in fact somebody with no legal training would pursue that as a legitimate defense. Is that correct? [AGENCY 11]

JON BRUNING: I mean, you know, these guys don't look at the policy implications of it. Had we left that defense in there, the court...let me put it this way, there's no statute that allows...I mean, there's no statute that says that this is the defense that's allowed. But had we left it in there the court would not have thrown it out. It's a policy decision that's allowing it to come out. There's no...the court would not have said, that is an illegitimate defense. And the judge would not have taken it out of our responsive pleading. So that's how I tell you, it's allowable under the law. Now I think it's terrible policy. And that's what I told our guy. The policy of this office is if there is a minor child involved in a relationship, we will never assert consent. But let me give you an example, just to tell you what we're talking about. Now the policy of my office is any child under the age of consent, under the age of 16, we will not assert contributory negligence or assumption of risk. So here's the reality. You have a 16 year old and 1 day foster child who is dating a 15 year 364 day girl. So these kids are 2 days apart, you follow me? Okay. So let's say the girl goes into the boys room and says, please, please sleep with me. And the boy, who's 2 days apart, and we all know that these age kids do this, let's say that happens. The policy in my office is now we will not assert that that child, let's say the boy is the younger one in that scenario, we will not assert any sort of consent on the part of that child. Now this is an outrage because it was a girl and she was 12. If it was a boy and he was 15, 364 days, we wouldn't be having this conversation. And I agree there's a difference in the two. And that was why I asked my lawyers to change it. But

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you're saying legally it's way out of bounds. It's not way out of bounds legally. What it is, is bad policy, that's why I changed it. [AGENCY 11]

SENATOR CONRAD: Well, regardless of the hypothetical you presented here, my concern lies in the fact that your office was involved in a similar case in 2005... [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: ...that received serious public attention... [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: ...and outrage. [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: And we see it again in 2009. [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: So obviously there had been no policy put in place at your direction to stop that kind of legal defenses from being presented... [AGENCY 11]

JON BRUNING: There was and it wasn't followed. No, there was... [AGENCY 11]

SENATOR HANSEN: Mr. Chairman, is this germane to what we're doing today? [AGENCY 11]

JON BRUNING: I mean, there was an it wasn't followed, Senator. [AGENCY 11]

SENATOR HANSEN: Mr. Chairman. [AGENCY 11]

SENATOR CONRAD: I think it goes to the management of the office and the utilization of state resources to put forward legitimate defenses and claims. And if we do have evidence that that is not happening, it affects budgetary decisions. [AGENCY 11]

JON BRUNING: Well, here's the good new, Senator. Is the people of Nebraska, if they think that I'm a crappy manager, have the right to throw me out next fall. So... [AGENCY 11]

SENATOR CONRAD: That's true, but we have your budget before us in the context of this and other aspects to look at and decide if state resources are being utilized

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appropriately. [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: They're legitimate questions. I appreciate your candor and response. [AGENCY 11]

JON BRUNING: Yeah, right. [AGENCY 11]

SENATOR CONRAD: I'm sorry if Senator Hansen doesn't understand why I'm going down this path. But I think it is legitimate. And it's part of our job to be watchful of these taxpayer dollars. [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: You understand that. I appreciate the dialogue on the record. [AGENCY 11]

JON BRUNING: Yeah. [AGENCY 11]

SENATOR CONRAD: And with that, we can move forward. [AGENCY 11]

SENATOR HEIDEMANN: Senator Harms. [AGENCY 11]

SENATOR HARMS: First of all, thank you very much for coming in. [AGENCY 11]

JON BRUNING: Sure. [AGENCY 11]

SENATOR HARMS: I will tell you I appreciate what you do for this great state. And I know you have a lot of cases that come before you and thank you for what you do. I think there's been a big difference from what I've been able to see over the years of how that office has improved. So thank you very much for that. If we would adopt the Governor's recommendation, you said you have a total of 109 staff members [AGENCY 11]

JON BRUNING: Yeah. [AGENCY 11]

SENATOR HARMS: Okay. Jon, how many would you have to reduce? What's the number you might have to take out? And we could...you could probably furlough...I don't really care about the furlough or...just a reduction. Because it all adds up about the same. So how many staff members would you probably reduce here? [AGENCY 11]

JON BRUNING: We'd probably survive, we'd limp through next June 30. And as of July

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1 we've got a big problem. [AGENCY 11]

SENATOR HARMS: Okay. And what would that big problem...what would...I mean...
[AGENCY 11]

JON BRUNING: Well, it's \$312,000, it probably equates to three of our top tier people or six of our new people and I'm talking lawyers now. You know, and I would probably choose, honestly, to keep our top tier people. I mean, I would say that one Jay Bartel or one Dale Comer is worth, you know, five younger people. Those people are, you know, Dale Comer, you can't even put a value on that guy he's so good. I mean, we have some of our top tier folks are just, I mean, Jay Bartel is saving quietly \$5 million here, \$2 million there, \$3 million. I mean, you know, it's hard to put a value on how skilled some of those people are. And they do make mistakes, I mean, there's no doubt. I mean, they do make mistakes and I was outraged by it. And you know, Senator, we'll have an offline conversation, but there was...there are some other factors. And the question is, do you want me to fire the guy? I'll give you some back story to it. People make mistakes. Human beings make mistakes. And this human being made a mistake. And in the world I live in his mistake is my mistake, that's the way it works, right. I mean, if he files that, I own it. And so, you know, what I would do, Senator, is probably, you know, hope somebody retired, not Dale, not Jay. Hope there's a...you know, I don't know what we'd do. It would be tough. We'd have to figure out how to come up with \$312,000, which is about, you know, at least three or four lawyers. [AGENCY 11]

SENATOR HARMS: Did I understand you to say that you'd get through this, this year. It would be the second year where you would have the real burden? [AGENCY 11]

JON BRUNING: Yeah. And the reason I say that is because we have tried to run lean. You know, we don't have like DAS where they'll have attorney II, and accountant III, and staff support, you know, we don't have those categorized positions. We have just a budget. And in the constitutional offices you can allocate it however you want. And so we don't have open positions. We just kind of allocate resources depending on where the fires are popping up. It's triage essentially. [AGENCY 11]

SENATOR HARMS: Okay, thank you very much. [AGENCY 11]

JON BRUNING: Thank you, Senator. [AGENCY 11]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 11]

SENATOR NELSON: I pass, thank you. [AGENCY 11]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 11]

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SENATOR MELLO: Mr. Attorney General, thank you for your testimony and some of your feedback today. I think you might have answered this question, but I'll ask it for the record. According to the job vacancy report that was provided to the Legislature by the Department of Administrative Services that answers directly to the Governor, it says that the Attorney General's Office has 58 vacant positions, to the tune of \$2,928,000. [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR MELLO: Is that accurate. [AGENCY 11]

JON BRUNING: No, no, that is not accurate. [AGENCY 11]

SENATOR MELLO: Okay. [AGENCY 11]

JON BRUNING: We were surprised to hear that. I was glad you asked for the information because it allowed us to realize that it existed. My understanding is that was put together in the transfer from the old system to NIS in the summer of '02. [AGENCY 11]

SENATOR MELLO: 2002? [AGENCY 11]

JON BRUNING: Two thousand two, I became Attorney General January of '03. I was never aware this was out there until you asked for it and the report was produced. And so I think it's just one of those things when you're switching systems, I'm not blaming DAS...I'm not...you know, I don't think there's anybody to blame. When you're switching from an old system to NIS there were a lot of issues. This evidently was one of them. I think Dana Hoffman, from our office went over and met with DAS today and cleaned it up. The answer is we have zero vacancies. [AGENCY 11]

SENATOR MELLO: Zero vacancies. [AGENCY 11]

JON BRUNING: Zero, yeah. [AGENCY 11]

SENATOR MELLO: Okay. One other question, it will affect I know testimony or possible testimony that comes in from the Department of Aeronautics. Do you use, when you travel statewide, do you use the Department of Aeronautics transportation, their airplanes or another mode of transportation such as, I know, through the University of Nebraska Foundation? [AGENCY 11]

JON BRUNING: Yes, and it depends how far I'm going, of course, I mean, I don't use it to go to Grand Island or places. But, yes, the answer is yes. [AGENCY 11]

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SENATOR MELLO: That's it, thank you. [AGENCY 11]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you for coming in today. [AGENCY 11]

JON BRUNING: Thank you, you bet. [AGENCY 11]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 11? Seeing none, we will close up the public hearing on Agency 11 and open up the public hearing on Agency 12, the State Treasurer. [AGENCY 11 AGENCY 12]

SHANE OSBORN: (Exhibit 8) Senator Heidemann, members of the Appropriations Committee, my name is Shane Osborn, O-s-b-o-r-n, and I serve as your State Treasurer of Nebraska. I'm here today to discuss the fiscal changes for the State Treasurer's Office during the upcoming years. It was my goal, in submitting my budget earlier this year, to submit a budget with a 0 percent growth. Given inflation, medical insurance increases, and an annual 2.5 percent PSL increase, my original budget request this biennium reflects an overall budget cut. Three years ago, during my first few months in office I submitted a revised budget request that also reflected a 2 percent overall officewide reduction. Since the end of the previous administration, a total of 11.88 percent has been eliminated from the state budget, State Treasurer's Office budget. I want to underscore my continuous commitment to ongoing fiscal responsibility which I have placed in the Treasurer's Office. During my term as Treasurer, my office has exceeded outputs in results achieved by previous administrations. To date, the Unclaimed Property Division has returned \$38 million dollars of unclaimed property, more than any previous State Treasurer. The Treasury Management Division processes an average of \$7 billion to \$11 billion a year, representing an increase over the past three years. The State Disbursement Unit, the child support payment center, handles child support payments within the state processes on average over \$23 million a month, representing a 9.63 percent increase during the past three years. Nebraska's new Long Term Care Savings Plan opened 283 accounts last year, for a total of \$500,000, which is quite an accomplishment considering our plan is the first of its kind in the nation and we have a very limited budget to support it. New accounts for the College Savings Plan have grown to 10,754 during 2009, an overall the plan has 173,383 accounts with over \$1.942 billion in portfolio assets. We've accomplished a 10.32 percent participation rate in Nebraska, which is the percentage of children under the age of 18 that have an account. That is by far the best in the country. During the same three year period, the Treasurer's Office has had staffing cuts which after these most recent cuts will represent an overall reduction in staff of 22 percent. Senator, we're doing more, achieving greater results, and all this with less money and personnel. At this time additional cuts have been proposed by the Governor and I believe those cuts are necessary given the current state of our revenue forecast. By the end of this November I will have five vacant positions in office which I'm not planning on filling. Therefore, my

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recommendation to the committee is to reduce the PSL allotment for these positions by \$225,000. In addition, I'll also identified cost savings by reducing the amount of monthly billing statements that are printed and mailed to noncustodial parents in the SDU. My office is in the process of notifying noncustodial parents to educate them on how they can view their monthly statements on-line. By reducing the 75,000 monthly billing statements that are printed and mailed each month, I project that we can save over \$15,000 each month and \$180,000 a year. I've also identified additional smaller cost savings, which include freezing replacement of out of warranty computer equipment; reducing our office's participation in the SOS program; cutting communication services that are no longer being utilized; eliminating contracts from equipment that our office is currently transitioning to surplus. I've also stressed to my staff the importance of continuing to recognize additional cost savings. My office is able to meet the Governor's recommendations. We'll be vigilant in reviewing our budget and we'll further reduce our operating expenses as opportunities allow. Also, as you consider LB3, the proposed bill to move cash funds to the General Fund, I encourage you to review the Nebraska statutes related to the Nebraska Educational Savings Plan Trust. I've attached a legal opinion from Kutak Rock LLP outlining the current statutes pertaining to the assets in the trust. I appreciate your time and would welcome answering any questions you may have for me. [AGENCY 12]

SENATOR HARMS: Thank you very much for your testimony. Do we have any questions? Senator Mello. [AGENCY 12]

SENATOR MELLO: Mr. Treasure, thank you for your testimony. A few questions. One, it appears to the job vacancy report issued by the Department of Administrative Services that goes over, I should say, the first quarter of this fiscal year,... [AGENCY 12]

SHANE OSBORN: Sure. [AGENCY 12]

SENATOR MELLO: ...that by the Department of Administrative Services that answers directly to the Governor, it says that you have no vacant positions as of the first quarter of the year. Is that correct? [AGENCY 12]

SHANE OSBORN: Well, I wouldn't say that's correct. I guess we had what would be considered to be one if you were to pull the report today. However, I've recently eliminated the deputy treasurer, legal counsel position, communications, and two more additional position at the STU. [AGENCY 12]

SENATOR MELLO: Okay. [AGENCY 12]

SHANE OSBORN: And so when I took over office there were 63 employees. There's now...there now will be 49. [AGENCY 12]

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SENATOR MELLO: Forty-nine now? [AGENCY 12]

SHANE OSBORN: Um-hum. [AGENCY 12]

SENATOR MELLO: One other quick question. And I know it's...I asked a very similar question to the State Auditor. Knowing some of the duties of the Treasurer's Office that could be essentially given to the Department of Administrative Services, Department of Revenue, and the Investment Council, would it possibly be in the state's best interest to be able to consolidate the Treasurer's Office and the State Auditor's position to maybe a comptroller position, knowing that we have existing code agencies that do preliminary, most of this work that happens in the Treasurer's Office? [AGENCY 12]

SHANE OSBORN: Well, I guess, I haven't thought about the combining. I would tell you that the office is run extremely well right now. We've got some great people. It's very lean. I don't think if you'd absorb it into DAS that you would gain any efficiencies. You might lose some, quite frankly. However, I also...I think it's a good idea to have an independent constitutional officer overlooking these agencies. And that was what I said when I talked about transparency, you know. The Legislature sets it, the Governor signs off, it's good to have an independent person overlooking and just giving a fiscal report. And so I don't see a lot of cost savings from the Treasurer's side. I think these numbers speak for themselves. We've increased efficiencies while reducing staff and dollars spent pretty significantly. [AGENCY 12]

SENATOR MELLO: Okay, thank you for your thoughts. [AGENCY 12]

SHANE OSBORN: Um-hum. [AGENCY 12]

SENATOR HARMS: Thank you, Mr. Mello. Senator Nelson. [AGENCY 12]

SENATOR NELSON: Thank you, Treasurer Osborn, for your good management and the cuts that you make and the conservation that you do in your office. If I understand you, you're telling me that you're okay with the Governor's recommendations in across the board cuts? [AGENCY 12]

SHANE OSBORN: Yes, sir. [AGENCY 12]

SENATOR NELSON: A large one which will come about in fiscal year '10-11 is the cut in Aid to Municipalities. What will that involve? [AGENCY 12]

SHANE OSBORN: That is not anything that I control, that's simply a formula that's given to me... [AGENCY 12]

SENATOR NELSON: Okay. [AGENCY 12]

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SHANE OSBORN: ...by the Legislature. So the MFOs and the likes, that's not what I'm talking about with the cutting. [AGENCY 12]

SENATOR NELSON: Okay. You don't control that then? [AGENCY 12]

SHANE OSBORN: No, I do not. I simply plug it into a program and send out the money. [AGENCY 12]

SENATOR NELSON: So you are not concerned about the cash funds, the transfers there at all? [AGENCY 12]

SHANE OSBORN: No, we, like I said, we've really modernized the office quite a bit. There's a lot of technology out there that's really helped us keep a handle on this. And so we've...it's allowed us to...you know, things are going to be lean, don't get me wrong, but we have to. You know, I mean, the state expects it. And I know my budget isn't one the big ones but I hope that others can follow because I think people expect us to tighten up the belt and that's what we're trying to do here. But we still want to maintain customer service and get the job done right, make sure that we don't drop the ball on the way. [AGENCY 12]

SENATOR NELSON: Thank you. [AGENCY 12]

SHANE OSBORN: Um-hum. [AGENCY 12]

SENATOR HARMS: Thank you, Senator Nelson. Are there any others? Senator Wightman. [AGENCY 12]

SENATOR WIGHTMAN: Just one question, Senator Harms. I'm really doing quickly and hadn't looked at this letter from Kutak Rock before that you referred to. With regard to the administrative funds, which is one of the three funds. You have a Program Fund, the Endowment Fund, and the Administrative Fund. What's the source of those funds? [AGENCY 12]

SHANE OSBORN: Are you...are we talking about the letter on... [AGENCY 12]

SENATOR WIGHTMAN: The letter. [AGENCY 12]

SHANE OSBORN: ...the Educational Savings Plan Trust, that comes money comes from the people participating in Nebraska's 529 Plan. [AGENCY 12]

SENATOR WIGHTMAN: So all of that comes from outside sources. [AGENCY 12]

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SHANE OSBORN: So that's from fees. [AGENCY 12]

SENATOR WIGHTMAN: Nothing comes from the state of Nebraska, from any...
[AGENCY 12]

SHANE OSBORN: No, sir. [AGENCY 12]

SENATOR WIGHTMAN: ...tax appropriation? [AGENCY 12]

SHANE OSBORN: No, sir. [AGENCY 12]

SENATOR WIGHTMAN: Thank you. [AGENCY 12]

SHANE OSBORN: No. Those are essentially sub TA funds that have grown over time.
[AGENCY 12]

SENATOR HARMS: Thank you, Senator Wightman. Mr. Osborn, I just have one
question. [AGENCY 12]

SHANE OSBORN: Yes, sir. [AGENCY 12]

SENATOR HARMS: If we accepted the cuts that the Governor is recommending, are
there any employees that you would have to reduce? [AGENCY 12]

SHANE OSBORN: Oh, I have already made those decisions. And I'm already reducing
them. The final notification will go out tomorrow on a couple, but most already know.
[AGENCY 12]

SENATOR HARMS: Okay. Well, how many are those? [AGENCY 12]

SHANE OSBORN: Well, we'll reduce by four more. [AGENCY 12]

SENATOR HARMS: Four more, okay. [AGENCY 12]

SHANE OSBORN: And one was, you know, my top chief deputy. I'll have to use
Attorney General for legal counsel now, which is fine. But that was, you know, it was a
tough one to make. He was pretty key. But, you know, we've got to do what we've got to
do. [AGENCY 12]

SENATOR HARMS: Thank you for your testimony. No other questions? Thank you.
[AGENCY 12]

SHANE OSBORN: All right, thank you. [AGENCY 12]

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SENATOR HARMS: Do we have anyone else who would speak in favor of Agency 12?
[AGENCY 12]

LYNN REX: (Exhibit 9) Senator Harms, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. I know you've had a very long afternoon so I'll try to make this as concise as possible, as soon as you all have the handouts. I'm here to talk about the cut in Aid to Municipalities and our concerns relative to that cut. And I will wait until the page gets these handed out. I thank her for doing that. There are three specific aid programs for municipalities. If you look at the first sheet, I'd like to just quickly review these. You'll note that the Aid to Municipalities program, in 2002-2003, as well as the Municipal Infrastructure Redevelopment Fund program in 2002-2003, as well as our Municipal Equalization Fund rollover amount, the aggregate cut for municipalities in 2002-2003 was 25 percent in those funds. In 2003-2004, in those same three aid programs the aggregate cut was 34 percent. And you can see the individual numbers that we've outlined for you and how those cuts developed. In 2004-2005, the aggregate cut for those three aid programs for municipalities was 32.5 percent. And I think those are all important cuts. You'll note at the very bottom of the first sheet it notes that in FY 2005-06, through FY 2008-09, we had a 100 percent cut in Municipal Infrastructure Redevelopment Fund for all municipalities except Lincoln. And the reason why Lincoln did not get that cut is because they took it out of their other cuts in state aid since, in fact, they had already been given legislative authority to bond those funds. So essentially, those outline just some of our recent cuts. And the next three pages go through, in detail, the LB numbers and how those developed over the few years. Going to the last sheet, because I know we're under time constraints here today, if you'll look halfway down through the last sheet, the last page that you have in your handout for FY 2009-10, before the special session cuts and, Chairman, we're looking at the last page of this handout, you'll note that Aid to Municipalities is \$11,257,193 per year. The original \$17.9 million has not been fully funded since 1992-93. The MIRF funds have been now totally eliminated. Municipal Equalization Fund, over the last few years, basically all of that was distributed so there's no rollover to distribute. So what we're looking at in terms of 2009 special cuts, which you have in LB3, Section 41, I'm sorry, LB1, Section 41 of LB1. What is proposed is that in FY 2009-10 we get an additional 2.5 percent cut in Aid to Municipalities of \$294,430 and that we get a 5 percent in FY 2010-11 of \$588,860 for a total \$883,290 cut for the next two years. We're really concerned about this because we've had, we think, a very disproportionate amount of cuts across the state of Nebraska. In our 530 municipalities, obviously comprised of cities and villages, across the state it has had some dire impacts on the local level. And in addition to all of these cuts, municipalities and counties will be facing a \$14 million cut in roads funds as of July 1, 2010. It will be, as we understand it in talking to committee counsel yesterday, \$10 million as of January 2010. And then once the next amount kicks in it's going to be another \$4 million on top of that. So that's a \$7 million loss in addition on road funds for

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municipalities. And obviously, the other \$7 million is a loss of road funds for counties. We would respectfully urge that you not cut us anymore. We think we have already had as municipalities across the state a disproportionate amount of cuts and elimination of programs outright. And I know that you've looked at a number of programs, whether it's the Department of Roads programs and how they're being impacted across the state, how that interconnects with what cities are doing. And, of course, we have got not only roads that are not being taken care of maintained, we have personnel that are being laid off across the state. We have had dire consequences already and we respectfully request that we not have anymore cuts. I would be happy to answer any questions that you may have. We know that you have a hard job before you, but again we think that we've taken our cuts in a disproportionate amount. [AGENCY 12]

SENATOR HEIDEMANN: Senator Harms. [AGENCY 12]

SENATOR HARMS: Thank you for your testimony and... [AGENCY 12]

LYNN REX: You're welcome. [AGENCY 12]

SENATOR HARMS: In regard to the municipalities and the loss of aid, do you know of any jobs that will be lost over this and the number? [AGENCY 12]

LYNN REX: I cannot tell you concisely the number of jobs that will be lost. [AGENCY 12]

SENATOR HARMS: Do you anticipate that that might be (inaudible)? [AGENCY 12]

LYNN REX: Yes, I do. [AGENCY 12]

SENATOR HARMS: Okay. [AGENCY 12]

LYNN REX: Yes, I mean, clearly that's already been happening in municipalities across the state. And I want to also emphasize too that what the Aid to Municipalities program started out as being, very quickly, Senator, if I may, it was never just Aid to Municipalities. This was a reimbursement to local governments across the state for property tax exemptions given by the Nebraska Legislature to special interest groups. And I'm not suggesting that those were not valid, I'm not suggesting that those were not important. But I am suggesting that it had a huge impact across the state of Nebraska to the point that during one of the very first years that this occurred, let me give you an example, in 1978, with passage of LB518, and that was just the elimination of livestock, farm equipment and business inventory, those three alone resulted in over a \$250 million loss of revenue to local governments, not base, loss of actual dollars. And obviously, those are legitimate exemptions. But the Nebraska Legislature at that time said, we're going to reimburse you for the amount that you're losing, dollar-per-dollar.

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Then Governor Exon said, we can't afford that, so we're going to put it...ratchet it down to \$70 million. And then, of course, what's happened over a period of time is it's been down, down, down and down. So again, what has happened, to make a long story short, we had a property tax base that was like this that is now like this. And so that is resulting in lots of cuts at the local level. [AGENCY 12]

SENATOR HARMS: All right, I thank you for that. I guess, what I'm really concerned about as we go through all of this is my hope is we can save as many positions as we can, both in state government and county government, however you want to look at this. Because, I think, as you lay people off, if we don't furlough those folks, it just drives the economy into a worse environment. And the more people we can keep employed, the more important it is to this great state and to our fiscal side of the house. So if there's any way you can give us an estimate before we get to the end of this thing, it would really be helpful for us about how many you think might potentially be laid off or furloughed or whatever. Because the furlough and laying people off or cutting their salary, I guess cutting their salary back and furloughing actually balances out about the same. But that's what I'm concerned about. And it really bothers me as we go through this process because I know what's going to happen. And if we can prevent any of this from happening by just knowing in advance this is what it's going to be, we ought to do that. I mean, that's where I'm coming from. So if you can help us in any form or manner, it would be great information for us. And coordinate it so it doesn't get lost, you could just give it to our chair. In my office I might forget where I put it. So if you'd do that for me I would really appreciate that. Thank you. [AGENCY 12]

LYNN REX: I appreciate the question. And we will do a survey, it won't be scientific... [AGENCY 12]

SENATOR HARMS: Well, that's okay. [AGENCY 12]

LYNN REX: ...and, of course, we'll ask our municipalities for their best guess and we will get that information to you. [AGENCY 12]

SENATOR HARMS: Thank you. [AGENCY 12]

SENATOR HEIDEMANN: With the exception of livestock, when it went on, wouldn't that have affected the counties more, really more than the cities? The locals... [AGENCY 12]

LYNN REX: Well, I'm just saying...I'm giving you aggregate numbers from a study that was done at the time. So I don't have it broken out in terms of...I suppose, I could go back and try to look. But in terms of livestock, business inventory, and farm equipment that was passage of LB518, I'm just saying the total amount of those three exemptions alone resulted in a loss of \$250 million to local governments across the state. And I don't know what it is. But you're correct, I'm sure that the counties would be more

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impacted, obviously, by the livestock one. [AGENCY 12]

SENATOR HEIDEMANN: By far, yes. [AGENCY 12]

LYNN REX: In terms of business inventory, obviously, that would be cities, probably disproportionate to counties. And I'm not suggesting that those were not legitimate exemptions. What I am suggesting is that at that time local governments across the state were told that you'll get a dollar-for-dollar reimbursement for the valid property taxes that are lost. And over a period of, I believe, four lawsuits the Nebraska Supreme said, first and foremost it's a frozen class. And so even if you could do it dollar-per-dollar, you're going to have to rename it, come up with something else. And I believe it was John DeCamp that said, we'll just call it aid. And that's how you have in your budget and in LB1 just this line that says Aid to Local Governments. [AGENCY 12]

SENATOR HEIDEMANN: Why would there be a loss of roads funding? [AGENCY 12]

LYNN REX: Roads funding, I'm just suggesting to you roads funding has nothing to do per se with the Aid to Municipalities. [AGENCY 12]

SENATOR HEIDEMANN: And I understand that, but you had talked about... [AGENCY 12]

LYNN REX: Yes, that in addition to these cuts which we think are quite significant, Senator, that in addition to the cuts that are outlined on these five pages, in addition to that we're also going to take another, as municipalities, another \$7 million hit in loss of roads funds as of July 1, 2010. And counties will take a \$7 million hit in addition. [AGENCY 12]

SENATOR HEIDEMANN: I am just asking the reasoning behind that. [AGENCY 12]

LYNN REX: Why the roads funds? [AGENCY 12]

SENATOR HEIDEMANN: Yes. [AGENCY 12]

LYNN REX: Because of the way that the formula is working. And we supported LB846 to stabilize the budget for the Department of Roads. We did support that. But what has occurred as a result of that is, and there is no way anyone could have predicted what was going to happen in 2008, in the fall of 2008, no one could have predicted that, we certainly didn't or I'm sure our board would have never supported LB846, which we did support. But at this point we're just suggesting to you that in addition to all of these cuts we're looking at a serious loss of dollars in terms of road funds. And all of that combined gets to the issue that Senator Harms raised, which is what...how many people are going to be laid off, how many people are going to lose their jobs. We've had city after city told

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us in the last round, whether they have bargaining units or not, they looked at 0 percent increases on the local level. [AGENCY 12]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 12]

SENATOR MELLO: Ms. Rex, thank you for your testimony. And I appreciate, not being here for more than a year, some of the historical perspective you brought to the Aid to Municipalities and how that has come about. But the understanding that you mentioned, which the purpose of Aid to Municipalities and aid to counties was set up as a property tax relief program, which means any cut to this program essentially would lead to, potentially lead to a property tax increase, such as whether it's the city of Omaha or the city of Hastings, that they would be more inclined with this less Aid to Municipalities to raise property taxes. Would that be correct? [AGENCY 12]

LYNN REX: There will be some municipalities that would be fortunate enough that they would have the capacity to raise property taxes. Of the 530 municipalities, the last count we saw, over 240 of them are already at their maximum 45 cent per \$100 of valuation limitation. They have no place to go. They just simply lose, lose, and lose again. That's the problem. [AGENCY 12]

SENATOR MELLO: Okay. Thank you. [AGENCY 12]

LYNN REX: But you're right. Some municipalities do have the...I guess, if you want to say the good news is some actually could raise property taxes to make up the difference if necessary. Thanks for the question. [AGENCY 12]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 12]

SENATOR NORDQUIST: Along the same lines, you have your ear to the ground in municipalities. What, for those that aren't at their lid right now, there's many others looking at going...increasing property taxes? [AGENCY 12]

LYNN REX: Well, in terms of...there are two different issues, Senator, and they are separate and distinct. You've got the levy issue, which is 45 cents per \$100 of valuation plus 5 for interlocal agreements, and then you have the lid issue. And that passed with the passage of LB1114 in 1996. And so the lid side for us is at 2.5 percent on restricted funds, plus an additional 1 percent with a supermajority vote. We have, our larger cities typically have a lid issue. In other words, you look at Lincoln and Omaha, they've got capacity, if you will, in terms of the levy side. But then they have a lid side, and it is a double cap, it is a double whammy. When Senator Warner and the Revenue Committee first designed LB1114, back in 1996, the notion was that the lid would go away. The lid was put on for two years and it was intended to go away. And that was put on so that nobody would artificially try to bump it up. But then what occurred is that after two years

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the Legislature said, no, and Coordsen put in the bill we're going to keep the lid on. So then you had the lid, plus then you had the levy too. So we have small municipalities in this state that cannot, they can't go anywhere, they don't even have the levy authority to raise the 2.5 percent under the lid that they would be allowed to spend if they could. [AGENCY 12]

SENATOR MELLO: Thank you. [AGENCY 12]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 12]

SENATOR WIGHTMAN: Thank you, Senator. Lynn, with regard to cities, there's all sorts of different scenarios. And, of course, a lot of them have sales tax... [AGENCY 12]

LYNN REX: That's correct. [AGENCY 12]

SENATOR WIGHTMAN: ...statutes in place, or not statutes but have enacted a sales tax, and some of those are affected much more differently, I think, and much lesser impact with regard to their property tax levy probably. Some of them are at a fairly low property tax levy, is that correct? [AGENCY 12]

LYNN REX: That is correct. We have over...about 170 of the 530 cities have a local option sales tax with a vote of the people. [AGENCY 12]

SENATOR WIGHTMAN: That was my next question. After the...of the 531, I think you said... [AGENCY 12]

LYNN REX: Well, 530 now, we lost one. [AGENCY 12]

SENATOR WIGHTMAN: Lost one, okay, about 170 have... [AGENCY 12]

LYNN REX: After Elkhorn was annexed was my point. [AGENCY 12]

SENATOR WIGHTMAN: ...have sales tax authority. And generally speaking, they have a lower tax levy and aren't quite as likely to be bumping up against their lid, is that correct? [AGENCY 12]

LYNN REX: That is correct. If you're a sales tax municipality, most of them, the single most effective way that they've been able to lower property taxes in this state has been through local option sales tax with a local vote of the people. [AGENCY 12]

SENATOR WIGHTMAN: And even with regard to those, some of them are very small and have very little business within the community and don't have a lot of sales tax receipts, is that correct? [AGENCY 12]

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LYNN REX: That is correct. [AGENCY 12]

SENATOR WIGHTMAN: So particularly those smaller communities are going to have a major problem, I think, absorbing the cuts, is that right? [AGENCY 12]

LYNN REX: Yes, no question about it. And then you have the other side, though, which is the larger communities. And I would submit to you they're a very important part of the state's economic engine. The Lincoln, the Omaha's, your 30 first class cities with a population of 5,000 and up, that's part of your economic engine. That helps create jobs, that helps create your economy to help turn everything around for the state of Nebraska itself. So if you impair their ability to grow, maintain roads, do business, take care of business, we would suggest to you respectfully that that has an impact on the state as a whole. There are a number of economic engines, certainly the university is a huge one, too. [AGENCY 12]

SENATOR WIGHTMAN: One other question. You give, at the bottom of the last page, \$11,188,000 as being the current appropriation for the aid to cities, is that correct, or Aid to Municipalities? [AGENCY 12]

LYNN REX: No, sir. The current...at the middle...the last sheet, about the middle of the page, where it says "FY 2009-10 before special session."... [AGENCY 12]

SENATOR WIGHTMAN: Before the special session. [AGENCY 12]

LYNN REX: ...right now, currently, before you make...decide to do whatever you do, it is \$11,777,193 without cuts. [AGENCY 12]

SENATOR WIGHTMAN: With the cuts, though. [AGENCY 12]

LYNN REX: Then if you look at the bottom, the very last bold face, which is "2009 Special Session," the proposed cuts would be over the next two years a total of \$883,290. [AGENCY 12]

SENATOR WIGHTMAN: And my question to you then is, you talked about what losing \$250 million in taxes as a result of the legislation that you talked about taking the livestock and machinery off the rolls, is that correct? [AGENCY 12]

LYNN REX: Yes, but again,... [AGENCY 12]

SENATOR WIGHTMAN: And that wasn't only municipalities, I understand that. [AGENCY 12]

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LYNN REX: No, that's all local governments. But what I do want to underscore is that's just one bill, one year, which was phased in over three years. But that's just one bill. There are a number of bills, obviously, that have huge exemptions. I think this gets to what Senator Pahls has been talking about in terms of the exemptions that are granted. And not that those are not legitimate exemptions. We're just suggesting to you there is a very real reason why the property taxpayer is looking at bills saying, what about these increases? What about my property tax bill? Because the base itself, over the last 30 years, has gone from a huge base to a very, very narrow base, which falls predominantly on residential homeowners. [AGENCY 12]

SENATOR WIGHTMAN: On average would you say that the municipalities were getting about 20 to 25 percent? The school districts were getting some of that money, a major part of the money (inaudible). [AGENCY 12]

LYNN REX: That's correct. [AGENCY 12]

SENATOR WIGHTMAN: And counties were getting a major part of the money. And it would appear that maybe 20 to 25 percent would be about the amount that municipalities were getting out of that pie. [AGENCY 12]

LYNN REX: I would say that you're pretty close. I mean, depending upon the makeup and the various counties. But municipalities were probably getting a little bit more of that than counties, schools obviously predominantly. [AGENCY 12]

SENATOR WIGHTMAN: So if you were looking at that, we've now, and I realize (inaudible) cuts, you testified to that, but maybe their share of that \$250 million would have been \$50 million, somewhere in that figure. But now it's been reduced (inaudible). [AGENCY 12]

LYNN REX: Something like that, just for that one bill, though. [AGENCY 12]

SENATOR WIGHTMAN: Right. [AGENCY 12]

LYNN REX: Because there are lots of other bills with lots of other exemptions in them too. And I'm not suggesting that they're not legitimate. I'm just suggesting to you that what local governments were told, and I happened to be a Junior Woodchuck at the time, but when we had meetings with DeCamp and Senator Schimek...not Schimek, Schmit and other, and the various lobbyists involved and the state senators involved and the chairs of the Appropriations Committee, the Revenue Committee and others, and we were told, do not worry, there will not be a shift of property taxes because we are going to reimburse this dollar-for-dollar. It never happened. [AGENCY 12]

SENATOR WIGHTMAN: Thank you. [AGENCY 12]

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SENATOR HEIDEMANN: Senator Mello. [AGENCY 12]

SENATOR MELLO: Just, Ms. Rex, just...and you do have your pulse, I think, on the tax climate right now that is occurring within municipalities. Particularly, representing Omaha, I've followed what the city of Omaha has gone through with dramatically declining sales tax revenue over the last two years. [AGENCY 12]

LYNN REX: Exactly. [AGENCY 12]

SENATOR MELLO: I imagine other cities across the state are experiencing very similar downfalls or shortfalls, so to speak, of their sales tax revenue? [AGENCY 12]

LYNN REX: Absolutely. In fact, there is less than a handful, we had last Friday our meeting of larger cities, legislative committee members, which is all first class cities, Lincoln and Omaha represented, and then 40 representatives from second class cities and villages. So it's not all of those, obviously. But in terms of sales tax revenue we could identify maybe two or three cities that actually had any growth in sales tax. Papillion is doing great. But other than that, most of our cities are flat. Lincoln is flat, Omaha is flat. [AGENCY 12]

SENATOR MELLO: Any cities out in Greater Nebraska outside of the metropolitan area? [AGENCY 12]

LYNN REX: I believe Kearney has a little bit of growth. [AGENCY 12]

SENATOR MELLO: A little bit of growth? [AGENCY 12]

LYNN REX: Yes. And we can get those numbers to you. I think it's a great question,... [AGENCY 12]

SENATOR MELLO: That would be great. That would be wonderful. [AGENCY 12]

LYNN REX: ...and we'll get those numbers to you from the Department of Revenue. [AGENCY 12]

SENATOR MELLO: I think that would be very helpful, I think, in regards to discussing at least within the community the importance of Aid to Municipalities and aid to counties, knowing that it was setup as a property tax relief program. And essentially a cut to this program is simply shifting the tax responsibilities to municipalities or counties, such as I mentioned before, whether it's the city of Omaha or the city of Hastings,... [AGENCY 12]

LYNN REX: Right. [AGENCY 12]

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SENATOR MELLO: ...we are shifting the tax burden to the local municipalities to make up for this cut then. [AGENCY 12]

LYNN REX: No question. [AGENCY 12]

SENATOR MELLO: All right, thank you. [AGENCY 12]

SENATOR HEIDEMANN: Anyother...Senator Hansen. [AGENCY 12]

SENATOR HANSEN: Thank you. Lynn, your reference to the 1978 tax law change, are you sure that wasn't personal property instead of... [AGENCY 12]

LYNN REX: Oh, it is personal property tax, yes. [AGENCY 12]

SENATOR HANSEN: It was personal property. And also taken off at that same time was stocks, bonds, diamonds, pictures, art. [AGENCY 12]

LYNN REX: Yes. There was several things. [AGENCY 12]

SENATOR HANSEN: There was a large, large group of deductions. [AGENCY 12]

LYNN REX: Well, but LB518 was only those three. LB518 was those three. And basically, the state aid, you're correct, is not just the personal property tax relief fund comprised of those three, it is also comprised of governmental subdivision fund reimbursements, which was also supposed to be a dollar-per-dollar reimbursement to local governments and another series of reimbursements. [AGENCY 12]

SENATOR HANSEN: And I just want to let you know that our personal...or that our real estate tax is doubled about every nine years consistently since before 1978. [AGENCY 12]

LYNN REX: And also, Senator, when you look at how your property taxes have been increasing or not, depending upon where you are in the state, I will tell you that part of the dilemma with that is obviously when you have a smaller base, you have few people paying it, and they're going to be paying more. And that's what has happened over a period of the last 30 years. And I am old enough, I've actually been around since the last 30 years dealing in this business and before this committee and others. And that's what has been happening. [AGENCY 12]

SENATOR HANSEN: Thank you. [AGENCY 12]

LYNN REX: Yes, you're welcome. Thank you. [AGENCY 12]

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SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 12]

LYNN REX: Yes, thank you so much for your time today, I really appreciate that.
[AGENCY 12]

SENATOR HEIDEMANN: You bet. Welcome. [AGENCY 12]

JACK CHELOHA: Good afternoon, senators and members of the committee. My name is Jack Cheloha, it's spelled J-a-c-k, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify during this time in opposition to the cuts in state Aid to Municipalities. Lynn Rex covered a number of points that I wanted to make. And she did a terrific job on that. I always wonder how she has such great institutional memory, when she's only 29 years old, but yet she remembers the stuff from the late seventies. I've worked for the city of Omaha for 15 years now. And I've been through some of these wars. One thing...so I won't be repetitive. But I wanted you to know that your largest political subdivision, in terms of population, is hurting. As we're hurting nationally, you know, on the economy, in Omaha we're hurting. I mean things are down, sales tax is down, property taxes is flat because of foreclosures, etcetera, delinquencies on property tax payments. So we went through a very, very difficult budget season. The city of Omaha runs on the calendar year, January through December 31. So through July, August, and September of this year we worked on our 2010 budget. The city of Omaha, ultimately, had to look at trying to raise revenues to meet obligations through a number of different methods. We tried to fund our city budget, if you will, on a three-legged stool, you know, 33 percent property tax, 33 percent sales tax and the rest through other fees and state aid, other items like that. Through the past, oh basically, 10 to 15 years we've gotten out of whack a little bit in terms of funding our budget. And we became reliant more so on sales tax. It "creeped" up to maybe 40 percent or even higher. And because of the fact that not only was it flat but actually decreased in Omaha, obviously that left us with a huge budget hole. In fact, through 2009, we're still in the process of trying to, by statute and city charter we have to have a balanced budget just like the state. We're still trying to manage where we were for 2009. I think we started with about \$12.5 million in the red. Ultimately, things are still continuing. We did wage freezes from various departments. We've had layoffs, we've had people take leave of absence without pay, etcetera. Just in the past decade the city has lost about 10 percent of its civilian work force. Directly, what do these cuts mean to us? It may look to be that serious of a number. But the 2.5 percent for Omaha would be about \$90,000. And then the 5 percent would go to about \$180,000. One of the senators asked, well, what does that mean in terms of jobs. Roughly, to hire a new police recruit with their training, etcetera is about \$45,000. So we would lose, you know, two police officers based on that \$90,000, or it could be, you know, a number of clerical workers, just depends, other staff that the city has had. The city of Omaha went eight years without a property tax increase. When things were doing okay and the sales tax

was growing by 2, 3 percent, we were able to go along. But now we've had to negotiate wage freezes. Civilians are going to have their wages froze for 2009-2010 and 2011. The mayor just announced that we've got wage freezes with our police and fire for at least two years, '09 and '10. Like I said, what happens is when we hit these tough times we have to have layoffs. And typically, because of contracts in place and maybe the civilians are the first to go are those that aren't covered by collective bargaining. One other point I wanted to make is where you do get reliant on sales tax that, too, we talked about the base on property tax. That, too, we have to look at the base on sales tax, the local option sales tax. Through the years as exemptions are granted that narrows the base and you lose revenue. Back when the most serious of cuts to state aid occurred, if you look at Ms. Rex's chart, in the 2003 session, when the Legislature did various things to balance the budget and raised some taxes, they also did some things to broaden the sales tax base. And where cities lost aid, the senators at that time said, municipalities, don't worry about it, if you have a local option, you'll more than make it up with our broadening of the base. Well, for a little while that worked. But in less than a year or so the major component of the broadening of the base was put back in place, which was a tax exemption for remodeling and addition of homes. And with that anything that was made up on the base was lost. And the Aid to Municipalities was not made up. And so because of that we've been asked time and time again, you know, we're all in this together, please do your part. Well, eventually, you know we won't be in this together because there won't be anything left in terms of Aid to Municipalities. So I'm asking you to seriously look at this and let you know that, you know, your largest economic engine is hurting and we need your help. [AGENCY 12]

SENATOR HEIDEMANN: Out of curiosity, what was your spending increase in the '09 year? [AGENCY 12]

JACK CHELOHA: Spending increase, I can't say for certain but I think it was, you know, where we have the 2.5 percent growth, it didn't approach that even. So it was less than that. [AGENCY 12]

SENATOR HEIDEMANN: Okay. And you just got done with it or you're working on your budget? [AGENCY 12]

JACK CHELOHA: No, we are done. We have completed our budget for 2010. And in order to balance it we ultimately had to raise property tax. Which, as you know, is one of the most despised taxes in this state. But we had to raise our General Fund levy 1.8 cents and our Debt Service Fund 2.4 cents. So ultimately, it was about a 10 percent property tax increase. And coincidentally, if you look through the handout Lynn Rex gave you, and look at what Omaha has lost, we've lost in the MIRF funds roughly \$1 million per year. And state aid in the past few years, you know, for Omaha has probably been about \$2 million. And coincidentally, I'm not saying this is the only reason, but we may have been able to avoid at least a General Fund property tax increase, if we were

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to continue at least the same level that we were receiving in 2002. [AGENCY 12]

SENATOR HEIDEMANN: What was the spending increase in the ten year then, can you tell me that? [AGENCY 12]

JACK CHELOHA: Oh, for next year, I can't tell you but I can get you that. [AGENCY 12]

SENATOR HEIDEMANN: Okay. [AGENCY 12]

JACK CHELOHA: We'll have our documents. [AGENCY 12]

SENATOR HEIDEMANN: Senator Wightman. [Agency 12]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Mr. Cheloha, can you tell us, and I realize you've got spending lids, but can you tell us what the current property tax levy is for the city of Omaha? [AGENCY 12]

JACK CHELOHA: I can. For this year right now our total levy is roughly about 45 cents, and this is just an approximation. Our General Fund levy is about, I want to say 24 to 26 cents, if you well. And then the rest is debt service and judgment fund, etcetera. So our total levy though, because of these increases in 2010, will go up to about 47 cents, I think. [AGENCY 12]

SENATOR WIGHTMAN: But the debt service is all... [AGENCY 12]

JACK CHELOHA: Is outside, yeah, that's outside of it. [AGENCY 12]

SENATOR WIGHTMAN: Forty-five levy limit, so you're at about 26. [AGENCY 12]

JACK CHELOHA: About 26 cents for General Fund purposes. [AGENCY 12]

SENATOR WIGHTMAN: Thank you. [AGENCY 12]

SENATOR HEIDEMANN: I have a lot of cities in my area they're bumping General Fund levy at 45. [AGENCY 12]

JACK CHELOHA: Right at the max, sure. [AGENCY 12]

SENATOR HEIDEMANN: Yes. Senator Mello. [AGENCY 12]

SENATOR MELLO: I just wanted to make sure we at least establish a record a little bit. Mr. Cheloha, you said obviously, kind of recapping a little bit of what the city of Omaha has gone through this last year. Being the primary economic engine of the state, it's

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seen a dramatic decline in sales tax revenue. That this cut to the Aid of Municipalities, whether it's to the city of Omaha, to the city of Hastings, the city of Scottsbluff, would more than likely lead to a property tax increase. Would that be a true assessment?
[AGENCY 12]

JACK CHELOHA: I think that is a true assessment. It will lead to either property tax increase or more draconian cuts. And I'd like to say that Omaha has already, if you will, limped along on crutches and band-aids for about a decade. And so it ultimately came to the point where they felt they had no choice but to raise property tax. [AGENCY 12]

SENATOR MELLO: Okay, thank you. [AGENCY 12]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 12]

SENATOR FULTON: Thank you, Mr. Chairman. I'm trying to get a handle on the, you know, the inability to cut versus...and I'm not speaking specifically to Omaha necessarily, although that's where you'll be able to comment. There seems to be an underlying presumption that any cuts from the state in aid therefore equals property tax increases. The only way that would be true is if indeed spending had reached...there are no more ways to raise...there are no more ways to cut spending. In your estimation, in Omaha there are no more ways to cut spending and the populace is accepting of that? [AGENCY 12]

JACK CHELOHA: I would think at this point, based on Omaha's history of budget management over the last decade, that's true. Like I testified to, we've already cut our civilian work force by about 10 percent. Because of the expansion of territory, as we annex and grow, we've had to maintain our level of police and fire support, if you will. And so the public just would not allow any major cuts along those departments. And so I'd like to say that, you know, council members and mayors are good stewards of the money locally, they listen to their constituents. And they know that despite where you live an what your levy is that our citizens hate property tax as much as, you know, anybody else across the state. And that's typically the last source you look to. [AGENCY 12]

SENATOR FULTON: Okay, thank you. [AGENCY 12]

SENATOR HEIDEMANN: Seeing no further questions, thank you. [AGENCY 12]

JACK CHELOHA: Thank you. [AGENCY 12]

SENATOR HEIDEMANN: Is there anyone else wishing to testify on the State Treasurer? Seeing none, we will close the public hearing on Agency 12, the State Treasurer, and open up the public hearing on Agency 14, the Public Service

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Commission. Welcome. [AGENCY 12 AGENCY 14]

JERRY VAP: Is it evening yet, Senator? [AGENCY 14]

SENATOR HEIDEMANN: Depending on if you're in a country or if you're in town.
[AGENCY 14]

JERRY VAP: (Exhibit 10) Good afternoon, Chairman Heidemann, members of the Appropriations Committee. I am Commissioner Jerry Vap, vice chairman of the Public Service Commission, representing the 5th District. The commission is aware of the challenging economic environment faced by the state and its citizens. We're ready and willing to do what we can to assist in addressing the budgetary issues resulting from the current recession. However, we also have a responsibility to ensure that we are able to meet our statutory and constitutional obligations. Through miscellaneous fees, the commission generates approximately \$300,000 annually that goes into the General Fund. Additionally, the majority of our programs are entirely or significantly supported by cash funds generated through surcharges. The commission has always been responsible custodian of taxpayer's funds, frequently coming in under budget. In this current fiscal year we have continued to take steps to reduce costs and increase efficiencies, including the development and implementation of an on-line remittance system for the Universal Service and Wireless E911 programs to reduce staff time and paperwork. The elimination of two contract positions within the commission, resulting in a total savings of \$32,000 annually. Finally, the commission did not institute a cost of living increase for any staff members, saving an additional \$72,500. We understand that the current financial situation demands that the state reduce spending. And the commission stands ready to bear its share of the burden. We believe that reductions to our operations budget as proposed can be done in such a way as to minimize the impact on our ability to provide service to the public. In the interest of time, I'll not read my entire written testimony. But I'd like to highlight some key issues. The Enhanced Wireless 911 funds is a statewide safety program. The enhancement wireless 911 program is charged with implementing Phase II wireless 911 services statewide. As required by LB1222, we would at least (inaudible) a proposed funding mechanism in July of this year and have received comments and held an initial hearing. We are attempting to phase-in the implementation of the model beginning in the fiscal year 2010-2011. The proposed model is designed to bring the balance down over a three year period, to a reserve of \$7 million, representing one year's worth of surcharge revenue. The reserve is intended to be used to address any catastrophic equipment or other failures in the system due to acts of nature or other emergency equipment or software needs to ensure the availability of funds for the migration toward the next generation of 911 and to address any other unforeseen circumstances. Although the commission believes that the proposed transfer of \$5 million from the fund balance will not impede the implementation of the model, we have strong reservations regarding the open-ended transfer language in the bill. Such language will inject a level of

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unpredictability into a program which, by its nature, must be able to plan for long-term upgrades in order to ensure public safety. One example is the need for systemwide upgrades to the next generation of 911. As technology changes, we'll need to be able to respond. Frequent transfers from the fund will undermine, if not completely render useless the model which we have developed, and will impede the effectiveness of the program. We also want to ensure that the committee is aware that the transfer from the fund also means that the commission will not be able to accept a federal grant in the amount of \$483,000, awarded in September of this year for the completion of projects in five counties and the completion of intertandem trunking. We believe that these projects can go forward but it will cost the fund additional money. The Nebraska Relay program: The Nebraska Telephone Relay program provides vital telecommunications services and equipment to the deaf and hard of hearing in Nebraska. The commission reduced the relay surcharge to 3 cents per land line and wireless telephone line in July of 2009, which will significantly reduce the fund balance by the end of the current fiscal year. Transfers proposed by the Governor represent revenue equal to one-half cent in annual surcharge revenue. They will not adversely affect the provision of the relay service or distribution of essential equipment in the short-term, however, it may be necessary to increase the surcharge by a minimum of 1 cent in future years. Housing Program 19: The commission's factory-built Housing Department has been directly and severely affected by the downturn in the economy. A slowdown in the housing market has led to a dramatic drop in fees flowing into the program and has required staff reductions and furloughs. We would ask that the committee be mindful of the financial difficulties and cuts experienced by this program. In conclusion, although difficult, the commission can make the necessary adjustments required by the proposed reductions and continue to immediate statutory and constitutional obligations. We would ask that the committee carefully consider our written comments and those that I have made here today. I'll be available for questions. [AGENCY 14]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 14]

SENATOR NORDQUIST: Thank you, Mr. Chairman. Thank you for joining us, Commissioner. So for the implementation of Phase II without having a map in front of us in general can you give us kind of an update of where coverage is in the state for Phase II of E911? [AGENCY 14]

JERRY VAP: Currently, populationwise 93 percent of the population has Phase II capabilities with at least one carrier available to them. As far as the number of counties, in the 93 counties we are down to about 6 counties that need to get their equipment upgraded and their rural addressing and the mapping and all that done. And we anticipate that that can be completed by July 1 of 2010. [AGENCY 14]

SENATOR NORDQUIST: So the current plan that you have laid out to make the...to complete Phase II would leave a reserve of \$7 million. [AGENCY 14]

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JERRY VAP: We would have \$7 million there if...that would be the plan if nothing were changed under our model. With the \$5 million taken out, that gets us down to a balance of \$11 million in the fund. We have, as of Monday we have approximately \$2 million committed to expenditures for counties and PSAPs for equipment and software and mapping. That will either be paid out in the next few months or at least we'll be...it will be committed so that it cannot be "drawed" on. That gets us down to \$9 million. And we do have an income, like I said, of about \$700,000 a month. But we also have an outgo that pays for the operation system of about \$550,000 a month. So if we get it down too low, our ability to transfer in or grade...upgrade into the next generation of 911 is going to be severely impeded. Right now we will get these last six counties implemented and then we'll have to begin thinking about how are we going to do the next generation. By next generation I mean every teenager I know doesn't even talk on a cell phone these days, they do text messaging. And all the PSAPs across the state are going to have to be able to accept a text message as a 911 call or other forms of communications that are rapidly being developed. Right now some of them are having a hard time just handling the cell phone calls. And every time a 911 call is made it carries a cost with it. If you have a 911 call made on a landline phone, generally, there is one call made, so there is one cost. Oftentimes, the PSAPs tell us if there's a situation where cell phones are used to make the 911 call, there might be 30 or 40 calls and everyone of those carries a cost. So the wireless side of the equation is more expensive to operate. [AGENCY 14]

SENATOR NORDQUIST: Yeah, I appreciate you mentioning kind of the next phase, the text messaging now portion. There are a few of us, I think, who attended an event at a company in Omaha that's working on that. And certainly there are situations where, you know, you may think a phone call isn't going to work for somebody, depending on the situation that they're in, the emergency that they're in. So you mentioned maybe the reserve would be for potential catastrophic or system failures, is that...what would that entail? [AGENCY 14]

JERRY VAP: We had an instance a little over a year ago where an equipment company sent out a notice to some of the PSAPs, Public Safety Answering Points, that they would no longer support that equipment with parts, software or anything. And I think we had close to ten counties that had that equipment. Some of them hadn't had it anymore than a couple of years. And so we've actually had to just pony up the money and say, we're going to buy you all new equipment. Now the lifespan of most 911 equipment, because it's an operation 24 hours a day, 7 days a week is five years, maybe six years. And so we need to be able to have funds available. And this model that we have come together with provides funding for those PSAPs to replace their equipment in a matter of five years or when it becomes necessary. And that will work just fine as long as there's not a lot of money taken out of that system. [AGENCY 14]

SENATOR NORDQUIST: How does the commission prioritize projects like that? You

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know, if there's a need to do a major conversion and there's limited resources available, is it based on population served or...? [AGENCY 14]

JERRY VAP: No, no it isn't because the 911 system for cell phones could be accessed by anybody. Someone from Omaha could be driving to Denver and be out in the middle of...could be in Tom Hansen's pasture somewhere and try and make a call. [AGENCY 14]

SENATOR NORDQUIST: So what is the process, kind of, for determining...? [AGENCY 14]

JERRY VAP: Generally, the request is looked at the law requires that this fund only be spent on equipment and expenses that are generated by the wireless side of the equation. The wire line side is supposed to take care of itself or the counties, out of the county general fund. But the wireless pays for that. And right now we're looking at about a 55 percent wireless cost causer and 45 percent landline. Many of the PSAPs are telling us that in many of the municipalities: Omaha, Grand Island, Lincoln, Hastings, upwards of 70 percent is wireless cost caused. And so we may have to adjust the formula at this point in time until we get this model in place. And then what it will amount to is each PSAP is going to get a certain amount of money based on a formula. And that money will be money they'll have to pay their monthly recurring costs with and also save up for equipment replacement. Some of them are thinking that's all right because they want to have their own...control their own destiny. But then there are others that are saying, I don't know. They may spend that equipment money on something else. [AGENCY 14]

SENATOR NORDQUIST: You never know what kind of situations (inaudible). [AGENCY 14]

JERRY VAP: SO we have to have some strict accounting built into every bit of that. [AGENCY 14]

SENATOR NORDQUIST: Last question. For the next, kind of the next phase of the...and beyond Phase II, are there others area that are at that stage already in this state? [AGENCY 14]

JERRY VAP: Not in Nebraska. There are some demonstrations going on in other parts of the nation. And so it's a ways away, and we don't have any clue right now to what kind of cost that's going to create and what kind of pressure it's going to place on the PSAP system across the system when it does come about. I think, I personally think it's going to create a tremendous amount of training to be done by the operators in these PSAPs. And in some counties it's not easy to get people to work in those positions anyway. So there's going to be some huge expenses, I think. [AGENCY 14]

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SENATOR NORDQUIST: Thank you. [AGENCY 14]

SENATOR HEIDEMANN: Senator Harms. [AGENCY 14]

SENATOR HARMS: Mr. Vap, thank you very much for your testimony. If we would adopt the Governor's recommendation, how many staff would be lost? Would you reduce your staff? [AGENCY 14]

JERRY VAP: No. And I say that because we...technically, we have three vacancies. And I say technically, because they're in cash funded departments, one is...two in the Natural Gas Department. One of those is the Public Advocate and an administrative assistant for the Public Advocate. We have contracted for the Public Advocate position and because that particular position, by law, has to do public advocacy only for natural gas. It can't be used for telecommunications or anything else. We felt it was more cost-effective to contract than to have a full-time employee who may be months on end be doing nothing with support staff and everything else. So those two positions are technically open, but we've never filled them with full-time employees. The third position is in the E911 Department, and that's a technical advisory. And that position, we interviewed one time and the quality of candidates just didn't cut it. And we've chosen not to fill that position at all. There again, they're both cash funded, so there's no impact on the General Fund if those positions are done away with. We can't do away with the public advocate position because it's in statute. [AGENCY 14]

SENATOR HARMS: Thank you. [AGENCY 14]

SENATOR HEIDEMANN: Already knowing that he has three vacant positions...but, Senator Mello, would you like to ask a question? [AGENCY 14]

SENATOR MELLO: I have a couple questions for the commissioner. Thank you, Mr. Chairman. Commissioner Vap, just...I'm trying to learn a little bit more about the Enhanced Wireless 911 fund. How do we get funding for that? Is that a wireless fee? [AGENCY 14]

JERRY VAP: Every person who uses a cell phone in the state of Nebraska pays 50 cents a month. [AGENCY 14]

SENATOR MELLO: Okay. [AGENCY 14]

JERRY VAP: And that's remitted on your bill and it's remitted by the companies to the commission. [AGENCY 14]

SENATOR MELLO: Do you know, is it labeled as a fee, is it labeled as a tax? [AGENCY

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14]

JERRY VAP: It's a surcharge. [AGENCY 14]

SENATOR MELLO: Surcharge? [AGENCY 14]

JERRY VAP: Um-hum. [AGENCY 14]

SENATOR MELLO: So okay. [AGENCY 14]

JERRY VAP: It's not a tax, it's a surcharge. [AGENCY 14]

SENATOR MELLO: Surcharge and (laugh), and that surcharge then is based solely for infrastructure then of the Enhanced 911 system. [AGENCY 14]

JERRY VAP: It's infrastructure and monthly reoccurring costs of operating the system. So I mentioned intertandem trunking and we have selective routers. We pay to use those things so that someone makes a 911 call close to a county line, that selective router and intertandem trunking will take that call to where it's supposed to go. And the proper PSAP will then be dispatching. Sometimes we get a PSAP over in one county gets the call and they don't have a way to dispatch over to the other county, so we need to have all that intertandem trunking and selective routers there to...and that's part of it. But every time a call is made there's a cost and the PSAPs have to pay that on their phone bills and if it's caused by the wireless side of it then it comes out then it comes out of that fund so the PSAP is reimbursed. At the same time, most of the cell phone companies also get reimbursed for that traffic. Now the only one that has informed us that they will not be asking for any money whatsoever in the future is Verizon. Alltel has always accepted the money but Verizon says, we don't want it. [AGENCY 14]

SENATOR MELLO: Is there any movement within the Public Service Commission to advocate these other telecommunication firms to not...to not accept that money from the state or...? [AGENCY 14]

JERRY VAP: We would like them to, but they're going to pass it on to you as the customer if they don't get reimbursed for it. [AGENCY 14]

SENATOR MELLO: Okay. Okay. One final question: According to the job vacancy report that is issued to the Legislature by the Department of Administrative Services, that answers directly to the Governor, it says that you have five vacant positions within the Public Service Commission to the amount of \$75,000. Now you just said you had three vacant positions. [AGENCY 14]

JERRY VAP: We do have three. [AGENCY 14]

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SENATOR MELLO: So this would be incorrect. [AGENCY 14]

JERRY VAP: That is incorrect. In fact, in the housing department we have had four furloughs, one person just retired, he just walked out the door last week, and that is a very...right now it's a very poorly funded department on cash funds, and we've got people that are on furlough and we have no General Fund positions that are vacant at this time. [AGENCY 14]

SENATOR MELLO: Okay. Thank you so much, Commissioner. [AGENCY 14]

JERRY VAP: Thank you. [AGENCY 14]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 14]

SENATOR NELSON: Thank you, Senator. Thank you, Mr. Vap, for coming. I don't see the acronym VSAP in any of this material. [AGENCY 14]

JERRY VAP: PSAP is a public safety answering point. [AGENCY 14]

SENATOR NELSON: PSAP? [AGENCY 14]

JERRY VAP: Yes. [AGENCY 14]

SENATOR NELSON: Okay. [AGENCY 14]

JERRY VAP: It's an acronym that every county sheriff and every patrolman knows what it means but that's the Safety Center, be in Omaha and Lancaster County. It's right down the street over here. In a small community it might be in the sheriff's department, it might be in a police department, but it's...that's where the 911 calls come into and those calls then, in for example phase two, on the screen would come up the cell phone number and it would tell the GPS coordinates and print out a map for the rescue people to go right to that point. [AGENCY 14]

SENATOR NELSON: So there's one of those in every county where this has been established? [AGENCY 14]

JERRY VAP: About 83 counties. [AGENCY 14]

SENATOR NELSON: About 83. [AGENCY 14]

JERRY VAP: There are some, Keith County and Ogallala dispatches for six other counties at this point in time. [AGENCY 14]

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SENATOR NELSON: My next question is have...is anything owed to the counties and municipalities for the implementation of these? Have they been fully reimbursed, to the best of your knowledge? Is there going to be any more outlay of funds to this?
[AGENCY 14]

JERRY VAP: Oh yeah, there will be outlay. We got six more counties to go that are going to... [AGENCY 14]

SENATOR NELSON: But the existing counties where it's been implemented, that's paid, that's paid for. They've been reimbursed. [AGENCY 14]

JERRY VAP: It has but about every five years they're back for equipment replacement again and... [AGENCY 14]

SENATOR NELSON: Uh-huh. [AGENCY 14]

JERRY VAP: ...there's also a mapping component to this that has to be updated. In some areas, for example, Omaha and Lincoln, because of housing developments and that, all that database has to be constantly updated so that the rescue people and the fire, police department, will have accurate addressing to go to when a call comes in. And that all carries a cost and that's coming about through...being paid through this fund. The other thing is the GIS repository is held in the commission; is the repository for all the GIS data that's generated through the mapping that goes on across the state through this program and we have to maintain that as well. [AGENCY 14]

SENATOR NELSON: Thank you. [AGENCY 14]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 14]

SENATOR MELLO: One more question, Commissioner Vap. I just read the beginning of your testimony and I know we've had conversations with other agencies regarding furloughs and you just mentioned that the Public Service Commission has instituted furloughs. It says here that the commission did not institute a cost-of-living increase for any staff, saving an additional \$72,500 annually. [AGENCY 14]

JERRY VAP: Uh-huh. [AGENCY 14]

SENATOR MELLO: Do you have any labor contracted or union contracted employees...
[AGENCY 14]

JERRY VAP: No. [AGENCY 14]

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SENATOR MELLO: ...within the Public Service Commission? [AGENCY 14]

JERRY VAP: No. [AGENCY 14]

SENATOR MELLO: So they're all at-will employees of the Public Service Commission? [AGENCY 14]

JERRY VAP: That's correct. [AGENCY 14]

SENATOR MELLO: And you instituted essentially a salary freeze, would that be the equivalent? [AGENCY 14]

JERRY VAP: We did. [AGENCY 14]

SENATOR MELLO: Okay. And that was your savings, so the cost of... [AGENCY 14]

JERRY VAP: It is. [AGENCY 14]

SENATOR MELLO: ...the cost-of-living increase is a salary freeze, essentially. [AGENCY 14]

JERRY VAP: Yeah, there was...essentially, we got the word from the Governor's Office, no raises, and we didn't have money to do it even if we wanted to. [AGENCY 14]

SENATOR MELLO: Okay. So you instituted furloughs and a salary freeze to help deal with this problem. [AGENCY 14]

JERRY VAP: That's correct. Uh-huh. [AGENCY 14]

SENATOR MELLO: All right. Thank you, Commissioner. [AGENCY 14]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 14]

SENATOR NORDQUIST: Yeah, one more quick question, Commissioner. [AGENCY 14]

JERRY VAP: Sure. [AGENCY 14]

SENATOR NORDQUIST: I saw, you might have mentioned it, too, there's about a half a million dollar federal grant that's already been awarded, approved? [AGENCY 14]

JERRY VAP: That is a grant that was to be used to provide for some intertandem trunking and to bring five of the last six counties into compliance with the equipment and

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everything. [AGENCY 14]

SENATOR NORDQUIST: Sure. And if we take any funds out of that at all for..
[AGENCY 14]

JERRY VAP: If you take \$10 out of that fund, that \$483,000 goes back to...and we haven't got it yet, but we just...it gets rescinded. [AGENCY 14]

SENATOR NORDQUIST: So by touching this, we're going to be giving up a half million dollars that would be going towards offsetting, not that fees are going to go down, but offsetting fees that consumers are paying in on their monthly bases. [AGENCY 14]

JERRY VAP: Yes, that's correct. [AGENCY 14]

SENATOR NORDQUIST: Really seems a little bit like robbing Peter to pay Paul to me, but thanks. [AGENCY 14]

JERRY VAP: So...and the 50-cent a month surcharge, every county...and we can charge up to 70 cents per month in every county but Douglas County. They're limited to 50 cents on both the land line and the wireless side, so. But every county in the state, other than Douglas County, is paying \$1 a month on their wire line. [AGENCY 14]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 14]

JERRY VAP: Thank you. [AGENCY 14]

SENATOR HEIDEMANN: Anyone else wishing to testify on Agency 14? Seeing none, we will close the public hearing on Agency 14 and open up the public hearing on Agency 21. Welcome. [AGENCY 14]

JOHN FALGIONE: (Exhibits 11, 12) Good evening. Senator Heidemann and members of the Appropriations Committee, I'm State Fire Marshal John Falgione, J-o-h-n F-a-l-g-i-o-n-e. I would like to thank the committee for their diligence and continued efforts to find the best solution for all parties during the special session. I support the Governor's recommendations reductions for my agency. I have provided a handout to the committee members which supplies detailed information regarding the makeup of each program that is addressed in the Governor's recommendations. I would like to provide a general description of how the reductions will affect each program and then take any questions you might have. In Program--I think everyone has it by now--in Program 193, the recommended across-the-board reductions would reduce the General Fund money available to the agency in fiscal year '09-10 and fiscal year '10-11 by a total of \$244,270. This reduction in funding will be addressed in a number of ways, including a reduction in the number of public education and prevention programs that

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are presented by staff, limiting the amount of community relations work performed by various staff members, limiting the amount of training attended by staff, and reducing the operational costs associated with certain programs. The total costs across the board, excuse me, the total across-the-board reductions out of the cash funds are \$124,438. This reduction in funding will be addressed by reducing the number and frequency of inspections and consultations performed and a possible reduction in staff. In Program 340, the total recommended across-the-board reductions in both the General Fund and cash funds will reduce the money available to the training division by \$70,197. This reduction in funds will result in fewer certifications, accreditations, and general training classes that can be provided to the various first responders in this state. In Program 415, the total recommended across-the-board reductions and reappropriation reductions in General Fund reduce the money available to the VERRA Program by \$5,830. This reduction in funding will be addressed through management efficiencies and other administrative actions. In Program 193, there is also a specific transfer of \$100,000 from the Underground Storage Tank Cash Fund to the General Fund in fiscal year '09 and '10. This reduction in available money will be absorbed within the program. However, this money is used to match a federal grant that is provided, so careful monitoring will need to be maintained. And with that, thank you for your time and attention. If you have any questions, I'll be happy to try to answer them for you.
[AGENCY 21]

SENATOR HEIDEMANN: Thank you for your short testimony. I got a feeling that Senator Mello will have a question. [AGENCY 21]

SENATOR MELLO: Thank you. Thank you, Fire Marshal. I appreciate your testimony. It's short and sweet. My question will be short and sweet as well. [AGENCY 21]

JOHN FALGIONE: Okay. [AGENCY 21]

SENATOR MELLO: According to the job vacancy report issued by the Department of Administrative Services that report directly to the Governor, they say you have two job vacancies right now to the amount of \$94,000. Is that correct? [AGENCY 21]

JOHN FALGIONE: I have two vacancies at this time, but if I could further elaborate on how those vacancies occurred... [AGENCY 21]

SENATOR MELLO: That would be great. [AGENCY 21]

JOHN FALGIONE: ...one of those vacancies was accrued through an opening. A staff member left. We filled that opening, and I had to reposition that one opening at that time to south-central area, to Beatrice area. The city of Beatrice went into some financial constraints and they had to turn back their delegated authority status to us. They did away with their fire prevention bureau program. [AGENCY 21]

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SENATOR MELLO: Uh-huh. [AGENCY 21]

JOHN FALGIONE: So, therefore, they could not do the inspections for us and so I needed to move a deputy slot into that area to cover that area, which is going to result in another transition of counties to separate the workload a little bit. That was...that position was taken by an internal transfer from an investigator out of the northeast area. Well, then that opened up that investigator's position for the northeast area. The other position is an inspector position that's in that same district... [AGENCY 21]

SENATOR MELLO: Uh-huh. [AGENCY 21]

JOHN FALGIONE: ...in the northeast area. So, yes, at the present time I do have two openings that I'm going to have to consider filling. [AGENCY 21]

SENATOR MELLO: Consider filling or consider taking those savings from those vacant positions to ease your... [AGENCY 21]

JOHN FALGIONE: It is my intent to fill those positions. [AGENCY 21]

SENATOR MELLO: Fill those positions? [AGENCY 21]

JOHN FALGIONE: Yes, sir. [AGENCY 21]

SENATOR MELLO: Okay. Okay. Real quick too, you just mentioned the story about the city of Beatrice. Was that...so did they not have the municipal funding to be able to fund this fire program and, thus, had to give you that responsibility back? [AGENCY 21]

JOHN FALGIONE: I did not get into that, into their political aspect of the community, but I do know that that person was repositioned in the fire service. So they just felt they didn't have the people or the expertise to perform the inspections that were needed, much...you know, we've got delegated authority cities like Omaha and Grand Island.. [AGENCY 21]

SENATOR MELLO: Uh-huh, yeah. [AGENCY 21]

JOHN FALGIONE: ...and Lincoln, North Platte,... [AGENCY 21]

SENATOR MELLO: Uh-huh. [AGENCY 21]

JOHN FALGIONE: ...Scottsbluff,... [AGENCY 21]

SENATOR MELLO: Okay. [AGENCY 21]

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JOHN FALGIONE: ...and Norfolk. [AGENCY 21]

SENATOR MELLO: Okay. [AGENCY 21]

JOHN FALGIONE: So if any of those should decide to reduce their programs and put the further burden back on to the state to do this, then I'm in a real problem. [AGENCY 21]

SENATOR MELLO: Okay. Thank you. [AGENCY 21]

JOHN FALGIONE: Okay. [AGENCY 21]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 21]

SENATOR NORDQUIST: Yeah, thank you for joining us here this evening. The training division cuts, is that provided to, for instance, volunteer firefighters and first responders or professional or both? [AGENCY 21]

JOHN FALGIONE: And we'll provide training to both. [AGENCY 21]

SENATOR NORDQUIST: Okay. [AGENCY 21]

JOHN FALGIONE: The training division does provide training for all first responders, so. [AGENCY 21]

SENATOR NORDQUIST: Okay. [AGENCY 21]

JOHN FALGIONE: The majority of the training that they do provide does go to the volunteer service community. [AGENCY 21]

SENATOR NORDQUIST: Okay. And so, for instance, does Omaha Fire Department train through that or use those resources to train? [AGENCY 21]

JOHN FALGIONE: Yes, they do. [AGENCY 21]

SENATOR NORDQUIST: They do. Okay. [AGENCY 21]

JOHN FALGIONE: They do use our resources. Yes, they do. And they do have their own training officer and their own training facilities, but they have our staff come in to help with that training. [AGENCY 21]

SENATOR NORDQUIST: Uh-huh. But you did say a majority is volunteer, most likely in

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small communities around the state. [AGENCY 21]

JOHN FALGIONE: Yes. There's approximately 13,000 volunteer firefighters and responders across the state and we provide training for them if they so ask for it. [AGENCY 21]

SENATOR NORDQUIST: What percent of...what percent of the training budget is that kind of cut? It's... [AGENCY 21]

JOHN FALGIONE: This falls right in line with the... [AGENCY 21]

SENATOR NORDQUIST: ...about 5 percent roughly. [AGENCY 21]

JOHN FALGIONE: ...with the 5, uh-huh, yes. [AGENCY 21]

SENATOR NORDQUIST: Okay. Thank you. [AGENCY 21]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 21]

JOHN FALGIONE: Thank you very much. [AGENCY 21]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 21? Seeing none, we will close the public hearing on Agency 21 and open up the public hearing on Agency 3, the Legislative Council. [AGENCY 21]

SENATOR WIGHTMAN: Chairman Heidemann, members of the Appropriations Committee, good afternoon or perhaps I should say good night, good evening. For the record, my name is Senator John Wightman, District 36. I'm here as Chairman of the Executive Board, testifying regarding the budget of the Legislative Council. I've reviewed the Governor's recommendations. I will tell you that if this committee goes along with the Governor's recommendation it will mean significant cuts to the Legislature and it will impact the way the Legislature does its business. As the proposal now stands, we're talking about an approximately \$2.7 million reduction over the next two years. Now I don't know if they all work out this way, but ours works out almost exact amount on the reappropriation about \$1.35 million, \$1.36 million and about exactly the same amount on across-the-board cuts. So over the rest of the biennium, we would have a \$2.7 million reduction. Let me talk first about the calculation for the reduction of the Legislative Council. And I want to be clear that we have not adopted a plan as the Executive Board at this point. I have discussed with the Executive Board what some of these cuts might entail and some examples of what we might have to do to come in line. Like almost everyone else, the Council took an across-the-board reduction and a reduction in our reappropriation dollars, and as I said, that comes to about half of the total. Unlike other agencies perhaps, our reappropriation amount was

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in lieu of new money. It was not supplemental or additional money. I would ask that the committee consider this fact when making its decision regarding the Council's budget. Once the budget is passed, the Executive Board will meet and explore options and develop a plan. But you should know that as proposed the size of the reduction will impact our employees. There is no other way around it since approximately 80 percent of our budget is for salaries. And that's probably not a lot different than many of the other agencies. We may be a little higher, but perhaps not that much higher I think. Traditionally maybe 65 to 70 percent of a particular agency or an average agency's budget might be personnel. To put this in perspective, and I'm certainly not proposing this as a recommendation, but just so that you might understand the amount of the budget cut, if we were to meet the budget reductions by a single staff classification reduction, we would have to eliminate all of the administrative assistant positions effective January 1, 2010, because that would come to about \$50,000 per employee times 50, 49 employees, which would be approximately \$2.5 million. I'm certainly not proposing this. I'm just using this to demonstrate about what the size of the cut might be if you looked at it only from that standpoint. As this example demonstrates, the cuts will be steep and will have a dramatic impact. I want to give you a few of the options that the Executive Board could consider, and we've talked about the possibility of salary rollbacks that I think it's 2.9 percent effective this year salary increase for which they have been paid several months of that. And I think we would be talking if we did that, roll it back effective January 1 of this year and then there would be a 2.5 percent next year. If we were to take those cuts and roll it back for the balance of the 2009-2010 fiscal year and take the 2010 cuts, that would come to about \$989,000. So that would somewhat...probably handle between 35 and 40 percent of the cuts. Now we haven't done that. That's just one of the matters that could be considered. Reduce staffing is a possibility. Furlough is certainly a possibility and some calculations were done on that. We have about 250 employees in the Legislative Council. That will surprise a lot of you, but the Office of the Ombudsman, for example, is under our jurisdiction; Legislative Research; of course, all of legislative committee counsels; and, of course, we have three for every office so there's 150 if you just count the--approximately that--49 state senators and an administrative assistant and a legislative aide. So about 150 is made up of that. Another thing that would be probably considered is lower per diem amounts for senators. Furloughs, we made a calculation that if each employee--now I don't know if they counted the legislators--I don't think we're going to gain much if we furloughed the legislators for a day (laugh) but maybe that was just the other, but it's \$51,000, I think, if every...is that just for the other employees and not the legislators I assume, so about 200, we'd come to about \$51,000 a day. So if we took five days of furloughs, that would be \$250,000. I'm just trying to put these in perspective of how we might reach the figure. Lower per diem amounts for senators, as I said, we certainly would consider. And to give you a little background on this, we've been getting I think \$109. It was scheduled to go to \$116 and there's probably some odd cents on that so that would be \$7. If we took another 10 percent cut or \$10-a-day cut, we'd be looking at about \$16 a day. And I think the figure was about \$48,000 total on what we could gain by...so it

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wouldn't be a very big part, as you can see, of \$2.5 million. Actually, it's \$2.7 million so it would be under 2 percent of the total that we would need to cut. Again, I'm not in a position to tell you right now what specific cuts would be made. It will depend upon what the Legislature ultimately decides and, in turn, the plan that the Executive Board adopts. I will be happy to answer any questions you might have or at least with maybe the aid of some assistants here. The division directors are here to answer any questions you have about their respective budgets. So with that, I'd invite any questions. [AGENCY 03]

SENATOR HEIDEMANN: I appreciate the fact you went through and let us know, you know, let us know what was going to happen if this is what takes place. Do you agree or disagree with what the Governor proposed for Legislative Council? [AGENCY 03]

SENATOR WIGHTMAN: You know, I'm not here, I don't think...I think we will have to wait probably until I hear back from the Executive Board. I'm not here right now to say that we could take those cuts. I think they're very steep cuts and I think perhaps our reappropriation figure is higher accordingly than many other agencies. Can we live within it? Probably we can, but if you're going to be looking at the fact that you're going to be cutting staff, I think there will have to be some staff cuts to get there. Even if you took all of the others, and I gave you \$989,000; \$48,000 I think in the per diem; maybe \$250,000, maybe a little more than that in furloughs, I think there's also some cash available that would probably be available at the end of the...around \$300,000 as I recall. But I think there have to be some staff cuts to get there. Now how deep those staff cuts would have to go, obviously we're not talking about eliminating every administrative assistant position. But I guess we can look at where those cuts might come from. When you consider that 150 of the 250 employees are contained within the legislative offices, there aren't a lot of positions to cut. We maybe have 50 left and that includes a number of the Clerk's Office and a number of Fiscal Office, a whole lot of staff members that aren't going to be easy to cut; legislative committee counsels. [AGENCY 03]

SENATOR HEIDEMANN: And I didn't ask that question to be picking on you by any means. But as we're getting through almost one day, we have another three days of hearings left to go. Of the people that came through here and agreed with what the Governor's budget was, when we get this all done, I'd say we've got about \$30 million worth of cuts that people agree with; we've got \$300 million that people don't agree with and say that they can't live with. And it's going to put us in a heck of a spot what we're going to do and not do. And I'm asking you this. I'm throwing that out to you because you sit on Appropriations. [AGENCY 03]

SENATOR WIGHTMAN: Senator Heidemann, I fully appreciate it. At the same time, I think we do have to look at the fact that our 250 employees and ourselves represent one entire branch of government. And I think that is due some consideration. But I'm not saying we can or can't live within the cuts. I think it will be very difficult to live within the

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cuts and there will be personnel cuts. [AGENCY 03]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 03]

SENATOR MELLO: Senator Wightman, thank you for your testimony. And I have a few questions here just to kind of maybe kind of see where your perspective is, at least in regards to Chairman of the Exec Board and Chairman essentially of the Legislative Council. I mean you've just said...and I'm a firm believer of this that words matter. And the Governor refers to his budget as cutting all agencies, but what I think you just said, which I would agree with, the Legislature is not an agency, it's one of three coequal branches of government, which makes us a little bit more different than the 25 code agencies that directly report to the Governor. Do you know in regards to the general size of the number of employees that our coequal branch of government has in comparison to the executive branch or the judicial branch? [AGENCY 03]

SENATOR WIGHTMAN: Probably no more than I heard today, I'm sure we're much, much smaller than the judicial branch, and we probably are somewhat larger than the executive branch. But I can't give you those figures. [AGENCY 03]

SENATOR MELLO: Well, I do. I asked a little research and I know it's a little dated, but my research shows that the legislative branch employs 322 employees; the judicial branch employs 1,145 employees; and the executive branch, code agencies only, employs 14,576 employees. [AGENCY 03]

SENATOR WIGHTMAN: Well, if you're going to count everybody in the executive branch, I was just looking at primarily the Governor's Office. But... [AGENCY 03]

SENATOR MELLO: But you would agree that code agencies are...because they report to the executive branch they are part of the executive branch, since they do not report... [AGENCY 03]

SENATOR WIGHTMAN: Right, I don't know that all of those are classified as code agencies, but 14,000, I think, is approximately the number of all employees in the state of Nebraska and that might include the legislative branch as well and the courts. And then there's about that many more at the University of Nebraska, I think, so. [AGENCY 03]

SENATOR MELLO: Uh-huh. Do you see...do you see some of the cuts you discussed today to our...one of our three coequal branches of government impeding at all our ability to be a check and balance on the other two branches of government, particularly knowing some of the possibilities or potentials you've just laid in front of the committee, such as eliminating possibly up to almost, you know, 20 percent of our staff possibly, within our branch of government? [AGENCY 03]

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SENATOR WIGHTMAN: Well, if we took all the cuts there, Senator Mello, that might be true. I don't think anybody is suggesting that we take all of those cuts. I was doing that more for illustration purposes... [AGENCY 03]

SENATOR MELLO: Uh-huh. [AGENCY 03]

SENATOR WIGHTMAN: ...as to what the size of the cuts would be. Whether we would be impeding, I think we would be maybe less efficient as a check and balance part of our government but I don't know whether it would impede it. [AGENCY 03]

SENATOR MELLO: Do you know what would be an adequate...I asked the same question to the other coequal branch of government, the judicial branch. What percentage of cuts do you think that the legislative branch of government can absorb while maintaining its appropriate level of checks and balances? [AGENCY 03]

SENATOR WIGHTMAN: I don't know if I could give you a figure for that right now. I can tell you about what this cut would amount to. [AGENCY 03]

SENATOR MELLO: Uh-huh. [AGENCY 03]

SENATOR WIGHTMAN: We're about \$20 million to \$21 million I think annual amount, so we'd be looking at \$30 million if we took the cuts over a year and a half period, and we're talking about \$2.7 million, so we're about 9 percent. I think that perhaps our cut is more in the reappropriation figure and I think we were leaner in our budget to start with on the reappropriation figure as to how we were going to use that than some of the other branches...or some of the other agencies. [AGENCY 03]

SENATOR MELLO: One last question, Chairman. According to the job vacancy report that was issued to the Legislature by the Department of Administrative Services, that answers directly to the Governor, it says that the Legislative Council has 14 vacant positions to the tune of \$296,000. Is that correct? [AGENCY 03]

SENATOR WIGHTMAN: My opinion, and I'll let the staff answer that, but my opinion is that we probably don't have 14 that we're trying to fill at the present time. And I'll let... [AGENCY 03]

JANICE SATRA: Senator, my name is Janice Satra, S-a-t-r-a, for the record. We are looking at an October report, 14 vacancies; 3 of those have been filled, 3 are still vacant. The rest are in the Clerk's Office. They're primarily session employees, like pages, Bill Room, so they, you know, because of the timing of the report they aren't currently filled. [AGENCY 03]

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SENATOR MELLO: Okay. [AGENCY 03]

SENATOR WIGHTMAN: We have a lot of employees, Senator Mello, that are part-time, and you know that on the pages. [AGENCY 03]

SENATOR MELLO: Uh-huh. [AGENCY 03]

SENATOR WIGHTMAN: And I don't know how many hours on an average they work per year, but we have about 50, no, we have how many, 40 pages? [AGENCY 03]

JANICE SATRA: Pages. [AGENCY 03]

(UNKNOWN MALE): 30. [AGENCY 03]

SENATOR WIGHTMAN: 30. I should know that. [AGENCY 03]

SENATOR MELLO: So the report is wrong in the sense that we have 3 vacancies, not 14. That would be... [AGENCY 03]

SENATOR WIGHTMAN: Right, three have been filled, as I understand it from... [AGENCY 03]

SENATOR MELLO: Okay. All right. Thank you, Chairman. [AGENCY 03]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 03]

SENATOR CONRAD: Thank you, Senator Wightman. And in the spirit of fairness and shared sacrifice, can you tell me, do you know how many employees of the legislative branch make over \$100,000 a year? [AGENCY 03]

SENATOR WIGHTMAN: I certainly can't tell you that. Perhaps somebody can. [AGENCY 03]

SENATOR CONRAD: Ball park estimate. [AGENCY 03]

(UNKNOWN FEMALE): I think about five. [AGENCY 03]

SENATOR CONRAD: Five out of maybe two hundred and fifty, primarily, I'm guessing, longtime employees. [AGENCY 03]

SENATOR WIGHTMAN: And no state senator makes that, I'm sure. (Laugh) [AGENCY 03]

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SENATOR CONRAD: And that was my next point to clarify for the record. In the spirit of shared sacrifice, we obviously make \$12,000 a year, set by the constitution, so that is difficult, if not impossible, to change in the context of a special session. Is that correct? [AGENCY 03]

SENATOR WIGHTMAN: That is correct and probably there is no way, and we've discussed this in committee, that there is any way there could be a reduction in that because it is set constitutionally. Now as a practical matter, the only place we could take a cut would be in the per diem, and I suggested that possibility. [AGENCY 03]

SENATOR CONRAD: Sure. And also for the record, not all senators make over \$100 a day in their per diem. Some make less than, what, \$40, is that right, \$39? Yeah, thank you. [AGENCY 03]

SENATOR HEIDEMANN: Do you know how much we spend in travel? [AGENCY 03]

SENATOR WIGHTMAN: And that's certainly an area we could look at. I don't know the figures, but I think that could be looked at as a cut, a possible cut next year in limiting the number of out-of-state trips. Other things, and I didn't mention this, we could look at eliminating one of the two groups that we belong to as a Legislature, Council of State Governments, the National Council of State Legislatures. They are fairly substantial expenses. I don't know that it's a good method of reaching our goal because I think, particularly with term limits, we, as young senators--not young, inexperienced senators--we have a lot to gain--some of you are young--have a lot to gain by attending these, but. [AGENCY 03]

JANICE SATRA: That's in state and outstate though. [AGENCY 03]

SENATOR WIGHTMAN: In state and outstate total travel expense at \$761,442, so it's not a small figure. [AGENCY 03]

SENATOR HEIDEMANN: I think out Clerk wants to say something, or are you just... [AGENCY 03]

PATRICK O'DONNELL: Well, I hesitate to correct the Chairman, but of that number,... [AGENCY 03]

SENATOR WIGHTMAN: Feel free. [AGENCY 03]

PATRICK O'DONNELL: ...that's also your per diem money. [AGENCY 03]

SENATOR WIGHTMAN: Oh, okay. [AGENCY 03]

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SENATOR HEIDEMANN: I was going to think there was more into that. [AGENCY 03]

PATRICK O'DONNELL: There's probably... [AGENCY 03]

JANICE SATRA: That's the in state (inaudible). [AGENCY 03]

PATRICK O'DONNELL: Yes. Yeah. So I just...and that's \$500,000 of that \$761,000. [AGENCY 03]

JANICE SATRA: Right. [AGENCY 03]

SENATOR WIGHTMAN: Oh, so it's much smaller than that when we take that out. Is all of the per diem in that or just the travel? [AGENCY 03]

PATRICK O'DONNELL: No, your per diem dollar amount (inaudible). [AGENCY 03]

SENATOR WIGHTMAN: Is in the \$761,000. [AGENCY 03]

PATRICK O'DONNELL: Yes. [AGENCY 03]

SENATOR WIGHTMAN: Okay. [AGENCY 03]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 03]

SENATOR NORDQUIST: Just where the Clerk of the Legislature Cash Fund and the Nebraska Legislative Shared Info System Cash Fund, can you give me a little background on those two? [AGENCY 03]

SENATOR WIGHTMAN: I'll let the Clerk answer that, if he will. [AGENCY 03]

PATRICK O'DONNELL: Sure. Senator, the Clerk's Cash Fund is essentially the lobby registration process. State law requires lobbyists to file quarterly reports, register with our office. Registration fees flow into a cash fund. Money emanates from that cash fund to pay for our...we have a person who does lobby registration. The other cash fund is primarily involved with statute book sales, so as, you know, new reissues come out, lawyers buy them and that money is deposited into that cash fund. [AGENCY 03]

SENATOR NORDQUIST: What are the current fees charged to lobbyists? You have any... [AGENCY 03]

PATRICK O'DONNELL: A hundred bucks. A hundred bucks a year. And nonprofits, I think it's \$15 or...but the \$100 is for-profits. [AGENCY 03]

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SENATOR HEIDEMANN: When was the last time that was raised? [AGENCY 03]

PATRICK O'DONNELL: Not...maybe 8-10 years ago. [AGENCY 03]

SENATOR HEIDEMANN: Okay. Senator Conrad. [AGENCY 03]

SENATOR CONRAD: I have one follow-up question, Senator Wightman or Mr. Clerk, in regards to the travel expense that we had just discussed. And I understand that it may group some other expenses in it and that's why that number appears inflated. But has the Executive Board of the Legislature looked at the possibility of, for example, reducing travel in the midst of...or for the purpose of interim hearings and, rather, moving to having all interim hearings being conducted here at the Capitol or through telephonic means or otherwise? I know that there's a lot of travel during the interim in relation to holding interim hearings around the state and how that expense...has that been specifically allocated and could that be reduced? Has that been discussed? [AGENCY 03]

SENATOR WIGHTMAN: Senator Conrad, that issue has been raised, but it has not been discussed at the committee level at this point. [AGENCY 03]

SENATOR CONRAD: Okay. [AGENCY 03]

SENATOR WIGHTMAN: It's probably an item that we will discuss but... [AGENCY 03]

SENATOR CONRAD: Okay. [AGENCY 03]

SENATOR WIGHTMAN: ...but we haven't discussed it yet. [AGENCY 03]

SENATOR CONRAD: Okay. Thank you. [AGENCY 03]

SENATOR HEIDEMANN: Are there any other questions? Senator Mello has one, excuse me. [AGENCY 03]

SENATOR MELLO: One final question, Senator Wightman. [AGENCY 03]

SENATOR WIGHTMAN: Is this the final, final question? [AGENCY 03]

SENATOR MELLO: This is the final question (laughter) for you for right now. Do you think in regard to some of the possible cuts you discussed, do you think that a reduction in services to the senators within the third coequal branch of government, do you think a reduction in services would have an impact in regards to senators' abilities to be able to use information or be able to gather information that's not coming from outside interests, such as the lobbyists or people who have been here or people who have worked in

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state government for awhile, maybe the executive branch? Do you think that would raise any kind of concern at all in regards to the level of cuts the Governor has recommended? [AGENCY 03]

SENATOR WIGHTMAN: Well, and certainly I think some of the things I've suggested, including the reduction of staff, if we were to reduce our administrative assistants, not only reduce them but eliminate them, that certainly would have some impact, I think, on our ability to respond both to questions asked generally and those asked by constituents. It would be a major cut. I don't think we're suggesting doing that but I guess it's one of the things on the table. [AGENCY 03]

SENATOR MELLO: I was looking less maybe at like our...like at senators' administrative staff and more of the resources of the Legislative Council. You know, you can go through all of them, but the fact is that the Legislative Council has built up a history of knowledge that provides this coequal branch of government information that is nonpartisan in its fashion that otherwise, if that knowledge base or that infrastructure is...deteriorates or is reduced, that senators are left then only to get that information from either the executive branch or special interests, such as lobbyists or other organizations outside of government. [AGENCY 03]

SENATOR WIGHTMAN: Certainly if those staff cuts took place in divisions, such as Legislative Research, Performance Audit, I think there could be a substantial reduction, particularly when we're looking at Legislative Research having a major role in the next year and a half as we go through the census. So obviously, it would take either some outside sources or a whole lot more work on the part of senators and senators' staff... [AGENCY 03]

SENATOR MELLO: Uh-huh. [AGENCY 03]

SENATOR WIGHTMAN: ...if we cut them. So certainly some of these things would have an impact. [AGENCY 03]

SENATOR MELLO: Okay. Thank you. [AGENCY 03]

SENATOR WIGHTMAN: That was the final, final question? [AGENCY 03]

SENATOR MELLO: That was the final question. [AGENCY 03]

SENATOR HEIDEMANN: Not for sure from everybody, but it looks that way. [AGENCY 03]

SENATOR WIGHTMAN: Thank you. [AGENCY 03]

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SENATOR HEIDEMANN: Thank you, Senator Wightman. Is anyone else wishing to testify on Agency 3, the Legislative Council? Seeing none, we will close the public hearing on Agency 3, open up the public hearing on Agency 46, the Department of Corrections. Welcome. [AGENCY 03]

ROBERT HOUSTON: Welcome. [AGENCY 46]

SENATOR HEIDEMANN: Good evening. [AGENCY 46]

ROBERT HOUSTON: (Exhibit 13) I have good afternoon here, but I'm going to say good evening. Chairman Heidemann and members of the Appropriations Committee, my name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. My testimony today will address the components of cost-saving measures the department has implemented. Initiatives for \$1.6 million of reductions in fiscal year '10, including reappropriation amounts, have been decided and continue to be implemented. We will also accomplish \$1.6 million in reductions in fiscal year 2011. These reductions are in addition to the 75 vacancies we'll keep open and other measures previously implemented to reduce costs. Our operations reduction measures focus on vacant positions and creating more efficiencies throughout our agency. With regards to the capital construction appropriation for security systems, the amounts for this biennium were reduced by \$1 million for each fiscal year and the plan adjusted accordingly for the biennium projects. All aspects of the department are impacted by the budget reductions. Facility-wide, during fiscal year 2010, 37 security positions have been identified to be left open, many for a short period of time. These positions were determined after a careful post-by-post analysis that will not weaken custody and control of inmates. The department is eliminating approximately 30 positions for full implementation of cost reduction measures in fiscal year 2011. In addition to personnel measures, the department has also identified measures to reduce costs related to substance abuse contracts, health services, pharmacy issues, as well as others. The department continues to operate safe and secure facilities at present levels of capacity. Our ability to do so is guided by maintaining our physical infrastructure, moving greater numbers of inmates to community custody, providing treatment programs that lead to parole, and continue to employ well-trained, well-supervised, and high-performing work force. I will answer any questions you have. [AGENCY 46]

SENATOR HEIDEMANN: Senator Conrad has one. [AGENCY 46]

SENATOR CONRAD: Thank you, Director Houston. It's always a pleasure hearing an update from you and your department and I know that you're always a good resource for a variety of different issues... [AGENCY 46]

ROBERT HOUSTON: Thank you. [AGENCY 46]

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SENATOR HEIDEMANN: ...that come before this body. And I'm sure...I've always appreciated your candor in the past and you'll appreciate the relevance of this question as we move forward. [AGENCY 46]

ROBERT HOUSTON: Okay. [AGENCY 46]

SENATOR CONRAD: I know that you have many tasks that you're charged with. I also know that one of those is developing a protocol related to the lethal injection bill that this Legislature has recently passed. [AGENCY 46]

ROBERT HOUSTON: Yes. [AGENCY 46]

SENATOR CONRAD: Can you tell me if you've been able to decipher any costs associated with those changes thus far? [AGENCY 46]

ROBERT HOUSTON: No. We move along with how we develop policy, how we develop the securing of equipment or physical modifications. We do that in the course of business, so. [AGENCY 46]

SENATOR CONRAD: Okay. Thank you so much. [AGENCY 46]

ROBERT HOUSTON: You bet. Thank you. [AGENCY 46]

SENATOR HEIDEMANN: Senator Hansen. [AGENCY 46]

SENATOR HANSEN: Thank you. Bob, do you have any insight, on the 75 vacancies that you list here,... [AGENCY 46]

ROBERT HOUSTON: Yes. [AGENCY 46]

SENATOR HANSEN: ...are you beginning to have more and more overtime with that many vacancies? And my underlying question, I guess, is morale of the staff. [AGENCY 46]

ROBERT HOUSTON: Yes. [AGENCY 46]

SENATOR HANSEN: Like we saw at Beatrice, the morale went down with mandatory overtime. Have you gotten into that position yet? [AGENCY 46]

ROBERT HOUSTON: Well, actually, the morale has gone the other way in that staff that were used to getting overtime are getting less overtime now, and a lot of people became dependent upon that money. What has gone down is mandatory overtime, specifically at Tecumseh. That's been refreshing. We actually have had a waiting list to

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become a correction officer at Tecumseh. The 75 vacancies that we have that are unfunded are a revolving number. We, last year, we trained, for fiscal year '09, we trained 459 new staff members. That gives you an idea of how positions turn over. And so at any one time we always have about 75 positions that are open and so those positions rotate in their being open. Right now we have 97 positions open departmentwide and so we started reductions a year ago. We're having a good problem in that our security positions are being filled and I appreciate your concern about the staff morale. [AGENCY 46]

SENATOR HANSEN: You're over the McCook Work Ethic Camp, too, aren't you? [AGENCY 46]

ROBERT HOUSTON: Yes, I am. [AGENCY 46]

SENATOR HANSEN: I toured that this summer. Seemed like a great facility. [AGENCY 46]

ROBERT HOUSTON: Yes, it is. [AGENCY 46]

SENATOR HANSEN: After the...several days, several weeks after the visit down there, they had a walk off and I guess that's a continuing problem or has some potential down there. But it seems to be a great facility. Those parolees are learning a life skill and hopefully will become good members of society. But it seems to be a very good program. [AGENCY 46]

ROBERT HOUSTON: Well, I appreciate you taking time to go out there. It's an excellent facility. We value it as much as we value Tecumseh... [AGENCY 46]

SENATOR HANSEN: Right. [AGENCY 46]

ROBERT HOUSTON: ...for different purposes, but nonetheless the same value. [AGENCY 46]

SENATOR HANSEN: Right. [AGENCY 46]

ROBERT HOUSTON: Thank you. [AGENCY 46]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 46]

SENATOR FULTON: Thank you, Mr. Chair. Thank you, Director, for being here. [AGENCY 46]

ROBERT HOUSTON: Yes. [AGENCY 46]

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SENATOR FULTON: In your testimony you indicated that "our operations reduction measures focus on vacant positions and creating more efficiencies more throughout our agency." With respect to the more efficiencies throughout the agency, will this...and this kind of dovetails off Senator Hansen's question, are we talking about furloughs for employees in addition to reduction of overtime? [AGENCY 46]

ROBERT HOUSTON: No. We considered furloughs but it...I think Gerry Oligmueller addressed that very clearly in his testimony. And the...but the efficiencies we're talking about--in fact we have Steve Urosevich here, who is our chief operating officer over health services--have to do with things such as dialysis. Right now if we have somebody on dialysis, they basically go into the community 14 times a month. We're going to reduce that down to 1 time by doing dialysis at our facility in a community standard way of doing that. The other thing has to do with traditionally if we had an emergency, somebody cut their finger, broke their finger or their hand and so forth, we would take them to an emergency room. Well, that's very costly. Now we're using Emergicare every time we can, so it reduces the amount of time our staff is out there and the costs are much less than the emergency room for those things that are appropriate for that level. So there's dozens and dozens of other efficiencies, but there's a couple. [AGENCY 46]

SENATOR FULTON: The follow-up, the number of staff, I mean you indicate that there's a level of security that the public should have. I ask this on behalf of my constituents but I think on behalf of the public too. [AGENCY 46]

ROBERT HOUSTON: Yes. [AGENCY 46]

SENATOR FULTON: I mean we haven't reduced staff such that we have to worry about not having adequate staff to maintain order and discipline and security in our facilities. [AGENCY 46]

ROBERT HOUSTON: That's correct. And our planning started I believe one year ago. It was the day after the Governor announced that we need to look ahead, and that's what we did. And so we had budget saving seminars. We have sometimes weekly, sometimes daily but always monthly meetings on budget reductions. We've vacated several administrative positions to fund upgrades or changes in classification, I should say. We also closed down some positions in our central office that became our psychiatrists at the Lincoln Correctional Center. We've combined positions. So we've been doing this over the course of a year to...saving money. So when this exercise came in, because of all the planning we've been doing the last year, it readily fell into place. [AGENCY 46]

SENATOR FULTON: Thank you. [AGENCY 46]

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ROBERT HOUSTON: Thanks. [AGENCY 46]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 46]

SENATOR MELLO: Hi there, Director Houston. A couple questions, one on kind of more of a level of accountability, which I know your office has been very diligent in regard to some of the requests I've made regarding the recent news that the Department of Corrections was employing an internationally wanted criminal. One of the questions that was raised to me was, through the Appropriations Committee decision last year in conjunction with the Governor to fund \$52 million in Department of Corrections with the American Recovery and Reinvestment Act dollars, general stabilization dollars, was that employee paid then with federal stimulus money since that money was essentially woven into the Department of Corrections? [AGENCY 46]

ROBERT HOUSTON: It depends on whether or not his position number was one of those coded. I believe we have about 337 positions coded towards that... [AGENCY 46]

SENATOR MELLO: Uh-huh. [AGENCY 46]

ROBERT HOUSTON: ...out of 2,259 positions. So I don't know whether or not that position was coded. [AGENCY 46]

SENATOR MELLO: You don't. [AGENCY 46]

ROBERT HOUSTON: In response to that also is that the...that was an administrative warrant upon which he was arrested, not a criminal warrant. Administrative warrants, I Googled this nonetheless to find out, are not entered into the National Crime Information Center. So all the best searches by the State Patrol and by the FBI, administrative warrants are not issued in there so there was no way that we could have discovered that. [AGENCY 46]

SENATOR MELLO: Okay. Well, I guess the follow-up question just would be...and I know that we'll continue this dialogue off the mike, too, and I appreciate your candidness with me and your office providing me the information. I guess the question I have then for the committee is can you guarantee that this is not happening in other facilities, knowing that this person was wanted, it was documented and it was, frankly, uncovered by an investigative reporter? Knowing that the criminal was fired, given to Immigration Services in September, it wasn't released publicly for close to a month, can you guarantee that this is not happening in other agency...or other facilities within the Department of Corrections? [AGENCY 46]

ROBERT HOUSTON: Well, I don't work in an agency that gives guarantees. Everything has a risk level and everything has to be handled in the most appropriate fashion

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possible. We do standardized checks. I mean we do checks that are in line with national standards. We also are looking at another means that the Marshal's office got a hold of us and explained to us in more detail from what we've gotten off the Internet what administrative warrants mean, and they said there was just no way you would have discovered that. They did say that there is possibly another system, and Dawn Renee Smith, who is here, is working on that to see if we can identify that. I did indicate earlier, we hired 459 staff in one...over 12 months and so forth, and we try to do that to perfection. We do excellent training. That employee was actually performing well and was promoted. There are investigations that we do where we use Google. There are investigations we use various parts of the Internet to do that as a screening instrument for employment. Since we do the extensive backgrounds with criminal checks and so forth, we just don't know how we could do that fairly. If everybody we hired was named Preklik, we could probably do Google checks and maybe find him after a few minutes, but if you were to Google the name Jim Smith or John Jones, you would see the hopelessness we would have in trying to use Internet and Google. The other thing is, is that the checks we do are all from reliable sources. The reason that that was an administrative warrant, not a criminal warrant, is that even though it was issued several months ago, the Marshal's office makes certain that U.S. law enforcement authorities went to arrest that person, and so that's why there was a long delay. And actually, the system worked because we put the fingerprints for that individual into the system. We put his name and identifiers in there. It's because of that input of the data that he was located where he was. So we have also federal and state employment laws that we have to follow, like other state agencies and other employers, and for us to approach staff off of information that could have been fabricated or even real on the Internet would bring in employment issues that would...just wouldn't stop. So it's all with all due caution that we use those type of checks. [AGENCY 46]

SENATOR MELLO: Okay. Thank you. [AGENCY 46]

ROBERT HOUSTON: Thank you. Uh-huh. [AGENCY 46]

SENATOR MELLO: One last question: According to the job vacancy report issued by the Department of Administrative Services that answers directly to the Governor, it says you have 209 vacant positions to the tune of \$6.8 million. Is that accurate? [AGENCY 46]

ROBERT HOUSTON: No, that would not be accurate. Some of those positions in there are positions from when we had closed Hastings, and I believe that's about 60 or 80. [AGENCY 46]

SENATOR MELLO: Uh-huh. Yes. [AGENCY 46]

ROBERT HOUSTON: And so, no, I think that this exercise will, either we are or have,

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are cleaning those up. Thank you. [AGENCY 46]

SENATOR MELLO: Okay. [AGENCY 46]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 46]

SENATOR WIGHTMAN: Thank you, Mr. Chairman. My question has been answered, but I do want to compliment you on your presentation, Director Houston. [AGENCY 46]

ROBERT HOUSTON: Thank you. [AGENCY 46]

SENATOR WIGHTMAN: I think you've done about as good a job as anyone we've heard today and I appreciate it. [AGENCY 46]

ROBERT HOUSTON: Well, thank you. Well, I appreciate that. Thank you very much. [AGENCY 46]

(UNKNOWN): Thank you. [AGENCY 46]

SENATOR HEIDEMANN: Any other questions? Seeing none, thanks for coming in this evening. [AGENCY 46]

ROBERT HOUSTON: Thank you very much. [AGENCY 46]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 46? Seeing none, we will close up the public hearing on Agency 46, open up the public hearing on Agency 64, State Patrol. Welcome. [AGENCY 46]

BRYAN TUMA: (Exhibit 14) Thank you. Good evening, Senator Heidemann and members of the Appropriations Committee. I'm Colonel Bryan, B-r-y-a-n, Tuma, T-u-m-a, superintendent of the Nebraska State Patrol, and I want to thank the members of the Appropriations Committee for the opportunity to brief you this evening on the Governor's budget recommendations. My goal today is to briefly review the Governor's recommendations relative to the Nebraska State Patrol and offer you a perspective on how these reductions will affect the delivery of law enforcement services and public safety in our state. First, I'm thankful for the Governor's support regarding his recommendation to exempt the Nebraska State Patrol from across-the-board reductions. I also wish to express my appreciation to the Governor and the Legislature for their continued support of the public safety communication system which is currently in the implementation phase. The utilization of mobile data terminations, or MDTs, is one example of technology which reduces administrative time, increases productivity, and maximizes the capabilities of the public safety communication system. This technology not only represents a significant investment in officer safety but addresses a

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number of initiatives intended to improve our efficiency. The Governor's recommendation eliminates vacant positions as a measure to reduce General Fund expenditures. The budget request for the current biennium, which the Nebraska State Patrol submitted in September of 2008, recognized that the economic situation in the state was probably not going to improve in the immediate future. This request estimated that the Nebraska State Patrol would realize a savings by not filling 20 vacancies during the biennium. The Appropriations Committee and the Legislature restored funding for 11 of those 20 vacancies. The Nebraska State Patrol eliminated the 9 vacant positions which were not funded for the current biennium. The current recommendation eliminates an additional 17 positions which are currently vacant. Eliminating these vacant positions will bring the authorized strength of the agency to 488.5 sworn officers. Attached to the testimony are two graphs which depict authorized strength since the year 2000 and the various funding sources for those positions. The Public Safety Cash Fund is mentioned in a section of the Governor's recommendation about across-the-board related cash fund transfers, and while we can accommodate the reduction and the cash transfer, I would propose that the cash fund involved be changed to the Drug Control and Education Cash Fund. The U.S. Department of Justice Asset Forfeiture Program has a number of specific requirements on the use of the funds received through the program. Transferring funds from the Public Safety Cash Fund to the General Fund would not meet the guidelines issued by the U.S. Department of Justice. There are sufficient funds, no prohibitions about transferring these amounts from the Drug Control and Education Cash Fund. I know you have many questions regarding the effect these reductions in personnel may have on our operations and what risk this constitutes to the safety of the public. We've taken significant steps to increase efficiency, address crime reduction strategies, employ technology solutions, and utilize available grant dollars for overtime compensation to meet service expectations. With proper planning, we will continue to operate to meet the mission of the Nebraska State Patrol. It's my position that, despite the challenges created by the budget, we will continue to meet the needs of the public, and I can assure you that our staff and all the members of the Nebraska State Patrol are engaged in their duties and responsibilities. They do their best each and every day to address their activities with due diligence and professionalism. Thank you for the opportunity to speak with you today, and I'll be happy to answer any questions. [AGENCY 64]

SENATOR HEIDEMANN: Thank you. Senator Conrad. [AGENCY 64]

SENATOR CONRAD: Thank you, Colonel, and thank you for your service. [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR CONRAD: A couple quick questions in follow up. I appreciate your resilience to try and accommodate these difficult budgetary concerns in carrying out the many

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obligations you're charged with, but can you tell me the last time the State Patrol was able to field and fund a full class, so to speak I think is the parlance that's normally thrown around,... [AGENCY 64]

BRYAN TUMA: Sure. [AGENCY 64]

SENATOR CONRAD: ...in terms in training new officers? [AGENCY 64]

BRYAN TUMA: Right. We hired a class in July of 2007 and then that class graduated in January of 2008. That was the last class that we graduated. [AGENCY 64]

SENATOR CONRAD: Okay. That's very helpful and obviously critical, to bring new blood in to replace retiring officers into your ranks. [AGENCY 64]

BRYAN TUMA: Right. [AGENCY 64]

SENATOR CONRAD: And I'll tell you, my office has received a significant amount of contacts in relation to the general public's concern for public safety issues related to no resources being available to continue this class tradition forward, and I know that's something that weighs very heavily on all of our minds. And so I just want to make sure that you knew that message was getting through. [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR CONRAD: The second question I have is something that's not mentioned specifically from your testimony but something that I've been meeting with local law enforcement in the Lincoln area about a lot over the interim and that's the resources that we have available for Crime Lab... [AGENCY 64]

BRYAN TUMA: Yes. [AGENCY 64]

SENATOR CONRAD: ...testing and investigation. And it's my understanding that we're down to one Crime Lab in the state of Nebraska, which... [AGENCY 64]

BRYAN TUMA: Yes. [AGENCY 64]

SENATOR CONRAD: ...you have jurisdiction over, and it performs many, many vital functions and that we have an extraordinary backlog in terms of the amount of cases and pieces of evidence being sent there. Again, I know you're in a very difficult position, but if you could talk about, you know, what you foresee as needs in terms of easing that backlog and ensuring a more smooth administration of justice, I'd appreciate your thoughts. [AGENCY 64]

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BRYAN TUMA: Okay. Well, you are correct. The Nebraska State Patrol's Crime Lab right now is probably the only forensic crime laboratory operating in the state of Nebraska. There are some other, I guess, resources that are available to assist law enforcement. For instance, at UNMC they can do some DNA testing. Right now, the status of the Douglas County Crime Lab, there are some issues there, I think--I'll try to be as politically correct about that as possible--and I think those will be resolved at some point. But you are correct, backlog is an issue for us. We've had this discussion within our command staff on a number of occasions. Some of the difficulties we have faced over the years is simply trying to keep the lab staffed. Forensic, that whole science right now saw a tremendous increase. There was a tremendous increase in interest by young people that were attending college. Programs like CSI: became extremely popular and there was a great demand for...in the academic environment, for providing that kind of training and those classes. And then there were some attempts within law enforcement and the effort to enhance the capabilities of crime labs through those forensic sciences. We have tried to keep up with that but the demand for those people has really created a great demand in the marketplace for people that have that type of training, so we were in a situation where we would train these individuals, employ them, and only to find that other crime labs would actively recruit and essentially lure our employees away from our crime lab. So we've had a continual problem with that issue, which makes working the backlog of cases even more difficult. We have seen some bright spots though. You know, there's trace analysis. A lot of the drug work that we do we infused some new technology into the Crime Lab, some robots that are able to do a lot of the testing which significantly automated that process. So we were able to significantly decrease the backlog in that area. But there is no doubt we have a lot of demand for the services and trying to keep pace with the demand is a real challenge for us. [AGENCY 64]

SENATOR CONRAD: Well, and I can tell you it would be no surprise to you or probably anybody in this room that, you know, in my conversations with those members of the bar who practice far more so than I do that juries expect to see evidence related to what they see on CSI: and otherwise, and so there is a very real demand in terms of our administration of justice on that level. And then also, you know, just from a very local perspective, up in north Lincoln we had a recent incident where there was potential for a serial sexual assault assailant and there's, through exigent circumstances and some expedited testing, they were able to rule out certain suspects and focus the investigative efforts otherwise to rapidly apprehend that person, which brought, of course, great relief to the residents of north Lincoln. But I know that there's almost a yearlong backlog in terms of the technology required to fully investigate some sexual assaults... [AGENCY 64]

BRYAN TUMA: Right. [AGENCY 64]

SENATOR CONRAD: ...at the present time, and I think that could just come to the point

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where, besides coming in below jury expectations, it severely compromises public safety. And so I appreciate your thoughts. [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Just out of curiosity, you haven't been running out at the Law Enforcement Training Center State Patrol camps. You also train out there, I think, county, county deputies and city police. Have you see a slowdown in that also? [AGENCY 64]

BRYAN TUMA: Well, we continue to use the facility for some of our in-service training programs, but the Crime Commission, in the Law Enforcement Training Center's side of the house, I think they have seen a reduction in the number of recruits that they are training. [AGENCY 64]

SENATOR HEIDEMANN: Also? [AGENCY 64]

BRYAN TUMA: I believe that's the case. [AGENCY 64]

SENATOR HEIDEMANN: Okay. Thank you. Senator Harms. [AGENCY 64]

SENATOR HARMS: Colonel Tuma, thank you very much for your testimony and just want to tell you how proud I am of what our Nebraska State Patrol does for the people of this great state. What I worry about is the fact that with all these fiscal issues we're confronted with that we may very well weaken that security, and I have great fear about that. Particularly where I live, it's already difficult, in some of our rural communities, to get the kind of help that we need, and so far you guys, your people have been just wonderful. We thank you for that. [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR HARMS: So the question I have, and maybe you probably brought this out and, because of the lateness of the night and my head, it probably went over my head. Okay? How many people would be lost if we adopt the Governor's recommendation? How many staff would actually be lost in this process? [AGENCY 64]

BRYAN TUMA: Well, right now it's a situation where we wouldn't replace. We have the vacancies right now. [AGENCY 64]

SENATOR HARMS: Okay. [AGENCY 64]

BRYAN TUMA: Right now, I'm currently staffed at 485 officers. The Governor's recommendation would up, place our authorized strength at 488.5 positions. So in terms

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of making the cuts that are recommended by the Governor or not filling those vacancies, I can do that right now. [AGENCY 64]

SENATOR HARMS: So then what does that do for the public and its concern for security? [AGENCY 64]

BRYAN TUMA: Well, you know... [AGENCY 64]

SENATOR HARMS: I mean that's a tough question... [AGENCY 64]

BRYAN TUMA: Yeah. Yeah. [AGENCY 64]

SENATOR HARMS: ...and you're in a tough bind here, but I just...I'm a supporter here but I'm just trying to find out what's going on. [AGENCY 64]

BRYAN TUMA: Yes. It's fairly obvious, if you don't have the people then it's going to delay our response time in some cases. You know, it will probably impede our ability to respond as quickly as we'd like to in some cases. But we do not...we never say that we'll not take a call. It might take us a little longer to get there but we will get there. If we have to call somebody out and send them back to work, we will do that, and that's typically what happens. And we're using overtime grant monies to, I guess, augment our available work force. Those are the kinds of things that we're trying to work on. We're doing data-driven allocation, policing models where we look at data to let it tell us where we need to put our resources. We're trying to become more involved in intelligence-led policing models where we're looking at what crime intelligence information is telling us, where we see crime trends. And, you know, we try to utilize aggressive traffic enforcement techniques to interdict criminal activity. Those have been fairly effective but, obviously, if we don't have the people then it impairs our ability to do as much as we would like to do. It does have an effect on us and I think it has an effect on local law enforcement. [AGENCY 64]

SENATOR HARMS: With the economy as it is today, are you seeing an increase in crime that you're being involved in? [AGENCY 64]

BRYAN TUMA: Well, I guess the things that we're normally engaged in as the State Patrol, we're seeing probably as much criminal interdiction activity on the interstate system. Typically that's drugs or some type of illegal proceeds from drug activity. Those arrests, those seizures I think are at least where we were at within the last couple years and probably increasing. Clearly, there's an effort to...what we're hearing is because of what's taking place in Mexico with the Calderon government and the pressure that's being placed on the drug cartels in Mexico, the competition amongst the cartels is leading to a lot of factors, which means there's a shortage of product here in the United States, so I think we're pretty active in that regard. Our criminal investigators, our drug

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investigators are all...I think our casework is up, our calls for service are up. That can be anything from traffic accidents from, you know, investigating domestic violence or other criminal activity that our uniform road troopers are responding to. So, yeah, I think, in general terms, we're pretty busy. [AGENCY 64]

SENATOR HARMS: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 64]

SENATOR MELLO: Thank you, Mr. Chairman. Thank you, Colonel Tuma,... [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR MELLO: ...for your testimony. Only one question: According to the job vacancy report that was issued by the Department of Administrative Services that reports directly to the Governor, this report says that you have 38 vacant positions that equate to \$1.4 million. Is that accurate? [AGENCY 64]

BRYAN TUMA: No. We have...we are authorized 505 positions, 505.5. Right now we have 485 sworn officers employed, so we have 20 vacancies for sworn positions. In terms of civilian positions, I believe we have right at 6 vacancies right now. Some of those are on hold. We have not...we've decided not to fill them or to at least hold off on filling them. Some have been posted, no action taken, and others are being filled because they're mission critical positions, for instance like a dispatcher. [AGENCY 64]

SENATOR MELLO: So right now you have 20 vacant officer positions, which I know... [AGENCY 64]

BRYAN TUMA: Right. [AGENCY 64]

SENATOR MELLO: ...the Governor takes a good chunk of those here,... [AGENCY 64]

BRYAN TUMA: Yeah. [AGENCY 64]

SENATOR MELLO: ...and then 6 civilian. [AGENCY 64]

BRYAN TUMA: Right. [AGENCY 64]

SENATOR MELLO: So 26, not 38. [AGENCY 64]

BRYAN TUMA: Right. [AGENCY 64]

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SENATOR MELLO: All right. Thanks so much. [AGENCY 64]

SENATOR HEIDEMANN: Senator Hansen. [AGENCY 64]

SENATOR HANSEN: Thank you, Colonel Tuma. Nice to have you here tonight.
[AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR HANSEN: I will relay the message to Captain Parrish that you're still working
nights. [AGENCY 64]

BRYAN TUMA: Yeah. (Laughter) Yes. [AGENCY 64]

SENATOR HANSEN: Assure me that the 3 positions that you're authorized to fill now,
not the 20 but the 3, are going to be trained, they're going to be trained, not that they're
going to have a full class but assure me that they are going to be trained. [AGENCY 64]

BRYAN TUMA: I can't do that right now. [AGENCY 64]

SENATOR HANSEN: Well, any new hires in the Patrol will be trained. Is that correct?
[AGENCY 64]

BRYAN TUMA: Oh, absolutely. [AGENCY 64]

SENATOR HANSEN: They won't be...they won't have to fill out an Internet survey and
go to work. [AGENCY 64]

BRYAN TUMA: Oh, no. No. [AGENCY 64]

SENATOR HANSEN: Okay. [AGENCY 64]

BRYAN TUMA: No, we have a fairly rigorous, extensive training process. Yes.
[AGENCY 64]

SENATOR HANSEN: At the Training Center in Grand Island. [AGENCY 64]

BRYAN TUMA: Yes. Right. [AGENCY 64]

SENATOR HANSEN: Good. Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 64]

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SENATOR FULTON: That's all right. I'll just take an opportunity to say thank you.
[AGENCY 64]

BRYAN TUMA: Thank you, Senator. [AGENCY 64]

SENATOR FULTON: The Patrol does good work and obviously there's some concern about public safety here and we appreciate your assurances. [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR FULTON: Uh-huh. [AGENCY 64]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 64]

SENATOR CONRAD: Could you also provide some information in terms of the age of your work force and issues that may be on the horizon in relation... [AGENCY 64]

BRYAN TUMA: Sure. [AGENCY 64]

SENATOR CONRAD: ...to retirements and how that buttresses with the need for new recruits and new officers and... [AGENCY 64]

BRYAN TUMA: Right. Right now, I have 6 retirement letters pending. By the end of the year those six officers will retire. I have 27 officers that were in the DROP Program. I believe by the end of this year I will lose two of those officers through that retirement process. I'm really not impacted by retirements or people eligible for DROP in '09 and '10. In '11 I begin to see an uptick and by 2012 and 2013 I will see a number of those folks that will be eligible for retirement. You know, the long-term impact of delaying the training camps is that you get a bottleneck. Twenty years, twenty-five years from now we will have a large...if we're allowed to hire at some point in the next couple of years, if things turn around, then we will hire larger classes. Those larger classes will go through their career and then, in 20-25 years, we'll see, you know, another mass exodus. So, you know, we anticipate we'll continue to have probably four to six retirements each year and some of those folks may elect to join the DROP Program and some of those people may not. I mean not everybody goes into the DROP Program. [AGENCY 64]

SENATOR CONRAD: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 64]

BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: And thank you for all you do. [AGENCY 64]

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BRYAN TUMA: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 64? [AGENCY 64]

KORBY GILBERTSON: (Exhibit 15) Good evening, Chairman Heidemann, members of the committee, for the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the State Troopers Association of Nebraska. The State Troopers Association has not had a chance to meet, formally take a position on these proposed budget cuts so I'm here in a neutral capacity this evening, just to voice our concerns with the proposed cuts. On page 31 of the Governor's budget proposal document, it talks about the specific cuts to the Patrol. Obviously, these cuts have concerns with the members of STAN regarding the delivery of law enforcement and public safety in the state of Nebraska and also the impact on those troopers that are currently providing service to the state. This is a quality of life issue for them. Obviously, they work very hard today on what they do and they're afraid of the impact that these cuts will have on them. I also want to address in a bigger picture the impact that you talked about a little bit at the end of Colonel Tuma's testimony, and that's the impact that this has on the retirement plan for these troopers. Also, on page 31 the Governor proposes cutting \$266,087 out of the proposed appropriations from last year's budget to the Patrol's plan. If you look at, let's see, page 4 of the document that I handed out, this is a Patrol specific page and you'll see in the first column that in 2009...this is a document, by the way, that was distributed to the Public Employees Retirement Board on October 20. I did make the Governor's Office aware of it, but obviously they're...the information in here as is stated was based on a revised five-year projection and completed in February of 2009. As this report states, the actual needed state contribution for 2009, which would be payable in July of 2010, is going to be \$812,000. That assumes that that \$266,000 is going there. So if the \$266,000 is taken away, then we will be here next year asking for over \$1 million to put money into the plan. For those of you who paid close attention last year to the retirement plan, the State Troopers Association agreed to a 2 percent increase in their contribution rate, with the agreement that the state would contribute this \$266,000 to shore up the plan based on the actuarial study at that time. Our concern now is that we will be back, obviously looking at a further increase but an increase that will be made bigger because of this proposed budget cut. I could go on but I think you get the picture, and I'd be happy to try to answer any questions. [AGENCY 64]

SENATOR NORDQUIST: Thank you, Mr. Chairman. Thank you, Ms. Gilbertson. I had the bill last year that increased the contribution rates and I remember very distinctly of the agreement that was made to make that. This, all this is going to do is put it off until next session. And you said you spoke to the administration... [AGENCY 64]

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KORBY GILBERTSON: Right, I wanted to... [AGENCY 64]

SENATOR NORDQUIST: ...and their response was... [AGENCY 64]

KORBY GILBERTSON: Yeah, I wanted to make sure that they were aware of this. There is going to be a presentation to the Retirement Board on November 16 where these numbers will be made public. So at this point this is just a pre...this is just a look at what's to come. And I should also mention that it's not just the Patrol's plan that's going to be needing a good infusion. If you look in out-years for, say, the teachers' plan and the judges' plan, there are going to be significant issues in a few years and I think that we'll just compound that by ignoring it now or making cuts right now. [AGENCY 64]

SENATOR NORDQUIST: Yeah. Well, I don't know why the administration wouldn't put a placeholder in for that amount. I don't, you know, I don't think it's going to change much between now and the actual...the report that is officially issued on the 16th, which without...we have to have that in mind as we proceed through this special session. [AGENCY 64]

KORBY GILBERTSON: And I don't know if they had a copy of this. I just...I asked for a copy from PERB and got it. [AGENCY 64]

SENATOR NORDQUIST: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 64]

SENATOR MELLO: I think Senator Nordquist, I think, asked the main question or at least I think he was getting there, which my question was if we do take this cut don't we only then just have to pay more in the future? So isn't this cut not just a band-aid approach to kind of get us through this special session but this is part of a larger problem that we'll have to face? [AGENCY 64]

KORBY GILBERTSON: That's our fear, and it's also compounded by the fact that if you look at eliminating all of the positions that could be filled right now in the Patrol, you're going to compound that even further because you're not replacing the 28, 27 people that are going to be eligible for DROP and will start retiring with, you know, after that five-year DROP period. The 6 that are pending retirements, you have 2 more, that turns that 20 into 30 pretty quickly and then all of a sudden you do have a bottleneck problem and you don't have the resources coming in to fill back in those holes that are going to be made in the retirement system. [AGENCY 64]

SENATOR HEIDEMANN: Senator Nordquist for... [AGENCY 64]

SENATOR NORDQUIST: I'd just like to comment on that point of view for the members

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on the committee. If you look just at the different retirement plans and their amount of employer contribution, the other plans see some increase over time. But you can see with the State Patrol it's flat because those positions aren't there. So the thing that has to increase then is the state's share. [AGENCY 64]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you for coming in this evening. [AGENCY 64]

KORBY GILBERTSON: Thank you. [AGENCY 64]

SENATOR CONRAD: Thank you. [AGENCY 64]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 64? Seeing none, we'll close up the public hearing on Agency 64 and open up the public hearing on Agency 78, the Crime Commission. [AGENCY 64]

MICHAEL BEHM: (Exhibit 16) Good evening, Senator Heidemann,... [AGENCY 78]

SENATOR HEIDEMANN: Good evening. [AGENCY 78]

MICHAEL BEHM: ...members of the Appropriations Committee. It's been a long day for you guys. My name is Michael Behm, B-e-h-m. I'm the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, commonly known as the Crime Commission. Linda Krutz, the director of the Community Corrections Council, is with me and will testify after me. The Crime Commission provides budgetary and administrative support to the council. Also with me today is Bill Muldoon, the director of the Law Enforcement Training Center, and Mike Friend, the director of Office of Violence Prevention. I support the Governor's budget recommendation for reduction in our agency's funding for fiscal year '09 and '10, and fiscal years '10 and '11. The Crime Commission has always been a good steward of the funds we receive, both from state government and federal government programs. We have adjusted to lower funding in the current fiscal year by evaluating vacancies as they occur and by not filling each vacancy unless we determine it to be an essential position. We are a relatively small agency with 44 FTEs. We currently have one vacancy, which we are evaluating prior to beginning the process to hire a replacement employee. That particular vacancy now is an instructor out at the Grand Island Training Center. I've restricted out-of-state travel to only essential trips, and have instructed my staff to make full use of federal funds or other sources to pay for this travel. We have always been diligent in our scheduling of travel and conferences and we only attend those meetings out of state which are required by federal programs or which will provide direct benefits to the state. We anticipate future utility savings at the Nebraska Law Enforcement Training Center. The center is working with the Task Force for Building Renewal on a project that replaces heating and cooling units throughout the facility and updates lighting to make the entire

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building more energy efficient. The current systems are more than 25 years old. It is anticipated that these new energy efficient systems will reduce energy consumption and leverage new green technologies that have recently become available. LB63, which passed earlier this year as a legislative priority bill, created the Office of Violence Prevention within the Crime Commission with a General Fund budget of \$100,000 for operations and a cash fund budget of \$350,000 for aid. There are no reductions to this program in the Governor's budget recommendation. It is staffed by one person. The General Funds are used for salary and benefits and travel costs for an advisory council. The aid funds have been awarded to pilot projects that address violence prevention. We do not anticipate layoffs at the 2.5 or 5 percent across-the-board reductions or the reappropriation reductions in the Governor's budget proposal. If these reductions are higher, I anticipate layoffs could be a possibility during the biennium. To reiterate, we have already implemented cost savings during this year and in previous fiscal years. We continue to evaluate our staffing needs, and in 2008 we realized cost savings at the Law Enforcement Training Center via an internal organization of staff. I thank you for your time and would gladly answer your questions. [AGENCY 78]

SENATOR HEIDEMANN: Thank you for coming in this evening. Senator Mello. [AGENCY 78]

SENATOR MELLO: Thank you, Director. I have two questions real quick and one is more just an administrative question. The applications for the aid through the Office of Violence Prevention, are those grant applications available to the public or to the senators' offices if we would request those? [AGENCY 78]

MICHAEL BEHM: We can allow you to look at the grant applicants. What I'd like to...what I've done in the past is had an individual actually come into our office to take a look at them, for obvious reasons. The files are pretty thick. We monitor not only what they made in application, what the Grant Review Committee made, and the honest answer here is I don't want it to walk out of the office and not come back... [AGENCY 78]

SENATOR MELLO: Okay. [AGENCY 78]

MICHAEL BEHM: ...so that we maintain that file. [AGENCY 78]

SENATOR MELLO: Okay. So I can follow up with Director Friend to set up an appointment to look at those documents? [AGENCY 78]

MICHAEL BEHM: Yes. Yes, you can, Senator. [AGENCY 78]

SENATOR MELLO: Okay. The only other question I have is, according to the job vacancy report that was issued to the Legislature by the Department of Administrative

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Services, who directly reports to the Governor, says that Corrections, I'm sorry, Crime Commission has one vacant position to the amount of \$45,000. You mentioned in your testimony you have one vacant position. Is that the same? [AGENCY 78]

MICHAEL BEHM: That is correct, Senator. [AGENCY 78]

SENATOR MELLO: Okay. [AGENCY 78]

MICHAEL BEHM: That would be an instructor position out at the Training Center. [AGENCY 78]

SENATOR MELLO: Okay. All right. Thank you. [AGENCY 78]

SENATOR HEIDEMANN: Are there any other questions? Thank you. [AGENCY 78]

MICHAEL BEHM: Thank you, sir. [AGENCY 78]

LINDA KRUTZ: Good evening. [AGENCY 78]

SENATOR HEIDEMANN: Good evening. [AGENCY 78]

LINDA KRUTZ: (Exhibit 17) I'll be brief also. Good evening, Senator Heidemann and members of the Appropriations Committee. My name is Linda Krutz and I am the executive director of the Community Corrections Council. Thank you for the opportunity to testify before you today. I appreciate the difficult task which the Legislature faces during the special session and want to inform the committee that the council is prepared and willing to assist in resolving the current fiscal crisis. Let me begin by stating that I support the Governor's proposed 2.5 percent and 5 percent reductions in our agency's appropriation for fiscal year '09-10 and fiscal year '10-11, as well as the reductions in the carryover appropriations from the last biennium and the proposed cash fund transfer from the Uniform Data Analysis Cash Fund. While the proposed cuts will impact the council by delaying new initiatives and postponing expansion of existing programs, the conservative approach used by the council and its partners in managing the resources provided by the Legislature will allow us to minimize the impact the cuts have on existing community corrections programs. As you are aware, the council receives about \$5.5 million in General Funds each year to support problem solving courts, reporting centers, and the fee-for-service treatment voucher program. These funds are passed through the council to Probation administration and the Court Administrator's Office, which administer these programs in collaboration with the council. The proposed 2.5 percent and 5 percent cuts in these programs would normally require a reduction in the level of services available in these three programs for offenders. Fortunately, the recommended remaining carryover appropriations which was saved from the last biennium, after reductions, will allow the reporting centers and problem solving courts to

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continue to provide the same level and quality of services to offenders as they have in the past. Any additional cuts would have a direct impact on services for the programs in question. Council staff has also made a number of changes in response to the economic downturn. A temporary employee position was eliminated within the last year and all travel and training for staff has been frozen for the past two years. Operations costs have been reduced by acquiring free meeting space for council meetings, expanding electronic distribution of materials, and developing the council Web site inhouse. In closing, I would like to reiterate the council's willingness to assist in resolving the current budget situation and would be happy to answer any questions. [AGENCY 78]

SENATOR HEIDEMANN: Thank you. Are there any questions? You might luck out. I don't think so. [AGENCY 78]

LINDA KRUTZ: (Laugh) I think that's a first. [AGENCY 78]

SENATOR HEIDEMANN: Thank you for coming in this evening. [AGENCY 78]

LINDA KRUTZ: Thanks. [AGENCY 78]

SENATOR HEIDEMANN: Are there anyone else wishing to testify on Agency 78? Seeing none, we will close up the public hearing on Agency 78 and open up the public hearing on Agency 94, the Commission on Public Advocacy. [AGENCY 78]

JIM MOWBRAY: Last, but not least. [AGENCY 94]

SENATOR HEIDEMANN: I numbered the agencies from the bottom so I knew always how many I had left, so you're actually number 1. (Laughter) [AGENCY 94]

JIM MOWBRAY: Okay. Thank you. I'll try to also be brief. Good evening. My name is Jim Mowbray, M-o-w-b-r-a-y. I'm chief counsel for the Nebraska Commission on Public Advocacy. I'm going to limit my comments to two of the programs which are really the most important part of my agency, and that's program 425 and 455. The other two have been previously testified to by Mr. Pantos, at least regarding two funds that we basically managed that we receive fees and then pay them out through grants. Fourteen years ago, this Legislature saw the need to create the Commission on Public Advocacy, and I think some history is necessary for some of the newer senators. The legislation addressed three goals. The first goal was to provide property tax relief to counties by the state assisting counties were providing adequate funding for indigent defense services. The second goal was to lessen the impact on county taxpayers to the cost of high-profile death penalty cases which can significantly effect the finances of the counties. And the third goal was for the state and the counties to fulfill their state and federal constitutional obligation to provide indigent defendants with effective assistance

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at counsel. Over the last 14 years, my office has successfully accomplished all three goals year in and year out with the ongoing support of the Governor's Office and this committee. Now, I just recently looked and I would estimate we have saved the counties of Nebraska approximately \$4 million per year for the last 14 years in tax relief that they would normally be spending on indigent defense. And at the same time we've provided I believe would most certainly conclude was effective assistance at counsel. I know what we do is certainly not popular and sometimes completely understood, but my staff is dedicated to protecting the constitutional guarantees afforded all citizens of this state, as well as ensuring that anyone accused of a serious crime receives effective assistance of counsel. Providing citizens of this state with their constitutional right to effective assistance of counsel requires more than having a warm body present in the courtroom. It requires an attorney who is well-trained and is dedicated to the profession. It requires the attorney to have at their disposal all the tools necessary to properly defend their client, which includes costs that are over and above the attorney's times. Most of those costs are unpredictable. We do not choose our client or our cases or where they may live in this state. We have costs that involve mileage, lodging; more important, we have the need for the assistance of experts depending on the specific facts surrounding a case. These costs include pathologists, psychiatrists, psychologists, ballistic experts, and others. We may also engage experts for scientific testing of forensic evidence such as DNA. Those costs have varied from year to year and, of course, they continue to rise every year. Anytime that I've come before this committee over the last 14 years, I've always presented a budget that allows my office to continue to meet and exceed the goals set by this Legislature. I've never asked for anymore than I need and I've always said that what I don't spend, you can have back. By doing that, I think we've been able to build up a cash reserve by being fiscally responsible. I realize I need to be a team player. I realize that agencies must contribute something to help solve this shortfall, so I know my office is certainly not exempt and I don't think it should be. However, under the current recommendations of the Governor we cannot carry out our purpose. I basically don't have any problem with the taking of \$460,000 from our cash fund. That money is money that I had previously asked for that was...the authority was given. I didn't spend it. And so it should be returned, as I have suggested. But the problem I do have is the across the board reduction and the reduction in the reappropriation because these cuts will result in reducing our spending authority, which in turn will basically eliminate our ability to properly and effectively represent our clients. What I mean by this is I think what the budget office did was they looked at our budget over the last four or five years and consistently we've spent about 90 to 95 percent of what we were authorized to spend, which means that it appears that by cutting us 6, 7, 8 percent that that wouldn't have any impact on what we're doing. The problem with that is, is those costs that we have some flexibility really revolve around the types of costs such as travel, expert witnesses, and those expenses, which again I can't predict up front. The reason most of the years that we've been able to give money back or at least not spend what we've asked for have been in those areas. And if you look at the budget almost year in and year out, where we're returning funds or where funds are going

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unspent are in these areas. However, for example, this year in the first four months we've had two first-degree murder trials and one second-degree murder trial. One of those cases, which is going on right now, involves insanity, and by the end of the month we'll have spent over \$20,000 in psychiatry fees and expert witnesses. Now, I can tell you that the state has spent even more. Is that unusual? Yes, it is. But it can happen. And in the other trials, again, we had experts involved including pathologists. One case was the cause of death. What was it? Our pathologist said it was natural causes. The state's pathologist agreed it could be natural; it could be from suffocation. But the point was those experts are necessary, both for the state and for the defendant. So under our current budget if we are reduced to basically the cuts that are suggested by the Governor, and I realize that's only approximately \$77,000 which doesn't sound like a lot--not with the numbers I've heard today--but that essentially just eliminates my experts, it eliminates most of our travel, and it eliminates the taking of depositions which essentially just cuts the legs out from under us. We are not able to properly and adequately represent people we are appointed to. So the following year, the '10-11 according to the Governor if, again, you don't remove the cuts for this year as well as next, we can get by. I think we'll be all right because I do think at least it looks like this year has been unusual with these expert costs. And I hope next year that these don't come up again, and I think we'll be all right. But what I can tell you in 28 years as both a prosecutor and a defense attorney, I have never seen a case go unprosecuted because the state had no money for experts. It's never happened and it never will. Now, what I'm suggesting is to be fair and, again, to be consistent I think with the other agencies, if you need the additional cash that's coming from the reduction is to just simply increase the amount that's coming out of the fund. In other words, don't reduce our authority, but if you need the additional \$77,000 and the \$50,000 I believe the next year, then add that to the \$460,000. We can afford the money coming out of the bank. I can't afford the actual spending authority cuts or we simply can't do our job. I want to remind you that last year my office was directly involved in proving the innocence of six people through DNA testing. All of those costs, over \$30,000, were paid for by the very funds you're now considering cutting. Had these funds not been available, three innocent persons would still be sitting in prison. Could a case like that occur in the next two years? Maybe. And if it doesn't, I don't want to tell my...and if it does, I don't want to be the one to tell my client: I'd like to prove you're innocent but I just don't have the money to do it. I'll be happy to answer any questions. [AGENCY 94]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 94]

SENATOR CONRAD: Thank you, Director. I have two, hopefully, brief questions in follow up. And I want to thank you for not only your service to this state, but your resiliency in lasting through the hearings with us (laughter) here this evening. Number one, if we were to remove the flexibility in resources from your office in relation to what you and your staff determine is a necessary amount in adequate and efficient defense for your clients, would that in effect set up the state, set up your office, set up others

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for...would that increase our potential liability in terms of future ineffective assistance counsel claims? [AGENCY 94]

JIM MOWBRAY: Well, it would increase the ineffective assistance to counsel because somebody either is going to pay for it or, i.e. through the money contribution or pay for it for having to do the trial over or it's going to be passed on, again, back to the counties which is one of the things we're trying to prevent because of the high costs. I mean, some of these death penalty cases or even the murder cases were up into the half a million dollar per case up to a million dollar per case. And when you take a county that's like Lancaster, they can maybe absorb that, but you take a county that, you know, that's obviously much smaller population, they certainly can't afford that. I mean, we were created because of Richardson...one of the problems was in Richardson County. They were borrowing on their ambulances trying to pay for the costs. So, yes, there would be ongoing problems. [AGENCY 94]

SENATOR CONRAD: And then finally, you know, regardless of mine, yours, a member of this committee's personal position related to the issue surrounding the death penalty, this Legislature has made a policy decision to move forward and to change our method of execution and continue to have a death penalty in the state of Nebraska. That being said, do you foresee those changes in the law in adding additional layers or additional levels of work to you and your staff's time on behalf of your clients now potentially changed appellate arguments or otherwise? [AGENCY 94]

JIM MOWBRAY: I think one of the things that my office provides the state is...there's probably over 6,000 licensed attorneys in this state, and if there are 50 that are qualified to do death penalty cases, that would be the maximum number, and of those 50, 6 are in my office. So we are doing the type of work that I think would allow us, at least the Legislature and the people of the state of Nebraska who support the death penalty, to sleep better at night because they know that regardless of whether they are for or against the death penalty, that at least you're ensuring that an individual that's facing that punishment is being adequately represented with adequate funds. And by doing that, you're ensuring that hopefully innocent people aren't being convicted and innocent people aren't being subjected to the death penalty. And for that alone if we are going to have the death penalty, then I would think at least you would want to make sure that those people facing that are adequately represented. [AGENCY 94]

SENATOR CONRAD: Thank you. [AGENCY 94]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 94]

SENATOR MELLO: Thank you for your testimony, Director. I want only one question and I know it's late. According to the job vacancy report that was issued to the Legislature by the Department of Administrative Services that reports directly to the

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Governor, they say you have two job vacancies to the tune of \$75,000. Is that correct?
[AGENCY 94]

JIM MOWBRAY: No. When we initially started, we had the funding and the authority to hire three support staff and a full-time investigator as well as the number of attorneys that I now have, which are five in addition to myself. I eliminated one full-time position of the staff when I realized...just simply, again, when we started to move towards...in 2002 I believe it was we had our first problems, and so I eliminated a staff person. I recently reduced the investigator's position to a part-time position, which I didn't want to do. You know, I think it's...when we're dealing with any particular case, of course, we're dealing with law enforcement and there may be eight or nine officers for a particular agency working on one case. And yet my investigator is not only working on that case with just as many witnesses as the nine police officers, but he has all the other cases. But be that as it may, I did cut him to a half-time position. So we're down to two support two staff and six attorneys and a half-time position investigator. [AGENCY 94]

SENATOR MELLO: So you have no job vacancies then? [AGENCY 94]

JIM MOWBRAY: No. [AGENCY 94]

SENATOR MELLO: Okay. [AGENCY 94]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 94]

SENATOR NELSON: Thank you, Senator. Thank you, Director Mowbray. I'm not following. You cited a \$77,000 figure here. Is that in the lapse appropriations side?
[AGENCY 94]

JIM MOWBRAY: It's both the lapse and the reappropriation reduction. [AGENCY 94]

SENATOR NELSON: All right. The other question I have is on the DNA testing. How often do you have to do that in a year's time? [AGENCY 94]

JIM MOWBRAY: We have generally about eight to nine cases that are either open and closing and opening a new one. About that number will go on every year where inmates are filing motions for DNA testing. Now, not all of them successful. I mean, some of them aren't even able to do any testing because of forensic evidence has been done away. But generally speaking we have about that number of cases that are ongoing.
[AGENCY 94]

SENATOR NELSON: And what does the usual DNA test cost to have done? [AGENCY 94]

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JIM MOWBRAY: For just the...if they have...if they're doing a nuclear DNA test on a good sample, it's \$450. If it...again, depending on if they have to work with the sample, it could rise up to around \$1,200. And if they're doing what's called "mitochondria DNA," that runs at \$2,500 per test. And you may have in a particular...let's say it's a pillowcase, there may be ten tests done on one pillowcase. In the case in Beatrice, we ran just in the bedroom alone I believe DNA tests on probably 50 to 60 samples that were submitted. So it can get expensive very quickly. There was one case where there was a number of hairs involved, and I think the testing added up to almost \$48,000 in one particular case. [AGENCY 94]

SENATOR NELSON: If you did absorb the \$56,000 reduction there, what would that leave you in that cash fund? [AGENCY 94]

JIM MOWBRAY: The \$56,000 for the DNA? [AGENCY 94]

SENATOR NELSON: Yes, for the DNA. [AGENCY 94]

JIM MOWBRAY: Well, I still have money that I would have...let's see, I would have spending authority of \$75,000 total, so I'm down to like \$20,000 spending authority which may or may not be sufficient. The thing is that these reductions don't help you all plug the revenue problem. I mean, since we are totally cash funded and we always bring in more money than I spend, and so that's why I'm suggesting is to take the cash instead of actually cutting our authority is to take the cash out of the bank. And that way we can still afford to operate and not be hamstrung, but at the same time the state can use that money, hopefully, to help the Supreme Court or some other legally related...you know, I know you're not going to do that, but I mean it certainly can go to other agencies that are in need of this. [AGENCY 94]

SENATOR FULTON: It's a good try though. (Laugh) [AGENCY 94]

JIM MOWBRAY: Well, you know I'd like to see them get it. [AGENCY 94]

SENATOR NELSON: Thank you. [AGENCY 94]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you. [AGENCY 94]

JIM MOWBRAY: You're welcome. [AGENCY 94]

SENATOR HEIDEMANN: Are there any other...just a second. Is there anyone else wishing to testify on Agency 94? Seeing none, we will close up the public hearing on Agency 94, and we're done for the evening. [AGENCY 94]

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