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Appropriations Committee  
November 06, 2009

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[AGENCY 23 AGENCY 35 AGENCY 93 AGENCY 41 AGENCY 30 AGENCY 54  
AGENCY 57 AGENCY 62 AGENCY 66 AGENCY 65 AGENCY 71 AGENCY 74  
AGENCY 13]

The Committee on Appropriations met at 1:30 p.m. on Friday, November 6, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Agencies 23, 35, 62, 66, 93, 41, 30, 54, 57, 65, 71, 74, and 13. Senators present: Lavon Heidemann, Chairperson; John Harms, Vice Chairperson; Danielle Conrad; Tony Fulton; Tom Hansen; Heath Mello; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: None.

SENATOR HEIDEMANN: We're going to start today. And we normally start with some introductions, and we're going to start over to our right: Senator Jeremy Nordquist is not here at the present time, but he will be joining us later; next to Senator Nordquist is...oh, I thought we were going to do self-introductions. (Laughter)

SENATOR HANSEN: Oh, I'm sorry. I thought he'd forgotten again. I'm Tom Hansen from District 42, Lincoln County.

SENATOR HEIDEMANN: Next to him is Senator Conrad. She's from Lincoln, the "Fighting 46."

SENATOR WIGHTMAN: John Wightman, District 36.

DOUG GIBBS: Doug Gibbs, budget analyst.

SENATOR HEIDEMANN: I'm Senator Lavon Heidemann, Chair of Appropriations, District 1.

SENATOR HARMS: John Harms. I represent the 48th District in Scottsbluff.

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SENATOR NELSON: I'm John Nelson, District 6 in central Omaha.

SENATOR FULTON: Tony Fulton, District 29, south Lincoln.

SENATOR MELLO: Health Mello, District 5, south Omaha and Bellevue.

SENATOR HEIDEMANN: I also want to introduce Anne Fargen; she's our committee clerk. Our pages for today will be Justin and Ryan. If you need anything to pass out, just hand it to them. They're always more than willing to help. At this time, I would like to remind you if you have cell phones, please shut them off as we don't want the disruption later on. Also, testifier sheets are on the table and near the backdoors. Please fill them out completely and put them in a 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. If you don't do this, we'll remind you later on to do that. Nontestifiers sheets near the backdoors; if you do not want to testify but would like to record your support or opposition. You only need to fill those 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; they will distribute them. We will need at least 12 copies. In the matter of time, please keep your testimony concise and on topic. That leads you to a list of things that we don't normally do during regular session, but because we have a special session and we have a very compressed time schedule here that we're operating on--we're doing 70 hearings in three or four days versus we usually do it in a month, month and a half--because of that, we will...if you see up on the table here we're going to be using the light system, something we don't normally do in Appropriations. Other committees do do it. You get so many minutes: The principle introducer gets ten; anybody after that gets three to five depending on how many people are going to testify. You'll see your green light is on. That's good. Yellow light, you have a minute left. Red light comes on and that's actually an ejection chair. Just kidding. (Laugh) So we just

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would appreciate your help there on that side of it so we keep things moving. If there's any questions on that as we go along, you can sure ask, but I think we're ready to go. With that, we will open up the public hearing on Agency 23. And I believe we're ready to go. [AGENCY 23]

CATHERINE LANG: Chairman Heidemann and members of the Appropriations Committee, I'm Catherine Lang, L-a-n-g, Commissioner of the Nebraska Department of Labor. I appear before you today in support of the Governor's recommendations for the budget of the Department of Labor. We'd like to take one moment, if I could, and introduce three members of the Department of Labor who are with me today. Directly behind me is Debbie Kay Ward, our controller. Debbie Kay has now been with us two months. John Albin is our agency legal counsel, and Bart Moore is our budget analyst. The decreases in the appropriation for FY 2009-10 can be managed without layoffs of staff members. We will efficiently spend the resources provided and assure that we reduce spending to meet the recommended appropriation. The decreases in appropriations for FY 2010-11 may require the reorganization of the functions of the safety and labor law programs. Any reductions in staff will be made to assure that the needed and vital services are not diminished to the public. These programs will be reviewed for functions that are not necessary to the programs and the services that are provided to our citizens. Any reductions will be made in supporting roles so that the inspection and advisory roles of our agency are not impaired by the staff reductions. The recommendations of the Department of Labor do not include any transfers from the Cash Fund to the General Fund. It is necessary to preserve the balances in these cash funds in case they are needed to resolve the federal grant expenditure issues that were identified in our 2009-2011 biennial request. We have submitted a methodology to the U.S. Department of Labor for resolving the grant expenditure issue, and I am optimistic that the proposed methodology will be accepted and incorporated into the Department of Labor's final determination which we believe will occur sometime near December 23 of this year. Thank you for your time and I'd be happy to answer any questions that you may have. [AGENCY 23]

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SENATOR HEIDEMANN: Thank you for coming and testifying. I know you've gone through some difficult times, seems to be going a little bit better. I appreciate that certain things happen in my district and sometimes you can't always satisfy them to what they would like that you have gone out of your way to at least try to make things better and I, at least, appreciate that. Are there any questions? Senator Mello. [AGENCY 23]

SENATOR MELLO: Thank you, Commissioner Lang, for your testimony. I have a couple of questions. It was brought to my attention by some individuals within the Omaha business community that they were under the understanding that the Department of Labor was going to be raising unemployment taxes either this year or next year. Can you shed more information about that for me? [AGENCY 23]

CATHERINE LANG: Yes, I'd be happy to. Each year, the Department of Labor is statutorily required to calculate and set the unemployment insurance tax rates, and they commence on January 1 of each year. And businesses make their first payment of those taxes on a quarterly basis, and those are made on or before April 30 of each year. We are in the process right now of making that calculation, and we will be providing information to the public as soon as we have it available to them. The predominant factor in the calculation is how many benefits...or how much in benefits have been paid out for the previous year. And that year is September 1, 2008 or excuse me October 1, 2008 to September 30, 2009. And just to give you a little bit of an understanding, we experienced just over about 150 percent increase in benefit payments for that year as compared to the prior year, but we do plan to roll that information out. We plan to have some public news articles available to describe not only where the rates are going, but how that calculation was determined. [AGENCY 23]

SENATOR MELLO: Does that unemployment tax increase then...how does that impact at all...I know the close to, what, \$50 million in stimulus funds that we've yet to accept as a state for unemployment, how does this tax increase effect our opportunities to receive

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those funds? [AGENCY 23]

CATHERINE LANG: Well, it does not impact that. And you are speaking of the Unemployment Insurance Modernization Funds. And the...in order for Nebraska to receive those funds, there are going to be provisions of Nebraska law that must be changed to bring us into compliance with the requirements to receive those funds. The funds are estimated at about just slightly over \$43 million, and we anticipate that that will be discussed as we approach the 2010 session. But the changes were not made in order to receive those funds at this time. [AGENCY 23]

SENATOR MELLO: So the anticipated unemployment tax increase that we should see next year has no impact at all in regard to us applying for those stimulus funds? [AGENCY 23]

CATHERINE LANG: No, it does not. [AGENCY 23]

SENATOR MELLO: Okay. The only other question, and you probably have the answer, according to the job vacancy report issued to the Legislature by the Department of Administrative Services who answers directly to the Governor, states that the Department of Labor has 56 vacant positions to the amount of \$2.2 million. Is that accurate? [AGENCY 23]

CATHERINE LANG: That is accurate. Of those positions, approximately 51 of those are related to our federal fund expenditures. And we have been going through a process over the last year but really focused over the last six months of assuring that the information that is in the NIS system accurately reflects what we are doing at the Department of Labor or vice versa. So we have been going through and purging a number of positions out of the system that were not budgeted for, there was no anticipation that we would be hiring those. When we look at our federal side of our appropriations and expenditures, we probably will always request the ability to keep

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additional positions above and beyond what we may budget for because in years such as this past year where we have a tremendous increase in our workload, we receive above base funding for our grant funds. And we would need to be able to then hire into those positions quickly so that we can meet the needs of that increased workload. So some of those 51 positions really do relate to that issue. But, again, those 51 positions are on the federal side. And then on the other side, which is the area where we are talking about our general funds or our cash funds, we have one position, a labor law specialist position, that is probably one of those positions that will need to be purged. We are not quite done with our purging process, but we do not have funds available for this position; we have no intention of filling it. The Elevator Inspection Division does not have any vacancies. There are two vacancies in the Boiler Inspection area. And right now we have really struggled, as many states have, with filling boiler inspection positions. We get them on, we get them trained, and then they go out and are able to have higher pay in the private sector. Right now, we are under contract with an entity who assists us in our boiler inspections, but we also have staff that performs that function as well. If we were to fill those two positions, it would mean that we would then expend less in the contract that we have with the outside contractor. So we plan to keep those two positions in the system. And then the last two positions that are vacant are within the OSHA 21(d) consultation program. And, again, it is one of those where once we know what our funding is and once we have gone through and examined our staffing position, we will be able to make a more accurate determination as to whether or not those two positions should remain on the books. [AGENCY 23]

SENATOR MELLO: Thank you for your answer. That was probably the best agency answer today, so thank you. One last questions real quick. But I know I think I was able to digest the information I know our Fiscal Office presented me. The unemployment rate in the state has roughly increased about, what, 40 percent in the last year? Is that about accurate? [AGENCY 23]

CATHERINE LANG: Right. Our current rate is at 4.9, and our normal rate is somewhere

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between 2.5 and 3. [AGENCY 23]

SENATOR MELLO: Okay. Is there any long-term concern right now regarding our unemployment insurance fund knowing that we have seen pretty much a 50 percent increase in unemployment in this state over the last year, knowing that I know the Governor has made statements and the committee has made statements as well about concerns for future unemployment growth in the state? Has there been any long-term planning or number crunching, so to speak, that would help provide the Legislature more information to kind of start planning for that possible depletion of the fund? [AGENCY 23]

CATHERINE LANG: Well, our hope at the Department of Labor is that the methodology that is imposed by state law will adequately fund our unemployment fund going forward. Is there the possibility at some point in time that we could have such a severe economic downturn that perhaps given the timing of it and its severity that perhaps we could come into a concerning situation with regard to that fund? Of course, that's always possible. But we don't believe that we are at that point at this time. And so we do not have any concerns at this time. [AGENCY 23]

SENATOR MELLO: Okay. Thank you, Commissioner. [AGENCY 23]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 23]

SENATOR CONRAD: Thank you, Director. And I apologize if you covered this in the early part of your testimony as I was finishing up another meeting, but maybe you heard it said yesterday or maybe you know as part of crafting...part of the work done to craft the Governor's budgetary proposal that his proposal anticipates the loss of over 400 jobs of state employees if it were to be adopted by this Legislature. My question to you is: What, if any, preparations has your department taken to help those employees who may find themselves in a transition period find new jobs? [AGENCY 23]

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CATHERINE LANG: And I assume, Senator Conrad, you're speaking in terms of what we would do as an outreach to state employees generally. Well, we would probably... [AGENCY 23]

SENATOR CONRAD: Specifically those who might lose their job if the Governor's proposal is adopted. [AGENCY 23]

CATHERINE LANG: But beyond our own agency, in the state government in general, I mean. [AGENCY 23]

SENATOR CONRAD: Yes, yes, across the agencies. Yes. [AGENCY 23]

CATHERINE LANG: We would probably implement what we do for businesses across the state which is a rapid response. So as we see how the special session goes and see what occurs as a result of the proposed cuts that are made, we would provide information to state employees in the same way that we do for businesses across the state. We have the ability to conduct seminars. We have the ability to walk them through the processes that are...that they would need to go through to file for benefits or to avail themselves of the other services that we do provide to all citizens of Nebraska. [AGENCY 23]

SENATOR CONRAD: Thank you. [AGENCY 23]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 23]

SENATOR NORDQUIST: Thank you for joining us here today. A few years back, my predecessor had a bill that increased the contractor registration fee, and that money would go towards kind of enforcement of our contractor registration and making sure that employees on job sites were appropriately classified. And I was just going to follow

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up on that. And then the concern that I have regarding the situation we're in now is that the state is potentially losing revenue from people who aren't withholding taxes or misclassifying their workers. And if there's any coordination between the Department of Labor and the Department of Revenue when there is a problem at a job site that the Department of Revenue follows up to make sure that all appropriate revenue is coming to the state. [AGENCY 23]

CATHERINE LANG: Thank you, Senator Nordquist, for that question. Right now based on legislation that was passed this last year or year before, the Department of Labor and the Department of Revenue are working together to, (1) merge our contractor registration databases into one. And, in fact, we believe we're ahead of schedule on that and we're working together to get that accomplished. As well, though, and this is true not only in our relationship with the Department of Revenue, but also our relationship with the Department of Economic Development and the Department of Energy, and any of the other agencies where we believe that we can partner and create a more effective implementation of whether it's grant funds or any other process that we have behind that big curtain of state government. But we do work very closely with the Department of Revenue in sharing information to the extent we can by law so that we are aware if they discover an issue, they're out doing an audit, they discover an issue of concern for them where they believe perhaps misclassification has occurred, they let us know. If our staff, our tax staff, is our doing an audit and we run into that same issue, we present that information as well to the Department of Revenue so that they can follow up for the tax programs for the state tax program. We have also gone through, and we are in the process right now of assuring that we have gone through every statutory provision that relates to sharing of information. We are bringing a bill forward next year to help reduce the barriers that exist in sharing information among our two agencies, especially because a lot of it is related tax information. And so we'll be bringing a bill forward this next year to address any other issues that we have discovered in state law. [AGENCY 23]

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SENATOR NORDQUIST: Have either of you or the Department of Revenue conducted any kind of analysis regarding, you know, how widespread the problem is and how much revenue the state could be missing out on? Is that something you've studied or looked at or... [AGENCY 23]

CATHERINE LANG: I cannot speak for the Department of Revenue. Our agency specifically has not. Our staff is keenly aware of the issue. And as they are out performing audits of businesses across the state, they are certainly watching for that. And if we receive any tips or calls or concerns from citizens or employees, we follow up on those. [AGENCY 23]

SENATOR NORDQUIST: Thank you. [AGENCY 23]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 23]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Director Lang, just kind of a follow-up question to Senator Conrad's and some comments you made. You talked about when you know of a layoff that's going to occur, you go out and provide these services to the employees that are going to be laid off. I know we have a big one coming up, out in Dawson County. [AGENCY 23]

CATHERINE LANG: Yes. [AGENCY 23]

SENATOR WIGHTMAN: And at what stage do you do that? Immediately after there's notice that there are going to be major layoffs or... [AGENCY 23]

CATHERINE LANG: We receive the information regarding a layoff from a number of sources. Many times it is the business itself, the employer, who contacts us and requests that we come out to perform the rapid response. We may also hear about it from the media or employees who then contact us, and then we close the loop the other

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way. We contact the employer and say: We have the ability to perform this service for your employees. Here's how we could do it. Would you like us to be there? With regard to the Tenneco layoff and plant closing, this is going to be a little unique. In fact, we've handled it as requested by the employer because they're going to be staging that layoff over a long period of time. So while initially we went out and immediately performed a rapid response, we conducted numerous rapid response sessions throughout a number of days so that we could hit every shift of the employees there to try and cover all of them. We also know from experience that the first time they hear this news, first of all, they're usually in a position where receiving that information and hearing that information and understanding that information may be very difficult for them. They're anxious, they're concerned, and so to hear all of that information at one time can be very difficult. So we're always available to continue to ask questions as they come in. We're always in contact with the HR departments to make sure that we're getting them the information that they need as timely as possible. What we...so we've performed that initial rapid response in that situation, but we also plan to perform additional rapid responses because they plan to do the layoff over such an extended period of time. And so we're working to assure that we are meeting the needs of those employees as they become laid off, because a lot of times that information needs to be layered in over time; they need to hear it a couple of times so that they become comfortable with the information we're giving them. [AGENCY 23]

SENATOR WIGHTMAN: So as a follow up, the services include, I suppose, letting them know what benefits are available and how they apply for those. But also you assist in contacting other industries to see if...or is that part of the job? And I understand that there have been a quite a number that are going to be employed with another major employer, Tyson plant and maybe some others, and some of them will be (inaudible). [AGENCY 23]

CATHERINE LANG: Yes, and the answer to that is absolutely yes. We also partner with many other entities as time permits. Sometimes the time can be really compressed. And

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so to bring a large group of service providers into one meeting could be a little difficult logistically. But we also provide as much information as we can about other services that would be available, not just the unemployment insurance benefit piece, but our employment service process, if they're available for training...or if they're eligible, excuse me, if they're eligible for training through trade programs or other programs that we administer. We partner with our education partners, such as the community colleges, to help as we come in to meet with those employees to let them know that there really are a broad number of services available to them. [AGENCY 23]

SENATOR WIGHTMAN: Including retraining, I assume. [AGENCY 23]

CATHERINE LANG: Including retraining. [AGENCY 23]

SENATOR WIGHTMAN: Thank you. [AGENCY 23]

CATHERINE LANG: Yes. [AGENCY 23]

SENATOR HEIDEMANN: Senator Fulton. Anybody else? Seeing no further questions, thank you. [AGENCY 23]

CATHERINE LANG: Thank you. [AGENCY 23]

SENATOR HEIDEMANN: Is anyone else wishing to testify on the Department of Labor? Agency 23? Seeing none, we will close the public hearing on Agency 23. And open up the public hearing on Agency 35, the Liquor Control Commission. Welcome. [AGENCY 23]

HOBERT RUPE: (Exhibit 1) Good afternoon, Chairman Heidemann, members of the Appropriations Committee. My name is Hobie Rupe, and I have the privilege of serving as the Executive Director of the Nebraska Liquor Control Commission. We want to

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highlight a few things regarding the proposed changes to the existing budget, as well as hopefully starting discussion on some of the upcoming changes that will maybe (inaudible) out in an upcoming legislative letter which may address some of the concerns I know that Senator Nordquist thought about sort of long-term planning on some of these issues. The commission will be able to absorb the proposed cuts in the Governor's proposed package. The 2.5 percent cut would result in a decrease of \$24,966 in our 2009-2010 budget, and \$51,438 cut in our 2010-2011 budget. The Governor's proposal also takes \$97,408 from the carry over. We're trying to be very frugal beforehand. In order to meet those reductions, we would be eliminating an Auditor I position. That position has a salary of \$35,000, expected benefits of \$15,000, and a \$1,000 travel budget. The net savings would be approximately \$55,000. Now, that position is currently vacant. The commission followed the Governor's recommendation in noncode agencies not to fill vacant positions. And from a personal standpoint, it's easier to cut a position without actually having to fire somebody who's actually there because that person would have been the one person let go because they would have had the least seniority in the commission anywhere. However, although it's possible to cut that position, we hope that the reductions for our base budget do not occur. Although we can absorb the current reduction in the carryover, we can absorb the carryover cut and still fill that Auditor I position if we can keep the base appropriation and not have the 2.5 and the 5 percent cut. I handed out some information which shows the collection of the excise tax by the commission. As can be seen from the most current revenue statements, we've collected \$20,953,304.21 as of September 30, 2009. In 2008, the total collection was \$27,534,949.23. It is our projection that we will collect at least that same amount and probably see an increase as it seems that the...there's been a trend for a 2 percent increase in beer revenue collected and a 1 percent increase in liquor and...wine and spirits increase. Now, all those excise taxes are collected at the wholesale level. They are due and collected on the 25th day of the following month in which they're incurred. We also collect the tax from the farm wineries, the craft breweries, and the microdistilleries on that same date. We also collect taxes from the S1, the direct shippers, on an annual basis. They have relatively small returns.

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As I say, we have two auditor positions. One was just currently vacant. We're responsible for the oversight of those tax filers. That means there are currently 101 filers located instate and 227 S1's are out of state filers. In the grand scheme of things I'm more worried about the bulk of it comes from the instate filers from the wholesales tier. As Ronald Reagan was fond of saying, although he was not the first, "trust, but verify." We believe keeping the Auditor I position we'd be able to collect actually more revenue. The auditors, the verify position, and I believe in effect would be a cost-positive for variations of if there's a discrepancy found in the tax or a late filing, not only is their past-due tax, but there's also a 10 percent fee penalty that's applied by statute on that. So if there is a misfiling by the wholesale tier or by farm winery or by a craft distillery, that's how it would be applied. That wholesale audit division also deals with complaints from the wholesale industry. Those complaints have increased this current economic environment by about 30 percent. Although our revenues are staying pretty much the same, there is a change in the industry. Someone asked me earlier on in the session, is alcohol recession proof? And I said, no, alcohol is more recession resistant. People have changed the way they're buying. There's people buying more off-sale than on sale, they're down grading. But our tax revenue doesn't really take that into account. We charge exactly the same tax on a Guinness, which would sell for \$5 or \$6, as we do on a Natural Light, which might sell for a buck and a half. The tax is the same at the excise tax. Another benefit or job of the auditors do is they help the Nebraska State Patrol, which is our investigative arm, in looking at false applications for hidden ownership. We have seen an increase in hidden ownership, though they're generally people who are felons or otherwise miscreants would not be eligible in the statutory scheme who have decided they want to go into the bar business. And oftentimes it's...you know, the Patrol does a wonderful job, you know, thinking there might be an issue there, but it takes one of our auditors to do a forensic analysis of the money, see where the money is going because oftentimes...although sometimes they are, they're not stupid enough to say, oh, by the way, I'm a hidden owner. And sometimes they are that stupid, but it works...that's the rarity. Those are...so we would hope that, you know, you would see fit to help us keep that Auditor I position. There are a couple of things I think is incumbent upon the

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commission. We were looking at our legislative letter anyway and some of these positions would have been seen then, but I think they are probably appropriate, at least now, to begin the discussion in front of you at this point in time. One of those are a couple...are looking at two of the current fees that are assessed by the commission. The current application fee for new applicants is \$45; \$5 goes to Liquor Commission Cash Fund which used for payment for printing of our law books, also is utilized for subsidizing the NE Director of the University of Nebraska, the on-line server training, and other activities like that. The other \$40 goes to the General Fund. Last year shortly after he was appointed commissioner, Batt asked the state, asked us for a cost analysis. It's almost \$300 to actually process an application if you factor in not only the times that the Nebraska State...the commission spends on it, the time the Patrol spends on it, the time that the Fire Marshal goes out and does the inspection. And so in effect for a long time it's been, you know, the taxpayers have been subsidizing applicants for businesses to the tune of almost \$250. Last year, we worked with Senator Gwen Howard on LB605, one of the amendments she thought we would be agreed on would be to sort of (inaudible) preface of the commission to accept that fee on an annual basis to reflect the actual cost of the state to process these. That bill is currently in the General Affairs Committee. I don't know if it's going to come forward or not, but I thought it was important to bring it up to you as a way...sort of a place where the state taxpayers are sort of subsidizing somewhat in that capacity. Another issue we think really needs to be looked at is we've been doing an overview of our overall licensing structure. We're not really going on the retail because there's very...a lot of persnicketies. But the key thing I know is most all your retail license fees go to the local government body anyway, they go to either the school board or the school fund of the local governing body, and the local governing body can charge twice that amount as an occupation tax. There are a couple of license fees which do go to the General Fund. One of those is actually the shipper license. As you're aware, you know, Nebraska, like almost every other state, is predicated upon a three-tiered system. Shippers would be the first tier; they're the manufacturers. They have the ability to send their product to a wholesaler in the state of Nebraska, you know, so they can buy it and then sell it to the

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retailer. Currently our wholesale...I mean, our shipper's fees are \$200. I can tell you that when I was looking back, Senator...or Jerry Van Ackeren, my wholesale compliance auditor is here. He's been with the commission since 1976. He can't remember of us ever having looked at that fee rate. During that time, you've seen massive consolidation on that tier. It used to be, you know, you would have one company would have perhaps one brand. Now you have large, multiconglomerates who each have multiple brands, for example, Diageo is an example who is the largest. They have Spirinoff Vodka, Johnnie Walker Scotch, Baileys Liquors, J&B Scotch, Captain Morgan Spiced Rum, Cuervo Tequila, and Tanqueray Gin. And those are just the basic lines, not all the sublines of those. They all ship into the state for \$200 a year. We compared some of the Midwest states, just what is our...how does our fee in that compare? Minnesota, their beer is \$1,600 and their spirits are \$420. Wisconsin charges \$1,000 for each. Colorado charges \$1,025. Missouri is \$450 for each. If those fees would be raise to \$1,000 from the current \$200, the net gain to a general fund would be \$476,800. One of the reasons why we start looking at those is when we were recently audited by Mr. Foley's office he asked, why those weren't going to the local school boards. Well, they're out-of-state entities paying it, and for about 50 years those were called "shipping permits." And permit fees always went just to the General Fund. Well, about ten years ago, some language was changed and it became licenses. Well, then we would change where the money was going. And so we thought that it would be appropriate if you wished to look at that--we'll be introducing that in our legislative bill anyway--to direct where those funds go. Those are from out-of-state entities like Anheuser-Busch, MillerCoors, Constellation Wines. Though I can tell you most times when they call in, a new shipper is trying to get shipper...when they hear us say \$200, they think we're misspeaking. They think, did you mean \$2,000? No, we meant \$200. And so I think that is one issue we can look at. And, you know, I was trying to be brief but I see the yellow light is on. As most lawyers know, that means I have to wrap it up and shut up. So I will conclude my remarks, but I will ask if there are any questions? [AGENCY 35]

SENATOR HEIDEMANN: Senator Hansen. [AGENCY 35]

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SENATOR HANSEN: I have one question. In December '07, your fines was listed at \$2,200, and by September of '09 jumped to \$37,350. How do you explain that increase in fines? [AGENCY 35]

HOBERT RUPE: In the fines? I think that... [AGENCY 35]

SENATOR HANSEN: Describe the fines, I guess, first. [AGENCY 35]

HOBERT RUPE: Okay. Fines...the commission cannot technically fine. We can suspend, and by statute they can pay off those fines at \$100 per day or at \$50 per day if it's a first offense. I think what that shows is by December when they're showing the annual, the total year, and those fines go to the local school boards. [AGENCY 35]

SENATOR HANSEN: Is that quite an increase, though, from... [AGENCY 35]

HOBERT RUPE: That's about the same, I think. Well, the thing is the \$2,200 shows what was collected that month, and then the next year would show what the annual was, what was collected for the whole year. [AGENCY 35]

SENATOR HANSEN: Does it have anything to do with underaged selling that the State Patrol stings? [AGENCY 35]

HOBERT RUPE: Yeah. Well, it might have something to do with compliance checks, but there are those fines. You know, the commission practices progressive discipline. You know, with first offense you're usually looking...let's just use selling to an underaged minor, you're probably looking at a 14-day suspension, which they could either, you know, be served and not be open for those 14 days for the sale of alcohol or they can pay it off with a \$1,400 fine. So you'll see some variations of that depending upon, you know, the case load. I can tell you right now our case load is pretty full. We're doing two

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full complete days of hearings every month. Those are both on citations where we're very much in our quasi-judicial function, as well as doing analysis on license application, which are approximately questionable. I think the 133 is what we've collected over the full year. Sometimes it's been closer to \$300,000, I think about five years ago we were up to that. It depends on how they're going. The current Commissioner sometimes, if you're a multiple offender, decides that it might be better for you just to leave the business, so they're a little quicker to pull the trigger and go right to cancellation on some licenses who they feel just can't comply with the act. [AGENCY 35]

SENATOR HANSEN: Thank you. [AGENCY 35]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 35]

SENATOR MELLO: Thank you, Mr. Chairman. Thank you, Mr. Rupe. I won't...you described you have one vacancy. It appears to be the same vacancy that's listed in the reports, so I just want to double check and make sure that according to the job vacancy report that's issued to the Legislature by the Department of Administrative Services who answers directly to the Governor, they say that one vacant auditor position is available for \$35,000. That's accurate? [AGENCY 35]

HOBERT RUPE: That's is accurate and correct. [AGENCY 35]

SENATOR MELLO: All right. Thank you. [AGENCY 35]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 35]

SENATOR NORDQUIST: Thank you, Mr. Rupe. How many of these auditor...how many auditors do you have in your department? [AGENCY 35]

HOBERT RUPE: I have one, and the other one, in the proposal would be the second

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one. We have Jerry Van Ackeren who is here behind me. He's one of those people in a small agency who serves many hats. He basically is an unpaid deputy director, he's also a compliance administrator, and he's also the auditor. [AGENCY 35]

SENATOR NORDQUIST: Okay. When you say, them bringing in more revenue, is that...they look at actual income taxes and pieces like that or is it just... [AGENCY 35]

HOBERT RUPE: No, they look at the excise tax... [AGENCY 35]

SENATOR NORDQUIST: Okay. And today... [AGENCY 35]

HOBERT RUPE: ...which just goes right to the General Fund. Unfortunately given the number of...if you factor it roughly, we have 100-plus instate filers. You know, one auditor is...we're lucky if we can get those guys once every five years. My hope was originally in getting the second auditor was to shorten that to 24 to 36 months where every place was being audited during that time frame. We do still catch some of them normally. We have two Accountant I positions who...one handles beer, one handles spirits and wine where the actual money flows through when you're filing the returns. And oftentimes we'll find errors when we...if we could go pull them randomly out for a...compare it to the shippers, make sure that, you know, what the shippers say they sent it to this wholesaler, this wholesale is actually listing down as selling. And sometimes we'll catch some variances there. You know, I think for the most part the industry tries to comply and pay appropriately, but sometimes we find errors where they have failed to properly pay the tax. And I think that if, you know, if we had...if we were doing audits, you know, in a two-and-a-half-year cycle rather than a five-year cycle, we'd probably catch the \$35,000 salary plus the benefits, which would be right around \$50,000. [AGENCY 35]

SENATOR NORDQUIST: Um-hum. Are there ever situations that arise that when you're going through there, there are books that, you know, cash fund looks like other funds of

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revenue aren't being collected or would you guys not look at that at all? [AGENCY 35]

HOBERT RUPE: We don't look...we're looking solely upon the taxes. And this makes it even more arcane and archaic in the liquor industry, when those taxes are due is different, depending upon the product. Beer tax is due upon when the wholesaler receives that product in their warehouse. Beer is perishable. There's a shorter life span. And so when the beer actually lands at the warehouse, that tax is due and that's the month that tax is due in. Spirits, the tax is due when the wholesaler sells that to a retailer, that's when that tax occurs because spirits can sit on a warehouse a lot longer than beer can. And so that's the difference in those things. And so a lot of this could depend on making sure they pay it right. One issue we had recently is under our statutory scheme draft ciders, hard ciders are considered wines because they're fermented from the fruit juice. So to tax some people (inaudible) pay the tax as a beer, well, that's a 35 cents...31 cents a gallon for beer and it's 95 cents a gallon for wine, so it's a significantly large tax discrepancy at that location. [AGENCY 35]

SENATOR NORDQUIST: Okay. Sure. [AGENCY 35]

HOBERT RUPE: That's an example of something we found by doing an audit.  
[AGENCY 35]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you.  
[AGENCY 35]

HOBERT RUPE: Thank you very much. [AGENCY 35]

SENATOR HEIDEMANN: Is there anyone else wishing to testify on Agency 35? Seeing none, we will close up the public hearing on Agency 35, and open up the public hearing on Agency 62, the Board of Land Surveyors. Actually, thank you very much, this agency has sent a letter and evidently they will not be coming in to testify. (See Exhibit 13) They

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accept the appropriation just as it's published in the Governor's budget recommendation. This will go into public record. Is there anyone else wishing to testify on Agency 62? Seeing no one else wishing to testify, we will close the public hearing on Agency 62, and open up the public hearing on Agency 66. And actually we have another letter from the Abstracters Board of Examiners. (See Exhibit 14) They actually agree with the Governor also, and they will not be in to testify. That will go into public record. Is there anyone else here to testify on Agency 66, Abstracters Board of Examiners? Seeing none, we will close the public hearing on Agency 66, and open up the public hearing on Tax Equalization and Review Commission. We got a letter, but I did see somebody actually show up. (See Exhibit 15) [AGENCY 35 AGENCY 62 AGENCY 66]

BILL WARNES: Senator Heidemann and members of the Appropriations Committee, my name is Bill Warnes, W-a-r-n-e-s. I am the chairman of the Nebraska Tax Equalization Review Commission. I did submit a letter basically agreeing to the Governor's recommendations. However, I'm here both to answer any questions that you might have and, too, we do show and should be showing a vacancy, and I'm concerned about how that might be interpreted, so. If there was a question, Senator, you have on that one, otherwise we're in agreement with the Governor's recommendation. [AGENCY 93]

SENATOR HEIDEMANN: Should we just cut to the chase and ask Senator Mello if he has a question? (Laughter) [AGENCY 93]

SENATOR MELLO: I would appreciate that, Chairman. It does...actually, it does show that according to the job vacancy report issued to the Legislature by the Department of Administrative Services, who answers directly to the Governor, states that you currently have one administrative assistant vacant position, but it does not detail a salary with that position. [AGENCY 93]

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BILL WARNES: Let me first tell you that the report is accurate, however, it is a little misleading because we've never filled the position. It was a new position that was authorized at a salary of \$30,000 base salary. What the position was designed to do was to allow us to catch up with the resources that we had had approved which included moving to a new space, of course we didn't have much choice in that. But we moved to a new space and we're just in the process of doing it this week. It's been a very trying week. But, secondly, we have a new hearing room, we have a second hearing room. We need that administrative clerk to act as the recording clerk for the second hearing room. Now, our goal in TERC--and I'm going to refer to TERC, an acronym--is to process these appeals that we're getting. And you might be interested to know that this last year we had 1,700 come in for...in round numbers, for 2009. We think that probably will mean we'll have to deal with about 1,550. But what we have done is got...asked for a second hearing room. We've had that all approved. We have the space, it's all been outfitted. We're going to outfit it with furniture. We need that recording clerk so we can double up the hearings. And the hearings will principally be doubled up on the residential properties from Douglas County. If Sarpy County or other counties had residential, we would bring them in. And we'd be hearing them at twice the rate we were hearing them before because our goal it to try to hear all appeals within one year. Now, we're not there, (laugh) we're not there yet, but that's our goal. And I stated it publicly and so we're just going to have to work harder, but we need that recording clerk and the second hearing room. So that explains and gives you the salary. [AGENCY 93]

SENATOR MELLO: Okay. Thank you. [AGENCY 93]

SENATOR HEIDEMANN: Anyone else have any questions? Senator Nelson. [AGENCY 93]

SENATOR NELSON: Where is your new location now? [AGENCY 93]

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BILL WARNES: Senator, we're on the...we went from the first floor in a little cubby hole to the sixth floor, and we're sharing that with mainly education, veterans affairs.

[AGENCY 93]

SENATOR NELSON: That's down here on the Mall? [AGENCY 93]

BILL WARNES: Yes. Yes, sir. [AGENCY 93]

SENATOR NELSON: Okay. Thank you. Thank you. [AGENCY 93]

SENATOR HEIDEMANN: Seeing no other questions, thank you. [AGENCY 93]

BILL WARNES: All right. [AGENCY 93]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 93? Seeing no one, we will close the public hearing on Agency 93, and open up the public hearing on Agency 41, the Real Estate Commission. Welcome. [AGENCY 93]

GREG LEMON: (Exhibit 2) Good afternoon, Chairman Heidemann, members of the Appropriations Committee. Thank you for giving me an opportunity to speak today. For the record, my name is Greg Lemon, G-r-e-g L-e-m-o-n, Director of the Nebraska Real Estate Commission. I've listened to some of the testimony over the computer yesterday and then in the room today, it seems like it's mostly characterized as we understand that the state has difficult times and we'll comply with the Governor's request. It seems to distribute the cuts equally and we were treated similar to other agencies with the across the board reductions and reduction of part of our reappropriation. And we would also say that we can live within the Governor's recommendations. We may have to tighten the belt a little bit, but I don't anticipate dramatic problems with our operations there. And most everybody said they can live within the recommendation, but. And so I have a little "but" as well. Obviously concerns, and I'm sure you've heard them both within the

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context of these hearings and probably some communications. You know, we operate out of a dedicated cash fund. The people pay those fees with the expectation that those fees will be used for the operation of the Real Estate Commission. They pay sales and income tax as well. And so we understand this is a one-time thing and we are doing our part for the one-time thing, but we reserve the right in the future if you need to go this direction again that we may have more concerns with it. You know, one from the policy side that, I'm sure you've heard on our cash fund and other cash funds as well. The other just at least currently, we're at about...we have a little bit of a cyclical cycle with our cash fund and get down to about four months operating it at the lowest part of the year with the transfer that's done. Next year, we may be down closer to three months operating if we get down less than that in the cash fund, why, it makes us all a little nervous. So that's the practical side. Obviously, you know, the policy side, the dedicated fund, concerned about that. The one specific request in this session that we would make is as I understand it in looking at the Governor's bills, that authority that's created to transfer the cash fund is created in statute in perpetuity. We look at this as a one-time thing and we respectfully request that you would consider sunseting or repealing that authority after those transfers are made. And, you know, we understand that the Legislature can do it again if we need to do it again, but we just don't want to make it too easy. So with that, I'd be glad to answer any questions. [AGENCY 41]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 41]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Director, can you tell us the sources of the cash fund that come into the Real Estate Commission? Are they all out of real estate sales or does some of it come from doc stamps or... [AGENCY 41]

GREG LEMON: No. Licensing fees, primarily real estate licensees either initial applications, examination fees, and renewal fees. And we do have a couple of more functions that are a lot lower volume like time shares and retirement communities, but the vast majority of revenue comes from the real estate licensees license fees. Last

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year, our 2009 licensees numbers were down just a little under 5 percent, so that's kind of a reflection I think of how the industry is going. This year, we're in the middle of our renewal cycle. A lot of them renew towards the end, so we don't even have half of them in, but we're tracking at least so far fairly closely with last year. [AGENCY 41]

SENATOR WIGHTMAN: Thank you. [AGENCY 41]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 41]

SENATOR MELLO: Thank you, Mr. Lemon, for your testimony. I have one question first. It was brought to my attention by another senator that the commission raised their fees last year, in part because the cash fund was diminished. If we follow the Governor's proposal this year and take the cash again, will that essentially require another fee increase next year in part due to the housing market status the way it is right now? [AGENCY 41]

GREG LEMON: That's a very good question. I would say right now it's borderline. If we can hold steady with the number of licensees, with the number of activity this year and next year, we're probably okay at the fee we're at. If there's a dip, we may be getting to the point, like I said, where our cash fund balance is looking at a level where we might have to consider a fee increase. [AGENCY 41]

SENATOR MELLO: Okay. Okay. One last question. According to the job vacancy report that was issued to the Legislature by the Department of Administrative Services who answers directly to the Governor, their report states that you have no vacant positions right now in the commission. Is that accurate? [AGENCY 41]

GREG LEMON: That is accurate and, in fact, we checked with DAS this morning and they confirmed that we have no vacancies. [AGENCY 41]

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SENATOR MELLO: Okay. Thank you. [AGENCY 41]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you very much.  
[AGENCY 41]

GREG LEMON: Thank you very much. [AGENCY 41]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 41? (See also Exhibit 18) Seeing nobody wishing to testify on Agency 41, we will close the public hearing on Agency 41, and open up the public hearing on Agency 30, the State Electrical Board. Welcome. [AGENCY 41]

RANDY ANDERSON: (Exhibit 3) Thank you. Mr. Chairman, members of the committee, I'm Randy Anderson, R-a-n-d-y A-n-d-e-r-s-o-n. I'm the executive director of the Electrical Division. I want to thank you for taking time to hear my testimony today. The board agrees with the problems faced by the state and it needs to be addressed by all divisions of the state. The Electrical Division is totally cash funded, and that being the case, have spent money very carefully. We have been proactive to the upcoming shortfalls. Our license renewal period is from October 15 of even numbered years through March 30 of the following year. So funds you see on hand now are at the high end and will progressively fall until the next renewal period. Electrical permits are applied for daily and account for 50 to 55 percent of our revenue. We have been able to be very close on the estimate of license renewal, but permits are driven by the economy and more difficult to predict. We have moved forward with our mission to make it easier for the public to apply for permits and license renewals on-line and contact our electrical inspectors through e-mail. This on-line access helps the division operate more efficiently. We are willing to suspend moving forward with programs that would benefit the efficiencies of our division to help address this statewide problem. We are also going to suspend newsletters, reduce the number of staff meetings, and any other services we can to meet this need. I've included a map with testimony to give you an

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idea of where our inspectors are located throughout the state. We currently have 5,572 electrical permits and 8,968 electricians on file in our office. Our main focus is going to be issuing electrical license, permits, electrical exams, and provide timely electrical inspections to keep the construction industry on track. We will be on the leading edge of the comeback in construction and committed to providing the best service we can with the funds available to keep the industry moving forward and to better times. In closing I'd just like to say, no division wants to give up \$123,000 of appropriated money and give back \$87,000 in reappropriation and have \$240,000 taken out of their cash fund. As you know, any time I've testified before you when the Electrical Division asked for spending requests, we always had the money that we wanted to spend; we saved it first, and then asked for the authority to spend it. We're willing to do this for the Governor. And I kind of want to reiterate what Mr. Lemon said: We don't mind giving in to help the whole state. We had a good run for a while, but we're hoping that we won't make it too easy because we've been conservative with our money that every time we see a balance, it goes up. So that you know our balance right now is approximately \$1.3 million, but as that progresses down, gaining the \$87,000 that is taken away from the spending authority will be put back in our cash fund. We're going to be at about \$386,000. Our operating expenses are about \$115,000 a month, so that tells you we wouldn't want to see the electricians of the state funded all the time, but we do have the funds to survive this and we'll make it happen. Thank you. [AGENCY 30]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 30]

SENATOR FULTON: Thank you, Mr. Chairman. When was the last time there was a fee increase or an increase to the license? [AGENCY 30]

RANDY ANDERSON: 2003. And before that, it was 1986. So the one in '83...or 2003 was substantial because it hadn't been done for years and the division had had some good runs. And the director at that time rather than step forward every few years raised it all at one time. What the board did last year since we obviously at that time had a lot

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of money in our account, we were trying to justify the fees. And with the economy being good for us at that time, the board chose to reduce license fees 50 percent for one year to kind of help the electricians out and not show such an excess in our account. With this happening with this money, if the economy stays like it is right now, we'll weather this okay. But the board is planning on looking at these fees to see our maximum, like, say, for a contractor is \$250 and we lowered that to \$130, what we had projected was we'd do that one period and then see where we need to put it. That's the maximum we can charge. We don't see ourselves raising it past that maximum, but it will be somewhere between that \$130 and the \$250, and that's going to be governed by what happens with the economy. If our permits fall completely off like they did after 9/11, it will probably go back to what the fees always were. [AGENCY 30]

SENATOR FULTON: Thank you. [AGENCY 30]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 30]

SENATOR MELLO: Thank you, Mr. Chairman, and thank you, Mr. Anderson, for your testimony and your willingness to help share in this burden that all of us must be looking to do. Real quick one question, though, at the end of the day this job vacancy report that was given to us, the Legislature, by the Department of Administrative Services who answer directly to the Governor of Nebraska states that your agency has no vacant positions right now. Is that inaccurate? [AGENCY 30]

RANDY ANDERSON: That is correct. [AGENCY 30]

SENATOR MELLO: Okay. Thank you. [AGENCY 30]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you. [AGENCY 30]

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RANDY ANDERSON: Thank you. [AGENCY 30]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 30? Seeing none, we will close the public hearing on Agency 30, and open up the public hearing on Agency 54, the State Historical Society. Welcome. [AGENCY 30]

MICHAEL SMITH: (Exhibit 4) Mr. Chairman. I'm Michael Smith, spelled S-m-i-t-h, director and CEO of the Nebraska State Historical Society, and independent agency of the state of Nebraska. Chairman Heidemann, members of the committee, thank you for providing us with the opportunity to appear today. Under the provisions of statutes of the state of Nebraska dating back well over a century, the Nebraska State Historical Society has been assigned a wide range of responsibilities pertaining to the history and the heritage of Nebraska and its people. This includes identifying, collecting, preserving, researching, and providing educational services pertaining to Nebraska's history. The core of our mission is encouraging and enabling interested Nebraskans and people from around the world to discover and create their own histories, histories of families, communities, businesses, and institutions that make up what we know today as the state of Nebraska. You see our work in: roadside historical markers; in the Nebraska History Museum here on the Centennial Mall; in the state's library of history; and the state archives of vital historical governmental records located at our headquarters building at 15th and R Streets; in the seven historic sites for which we have operating responsibility across the state; in the historic preservation and archeology programs; in Nebraska's History magazine published four times a year; and in our teacher training programs which are, even as we speak, improving the teaching and learning of Nebraska's history for elementary and secondary school students. During the school year, 25,000 Nebraska elementary and secondary school students are gaining a better knowledge, more useful understanding of our state. Furthermore, the educational testing numbers support our perception of the success of this effort. We have and continue to appreciate the legislative support in terms of General Funds and other appropriations. This, of course, brings us to the purpose of this hearing. There isn't a

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whole lot of surface water in Nebraska, but we certainly understand the truism there when the ship is taking on water, every swabby needs to turn out and bail. We are prepared to do that and we are studying ways in which we can make adjustments in addition to those required by the passage of LB315 last spring. We hope we can do that in a manner that will not require shuttering the doors to our museums and historical society...excuse me, shuttering of the doors of our museums and our state library and archives for more than the current Monday closing schedule, which is normal among all kinds of institutions like ours. You're normally closed on Mondays. In regard to the current year, we've been very careful with our budgeted funds and we can absorb the Governor's recommended 2.5 percent across the board reduction. The proposed reduction of \$221,597 in funds carried forward from the last to the current biennium creates a challenge for us not in this year, but in the 2010-11 year in that we would lose current year savings which could be used to smooth out the budget in that second year of the biennium. That, plus the 5 percent reduction in General Funds for 2010-11, does put us in danger of needing to layoff up to five positions and possibly, I hope not, but possibly reducing hours of service to the public beginning in July 2010. Now normally, we would look to earn cash to make up at least part of that loss of services to the public. However, the executive branch's recommended transfer of cash funds to the General Fund makes that problematic, both in terms of the current biennium and what we see as a possible threat to this source of funding for public services down the road. The society earns its cash funds from its businesslike operations. We don't provide driver's licenses, auto plates, professional registrations, or other statutorily dictated requirements for the citizenry that may on occasion produce more funds than required to provide those services. We just do business, offering products and services that people acquire and use on a free-exchange, willing-buyer basis. What we do is commerce in its most basic form in our cash funds. Our cash funds derive, for example, from: admissions collected at our historic sites; contributed admission dollars at the Nebraska History Museum where we don't charge a set admission; sales in our Landmark Stores; researchers' expenditures at the library/archives reference room; archeological and architectural history services provided under contract to the Nebraska Department of Roads and

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other state and federal agencies and some private organizations; payments for copies of photographs in our collection; dollars paid by publishers, television producers, etcetera, for using images from the collection, you may have seen a lot of those recently in the Ken Burns National Parks program, for example; cash paid for art/artifact preservation work, conservation work, if you will, by our staff at the Ford Conservation Center in Omaha. In 1990, the Nebraska State Historical Society had 135 employees; 19 years later we have lost 40 percent of that number. As the number of employees have been reduced, so have the General Funds. In fact, legislative action in LB315 took \$78,000 from the appropriation of General Funds for the Ford Conservation Center and replaced it with cash authority. And that's really been the pattern for 20 years or more. The society has responded through increasingly entrepreneurial activities. We accepted the challenge of earning more cash in services at the Ford Center, along with implementing efficiencies in regard, for example, to utilities in that building, we are working to make it happen. On another front, the NSHS will open the Capitol gift shop just around the corner here on the first floor in two weeks. We are taking that on for several reasons, the foremost of which is to earn cash to replace General Funds in order to continue to provide the services mandated by statute and demanded by the people. I've been directing public and private historical organizations now for almost four decades, and the challenge has always been, "Be more like a business; earn more of your own way." That's a reasonable expectation. As a state of Nebraska agency, over the last four years that I have been here, we have moved decisively to do just that, to adjust the mix of General Fund, cash, and federal funds which are necessary to support our very broad mandate and the services which result from that charge. We are concerned that this proposed move of \$43,425 in cash in our current year and \$92,400 in 2010-11 is (a) a bad precedent, (b) a major disincentive to our agency and to the staff who sell and provide the services that produce that cash, and (c) a clear threat to our future ability to operate effectively with the resources that are available. Before concluding, I want to thank you, this committee, and the Legislature as a whole for supporting the upgrade, the renovation of our headquarters building at 15th and R Streets. This work is on time and well below budget. The clouds of the current economic

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difficulties had at least one silver lining--the depressed building industry and the excellent bids that resulted. We are very pleased that we were able to give back \$1 million out of the \$6.2 million that was appropriated to the General Fund from their project. Maybe that's a good trade off for keeping our cash funds. So, Mr. Chairman and members, we are prepared to be good swabbies and bail, but very concerned that the propellers of our ship which look a lot like our cash funds are being taken away. A ship without power is in clear danger of foundering. We certainly do not believe that this would be the best interest of fulfilling the mission of services to the people of the state of Nebraska. I hope I haven't offended any former Navy people in here, and we'd be happy to answer questions. [AGENCY 54]

SENATOR HEIDEMANN: Thank you for coming in today and testifying, giving us a lot of good information. Are there any questions? Senator Wightman. [AGENCY 54]

SENATOR WIGHTMAN: Just one. The source of the cash fund, none of that contribution comes through the foundation or something? [AGENCY 54]

MICHAEL SMITH: Most of our contributions do come through the foundation. We do have some contributions that do come in voluntarily. For example, people will send in their membership dues and they add \$20 to something like that. We also run contribution boxes at our museums and that does help also. But it's a small part of the total cash fund. [AGENCY 54]

SENATOR WIGHTMAN: Okay. Thank you. [AGENCY 54]

MICHAEL SMITH: Yeah, but it's there. [AGENCY 54]

SENATOR HEIDEMANN: Any other questions? Senator Mello. [AGENCY 54]

SENATOR MELLO: Thank you, Chairman Heidemann. Thank you, Mr. Smith, for your

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testimony. My lone question is, according to this job vacancy report that was issued to the Legislature by the Department of Administrative Services who answers directly to the Governor, states that your agency has 38 job vacancies right now to the amount of \$1.1 million. Is that accurate? [AGENCY 54]

MICHAEL SMITH: I don't believe so. Let me explain, though, some of those. Some of those vacancies I can talk to, and I haven't seen the report. I'd be happy to get a look at it and get information back to the committee. We have a number of vacancies that I can speak to very authoritatively. We have half a position, a .5 FTE that's being filled at the present time, and that is a person to work part time in the store that we're opening around the corner. Okay? We have 3.5 vacancies that were held open in our budget, budgeted this year and held open pending because we had a good sense of where the tax revenues might actually turn out, so we were trying to be conservative in that regard. We have four seasonal positions at Fort Robinson, Chimney Rock, the Norris House, and the Neligh Mill which are seasonal positions and they may show up as vacancies in there, okay, vacancies in there. We have at least eight archeology positions, which is I would say is probably too many. And these are unfunded positions, these archeology positions. We contract with...well, the Department of Roads contracts with us, is the right way to say it, to provide archeological services and architectural history services in regard to road development, the environmental work that they have to do for the FHWA. That's about a \$500,000 contract, I think, this year. Not included in that project are any particular...if we get into an archeological site that needs to be further excavated, these positions are on the books so that if we have to, under a supplemental agreement with Department of Roads, add additional research, these would be there for that. And I really don't know where they get the figure 38. I'll go back and look and get information back to you. And I know we have two vacant positions at the present time which are in that \$500,000 budget with the Department of Roads which we have not yet opened the process to fill those positions. But it looks like I better get a look at that and get that information back, if I may, Mr. Chairman, because I don't know where they're getting that number. [AGENCY 54]

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SENATOR MELLO: Okay. Thank you, Mr. Smith. [AGENCY 54]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 54]

SENATOR NELSON: Thank you, Director Smith. If I understand, you're okay with the Governor's recommendations, but you would just as soon not have to give up the cash fund amounts, is that correct? [AGENCY 54]

MICHAEL SMITH: That's correct. [AGENCY 54]

SENATOR NELSON: Okay. And on an average, what does your cash fund run, you know, month to month or what size is it about? [AGENCY 54]

MICHAEL SMITH: Michelle Furby is here, F-u-r-b-y, who is our CFO. Michelle, do you have a... [AGENCY 54]

MICHELLE FURBY: Yes. We are... [AGENCY 54]

SENATOR HEIDEMANN: Could you come up by the mike? And it's just best to go ahead state and spell your name. [AGENCY 54]

MICHELLE FURBY: I'm Michelle Furby, and it's F-u-r-b-y. On a monthly basis...well, on a two-week basis, we have cash coming out of that pays salaries that is almost \$20,000. We do have the contract with Roads. On a monthly basis, he talked about the donations that we receive. We receive approximately anywhere from \$800 to \$1,300 in donations in the museum. So there's quite a few. Now, when it comes to the cash that we receive within the stores and the admissions, those are all seasonal. You know, so right now is the time of year that we would have the cash, but it's got to last throughout the winter months when we don't have any visitors at Fort Robinson and Chimney Rock.

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[AGENCY 54]

SENATOR NELSON: But what's the high and a low of your cash fund over a year?

[AGENCY 54]

MICHELLE FURBY: Oh, you mean the fund balance? [AGENCY 54]

SENATOR NELSON: Yes, the fund balance. Um-hum. [AGENCY 54]

MICHELLE FURBY: The fund balance, it can change within five days, but it's been the lowest at about \$20,000 and it's been the highest at probably about \$230,000.

[AGENCY 54]

SENATOR NELSON: All right. Thank you. Director Smith, thank you very much. I have a Navy background. I haven't heard the word "swabby" for a long, long time. Is that maybe archaic now? [AGENCY 54]

MICHAEL SMITH: Don't ask me. I was in the Army. (Laughter) Sorry, Senator.

[AGENCY 54]

SENATOR NELSON: And the equivalent would be grunts in the Army, is that it?

[AGENCY 54]

MICHAEL SMITH: Well, yeah but I don't think grunts do a lot of bailing. [AGENCY 54]

SENATOR NELSON: Okay. I'm not sure the sailors do anymore either in our modern day Navy. Thank you very much. [AGENCY 54]

SENATOR HEIDEMANN: Seeing no further questions, just one thing. Out of curiosity, we had a gift shop here in the Capitol and you're going to take that over. I was under the

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understanding that they actually somewhat had a problem of making a go cash flow, and evidently you have indicated that you think this could be a revenue generator for you. What are you going to do different? [AGENCY 54]

MICHAEL SMITH: Well, first of all, it's been completely redesigned. Secondly, we're going to operate it more professional perhaps than the students from the university from that one particular class have operated it. It's a challenge. Thirdly, we have good experience in our museum here and at our field museums, particularly Fort Robinson and Chimney Rock do very well for us. We're going to have a better product selection, and we're going to count on all of you and your staff to really support it. (Laughter) [AGENCY 54]

SENATOR HEIDEMANN: That was good. (Laughter) I appreciate it. Any other questions? Seeing none, thank you. [AGENCY 54]

MICHAEL SMITH: All right. Thanks for your time. And I'll get that other information back to you. [AGENCY 54]

SENATOR HEIDEMANN: Thank you. Is anyone else wishing to testify on Agency 54, the Historical Society? Seeing none, we will close up the public hearing on Agency 54, and open up the public hearing on Agency 57, the Oil and Gas Conservation Commission. [AGENCY 54]

BILL SYDOW: (Exhibit 5) Well, good afternoon, Mr. Chairman and members of the committee. My name is Bill Sydow, last name is spelled S-y-d-o-w, and I serve as the director of our Oil and Gas Conservation Commission for our state with our headquarters in Sydney, Nebraska. And so I've been able to take notes today and I'm going to be the first person who is in disagreement with this budget proposal. I'm adamantly against the so-called fund transfers from cash fund to the agencies. In particular, where my friend Scott Danigole two days ago sent me what you have before

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you. And I was clueless on it, and it amounts to about 50 percent, I had 60 in the write up, but about 50 percent of my cash that we operate on. The statute that we currently have in place, 57-919, I find as being recommended to be amended to get rid of the word "exclusively" to pay the cost of our commission, but to allow the transfer of funds. So actually I just learned about LB3 this morning with Mr. Danigole. But I want to give you a brief update on our finances and what has occurred since I was last before you in February. In our budget request for this current biennium, you approved an increase that was fairly dramatic, and I have that. I won't go over it, but that graph is there for you to look at later. Primarily that increase we asked for was for creation of the position of an assistant director or deputy director and to allow for several interns, at least one next summer. And so that's why it was increased so dramatically, but I want to thank you for that. I had to have that if I would have gone to the Personnel Division to have the appropriation to create that position. The assistant director position, I have not gone forward to that, honoring the Governor's request to really not hire, but I didn't even go forward on creating that position at all. The only thing that we did do this fall is we bought an \$18,000 scanner that was approved almost on a line item, a special item, and we've begun to use that. And so even with that particular purchase, compared to last year FY 2009, we are about \$11,000 spending less than we did last year. Now, one of the things that we always have to do for our budget requests since we're cash funded for the most part, we get some fees, but that's directly related to activity. And so this year our activity is probably 20 percent of what it was last year. But our fees that we receive, of course, supplement our conservation tax, which is a tax based upon a...it's a mill levy applied to the sales of severed crude oil and natural gas. A year and a half ago, oil prices in Nebraska were \$118 a barrel. And about six or eight months later they were \$20 a barrel in January of this year. So we have seen some pretty extensive price swings, and one of the things that we always do is to make a sensitivities. Sensitivity runs at varying prices, and even at varying mill levies. And so what we've always tried to do in our commission is to maintain about six months of cash flow, a requirement that would be in the bank, so-called, not desiring to make a profit and have it run up. But when the oil prices began to increase in 2006, we made cuts to our conservation tax.

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We went from about five mills, then we went to three, we went to two, we went to one in an attempt to spend down our cash. We could not run it. But we really successfully did that. We got down to about a value of \$475,000, in fact, just a few months ago. But one of the decisions we made early in the spring when we had \$20 oil is that we would increase our conservation tax 700 percent to seven mills, and that's where we are today. I'm not spending at the appropriation level, so that's building up. But that's what we thought we would need to have to keep our cash at about half appropriation level. Two days ago, in fact, is when Scott first advised me that we were looking at not just \$60,000 from our cash fund, but another \$240,000 up to \$300,000. And so I made a sensitivity run, which I have in there for you. And I'll just tell you this about that. This is maybe the last graph that you have there. If we were to lose \$300,000 and if oil went to \$35 a barrel and if we stayed even at our current spending level, we're going to be out of cash at the end of fiscal year 2011 because we would go into it. So that's kind of my position regarding the budget in general and specifically regarding us from what you have. I can certainly live with the cuts of the appropriations because it was there to be able to hire somebody new and get some new blood, if you will, on a technical side in our organization. So I think we could live with that and maybe I'd still have enough appropriation to go and successfully, at least, get that job position created which would give me a vacancy. As far as the reappropriated funds that you allowed to have, 15 years in state government I think that's the first time I've ever seen the Legislature reappropriate and carry over some monies that were not spent in a previous biennium. And so I want to thank you for that, but it was never my intention to do that. I didn't learn about that until July when we were filling out the NIS budget. And I actually asked the DAS budget office to zero the federal account and zero the cash fund account on the reappropriation back in July or August. So I was actually surprised to see that the cash fund amount was still there because I had wanted it to zero. We had never had any intent to spend that money and we would not have. So with that, I guess I'm okay with that. But I'm really adamantly opposed to ceasing any cash funds from any agency, and I'm going to tell you why. When I came to this job in January of 1995, I took a \$7,000-a-year pay cut to go here, thought it was going to be a great deal. And got there

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and found out that our commission was just about broke. We had expenses someplace around \$36,000 a month. We had \$45,000 in the cash fund, and that was on January 2, 1995. So I asked some questions in Lincoln, and these were my questions: Can I get an advance, so to speak, from the General Fund? Or barring that, can I borrow some money or even can I go to a bank? And the answer every time was, no, you can't do that. You're going to have to live within your means, and if that means laying off somebody, that's...so be it. That's the way you're going to have to operate. Effectively, we're broke. And actually what I did, I went back home and sat down with my people who I'd known for a couple of days and said, you know, if you believe in a God in Heaven, you better pray that the oil prices increase and our oil production flattens out or there are going to be some big changes around here and I can't stop it. I've tried. So thankfully that never came around, but I didn't get any raises, maybe I didn't deserve them, but two out of four years. I didn't take a raise because we couldn't afford it. When that happened, everything...we looked at everything we did very honestly, and one of the things that we didn't replace was the cleaning lady had quit. And it's like, we're not going to do...we're going to do her job, and we're going to vacuum, and we're going to take out our own garbage. We still do that. And, in fact, I still mop the ladies rest room. So that's the way we operate out there. Now, the cash funds that we have, I look at them to be used for us. If it was our family or my family overall, I'm going to be asked to make the decision on what I'm going to live without. And so I don't like the taking at least \$240,000 of my cash. And then maybe that's personal, but I'm looking at this a little bit personal. So that's my position for our cash fund. Now, I want to throw something...this is a personal comment, doesn't represent any of my commissioners or my staff, but the state of Nebraska has not the greatest...we don't have a pension fund like other states. Other states, you know, if you work 30 years, you're a civil servant. You can have a retirement at whatever...some percentage level. What we have is that match of our employers. And so we have 18,600 employees in state government, and we match \$1.56 per dollar for that put in. In 2008, the state of Nebraska through all our agencies, whether it's cash funded or general funded, contributed \$51 million, a little bit over. Now, I wonder if we would ask the state employees to maybe to share a little of

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the pain that everybody else has around us and say, is it unreasonable to consider as an employee of the state of Nebraska that I will defer that match, I don't want it for two years. And we'll save \$100 million? And if we see our way out of it, good. But my concern, I guess, as a citizen of Nebraska, if we are going to rob Peter to pay Paul right now with the cash funds, what if this doesn't turn around in two years? Then we don't have any cash funds left. And so that's my personal concern and I don't know if it would even be possible to defer those contributions, but that's my personal suggestion. So that's it, Mr. Chairman, thank you. [AGENCY 57]

SENATOR HEIDEMANN: Thank you. We do have the Vice Chair of the Retirement Committee here. It would be my opinion if you defer them, you actually...you would accrue a liability in some out-years. And you might want to comment on that, but that's what would probably happen. Senator Conrad. [AGENCY 57]

SENATOR CONRAD: Director Sydow, as usual your testimony was passionate and informative, so thank you for all that you do and for being here. And I'm glad that you came forward and talked about the dynamic that I started to broach with the Governor's Office yesterday in relation to some of the assumptions assumed within the plan that they've proposed to us. And what I'm worried about is how those reappropriations, cash fund transfers, and otherwise may end up causing cash flow problems for our respective agencies instead of projection problems which is what we're dealing with right now in the context of where the Advisory Board...Forecasting Board came in and where we are in terms of our biennial budget cycle. I think we all acknowledge that we have to deal with these imbalances, but that right now we're in a structural imbalance rather than a cash flow problem, which other states are experiencing. And you did a great job of actually illustrating exactly that point. So I wanted to thank you for that and just thank you for, you know, running such a lean agency that focuses on your core mission, and I always enjoy hearing an update from your office. [AGENCY 57]

BILL SYDOW: Thank you. [AGENCY 57]

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SENATOR HEIDEMANN: Senator Fulton [AGENCY 57]

SENATOR FULTON: Thank you, Mr. Chair. Is there a level of cash fund reduction that you would accept? [AGENCY 57]

BILL SYDOW: I am going to say, yes. I mean, I don't think it's unreasonable to look at the reduction of the appropriations for the next two years. I mean, I can live with that. I think everybody can. And if we lost \$60,000, maybe...you know, I don't have a problem with that, Senator Fulton, but I do want the \$240,000. And maybe...I mean, maybe I was just ignorant of that and I don't know how many other agency directors maybe got...looked at something for the first time two days ago, like I did, or Tuesday morning. That's when I found out. I'm lucky to be here because I about broke my neck on the ceiling. [AGENCY 57]

SENATOR FULTON: Okay. Thank you. [AGENCY 57]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 57]

SENATOR MELLO: Thank you, Mr. Chairman, and thank you, Director Sydow. I would echo Senator Conrad's comments in regards to your ingenuity and innovation in regards to seeing an actual state agency do more with less over the last few years. It's refreshing to see what you've been able to do compared to some more of our larger bloated agencies. One question I have, though, is dealing with this job vacancy report that was presented to the Legislature by the Department of Administrative Services who answers directly to the Governor states that you have no job vacancies. Your testimony to us today says that you do have a job vacancy. Can you clarify that, please?  
[AGENCY 57]

BILL SYDOW: Yes. I don't have a job vacancy because I did not seek to create a new

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job position. I waited and deferred that. [AGENCY 57]

SENATOR MELLO: Okay. [AGENCY 57]

BILL SYDOW: Yeah. [AGENCY 57]

SENATOR MELLO: Thank you. [AGENCY 57]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 57]

SENATOR WIGHTMAN: Thank you, Chairman Heidemann. Thank you for your testimony, Mr. Sydow. You talked about your I guess it was assessment schedule that you had been at...I don't remember what. You'd gone down to \$1 and one mill and then going back to seven. What's the highest you've ever been? [AGENCY 57]

BILL SYDOW: The highest we've ever been that I've ever talked the commissioners into was ten mills, and that was in 1998. And for a whole series of reasons I'm one that thinks that maybe you can get governments, not companies, governments can manipulate oil prices. And, anyway, I found the correspondence to the price of wheat and the price of oil in Sydney, Nebraska, and you could graph it and you could hang your hat on it for a six-month period of time. And so I believe personally that what we did is we went to ten mills. And I told them I think we could have under \$7 oil price by December. And they...I had three orders to sign, and we sign orders, increasing it to 10, 12, or 15. And I just said, guys, we're not leaving; you're signing one for me today. And ten was...that was all they would go for and never...and told me they thought I was panicking. [AGENCY 57]

SENATOR WIGHTMAN: And this is based upon the price of oil? [AGENCY 57]

BILL SYDOW: Absolutely, and it happened. [AGENCY 57]

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SENATOR WIGHTMAN: What was the price of oil when you were at ten? [AGENCY 57]

BILL SYDOW: Six dollars and eighty-five cents in December of 1998 in the state of Nebraska. And in fact, all of our production except for one field was uneconomic for probably four or five months. People hemorrhaged on cash for five months, but we'd increased it so we went to ten. The maximum is 15. The maximum is 15, and so we...we were 10, then we're 7, 5, 3, 2, 1, now back to 7. [AGENCY 57]

SENATOR WIGHTMAN: Thank you. [AGENCY 57]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 57]

SENATOR MELLO: Well, just with your comment to Senator Wightman's question, have you been able to...have you informed the administration at all prior to the release of the Governor's proposal and maybe explaining some of the historical perspective on your agency and how a cut that they proposed could essentially damage and eliminate a very important energy component of our state, such as your commission? [AGENCY 57]

BILL SYDOW: No, because I wasn't asked, and that's...all of this was new to me. And I guess I've made my opinion verbalized or I verbalized my thoughts here the other day to the Budget Office. [AGENCY 57]

SENATOR MELLO: And you're, for the record, Agency 57 is not a code agency, correct? [AGENCY 57]

BILL SYDOW: Agency 57 is a non. [AGENCY 57]

SENATOR MELLO: Noncode. [AGENCY 57]

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BILL SYDOW: It is a noncode cash-funded agency. [AGENCY 57]

SENATOR MELLO: All right. Thank you, Director. [AGENCY 57]

SENATOR HEIDEMANN: See no further questions. I got just a little quick question and it's just some information that I would like to get, being as you're here and it just popped in my mind. I got a phone call on the up here today. We have a rare earths project that is kind of starting to heat back up again in southeast Nebraska and they've found out that, at least from in Texas and Oklahoma, that if they acquire all the leasing rights to the majority of the properties and a couple of farmers don't sign, that you can use eminent domain for the last couple of parcels. [AGENCY 57]

BILL SYDOW: And this is for like rare earths? [AGENCY 57]

SENATOR HEIDEMANN: This is rare earths. [AGENCY 57]

BILL SYDOW: For like in some kind of pipe? The Elk Creek carbonatite, is that what it is? [AGENCY 57]

SENATOR HEIDEMANN: There you go. You know it. [AGENCY 57]

BILL SYDOW: Okay. You know what, I don't think that Nebraska has any statute law or I don't think that that can be a condemnation on a mining operation. I've never been around minerals like that, but I don't know if you could condemn somebody's property. [AGENCY 57]

SENATOR HEIDEMANN: Is it that way for oil and gas? [AGENCY 57]

BILL SYDOW: The way it is in oil and gas is we have the ability to say, if someone wanted to drill a well and we're on 40-acre spacing and half of the minerals were

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unleased...and so this would be my analogy. If Scott Danigole and I owned half the minerals on a 40-acre tract and you had to lease from Scott and I told you, Senator Heidemann, get out of here, I'm not ever signing your lease, you can say, fine, we're going to go before the Oil and Gas Conservation Commission, we will seek an order that force-pools that 40-acres, the interests. And as the unleased mineral interest owner, I automatically become a working interest owner for my portion of the minerals. I would only get to keep the royalty portion, if you made a well, and you would get to keep the remaining seven-eighths to pay the expenses to drill and complete that well, so...with a penalty applied to me on my funds. So that's how we could get a well drilled but there's a process that would have to be gone through. [AGENCY 57]

SENATOR HEIDEMANN: But you would think on minerals it would be a different...  
[AGENCY 57]

BILL SYDOW: Well, I think it's different because I don't think there's any regulations or probably little mining law in the state of Nebraska that would even deal with something like that. You know, we have probably the biggest uranium mining operation in the 48 states in Dawes County over by Crawford and...but those were all put together on uranium leases and I think they had everything leased when they began that operation.  
[AGENCY 57]

SENATOR HEIDEMANN: I was going to ask that question. Where would this fall under? Where does the uranium fall under? Where would this rare earths project fall under for as far as the agency looking after this? Is it you? [AGENCY 57]

BILL SYDOW: No, I don't think so. I think if it was, you know, maybe the only thing we have miningwise in Nebraska, other than uranium, would be limestone. [AGENCY 57]

SENATOR HEIDEMANN: Right. [AGENCY 57]

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BILL SYDOW: And that might be falling then under the Department of Environmental Quality. They actually have regulation on the water injection wells up at the Crow Butte Project in Dawes County, so they are the regulatory agency responsible for that. Now on other mining, it's probably a whole new world for us in Nebraska. We have never had any precious metal mining, base metals. Just never had it. [AGENCY 57]

SENATOR HEIDEMANN: And another question got asked to me because all this land is 35 square sections, what they're trying to get leased is zoned agricultural. If it ever went through and you'd ever want to put a mine up or, in your case, a well, does it have to be zoned? [AGENCY 57]

BILL SYDOW: Okay, in the case of a well, it does not have to be zoned--and I've kind of fought that battle a little bit, quite honestly--because we disturb such a small area. But if planning and zoning commissions at the county level in the state of Nebraska, if that is not going to be agricultural, what is it? And in fact, if you had an open-pit mine, you're going to have a conditional use permit. I think at a minimum it would take a county level conditional use permit because it's not agricultural, it's nearly nonindustrial. You're doing something different with it. [AGENCY 57]

SENATOR HEIDEMANN: All right. I appreciate... [AGENCY 57]

BILL SYDOW: That's anyway my opinion on that. [AGENCY 57]

SENATOR HEIDEMANN: I appreciate the information. Seeing no further questions, thank you. [AGENCY 57]

BILL SYDOW: Thank you. [AGENCY 57]

SENATOR HEIDEMANN: Are there any other people wishing to testify on Agency 57? Seeing none, we'll close the public hearing on Agency 57 and open up the public

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hearing on Agency 65, the Department of Administrative Services. I do want to note at this time we got a letter from Bob Ripley, Office of Capitol Commission, wishing to acknowledge support of Governor Heidemann's budget proposal for our agency for the 2009 Special Session will be put in the public record. (Exhibit 16) Welcome. [AGENCY 57 AGENCY 65]

CARLOS CASTILLO: Good afternoon, Senator Heidemann, members of the Appropriations Committee. My name is Carlos Castillo, C-a-s-t-i-l-l-o. I'm the director of Administrative Services and I do report directly to the Governor. As you know, Administrative Services is responsible for providing operational services state agencies utilize on a daily basis, such as office space and state-owned vehicles. Much of our need for budget authority is based on agency demand for services. This afternoon I'd like to talk about our agency's plans for accommodating the Governor's budget reduction recommendations. Administrative Services is looking at service level reductions in every division to meet the across-the-board cuts. Examples include reducing the daily janitorial services to fewer days per week; alternatives to passenger vehicles through fleet reductions and smaller, less-expensive vehicles; and more efficient ways to deliver services through utilization of advanced technology. We are devising a plan to reduce future service charges. For example, this may include a one-month no charge for agency rental of state-owned office space. We feel this will help state agencies in meeting their appropriation reductions. Finally, with respect to the reduction in reappropriation recommended by the Governor, generally the department's efforts to reduce expenditures by actions such as delaying filling positions as they become vacant, improving the use of technology for service delivery, and cutting out essential travel has allowed the agency to maintain carryover balances. This will continue to be critical for our operations as we move forward. We appreciate the Governor's recommendation which allows the agency to retain a portion of the reappropriation. The reappropriation will allow Administrative Services the ability to absorb some potential future inflationary costs. Thank you for your time. I'd be happy to answer any questions you might have. [AGENCY 65]

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SENATOR HEIDEMANN: Thank you. Are there any questions? Senator Nordquist.  
[AGENCY 65]

SENATOR NORDQUIST: Yeah, thank you for joining us, Director. Through public input, one comment that was made was...you mentioned janitorial services, somebody who works in one state office building commented that there's cleaning services three times a day going through the bathroom. Is that...are those procedures you're reviewing and going to be scaling down on? [AGENCY 65]

CARLOS CASTILLO: I think it's a great idea actually. [AGENCY 65]

SENATOR NORDQUIST: Okay. [AGENCY 65]

CARLOS CASTILLO: We don't the bathrooms actually three times a day. We clean them once a day. Someone goes in and checks to see if there needs to be something done. [AGENCY 65]

SENATOR NORDQUIST: Okay. [AGENCY 65]

CARLOS CASTILLO: But absolutely, I think people can expect that service levels that we provide will increase...decrease, I'm sorry. [AGENCY 65]

SENATOR NORDQUIST: Yeah. The previous agency mentioned that they do some of their own cleaning, take out their own trash. Is that something that we've talked to other agencies about? [AGENCY 65]

CARLOS CASTILLO: I'm not familiar with where Mr. Sydow rents or leases his office space, so. [AGENCY 65]

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SENATOR NORDQUIST: Okay. Okay. [AGENCY 65]

CARLOS CASTILLO: I can't remember off the top of my head if he's in state space or not. [AGENCY 65]

SENATOR NORDQUIST: Okay. All right. Thank you. [AGENCY 65]

CARLOS CASTILLO: But, yeah, we would encourage that. [AGENCY 65]

SENATOR NORDQUIST: Yeah. [AGENCY 65]

CARLOS CASTILLO: I mean, you know, I think people will see a dramatic shift in how often we clean buildings, how they're heated and cooled. [AGENCY 65]

SENATOR NORDQUIST: Uh-huh. [AGENCY 65]

CARLOS CASTILLO: I think all that is on the table. [AGENCY 65]

SENATOR NORDQUIST: Okay. Thank you. [AGENCY 65]

CARLOS CASTILLO: Uh-huh. [AGENCY 65]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 65]

SENATOR MELLO: Good afternoon, Director Castillo. I imagine, if you've been paying attention to the Appropriations Committee hearings over the last two days, you've probably heard a number of agencies refer to the report that your department produced on behalf of the Legislature due to intent language that the Legislature passed in last year's budget that requires your department to produce a quarterly report of all the job vacancies within state government. Real quick, I just want to read something here that I

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found on my lunch break that discusses a little bit about what your responsibilities actually are. Section 81-129, this is Director of Administrative Services, investigation of all spending agencies, and reports, states: It shall be the duty of the Director of Administrative Services to keep in close communication with each department, office, board, bureau, commission, or institution in the state for which money is to be appropriated and expended, including the executive and judicial departments, state colleges, university, and state institutions. The director shall make or cause to be made under his or her supervision an investigation of the needs and requirements therefor and whether the appropriations are being judiciously and economically expended for the purposes for which they were made and shall transmit to the Governor and to the expending agency a complete report of each such investigation. In making such investigations and inspections, he or she shall, at reasonable times, have access to the offices of all state departments, boards, bureaus, commissions, and institutions and all public works of the state and may, for the purpose of obtaining information as to the operation and fiscal needs therefor, examine the books, papers, and public records therein, and the activities shall, through their proper officers, furnish such data, information, or statements as may be requested of them. After reading that in the Revised Statutes of Nebraska and hearing from a significant number of state agencies, it appears that your department, and under your leadership, has not done that. Can you address the discrepancies that the Appropriations Committee and the Legislature as a whole has heard through the last two days of hearings of why the information presented on such a critical issue, knowing that we are dealing with a \$335 million deficit, that we can't find out how many vacant positions there are currently in state government?  
[AGENCY 65]

CARLOS CASTILLO: Sure. Without having the luxury of having the statute in front of me, one of the words I picked up on in the beginning was "communication," and so I'd like to spend a little bit of time talking to you about what we did do with agencies to make sure that they understood the statute or the intent language. First of all, it's important to remember that the state utilizes decentralized HR functions, which means

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that each agency has their own HR staffs. They are responsible for conducting their HR duties, not Administrative Services. The report that we provided you, we simply design the report, print the report, and supplied it to you. It's also important to remember that--I went back and looked, because I wanted to double-check--we first started communicating with agencies at the end of May, beginning of June, that the intent language was there, that they needed to be very aware that there was going to be this report run; if you don't understand the report, you don't understand the functionality of the report, you need to make sure you go to a training session. Between that time period in June and let's say about two weeks ago, there were over 12 training sessions held for agencies giving them opportunities to learn about the report that they needed to populate the data in. So I can't speak for why agencies did or did not have correct data in there. That's ultimately their responsibility, not ours. So I feel like we gave them very ample opportunity to know what the intent language would require of them and what they needed to do to make sure that they were producing accurate numbers in the report. [AGENCY 65]

SENATOR MELLO: I guess a follow-up question would be then, through the majority of agencies that this committee has heard, it appears that noncode agencies' actual information is correct, while a majority of the code agencies are coming in with incorrect information, with the exception of the Department of Labor today, who reported, the only code agency, according to my information, who's coming with an accurate report of job vacancies. So knowing that if you followed the procedure that you just explained, how can you explain that agencies that report directly to your supervisor, the Governor of the state, did not follow direction from you and/or direction from the Governor of Nebraska? [AGENCY 65]

CARLOS CASTILLO: Well, I think you have to ask them that. I mean, I can't speak for them. I can tell you my report is correct. [AGENCY 65]

SENATOR MELLO: All right. Thank you. [AGENCY 65]

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SENATOR HEIDEMANN: Senator Nelson. [AGENCY 65]

SENATOR NELSON: Come back to a more mundane subject--janitorial. Who handles the janitorial in the Capitol Building? Is that privatized? [AGENCY 65]

CARLOS CASTILLO: You know, DAS has a...there's a relationship in the Department of Administrative Services where there are certain directors that report directly to the Governor. The Capitol, Bob Ripley is one of those directors. You'd have to ask him. I don't know. So that...the Capitol doesn't really fall under my purview. I think it's a contract. [AGENCY 65]

SENATOR NELSON: It's a contract. [AGENCY 65]

CARLOS CASTILLO: I think so. [AGENCY 65]

SENATOR NELSON: Oh, okay. Thank you very much. [AGENCY 65]

CARLOS CASTILLO: You bet. [AGENCY 65]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 65]

SENATOR CONRAD: Director, thank you for your testimony and good humor. I just wanted to draw your attention to something that Senator Nordquist at least highlighted initially. The Web site that has been created, [NebraskaBudget.com](http://NebraskaBudget.com), as you may or may not know, has generated a wide range of responses from our citizenry. A great many of the specific suggestions that were brought forward, in addition to janitorial services or otherwise, related to other issues surrounding state fleet and DAS itself from others who either work in state government, I mean I'm not sure exactly what their background was or not from the Web site and the information they provided or otherwise, but there

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seemed to be a lot of uncertainty or confusion amongst maybe even some other state agencies about your office's scope and mission and purpose. And it's my understanding, DAS was created to try and find some efficiencies for state agencies in terms of their purchasing power or otherwise. And your budget continues to grow, other agencies' budgets continue to grow. Are we really achieving those initial purposes and trying to find those efficiencies? [AGENCY 65]

CARLOS CASTILLO: I think so. I mean, I don't...over... [AGENCY 65]

SENATOR CONRAD: It's a big question. [AGENCY 65]

CARLOS CASTILLO: ...yeah, oversimplify it here but... [AGENCY 65]

SENATOR CONRAD: Right. Right. [AGENCY 65]

CARLOS CASTILLO: ...you know, do we want...we'll take cars, for instance. Do we want 70, 80, 90 agencies out each buying their own vehicles? I mean there's some...it does make some sense to have a centralized office that can do that, that can coordinate the procurement of those kinds of things. Office service is another one that we do. We do it internally. I think we do it...I know we do it much more efficiently and at a cheaper cost than an agency could go and hire a temporary employee from an agency. So I believe so. [AGENCY 65]

SENATOR CONRAD: And I think that, you know, the good news is, in terms of the responses, that Web site and other communications our office have received in relation to the special session, we'll have the ability to review that information now in preparation for the next session and otherwise. And it seemed just like there was a lot of good ideas that people brought forward that at least deserve some more attention in terms of how we can all work together to find efficiencies as we move forward. [AGENCY 65]

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CARLOS CASTILLO: Yeah. I mean we've got great folks. I just had a conversation with some Building Division folks and we are looking at how to make bathrooms more efficient. I mean so...and I was looking at pictures of bathrooms, so, you know, I think our folks are making an effort. I think everything is on the table and we look forward to learning those ideas that are submitted. [AGENCY 65]

SENATOR CONRAD: Yeah. And I know some concerns that have been brought forward, for example, is that certain agencies felt like they couldn't afford the fees or costs associated with rules and regulations imposed upon them by DAS in relation to technology or otherwise. [AGENCY 65]

CARLOS CASTILLO: Uh-huh. [AGENCY 65]

SENATOR CONRAD: And like anything that we deal with, I'm sure there's more than two sides to the story and our job is to strike the appropriate balance in that manner. But those are the kinds of things that I think it would be helpful if we had a continued dialogue so that we were all on the same page. [AGENCY 65]

CARLOS CASTILLO: Absolutely. Absolutely. [AGENCY 65]

SENATOR CONRAD: Yeah. Thank you. [AGENCY 65]

CARLOS CASTILLO: You bet. [AGENCY 65]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 65]

SENATOR FULTON: Thank you, Mr. Chair. Thank you for coming today. So I have two questions. [AGENCY 65]

CARLOS CASTILLO: Sure. [AGENCY 65]

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SENATOR FULTON: The first, there's some General Fund reductions and I'm trying to ferret out are these actually going to be, so for instance, Program 101, across-the-board cut the chief information officer? That's within...that's within that office. I'm trying to glean what kind of, oh, FTEs are going to be reduced through DAS. Is that... [AGENCY 65]

CARLOS CASTILLO: Yeah, specifically I'll let Brenda, I think she's going to testify after me, talk about that. But in general for us in other line items, we feel that we've been very proactive. Over the last we'll say 12 or 13 months we've laid off people through attrition. We essentially haven't filled jobs, about 10 percent of my work force that way. So I hope that we've put ourselves in a position to weather the storm this fiscal year and next. So I think that will go a long way to helping us achieve some of the things that the Governor has outlined. [AGENCY 65]

SENATOR FULTON: Okay. That was the second question, is how has...maybe you could expand on that a little bit, the...over the course of the past year and maybe longer you haven't been filling jobs, so the cuts...I guess if you haven't been filling jobs up to this point and there are going to be additional cuts, we can expect that there are going to be more jobs not filled or (b) are we to expect that there will be some layoffs? [AGENCY 65]

CARLOS CASTILLO: I think it's safe to say we look at every job that comes available and can we live without that position. It would be great to have all of those positions to do things in different type of financial environment, but we look at every position that comes available. And I think it's probably safe to say that, even as of today going forward, when jobs become available because someone decides to go do something else, they depart employment with us, we make an effort to evaluate whether or not that job we need to fill. If it's critical to our mission and critical to our service levels that are going to change dramatically over the next, you know, 12 or 14 months. [AGENCY 65]

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SENATOR FULTON: Thank you. [AGENCY 65]

CARLOS CASTILLO: Uh-huh. [AGENCY 65]

SENATOR HEIDEMANN: Senator Wightman. [AGENCY 65]

SENATOR WIGHTMAN: Thank you, Chairman Heidemann. I thank you for being here, Director Castillo. About a year ago I think, the Governor started the Wellness Program and I think your office has administered that. Is that correct? [AGENCY 65]

CARLOS CASTILLO: Uh-huh. Uh-huh. [AGENCY 65]

SENATOR WIGHTMAN: Can you tell us what's been the success of that? [AGENCY 65]

CARLOS CASTILLO: You know, it's early to say. It's a great program. I'm a big believer in it. We've been leading. We're one of the few states, maybe the only state that has integrated a wellness plan with our health plan. It was a tough sell to employees. We think we've done a really good of it...at it. Our actuary predicted that we'd have 20 percent participation in the first year. We actually had 26 percent. We have 4,000 people enrolled in that plan. We get stories virtually every day of how we're changing someone's life. Every lifestyle change that we can help with some...someone make in their life saves the state money in the long run. Hopefully, in the next, we'll say, eight to ten months, we'll be able to prove that out actuarially so we can see exactly where we're saving money. But it's been a great program. You see people walking with their pedometers. That's a big part of it. Everyone is counting their steps that's enrolled. [AGENCY 65]

SENATOR WIGHTMAN: So the participation rate has been good but you're not yet able

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to evaluate it economically. [AGENCY 65]

CARLOS CASTILLO: Yeah, we haven't been through our first year yet. I think, based on some of the indicators, you can tell that things are going really well. When we talk to some of our, you know, our pharmacy provider, for instance, we'll say, they can start to see that trend develop. Now how much that is in its first year, everyone has told us, from our actuaries to our consultants, be very careful your first year, you have to convince folks. Wellness is a process. You don't get all your savings in the first year; it's over a period of years. But we think we're making strides. [AGENCY 65]

SENATOR WIGHTMAN: Thank you. [AGENCY 65]

CARLOS CASTILLO: Uh-huh. [AGENCY 65]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 65]

SENATOR MELLO: I have just a few other questions, Director,... [AGENCY 65]

CARLOS CASTILLO: Sure. [AGENCY 65]

SENATOR MELLO: ...that you made me think about after our last dialogue. Would you say or would you generally agree with that good government is usually accountable government? [AGENCY 65]

CARLOS CASTILLO: Sure. [AGENCY 65]

SENATOR MELLO: From your prior statement of what you explained to the committee, that you provided all this information to other agencies,... [AGENCY 65]

CARLOS CASTILLO: Uh-huh. [AGENCY 65]

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SENATOR MELLO: ...that you said that they needed to provide us this information or provide you this information so that you could compile it and provide it to the Legislature, and your statement said you did that but essentially all these other agencies have chosen not to do that or not do it efficiently or effectively. So my question to you is, if these agencies are completely disregarding your request, that we requested of you, who ultimately is held accountable for this then? [AGENCY 65]

CARLOS CASTILLO: Yeah, I mean I just think we have a difference of opinion. I mean I don't think it's my job to go out and to see if an agency is or is not complying. My job was to pass along the information that was in the intent bill, which we did not only once but numerous times. So you'd have to ask those individual agency directors. I mean my charge is not to run all of HR for state government. If you want to change the statute it would be different, but that's not the way the personnel statutes of Nebraska are written. I think we just have a difference of opinion. I produce the report. I'm not responsible for the agency information that goes into the report. [AGENCY 65]

SENATOR MELLO: But I think the question, though, goes back to, if you are not responsible for the information then, and these agency directors, and as I laid out before most of the agencies with the misinformation are code agencies, who ultimately is accountable for that then? [AGENCY 65]

CARLOS CASTILLO: I think you would have to ask them that. I can't speak for them. I can tell you, my report is 100 percent correct. [AGENCY 65]

SENATOR MELLO: So the code agency directors would be the ones held accountable for providing the misinformation? [AGENCY 65]

CARLOS CASTILLO: I think you would have to ask them why they haven't done that. I can't speak for them. I can tell you what I did. It's 100 percent correct. You put the intent

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language in; we responded appropriately. [AGENCY 65]

SENATOR MELLO: So the accountability does not lie with the Department of Administrative Services. It lies somewhere else. [AGENCY 65]

CARLOS CASTILLO: Exactly. I mean it relies based on statute and State Personnel and how we are organized, it resides at the agency level. [AGENCY 65]

SENATOR MELLO: Does that lie within the executive branch? [AGENCY 65]

CARLOS CASTILLO: State Personnel. [AGENCY 65]

SENATOR MELLO: State Personnel within the executive branch. [AGENCY 65]

CARLOS CASTILLO: Sure, which...yes, which manages personnel issues for all of state government. [AGENCY 65]

SENATOR MELLO: Okay. So... [AGENCY 65]

CARLOS CASTILLO: But at the end of the day, you have to ask, I think, agency directors. They are responsible for managing their departments, not me. [AGENCY 65]

SENATOR MELLO: Okay. I'll ask the last question actually, and this I know will make a lot of the agencies after you very happy. According to the report that your office presented to the Legislature, that you also directly report to the Governor of Nebraska, says that you have 61 job vacancies to the tune of \$2.6 million. Is that accurate? [AGENCY 65]

CARLOS CASTILLO: It's accurate as of the date of the report. [AGENCY 65]

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SENATOR MELLO: Thank you so much. [AGENCY 65]

CARLOS CASTILLO: Yes. [AGENCY 65]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 65]

SENATOR NORDQUIST: Thank you. Thank you again, Director. This last legislative session we passed LB403, which required the state to verify citizenship of its employees, contractors with the state. What role has DAS played in the implementation of that legislation? [AGENCY 65]

CARLOS CASTILLO: Two parts: We oversee the E-Verify part, the E-Verify portion, and then the contract language. We inserted some contract language into the boilerplate language in State Personnel...in state purchasing, excuse me. And then State Personnel, we are doing a verification every day. [AGENCY 65]

SENATOR NORDQUIST: Okay. Was there any outreach to agencies to teach them or seminars on how to comply or how to work through the system or do... [AGENCY 65]

CARLOS CASTILLO: I'll talk about the E-Verify part because that's more on the personnel side that reports to us. We do that for them, so there's not much that they have to do other than get people in the system. The system runs a report at the end of the night and then we feed it to Department of Homeland Security. [AGENCY 65]

SENATOR NORDQUIST: Okay. If I remember right, I don't think the bill had any fiscal impact associated with it. Is that true, there's been no cost at all to do any of that? [AGENCY 65]

CARLOS CASTILLO: From the portion that we are directly involved in, we've been doing it within our existing resources. [AGENCY 65]

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SENATOR NORDQUIST: Okay. [AGENCY 65]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 65]

CARLOS CASTILLO: You bet. Thank you. [AGENCY 65]

SENATOR HEIDEMANN: Welcome, Brenda. [AGENCY 65]

BRENDA DECKER: (Exhibit 6) Thank you. Good afternoon, Senator Heidmann and members of the Appropriations Committee. My name is Brenda Decker, B-r-e-n-d-a D-e-c-k-e-r, and I'm the chief information officer for the state of Nebraska and I'm here to testify in support of the Governor's budget recommendations for the Office of the Chief Information Officer. The Office of the CIO's budget specifics are contained in five separate programs requests under the Department of Administrative Services. Specifically, these programs are Program 101, the Office of the CIO, and then the Nebraska Information Technology Commission; Program 170, intergovernmental data services program; Program 172, the information management services; Program 173, the Division of Communications; and Program 245, public safety communications. The Office of the CIO provides information technology services to state agencies on a daily basis. The majority of our budget is represented in revolving and cash funds that are used to account for the operation of our agency to provide goods and services to other departments, agencies, and political subdivisions of government. Our strategy for accomplishing the Governor's recommendations for across-the-board cuts and the reduction in reappropriations is based on several factors. These include an anticipated reduction in expenditures by agencies, the finalization of previous year fiscal payments, careful management of our vacant positions, management of our equipment refresh cycles, and cutting of nonessential travel and training, to name a few. I do want to briefly touch on some of the ways we anticipate the Office of the CIO can assist agencies as they work to lower their expenditures in this economic downturn. The majority of the

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services we offer to agencies are either purchased in bulk and resold or, in some cases, resources which are people and equipment that are...that create a service that we can offer to agencies. Where we are purchasing services in bulk, we've made a concentrated effort to assure that we are combining as many agencies as possible into a statewide contract to acquire the lowest price available. We have worked with cities, counties, the university, and even federal agencies in some cases. The savings from these efforts are passed on to the agencies in the form of lower costs and represent some significant numbers. For example, we have been going through this process with the IBM contract for a few years now. This year end we anticipate the savings to agencies to be over \$230,000. By aggregating demand for Internet access across state government, higher education, K-12, and several political subdivisions, we estimate the savings this year to be over \$350,000. We will continue this work with providers of services, as well as rebidding several of our services to continue to find the lowest price possible for the technical needs of Nebraska state government. In the areas of services where we provide...that we provide where we're using multiple resources and we create a service, our office is taking a hard look at where we can reduce services and costs to agencies. All of these types of services are undergoing a rigorous cost review that includes the total cost of providing that service. We are looking to extend the refresh cycle on equipment, providing these services from a four-year refresh cycle to a five-year cycle, and in many cases we are examining the possibility of cancelling maintenance contracts. We continue to manage our vacancies to assure that our services are cost-effective. I've handed out a sheet that indicates the savings our agency has implemented, at the end of fiscal year 2009 the agencies will see on their current bills. These savings displayed on this sheet represent \$2.8 million over the next fiscal year that will not be billed to our customers. In addition to the reductions on this sheet, we have devised a plan that will provide a one-time reduction to the retainers of Program 170 of approximately \$300,000 and future reductions in mainframe rates that appear to equate to over \$500,000 in fiscal year 2010 and over \$900,000 in the following year. These savings will not only reduce our expenditures by these amounts but they will also be reduced charges to our customers. These customers include state

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agencies, the university, K-12, and several political subdivisions of the state. These reductions will help our customers to meet their reduced level of appropriation. I want to take this opportunity to thank you for your consideration for what you...the consideration you've shown for the management of technology in Nebraska, and I'd be happy to answer any questions regarding our budget and technology management. [AGENCY 65]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 65]

SENATOR NORDQUIST: Thank you, Ms. Decker. With your role on handling equipment, does any of that include the television sets within the Capitol Building or other state office buildings? [AGENCY 65]

BRENDA DECKER: Yes, sir, it does. [AGENCY 65]

SENATOR NORDQUIST: I noticed maybe it was a month or so ago that all of them were replaced with flat-screen TVs. And I've been around here now for four or five years as a senator and staff, and I hadn't seen any problems with the previous ones. I was just wondering what...how does the process go that the decision would be made to replace all of those. [AGENCY 65]

BRENDA DECKER: The decision was made in conjunction with the Legislature, quite frankly, when we decided to replace your televisions in your areas. We were starting to see failures in the television sets they have. Most of the television sets had been in the offices for at least four years... [AGENCY 65]

SENATOR NORDQUIST: Okay. [AGENCY 65]

BRENDA DECKER: ...and we were starting to see failures. I think there was a concern that the Legislature, in particular during session, would be in a situation where we'd be

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needing to replace television sets, and we had done a bulk buy of those televisions. Flat-screens, as you know, are the new norm. [AGENCY 65]

SENATOR NORDQUIST: It's very much what you have to buy, yeah. [AGENCY 65]

BRENDA DECKER: I mean it's not we went out and did something new and different, so. [AGENCY 65]

SENATOR NORDQUIST: Okay. Okay, so there were equipment failures that led to that. [AGENCY 65]

BRENDA DECKER: There, yes, there were equipment failures... [AGENCY 65]

SENATOR NORDQUIST: Okay. [AGENCY 65]

BRENDA DECKER: ...we were starting to see. [AGENCY 65]

SENATOR HEIDEMANN: Senator Fulton. [AGENCY 65]

SENATOR FULTON: Thank you, Mr. Chair. I had asked this of Carlos, Director Castillo, earlier. What's the expectation for layoffs? It doesn't look like there are enough for FTEs in each of these specific reductions, so I guess I'm trying to get a handle on are we talking about personnel here, are we talking about nonpersonnel? [AGENCY 65]

BRENDA DECKER: We're talking about nonpersonnel in the General Funds. Actually, we are not looking, at this point, at reducing staff in our organization. We do have a number of vacancies that we have set aside that have not been filled, some since 2004. What we're doing in the positions that are in our General Funds, we are trying to move the various programs and things that we are doing, such as one of the things that is in there is a geographical information system project that has been funded through

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that...through that program. And what we are looking to do is we are looking to reduce the scope of that program and actually take those costs out of that and hopefully find grant funds that could help us backfill that program and make sure that we get that project completed. [AGENCY 65]

SENATOR FULTON: Thank you. [AGENCY 65]

BRENDA DECKER: You bet. [AGENCY 65]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thanks, Brenda. [AGENCY 65]

BRENDA DECKER: Thank you. [AGENCY 65]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 65? Seeing none, we will close the public hearing on Agency 65 and open up the public hearing on Agency 75, the Nebraska Energy Office. Welcome. [AGENCY 65]

NEIL MOSEMAN: Good afternoon. May I? [AGENCY 71]

SENATOR HEIDEMANN: Yeah, roll away. [AGENCY 71]

NEIL MOSEMAN: (Exhibit 7) Good afternoon, Chairman Heidemann and members of the Appropriations Committee. My name is Neil Moseman, N-e-i-l M-o-s-e-m-a-n, and I'm director of the Nebraska Energy Office. Thank you for the opportunity to testify today in support of the Governor's budget proposal before the Legislature. The Nebraska Energy Office has been asked to reduce the operations budget and cash fund balance by \$10,655 for fiscal year 2009-2010 and \$20,307 for fiscal year 2010-2011. We've also been asked to reduce the operational budget and cash fund balance for the school weatherization budget by \$756 for fiscal year 2009-2010 and \$1,510 for fiscal year

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2010-2011. The Energy Office will comply with these necessary reductions. The Energy Office concurs with the Governor's proposed budget recommendation of a 2.5 percent reduction across the board for fiscal year 2009-2010 and a 5 percent reduction for fiscal year 2010-2011 and the fund transfers to the General Fund. The Nebraska Energy Office supports the Governor's direction and understands that the current economic circumstances necessitate prioritization of resources, work, and shared sacrifices. I am glad to answer any questions. [AGENCY 71]

SENATOR HEIDEMANN: Thanks for coming in today, Neil. Senator Mello. [AGENCY 71]

SENATOR MELLO: Thank you, Director Moseman, for your testimony and I only have one question and it involves funding from the American Recovery and Reinvestment Act. It's my understanding that your agency was the only agency, besides the Department of Administrative Services, that received funding from the stimulus money the state received to actually administer programming. I think it's to the tune of \$2.4 million that you can use for the general operations of the day in, day out Energy Office. If we decided, as the Appropriations Committee--I noticed the Governor did not put in his proposal of taking any of that administrative money away--if the Legislature took \$2 million of that and, instead, used it, for an example, to put into the aid to municipalities, since that money can be used for anything, similar to a lot of the other stimulus money that the Legislature and the Governor have used to spend and plug budget holes, would your agency be able to continue to provide the day in, day out services right now with the stimulus money that you're receiving, or is there...or would you not be able to carry out your mission maybe, or would you have to rely, for an example, on DAS and maybe the State Budget Administrator's Office to help maybe do more of the reporting and accounting of the stimulus money? [AGENCY 71]

NEIL MOSEMAN: Well, my understanding is that the energy portion of the HR1 American Recovery and Reinvestment Act, it's unlawful to supplant state funding. So we

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would...my understanding, we're not able to provide funds of the state for any sort of those purposes if we wanted to. [AGENCY 71]

SENATOR MELLO: We then could...well, could we then take, out of the \$2.4 million, we could take \$2 million or the entire amount and put it into, for an example, the School Weatherization Program or some other existing program that is not based on staff or administration, since that would not be supplanting? [AGENCY 71]

NEIL MOSEMAN: And you're talking about administrative funds from the stimulus? [AGENCY 71]

SENATOR MELLO: My understanding, from our dialogue last session, is that 10 percent of the stimulus money that goes to the Energy Office can be used for administration and your office was the only office, next to DAS, that was allowed to use that 10 percent funding. If the Legislature in this special session decides to remove that 10 percent administrative funds and put to an existing program within your agency, would you continue with your current staffing levels in the Energy Office? Would you be able to carry out the responsibilities of managing the stimulus money then? [AGENCY 71]

NEIL MOSEMAN: I... [AGENCY 71]

SENATOR MELLO: Or would you...or do you absolutely need to hire more staff to oversee the influx of money for some of your programs? [AGENCY 71]

NEIL MOSEMAN: I guess I'm confused. I would...I guess maybe that's a question for the Inspector General of the U.S. Department of Energy, because this is...my understanding and our read from HR1 is that that would be...that's against the law to utilize any of those funds for...to supplant state funds. [AGENCY 71]

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SENATOR MELLO: But there's no...but I guess my question is it's not supplanting because out of HR1 it says that each agency can take 10 percent of the stimulus funds that are awarded for each agency for administrative purposes. Your agency took that 10 percent. You were one of the only agencies, I believe, to do that. [AGENCY 71]

NEIL MOSEMAN: Well, we get 5 percent of...we get 5 percent of our program funds for administrative purposes and those are to implement the stimulus program. [AGENCY 71]

SENATOR MELLO: If we took those funds away and put them in programming instead, maybe programming that actually would help create more jobs right now, knowing that our state's unemployment is increasing, would your agency still be able to carry out your mission in regards to overseeing those stimulus dollars? That's just my question. If we took any of those funds away, put it into programming, do you have the appropriate level of staff right now to continue to carry out the administration of those programs or would you need to hire? [AGENCY 71]

NEIL MOSEMAN: I think somebody would go to jail if that happened. I just...I mean I don't think it's legally possible. I'd be happy to have... [AGENCY 71]

SENATOR MELLO: We could chat off the mike, too, if that's... [AGENCY 71]

NEIL MOSEMAN: Sure. [AGENCY 71]

SENATOR MELLO: ...to make sure we're clear, because I... [AGENCY 71]

NEIL MOSEMAN: ...have an IG opinion on that and it's 5 percent of the weatherization program, state energy. I mean 5 percent of that is allowable for administrative costs and fees. But I don't know where the 10 percent number (inaudible). [AGENCY 71]

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SENATOR MELLO: Okay. Maybe...maybe I'm...I could be mistaken, Director. Don't...I'm not...I do not claim to know it all, so to speak. I just...I distinctly remember we had \$2 million and... [AGENCY 71]

SENATOR FULTON: What did you just say? That's (inaudible). (Laughter) [AGENCY 71]

SENATOR MELLO: I distinctly remember we had \$2 million in your administration that we left there so. [AGENCY 71]

NEIL MOSEMAN: I wish I had \$2 million. Wow! [AGENCY 71]

SENATOR FULTON: We got that on the record. [AGENCY 71]

SENATOR HEIDEMANN: That was read in the public record, what you just said, by the way. (Laugh) [AGENCY 71]

SENATOR MELLO: I'd stand by that. That's no problem. [AGENCY 71]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 71]

SENATOR CONRAD: Thank you, Director Moseman. We had a chance to visit during your regular budget hearing last session about the Department of Energy's long-term plan for your agency's operations. At that time, when you came before us, there was no plan in existence. I was wondering if you could provide this committee with a brief synopsis of what activities you've been involved in since that time to remedy that situation. [AGENCY 71]

NEIL MOSEMAN: There was a...we've had an interim plan since, well, December of 2008. I'm just trying to think what date that would have...that would have been the

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spring, I believe, the last hearing we had on this. Sure, but I can briefly address that. In the fall of 2008 or when I came into this position as director, the previous...the state energy plan that had been in place had not been updated since 1996. And so in the fall of 2008 I embarked. I went across the state and held public hearings seeking public input as to what the state energy plan should be. We had our Web site. My goal was to replicate what they do with the federal rule-making process. We had our Web site open for public comments for 60 days and then we...60 days, and after I did nine hearings across the state, we put that plan together, an interim plan, up again for comment in December of 2008 for another 30-day period. And at that time, we issued, based on those second round of comments, put in an interim plan, which was on our Web site, in January of 2008. And our plan was to then make that a final document shortly thereafter based on other public input; however, the stimulus package rolled along and, based on that, I talked to the Governor and I said if we, based on what's going to happen here with the stimulus package, we probably should hold off and see what numbers and what sort of dollars we're going to receive, and \$93 million later in energy stimulus funding we now have...we're very close to weatherization. The big...really the big four programs...I'm sorry I'm going on too long but I'll kind of... [AGENCY 71]

SENATOR CONRAD: No, that's helpful. [AGENCY 71]

NEIL MOSEMAN: Part of the answer here, the weatherization program, we've applied for that and we've received those funds, are moving ahead on that. There's one caveat having to do with Davis-Bacon. If anyone was interested, that's a five-month delay that caused. But the weatherization program, state energy program, that's up and moving along. That's \$30.1 million. The energy efficiency community, the block grant program, our application is currently in to the Department of Energy but we expect that to be approved very soon. The last program, it's \$1.7 million but actually it's probably got the most attention, that's the ENERGY STAR Appliance Rebate Program. Some folks refer to it as, you know, refrigerator for clunkers, that sort of thing. That we submitted October 15, our plan, and we hope to hear back from the federal government by December 15 if

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we can roll ahead with that. And based on that December 15 number, I anticipate at that time, once the feds approve that plan, we can submit...we can...or we'll be able to release our final state energy plan, because then we have all these pieces in place. And from January till now my thought has been once we have all the stimulus plans in place and approved by the feds, move forward, instead of doing this piecemeal throughout the year. [AGENCY 71]

SENATOR CONRAD: That's helpful. [AGENCY 71]

NEIL MOSEMAN: Okay. [AGENCY 71]

SENATOR CONRAD: And in fairness, I just want to make sure that the time frame is clear in my head, your office, your agency is fairly new. These activities used to be handled within the context of the Governor's Office. Is that right? [AGENCY 71]

NEIL MOSEMAN: The Police Research Office, that's correct. Yes, ma'am. [AGENCY 71]

SENATOR CONRAD: Police Research Office. Okay, so the Nebraska Department of Energy was essentially created or reestablished or otherwise about two years ago. Is that right? [AGENCY 71]

NEIL MOSEMAN: July 1 of 2008, became a code agency. [AGENCY 71]

SENATOR CONRAD: July 1, 2008. Okay. And so you've spent the early time in the brief history of the agency and as director trying to put together a plan, then kind of reformatting those ideas to be conducive to the stimulus programs that have been presented and have been very busy trying to accomplish those efforts. And so do you have a plan, though, beyond the immediate work involved in the stimulus to come back and look at long-range issues in terms of Nebraska's energy policy? [AGENCY 71]

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NEIL MOSEMAN: Absolutely. In this energy plan that will be completed here middle of December or so, that's part of the picture. Actually be...once we get this final approval on our ENERGY STAR Appliance Program, it frankly will be a relief that we can move on now to some longer range planning and implementing some of those goals in various areas, so absolutely. [AGENCY 71]

SENATOR CONRAD: Okay. Great. And then how many employees does your agency currently have to assist you with these efforts? [AGENCY 71]

NEIL MOSEMAN: Eighteen full-time employees and we're also, via the stimulus funding, adding some temporary staff. [AGENCY 71]

SENATOR CONRAD: Okay. Thank you. [AGENCY 71]

NEIL MOSEMAN: Thank you. [AGENCY 71]

SENATOR HEIDEMANN: Are there any other questions? Senator Mello might have one. He's running back in. [AGENCY 71]

SENATOR MELLO: Director Moseman, thank you for entertaining this one last question. I was able to get from my office the state energy program overview, which was the plan that our state submitted to the federal government to receive close to \$31 million. In the last section is what I was referring to in our previous dialogue, which says under administration evaluation monitoring and reporting, it says that your office will use \$2.1 million and it's estimated to create 23 jobs. It says officially, the Energy Office will administer ARRA funds, monitor grants, and report on required activities. The Energy Office will make periodic on-site inspections of ARRA-funded project to document progress in compliance with ARRA-funded contracts. The state's Dollar and Energy Savings Loan Program will also be evaluated. My question was, we could take those

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funds away and put them, for an example, in the Dollar and Energy Savings Loan Program or some other program within the state energy program if necessary. And that was my question, is that we can take those administrative dollars away and, for an example, use them in some other way, whether it's the Advance Renewable Energy Projects, which is more of a competitive entrepreneurial grant project for businesses to start off and create renewable energy projects, or the State Building Energy Efficiency Fund. We could do that, could we not, or is it your understanding that we can't do that at this point? [AGENCY 71]

NEIL MOSEMAN: It's my understanding, that the plan that's been approved by the U.S. Department of Energy, that that's what's in place and we're about halfway through in terms of implementation of that, that plan. Within that, oh, that \$2 million, the whole pot for the state energy program is \$30.9 million, so that's the administrative funds and you are correct. Actually within that \$30 million we've added \$11 million to our revolving loan program for renewable, so...and, of course, \$6 million goes to higher education here in the state for energy building retrofits, and \$4 million goes to the state, state of Nebraska, for basically DAS building retrofits. So, yeah, that...in July of this year is when the Department of Energy approved that plan or that funding, as you stated. [AGENCY 71]

SENATOR MELLO: And I know, I want to make sure that it's...I'm not seeking any got you answers right now. Your office has been very helpful with me and my office through session to the end of session regarding getting more information about these funds. I'm just looking at this issue particularly know that it says that we have to create or retain 23 jobs. Are those...and I've always wanted to just kind of get more information, is that money being spent on existing staff then, to retain existing staff within the Energy Office, or are we going to use these one-time dollars to hire new people to help administer this program and then lay those people off when the funds go away? [AGENCY 71]

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NEIL MOSEMAN: Oh, I...those...the jobs and...well, actually, to back it up a step in this, should be hopefully helpful, all these stimulus dollars have to do...well, they do several things, but the top, the big two are actually create jobs and save energy. [AGENCY 71]

SENATOR MELLO: Uh-huh. [AGENCY 71]

NEIL MOSEMAN: There's greenhouse gas reduction. There's a few other...rural development, community development, other activities, but I use the analogy much like the bowl championship series, you know, there's ten folks who get rated but the top two play for the championship, and in this case jobs created and energy saved are the top two goals of this state energy program. In that regard, when we submit our state energy program plan to the federal government, they gave us a matrix, basically how many jobs. You plug in how many dollars and what sort of program, and then it kicks back a number and says this is how many jobs the U.S. Department of Energy anticipates that these funds will create. And so that's where that job figure comes from. So is that helpful? [AGENCY 71]

SENATOR MELLO: I guess my question...I think you're getting to the answer I was looking for which is, is that \$2.1 million going to be used to fund existing positions or will that money be used to hire new people that then will have to be laid off when this money disappears? [AGENCY 71]

NEIL MOSEMAN: Those funds...the answer, actually it's both. Some of those funds are utilized, being utilized for folks, current full-time employees in the Energy Office now who are working on the state energy program plans. And then we've hired several temporary staff to implement the state energy program, for example, the folks who are going to be handling the renewable energy demonstration project, that grant. And those are all...those are all temporary positions. So March 30, 2012, or before, those positions go away. [AGENCY 71]

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SENATOR MELLO: So would that lead one to believe that with the cuts that would happen to the Energy Office, you really wouldn't lose staff, so to speak? You really wouldn't feel a lot of cuts, so to speak, or a lot of pain because you're getting this \$2.1 million to help pay for staff and administration already. Would that be a fair assessment, that you can take this cut fairly easily, not a whole lot of questions asked, because you are receiving a serious influx of federal dollars that can cover all of your staff? No one will be laid off, no one will be furloughed, things of that nature. [AGENCY 71]

NEIL MOSEMAN: You can say that. Of our budget, roughly \$400,000, you know, state funds and the other nearly \$100 million is federal funds, so. [AGENCY 71]

SENATOR MELLO: Okay. That helps out, I think, the committee... [AGENCY 71]

NEIL MOSEMAN: Yeah. [AGENCY 71]

SENATOR MELLO: ...in the understanding of what pain, so to speak, the Energy Office would feel with these existing cuts, or if we chose to go deeper in cuts, that what little pain that your office would feel, knowing that you have that cushion of funding from the federal government. So that just helps us out. Thank you so much. [AGENCY 71]

NEIL MOSEMAN: Oh, thank you. [AGENCY 71]

SENATOR HEIDEMANN: Senator Hansen has a question. [AGENCY 71]

SENATOR HANSEN: Thank you. Director Moseman, if the intent of the stimulus dollars are to save jobs and save energy, I believe it was the Energy Department that had a grant award program this summer and a lot of those grants in the western part of the state were to quit using gravity feed irrigation and go to a center-pivot type. Was that through your department? [AGENCY 71]

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NEIL MOSEMAN: No, sir, that must have been the federal or the U.S. Department of Energy must have had that grant program. [AGENCY 71]

SENATOR HEIDEMANN: I think that was administered by somebody else. I know what you're talking about. [AGENCY 71]

SENATOR HANSEN: Okay. Okay. Well, it's not saving any energy but it's...it's more efficient but not saving energy. Okay. On the long-range plan that you had to put aside for a little while, when you come back to that and you talk about renewable energies, are you going to consider nuclear energy a truly reliable type of renewable energy... [AGENCY 71]

NEIL MOSEMAN: Yes, sir. [AGENCY 71]

SENATOR HANSEN: ...rather than an intermittent unreliable expensive form? [AGENCY 71]

NEIL MOSEMAN: That's certainly...that's a significant part. I'm sorry. Yes. [AGENCY 71]

SENATOR HANSEN: But that will be part of it,... [AGENCY 71]

NEIL MOSEMAN: Yes, sir. [AGENCY 71]

SENATOR HANSEN: ...be part of the discussion anyway? [AGENCY 71]

NEIL MOSEMAN: Yes, sir. [AGENCY 71]

SENATOR HANSEN: Thank you. [AGENCY 71]

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SENATOR HEIDEMANN: Are there any other questions? [AGENCY 71]

SENATOR MELLO: One other question, Mr. Chairman. It was a question I asked of Oligmueller, Director Oligmueller as well. He recommended I ask Director Moseman. [AGENCY 71]

SENATOR HEIDEMANN: Okay. [AGENCY 71]

SENATOR MELLO: I asked Director Oligmueller, when he presented LB1, LB2, and LB3, if the Governor or through your office possibly had recommended any kind of executive orders to existing state agencies to become more energy efficient. Other Governors in western states have issued these executive orders to mandate a 5 to 10 percent energy efficiency requirement within state governments or at least within agencies that the Governor controls. Director Oligmueller couldn't remember or couldn't determine whether or not Governor Heinemann has done that and directed that maybe I ask you that question. [AGENCY 71]

NEIL MOSEMAN: The Governor issued a memorandum in 2005, I believe October 2005, and obviously four years ago. So our intent here is, you know, take that memorandum and now other information and programs that we have available, particularly through the stimulus programs and state energy program, roll that into our state energy plan, too, not only recommendations but things that the state can do to become energy efficient in many different ways. So, yeah, that's a major push here to do. [AGENCY 71]

SENATOR MELLO: So as far as you know then, the Governor has not issued an executive order that would mandate energy efficiency savings in state government, thus, saving tax dollars in the process? [AGENCY 71]

NEIL MOSEMAN: Well, once we issue the state energy plan here in the December,

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I...that may not have the force of an executive order but I'd say it's probably a pretty good road map as to how to do that, so. [AGENCY 71]

SENATOR MELLO: Of where we might go in the future... [AGENCY 71]

NEIL MOSEMAN: Yes, sir. [AGENCY 71]

SENATOR MELLO: ...with an executive order then? [AGENCY 71]

NEIL MOSEMAN: Yes, sir. [AGENCY 71]

SENATOR MELLO: Thank you. [AGENCY 71]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 71]

SENATOR NORDQUIST: Just quickly along those same lines, there's a conversation yesterday between Senator Mello and Director Oligmueller about Utah and them transitioning to a four-day, ten-hour work...ten-hour day workday in order to save energy. They estimated it at 20 percent. They've had...Director Oligmueller had different thoughts on it. Have you had a chance to look at that and consider that for...to be a part of our plan in Nebraska and have discussions within the administration on it? [AGENCY 71]

NEIL MOSEMAN: We have not. We haven't tackled that issue. Just I've asked my personnel within the Energy Office what sort of interest there would be in that and every hand shot toward the ceiling. So, yeah, I think within the state agencies, they'd be in support of that. But we haven't looked in terms to see what actual savings may be. [AGENCY 71]

SENATOR NORDQUIST: Yeah. The energy savings. Okay. Thank you. [AGENCY 71]

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SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 71]

NEIL MOSEMAN: Thank you, Senators. [AGENCY 71]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 71, the Nebraska Energy Office? Seeing none, we will close the public hearing on Agency 71 and open up the public hearing on Agency 74, the Power Review Board. Welcome. [AGENCY 71]

TIM TEXEL: Chairman Heidemann, members of the committee, my name is Tim Texel, T-i-m, last name T-e-x-e-l, and I'm the executive director and the general counsel for the Nebraska Power Review Board, and the Power Review Board is the state agency with primary jurisdiction over Nebraska's electric power suppliers. We're an independent or a noncode agency. My testimony, I noticed I'm next to last, I'll be very brief. I think you've had similar testimony earlier today. But under the Governor's proposal, the board's budget would be reduced by approximately \$10,000 in fiscal year 2009-2010 and by approximately \$20,500 in fiscal year 2010-2011. Although no one likes the prospect of budget cuts, the board understands and appreciates the seriousness of the budget shortfalls facing the state of Nebraska. The board is an entirely cash funded agency and we obtain our operating funds through assessments levied against Nebraska's power suppliers. Although the board has some concerns regarding taking cash funds and moving them to the General Fund, the board recognizes that everyone needs to do their part to address the current budget crisis. So given the budget situation, the board believes the Governor's proposal, at least as far as it affects the Power Review Board, presents a fair and reasonable approach towards addressing the budget situation. So under the Governor's proposal, the board believes it would be able to fulfill its mission and continue its operations without laying off, and there's only three full-time employees there of which I'm one, but we wouldn't have to layoff or furlough anybody under these proposed cuts. So with that, that concludes my testimony. I'd be glad to try to try and answer any questions. [AGENCY 74]

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SENATOR HEIDEMANN: There any questions? Seeing none, thank you. [AGENCY 74]

TIM TEXEL: Thank you. [AGENCY 74]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 74, the Power Review Board? Seeing none, we will close the public hearing on Agency 74 and open up the public hearing on Agency 13, the Department of Education. I'll take this brief time before we get started here to say we have a letter from Nebraska Appleseed concerning education that will be put into public record. (Exhibit 17) Welcome. [AGENCY 74]

ROGER BREED: (Exhibits 8, 9) Thank you. Good afternoon, Senator Heidemann, members of the Appropriations Committee. Like you, I wish we were not meeting at this time but we are. So I have some opening comments and then I would like to walk you through the two handouts and then spend time with your questions. We are all aware of the gravity of the financial situation facing the state. I am not here to say the Department of Education is not going to be a part of the solution because we are and we have to be. I would remind the committee, however, that in the last biennium the department received a \$1.3 million reduction, approximately 10 percent, for Program 25 services. This reduction in operations funding that is proposed by the Governor's recommendation is definitely going to have to call into question the services that we can provide and the time line in which we can provide them. From the last biennium to this one, we were asked to add four functions to our services: the Student Leadership Center, the expansion of the Attracting Teacher Excellence Program, and more importantly two burdensome areas--a statewide assessment system which requires the development and implementation of state tests, and the administration of ARRA, the American Recovery and Reinvestment Act, particularly the state fiscal stabilization funds, the 1512 accounting. The...now, if I can just walk you through the worksheet that summarizes the Governor's proposals. The areas that are marked with asterisks, first of all, I would point out to some degree have been granted out or already sent away from

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the department, so they're not available for reductions. Under Program 25, the biggest portion of that cut, the cuts proposed, will fall on the monies available for the statewide assessment program. That would be approximately \$350,000 over the biennium. When the Legislature, in 2008, passed the mandate for a statewide assessment program, a fiscal analyst preparation was made that we feel was very accurate. This proposal would cut into that by \$300,000 a year, approximately, and basically make it untenable to accomplish the goals of the statewide assessment program without significant cuts in other department functions and a transfer of those dollars to that particular mission. When you look at Program 158, the early childhood programs, the high ability learners, the learning community transition, generally those funds have already been granted out. They are not available for the department to give up, so we'll have to look for other sources or suggest that those be removed from other agencies. Program 401 and Program 402 I would like to speak to on the second page. Any reductions in funds for deaf or hard of hearing services will be passed on to school districts, so that may be a state cut but it will be a local school district increase. The mandate to provide those services is federal and continuing. It does not go away. I would also point out that the proposed reductions in vocational rehabilitation, at the top of that page, the caution with regard to VR cuts is twofold. One is that we have to maintain a minimum effort. I think everyone on the committee understands that. The second thing is any reduction in money to VR is a reduction of services. So as the numbers of adults with disabilities that require services continues to expand in our state, we are at the same time reducing the capability to serve those individuals. The third point with VR is that every dollar we commit to VR results in \$3.49 of federal money to match. So the cuts do have a cost, if you will. In Program 402, we have committed to operate a Nebraska Center for Education of Children who are Blind or Visually Impaired in Nebraska City, we contract with ESU 4 in Nebraska City to run, and that's a wonderful program. I know some of you are very familiar with it. Again, to reduce the funds available for that program will cause us to enter into that contract. You're also aware that ESU 4, like all ESUs, is subject to cuts with regard to their core services monies. Whether or not we'll be able to sustain that program with ESU 4 or not is called into question. I would also ask you to note the

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transfer, specific fund transfer, of \$10 million from the distance learning fund to the university. If you could for a minute, and I understand that that's probably going to happen and maybe should, but that was somewhat of a...starting to be a bit of a dream fund, that if we could ever imagine the state of Nebraska getting out in the lead in terms of technology application for providing high quality, high level curriculum for students wherever they reside in the state, in our most distant geographic schools, in our smallest schools that have difficulty accessing AP classes of all kinds, to deliver those on-line and to use that money for that purpose to incent and create that type of a program was just a seed that was beginning to be planted. Taking that away will take away that seed and we'll have to seek other ways to do that. Again, if it has to be done it has to be done, but I do want the committee to understand the cost to the cuts with regard to the department. So with those comments, I just have one other comment with regard to the second sheet that was sent out in anticipation of Senator Mello's question. (Laughter) And I don't mean to steal your thunder on this. You may certainly ask it. But we have at this time 41 vacancies. We are a department of roughly 504 FTE. The vast majority of those are federally funded so the impact of 41 positions, in terms of state monies, is actually...can be translated to about 5.56 positions, pretty minimal in terms of the 41. So wanted to update the committee. With that, I do not envy your job and your role. I do thank you for your attention to the task and for the opportunity to speak with you today. [AGENCY 13]

SENATOR HEIDEMANN: Thank you for coming in today. Senator Harms. [AGENCY 13]

SENATOR HARMS: Thank you, Mr. Chairman. Commissioner, thank you very much for your testimony. When I look at the cuts that we have here or projected cuts, like for example in Program 25, when it deals with a phase of operation, that's pretty healthy cuts from the General as well as the cash. What's that going to actually do to this program? [AGENCY 13]

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ROGER BREED: Well, if the priority is to hold fast to creating a high-quality assessment program, of which that is a substantial portion of those monies, then it will result in a reduction of staff and reduction of capability to perform the other services of the department. [AGENCY 13]

SENATOR HARMS: And when we talk about reduction, what are we talking about in numbers? [AGENCY 13]

ROGER BREED: To compensate for \$350,000 you're looking at six FTE. [AGENCY 13]

SENATOR HARMS: Six FTE? Okay. Well, did I understand you correctly when you talked about Program 158 that those were already granted out? That in fact they would be... [AGENCY 13]

ROGER BREED: Some with the asterisk by them, those programs for the most part, that money has already been granted out. It's already been sent out of the department or flowed through the department. [AGENCY 13]

SENATOR HARMS: Now is that every one of those in Program 158 or...? [AGENCY 13]

ROGER BREED: Just the ones that are asterisk, and I would correct the early childhood program. I think it's about \$11,000 remains in that particular fund. [AGENCY 13]

SENATOR HARMS: Okay. Now do you plan on removing that \$11,000 or are you going to go ahead and let that be granted further... [AGENCY 13]

ROGER BREED: We assume... [AGENCY 13]

SENATOR HARMS: ...in the early childhood development? [AGENCY 13]

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ROGER BREED: We assume that will be committed to the cuts. [AGENCY 13]

SENATOR HARMS: Okay. I guess the other question I would just like to ask you, if I can. I have a high interest in early childhood develop and even though that's been granted out, as we look into the future here I'd be interested in your views about early childhood development. I guess I look at if investment we make at the front of these children, from the research that I reviewed shows very clearly that that's where you make your investment, it's much more cost-effective to do that at the front rather than the later. Is that...would you agree with that? [AGENCY 13]

ROGER BREED: I agree with that 100 percent. When we look at impacts to reduce dropouts, when we look at impact efforts to reduce special education costs, when we look at impact efforts to reduce incarceration costs, study after study indicates that dollars put into quality early learning opportunities for students, consistently administered and consistently connected to your K-12 environments, are productive and cost-effective. [AGENCY 13]

SENATOR HARMS: Would you also agree, Commissioner, that children who get...who are placed in the early childhood development programs, good ones, as they move into the school system are much more...I guess they're better prepared than children who are not? Is that also correct as you look at that? [AGENCY 13]

ROGER BREED: With quality. [AGENCY 13]

SENATOR HARMS: Yeah, I'm talking about quality. [AGENCY 13]

ROGER BREED: Again, we have a continuum of programs, you know with a quality program that has a learning basis for it and is staffed by well-trained, well-motivated individuals, I agree with your statement. [AGENCY 13]

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SENATOR HARMS: Here's where I'm coming from in regard to these questions.  
[AGENCY 13]

ROGER BREED: Okay. [AGENCY 13]

SENATOR HARMS: There's always something that you're going to leave out, too, okay? From a recent study that I have reviewed showed that we have 50,000 at risk, high risk in Nebraska, and approximately 40 percent of those are in rural America, and I have a concern about the early childhood development program. And when I talk about early childhood, I'm talking about from zero to five, okay? I just want to make sure, as we start looking at the future and if we're going to address this issue, that I think we need to make sure that we preserve the sort of childhood phase of it because I think it's more cost-effective for us. And what surprised me in the study itself was to learn that, out of 50,000 children, 40 percent were in rural Nebraska--I would have just bet the other way--which tells me then that rural Nebraska, which I've been saying for some time, is at risk here in about every phase of our operations. And I want to make sure that as we look at this and we prepare for the future that we keep this in mind, because, I'll tell you what, I'm going to be watching that carefully. I'm really committed to this. And I know that it's really tough. These are tough times and we've got these already granted out. But, you know, we've got another cycle coming back around and I just want to bring this out as a matter of record that I think it's extremely important that we look at this. I'm really sorry that we even have to have this discussion about education. I mean I'm pretty much committed to this. I also understand there has to be a balance. But I am concerned by what we're going to have to reduce here. [AGENCY 13]

ROGER BREED: Well, the only thing I can add, the resolve of the department is strong with regards to providing quality early learning opportunities for students border to border in the state. And we are as aware as you are of the rural nature of the impact of poverty on our students. [AGENCY 13]

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SENATOR HARMS: In fact, we had this discussion today in a committee meeting in regard to long-range planning for the state, and I told my colleagues, I think they're going to be surprised when we get into the poverty aspect of how severe it is in rural Nebraska. [AGENCY 13]

ROGER BREED: Uh-huh. [AGENCY 13]

SENATOR HARMS: I think we're going to find some things that we're not going to like that I just didn't anticipate. But some of the studies and the research in every category, not just children but adults in general, were at risk. So... [AGENCY 13]

ROGER BREED: And the delivery of quality service to rural and distant scattered areas is very difficult. We'll have to reconfigure our thoughts with regard to that. [AGENCY 13]

SENATOR HARMS: And it's expensive because it's more difficult. You have smaller numbers. [AGENCY 13]

ROGER BREED: Yeah. Uh-huh. [AGENCY 13]

SENATOR HARMS: But that's the challenge we're going to have. And I'm not going to walk into some of the other thoughts because it's late in the day, but I'll do what I can to support and help the educational cause but I think all of us are going to pay the price. It just depends on how much you want to pay. [AGENCY 13]

ROGER BREED: Appreciate that. [AGENCY 13]

SENATOR HARMS: So thank you very much for your testimony. I appreciate it. [AGENCY 13]

ROGER BREED: Thank you, Senator Harms. [AGENCY 13]

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SENATOR HARMS: You're welcome. [AGENCY 13]

SENATOR HEIDEMANN: Senator Nordquist, then Mello, then Conrad, and then Fulton.  
[AGENCY 13]

SENATOR NORDQUIST: All right. Thank you, Dr. Breed, for joining us today. Thank you for your leadership of the department. Start with the cash funds that you mentioned. Where do those get generated or what generates those cash funds? [AGENCY 13]

ROGER BREED: The cash funds? [AGENCY 13]

SENATOR NORDQUIST: Yeah. [AGENCY 13]

ROGER BREED: In Program 25? [AGENCY 13]

SENATOR NORDQUIST: No, the ones we're transferring to the university. I'm sorry.  
[AGENCY 13]

ROGER BREED: Oh, the ones that we're transferring to the university? [AGENCY 13]

SENATOR NORDQUIST: Yeah. [AGENCY 13]

ROGER BREED: That's generated from the lottery. [AGENCY 13]

SENATOR NORDQUIST: Okay. Okay. [AGENCY 13]

ROGER BREED: So buy your tickets early and often, so... [AGENCY 13]

SENATOR NORDQUIST: How much...how much is in there right now? [AGENCY 13]

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ROGER BREED: I think we have a little over \$11.5 million, and so we're leaving in there what would be needed to obligate the reimbursement of distant... [AGENCY 13]

SENATOR NORDQUIST: Uh-huh. [AGENCY 13]

ROGER BREED: ...distance education equipment anticipated over the next year.  
[AGENCY 13]

SENATOR NORDQUIST: Sure. And you mentioned kind of as the dream fund, does the department kind of have a long-term vision for kind of a plan or a direction for how to implement that next step in distance learning? [AGENCY 13]

ROGER BREED: Well, you are aware that we have been working on a race to the top...  
[AGENCY 13]

SENATOR NORDQUIST: Uh-huh. [AGENCY 13]

ROGER BREED: ...grant proposal. This would be one of them. And when you talk about one of the key aspects of that grant proposal is sustainability,... [AGENCY 13]

SENATOR NORDQUIST: Uh-huh. [AGENCY 13]

ROGER BREED: ...here's a fund that could contribute to that aspect of sustainability in a properly done, virtual school effort. [AGENCY 13]

SENATOR NORDQUIST: Sure. So would you say that not having these funds in place would significantly stifle an effort to make that next phase in distance learning, especially to rural Nebraska where... [AGENCY 13]

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ROGER BREED: It would stifle but if we look at it if...you know, if we're going to use my race to the top argument then we could secure grant money for four years. [AGENCY 13]

SENATOR NORDQUIST: Uh-huh. [AGENCY 13]

ROGER BREED: And so in four years' time, if we could accrue these funds, if this is a one-time take and we all continue to buy our Powerball tickets, then we could build up that amount for sustainability of a virtual school project in that time. If the take away would continue, then I would agree that this is a significant stifling. [AGENCY 13]

SENATOR NORDQUIST: Sure. Yeah. Well, I certainly think it's critical, the long-term we build towards having those educational opportunities available across the state, regardless of geography. You know, through your leadership, I know you travel the state a lot and talk to administrators in school districts, the cut in TEEOSA here, \$47 million, have you gotten any sense of how school districts are going to manage this cut, whether it's through layoffs or increased property taxes? Have you heard some of both? I mean, yeah. [AGENCY 13]

ROGER BREED: It will be district specific. I guess the couple things that I've heard consistently is please no cuts until 2010-11,... [AGENCY 13]

SENATOR NORDQUIST: Sure. [AGENCY 13]

ROGER BREED: ...so they have a year to prepare for it. And then, you know, the general budget cutting process in a school district is you look at the nonpersonnel items first, so how do you economize in transportation, maintenance, operations costs, support staff, noncontract personnel, shoot a couple administrators (laughter), those kinds of things, and then you have to look at cuts to that. Now a 5 percent reduction in state aid, and if that was equally applied, and of course it won't be because we have a

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formula that is based on needs, equally applied, I would say school districts--and all other things staying the same--could get by with that by a belt tightening of one or two notches and basically no new initiatives. Okay? If, however, you're in a declining assessed valuation situation, a declining enrollment situation, which exacerbates the decline of your resources, it will be the only thing they can do at that point is start looking at contracted, certificated staff. [AGENCY 13]

SENATOR NORDQUIST: Sure. Okay. A final question kind of along those lines as well: The ARRA funds required a report to be generated about jobs created or saved. Did you collect that information? [AGENCY 13]

ROGER BREED: Yes. [AGENCY 13]

SENATOR NORDQUIST: And I believe it was 300-some-odd, was that the number or...? I'm trying to remember that. [AGENCY 13]

ROGER BREED: I don't quite have that number in front of me but, yes,... [AGENCY 13]

SENATOR NORDQUIST: Did you collect that? Did you... [AGENCY 13]

ROGER BREED: ...it was our job to collect that data... [AGENCY 13]

SENATOR NORDQUIST: Yeah, from the districts? [AGENCY 13]

ROGER BREED: ...from the districts, and it will be our job to do that quarterly. [AGENCY 13]

SENATOR NORDQUIST: Uh-huh. Sure. Do you think the potential is there to kind of look at those numbers and do, if we're reducing \$47 million now, that there might be some sort of proportional reduction in staff or do you know... [AGENCY 13]

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ROGER BREED: That potential,... [AGENCY 13]

SENATOR NORDQUIST: ...we would cut... [AGENCY 13]

ROGER BREED: ...that is not a misplaced assumption. [AGENCY 13]

SENATOR NORDQUIST: Okay. [AGENCY 13]

ROGER BREED: Okay? [AGENCY 13]

SENATOR NORDQUIST: Okay. Thank you. [AGENCY 13]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 13]

SENATOR MELLO: Thank you, Mr. Chairman, and thank you, Commissioner Breed, for your testimony. I'd like to echo the sentiment of my colleague Senator Harms regarding concerns of any cuts of early childhood education funding. I think I've spoken on the record multiple times about the importance of this component of our education system and look forward to more of the internal debate within the Legislature about protecting some of those funds. But my question...a few points you raise and I just maybe need some clarification, you discussed that the Governor's proposal indicates cuts in Programs 401 and 402. You discussed that those cuts that the Governor proposed would lead to essentially unfunded mandates to school districts because there's no other way to pick up the funds at our end. Would that be a... [AGENCY 13]

ROGER BREED: Right, 401 is...would directly go back to the individual school districts... [AGENCY 13]

SENATOR MELLO: Okay. [AGENCY 13]

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ROGER BREED: ...from where those individual students come from. The mandate is there. The money is drawn on the basis of the needs of the students and the state chose to pick that up. If we don't pick that up, it will fall on the individual school districts.  
[AGENCY 13]

SENATOR MELLO: And then would 402, a similar unfunded mandate in the proposal?  
[AGENCY 13]

ROGER BREED: The concern with 402 is that we've already drawn and signed and agreed to contracts to operate the Nebraska Center for Education of Children who are Blind or Visually Impaired down in Nebraska City with ESU 4. To go back in and reduce those contracts, we probably have the authority to do that. The caution is, is that we do that with ESU 4, which is also going to take a reduction in its core services, and then that may make it so that it is not a viable contract for them. If, you know, the last time we went through this, there weren't a lot of people available to run that program as well as ESU 4 can run it. So our concern is reduction in those funds jeopardizes that contract.  
[AGENCY 13]

SENATOR MELLO: So if we took the Governor's proposal on Program 402, what do you think would be the department's course of action? [AGENCY 13]

ROGER BREED: Well, we would initiative conversations with ESU 4 and look for economies where we can and hope for the best. [AGENCY 13]

SENATOR MELLO: And maybe that leads to my last question regarding ESU 4 on the front page of your testimony discussing cuts to ESU core service. It's my understanding, ESUs are property tax funded. Such a significant cut to an ESU like this, I would think, would only lead to them either having to completely, as you said, get rid of their services, renegotiate existing services, or... [AGENCY 13]

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ROGER BREED: Uh-huh. [AGENCY 13]

SENATOR MELLO: ...have to increase property taxes. Is that a conversation the department has had with ESU 4? [AGENCY 13]

ROGER BREED: Yeah, my conversation with ESUs is that they're all at the max levy and so they can't run to the levy because they're already there. So the option that they would have in reducing core services is either to charge their member school districts for the provision of those services, in which case you're just passing it to the property taxes of individual school districts, or to eliminate those services. And I guess the position I would take is that the Department of Education relies heavily on education service units to do professional development to, if you will, carry the message of good education quality services across the state for us. And diminishment of that capability is a problem. [AGENCY 13]

SENATOR MELLO: Has that been done? I mean has what you discussed, has ESUs before passed on costs, so to speak, or billed school districts for services? Is that...? [AGENCY 13]

ROGER BREED: In some cases in the...you know, I'm familiar with ESU 3 because that's where I was. [AGENCY 13]

SENATOR MELLO: Uh-huh. [AGENCY 13]

ROGER BREED: And they would create services that are capable for and accessible for all school districts. Those are part of your core services. Then at times we would insist that 4 or 5 of us of the 19 schools in ESU 3 would say, would you also do this. They would do that but then they would charge that back to the school districts because it wouldn't be fair to just offer that to those 5 school districts and not the other 14.

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So...and I think most ESUs do that to some degree. [AGENCY 13]

SENATOR MELLO: Okay. Thank you so much, Commissioner. [AGENCY 13]

ROGER BREED: You bet. [AGENCY 13]

SENATOR HEIDEMANN: Senator Conrad. [AGENCY 13]

SENATOR CONRAD: Thank you, Commissioner. Just a brief question in terms of an overview surrounding your testimony here today in response to the Governor's budget reduction recommendations. I think you've provided us with a variety of clear examples here but I just want to make sure my thinking about this is right. If we were to accept the Governor's budget reduction recommendations in regards to what he's proposed for the Department of Education,... [AGENCY 13]

ROGER BREED: Uh-huh. [AGENCY 13]

SENATOR CONRAD: ...we're not talking about impacts that may involve furloughs or layoffs. We're talking about impacts that will involve direct services to disabled adults, deaf and blind children, and disabled children. Is that right? [AGENCY 13]

ROGER BREED: That's correct. [AGENCY 13]

SENATOR CONRAD: Thank you. [AGENCY 13]

ROGER BREED: And...and it may involve layoffs... [AGENCY 13]

SENATOR CONRAD: In addition. [AGENCY 13]

ROGER BREED: ...and furloughs in addition to that. [AGENCY 13]

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SENATOR CONRAD: Thank you. [AGENCY 13]

ROGER BREED: So... [AGENCY 13]

SENATOR CONRAD: Thank you. [AGENCY 13]

ROGER BREED: And I...and can we do it? You know, it's the same way we did the ARRA. We didn't add but one person to do about a four-man job with the regard to the additional spending in ARRA. So we have great people. We'll pull it together. But when it talks about going out, providing direct services to disabled adults, disabled students, you're diminishing our capability to do that. [AGENCY 13]

SENATOR CONRAD: Thank you. [AGENCY 13]

ROGER BREED: Okay. [AGENCY 13]

SENATOR HEIDEMANN: Might be the last question for...oh, no, Senator Fulton first, and then Senator Nelson. [AGENCY 13]

SENATOR FULTON: Thank you, Mr. Chairman. Commissioner Breed, I'm going to ask a tough question here. In light of Senator Conrad's question, is there any more administration that we...could we allocate money that would be considered administrative money such that we could better serve those least among us? I warned you it was going to be a tough question. [AGENCY 13]

ROGER BREED: Yeah. And, you know, I would have to give that some thought, Senator Fulton. The one thing that is clear to me traveling across the state and getting to know my job as I have been, you know, and I'm a veteran of 7.5 months now, is that the needs are not decreasing. The needs, whether they're in adult basic education, in

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...serving adults with disabilities, in special education needs, in early childhood needs, in overcoming risk and poverty needs, they are increasing, not decreasing. And so I rail against, I think, any diminishing of capability with regard to that. But I'm also, having spent 39 years in public schools in Nebraska, and I think I made the comment to this committee before that I've never started a school year where I thought we had just loads and loads of money and more than we needed to do the job. So we will tighten the belt. We will consolidate to the degree that we can. We will squeeze out any extra money we can to continue to provide services first and the other things second. [AGENCY 13]

SENATOR FULTON: Just any type of suggestion or help. This is the hard part about budgeting because Senator Conrad hits on it. I mean we're talking about, at least among us, and this is part of what government is supposed to do. So any insights that you have, please share. [AGENCY 13]

ROGER BREED: We'll put our heads together again. We're only three days into this at this point. So...and it may take a little longer to come up with really good ideas so, okay. [AGENCY 13]

SENATOR FULTON: Okay. Thank you. [AGENCY 13]

SENATOR HEIDEMANN: Senator Nelson. [AGENCY 13]

SENATOR NELSON: Thank you, Senator. Thank you, Commissioner Breed, for coming in. I'm taking a look at Programs 401 and 402 on the second page. In looking at the contract costs and everything, have you calculated what percentage the Governor's recommended cuts represent? Is it about 5 percent of the cost of those programs or? [AGENCY 13]

ROGER BREED: No. I think it's probably less than that. [AGENCY 13]

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SENATOR NELSON: Well, all right. Could you give us an idea, if you know, about how many students are covered or involved in those two programs? [AGENCY 13]

ROGER BREED: I could not at this time. I can get that information to you. [AGENCY 13]

SENATOR NELSON: Well, but how many districts? This is the... [AGENCY 13]

ROGER BREED: Yeah. Oh how many... [AGENCY 13]

SENATOR NELSON: Go ahead. [AGENCY 13]

ROGER BREED: Yeah. I think the last time I looked at the Nebraska Center down in Nebraska City that they had students from about 26 districts. [AGENCY 13]

SENATOR NELSON: Oh, I'm looking more at 401, the deaf and hard of hearing. My question is this: Is it enough of a cut that the school districts are not going to be able to absorb those... [AGENCY 13]

ROGER BREED: No, they'll absorb. They have to absorb it. [AGENCY 13]

SENATOR NELSON: Right. [AGENCY 13]

ROGER BREED: So what they'll do is they'll stop spending on something else in their general fund to meet this mandate. That's how special education costs work. [AGENCY 13]

SENATOR NELSON: Okay. [AGENCY 13]

ROGER BREED: And then they will charge that as a special education cost next year, which will increase the obligation at the state or an obligation of their spending that will

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be reflected in the state aid formula. [AGENCY 13]

SENATOR NELSON: All right. One other question. If I heard you correctly, you started out saying if the implementation of the assessment program remains a high priority that you're going to have to have these other cuts. [AGENCY 13]

ROGER BREED: That's right. [AGENCY 13]

SENATOR NELSON: Do you have some leeway in the implementation of that special assessment at all so that that can be lengthened a little bit and get you by for a year or two? [AGENCY 13]

ROGER BREED: I don't have that leeway. You do. [AGENCY 13]

SENATOR NELSON: Okay. [AGENCY 13]

ROGER BREED: The LB1157 passed in March of 2008 specifies an implementation time line for a statewide assessment in reading language arts next spring, followed by math in 2011 and science in 2012. There is no leeway in that time. And each of those has a run-up of about a year to properly do the standards revision and the assessment development. [AGENCY 13]

SENATOR NELSON: But if the Legislature chose to change that and make it a four-year deal, for want of a better word, rather than a three-year, that would help you? [AGENCY 13]

ROGER BREED: Well, yeah, if the federal government would agree to that because we have an agreement with the federal government, you know, to convert from STARS to a statewide assessment that follows that time line. And that's with the U.S. Department of Education as part of the negotiations under No Child Left Behind. So my understanding

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is we would not only have to have the Legislature's capability to change that, but we would also have to ask the federal government to amend our agreement. That's not necessarily discussion we would want to enter into lightly. So we would probably shift things around... [AGENCY 13]

SENATOR NELSON: The cost of that implementation has been pretty closely figured so you can't get by with less or can't revamp that and still accomplish the goals in three years? [AGENCY 13]

ROGER BREED: The concern with that is, is at the state board level, among others, is they want a quality assessment. They want it to be done right. To do it right, we are following very closely the fiscal analyst amounts of about \$5 million a year for the development, implementation, and execution of those assessments. [AGENCY 13]

SENATOR NELSON: All right. Thank you. [AGENCY 13]

ROGER BREED: Okay, thank you. [AGENCY 13]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you. [AGENCY 13]

ROGER BREED: Thank you, Senator Heidemann. [AGENCY 13]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 13? Two. We have two I think that want to testify I see. You want to testify? Is there anyone else that was going to testify on this agency? All right, thank you. Welcome. [AGENCY 13]

CASPER NINGEN: (Exhibits 10, 11) Thank you so much for entertaining different folks and allowing us a chance to offer our input. It's wonderful that you all represent our state and thank you very much for that. Just to quickly echo what Dr. Breed had to say, in our district...my name, by the way, is written on your envelopes too. It's Casper Ningen,

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N-i-n-g-e-n, and it's pronounced a variety of ways, just like singin'. I'm a school superintendent in western Nebraska, and I've been an educator in Nebraska for 34 years now and have enjoyed calling Nebraska home after going there from Wyoming. As a kid, my father was transferred to Chadron, Nebraska, when I was a junior in high school. But to echo what Dr. Breed had to say about the, what used to be called NSVH in Nebraska City, the School for the Visually and Blind, we're a district that sends a student there as a matter of fact, across the state diagonally just about as far as you can go, we're pleased to have a facility there that is funded and we pay a substantial amount, too, to have our student there. We also have a very activity high-ability learners program at Hemingford, and we receive \$3,400 for that in grant funds. They just came last week, as a matter of fact, to confirm what Dr. Breed said. And those funds are, of course, just kind of a starter amount. We spend more than that on that program. As far as early childhood, we now offer a second section of early childhood at our school. We appreciate the fact that we have a lot of parents that want their sons and daughters to have a good start. We don't have a preschool or a public day care in Hemingford. It's a population of about 900 folks. The DL offerings that we are able to receive and send at Hemingford are also very valuable. We have a Spanish teacher, but we don't have a French teacher. We have an ag teacher, but we don't have a college algebra teacher, for instance. Those are...we take drama from another school. So some of those subjects are, I guess, the required subjects and some are elective. So hopefully I took my first minute and a half and touched on that. The letter that you have in your envelope is one that kind of echoes what I have e-mailed you about and then I'll be done. I just had two suggestions for the money that the Governor and yourselves are looking to try and save. And I guess what I would ask this committee and I would ask the Education Committee and I would ask all senators to consider is if there is a freeze for the schools districts...our school district state aid that it's a freeze district by district. And I know TEEOSA is something that can be fine tuned and it can be changed. I don't know that TEEOSA is at fault. It's the receipts that aren't coming in that are at fault. So if there was a way...for instance, I'm only speaking for our district, if you froze our state aid at what it is this year and it kept the same for next year, we could live with that. If you freeze \$47

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million and redistribute it and we lose state aid like we have the last couple of years when the recertification that occurred, then, you know, I, of course, would be opposed to that. So when I hear across the board or when I hear sharing the pain or when I hear that word equity that's part of TEEOSA or educational enhancement, if there was a way that the small schools and the big schools and the metropolitan schools and the outstate schools could all work together and be faced with some difficulties, it would be more palatable for the state's voters and would make better sense. The last thing I'll say is if there is a cut, again that was concerning the freeze, the second thought I had was if there's a cut in our state aid this year, which Dr. Breed is opposed to and I imagine most school districts are opposed to, that it also be one that's taken district by district. If the Legislature deems 3 percent or 2 percent or 5 percent appropriate, then each district would lose that percentage of their state aid that they have been certified to get this year and instead of again taking that TEEOSA formula and messing with it. That's all I have. Questions? [AGENCY 13]

SENATOR HEIDEMANN: Senator Harms. [AGENCY 13]

SENATOR HARMS: Well, thank you for traveling from western Nebraska to testify. You're about as far west as you can go (inaudible) Scottsbluff. [AGENCY 13]

CASPER NINGEN: What a beautiful state we have. [AGENCY 13]

SENATOR HARMS: Yep, you're right, a lot of territory in-between, isn't there? [AGENCY 13]

CASPER NINGEN: There is. [AGENCY 13]

SENATOR HARMS: I wanted to ask you while being in Hemingford and being close to Alliance and Chadron, how many classes do your students take through distance learning? [AGENCY 13]

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CASPER NINGEN: We take four. [AGENCY 13]

SENATOR HARMS: And what are those? [AGENCY 13]

CASPER NINGEN: We take French, drama, college algebra, and then I want to say that we're taking a medical terminology class so those four. [AGENCY 13]

SENATOR HARMS: If times become more difficult for us in regard to funding, would it be to your advantage or to the school's advantage to begin to look at how we can interlock more with technology with some of your outlying high schools or the community college area to continue to take more classes over the Web? What are your thoughts about that? What are your students saying at the end of this experience? [AGENCY 13]

CASPER NINGEN: Years ago I was able to take a trip with a number of other school administrators to Minnesota and to see their...before Nebraska ever had any distance learning. And we saw a digital display and we saw an analog display and we saw some gifted teachers teaching and those classes were successful. And then we saw examples of some teachers that had a difficult time and those classes were not successful. So I would say based on the instructor and based on the level, I guess the interest of the kids I think they can be very successful. [AGENCY 13]

SENATOR HARMS: Yeah, I have found that it takes a great deal of training to prepare a teacher to use distance learning because you have everything in front of you that you can connect yourself to the world very quickly. And it can be very frustrating if you're not oriented with technology. But yet it has a great opportunity for students to learn. Do you find in this process and then I'll leave you alone, do you find in this process of the evaluation of your students, have you been able to measure any success or lack of success by being in a classroom using technology or just being straight across the

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board teaching without any technology? [AGENCY 13]

CASPER NINGEN: We're blessed right now to have a very active technology coordinator, and she has administrative and board support for keeping our school district up to date. So I would say that we're very blessed that way. And it's the evaluation that we can make of our students, I can say in reading and in writing our students score as high as anyone in the state. When we get into high school and into mathematics and science, we have a ways to go. So it's a mixture, mixed success. [AGENCY 13]

SENATOR HARMS: Are you finding the children that come into your school system, the younger ones, that they learn differently because they are so used to using technology long before they ever get to your school? [AGENCY 13]

CASPER NINGEN: As a matter of fact, in our lower grades our little kids that take computer classes for the most part the third grade and fourth grade classes that take technology, they take classes three times a week. Those kids are learning how to do presentations and learning how to do multimedia sort of things. And we have to redouble our efforts in junior high and senior high so they're not bored. So we've really done a good job that way. [AGENCY 13]

SENATOR HARMS: Yeah. Have your teachers found that to be a real challenge to stay ahead of these kids? [AGENCY 13]

CASPER NINGEN: They have, but I think it's...we have to work with it or we'll really get behind. [AGENCY 13]

SENATOR HARMS: Thank you very much. [AGENCY 13]

CASPER NINGEN: Thank you, Dr. Harms. [AGENCY 13]

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SENATOR HEIDEMANN: Senator Conrad. [AGENCY 13]

SENATOR CONRAD: Thank you for your comments and thank you for your art. I think that you've bestowed some similar tokens and items... [AGENCY 13]

CASPER NINGEN: Those calligraphy pens just come in handy. [AGENCY 13]

SENATOR CONRAD: Yes. [AGENCY 13]

CASPER NINGEN: I haven't had a chance to say hello to every senator individually, but I try to and at least pop in the office once in a while. [AGENCY 13]

SENATOR CONRAD: Well, we appreciate them and admire them and I'm very jealous of your talent in the artistic realm. But I wanted to ask really two questions in regards to your testimony and this budget, the reductions in terms of education that are before us. And I talked a little bit with the Governor's staff about this yesterday and really didn't get a very clear answer. We all anticipate that we have the issues to deal with in terms of the economic climate that we're faced with now and into the future. What hasn't been explained to me in any context is if education is going to have to make some cuts--I know Senator Adams and his committee are working to figure out how to do that as fairly as possible--but why aren't we ever looking at any scenarios that just protect education and look elsewhere first? And I guess maybe that's unrealistic or naive, but I'd just like to know what your thoughts are in general about that fundamental question of why are we looking to education first and now? [AGENCY 13]

CASPER NINGEN: I think we find, at least I've found in my life, that some things that I believed in are actually...get turned around as I get older or I have a different perception or appreciation of that. And I would say that most everyone should be able to say that education is one of the most important things in our life. And whatever we can do, even

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if it costs some money, to take care of those kids when they're younger will end up repaying us as they get older because they won't be in prison, they'll have better jobs. When we retire, then Social Security will be in great shape because of all those kids that we so educated. But it is a tempting and large target. It's a large...it's a tremendously large amount of money. So I would say that's the converse part of it. It's something you can reach out and touch and say, look at that. That's a huge amount of money. We'll be able to do something with that. [AGENCY 13]

SENATOR CONRAD: And do you find...you deal with children and teaching every day. I mean the lessons you pass on to them say go ahead and do what's easy first or do you say work hard and figure out what's right? [AGENCY 13]

CASPER NINGEN: You know, I would hope anyway that if you spoke to any of our students or any of our teachers that they would be able to say about any teacher or any administrator or hopefully every parent that they're still pushing us to do our best. They still want us to come to school with a smile on our face and I know that sounds corny, and to go home at the end of the day and be able to sit at the supper table and be asked, what did you do in math today. How did English go today? And so we're missing that part because a lot of parents don't ask that specific of a question or perhaps can't be there for supper. And then a lot of times that you ask that general question you get a general answer--nothing. [AGENCY 13]

SENATOR CONRAD: No, that's helpful. And then finally the point that you bring forward in your testimony, and believe me, I'm not an education expert like you or Dr. Breed or many of the other talented people who work in this arena in our state, but it seems in my short tenure in the Legislature there's probably been more acrimony surrounding school funding issues than almost anything, whether it comes to stimulus salaries, TEEOSA in general, go down the list. And, you know, it seems to me that there's so many compassionate, caring, talented folk in this realm that we should be able to get together and find common ground and partnerships. So what I'm most concerned about is this

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kind of boom and bust cycle we have going with our education funding and which I think causes a lot of uncertainty and defensiveness on the local level in our relationship about how we work together to improve our education system. And would you, just as a very general principle, even if your increases weren't going to be significant or come close to meeting your needs, but if we had more stability so that you knew what you would be getting from a state perspective, would that assist you in better crafting your plans and your activities as you move forward on a year-to-year basis? [AGENCY 13]

CASPER NINGEN: In speaking for our own district, I can tell you that I've worked in this district for six years and I've worked in a few other districts that were not blessed with money that would be carried forward and have an actual cash reserve. So generally speaking it's good to have a surprise once in a while in everyone's life. But generally speaking, there's great value in relying on things and consistency and feeling just like we all wanted to feel at school--comfortable and be encouraged. So for some districts that have no cash reserve and maybe do have a little bit of an up and down effect with state aid, it causes them sometimes to lose teachers to other states. It causes them sometimes to not offer classes that they could otherwise offer. And it causes now, with an option law, it causes students to jump from school to school. I would say that the school districts that have been prudent and fortunate to have an actual cash reserve can weather that a little bit. But of the 350 school districts, there's a lot of them that may not be able to so then it's personnel change. [AGENCY 13]

SENATOR CONRAD: One final follow up. Do you find it inconsistent that the state or the Governor, through his proposal, is saying we're not going to look at our cash reserve as a state, but we want you, as school districts, to do exactly that? [AGENCY 13]

CASPER NINGEN: Well, and that would be wonderful if every school district had a cash reserve. Most of the...I guess there are many...there are some school districts, I'll put it that way, there are some school districts that have a hypothetical cash reserve that throughout the year allows them cash flow. But when they get to the end of the year, it's

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not there. It came and went already. [AGENCY 13]

SENATOR CONRAD: And, of course, just to be clear for the record, the schools that don't have the benefit or the resources to establish a cash reserve, of course their taxpayers helped contribute to the state of Nebraska's cash reserve. Is that right?  
[AGENCY 13]

CASPER NINGEN: True. [AGENCY 13]

SENATOR CONRAD: Thank you. [AGENCY 13]

SENATOR HARMS: Thank you, Senator Conrad. Senator Nordquist. [AGENCY 13]

SENATOR NORDQUIST: Thank you. You know, school districts look long-term at these reductions that we're facing, potential reduction in TEEOSA. I'm sure, you know, a big issue that will come up will be the salary of our employees, of our teachers. And, you know, where I live, you know, I'm a half mile from the Missouri River close to Iowa where, you know, our school districts have seen some significant competition from Iowa because they've put some money forward to increase teacher pay as a statewide initiative. And I know Wyoming on the western side of the state has done similar. Have you seen a similar trend with teachers? [AGENCY 13]

CASPER NINGEN: Well, and each state is a little different. I can't speak for Iowa but growing up in Wyoming, earlier the conversation was about mineral rights and getting licenses. Wyoming isn't in trouble that way. They're in great shape for minerals and they don't collect income tax, state income tax for instance. But even there there's been a little bit of this. I can tell you that within 100 miles of our school district there are Wyoming school districts where base pays...a teacher coming out of college with no experience, \$53,000 plus insurance, plus a home. [AGENCY 13]

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SENATOR NORDQUIST: May I ask what's base pay in typical around your area?  
[AGENCY 13]

CASPER NINGEN: In ours it's \$29,200 which is a very decent salary. But we don't...a lot of districts have kind of a mixture of faculty, though, that are married to local ranchers and so there's that anchor I guess or that more positive way, home plate kind of thing. But it does affect people, even in Scottsbluff and Gering who, out in our neck of the woods, those are the largest cities and they have wonderful teaching staffs and wonderful facilities. They still will lose some teachers to Wyoming. [AGENCY 13]

SENATOR NORDQUIST: Thank you. [AGENCY 13]

SENATOR HARMS: Thank you, Senator Nordquist. Do we have any other questions? Thank you very much for your testimony. We appreciate it and thank you for coming all the way from western Nebraska. It's a long drive and I understand that. [AGENCY 13]

CASPER NINGEN: It's the least that I can do. I really think it's... [AGENCY 13]

SENATOR HARMS: Well, thank you. We appreciate it. Do we have anyone else who would like to testify in favor of Agency 13? Okay. [AGENCY 13]

JEN HERNANDEZ: (Exhibit 12) Thank you, Senator Harms, members of the committee. I may be your last testifier and it's gorgeous outside so I will be brief. [AGENCY 13]

\_\_\_\_\_: Oh, don't tell us that. [AGENCY 13]

JEN HERNANDEZ: My name is Jen Hernandez, H-e-r-n-a-n-d-e-z, and I'm here representing the Nebraska Children and Families Foundation. Thank you so much for the difficult work and attention that you're putting on this and also for the opportunity to testify here today. We want to be helpful in getting the most effective use of the dollars

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we're spending in state government and are particularly appreciative of the Legislature's Planning Committee. A few of you were able to hear Dr. Jack Shonkoff a couple of months ago when he came to Nebraska to talk about the science of early childhood and the importance of investing early. And as you're faced with cuts, I hope you'll remember that. The research is clear. There is no smarter place that we can invest than in early childhood. And thank you, Senator Harms, for pointing out the most recent numbers that we have available--50,000 kids in Nebraska birth to 5 that are at risk of failing in school and 40 percent of them are in rural Nebraska. The proposed early childhood cut has already been brought up here today, and I just want to let you know what the impact of that cut would be. There's \$180,000 recommended reduction for 2010-11 in early childhood programs. And that \$180,000 means 90 children who are at risk of failing in school who are being served right now. But right now that intervention comes when they are 3 and 4 years old before they get to school, before they're already behind their peers. And I also want to point out in the handout that you have in front of you that that cut would disproportionately affect our rural children. You can see, and it won't take you but more than a moment to very quickly realize where the grant funds for those 3- and 4-year-olds are going, and it is by and large to the rural children in our state. Just to keep it brief, I just want to remind you that there are very few areas that we have public/private partnerships in this state, but early childhood is one of them. The private community has invested millions of dollars statewide into services for children 0 to 5. And frankly, the problem that we have is very big, and we need the private community to help us. It's not something that public dollars can do entirely. And so I would just ask you to, in light of their investment also, rethink this particular proposed reduction. []

SENATOR HARMS: Do we have any questions? Are you sure? Okay. Well, thank you. Thank you very much for coming... [AGENCY 13]

SENATOR CONRAD: Do you have any vacancies in the Children and Families Foundation? (Laugh) [AGENCY 13]

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SENATOR HARMS: Thank you for coming and thank you for your testimony. Do we have anyone else who would like to testify either in favor or against or neutral for Agency 13? That's music to my ears. Thank you and we are now closed, we'll close this officially. Thank you. []