

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

Appropriations Committee
January 26, 2010

[LB935]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, January 26, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB935. Senators present: Lavon Heidemann, Chairperson; John Harms, Vice Chairperson; Tony Fulton; Tom Hansen; Danielle Conrad; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: Heath Mello.

SENATOR HEIDEMANN: I think we are going to go ahead and get started. We got a fairly full agenda today. It looks like we got quite a bit to go through. With that, we're going to start with introductions. And we're going to start, because the majority of the people are here, we'll start with self-introduction. I always like to start to my right.

SENATOR NORDQUIST: Thank you, imagine that. Jeremy Nordquist, District 7, downtown and south Omaha.

SENATOR HANSEN: Tom Hansen, District 42, Lincoln County.

SENATOR CONRAD: Danielle Conrad, north Lincoln's "Fightin' 46th."

SENATOR WIGHTMAN: John Wightman, District 36, most of Dawson and Buffalo County.

SENATOR HEIDEMANN: I'm Senator Lavon Heidemann, District 1, Appropriations Chair. To my right is Michael Calvert, Fiscal director; the clerk is Anne Fargen; and our page is Matthew. If you need any help, he's always willing to help us. And then to my left is...

SENATOR HARMS: Senator John Harms from the 48th District, Scottsbluff, Nebraska.

SENATOR NELSON: Senator John Nelson, District 6, central Omaha.

SENATOR HEIDEMANN: Joining us later will be Senator Tony Fulton from Lincoln. And Senator Heath Mello, District 5, from Omaha, is not in the state today, I don't believe, so he won't be joining. At this time, we ask if you have cell phones to please shut them off. Testifier sheets are on the table near the back doors. We ask that you please fill them out completely and put them in the box on the table when you testify. At the beginning of the testimony, for the transcribers following, we ask that you please state and spell your name. Nontestifier's sheets are near the back doors. If you do not want to testify but would like to record your support or opposition, only fill out if you will not be publicly testifying. If you have printed materials to distribute, we ask that you give them to the page at the beginning of your testimony. We'll need at least 12 copies. We ask, because of the full agenda that we have today, to please keep your testimony concise and on

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topic. Also want to announce that Senator Tony Fulton has arrived and joined us. And at this time we will actually start with our first and actually only bill for the day, LB935. And, I believe, Gerry will...right? You're going to be doing it? Sounds good. Welcome to Appropriations.

GERRY OLIGMUELLER: (Exhibits 1 and 2) You bet. Good afternoon, Senator Heidemann and members of the Appropriations Committee. For the record, my name is Gerry Oligmueller. My name is spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I am the state budget administrator and administrator of the Department of Administrative Services, State Budget Division. I'm appearing here today on behalf of Governor Heineman in support of LB935, which contains the Governor's mid-biennium budget recommendations. The contents of this legislation have been summarized and presented to you in a printed publication entitled, "Mid-Biennium Budget Adjustments 2009-2011 Biennium" and dated January 14, 2010. I've provided a copy of that printed publication along with my prepared remarks to the committee clerk for your record. In addition, we have posted the publication on the State Budget Division Web site. The Governor's November 2, 2009 recommendations and your actions during the November 2009 Special Legislative Session addressed the \$334 million budget gap caused by a shortfall of FY 2008-09 actual tax receipts and the October 2009 downward revision in the estimate of tax receipts for both fiscal year '10 and '11 by the Nebraska Economic Forecasting Advisory Board. The Governor's January 14 recommendations, contained in LB935, address the mid-biennium budget adjustments requested by various state agencies, boards and commissions. My understanding is that you've been briefed on these requests and recommendations. I also understand that you have scheduled additional hearings this week for further review of these items. The State Budget Division remains available to assist as needed in your further consideration of budget matters. Thank you. I'd be happy to address any questions from the committee. [LB935]

SENATOR HEIDEMANN: We have at least one. Senator Nordquist. [LB935]

SENATOR NORDQUIST: A couple quick questions, Gerry. On the...and this maybe Department of Revenue could fill in too. But from your take, what's driving the homestead utilization? [LB935]

GERRY OLIGMUELLER: My understanding is that the income affects on individuals principally have caused an increase in the amount that individuals are able to be exempted from as well as increased participation. And the Department of Revenue will address that with you later in the week. [LB935]

SENATOR NORDQUIST: Okay, okay. And then the second question is, as we prepare for February forecast, not knowing what that brings, what steps are you taking from the Budget Office and the administration to prepare scenarios and alternatives to work with us? Because ultimately, we're going to have four days after the forecast to get

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something to the floor of the Legislature. And how we're going to work together on that, just kind of how you guys are preparing for that day. [LB935]

GERRY OLIGMUELLER: Well, you know it is a little difficult to speculate about exactly what could happen, I guess, at the Forecast Board meeting on the 26th, because you get some mixed economic signals about what's happening on the short-term vis-a-vis the long-term. So we keep our eyes open to, you know, what we are hearing and seeing with regards to the economy. We try and, you know, the analysts in the division, obviously, keep their ideas flowing, keep an eye to what the appropriations are for the various agencies and what alternatives might be something that could be considered if there is a need to act one way or another. [LB935]

SENATOR NORDQUIST: Um-hum, okay. [LB935]

GERRY OLIGMUELLER: So it's hard to know, you know, hard to speculate exactly what might occur. [LB935]

SENATOR HEIDEMANN: Senator Conrad. [LB935]

SENATOR CONRAD: Yes, thank you, Gerry. Actually, I wasn't going to have any questions, but just as a quick follow-up to Senator Nordquist, and I know it's only speculative at best at this point in time. But if things were to take a dramatic turn in either direction, but particularly downward after the February forecast, do you have any sense at this preliminary stage whether it would be the administration or the Governor's position to try and address those shortfalls immediately or to wait and see how things progress in terms of revenues and contemplate about whether or not a special session would be required? I know it's very early, and if you don't have an answer that's okay. But I was just wondering if you've had some of those conversations? [LB935]

GERRY OLIGMUELLER: I mean, a lot depends, and so I think, you know, as much anticipation or anxiety anyone might have about an upcoming Forecast Board meeting, you kind of have to let the normal order of events occur, you know, and deal with the information that's presented. So at this time, I'm not offering anything. [LB935]

SENATOR CONRAD: Okay. And, I mean, I think that one thing that we've just been struggling with as a committee also based on pure speculation at this point in time is trying to be responsive and adept and as flexible as possible to try and conduct the state's business. But with the short session and the time constraints that are here and when those forecasts come in, whether or not if we have to take some dramatic actions, if we'd be able to or if we'd need a larger context to do that within. So it's just a conversation we've been having on the committee. And, of course, that will be things that we'll process-wise work on together. So... [LB935]

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GERRY OLIGMUELLER: Yeah. And I probably only, you know, as a follow-up, encourage you not to just focus on the Forecast Board meeting but to also be cognizant of the fact that school aid is yet to be certified for the next fiscal year. So that's something that obviously has to be taken into consideration at some point. I'm actually missing a conference call the White House is having at this moment with regards to a so called freeze on the federal budget and what the implications of that might be. And some of the information I've seen in that regard actually seemingly relates to the tax code and consequently what that might portend in the future for state tax receipts. So there's a lot of moving parts, if you will, as you're aware as a committee because you get to see it all probably much more so than some of the other standing committees of the Legislature. But there's just an awful lot of moving parts that will have to be taken into consideration as the weeks, you know, unfold during this short session and perhaps, you know, into the weeks after the Legislature adjourns ultimately. So... [LB935]

SENATOR CONRAD: It seems that in conversations with Fiscal, our fiscal analysts and office and their excellent historical perspective that they provide to us, that it will probably be at least June until we have a complete picture about where we are in terms of revenue and what those forecasts mean and change is ever...ever changing landscapes on the federal level and otherwise, and we'll of course be a part of that dialogue. But I think that we're all willing to partner and achieve what we can to the greatest degree of flexibility as possible to conduct the state's business. So process-wise I just thought it would be a good idea to make sure that we have that dialogue. [LB935]

GERRY OLIGMUELLER: We've worked good with the Fiscal Office, so I don't see any problems there. And we're always available to help where needed. So... [LB935]

SENATOR CONRAD: And thank you for acknowledging our special, special blessings that come with being members of the Appropriations Committee. (Laughter) [LB935]

GERRY OLIGMUELLER: You're welcome. Any other questions? [LB935]

SENATOR HEIDEMANN: You had commented on that there's a lot of things to unfold and certification date for state aid is one. Another thing that I catch kind of bites of is things that are happening in Washington as far as maybe more ARRA money coming our way. And czar of this, maybe you could enlighten us a little bit because it could be a significant part of a solution maybe. [LB935]

GERRY OLIGMUELLER: Well, maybe. You know, there was initial discussions at the federal level, Senator, on a jobs bill. And, I think, some of those discussions are now changing. This recent announcement of a freeze, if you will, on the federal budget certainly puts a new and different context on things. There's been some discussion

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along the way about a possible extension of the enhanced FMAP, for example. But it's still not clear whether or not that will occur. So, you know, when we hear about those things we'll certainly be willing to share what we hear with the committee. Unfortunately, some of that isn't particularly definitive at this point in time. And the extension isn't something that are included in the Governor's recommendations certainly as relates to the enhanced FMAP. We are posting on Nebraska's recovery Web site the information that we are sending...the various primary recipient state agencies are sending in related to the ARRA, or stimulus funding. And we just finished our second reporting period under what's called Section 1512 of that federal act. And that's been posted to our Web site. So I'd certainly encourage people to take a look at that. We also are posting on that Web site a report that we generate out of the Nebraska Information System or the state's accounting system that is specific to the spending that is occurring out of the state treasury, if you will, by various state agencies of federal ARRA money. So that report is being posted to the Web as well. And so that information continuously updates, if you will. And there are changes that occur. But I'd certainly be willing to share as much as you need in that regard as well. [LB935]

SENATOR HEIDEMANN: In a year from now, we are going to be sitting in the same spot. And if you and I are lucky enough or unlucky enough it will be us talking here. And as I not only look at what we're dealing with right now, I start to look about what we call the out-years. And it's showing right now a \$639 million shortfall and possibly could be more and I think we both acknowledge that. [LB935]

GERRY OLIGMUELLER: Right. [LB935]

SENATOR HEIDEMANN: If there any internal talk in the administration already and in your shop how we might be able to deal with this? [LB935]

GERRY OLIGMUELLER: Well, you know I view the budget process as a continuous process. So when the question was asked earlier, I mean, what occurred to me is we never...I mean, we're always trying to thresh our ideas with regards to what we see occurring in the economy, what we know with regard to the state budget, and how we might plan to address that in the future. And so, I guess, I'm mindful of the fact that we're on the verge, if you will, of another biennial budget process within state government. So there is an opportunity, through the budget process, budget formulation process, the request process, however you might think of it, to structure some of the information that's provided by state agencies heading into the fall, in particular, of this year to facilitate the kinds of discussions that need to occur at some point to set that biennial appropriation for fiscal year '12 and '13. So I throw that out just so you're aware that we're sort of on the cusp of another process. We issue instructions as a part of moving that forward. By law, I consult with the Legislative Fiscal Office regarding those instructions. And those are usually communicated sometime in the spring, in at least a draft format, to the various state agencies, late spring. And then formally by no later

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than July 15 as required by state law. So there are some things that can unfold in that context as well to aid that decisionmaking process. [LB935]

SENATOR HEIDEMANN: Senator Fulton. [LB935]

SENATOR FULTON: Thank you, Mr. Chairman. The Cash Reserve, we're talking about out-years and looking long-term. [LB935]

GERRY OLIGMUELLER: Um-hum. [LB935]

SENATOR FULTON: I'm not so much asking about, you know, this year as I am about the upcoming three years. Can you give me an idea of what...and I know we can't predict the future and I understand that. But there is a certain...there will be a propensity to go to the Cash Reserve at some point. And can you give some insight into what the administration has in mind in terms of, you know, do we go to it if we go into special session? Is that something that's off the table? Is the idea to hold the Cash Reserve with the knowledge that the next biennial budget is...it's going to be needed. [LB935]

GERRY OLIGMUELLER: My recommendation would be to make all possible efforts to preserve as much of the unobligated balance in that Cash Reserve fund as can possibly be preserved. [LB935]

SENATOR FULTON: In this budget? In our present biennium? [LB935]

GERRY OLIGMUELLER: From this point forward... [LB935]

SENATOR FULTON: Okay. [LB935]

GERRY OLIGMUELLER: ...particularly with an eye to what the out-year looks like for fiscal year '12 and '13. [LB935]

SENATOR FULTON: Yeah. Okay. [LB935]

SENATOR HEIDEMANN: Senator Hansen. [LB935]

SENATOR HANSEN: Mr. Chairman, thank you. Gerry, I've talked to a few senators. And by the constitution this is an even-numbered year so we can only have a 60-day session. In order to save the citizens of Nebraska \$10,000 a day, I've been battering around the idea of recessing for two weeks in April and then coming back in May and finishing the session. You can bat that around. But I think we can do that. And to save the state \$10,000 a day I think it would be worth talking about anyway. [LB935]

GERRY OLIGMUELLER: I think it's a very novel idea and probably one I won't

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comment on... [LB935]

SENATOR HANSEN: Okay. [LB935]

GERRY OLIGMUELLER: ...because it's such a big deal for body to decide. [LB935]

SENATOR HANSEN: It's only a big deal if you're going on vacation. It's only a big deal if you're going on vacation at that time. (Laugh) [LB935]

SENATOR HEIDEMANN: Being as that would be right in the middle of corn planting season, my brother would vote no. [LB935]

GERRY OLIGMUELLER: Well, I understand there's a big date in May, too, sometime, that I'm not exactly cued in on as maybe some others are. [LB935]

SENATOR HEIDEMANN: We won't even go there. Any other questions? Seeing none,... [LB935]

GERRY OLIGMUELLER: Thank you very much. [LB935]

SENATOR HEIDEMANN: ...are you sticking around for a close? [LB935]

GERRY OLIGMUELLER: I'll pass on that. [LB935]

SENATOR HEIDEMANN: You're going to waive the close? [LB935]

GERRY OLIGMUELLER: Sure, you bet. [LB935]

SENATOR HEIDEMANN: Is there anyone else wishing to testify on LB935? You'll be testifying in support of LB935 at this time. We will take testimony in support of, in opposition to, and then in the neutral capacity. If you wish to testify and you don't have an opinion really on the bill, it would probably be wise to come in, in a neutral position. At this time we will take testimony in support of LB935. Seeing none, we will take testimony in opposition of LB935. You wish to testify in opposition of or do you want to wait until neutral... [LB935]

JOHN CHILDEARS: Actually, I'm neutral, but my comments will be negative. (Laughter) [LB935]

SENATOR HEIDEMANN: The committee clerk can take that however she decides to put you down. [LB935]

JOHN CHILDEARS: When do you want me to testify, sir? [LB935]

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SENATOR HEIDEMANN: It's your choice, yeah. [LB935]

JOHN CHILDEARS: All right. If it's okay, I will now. [LB935]

SENATOR HEIDEMANN: Yes, yes. [LB935]

JOHN CHILDEARS: (Exhibit 3) Chairman Heidemann and senators, thank you very much. I appreciate the opportunity to have a chance to share my thoughts with you. My thoughts are relative to cash fund agencies and the taking of... [LB935]

SENATOR HEIDEMANN: Can you state and spell your name for us. [LB935]

JOHN CHILDEARS: I certainly can, sir. Apologize. John M. Childears, C-h-i-l-d-e-a-r-s, I reside north of North Platte, half the way to Stapleton; I'm in Senator Hansen's district. Don't hold that against me, please. (Laughter) I wish to speak to you a few words about the sweeping of funds from cash agencies to the General Fund, that question. First off, you did not take money last special session from the corn, wheat, dry edible bean boards and from the Brand Committee. I produce all of those except dry edible beans and so I thank you for not taking those funds. As you know, those commodity board funds are used for the research, development of products from those items and promotion of the product in the United States and eventually promotion of international trade with those products. Of course, the Brand Committee funds are used to...for an investigator to investigate the brand at every point of sale of the cattle, to try to stop rustling, so it's a little different but it is a direct service to the cattle producers. These funds are collected at the point of sale, so a bushel sold, so the funds are collected at the grain elevator or at the ethanol plant. And, of course, the Brand Committee funds are either collected on the ranch where the brand inspector comes or at the point of sale. But the point is they are supplied internally by the producers of those commodities, and they are vital to agriculture producers and to the economy of the state of Nebraska. And again, thank you for not sweeping those. However, I have been a licensed appraiser and real estate broker since 1980, practicing out of North Platte. Governor Love appointed me to the first ever Appraisal Board. I served four years, starting in 1991, when federal licensing of appraisers was mandated. I was actually licensed in 1977, under Nebraska's existing law at that time. So serving on that board was my...is my knowledge of board administration of agencies in the state of Nebraska. The sweeping last fall, from the special session, involved at least 20 agencies that are cash funded. These agencies are responsible for the creation and updating of rules and regulations under the appropriate law for that profession. They are also...the agency is saddled with the requirement to provide necessary professionals for appraisers, brokers, abstractors for title insurance, surveyors, architects, your barber, Tom, and your beautician, geologists, engineers, electricians, pilots and the like. Further, they are responsible for the initial licensing, the continuing education approval and requirements

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to relicense, investigation of complaints, and enforcement of the respective laws. Funds for operation of these agencies are collected as license fees from those that are licensed, i.e., self-funded agency to maintain the proper level of competency for the professions involved. All funds are from license fees without any tax dollars involved. The process for these agencies involves creation of a budget sent to the appropriate state level for approval of the budget within your Appropriations Committee, setting and collection of the license fees, and implementation of the respective budget after it's approved, again without any state or tax dollars involved. Employees of these agencies are in fact state employees but all of their salary, benefits and so forth is paid from the license fees, not a dollar of tax funds. Sweeping of agency funds is akin to you going home to your neighbors, every one of your neighbors, collecting a fee from them to be used as you see fit. That wouldn't be very correct to treat your neighbors that way. Sweeping of these funds is a special taxation on the licensees of the affected agencies. To say that taxes were reduced or the state budget balanced is a sham as these were not tax dollars. The sweeping was a special taking of tax dollars or taxation of your neighbor without equal representation. I speak of the Appraisal Board because that's some of my knowledge base. The Unicameral swept \$106,000 from that agency, an agency that has 643 licensed personnel, licensed appraisers, for 2010 or a per capita taking of \$165 per licensee. My license fee to renew for 2010 was \$175, of which \$25...of the \$175, \$25 has to be sent directly to the federal Appraisal Foundation to register state appraisers with that foundation to be legal nationally. So in essence, I paid \$150 to be licensed in Nebraska. The taking of those funds at \$165, more than took one year of my license fee. So next year will that license fee be doubled in order to get the funds back into the agency to have the money to do their responsibilities? Why were these funds available, sitting there to be taken? Because that agency had worked diligently to be prepared for the future responsibilities to properly license Nebraska appraisers. The sweeping took their savings for a new roof, savings to repair the sewer system, savings to reside their house, and the savings to educate Sally. As you can tell, I believe that taking of nontax dollar license fees from these cash agencies is wrong just as it would be wrong for you to take commodity board funds from the corn, wheat and dry edible bean boards or to take funds from the Brand Committee. Unfortunately, I have to accept you probably can't correct last special session's taking. You passed a bill specifically to legalize that taking. Somebody somewhere can introduce a bill and pass a bill to make it illegal to ever be done again. And I think that that's what should be done. Due to term limits and my advanced age, I won't be able to come down here every year and lobby the Appropriations Committee's new senators to continue to give this message. So I deeply hope that somebody will get a bill passed that will stop the sweeping of nontax dollar license fees. You can do the right thing and get that bill passed. And I thank you very, very much for your time and your consideration. [LB935]

SENATOR HEIDEMANN: You could pass a bill in here, just to let you know how we work and how future legislators could work, with 25 votes we can pass a bill that says you can't ever take these funds again. With another 25 votes they could take the "n't" off

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of "can't" and it would be you "can" take those funds; 25 votes will buy you almost anything in this body. And 25 votes can change that down the road, sometimes unfortunately, but that's just the way it works. [LB935]

JOHN CHILDEARS: I smile so that I don't cry, sir. (Laughter) I understand that very well. I think, however, is it LB1 that was passed to allow the taking? And so it's on the books today. The next senator that's never heard anything of this, ten years from now, will much more readily say, oh, it's precedent, let's do it again. And that's why I believe it's important that you pass a bill that would say, hey, what the real thing should be is nontaking of cash agency funds, it's special taxation. It's not equal across the state. We need to have taxation equal by all of our citizens to do that. That's why I'm asking that somebody do a bill to correct the ill that is now on the books. [LB935]

SENATOR HEIDEMANN: Senator Conrad. [LB935]

SENATOR CONRAD: Thank you, sir, and thank you. I think you had e-mailed us prior to your attendance at this hearing. [LB935]

JOHN CHILDEARS: Yes, ma'am. [LB935]

SENATOR CONRAD: And once you got started, it definitely refreshed my recollection. But to be clear, this issue has been before this committee and we've had spirited debate about the very philosophies and principles that you bring forward. And just as a point of information, I wanted to let you know that Senator Annette Dubas has actually introduced that very bill that we had a public hearing on yesterday. And we would be happy to get the number for you so that you could follow that. And Senator Tom Carlson has brought forward legislation as well related to these issues, more so with the commodity, but...and I know your issues are broader in terms of cash funds as a whole, as was Senator Dubas' bill. But it did just that, it would put into law a red flag for existing and future legislators about the utilization of these kinds of funds. And so I just wanted to make sure you had that on your radar screen. And it is before this committee. And we had a great hearing on it, so that will be part of our deliberation. [LB935]

JOHN CHILDEARS: I apologize that I did not know. The bill number, ma'am? [LB935]

SENATOR CONRAD: No worry. [LB935]

SENATOR NORDQUIST: LB793, LB793. [LB935]

SENATOR CONRAD: LB793, I guess it is. And we can get you a copy of that, too. And we'll definitely consider your... [LB935]

JOHN CHILDEARS: My secretary can print it off for me. [LB935]

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SENATOR CONRAD: ...we'll consider your testimony as part of that deliberation as well. [LB935]

JOHN CHILDEARS: Very good. Thank you, ma'am. [LB935]

SENATOR HEIDEMANN: Senator Fulton. [LB935]

SENATOR FULTON: Thank you, Mr. Chairman. Thanks for making that trip down here to Lincoln. I just...I would be, and for that matter, I think we would be informed to hear your rationale. Because I'll tell you that there are many here in the Legislature who hold that principle that you hold about a separation of...a very accurate accounting of cash funds as delineated from General Funds. What we were faced with here is the recognition that there are...there were some cash funds that had funds or monies that could be accessed. And we would simultaneously have been turning to the public and saying that we may need to consider raising taxes, even though we have some of these cash funds sitting here. So it was one of these...when faced with an extraordinary circumstance, we were forced to do something which I think would be extraordinary. And my vantage, I pay into...for my profession I pay into...my profession got raided too. But in the end I ended up supporting it because it balanced the budget. Let me ask you, knowing your principles and understanding that you've come a long way to share these principles with us, do you envision...or is there an extraordinary circumstance where you would be willing to make an extraordinary exception? I guess, I'd like to hear that thought. Because we went through this. And it just helps to hear other people think through it too. [LB935]

JOHN CHILDEARS: Well, again, my point is that certain citizens of the state are selected out, they have money in a bank account and so we can take those. If it were a borrowing and then a replacement of those funds, I, personally, would not have a problem one with that. It's the taking, the borrowing and never returning that I have a problem with. Because now what you saddle those agencies, the difficulty with is that rather than collect enough money to, let's take the Appraisal Board, let's say that they have 20 appraisers that violate the law and they have to go through a lot of investigation and enforcement, which includes the Attorney General's Office then being the attorney that enforces in the hearing and so forth. The only way for them to protect themselves is to make sure that they have a zero cash balance. Well, that's as fiscally irresponsible as not having enough to repair the sewer system when your sewer goes bad. So I think you...the problem you help create is the reverse of fiscal responsibility. The only way for them to protect their licensees, the only way for the barbers and beauticians to not have their money taken is for there to be zero in that fund. And that's not good fiscal planning. So, I guess, the only scenario that I would see that is correct would be a borrowing and a replacement. [LB935]

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SENATOR FULTON: Okay, all right. Thank you. [LB935]

JOHN CHILDEARS: Thank you, sir. [LB935]

SENATOR HEIDEMANN: You pay money into the corn checkoff? [LB935]

JOHN CHILDEARS: Yes, sir. [LB935]

SENATOR HEIDEMANN: And you don't think any of that money should go to anything besides to promote corn. [LB935]

JOHN CHILDEARS: No, sir. [LB935]

SENATOR HEIDEMANN: Do you realize that some of that corn checkoff goes to...in to help pay the EPIC Fund? [LB935]

JOHN CHILDEARS: The which fund, sir? [LB935]

SENATOR HEIDEMANN: EPIC, it's, yeah, it's ethanol, I can't think of what EPIC stands for. But it helps pay into the ethanol or replace those funds that are used out of there for the Department of Transportation. And actually, in future years it's set to go from that actually to help the Water Resource Cash Fund, I believe it is. So in a way, just because we don't get them, they're actually being taxed, in your opinion, then in another way. Would that be correct? [LB935]

JOHN CHILDEARS: I'm not sure I understand the question 1,000 percent, but let me give an answer anyway. There is a set system, whether it's dry edible beans or corn or the Brand Committee where everybody that raises those commodities knows that they have to pay those fees at the time of sale or the time of transfer of cattle. And they know...maybe they don't know exactly the point that you just made, but that's a set part of their commodity production, their expenses and so forth. For the Legislature to take those funds for different uses is not part of what the system was set up for. The system on dry edible beans, as an example, was set up to find new products for dry edible beans, new ways of preparing, cooking, so forth, finding new places to sell, whether it's nationally or internationally, that product. So it's a self-promotion of the dry edible bean for the benefit of those producers. I think it's a very, very good system where if I'm going to raise dry edible beans I can pitch into the fund and help...be able to sell more beans and I can raise more beans. For you to take that and say that you've reduced taxes or that you've lowered the budget is very misleading to the public, it's not true. You haven't lowered the budget. You've borrowed money that you never intend to return and you've applied that to a bill of the state, but it's not lowering the budget or reducing taxes. Because the tax burden to the citizen is going to be the same, regardless of taking that dry edible bean fund. And, I guess, one of my points is I don't know the total, and I

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apologize for being ignorant of the exact dollars, but of the dollars that you swept, what percentage of the budget was that? It ain't a darn thing to the budget, but it is very sensitive to those professionals that are licensed. And will I have to now pay, instead of \$175, will I have to pay 350 bucks next year to be licensed for 2011? [LB935]

SENATOR HEIDEMANN: I will say that when you put all the cash funds together, and we actually looked at that in the special session, if we didn't do it, what we would have to do then with across the board cuts and other things in the General Fund budget. And it was significant I will say to you, "scarily" significant. We were probably put in a little bit of a spot that we weren't comfortable with, but we, I think, ended up realizing what we had to do. And I probably posed that question to you on corn checkoff into EPIC and then eventually into water resources because it's something that I don't agree with. To me it looks like a tax that could actually be a General Fund obligation. So in reality... [LB935]

JOHN CHILDEARS: Well, you and I agree then, Mr. Chairman. (Laughter) [LB935]

SENATOR HEIDEMANN: It's something that I think at least for some members of the Legislature have a little bit of a problem with. And I think Senator Langemeier actually has a bill this year that might address part of that corn checkoff, not what you're talking about, but the part that I was talking about. [LB935]

JOHN CHILDEARS: Yes, sir. [LB935]

SENATOR HEIDEMANN: Senator Hansen. [LB935]

SENATOR HANSEN: Thank you. Mr. Childears, I think what the Chairman was talking about was the 7- or 8 cents per bushel fee that was put on by the Legislature just a couple of years ago. And I assumed, I thought as I remember that will "sunsetted," too, until 2012. But maybe it was...now it's intended to go on. But anyway, what the point is, when we went through every one of these cash funds we did put a sunset clause on it that it's going to last until 2011, the '09-10 year, and it will be sunset. Now, if you've been around this place very long, sunsets may or may not last. [LB935]

JOHN CHILDEARS: Yeah, I just heard over here how they disappear. (Laugh) [LB935]

SENATOR HANSEN: The commodity checkoffs that you talked about, that you referenced, the Governor has said publicly on KRVN Radio that he won't do that again. He said that was a mistake and he won't do that again. The ones we did lapse the funds of, we swept the funds from agencies similar to yours and all the other cash agencies, that has a precedence of doing that. I agree with you that it was not right. The difference between what we made up last fall, the \$334 million, compared to what we're looking at in the future, \$639 million at the end of 2012, we can't sit here and make any promises. I

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will point out in this document that we...in this bill that we're talking about today, the Governor's budget, that in Agency 53 that in 2010 you are...have a budget of \$35,441. But in the next year it's down \$14,000. [LB935]

JOHN CHILDEARS: I'm sorry, which agency is that, sir? [LB935]

SENATOR HANSEN: Your appraiser's agency. And what that difference is, is you may or may not know, but you're going to lose staff in the real estate appraiser board. [LB935]

JOHN CHILDEARS: I did not, sir. And that is of great... [LB935]

SENATOR HANSEN: And what good is that going to do? Can you give me anything that it will help the state of Nebraska or your agency to lose a half-time person? [LB935]

JOHN CHILDEARS: Right now there is one and a half ladies that work for the board and they do a very good job, they're very dedicated. They have a tremendous responsibility to educate the public on how do I become an appraiser, work with them to put in their applications, go through the proper education courses to be qualified, be eligible to take the test, take the test, and eventually get licensed by the board. Those personnel also have to maintain budget compliance with everything that they do. Then advise the board as to complaints as they come in. The board then would appoint an investigator to investigate those complaints and... [LB935]

SENATOR HANSEN: At your expense. [LB935]

JOHN CHILDEARS: At the board's expense. And if it was severe enough that they took that appraiser to task, then the Attorney General's Office would appoint one of the underlings... [LB935]

SENATOR HANSEN: At your expense. [LB935]

JOHN CHILDEARS: ...at the agency's expense, not the state, the agency refunds that money to the Attorney General's Office. So when you cut a half person where one and a half is overworked now, and believe me I don't have any bleeding heart for state employees, okay, but when they're overworked now and barely can keep up, because what they're facing, Senator, is not only the state law and regulations but the federal mandated guidelines of USPAP, Uniform Standards Professional Appraisal Practice, through the Appraisal Foundation. So they must make certain that Nebraska complies with all of those federal regulations. And Nebraska's Appraiser Office is audited about every third or fourth year. If the Appraisal Foundation were to find that office out of compliance the Nebraska appraiser would lose their ability to do any federally related appraisal work. All of your house loans, your farm loans, your loans for the donut shop,

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the hotel, whatever it would be would have to be done by an out of state appraiser. So when you take away enough state employee to run that office, you are risking the possibility that they get out of compliance and get hammered. Whether it's you doing the dishes at home or me mowing the lawn, there has to be enough manpower, womanpower to do the job. And so when you take away that state employee from that board that will have consequences. [LB935]

SENATOR HANSEN: If you were willing to increase your fees to get that half person back, you'd have to come to the Legislature and ask for that fee increase, unless you're not maxed out at your fee now. And we wouldn't allow it, we wouldn't allow it because it's going to raise the budget. [LB935]

JOHN CHILDEARS: Well, I'm surprised... [LB935]

SENATOR HANSEN: Tell me that...tell me if that makes sense to you, sir. [LB935]

JOHN CHILDEARS: I tell you what makes sense to me is not only would I, personally, volunteer to raise my fee to have the right people in the office, I run a company with six, seven secretaries in it now. I know the importance of those people. So I would gladly pay another 50 bucks in my license fee. But as to sweeping of funds, I would much rather that I and my neighbor both pitch into the pot and pay taxes to fund whatever part of the state it is as opposed to you taking my savings to educate my daughter to or repair my roof. So I'll pay the license fee and I'll pay extra taxes. I realize I'm an odd ball in the average citizen from that standpoint, but I think paying taxes is a much more fair mechanism than is the grabbing of dollars without me having any ability to say anything about that. [LB935]

SENATOR HANSEN: One last observation. I know you well enough that I know you're an auctioneer and you do sell buildings and land and whatever... [LB935]

JOHN CHILDEARS: Primarily farms and ranches. [LB935]

SENATOR HANSEN: ...farm and ranches but also buildings. I challenge you, John Childears, to come up with some differences how the state can come up with more money. And the sale of buildings in the state of Nebraska might be one of them, and we might be calling on you for your service and then rent them back. [LB935]

JOHN CHILDEARS: Well, I certainly hope that's not the case. Because whether it's you owning your own home or the state having the right buildings to conduct the state business, I think you need to have...now you can rent your home and the state can rent those buildings. But rather than me earning a commission coming down here and selling a state building, I think we have to look at the long-term and have those facilities available. [LB935]

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SENATOR HANSEN: Sure. Well, thank you for coming down today, John. [LB935]

JOHN CHILDEARS: Thank every one of you for listening to me. [LB935]

SENATOR HEIDEMANN: Senator Harms has a question. [LB935]

SENATOR HARMS: John, thank you very much for coming, appreciate it, appreciate your views. I'd like to look at maybe the larger picture here maybe for just a moment. You know, I think everyone in here, we all wrestled with sweeping of the funds and those issues. I think it was difficult for us to make those decisions. But when we look at the out-years, and you discussed it briefly, we could be at a minimum of \$600 million short. And maybe, you know in the worst case it could be \$1 billion short. Those are huge...that's a huge amount of money. And I don't think as we look at our budget in the future that we're going to be...this next time have the pleasure of probably cutting across the board. I think we're going to have to make some tough decisions in regard to looking at agencies individually. And to be very frank with you, some of those agencies could be lost because of the severe issue that we're...that we are addressing here. And I don't know if that's going to happen or not but that's how I look at that. So then what would be our options here? Six hundred million dollars short. We've cut about every agency we can cut. We're eliminated potentially some agencies. Well, if the cash funds would come up again, whether we would like to have that discussion or not but probably would come up again. The raising of taxes, which no one wants to really discuss, will probably come up again. And, I guess, where I'm a little frustrated with is that we're going to run out of options. And so my question to you, John, is, what are you willing to give up? What services, because that's what it's going to boil down to for all of us who sit around here. What services do you no longer want in rural Nebraska? Because that's where we're going to be. And so we have to decide, you know, what's best for this great state. Is it increasing taxes to keep our doors open? Is it to give up services? But that's what it's going to boil down to, what are we willing to give up in order to get through these difficult times. I think it's a partnership that we have to share. I'm not at all in favor of raising taxes. I'm not in favor of getting into that reserve, getting into the reserve very far because I don't think that's going to last long. And the bigger picture of this, \$300 million is not very much in a \$6.9 billion budget. And that can go by really quickly and then we have no other way to help ourselves. And so I think that is how I see this. And that's part of the problem that I think we're going to have to wrestle with in this room. So it's going to boil down to just what services do you want to give up and how can we address the issue to keep Nebraska competitive and get our citizens the appropriate help that they need. But those are not going to be easy. And I appreciate you coming in. Thank you. [LB935]

JOHN CHILDEARS: Well, you notice that I didn't come down asking for your job. I respect it very, very much and I know it's an extremely difficult job to do. When 9/11

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happened, I wrote a piece that hangs in our office in North Platte and part of it says that as citizens of the United States, we probably need to give up some of our...a few of our freedoms that we have come to enjoy and demand. Now I don't mean giving up a whole lot of them, but we need to give up a freedom that when we go to the airport we need to expect to be searched, we need to stand there and shut up and do it properly. You can think of a few other freedoms maybe that go along with that. Well, it's the same thing when it comes to the state budget, we need to have certain infrastructure to make our state work that we cannot give up that we have to pay for. If the roof has blown off, we must put that roof back on. On the other hand, if we can avoid having to repair that sidewalk to the house, that's probably what we should do. So I know that you have a very, very tough job. But again, I would rather that you raise my taxes and have me pay for that new roof than to take from my savings to educate my granddaughters and say, we're just going to take that and put the new roof on. That's my bone of contention. [LB935]

SENATOR HARMS: John, we...I appreciate those views. But it's just the opposite of what I get from where I live. [LB935]

JOHN CHILDEARS: Sure. [LB935]

SENATOR HARMS: I mean, you are rare. In fact, to say that you would like to have your taxes raised, I don't get that discussion very often. It's mostly can you just cut them; I don't care what you do, I don't want to have the increase in taxes. So you're rare in that thought. And if there were more people like you, we probably would get through this a little easier. But it is an issue, so thank you. [LB935]

JOHN CHILDEARS: Well, we're all spoiled children until we pass away, no matter what our chronological age is. And so, yes, the average person is going to demand I want to pay less and I want to get more. That gets back to the tough job that you have. I think we have to keep the right things alive in the state so that you appropriate the right funds to keep our economy going and the long-term deal. But you have to have the backbone and the guts to cut things that are frivolous, so to speak. Good luck and thank you very much. [LB935]

SENATOR HEIDEMANN: If you was actually going to be able to answer that question completely, I was going to have a tenth seat and you were going to be on Appropriations. (Laughter) [LB935]

JOHN CHILDEARS: You mean, I answered it to 1 percent even? (Laughter) [LB935]

SENATOR HEIDEMANN: Senator Wightman has a question. [LB935]

SENATOR WIGHTMAN: Thank you. I think your testimony has been very insightful. I do

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have a few thoughts. Number one, the Chairman asked you about the EPIC fund and financing that out of the corn checkoff. And I see that as being a lot different than sweeping it into. Because the EPIC promotes an industry that also promotes corn growing and the corn industry. And so, obviously, I see that as being quite a bit different. Even the cash funds I see as being differing a great deal from fund to fund. To me, if I were going to place them on a scale of one to ten, the checkoffs are probably a ten that probably need to be protected. And I can't think of any instance that I probably would support taking checkoff dollars and saving tax dollars with it. Some of the others are not quite as clear to me. Maybe they still are a nine, maybe some of them get down to a one. But, for example, you talked about the Attorney General being involved. And when you were questioned by Senator Hansen, I think, you said that you reimbursed the Attorney General. How is that done? [LB935]

JOHN CHILDEARS: Well, the Attorney General provides the attorney that, pardon me, I can't get the right word, that does the lawsuit against the appraiser that has violated the law, maybe cost somebody money or just violated all the elements of the law. So they...what lawyers in the room can help me? [LB935]

SENATOR NELSON: Prosecute. [LB935]

JOHN CHILDEARS: Prosecute, yes, sir, thank you very much. The Attorney General's Office prosecutes that lawsuit. At the end of that lawsuit, when it's finalized, win or lose, then the Appraisal Board writes a check from their funds to the Attorney General to pay for those... [LB935]

SENATOR WIGHTMAN: You get a bill from the Attorney General? [LB935]

JOHN CHILDEARS: Yes, sir, that's correct. [LB935]

SENATOR WIGHTMAN: Now you also use the courts to enforce, and you may do that in the checkoff dollars, but you have access to the courts of the state of Nebraska in order to enforce that. So if the Attorney General brings an action, he files it in the courts and that's eventually determined by the courts, I assume. Is that correct? [LB935]

JOHN CHILDEARS: Not quite, Senator. The Appraisal Board, like several other boards, can retain their own counsel for general knowledge and suggestions and guidance and so forth throughout the year. But when it actually comes to a suit against a licensee for violating the law, then it becomes a state of Nebraska lawsuit with the Attorney General's Office doing the work as opposed to district court. So the Appraisal Board does not have, to my knowledge, the ability to go to typical citizen's court. It's done within the state of Nebraska bringing the lawsuit. [LB935]

SENATOR WIGHTMAN: But the Attorney General would prosecute a suit in the

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Nebraska courts if it got to that stage. [LB935]

JOHN CHILDEARS: If it's appealed, no, it is a hearing... [LB935]

SENATOR WIGHTMAN: Before a... [LB935]

JOHN CHILDEARS: Right, before an actual court case. If the licensee appeals that, he appeals to the district court and then the Attorney General would pursue it in the district court. Yes, sir. [LB935]

SENATOR WIGHTMAN: How often does that happen? [LB935]

JOHN CHILDEARS: Not very often. If it's a smart licensee, it wouldn't happen very often. But... [LB935]

SENATOR WIGHTMAN: Well, I am just pointing that out as perhaps some difference. Because you might resort to the court system in the state of Nebraska for some of your enforcement. That may be a rare case and you're indicating that it probably is. First, you would appear before a commission of appraisers who would hear that. And then it would be an appeal from there before they would get into the court system. Is that correct? [LB935]

JOHN CHILDEARS: Yes, the hearing would be before the Appraisal Board itself. And the Attorney General would prosecute the case. The board would be the hearing officers. And they would make a decision, yes. You opened the door for me to make a comment that I wanted to make and failed. I believe there is a big difference between these boards. And I don't mean to be degrading or look down my nose at anybody. But as long as that barber and beautician is licensed and does what they're supposed to do, you know, how bad can it get? On the other hand, if your bank or your savings and loan hires an appraiser to make a loan on your house or your sons house or on your daughter's business downtown and that appraiser looks the other way and violates, creates...perpetrates fraud and does things that should not be and our state banking system loans a million bucks on that hotel because that appraiser misappraised it on purpose or because they were uneducated and didn't do it right, now we're talking about something that is material as opposed to Aunt Lily's hair coming back a little bit purple. So it is a very material...it goes beyond appropriations, it goes to banking industry, banking and commerce within our state and keeping those systems alive and going. [LB935]

SENATOR WIGHTMAN: Well, there are a lot of cash funds. And some of them are not as clear as the commodity checkoff. Yours may be clearer than many because it is almost all self-funded. But some of them are actually governed by the agencies that are all self-funded as well. And so to say that we couldn't ever take any of the checkoff

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dollars and apply, some of those, as I said, are government agencies. So there is a difference. And I think something that too broad and sweeping perhaps is not going to have the support. And Senator Dubas' bill was mentioned. And one of the things, and I know it would take some language change or at least I believe it would, it says that we would declare it to be unconstitutional. Well, I think, we'd be usurping the power of the other end of the building, the court system if we would declare it unconstitutional. I don't think we can do that. [LB935]

JOHN CHILDEARS: No. [LB935]

SENATOR WIGHTMAN: I suggest that maybe we can have some language in there that we kind of think it's unconstitutional. [LB935]

JOHN CHILDEARS: I tried to...that's why I tried to stick to the Appraisal Board because that's...if I have any knowledge, that's where it lies. But my comments on a fraudulent appraisal, you can slide over real quick to a real estate broker and there is...that's what is going on, on the coasts of our country right now, the rest of the United States, the states and the federal government are doing everything they can to stop fraudulent appraisals, kiting of properties by brokers together with appraisers and lenders, and all of the things. That's why our housing is in such a disaster on the coasts is fraudulent activity. That's why it's so important that these appraisers be held accountable by an agency with the right number of employees. [LB935]

SENATOR WIGHTMAN: Well, I think, your testimony has been great and I appreciate your being here. Thank you. [LB935]

SENATOR HEIDEMANN: Senator Nelson. [LB935]

SENATOR NELSON: Thank you, Mr. Chairman. Thank you, Mr. Childears for coming out. I just have to say I agree with a lot of what you're saying here today. I would like to follow up a little bit on what Senator Wightman was...the point he was making is that we have a lot of different type of cash funds and agencies. If you take a look at the Corn Board, Wheat Board and those, I agree very much that we shouldn't take those funds. But you...I just want to point out that in a great year of production like we have right now, the money is going to come rolling in there whether you anticipate it or not. And so it builds up. The same is true of some other agencies who really don't have much control. I mean the fees are set. And if, for instance, the stock market...there's a lot of trading and everything and those small fees come rolling in, it's pretty easy for an agency to build up several million dollars that they're never going to be able to use or spend. If they did, they would be wasting money. And so we have to be a little selective and we have to decide this agency could probably spend \$300,000 and they've got \$3 million that they're probably never going to use. So what I'm saying is that's a time perhaps where we say, well, these fees have come in, rather than leave them sit there

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we can put them to better use and still not harm the agency and not have to perhaps raise taxes, you know. And so those are some hard decisions that we have to make. With your particular agency, I see exactly where you're coming from that probably your cash funds should be left alone. Thank you. [LB935]

JOHN CHILDEARS: Well, in particular relative to the \$25 every year for every appraiser that has to go to the Appraisal Foundation. When you look at those funds you can't look at the total dollar. You have to look at nonfederal dedicated dollars. So again, I don't relish your job and I'm not going to try and get it from you. [LB935]

SENATOR HEIDEMANN: Any other questions? Seeing none, you've done a good job of coming before this committee and... [LB935]

JOHN CHILDEARS: I hope I didn't take more than ten minutes, sir. (Laughter) Thank you very, very much. [LB935]

SENATOR HEIDEMANN: You bet. Is anyone else wishing to testify on LB935? [LB935]

STEVE SORUM: Good afternoon, Mr. Chairman and members. My name is Steve Sorum, S-o-r-u-m. I've been asked to appear before you today by the Nebraska Ethanol Board with a request. And the board will make this request fully cognizant of the pressures and the tremendous stress that you are under and the decisions that you have to make. The Ethanol Board was greatly affected by LB1 and LB2. There was approximately \$150,000 cut from the budget of Nebraska's ethanol program. Of much greater concern, however, were the cash transfers that, if I remember correctly, were included in LB2. About \$250,000 either have been or will be transferred from the board's fund, cash fund. That represented approximately 65 percent of the uncommitted funds. Unlike other "commodity" boards, the Ethanol Board was hit pretty hard as it turns out. We project about \$175,000 deficit because of this combination of the transfer of funds...of cash funds and rapidly declining revenues, about a \$175,000 deficit at the end of fiscal year '11. So we're in a tough spot. We'll be about 35 percent short of being able to fund the reduced appropriation in fiscal '11. The following revenue situation came upon us completely unanticipated. We are a commodity board in the sense that the ethanol producers pay the bill. Ninety-one percent of our revenue comes from a tax on denaturant, that is gasoline that's added to ethanol to make it undrinkable and therefore exempt from the federal beverage tax. The feds changed the law which allowed a 5 percent maximum denaturant level to 2 percent in 2009. That had the immediate effect of cutting our revenues by 55 to 60 percent. So that combination of cash fund transfers and the revenue situation have really impaired board's ability to carry out its mission. Very briefly, we would request that the...respectfully request that the board consider at least cancelling a \$28,000 cash transfer that is scheduled for 2011 and going beyond that, perhaps even considering reversing half of the \$214,000 cash transfer that was made in 2009. We understand the difficulty in both of those situations and the difficulties

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that you face, but we think that Nebraska has a unique opportunity and the board would like very much to be in a position to take advantage of it. Very briefly, the renewable fuel standard says that by the year 2015 the United States must burn 15 billion gallons of ethanol. Today production is between 11.5 and 12 billion gallons. So that means in each of the next five years there have to be the equivalent of 12 50-million-gallon plants built in this country each year to meet the minimum requirements of that renewable fuel standard. Nebraska has become the second largest ethanol producer in the state. We are uniquely qualified to get a lot of that new construction that will take place. And we think that given sufficient resources, the board can continue to do the statutory...fulfill the statutory responsibilities in trying to acquire and attract some of that new production. So I thank you very much for your time. We appreciate the difficulties that you're in. And the board just asked me to relay our own difficulties to you and make this request. So thank you for letting me appear here. [LB935]

SENATOR HEIDEMANN: Are there any questions? Seeing none, thank you for coming in today. [LB935]

STEVE SORUM: Thank you, Senator. [LB935]

SENATOR HEIDEMANN: You bet. Is anyone else wishing to testify on LB935? Seeing none, I think they had waived closing, so we will close the public hearing on LB935 and that will be it for the day. Thank you. [LB935]