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Appropriations Committee October 07, 2022
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STINNER: Well, welcome to the Appropriations Committee hearing. My name is John Stinner. I'm from Gering. I represent the 48th Legislative District. I serve as Chair of this committee. I'd like to start off by having members do self-introductions, starting with Senator Clements.

CLEMENTS: I'm Rob Clements with District 2, which is Cass County and eastern Lancaster.

STINNER: John Stinner, District 48, which is now Scotts Bluff, Banner, and Kimball Counties.

WISHART: Anna Wishart, District 27. It's west Lincoln and Lancaster County.

KOLTERMAN: Mark Kolterman, District 24, which is Seward, York, Polk, and a little bit of Butler County.

DORN: Myron Dorn, District 30, which is all of Gage County and part of Lancaster.

STINNER: Now, who do we have on the phone? The--

TAMARA HUNT: I can't tell.

STINNER: You can't tell?

McDONNELL: Mike McDonnell, LD 5, south Omaha.

STINNER: Thank you. How about Steve Erdman?

ERDMAN: Steve Erdman, District 47, the rest of the state of Nebraska that you don't have.

STINNER: Well, thank you for that. And is Senator Hilkemann on? Nothing yet. Anyhow, assisting the committee today is Tamara Hunt. And to my left is our fiscal analyst, Nikki Swope. At each entrance you'll find green testifier sheets. If you are planning to testify today, please fill out a sign-in sheet and hand it to the committee clerk when you come up to testify. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end

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of today's hearings. To better facilitate today's proceedings, we ask that you abide by the following procedures. Please silence or turn off your cell phone. Order of testimony will be the introducer and then, I presume, proponents. When we hear testimony regarding agencies, we will hear from a representative of the agency. We will then hear testimony from anyone who wishes to discuss anything on the LR. We ask when you come up that you first spell your first and last name for the record. Be concise. It is my request to limit your testimony to five minutes. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and the staff. We do not have a page, by the way. We need 12 copies. If you have written testimony, but do not have 12 copies, please raise your hand and I will go copy those for 12 copies. With that, our first LR today is-- what is it today?

J. CAVANAUGH: LR396.

STINNER: LR--

J. CAVANAUGH: LR390 [SIC].

STINNER: Get this out of the way. LR396, interim study to examine the funding needs of the Commission of Public Advocacy and to find a long-term funding solution and good luck, Senator Cavanaugh.

J. CAVANAUGH: Good morning, Chairman Stinner and members of the Appropriations Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha and I'm here to introduce LR396, which is an interim study to examine the funding needs of the Commission on Public Advocacy and to find a long-term funding solution. The Commission on Public Advocacy serves an essential purpose in our criminal justice system. Created in 1995 by the Legislature, the commission provides legal services and resources to assist counties in fulfilling their obligation to provide effective assistance of counsel for indigent persons. This serves important purposes not just for those in need of counsel, but for the taxpayers as well. In larger counties, the public defender's office is staffed by full-time attorneys, provides for indigent defense. As I've mentioned oftentimes, this is a job I had for seven years in Douglas County. The commission steps in when this-- when there's a conflict of interest or the public defender's office otherwise cannot represent the client. In counties that do not have a full-time public defender, the court must appoint counsel at the

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counties and that's the taxpayers' expense. This is where the Commission of Public Advocacy saves property taxpayers money. The commission, with its staff of attorneys, is able to provide resources to counties that-- and that cost is borne by the state out of the commission's budget rather than by the county. Major felony and capital cases can cost counties a lot of money. Without the commission's help, that cost would come from property taxes of those counties, but the commission staff is limited and its budget is funded primarily by court fees. Court fees can be an unreliable revenue source. Court fees collected, collected have decreased in recent years due to a decrease in court filings. And actually Senator Stinner before pointed out this committee has previously made a budget allotment for the commission and that was as a result of the shortcoming of court fees in recent years. This creates a dilemma. Raising fees diminishes access to the courts while the commission's budget struggles to keep up with the costs. This is why I brought LR396 to the Appropriations Committee. With the support of the commission and a broad group of cosponsors, I'm not predisposed to any particular funding mechanism, though I do think as a matter of policy, the state should move away from using court fees to fund government functions. I believe the committee has the expertise necessary to help find the funding for a sustainable solution. You'll hear from the commission and supporters of its mission today. Thank you for your time, the opportunity, and be happy to answer any questions.

STINNER: Any questions? Seeing none, thank you. And you're welcome to come up and take a seat. Morning.

JEFF PICKENS: Good morning. My name is Jeff Pickens. I'm chief counsel for the Nebraska Commission on Public Advocacy. I want to thank Senator Cavanaugh for introducing LR396, an interim study of the commission's funding needs. I also want to thank Senator Stinner and other members of this committee for ensuring the commission would be adequately funded for fiscal year 2021-2022, and fiscal year 2022-2023. Because of you, the commission received \$520,000 from the General Fund in July of 2021 and in July of 2022. Without those deposits, the commission would have been forced to reduce its staff and the service, services it provides to counties. The commission's administrative assistant, Kendra Werth, our paralegal, Shara Aden, and I prepared a draft report for LR396. You should have a copy of the draft report. It's 14 pages long and titled, "Interim Study Committee Report." Appended to the report is a chart that shows the commission's revenue expenditures and fund balance from fiscal year 20-- or 2005-2006 through fiscal year 2021-2022. Also appended to the report

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is a document titled, "Projected Income and Expenses through FY 2024-2025." The report can provide a factual basis for the interim study. At the end of the report is a space for findings and recommendations if the committee wishes to make findings and recommendations. Kendra, Shara, and I would welcome an opportunity to assist this committee in completing the report. I want to give a brief review of the report. First of all, I want to talk about the creation of the commission. The resolution did not ask for that information, but we thought it would be helpful to include that information. The Legislature created the commission because of Richard-- Richardson County's experience paying for criminal defense lawyers, mostly from Lincoln and Omaha, to represent defendants in the Rulo cult murder-- cult homicides in the mid '80s and in the Boys Don't Cry murders--

_____ : The caller has joined the conference.

JEFF PICKENS: --the Boys Don't Cry murders in the mid 1990s. In a nutshell, the Legislature was created-- the Legislature created the commission in 1995 to provide property tax relief. Nebraska Revised Statute Section 29-3920(5) states, "Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties." The study called for a review of the statutes that direct funding to the commission. The pertinent statute is section 29-3921. From 1996 to 2003, the commission received general funds and the counties that used our services were required to pay one-third of the commission's actual expenses in defending a case. In 2000-- 2003, the commission became cash funded and all of our services were free to the counties that used our services. Initially, we received \$2.75 from cases filed in Nebraska's courts. In 2005, the fee increased to \$3. It has not been increased since 2005. The study called for an examination of trends in Nebraska case filings that have impacted the commission. A chart appendaged to the report shows revenue expenditures and cash fund balances from fiscal year 2005-2006 through fiscal year 2021-2022. A similar chart is on page 6 of the report. It shows just revenue from fiscal year 2007-2008 through fiscal year 2021-2022. In fiscal year 2008-2009, the commission's revenue was almost \$1.3 million. In fiscal year 2021-2022, revenue was a little less than \$750,000. The difference in revenue between fiscal years 2008-2009 and 2021-2022 is almost \$540,000. There's no reason to believe case filings will increase to what they were in fiscal year 2008-2009. We project revenue for case filings will decrease at a rate of 6 percent for this

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fiscal year and the next two fiscal years. We project revenue from case filings will be a little over \$702,000 this fiscal year, around \$668,000 in fiscal year 2023-2024, and a little more than \$634,000 in fiscal year 2024-2025. The study called for a review of other possible funding mechanisms. Of course, one would be the indigent defense fee, which is keeping it the same rate or a higher rate, general funds or contributions from counties that use commission services and some combination of those mechanisms. Senator, I am going to run out of time. I have a little more material to cover.

STINNER: It's OK. Go ahead.

JEFF PICKENS: OK. Thank you. The study also called for a determination of whether the commission could take on additional cases with additional funding. Since May of this year, the commission has been down one lawyer, from six lawyers to five lawyers. We cannot afford to fill the vacancy so we are taking fewer cases because we have fewer lawyers. For the last several years, the commission has had to decline court appointments in most non-homicide cases because we have a full load of murder cases. I regularly get calls from judges, clerks, and public defenders asking me to accept court appointments in non-homicide cases. If there are unusual circumstances, I'm more likely to accept an appointment in a non-homicide case, but for the most part, I have to decline the appointment. I get a lot of requests to accept appointments in sexual assault cases. With increased funding, we could fill the lawyer vacancy and get back to a normal load of cases. With even more funding, we could hire another lawyer and take on even more cases and provide even more property tax relief to the counties. Finally, the study called for an examination of the property tax relief the commission has provided. Since 1996, the commission has represented more than 1,500 indigent defendants charged with murder and other serious felonies, such as child abuse resulting in death or serious bodily injury, manslaughter, kidnapping, sexual assault, and robbery, and we've done so in 72 counties. We've represented 184 indigent defendants charged with murder in 53 counties. We've charge-- we've represented 13 indigent defendants who were sentenced to death. I cannot give you an exact dollar amount of the property tax relief we have provided Nebraska counties, but I can give you information on some of the cases we've handled. In a non-death penalty murder case that went to trial, jury trial in 2000, our lawyers logged 640 hours. In a non-death penalty murder case with an insanity defense that went to trial in 2009, we spent over \$24,000-- \$24,000 for an expert witness. In Bailey Boswell's case out of Saline County that was tried in Dawson County because of pretrial

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publicity, our lawyers kept track of their time for the trial only. They averaged around 12 hours a day during the trial for the 15 days the case was in trial for a total of 350 hours; again, only for trial. Bailey Boswell's codefendant had court-appointed private practice lawyers. They went to trial first in Saline County. We're not sure exactly how much they were paid by Saline County, but we know from reviewing the court's website, JUSTICE, they were paid at least \$326,000. On Monday, we'll know the exact amount and we'll be able to provide that information if it's wanted. In a death penalty case for one of the defendants in the Norfolk bank murders, we spent almost \$120,000 for extra witnesses alone. The lawyers for one of the other defendants in the Norfolk bank case was paid \$427,000. In a death penalty case from Scotts Bluff County, our lawyers logged in over 1,000 hours. The report includes information regarding other cases we handled and a few cases in which we were not appointed. Again, I want to offer our help in completing the study. I want to thank Senator Cavanaugh and I want to thank Senator Stinner and the other members of this committee for the support you've given the commission over the years. Thank you.

STINNER: Thank you. Questions? Senator Dorn.

DORN: Could you-- thank you for being here, but could you clarify why you sometimes end up on a case or why a public defender-- what-- if I understood you right, you're-- it's when you have time to take on certain cases.

JEFF PICKENS: We will always accept an appointment in a murder case. We were created to do murder cases so we will always take murder cases. We'll find a way to take them even if we're-- you have a heavy caseload and we're short staffed. Typically what happens is we get, get appointments in cases where there is no public-- or counties where there is no public defender. Sometimes there's a public defender, but that public defender doesn't have the experience to do the case. And oftentimes the public defender will stay on and do the case with us to get the experience. Sometimes the public defender has a conflict of interest and has to get out so we take over. Judges throughout the state know that we do murder cases and they call us and ask us to, to get involved in these cases. Otherwise, we don't get involved. We have to be appointed by a judge to get involved in a case.

DORN: If you're not part of it, then the public defender then generally is the one that would be appointed for those types of cases.

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And that bill, if I understood you right, that cost then is picked up by the taxpayers--

JEFF PICKENS: Well, the--

DORN: --or the county.

JEFF PICKENS: Yeah, the public defender's office has a budget typically and might not include murder cases. A lot of our public defenders are contract public defenders; some are elected, some are contract. In some counties, they just go case by case and appoint private lawyers. What we find a lot in murder cases is there are multiple defendants. One lawyer can't represent all the defendants, can only take on one defendant. So you end up-- the county ends up appointing lawyers from private practice. And so oftentimes you will have private-practice lawyers who are appointed and they are paid typically between \$125 and \$175 an hour.

DORN: Yeah, when I was on the county board, I know they were paid at a lesser rate or whatever and that's kind of an agreed-upon rate through the process or set by the county. But if you're not there and a public defender or whoever private practice then takes, that's still a cost then for the county.

JEFF PICKENS: Absolutely.

DORN: Whereas you're-- you don't directly bill the county or do you bill for part of your cost?

JEFF PICKENS: Between '96 and 2003, we were required to pay-- or to bill the county for one-third of our actual expenses. Since 2003, we are completely free to the counties. We don't charge them for any of our expenses. So it's a team of lawyers, a paralegal. We used to have an investigator. Now, if we need an investigator, we will retain a private investigator. We hire experts. We do depositions. There's travel. We pay for all of that.

DORN: Thank you.

JEFF PICKENS: Thank you.

STINNER: Additional questions? Senator Kolterman.

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KOLTERMAN: Yeah, thank you. What percentage of-- and it's probably in the report. I haven't read the report yet, but what percentage of the dollars that you, that you budget do you need from court fees?

JEFF PICKENS: All of our budget comes from court fees.

KOLTERMAN: And you're seeing-- you know, I've, I've watched the court fees go down. In fact, during the pandemic, they really dropped off, but--

JEFF PICKENS: Yeah.

KOLTERMAN: Hopefully, so did crime. So it's all funded-- but, but we fund some of it for you. We fund the, the underfunded part of it for you. Is that correct?

JEFF PICKENS: You bailed us out the last two years.

KOLTERMAN: Yeah, that's right.

JEFF PICKENS: But, but that was the only time that happened.

KOLTERMAN: OK.

JEFF PICKENS: Over the years, the Legislature has actually taken a lot of money from our fund. There was a time when we had a lot of money in our cash fund. So there are at least five occasions where the Legislature took at least \$200,000 from our, from our cash fund.

KOLTERMAN: And all you're doing is asking for it to be a General Fund budget item.

JEFF PICKENS: To be honest with you, I don't care where the money comes from, but we need to be adequately funded and we are not right now.

KOLTERMAN: OK, thank you.

STINNER: Questions?

WISHART: Yeah.

STINNER: Senator Wishart.

WISHART: So when you say adequately funded, what-- how much money are we talking about?

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JEFF PICKENS: I think it's-- we're projecting that we're going to need 1.7--

_____ : 1.7 for the next two years.

JEFF PICKENS: --\$1.7 million if we're not getting, getting any money from the indigent defense fee. If it's general funds, it would be \$1.7 million for the next two years.

WISHART: For the next two years, but if-- are you able to pull for us sort of projections of what it would take for this Legislature to get this commission to a point where you just have stable funding and, and don't have to continue to come back in this situation?

JEFF PICKENS: I think then we would have to go general funds. We couldn't rely on the indigent defense fee and then additional money from the General Fund because we can't-- we can predict what the indigent defense fee will be, but case filings have gone down every year since 2008 and there's no reason to believe that they won't continue to go down.

WISHART: OK.

STINNER: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Stinner. Thanks for being here. Thanks for letting me sit on the Appropriations Committee. Just to clarify so everybody knows, the indigent defense fund is on all court filings, not just on criminal court filings.

JEFF PICKENS: It's on most court filings, not every court filing, but it's almost all cases that are filed in Nebraska courts. But of course, some fines are uncollectible. In a lot of criminal cases, the defendant is poor. He can't afford to pay the, the fines so the judge will waive those.

J. CAVANAUGH: But it, it is on civil filings as well--

JEFF PICKENS: Yes.

J. CAVANAUGH: --and that's where a lot of the decreasing in the filings have probably come from in the last couple of years.

JEFF PICKENS: Yes, but criminal case filings have gone down as well. But with arbitration, mediation, there's a lot of case filings in

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civil case-- or a lot fewer filings in civil cases. In criminal cases, you've got diversion and you've got STOP classes and so we're not getting money from those cases that we, we did in the past.

J. CAVANAUGH: Thank you.

STINNER: I have a couple questions. One of them is that you were originally put together for high-profile, first-degree murder cases, which have a significant impact on finance as a county. I think I understand that. But it goes on to say, to provide legal services and resources to assist counties in fulfilling their obligation to provide effective assistance of counsel for indigent persons. How many of those cases do you take on or are you specifically murder cases?

JEFF PICKENS: Well, we were created to do murder cases.

STINNER: Yes--

JEFF PICKENS: But we, we take--

STINNER: --that's what it says here, yeah.

JEFF PICKENS: --we can take other cases as well. Again, we get a lot of requests to do sexual assault cases. Those are difficult cases and a lot of private-practice lawyers don't want to do them. We have a lawyer in our office who is an expert in doing those kind of cases. And if we had the resources, he would be doing only sexual assault cases and we could save the county a lot of money.

STINNER: Well, quantify that for me. Is that going to save \$500,000 or is it going to save-- what, what is that number?

JEFF PICKENS: I would say in a typical murder case, if you have private-practice lawyers, they're going to bill at least \$100,000. If the case goes to trial, they're going to bill at least \$100,000 per lawyer. Oftentimes you have two lawyers. In most cases, you will have two lawyers. In fact, the statute sort of requires two lawyers in murder cases. In our office, there are times when-- I'm doing a trial now. I will try that without another lawyer, but with my paralegal helping me. But I've been doing murder cases for over 26 years. Most private-practice lawyers don't have that experience.

STINNER: And you started out in '96 with ten full-time employees. How many do you have now?

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JEFF PICKENS: We have seven.

STINNER: Seven.

JEFF PICKENS: We have five lawyers, an administrative assistant, and a paralegal.

STINNER: And you're budgeted to have six lawyers?

JEFF PICKENS: We're budgeted to have six lawyers.

STINNER: But you can't find another attorney or--

JEFF PICKENS: No, we could. We lost a lawyer in May. We can't afford to hire another lawyer.

STINNER: OK.

JEFF PICKENS: We wouldn't have any trouble finding a lawyer.

STINNER: OK. Back in '96 to 2003, it says here that there were Byrne Grant funds available. What was that about?

JEFF PICKENS: Well, we, we had two lawyers whose salaries were provided for by the Byrne Grant money. That ran out and-- at least that's what I've been told. I'm not entirely certain why we went from general funds to cash funds in 2003. I was busy doing one of the Norfolk bank cases then and didn't have time to do anything else. But, but I've been told that we were losing that grant money and so we wanted to keep the other two lawyers on and a decision was made to, to go to cash.

STINNER: But you don't know what, what the status of these types of funds are?

JEFF PICKENS: Oh, yes, I do. There are none. There's nothing available.

STINNER: OK. It's been used up.

JEFF PICKENS: Yeah, we've reached out to national criminal defense organizations asking about available grants and there's nothing available for an office like ours.

STINNER: OK, very good. Any additional questions? Senator Cavanaugh.

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J. CAVANAUGH: Thank you, Chairman. Are you aware of other states that have a similar program?

JEFF PICKENS: No, I'm not. There may be, but we get a lot of calls from other states asking for assistance. As you probably know, we did a challenge to the electric chair and the Nebraska Supreme Court found that the electric chair was cruel and unusual punishment, and that was based upon the evidence that we put together. There are other states that still have the electric chair and they reach out to us to find out how, how we were able to make the case that we made. And, and we get a lot of calls from some of these national organizations asking about our funding, but I'm not certain if there are other offices like ours. I don't think there are. I haven't heard of them.

J. CAVANAUGH: Thank you.

STINNER: Questions? Seeing none, thank you.

JEFF PICKENS: Thank you.

STINNER: Additional testifiers?

MARVIN KOHOUT: Good morning.

STINNER: Morning.

MARVIN KOHOUT: I'm Marv Kohout with Saline County, kind of between Gage and Seward County for geographical. Been a commissioner there for 18 years so I've seen some of the cases that have been defended for Saline County. In fact, they've handled 17 of our cases since 1995. And again, they were the high-profile cases. Back when Aubrey Trail was going to go to trial, we did budget \$300,000 for the trial and all that. We did not spend that the first year, but you figure all the things that happened after the trial, we're at that \$326,000-plus and it's not, not over yet. We do have over a dozen attorneys that do live in Saline County, but-- and we also have a public defender full time, but they don't have the expertise in murder trials. So therefore, our county judges have appointed someone outside and for Aubrey Trail, it was outside the county so, you know, we did have those extra expenses. When Bailey Boswell's trial came up, we budgeted another \$300,000 and we had Public Advocacy Commission attorneys doing the representation. The county attorney, I asked him for what his thoughts were about the Public Advocacy Commission and he said that they did a good job defending the clients, were very capable and experienced and were very cooperative people, which you don't always hear and then-- or see. And

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then for our district court judge, she also had a few comments she made about the commission and the trial and she said the attorneys got along very well and were not obstructionists. So it did go real well from that viewpoint. Our final expenses for the Boswell trial, less than \$50,000 and that was just for, you know, lodging and all those things. Basically, the Public Advocacy Commission saved the Saline County over a quarter of a million dollars and obviously provided some property tax relief for the Saline County residents. I remember when it was in Richardson County and they had the murder trials down there, it almost bankrupted then. Now, it won't bankrupt us, but \$300,000 in our budget is a large sum. And that's basically what I wanted to share with you today.

STINNER: Thank you very much.

TAMARA HUNT: Can you spell your name?

MARVIN KOHOUT: Oh, sorry. Marvin, M-a-r-v-i-n, Kohout, K-o-h-o-u-t, sorry.

STINNER: Thank you. Questions? Seeing none, thank you.

DORN: Go ahead.

J. CAVANAUGH: Can I ask a question?

STINNER: Oh, I'm sorry. Senator Cavanaugh.

J. CAVANAUGH: Thank you for being here. I just want to put a point out, so the, the Boswell and Trail, those were codefendants so the commission couldn't represent both of them.

MARVIN KOHOUT: Correct.

J. CAVANAUGH: And the county did pay the \$325,000-plus for the Trail trial?

MARVIN KOHOUT: Yes.

J. CAVANAUGH: And-- but the commission actually bore the cost of that \$300,000 that you had budgeted--

MARVIN KOHOUT: For--

J. CAVANAUGH: --for the Bailey-- the Boswell--

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MARVIN KOHOUT: Yes.

J. CAVANAUGH: --trial and that \$50,000 that you ended up having to pay for it, what was that for?

MARVIN KOHOUT: That was-- less than that even because well, the jailing, the meds and all the things like that that we paid before it went to trial.

J. CAVANAUGH: But that wasn't for the defense.

MARVIN KOHOUT: No, no, not at all. We didn't pay a dime for the defense.

J. CAVANAUGH: So you didn't pay a dime for the defense.

MARVIN KOHOUT: That's why it saved us well over a quarter-million dollars.

J. CAVANAUGH: Thank you.

MARVIN KOHOUT: Yeah, thank you.

STINNER: Thank you.

ELAINE MENZEL: Chairman Stinner and members of the Appropriations Committee--

STINNER: Good morning.

ELAINE MENZEL: --for-- my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials. While we-- while it's not a support or oppose piece of legislation, this is something that we would be supportive of the Public Advocacy Commission and putting it in that type of framework. Both Mr. Pickens and Chairman Kohout were able to give quite a bit of information and that kind of delved into some of the topics that I had intended to talk about, perhaps. So I will sort through and hopefully not be repetitive when I speak to you. First of all, we do appreciate Senator Cavanaugh for introducing LR396 so we can examine these issues and we also appreciate the Appropriations Committee for the support that they have given in the past, as well as examining the issues related to the Public Advocacy Commission as [INAUDIBLE] now. In the past, I've testified frequently in front of the Judiciary Committee when it's related to the court fees so that's where I've been more

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seen with respect to what's, what's going on with the Public Advocacy Commission. I did go back in the legislative history a little bit, and Mr. Pickens gave you some of the details in regards to Richardson County being used as an example of a county that was a smaller county facing some-- multiple defendants and high costs associated with indigent defense. One of the articles is going to be provided to you in documents that are being handed out at this time. And it might be of interest to you about what the Legislature was dealing with when they first considered things associated with the indigent defense. Additional documents-- and I'll reference those so that you know what's being passed around-- is a letter that I put together just in case I forget to tell you some of these things, but also a, a chart put together and it's compiled information from the-- both the Public Advocacy Commission and the bar association. With respect to the Public Advocacy Commission, it's talking about or it's showing the cases that they've considered since their creation. Again, as Mr. Pickens referenced, that's roughly 1,550 cases in 72 counties and so you can get an idea of where-- what counties were represented. Importantly, you'll see that it's any size of county in terms of population, again, because of-- and whether they have an elected public defender or-- in some situations. And then also it talks about court appointments and the costs that would-- a county would be bearing per hour and that information was compiled by the bar association. And then I'm going to take you back to a little bit of the legislative history with respect to when LB646 that created the Public Advoca-- Advocacy Commission was introduced. At that time, former Senator Christensen, who had been a prosecutor, so I think that lends to the importance of prosecutors and former prosecutors recognizing the importance of having effective defense counsel available for these indigent defense cases. Prior to the introduction, there had been extensive discussions about various subjects related to taxation and also indigent defense. And during his introduction, Senator Christensen explained indigent defense was defined as those people who are unable to afford legal representation in criminal matters and are entitled to representation because of the rule of the land through the United States Supreme Court, since codified in many states, including Nebraska, thus, state crimes being transferred to counties for expenses being paid. Therefore, we get to the property tax relief in part and our key interest. But we also are definitely interested in having effective counsel for both prosecutors as well as indigent defense. Seeing my light is almost putting me to, to the red, I will conclude and be willing to answer any questions and also make

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the statement if there's further study to be conducted, we would be glad to participate.

WISHART: Thank you, Elaine. Any questions?

DORN: I, I--

WISHART: Senator Dorn.

DORN: I got one I guess. I-- you talked a little bit about fees and maybe you understand part of the history. Just reading some of this here, it was originally set at \$2.75. Is that per every case in the state of Nebraska or is this for just certain cases and maybe John knows too?

ELAINE MENZEL: I-- Mr. Pickens referenced that a little bit and my understanding, it's not necessarily all of the court cases.

DORN: But it's--

ELAINE MENZEL: But--

DORN: Yeah.

ELAINE MENZEL: And there are some that are waivable from what he testified to, but the rationale that I understand that it's gone down in part is because civil-- and per-- not to put Ms. Neeley on the spot, but the bar association perhaps would have some additional--

DORN: OK.

ELAINE MENZEL: --comments on that.

DORN: Because it-- in 2021, that was-- there was a bill introduced to raise that from-- well, it, it got raised to \$3 and now there was another bill and it says here that it became apparent that was not going to pass.

ELAINE MENZEL: Correct.

DORN: Yeah.

ELAINE MENZEL: And in part, some of that could have been because of the COVID year in terms of consideration of the Legislature. But also during some of the past couple of years, there have been a variety of bills that have looked at using court fees to fund, for instance,

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judges' retirement, indigent defense for juveniles, as I recall. There may have been a third one. And that gets into, as I referenced, that we've-- that I've testified in front of Judiciary in support of that legislation that would enhance funding so that adequate defense could be provided at the Public Advocacy Commission in terms of both perhaps current funding as well as perhaps an enhancement to allow them to do more services and assist counties in providing indigent defense.

DORN: Thank you.

WISHART: Any other questions? Senator Clements.

CLEMENTS: Yes, thank you for being here.

ELAINE MENZEL: Thank you.

CLEMENTS: The-- I see on this one document, it says it was LB1082 that was proposed to increase the fee by \$1 that didn't pass. Was NACO in support of that bill?

ELAINE MENZEL: We were, yes. Again, as I referenced to Senator Dorn, that would have been legislation in front of the Judiciary Committee. Therefore, you wouldn't have seen me in this committee supporting the increase of a court fee.

CLEMENTS: All right, thank you.

ELAINE MENZEL: Yep.

WISHART: Any other questions? Thank you, Elaine.

ELAINE MENZEL: Thank you.

WISHART: Additional testifiers?

ELIZABETH NEELEY: Good morning. My name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association and thank you for the opportunity to be here. The motto of the state of Nebraska is "Equality Before the Law" and just outcomes in the criminal justice system require capable counsel for both the defense and the prosecution. You've heard today that the Commission on Public Advocacy was created in 1995 to provide legal representation to indigent defendants charged with first-degree murder and serious, violent or other drug-related felonies. The commission was created in part as a way to provide property tax relief

and to protect smaller counties from bankruptcy. Prior to the establishment of the commission, a small county could go broke covering legal fees associated with just one capital case. We can't control what counties end up having some type of serious felony. The commission is currently understaffed and without an increase, the commission will have to reduce services available, thereby increasing costs to counties. These are complicated cases. The stakes are high. Having a commission on public advocacy also helps ensure that lawyers providing representation in these cases are well trained and experienced. The commission also provides legal assistance to public defenders and court-appointed attorneys, thereby raising the quality of representation across the state and providing opportunities for public defenders and other lawyers to become trained and developed in this experience in these kinds of cases. There are 11 counties in Nebraska with no lawyers and approximately 20 with three or fewer. There are places in our state where it would be challenging to appoint a local lawyer with the experience and training needed in these cases. This summer, the Nebraska State Bar Association did a study on the rates paid to court-appointed counsel by county. These cases, as you heard from Mr. Pickens, take considerable time. Rates paid for capital and other serious felonies are often higher than those reported in the document that you just received. So it's easy to see that the Commission on Public Advocacy is the more cost-effective model, saving counties considerable money. Right now, the commission is funded on court filing fees. Over the years, the commission has been asked to take on additional responsibilities and functions without additional funding. And what I'm referring to, there are some grants that the commission has some administrative functions over, some law-- some student loan forgiveness that this-- that the commission helps administer. These court filings have been decreasing for decades. And to stabilize funding for this important state agency, it's probably time to consider a General Fund appropriation in whole or in combination with some kind of filing fee revenue. So on behalf of the Nebraska State Bar Association, we encourage your support of the commission. They play a very important role in our state and I'm happy to answer any questions.

STINNER: Senator Kolterman.

KOLTERMAN: Liz, thanks for being here.

ELIZABETH NEELEY: Thank you.

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KOLTERMAN: I-- the chart that you've passed out rates by county. I noticed that my-- our county-- Liz is one of my constituents-- our county has \$95. York County has \$95. Is that a fee that's set in statute and allowed to increase or decrease? And obviously, you can't get much of an attorney for \$95 in Seward County.

ELIZABETH NEELEY: Yep, so the, the rates for court-appointed counsel are not in statute. They're set by the judges. The majority of the time, they're set by district. So you'll notice, for example, if you look at judicial district 12, the rate is uniform across all the counties in that district. So the judges come together and decide the rate for the district. And among the legal profession, taking a court appointment is seen as a public service. Lawyers don't expect to get their actual hourly rate when they're taking court appointments,. It's, it's considered a reduced fee and public service to take a court appointment. These are not the rates that they would be charging if it was a private client. These are reduced rates that they, that they take because they feel it's important to provide that access to justice, so.

KOLTERMAN: So do they have the ability to turn it down?

ELIZABETH NEELEY: To turn down a court appointment? Yes, they-- you can decline. The process really is that lawyers seek to be put on the list for court appointment and so a lot of times, there's an application process where a, where a attorney would come to the court administrator or the judge and kind of, quote unquote, make an application to be considered for court appointments. And that would typically start at that misdemeanor level and as a newer attorney, built experience would be considered for more serious types of cases and felonies.

KOLTERMAN: So, so in our case, in Seward and York and Polk Counties, Butler County--

ELIZABETH NEELEY: Yes.

KOLTERMAN: --most of those counties don't have criminal defense attorneys with the kind of backgrounds necessary.

ELIZABETH NEELEY: That--

KOLTERMAN: So in all likelihood, they'd be coming from Lincoln or Omaha. Would that be a correct statement?

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ELIZABETH NEELEY: I think that would be a correct statement, yes.

KOLTERMAN: And would that carry a higher rate then?

ELIZABETH NEELEY: It would not, except for the, the rate would be-- but is paid by the county. There might be some additional travel costs if you have a-- appoint a, a lawyer from another-- that's traveling for that purpose.

KOLTERMAN: And one final comment and I'd like your opinion on this: you've been here-- you've been in your position for quite a few years longer than I've been here, but I've been here eight years and we've tried to increase court fees through the Legislature many times to no avail. I think, I think we hit the jackpot this year because we got the judges a little bit of an increase. But is that an accurate statement, it's very difficult to get court fees increased through the Legislature?

ELIZABETH NEELEY: I think that there is a, a balance that people are striving for. You need to make sure that you're court filing fees-- you know, you don't want to fund your justice system on the backs of people, some of-- many of whom can't really afford that and so you want to keep court costs in general reasonable. And so currently, court filings fund a number of things. They fund judicial retirements. There's fees for the Legal Aid and Services Cash Fund. There's fees for the Commission on Public Advocacy. And they all add up, right, and so a lot of times, people are looking at that total dollar, the filing fee, not the \$2 here or the \$3 here. I think when Senator Chambers was here, he was an advocate of keeping filing fees down. And that landscape may or may not have changed with his departure, but, but it is a balancing act, right? We need to keep the system affordable. And when those fees are waived, it's the county that pays for that indigent person and so there is kind of a cost shift back. But for me, the unpredictability of filing fee revenue is worrisome. And I think in the case of, of a state agency that is providing such important service to our counties, it doesn't make sense to continue to let them have that con-- there's a lack of, you know, confidence from year to year what they're going to be able to do. Can we hire, can we replace this lawyer? Can we take these cases becomes a question and we shouldn't be in that situation.

KOLTERMAN: Thank you.

STINNER: Senator Wishart.

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WISHART: So with the purpose of this interim study being to find a long-term funding solution for this commission, you mentioned a statistic that there are counties today in Nebraska that don't have lawyers who could provide the service living in that county.

ELIZABETH NEELEY: Correct.

WISHART: Do you see that trending-- which direction; more counties in the state of Nebraska are going to face that or less?

ELIZABETH NEELEY: Actually, I'm glad that you asked that question and I have a map I was going to bring and should have brought. So the state of Nebraska is actually kind of a leader in the nation. This is an issue in all states that there's legal deserts and, you know, lack of lawyers in certain rural areas of the state. And Nebraska has some very comprehensive efforts to try and improve the number of lawyers serving in rural Nebraska. That being said, we recently did a GIS map projection of what will happen in the next five years if lawyers that are at retirement age are not replaced and it is not good. I think that our number of counties with three or few lawyers will be over a third of the counties in Nebraska if those efforts to replace lawyers retiring in greater Nebraska are not successful. So this will be more of an issue five years from now in terms of being able to access local lawyers in rural areas of the state, particularly with this skillset.

WISHART: OK, and then you, you mentioned that we have seen revenue from court filing fees continue to decrease. Do you anticipate that that is going to be the trend?

ELIZABETH NEELEY: I have no reason to believe that that trend won't continue. It was in place prior to the pandemic. I think the pandemic exacerbated the rate of it. I think in the materials that you got from the Commission on Public Advocacy, there is a chart that shows kind of by year what that filing fee revenue has done. But to Mr. Pickens' comments earlier, there are fewer cases being filed in civil court. We have diversion. There's a lot of reasons that are contributing to the decrease in filing fees, and a lot of them are good reasons. We want people to have STOP class. We want people to have diversion. We want people to be able to mediate conflicts and not necessarily go through the court system. So those aren't bad things that are, that are happening, but I think this is an unintended consequence of those other advancements is that we have a state agency funded by filing fees and, and that is, in this instance, hurting them.

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WISHART: OK, thank you.

STINNER: Additional questions? Seeing none, thank you.

ELIZABETH NEELEY: Thank you very much.

SPIKE EICKHOLT: Good morning.

STINNER: Good morning.

SPIKE EICKHOLT: My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing as registered lobbyist on behalf of the Nebraska Criminal Defense Attorneys Association. Our association is a member organization. We have about 350, a little bit more, attorneys around the state who generally practice criminal law and Mr. Pickens, his attorneys, are also members. I wanted to mention that. And I wanted to add or at least show or try to show the committee the value that the Commission of Public Advocacy has to criminal defense all across the state. Our member organization, we regularly have seminars, webinars. We have meetings where we discussed changes in the law, changes in statutes, changes in case law with respect to criminal defense. And Mr. Pickens' office is invaluable for that, particularly on these significantly serious cases, these homicide cases and serious sexual assault cases and other cases like that that many of our members don't regularly have in their practice. That's important because in the public defender's offices in Lancaster and Douglas County, you have that institutional expertise, you have that. But the value that the commission has is sort of statewide. All these public defender's offices, they help those small or rural counties and the practitioners there. So when you have a situation in which a judge has a couple of codefendants in the courtroom, the commission can't do it because they're full up with murder cases or something like that. They've got a lawyer, part-time public defender who simply says, I can't do that kind of case. I've got my own regular case law. Then the judge starts looking around for someone to appoint because the law requires that person has a lawyer. I've done court appointments before. Ms. Neeley is right. It's difficult sometimes to do that as a, as a profession, but you-- because even though some of the rates are \$125, \$175, you can't justify saying no to people who will pay you more when they show up in your office to do much simpler, much easier, and much straightforward cases where you're not kept up all night, basically, with the severity of what you're dealing with. So lawyers are difficult to find. And when a lawyer is appointed in that situation and it's their first time dealing with a sexual assault case

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or a serious thing, they contact Mr. Pickens' office and say, hey, I've got this pretrial hearing, just walk me through it. Generally, what's going to happen? What should I do? I honestly have no idea. And that's helpful, and that's helpful for a couple of reasons. One, serious cases like death penalty cases and life sentence type cases are going to get subjected to more appellate review. In other words, if our Supreme Court sees that there was an ineffective assistance of counsel at the trial level, it's harder for the court to find that's harmless if somebody is in prison for life. In other words, a county doesn't want to pay for it the first time. They certainly don't want to pay for it when it comes back down again. The victims' families don't want to relive it again. Having quality representation the first time, make sure it's done right. And that's one advantage that the commission has, not only the cases they actually represent, but the ancillary support that they offer to lawyers across the state. Ms. Neeley referenced this a little bit before, this sort of dilemma of the court costs. I was just-- I would submit that the Legislature is doing some things right when it comes to our criminal justice system and our court system because filings are down, because you have passed legislation to provide for problem-solving courts and enhanced diversion and mediation in civil cases. And as a consequence, the courts are used less. The court fees may not have gone up that much, but then you've got that dilemma. Well, let's just raise the court fees, but then you've got fewer people paying more to use the courts. The court fees are sort of assessed on each case and they vary case to case. I just know from my practice that a traffic case, the court costs are \$50 for each case. Three of those \$50 goes to the Commission on Public Advocacy. I think five goes to Legal Aid. I think it's seven for each case goes to the judges' retirement. And there's some other fees that are earmarked for the court, basically for their computer system, automation and those kind of things. So \$3 doesn't seem like that much, but for the typical person who has to pay it, they're paying-- their bill is a one lump sum. And it is true, Ms. Neeley said the cases can't-- the fees can be discharged. If a defendant is in jail and then prison for the rest of their life, they're not going to be able to pay the court costs. But ultimately, and I think NACO can speak to this, then the county has to pay the state for that obligation as well. So it's something that's borne. Someone's got to pay for it. So I just wanted to add some testimony from our perspective. I'll answer any questions if anyone has any.

STINNER: Questions? I have a couple questions.

SPIKE EICKHOLT: Sure.

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STINNER: And one of them is I'm very, very sensitive to private versus public-sector competition from the, the public sector as it relates to the private sector. Do you get-- give me a sense of where the attorneys who practice this type of law, are they in competition with the advocacy? Do you get any blowback that says, hey, I should have had that case or--

SPIKE EICKHOLT: I don't think so because the Commission on Public Advocacy is appointed in instances in which the defendant can't afford to pay for a lawyer, right? So in other words, if the family can hire somebody from a fancy law firm in Lincoln or Omaha for their, for their family member or whatever, they're going to do it. That's not the typical client that the Commission on Public Advocacy and the private bar is competing for. So I just don't think that's there. I-- there are some private firms-- and they're my members so I have to speak highly of them-- that do very good criminal defense work. And as you can imagine, they are not necessarily going to be as accommodating to some lawyer they never heard of, calling them on the phone and say, hey, how do you guys handle these pretrial rape shield law, you know, cases before trial? If you have a private firm where your time and your expertise has value, you're just not going to give it out to any of your private competitors. And that's one point I wanted to kind of make with the commission. If I'm an estate lawyer, I do a little bit of criminal defense on the side, I get talked into doing a serious case from some judge and I really don't know what I'm doing, I know where I can reach out for actual helpful advice.

STINNER: Senator Cavanaugh. I'm sorry I interrupted--

J. CAVANAUGH: No, you're good. That was a good question. Thank you, Chairman Stinner. I just wanted to clarify on the court fee part that you mentioned. So it's not just folks who are doing permanent-- life in prison. If somebody-- I mean, so I was a public defender and I asked for a waiver of fines or fees when somebody is indigent, so if somebody is poor, they qualify for--

SPIKE EICKHOLT: Right.

J. CAVANAUGH: --private fees waived. In that instance, if, if I was ever to be successful in getting that waived, this county, Douglas County, would have had to pay the state of Nebraska the money that, that they-- the judge agreed to waive on that?

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SPIKE EICKHOLT: That's right. And I'm not quite sure how it works, but not all of the \$50, in that example, the county's responsible to pay. There are some that are considered nondischargeable or some similar term that the county has to pay the state. I think judges' retirement is one of those that they have to pay. And I'm, I'm not certain, but I think commission's-- the indigent defense fee is also one of those. And the thing about court costs, I gave the example of a traffic ticket, but if you launch your own civil suit, if you're a landlord and you're trying to evict a tenant for not paying, you pay the filing fee. And this isn't one of those fees that's on there. If you're just trying to enforce a contract, you pay the filing fee to bring your case in court. That's what Ms. Neeley was talking about, access to the court system. So it's a user fee sort of borne by everybody. And I suppose as policymakers, it's easy to maybe tack on a court cost for someone who does crimes, right, because it's kind of-- well, they shouldn't have done it, right? But the court costs are assessed for everyone who wants to use the court system, not necessarily it's the people who have been charged with a crime.

STINNER: Additional questions? I'd kind of like to hear from the private sector. If this becomes law, that would be helpful to hear from them saying, we advocate for this. The other thing, and just my debit and credit way of looking at the world, if we start to take it out of general funds, it actually is funded by income sales and miscellaneous tax as opposed to court fees. Then additionally, we've provided-- we meaning the Legislature-- provided a ton of tax relief, property tax relief out of those types of funds. So it's a little hard for me to make that transition to go from court fees to a general fund and call it a win. It just doesn't work in my mind, anyhow. So it's some-- but thank God I'll be gone and you don't have to deal with me. Anyhow, additional questions, anybody? Thank you.

SPIKE EICKHOLT: Thank you.

STINNER: Would you like to close? Any additional--

J. CAVANAUGH: I do have a few more things I'd like to--

STINNER: --testifiers?

J. CAVANAUGH: Well, thank you, Chairman Stinner and members of the Appropriations Committee and I appreciate the interest in the issues here and I appreciate everybody coming to testify. And I just kind of wanted to circle back and put a point on the things that people have

talked about. One is that Mr. Pickens handed out this flier. You can see these are all the counties in red that they've represented people in, have represented cases. And then I think there's a breakdown by the number, but you heard from Mr. Kohout in Saline County that one case, the commission saved them a quarter of a million dollars. And this commission was founded in the interest of preventing the smaller counties from going bankrupt for these unforeseen cases because as one of the testifiers pointed out, these are cases that you can't plan for. You don't know when the homicide is going to happen in your county, a small county or any county, but-- and then you-- the county is ultimately responsible to represent those, make sure those individuals get an adequate representation. As Mr. Eickholt pointed out, if we don't get accurate-- adequate representation, we're going to pay for it twice because it's going to come back and the county's going to be on the hook for that fee again. So it's better to do it right the first time. This is an essential service that's being funded. And to be clear to all the people who asked this question, we did have a bill about court fees and I was opposed to that bill. I fought with Senator Kolterman about the judges' retirement fee in particular. He won that fight, but-- and was successful increasing that fee. But it is-- this is a question of one, it is an access to the courts question. There are lots of other people, not just people in criminal courts, who are paying these fees and a lot of those do get waived or get discharged, which then the counties end up paying for. And two, it is extremely unreliable. You look at those numbers here, on page 6 of the handout that Mr. Pickens handed out, the court fee dollar amount we assessed in each case was the same. And yet over the period of ten years, the amount we collected was cut in half. The bottom line is this is an essential service. This is something that we need to make sure is adequately funded. If we're not adequately funding it, the cost of this service falls back on these smaller counties who do not have the ability to provide the service and do not have the ability to pay for it on that basis. And so we should-- we need to find a way to make sure we're adequately funding this in a reliable way. And court fees is clearly not going to do that going into the future. Even if we increase those court fees, the amount that it's collected when we increase it is going to continue to decrease from the day we, we increase it until the next time we revisit the issue. So I'm here asking us to find a permanent solution that will fund this and make it stable so we know what we're doing. I, I think in an ideal world, we would actually increase their funding so they can take on some of those more serious sex assault cases as opposed to being limited to just to homicides and save counties even more money.

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So this is a fundamental function of government and it will save taxpayer dollars at the county level. And so that's, that's why I thought this was important. I appreciate the conversation and I'm happy to answer any other questions if people--

STINNER: Senator Dorn.

DORN: Thank you, John, for bringing this up-- Senator Cavanaugh, for bringing this. I guess I sit here and I, I, I'm thinking through my head some things. You know, we, we have an increase supposedly of population in our-- at least our statewide jail system. I've been in the county enough to know the counties are having an increase and other things going on. And, and we hear that the court systems are maybe, I call it, full or we-- you know, their challenged too with getting everything through. And yet when you look at the ten-year history, what you brought about there, the court filing fees, they've been cut in half. Now, all these numbers are up here and yet the filing fees are going this way. Something doesn't-- I, I guess, give me an explanation or a thought of why that's-- why that maybe isn't lining up. Because common, common math will tell you if these numbers are high and these numbers are high, this one should be up there also.

J. CAVANAUGH: Well, I mean, a few of the answers are that a lot of the, the decreases in the filing fees are from civil cases that are maybe not making it into the criminal-- or into the court system. But the, the-- and, and we have created a lot of alternative courts, diversions, other programs that are taking the fees away, but they're not taking away the court time. Diversion cases still go to court. Alternative courts still go to court and, and go-- you know, they appear in court in front of the judge. They have hearings. They have those folks who are arrested. They're processed through. The, the-- those still take the court resources, but they don't necessarily assess the fees that, that we're talking about here because they get discharged without a trial or a conviction or a plea.

DORN: So over a period of time, we've kind of been our own worst enemy. We've kind of robbed Peter to-- and not fulfilled it by having Paul make it up or whatever.

J. CAVANAUGH: Well, it's been a successful policy and I think we just had a hearing this week or maybe it was last week about expanding problem-solving courts. Those are good programs and they solve long-term problems and they have good outcomes for the courts and for our, our carceral system; getting fewer people into the system, reduce

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recidivism. So they achieve all those objectives. They just don't happen to fund this program and-- which is another reason I-- that this program should not be-- we shouldn't be trying to get more people into the system so that we can fund programs like this, which is also a great program--

DORN: Yeah.

J. CAVANAUGH: --which is why I, I think we should be funding it from general funds.

DORN: Thank you, thank you for those comments.

STINNER: Questions?

ERDMAN: Senator Stinner, Erdman here.

STINNER: Yes, yes, please.

ERDMAN: I've got-- Senator Stinner, thank you. This is Erdman. I have a question for Senator Cavanaugh. Senator Cavanaugh, thank you for bringing this to our attention. We at Morrill County have used this service on several occasions and I appreciate that. So my question, Senator Cavanaugh, is do you know, as a statute, a county statute or law, what would cause someone to be incarcerated?

STINNER: A county statute or law that would have somebody be incarcerated. I think that's what--

J. CAVANAUGH: I'm sorry, Senator Erdman. I was having a little trouble making out exactly what you said. The, the speaker--

ERDMAN: Well, what Senator Stinner said was, was what I asked.

J. CAVANAUGH: And that was-- can you repeat it, Senator Stinner?

STINNER: Is there a stat-- a county statute or law that would cause somebody to be incarcerated?

J. CAVANAUGH: Oh. Counties don't generally have their own criminal code. Cities do, city ordinances and things like that. But that's-- those level of cases would be misdemeanors and so this-- the Commission on Public Advocacy has not been part of enforcing any-- or defending anyone in those cases. They have been--

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ERDMAN: I under-- I under-- I understand that, Senator. Here's my, here's my thought-- and I hope you can hear me-- most often, all of these cases are state statutes or state laws. And I believe that they should be doing all of this and the counties should not have to fund any of these prosecutions.

J. CAVANAUGH: And, and I wouldn't necessarily disagree with that either, but this is-- yeah, this is the defense side of that and so I, I do think it's the obligation of the state to make sure that we're funding these defenses. And that's-- I mean, I, I-- as I said, I would be interested in expanding their capacity to represent more than just homicides so the counties aren't left holding the, the bill for these more expensive cases. But I'm open to other ideas about that as well.

ERDMAN: I, I contend to let it be both sides that the state should-- there's not a statute that the county has put in place. It's a state law. The state should be doing both.

J. CAVANAUGH: You are correct about it being a state law.

STINNER: Any additional questions? Anything else, Senator--

ERDMAN: Thank you.

STINNER: --Senator Erdman? Thank you. Seeing none, thank you very much.

J. CAVANAUGH: Thank you.

STINNER: That concludes our hearing on LR396. We'll now open with LR405. **STINNER:** What's this one on? Just, just for the record, this is actually LR406. I made a mistake when I introduced that, so. Good morning, Senator Wishart and fellow members of the Appropriations Committee. For the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent District 48, which is all of Scotts Bluff, Banner, and Kimball County. The purpose of LR406 is to examine the implementation of the Information Technology Consolidation Initiative, spearheaded by the Office of Chief Information Officer, or OCIO, to ensure efficient use of taxpayer resources. OCIO website states that it was created to quote, assure-- to assure a coordinated, efficient and cost-effective approach is taken on an enterprise level for the department-- deployment of technology by the state government. The OCIO provides a wide range of technological services to state agencies, boards, commissions as well as political subdivisions. As the state continues to explore shared services, we have eliminated the

duplication of several IT expenditures and services, lowered the costs through enterprise purchase agreements and provided more efficient and effective ways to expand access to government services. And that's the end of the quote. OCIO has the duty to fulfill its mission statement and obligations to ensure the stated purpose of the coordinated-- coordinating-- stated purpose of coordinating a cost-effective operation of information technology services to the state of Nebraska agencies and political subdivisions. Before I get to some of my concerns with the consolidation initiative, I first want to refresh the committee on the background on the initiative of what is meant by the IT consolidation in the context of our state's infrastructure. The IT consolidation is the centralization of all IT infrastructure in state government under the OCIO network. Hardware is purchased and maintained, servers located in centrally managed data centers, enterprise applications and technological infrastructure for agency-specific applications are managed by the OCIO. The reasoning behind these efforts was to standardize IT activities at the lowest possible cost due to economies of scale, also to leverage the expertise of that office. While there have been cost savings realized-- and I do not have the initial number, but my recollection was somewhere in the \$5-10 million of initial cost savings was, was actually calculated for us. I couldn't find my notes on that. So that is an estimate and a fairly broad estimate. Some of those concerns that are-- and I have had some concerns on my time that's appropriate-- on the Appropriations Committee. Some of those concerns include a lack of transparency in how the OCIO fee structures are organized and charged to agencies, discrepancies in fund balances, growing revenues with a corresponding decrease in expenditures and difficulty in keeping positions filled without correspondent savings realized for the agencies. Ed Toner, the current chief information officer, is here to testify and elaborate to the committee on its questions regarding these and other concerns. I would like to thank the committee for its time and attention to some of these concerns I've raised and I would especially like to thank Mr. Toner for being here today to discuss fee structure and charges to the various agencies. With that, I will open for questions.

WISHART: Any questions? Seeing none--

STINNER: I will join the committee since this is an LR, so. Good morning.

ED TONER: Good morning, sir. Chairman Stinner and members of the Appropriations Committee, my name is Ed Toner, E-d T-o-n-e-r. I am the

chief information officer for the state of Nebraska. I appear before you today to testify on LR406. The National Conference of State Legislatures published an article titled, "The Case for IT Consolidation" in April of 2018. The article contained the following statement, "Consolidating IT resources across a state, though not an easy process, is clearly the favored path." Nebraska is one of the very few states that have achieved this favored path. In 2015, recognizing that the state's siloed and disparate legacy agency approach could no longer address the growing and changing needs of the citizens and taxpayers, the Office of the CIO looked for a better solution to provide enhanced services through a consolidated IT environment. What did we mean by consolidated? In short, for code agencies, the OCIO would be responsible for infrastructure and enterprise applications and agencies would be responsible for agency-specific applications. Nebraska's consolidation is one single network, one single domain: centralized management of an active hot standby, geographically separated data centers, hardware managed by the Office of the CIO; servers located only in the two data centers managed by the OCIO and enterprise applications managed by the OCIO. Applications that are specific to an agency are managed by the agency, but the technical infrastructure is managed by the Office of the CIO. Information technology has moved out of the traditional order-taking role to that of a strategic policy, business and service partner. The OCIO initial focus included centralizing information technology policy, strategic planning, project management, infrastructure, and addressing enterprise security needs. Enterprise applications are managed by the OCIO such as email, data, storage, etcetera. Applications that are specific to an agency are managed by the agency, business teams, which allows them full control of their line of business. Line-of-business services consists of differentiated services core to the strategic mission of that agency. Consolidation efforts took place in three phases over an 18-month period. The first phase: consolidate networks. Second phase: consolidate server administration. Third phase: desktop support.

_____ : The caller, Mike McDonnell, has left the conference.

ED TONER: Existing organizations and functions were consolidated. Several were materially strengthened in depth of support and incorporated industry best standards. The technology consolidation enabled major reductions in staff and technology expenditures while maintaining and increasing service levels. A number of new function processes and organizational units were also created: a centralized

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incident management team to enhance technology support; the risk management and mitigation team; a mitigation and compliance team, which addressed concerns about security; a centralized geographic information system team to address cross-boundary data mapping issues; a consolidated infrastructure organization to remediate reliability issues; and the creation of a strong, centralized project and change management programs.

_____ : The caller, Mike McDonnell, has joined the conference.

ED TONER: During this consolidation, no additional funds were requested to upgrade aging hardware across the state. No outside consulting firm was hired to manage or provide guidance. This was entirely funded from the existing OCIO revolving fund budget. LR406 sets out seven items to be addressed as part of this interim study. Items one through four are review of various budget programs, services and staffing levels for the Office of the CIO. We have prepared a handout that includes information and data in response to these items. Item five relates to the evidence of improvements resulting from the consolidation initiative. Most of my prepared remarks that follow will address this issue. The charts and data included in this testimony will show that to date, consolidation program has saved the state over \$38 million. Finally, six and seven-- item six and seven relate to potential improvements to the consolidation initiative. I will touch briefly on these two items in my concluding remarks. I see that my time is, is starting to go--

STINNER: You know, that's fine. You just keep going.

ED TONER: Thank you, sir. Through the tireless efforts of personnel in the Office of the CIO, the state of Nebraska has placed among the top states in the country for technology by the Center for Digital Technology. Nebraska received two awards from this center; one for resilience and recovery and disaster recovery and the continuity of operations, the second for innovation. The Office of the CIO also earned the 2018 Enterprise Technology Management Initiative Award for the State Technology Consolidation from the National Association of State Information Officers. The award celebrates the country's leading government IT services. The tactical benefits of consolidation: we consolidated technical support by restructuring existing agency support positions located outside the Lincoln area. We had enough resources to meet staffing benchmarks to support eight separate service centers. This allowed us to locate technical supports closer

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to the customer and gives us the ability to recruit from multiple rural areas of the state. We improved service levels and standardized processes across the state with integrated tools and automation. The included map below shows the eight new OCIO support regions closer to the customer. Operational benefits: operational benefits include the time saved through increased system availability, reduced downtime, and enhanced disaster recovery capabilities. Redundant data centers located in Omaha and Lincoln have the capability of running all critical applications independently. This allows for fill over to the alternate data center when issues occur. In 2021, the fill over plan was tested with success when the core network availability was affected by an edge router hardware failure. The team limited the duration of the outage by routing traffic to the alternate data center, allowing for successful replacement the following weekend. The chart with an-- with average system availability uptime over the last 12 months is included in these materials. With respect to critical issues, which we designate as P1s and P2 events, you can see in the included charts that the number and the duration of these events has steadily decreased since consolidation. Strategic benefits: in 2020, the OCIO was presented with the responsibility of transitioning a large number of state teammates to a remote working environment. Because of consolidation, the infrastructure necessary to deliver on this responsibility was already in place and functioning. While many states lack sufficient capacity to adequately support the demand and usage, Nebraska was not one of them. The customers of the OCIO immediately had access to a virtual private network with multi-factor authentication for secure work-from-home environment. The results: improved service delivery. Since consolidation completed in 2019, we see a steady decline trend in time to resolve for both incidents and service requests with high customer satisfaction ratings. Improved service quality: customer surveys have been submitted for the last three years and as you can see by the graphs, high scores from our customers. Savings-- staff savings: consolidation reduced the need for technology resources by 77 FTEs and 16 contractors with an accumulated savings of in excess of \$30 million. The included charts below show the 101 FTEs that were transferred from the agencies to the OCIO. The 77 FTEs eliminated and the 16 contractor positions eliminated. Physical servers eliminated or virtualized savings: savings from eliminated or virtualized servers are provided in the chart below. Consolidated county AS400 server savings: savings from the county AS400 servers that were eliminated and virtualized are provided in the chart below. Consolidated data center savings: a review of states, of states by the National Governors Association found that operating

consolidated data centers saves states millions of dollars. The OCIO consolidated into two data centers in Lincoln and Omaha. The agency data centers that were closed because of consolidation provided additional cost savings and eliminated risk due to their lack of threat mediation, adherence to basic best practices and basic access control procedures in place. Consolidated IT systems allows the OCIO to deploy technology rapidly. With a consolidated data center, individual agencies no longer have to maintain distinct, siloed environments, but rather take advantage of offerings already in place such as the VPN technology deployed during COVID. Agency-specific centers were no longer needed and amounted to approximately 6,000 square feet of office space self-reported by the agencies and their agency IT plans. Consolidating these data centers into those managed by the OCIO equates to approximately \$4 million in cost savings to date, as shown by the included table. Duplicate software savings: consolidation allows us to eliminate some duplicate software. Benefits of eliminating duplicate applications include reduced licensing costs, enhanced availability and enhanced security. A table with the savings from duplicate software elimination is included in the materials. Budget impact: Program 173 took the full impact of the consolidation, as shown in the chart below. The additional operating expenses were minimal when taking into account the additional PSL expenses and the additional server expenses, expenses, which were transferred to this program. Conclusion: Finally, with respect to potential improvements to the consolidation initiative, I welcome this committee's review of our consolidation initiative and any recommendations you may have. From the Office of the CIO's perspective, this initiative was completed successfully in 2019. However, we are always looking for opportunities to improve how we provide services to our customers. Consolidation is-- has created additional opportunities for the Office of the CIO. The following are a few projects we are considering or in the process of implementing: consolidation of enterprise applications such as a time, a single time entry system, contract management system and technology asset management systems; expanding our role and partnership with other noncode agencies. In closing, I would like to thank the Governor, this committee, and the participating agencies for supporting our efforts to better manage information technology for the state of Nebraska. I would be happy to answer any questions that you may have at this time.

STINNER: Thank you very much. Questions? I've got quite a few.

ED TONER: Senator.

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STINNER: One of them is, is what, what kind of oversight do you have? Is there somebody in the Legislature that's part of a committee and how many times does that committee meet? Because I basically have been shut out of any-- other than just coming in and talking to the head of DAS at the budget time-- and you've showed up a couple of times, which was very helpful because--

ED TONER: Yes.

STINNER: --I, I needed to know how the consolidation was going, what costs were associated, what the initiatives are, how we were protecting data. Now you've got a redundancy situation in Lincoln and Omaha. I-- that, that's a good thing, I think, that--

ED TONER: Yes, it is, sir. Hopeful--

STINNER: --that that will be something if we have a cyberattack, we can survive it. That all said, what's the oversight that we have?

ED TONER: I met during consolidation. I had multiple meetings with not only the Governor and the Governor's staff, but the Governor's Budget Office. Every move we made, HR, Jason Jackson, who at the time had HR, he met with me concerning the eliminated positions so that we could document that. During this time period, we actually eliminated 159 IT positions. I'm only claiming 77. Why am I only claiming 77? Many of those positions were unfunded and I didn't feel like it was something I could put into this report. But every single one of those, he called in each agency, we discussed their positions. We discussed who would come into my organization, what positions we should close. As they came into my position-- as you'll see from the chart, I started out with nearly 350. I'm down to 305. I'm continuing to reduce positions. I have not added-- from the 77 that were transferred me, I have never added an IT position to the state, not one. I also continuously get reviewed by the Budget Office on my rates. I'm challenged continuously on how they are incorporated. And what you'll see from the graph, I have been losing money. If you see on page 6-- on 19, my expenses were much higher than my revenues. The only reason why it looks like now that I am making a profit is COVID flooded so much federal money in that the demands for my services increased dramatically. I mentioned VPN. I charge for VPN. Well, I went from a couple of thousand customers to 15,000 customers. Now, because of the fact that I have two of everything, I had two VPN servers; one in Lincoln, one in Omaha. I was able to take the additional hit with no interruption, no latency, no purchases to do this. Other states that are siloed or

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they-- what they call federated, we're buying hundreds of servers to meet the demands of their customers. I bought none. I just used what I had because I had sized it. And because they all came through two servers, one in Lincoln, one in Omaha, not only did they have the nonservice interruption, but if one of my servers went down, they automatically went to the other server. So there was never an inter-- we were never in the paper. We were never saying, oh, our systems dropped. More than half of the states were in the paper during COVID because their systems were overwhelmed. Because we size our systems and we duplicate our systems, that was never a factor in Nebraska. Not one outage during COVID, which is an extreme. In fact, we got an award for resiliency. That is why we got that reward-- that award. But you can see that we ended up-- we, we have always been running at a deficit. We-- actually, our rates are below and we're having to talk about that with budget because our rates are too low.

STINNER: Well, let's, let's-- let me go into that. I'm going to--

ED TONER: Um-hum. Yes, sir.

STINNER: --interrupt you for a second. And I truly appreciate what you have done, what you've accomplished, where we are technology wise, but technology touches every agency--

ED TONER: Yes, sir.

STINNER: --as well as the Legislature.

ED TONER: Yes, sir.

STINNER: My point is, there's no mechanism for the Legislature to at least be involved in a discussion or a heads-up on what initiatives we're doing, how well we're doing, those types of things. So-- and fee schedule. Let me get into something else and I'm going to read a few things because I did look at your budget and the, you know, total receipts, \$56 million then the 69-- these are the last three years-- 68. And I'm doing actuals.

ED TONER: Yes, sir.

STINNER: The expenses went from 61 to 57 to 54. You're right, the expenses are coming down. Some of that has to do with-- and I think we've appropriated a heck of a lot more money to this than was utilized.

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ED TONER: In, in the--

STINNER: And now we have \$14.2 million of excess funds. The-- let me just continue on. Here's the angst of this whole thing-- and this is what I get blowback from as the Chair of the budget, the Budget Committee. And if I can find the page right here, I just went through the comments on this year's budget, OCC increases. There's five agencies, over 100 million have commented on increases in the OCC requests and significant increases and I can get into significant as well. Then you go into the \$20 million to \$100 million sized budget, again, five more people-- five more. It ends up being about 22 agencies that I looked at, all of them commenting on huge increases, huge increases meaning 30-- and I'll, I'll just tell you one of the ones I looked at, a small agency to compare it with that. Their increase is 37.8 percent that go-- and actually, they've had a 47 percent increase before that time. And they continue to complain that, you know, this is sucking up some resources. Now, they did put in a considerable amount of equipment, but-- which they need to have, but they-- that's a significant part of their increased request that they're going to come to this Budget Committee with. It looked at DHHS. They've gone from \$50 million to \$60 million to \$69 million. The request this time around is another \$23 million increase in requests there. I don't see savings coming through all of this stuff coming through to the agency. They're talking \$24 [million] and \$29 million request of additional appropriations needed to run their department. Now, some of that, in all fairness, will be federal funds because we do get reimbursed for, for some of those operations. I go to Corrections: 35 percent increase in one of their major items over the last three years. And, of course, the request now is for another \$18 million and \$25 million and they additionally comment on OCIO requests is the big part of their increase request in their budget.

ED TONER: Yes.

STINNER: I could go on and on, but I did go to your fee schedule and I'm curious about two areas; one is geographic information services that go from-- let's see, tier one, tier two, tier three go from 950 to 2,500. Charge from tier two: 1,600 to 17,393. Tier three: 12,000 to 25 and I presume that's per unit charge.

ED TONER: Yes.

STINNER: And that's an annual charge. So big numbers there, of course.

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ED TONER: Yes, sir. Can I, can I address that specifically?

STINNER: Yeah, please do.

ED TONER: That, that increase was actually initiated by our customer. We consolidated GIS and in the past, GIS was spread out across all of the agencies. We now take over that responsibility. We handle all the data for not only the state agencies, but agencies such as, as Public Service Commission. It was recognized early on by the Nebraska Department of Transportation that they were our biggest consumer of those services. We showed them our rates. We showed them what it cost us to support them. They actually initiated that last-- that rate increase saying that it was not fair for the OCIO to burden that-- to hold that burden. And so they were the ones that actually said this was an appropriate rate increase for us and they have agreed to that in the next-- in, in this budget. We had never had the level of service that we provide to those agencies. And so I actually thank the Department of Nation-- of Transportation for stepping up and saying there's, there's no, no reason why you should bur-- you should hold this burden on your, on your team. And that kind of goes to the my other answer to, to your questions. The OCIO rate increases were never in proportion to the reduced obligations of the agencies. The agencies, for example, no longer paid for 101 FTEs. Agencies no longer paid for their data centers. The agencies no longer paid for their firewalls and applications and networks that we shut down. We shut down thousands of devices that they were paying for. They no longer had that obligation. The other part of this answer of why are my rates higher or why are they asking for more money, I have, as you can see in my chart, I have only 301 people. The state has over 900 IT FTEs. I make up only a third of the number of IT personnel in this state. So when they come to you with increased requests, it's because they're coming to you with the same problems I have. I just got a 30 percent increase from Microsoft so I have to pass that along to my customer. And I-- and we, we meet with all of our customers. They are seeing and experiencing the same thing. And so if you can imagine, they are double my size. Their IT organizations are double. Now, everyone in the state feels like we are IT and, and we are. We control the skeleton of this state. We control the network of the state. We control the servers. We control all of those things that make the state work, the things that you don't see. What we don't control are things like N-FOCUS at DHHS. That's managed by DHHS. And they, they did go with a much larger budget increase. I, I worked with them on that. The reason why? They needed to upgrade their test environments. So they're going to be running more cycles through my, through my

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mainframes. I just recently bought two brand new mainframes. Now, the, the, the value of that is no one knows I did it. We got it installed. No one even-- no one saw anything happen. So we're buying those mainframes now. It used to be three contracts across the state from Microsoft. Two-thirds of the contract from Microsoft was paid by the other agencies. Department of Health and Human Services had their own contract. Department of Transportation had their own contract. I now share that burden alone. I pay for all of the state's contracts in, in regards to Microsoft. And so when an agency says that they have increased cost, please request where those costs really are coming from because often, as I said in my testimony, they have full control of their applications. I, I strongly feel like that is the right thing to do. They are closer to the business. They understand their business. And I also understand that their costs have to go up. But remember, they have twice the number of IT personnel that I have. I only make up one-third of the personnel across the state. And yet with that one-third, I manage every bit of infrastructure in this state and maintain an additional data center. When I came here, our data center was not only inadequate as a data center. Data centers are, are, are judged on a, on a tiering system, tier one through five. We weren't even a tier zero. We've put in \$5.6 million to bring our data center here in Lincoln to a tier four. We lowered costs by getting a agreement with Douglas County to use their data center in a barter system. We put servers in their data center. They put servers in our data center. I think one of the examples of, of our reduced costs is the Legislature. I just found out the Legislature moved their servers into our Lincoln data center and they wanted the replication that we have in place in Omaha. You were paying \$3,620 a month for a rack. You're charged now for two racks, fully redundant; \$2,000 a month from my office. You had one rack and one single point of failure. You now have the redundancy that's afforded all other agencies under our purview.

STINNER: Here's where I'm at with this whole thing: first of all, I think the Legislature should be-- have some kind of mechanism to, to meet with you from, from time to time, maybe every quarter, to get, to get the feedback and understanding of the initiatives, the cost associated with it, etcetera. What I thought in this consolidation thing-- situation was you start here on your income statement and it goes down to here for the various agencies. That never happened. They just continued to go up and I'm taking line items from OCC charge-- OCIO charges--

ED TONER: Right.

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STINNER: --not from their internal charges. And they're going up rapidly and in some cases 40 percent. Now, I get that they're a-- on a small agency, that gets kind of distorted, but on the larger agencies, we've seen 50 percent increases in costs associated with, I would say, the consolidation because I haven't seen any pullback in any of the other line items--

ED TONER: Right.

STINNER: --that were associated with it. So that all said, I, I will say this: controlling costs on the IT side is extremely difficult, as you have said, when you're locked into a Microsoft and Microsoft says, hey, we're not going to support this anymore. Oh, by the way, here's your new charges. I get that. I get the cost of communications is continuing to go up, although I would think there should be some, some tapering off on the communication side of things. But-- and of course, then we got cybersecurity to throw in and those are added cost. But I'm just kind of a debit and credit person. I just want to see the decreases in cost or the stabilization of cost. You've had a pretty flat run at--

ED TONER: Right.

STINNER: --at your expenditures, but the agencies are going up.

ED TONER: Yeah.

STINNER: So that's, that's where we're at today.

ED TONER: I know the--

STINNER: How do we, how do we get that--

ED TONER: Yeah, another factor--

STINNER: --how do we get that communicating?

ED TONER: Yeah, I think another factor is that the average age of the servers that I brought in, I had to replace them. They were ten years old. We replaced them on a five-year-old-- a five-year cycle, which is the best practice. So they, they did incur additional--

STINNER: Do you use the cloud at all on the-- if you replace, are you going to the cloud?

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ED TONER: We do. We do what's called a hybrid cloud.

STINNER: OK.

ED TONER: So where we see cost advantages, we absolutely go to the cloud. We call it smart cloud. Whenever we can-- if we can get a savings from a cloud offering, we will go to the cloud and we continue to do that. But I, I, I definitely agree the costs are going up, but much of that is due to the fact that we are holding them to best practice. No longer do they run servers 14 years. No longer do they allow themselves-- because why? Why do we do that? It's, it's more-- to run a server over its five-year life means that often you lose support, often you open yourself up to security because it's no longer being patched. We also don't-- we also require them to upgrade their applications. We have instances where their applications are so far out of compliance that they are no longer supported. And what that means is they no longer get patches that secure their environment. So we require that those patches are put on. That is a cost that they are incurring. So I, I would, I would ask you to understand that by following best practices, by following industry standards, which is what I have brought to the state, is not cheap. But it is so vital to the security of the state, to the functionality of the applications to ensure the reliability that we're always on. And it's been proven time and time again our outages, there-- you know, there are-- when we do have an issue, we resolve it very, very quickly so that our constituents, our citizens have full access 24/7 to our environment. That does not come cheaply. And because we have instituted policies through the NITC that all applications must be upgraded to a support level that allows patching and security to be applied, that has increased costs. I acknowledge that, but I also acknowledge that it's the right thing for the citizens, for the state to ensure that we provide the most secure and stable environment that we can possibly provide. The NITC does regulate us. I do have to report to them. I would, I would, I would be very pleased to give this type of report. In fact, Senator Stinner, when you asked me about this, I was, I was enthusiastic. I wanted to tell this story. I think-- you know, I think we have, we have a great story here in Nebraska. And we are, we are looked at as the model for where a state should be going.

STINNER: One of the things-- and it'll be in my next LR-- is the problem that we have in our accounting system is we've got too many paper transactions going on. That needs to get--

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ED TONER: I-- Senator, you are absolutely right. I've been working with the budget on a cloud-based solution because it, it will be cheaper than what I could provide them. They have all--

STINNER: Hopefully it will be more accurate and hopefully somebody--

ED TONER: Yes.

STINNER: --will reconcile the numbers.

ED TONER: Absolutely, Senator. We, we have been-- and that is the, that is the beauty of this, of this. They come to us now. The agencies, I-- there's a term out there called the CIO is a broker. I don't like it. I think the CIO must be a valued broker. And what we're finding is I'm being reached out to by countless agencies saying, can you come in and help us with this? Budget was one. They told me about the, the manual processes. They told us about the, the paper. And they've gone through-- we have a thing called a cloud committee because we felt like cloud would be the right, the right solution for them and we're working with them right now. In fact, they've gone through the cloud committee. We helped them with their RFP, we helped them write the RFP, and it's going to fit into our architecture. And that's the beauty of, of owning one network is that when new agencies come in and when an agency's-- new projects from an agency come in, we can make sure it, it syncs with our architecture and that they can get the best benefit ever. And we are seeing increased cloud. We are assisting in that. In fact, we are one of the few states-- we actually have direct connections to two cloud providers, which are much faster and more secure. So we are looking at that in the future, sir.

STINNER: Thank you. Senator Kolterman, you had a question.

KOLTERMAN: Yeah, thank you, Senator Stinner. Thanks for being here today. I have a question. In, in your conclusion, your second bullet point there is expanding our role and partnership with other noncode agencies. I'm very familiar because of my work with the Retirement Committee that NPERS is a noncode agency.

ED TONER: Yes.

KOLTERMAN: And as an example, this past year, we put some more money in the budget for them to increase their staff so they could add a, a full-time person to work with exactly what you're talking about, information technology. Security, cybersecurity is huge in that arena

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because you're dealing with all these people's Social Security numbers and their--

ED TONER: Yes, sir.

KOLTERMAN: --their, their cash balances and everything like that. So how soon will you be reaching out to those noncode agencies and trying to bring those costs down and at the same time, protecting the idea-- you know, protecting the security of those noncode agencies?

ED TONER: NPERS is the retirement system. They are our customer and in fact, we meet regularly with their IT staff, Jack Hardy. We helped him with his RFP. We, we suggested that Gartner comes in and, and review them. He is reporting to my office. We have a PMO, a project management office meeting every Thursday and Jack comes every-- once a month to give us an update with his new project manager. We helped him with that solution and we'll continue to help him with that solution. We also have given them advice on security that needs to be put in and they have been very cooperative and very helpful, but they are one of our existing customers.

KOLTERMAN: OK, well-- and I, and I guess that kind of plays into what Senator Stinner is asking because I had no, I had no way of knowing that was going on. And if, if that's the case, I believe we as the Legislature who fund all these ought to have that-- we, we, we have a right to know where the dollars are going and why they're being increased.

ED TONER: I [INAUDIBLE]--

KOLTERMAN: But I-- and I appreciate the fact that you're working with them and I hope that you continue to reach out to these other noncode agencies because there's a lot of information out there and cybersecurity is high importance anymore.

ED TONER: Absolutely and, Senator, that is a, that is a-- something I need to correct.

KOLTERMAN: OK, thank you.

STINNER: Senator.

CLEMENTS: Thank you, Director Toner. On, on page 19, on page 19, the-- in your revenues, you mentioned your increase in revenues from the VPN increase from COVID. Is that going to continue? Are people staying

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home, working from home or are they-- is that going to come back down so that your expenses and revenue are more equal?

ED TONER: We, we are seeing a mix. My office works in the office. That's, that's my preference. I like to have them in the office. We, we are seeing a little bit of a mix. I think that it's probably a hybrid. They're doing a little bit of working at home and a little bit of working in the office, which means they'll continue to buy those services from us so I think that will be continued. The other thing was that there was just a lot of money pumped into the system and so there was a lot of, a lot of projects that the agencies needed our assistance with. So we got a lot of consulting money. We, we charge time and materials to do certain things for agencies when it's outside their expertise. And so during COVID, there was a lot of help that we had to give agencies to, to get them through that, that, that time period. So I do-- I guess short answer is yes. I, I believe it will continue just because of the hybrid nature of work these days. And if they need to have a VPN for two days a week, they'll have to have it, you know, the entire time.

CLEMENTS: With these excess revenues, are, are you planning to reduce your fees some or--

ED TONER: We are in, in consultation right now-- our concern is, as you can see, in the past, we didn't have excess. We only got excess to the last two years. And we need to evaluate that, absolutely, and we are working with the Budget Office. Our concerns at this time is, is that an abnormality caused by COVID because of the increased needs by the agencies or is that a continuing process that they continue to ask for more resources? So we-- that's a, a good question and we definitely have to find an answer to that.

CLEMENTS: And what has happened-- where did the extra money go that you-- your excess revenues?

ED TONER: Our, our excess revenues have gone to some of the expenses that we had to assume because of the COVID process. In, in other words-- and I don't talk publicly about security, but because they are working from home, we did-- had to put, put in additional security measures that are not, are not cheap. I need to put-- I think every CIO in the country, if they don't say this, they need to-- I need to continue to pump money into security. One of the things that we've done right here in Nebraska, we have only one attack surface. Most states have 20 or 30 attack surfaces. What do I mean by that? HHS had

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their own network when I got here. DA-- DOT, their own network. They all now-- we all share one. If we were in the environment when I got here, we would have had to buy 20 security tools to support and protect 20 networks. We only have to protect one. That's it. Our focus is one. And so we have--

_____ : The caller has left the conference.

ED TONER: We, we have architected that and we have put our resources into that single network--

CLEMENTS: All right. That's--

ED TONER: --which has saved us.

CLEMENTS: --that's all, that's all I need. Thank you.

STINNER: Senator Dorn, did you have a question?

DORN: Thank you, Chairman Stinner. Thank you for being here. Thank you for the comments this morning. They're, they're interesting. When-- one time when-- I guess when I first came up here, we had the concept-- I think what you talked about-- is that everybody was on their own and they were trying to bring them all together and, and I think we're-- we'll never be there where you want to be, but we're-- we've make a lot of headways. How many-- are all the state agencies-- and I don't know if I'm asking the right question. Are-- generally, are they all part of this OCIC [SIC] or do we still have some out there exactly on their own?

ED TONER: No, the majority are. We-- the last count was 77 agencies, boards and commissions.

DORN: And they were part of this?

ED TONER: Yes, they are, they are either all in, 100 percent, or they use our services. And our services extend to the counties. We have a presence in all 93 counties. We also-- the city of Lincoln has asked us to house all of their infrastructure. So we do all the infrastructure for the city of, of, of Lincoln. We also do all the monitoring for the city of Lincoln. We monitor their environment. We also make deals with, with Douglas County. We sell our product to them. We are open to anyone who wants to join. Our requirement is-- because of the security is they have to follow our security rules and if they do, then, then they are welcome. There are absolutely welcome.

DORN: One more question, I guess, and this kind of relates back to what Chairman Stinner had. When we normally see the budget proposals coming from-- in front of us, there is this line on there, OCIC [SIC] and it's here last year and now it's here. And we don't really ever get what I call a cost analysis or cost breakdown. So we don't know that, you know, now they had to have this new and then that cost was passed on to them. So how is it determined, I guess, what you bill them or how do they determine-- and maybe you don't know this answer. How do they as an agency-- are they lumping other things in there that maybe aren't a direct OCIC [SIC] cost and yet they're counting it in their budget as that?

ED TONER: That is, that is an excellent question, Senator Dorn. I'm not, I'm not a part of what they-- I don't review what they submit so I can't, I can't answer that directly that they're, they're building in some of their own costs. But, but we acknowledge that they do-- two-thirds of their cost are theirs. I can tell you the things that we do-- like the big agencies, transportation, we have a very close relationship with them. HHS, I'll give you an example of just, just the past few months. We saw a 10 percent increase in usage of the mainframe. The Budget Office questioned why they asked for more. And then I went back and found out that there were legitimate reasons. They were upgrading, doing some upgrading on their side that was going to use more of my services. So what I do is I look at trends and we give them our trend analysis and we say, you are using X amount of our services. And then after that, the Budget Office knows what we've recommended and then they look to see why is there a delta? Well, in this case, the delta didn't make sense and so they brought me in and we were able to explain why HHS actually-- that was a legitimate increase and you'll see a large increase. And it was, it-- you know, it was surprising. But then once they explained it to me what they were doing, they were doing the right thing and justified it very much.

DORN: And, and, and I think that's a little bit what John-- how do we-- sometimes we look at justifying too why there was an increase or what, what knowledge do we-- and I don't know where the connection can be that we can at times get more information or more stuff so that we're not just looking at a number and a number and a number.

ED TONER: And that is the value of this, of, of this hearing to me. I, I did not, I didn't-- I don't understand the process after it leaves me. In my discussions that I have with the agencies, I don't-- I think there is a, there is an improvement that needs to be made. The fact

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that NPERS was not-- you didn't know that we actually take care of all of their services. We, we need to do a better job ourselves of maybe inserting ourselves more, it sounds like, and reviewing them maybe.

STINNER: Legislative oversight would be good, having a committee that's--

ED TONER: Yes.

STINNER: --we can coordinate--

ED TONER: Yes, I--

STINNER: --and communicate.

ED TONER: You're, you're bringing up some very good things that I-- from your questions, I did not understand--

STINNER: --keep budget growth to a minimum and when you have--

ED TONER: Yes.

STINNER: --a line item that goes up 20, 30, 40 percent--

ED TONER: Right, right.

STINNER: --you know, somewhere the bells and whistles better go off, so--

ED TONER: Yes, I would agree.

STINNER: --that's what this is predominantly about. And as far as accounting, the OCIO line item had better not have different things in it. It better be the OCIO's charges, so.

ED TONER: Yes.

STINNER: And I would imagine the agency also takes the schedule and computes out what their charges are going to be, if indeed they're going to add something, so.

ED TONER: We, we do open houses too.

STINNER: I, I think that's the problem. In fact, I'm sure that's the problem.

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ED TONER: We have open houses where we go to the eight-- we call them open houses. My financial officer, Noah Finlan, hosts those, hosts multiple over, over many, many weeks. But then we also have private discussions with the large agencies. And what we do is we explain to them these rates didn't change, didn't change, didn't change, oh, these did, and then we give them all the reasonings behind the changes because we feel like we owe that to our customer to explain to them why our costs are changing. And we do that prior to their sub-- obviously prior to their submission. But then we take one step further and that is with the big agencies that we know are going to be impacted. My financial officer meets with them privately, and they also attend the open houses, too, so they, they, they get a little bit more attention because of the fact that we know that it is going to be a big impact to them and that they have to understand why we're asking for that rate increase.

STINNER: Very quickly, in your budget request, you go from 170 actual people, full-time equivalents to 195 is your request. That's 25 more folks. Any idea where you're going to find new hires and if that's--

ED TONER: No, I-- no--

STINNER: That's the current budget?

ED TONER: Yeah, I, I did not ask for any additional and I have never asked for additional while I've been here seven and a half years.

STINNER: Very good. Any additional questions? Senator Clements.

ERDMAN: Chairman Stinner, this is Erdman. Can you hear me?

STINNER: Yes.

ERDMAN: I can hear you quite well. I hope you can hear me. Mr. Toner, thank you for coming. So my question is, who hired you?

ED TONER: Who hired me?

STINNER: Yeah.

ERDMAN: Yeah [INAUDIBLE]

ED TONER: Oh, the, the, the-- I am, I am a cabinet member. I was hired by Governor Ricketts on June 9 of 2015.

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ERDMAN: OK. Secondly, I think you said you've been there seven years, is that correct?

ED TONER: That is correct, just a little over seven and, seven and a half.

ERDMAN: So you directly report to the Governor there, is that right?

ED TONER: I directly report to the Governor, yes, sir.

ERDMAN: OK. So I attended the Brand Committee budget hearing in Thedford about a month ago, and they had a line item of \$125,000 [SIC] for OCIO when last year, it was zero. And I asked a question about that and they said that what they were doing for email and other things, they had to continue-- discontinue that [INAUDIBLE] with you and it was \$125,000 more to them than it was the prior year. And so it occurs to me that what government does to save money, they create another agency that costs more money. So tell me why does the Brand Committee need to discontinuing what they were doing and pay you \$145,000 to [INAUDIBLE]?

ED TONER: If I understand the question, the Brand Committee had an increase and they had a zero--

STINNER: Of \$145,000.

ERDMAN: That's correct.

ED TONER: We-- the Brand Committee has been our customer for multiple years. In fact, we were involved in their electronic-- when they went to electronic brand selection and we also redesigned their network because they were having network issues years ago. So we've always had a relationship with them. I'm going to have to get back to you with the fact that if we didn't charge them because we have been-- they have been in our offices. I have been in the room with them and we have had a relationship for years. I will have to get back with you on, on, on the specifics of that question.

ERDMAN: OK. Thank you.

STINNER: Anything else, Steve? Senator Erdman?

ERDMAN: That's it. Thank you.

STINNER: Senator Clements.

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CLEMENTS: Thank you. One more: The same 77 agencies all put into one server system, you have ways to secure if one agency has a breach and it doesn't spread throughout the whole system?

ED TONER: Yes, sir, Senator. We, we designed our network with what's called DMZs, demilitarized zones. We block cross-traffic communication and so that we can isolate an issue and not allow it to spread. We also use other technologies.

CLEMENTS: Yeah, I don't need details. I just wanted to make sure that's being addressed. When we put all-- everybody in one big boat--

ED TONER: You, your--

CLEMENTS: --we could all sink.

ED TONER: It is definitely the best practice to do this. But you, you bring up the point that, yes, if one chink in our armor, does it affect the rest? And we are very aware of, of making sure we isolate that.

CLEMENTS: OK. Thank you.

ED TONER: Thank you.

STINNER: The other thing that you need to have in this today is redundancy and that's-- that was--

ED TONER: Redundancy is--

STINNER: --that's significant, I think--

ED TONER: It is.

STINNER: --if you could shut that whole system down, trap--

ED TONER: Well--

STINNER: --track what's going on and then--

ED TONER: And, Senator Stinner, you bring up a very good point because we require redundancy. We never had redundancy before. There was no redundancy when I got here. We now require people to buy two of everything. So their cost to us-- you are actually answering-- you are actually making me think of why are they coming for more money? Well, because when they put in a system years ago, it was one server. And

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now we say, no, that's critical, you have to put in two, so we do double their costs when they, when they actually put in a server because of exactly that, that factor. So thank you for, for actually-- that, that [INAUDIBLE] my mind.

STINNER: You bet. Anybody else? Questions? Anybody on the phone with questions? Thank you for your testimony.

ED TONER: Thank you. This has been enlightening to me and I agree communication definitely needs to be improved between my office and yours.

STINNER: I appreciate that. And I'm going to waive my closing if that's OK with you guys so we can-- and that concludes our testimony on LR406. I'm going to open on LR405, interim study to examine the operations of statewide financial system by DAS. Let's see if we can get through this one a little quicker.

KOLTERMAN: So welcome, Senator Stinner. You're now able to open an LR405.

STINNER: I think it's still morning, isn't it?

_____ : The caller, Senator Vargas, has joined the conference.

STINNER: Well, welcome. Good morning, Senator Kolterman and members of the Appropriations Committee. For the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent the 48th District comprised of Scotts Bluff, Banner, and Kimball Counties. The purpose of LR405 is to examine the operation of the statewide financial system by the Accounting Administrator of the accounting division for the Department of Administrative Services and to ensure that internal controls are properly implemented. The accounting division operates and maintains a statewide financial system, preaudits agency transactions, issues the statewide annual comprehensive financial report and budgetary reports, coordinates the long-term financing needs of the state of Nebraska, and prepares the statewide cost allocation plan. The mission statement of the accounting division is to lead the state agencies through our customer-oriented management and support of the financial management system, to be mindful of our responsibilities to taxpayers, and to establish and follow a well-constructed plan to maximize our future endeavor. DAS has the duty to fulfill the mission statement of the accounting division and obligation to conform with generally accepted accounting principles

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for state and local government, which are established by the Government-- Governmental Accounting Standards Board. This committee is well aware of the ongoing reports on DAS ACFR management, especially within the past few years. As you're all aware, the Auditor's Office noted in its audit in fiscal year '21, published in April of this year, that there were a total of \$10.5 billion in errors. One of the most concerning items reported is \$4.3 billion in formal adjustments to the ACFR. It's important to note that at the time of publishing, the Auditor's Office couldn't guarantee that all the errors were detected due to the size and scope of these errors. An additional \$6.2 billion in errors from other items not-- needed formal adjustments were found. Back in August, I sent a letter to DAS to follow up on the fiscal year '21 audit corrective action items, as well as some for discussion during the DAS budget hearing earlier. I've provided your offices with copies of that letter I sent to DAS, followed by a response I've received. Phil Olsen, State Accounting Administrator, is here to continue that discussion with the committee and aforementioned concerns from April audit and a continuation of our discussions earlier. I'd like to thank Phil for his responsiveness and being here today to provide clarification of plan of action to the committee. I think there's several things I want to comment on. Obviously, I've-- this one is probably the most significant, most significant item that we have to address. If your financial statements-- if you can't rely on your financial statement, you can't make good decisions. I mean, that's just a basic fundamental deal. And because we can't, over the last two years, come up with accuracy and timeliness of financial information, it goes deeper. It goes to the agency level. And I think as you continue on with the appropriations, I think that's the deep dive that you have to find out at agency level what is going on. And I think Phil can enlighten us on some of those things. They may be able to come up with a timely and accurate financial situation, but when you take a deeper dive and look at the internal controls, material weaknesses is a big item. If you have a material weakness, that means you can't rely on what you're looking at. And that's, that's a little bit maybe broader than this LR is supposed to be, but they did put together a report from Duluth-- Deloitte Touche. I hope that you all got that report. I think there's some items there that you have to question: the use of paper to enter into the E-- or whatever the electronic system. That makes no sense to me and not in this environment. But even if you go to spreadsheets, even if you go to Excel spreadsheets, are they going to be accurate? And who's-- what are we tying out to, what are we reconciling to, and why are we reconciling? So-- and those are the information, by the

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way, we use for our budget. So in any event, with that, I'll close and ask if there's any questions.

KOLTERMAN: So--

STINNER: Go ahead.

KOLTERMAN: So I have a question. So at the hearing today, will we hear from both DAS as well as the auditors?

STINNER: I have invited the State Auditor.

KOLTERMAN: They're here. I just--

STINNER: They are here? I hope so because I think that's a source. Then what I want to do is really get down into the bottlenecks in the agency levels and what they're seeing there and what we need to do both from a technological standpoint, but also an accounting standpoint. Where are we falling down, you know? And it might be a situation where we need more qualified individuals. And I think of DAS. I've always said that they need a CPA or two running that big company. I asked them. Billions of dollars go through there in both federal money as well as state money, and not to have a very sophisticated accounting system, I think, is really a huge weakness. But that's-- I think I'll leave that up to the State Auditor or more qualified opinion-- people to answer that.

KOLTERMAN: OK.

STINNER: In any event, thank you.

PHILIP OLSEN: Good morning.

STINNER: Good morning.

PHILIP OLSEN: Good morning, Chairman Stinner and members of the Appropriations Committee. My name is Philip Olsen, P-h-i-l-i-p O-l-s-e-n, and I'm the State Accounting Administrator at the Department of Administrative Services. I appreciate the opportunity to testify on LR405 and provide a report on the practices undertaken most recently to fulfill our reporting obligations, ensure compliance with accounting principles, pertinent corrective measures taken and other relevant details consistent with our leadership and support of the state's financial management systems. I'm accompanied today by Krista Davis, Deputy State County Administrator. After a 20-year career in

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the State Auditor's Office, Krista now provides her invaluable expertise working exclusively on preparation of the annual comprehensive financial report and we're blessed to have her guidance and knowledge on the project. I'm going to give a broad overview of state accounting scope of work as a baseline understanding of our core functions of state accounting operations. We produce multiple statewide financial reports, including the annual comprehensive financial report, daily General Fund cash flow reports. We have daily responsibility for managing and operating the state's accounting system, running the Master Lease program and DAS budgeting and rate setting. State accounting oversees services that constitute the state's highest dollar programming. Among these are vendor and payroll payment processing of \$12 billion, federal draws totaling \$4.5 billion last year and, finally, COVID-19 funding amounting to \$2.6 billion. Shifting to LR405, in addition to the detailed response I provided in advance last week, I'll provide an analysis and an evaluation of our responsibility to the annual comprehensive financial report, or ACFR. We've made measured decisions and adjustments in recent months to contribute to our goal of filing a timely and accurate ACFR, which we are currently on track to fulfill. We have engaged the CPA firm of Deloitte & Touche on practice improvements, recommendations and GASB implementation; built in an experienced team; provided for error mitigation; and established realistic schedule and targeted deliverables to the State Auditor. We've made significant improvements in staffing and, notably, experience, as communicated to you in August and in accordance with recommendations from Deloitte. Collectively, two new ACFR team members bring 25 years of experience directly from the Auditor's Office. The ACFR team is managed by Caleb Witt, who has five years of experience at the Auditor's Office, and of course, you'll recall my introduction to Krista Davis, a key leader on our team as deputy state administrator-- state accounting administrator. We are fortunate to also have hired Raiatea Acuri, gaining his specific expertise on managed care organization capitation and manage-- and Medicaid drug rebates after two years of accounting experience at the Department of Health and Human Services. Additionally, Technical Sergeant Russel Cooper is a professional asset on our team as an intern through the Department of Defense SkillBridge program while he's working towards completing his accounting degree. With our existing teammates, these staff additions demonstrate the experience and discipline of our seven-staff-member team and inspire confidence in our operations, as well as accountability and productivity. DAS has instituted a sensible production of the ACFR, of which 77 procedures due to date have been submitted to the auditors on

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a timely basis. Consistent with tracking deliverables and progress made to date, by, by mid-November, we plan to have 90 percent of report deliverables to the APA in a first draft by December 1. Only one error has resulted in the Auditor's Office proposing an adjustment. The adjustment has been made and we're on track now, steadily moving forward in direct coordination with state agency accountants to mitigate errors, review accruals and prepare financial reports. We are continually, continually looking at improvement initiatives, controls and process efficiencies. The Department of Labor has made several staffing, reporting and process changes to more accurately and efficiently report unemployment insurance activity. The department continues to build and refine its reconciliation procedures between its new tax and benefits system and the state's accounting system. Corrective entry is being carried by DAS for Department of Labor, have been cleared and resolved on labor's books. Labor continues working through restrictive system reporting capabilities and its review of certain account balances that we have questioned. While great improvements have been made, there is a risk of modified audit opinion on unemployment insurance. I'll be happy to expand upon any of the initiatives or address any questions you may have. With Krista here as well, I'm sure we can satisfy your inquiries and review of our operations.

STINNER: Thank you. I-- tell me this: we've got seven new, new folks that have terrific qualifications. Prior to this, prior to, say, four years ago when we could turn out a financial statement on time when it had a clean opinion to it, how many people did you have at that time?

PHILIP OLSEN: Well, sir, four years ago, I was with the Auditor's Office.

STINNER: Uh-huh, so opine so for me, will you?

PHILIP OLSEN: I believe there were some modifications to the reports even back then. I know as the audit manager, I was responsible for that project and I recall two modifications, I think, in the last two years that I was there. So we had always recommended that they needed additional staff to bulk up their team. I think they had as few as four or five. I think they had four people with a fifth that did kind of non-ACFR accounting/further reporting area. So when I came in, in 2019, having knowledge of the project, I added some bench depth to the manager who was kind of stuck whenever there was a tough question or question about a GASB, how to implement, I supported her, and then we

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brought on an additional position to bolster that team. And in that year, we issued the report on time and with an unmodified opinion.

STINNER: So you only had two people more at that time--

PHILIP OLSEN: Correct.

STINNER: --than when you first started.

PHILIP OLSEN: Correct.

STINNER: And this is a recommendation by Deloitte Touche that we needed that these areas of expertise. Is that because the information that's coming up from the agencies are so inaccurate and need so much more work and so much more expertise?

PHILIP OLSEN: It's, it's a confluence of things. I think certainly that's one of them. Also, we continue to have GASB standards that are new that have to be implemented, that add to our workload every year. So we're doing more work in the same confinement of, you know, the statutory requirement of getting it issued by mid-December. And then last year, the manager that was responsible for the project, after about eight years, left the position. And so that left a big gap as well, and so we're trying to backfill that, which we have done with Caleb and Krista to bring someone in that has the knowledge base just to hit the ground running and, and be able to do it right off the bat versus training somebody up. You know, my experience working with, let's say, you know, new accountants or auditors on the project, it's really about a three-year learning curve to really get up to speed with the whole-- the magnitude of the project and what all goes into it.

STINNER: Does DAS have any say in, for an example, the Department of Health and Human Services, who the-- what they should have as an accounting people, what they should be doing as it relates to processing daily transactions, reconciling accounts, making sure that deposits are timely, those types of general things? I would think somebody has to be overseeing this that has the expertise, and you do have a CPA, so--

PHILIP OLSEN: Yes.

STINNER: --I'm looking at you saying--

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PHILIP OLSEN: Yeah, from a hiring standpoint, we've not been involved with DHHS. I've now been involved with Department of Labor in hiring their most recent controller. But we do provide overall guidance and chart of accounts and what's to be used to record certain transactions. When I, when I first stepped into the role and really started digging in and working with HHS, they, they had an issue, from my perspective, in that they were having nonaccounting program staff-- very knowledgeable of the program, but from a debit-and-credit sense, didn't understand that. They were the ones responsible for putting accruals together and, you know, so they started typically, you know, incorrect off the bat. So now we've engaged, not just HHS but all the large agencies, in, you know, SOPs, standard operating procedures, on how this goes together and making sure it's run through an accountant that's responsible for actually delivering the accruals to us. And in addition to that, this year, the director of every agency signed off on the reporting package as to its accuracy.

STINNER: I would think that somebody in accounting yourself would have a major influence on just the systems and procedures and the internal controls needed. I mean, the State Auditor lined those out. I believe it was five major weaknesses that they cited, and a lot of that is internal control procedures. It's people. It's technology. It's a whole bunch of things and it's just chaos, is what it looks like to me. And how you could sit there in the county and get this information-- you could have all the people in the world. If they're not giving you the accurate, good information-- you see what I'm getting to? This, this has to be pushed down even further than what we're doing at DAS.

PHILIP OLSEN: You're absolutely correct, Senator. And we started this year bringing those people into our building, sitting down with them. We opened up our conference center in the basement of the 1526 building every Monday for, I think, seven weeks, invited agencies to come in with at least drafts of what they had prepared and then ultimately what they were about to submit. We reviewed those with them, answered their questions. We had some new agencies that came in, saying, hey, I think I have an approval here, and, yes, you do, here's how you need to, to report, and a lot of positive feedback from the agencies on that, something we'll be doing going forward. But to your point, there are a lot of subsystems out there that they're collecting data from and they're putting it in Excel spreadsheets. These are accrual items, payables, receivables that aren't in our accounting system that would be then sort of bolting on for an accrual-based financial schedule.

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STINNER: Senator Wishart.

WISHART: Following up, with those meetings that you had, were all the agencies who have had issues in the past, that needed to be there, present?

PHILIP OLSEN: Yes, all of them participated: HHS, Department of Transportation, Corrections. Revenue is a fantastic agency to work with. They don't have a lot of-- they were there. Investment Council, I think I have a list of them in my letter that I sent last Friday. But, yes, all, all the major agencies and ones that we've had issues with.

WISHART: OK. And then you mentioned here that there have been great improvements with the Department of Labor, but there is still risk of a modified audit opinion on unemployment insurance. Walk me through, when you understand there is still a risk, what are the steps to take to try to avoid, avoid what you, what you're seeing, a likely outcome in the future?

PHILIP OLSEN: Yeah, great question, Senator. So beyond working with them on what we know to be errors in their account balances and correcting those, they implemented a new IT system in November and they've revamped, you know, some of their reporting and how they closed their books. We've asked about, how do you reconcile this particular account balance back to your accounting system? And it's new staff, it's a new system, and our understanding is they're still working on refining and building the reporting capabilities in that system. And while we've made, you know, great strides on either lowering those balances to a more reasonable level, we're still-- our shop has uncertainty about, you know, their overall accuracy. And I think that is what will potentially lead to that higher risk of a, of a modified opinion.

STINNER: One of the things, this leading practice, I was looking at just on technology: integrate and automate, made of financial data from ERP, financials and other-- it appears that we have a lot of paper transactions that have to be inputted into the system and then, of course, some of it gets in, some of it doesn't, some of it gets inputted improperly and nobody catches it. So there is a process and procedure that has to go on in that and are-- describe what, what their, their best practice, leading practice, what you've done as it relates to that, that issue.

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PHILIP OLSEN: Yeah. So the ERP system is our Oracle accounting system. And when we ask for accruals that are coming from these other systems, they are reported to us on Excel spreadsheets. They do come in through email. That is still currently our process. One recommendation is to build an online, online platform where they're submitting so that we can see, you know, who's submitted, the time that they submitted, if they changed anything, just more of an audit trail. So that is something we're looking at. But, but currently it is coming into us electronically. So paperwise, you know, internally and partly because of COVID, we've gone all electronic. We used to have, you know, binders with work papers and references, and all of that is now done electronically. We have taken one of the Deloitte recommendations for a standardized procedure document where we're laying out all the steps so it's consistent across all 244 procedures that we put together and submit to the, the Auditor's Office.

STINNER: One of the things, they had to find three different ledgers to capture accounting transactions, cash basis, which is one we're-- actually, the state's on--

PHILIP OLSEN: Yes.

STINNER: --and we do our budgeting on, modified accrual and control accrual. Is that what you're talking about, trying to put that type of platform together?

PHILIP OLSEN: That's a little bit different. So we have-- in Oracle, we have an AA ledger, which stands for actual amounts, and that's your cash basis that you all are familiar with in working on the budget. And then we have a separate ledger called the GF ledger, which is where we put all of our accruals in that build our governmental financials. The third component is government-wide financials that have the real, long-term payables, like our pension plan payables, things like that. And those are built in a separate reporting system that's called CDM. And so those are the three components. Now everything ultimately ends up in CDM. We generate reports out of Enterprise One. They get fed into this reporting system. There's a lot of articulation in the financial statements and to the footnotes. That helps us monitor that all those numbers are consistent through the report, but those are the three components that they're speaking of. And so that, that has remained unchanged and that's still a process.

STINNER: OK. This current state of technology, the interfaces and manual journals they show going into the, the Oracle E1, which is the

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system, that-- I put a big circle around that. That, that, that has to be a major-league concern for, for you, for heading up the accounting, because you've got to have timely and accurate information.

PHILIP OLSEN: Yeah. So we've pushed all the, the agency directors to meet our timeline to get everything in by mid-August from an accrual perspective. All the agencies met that goal. You know, one of the biggest ones three years ago, you know, was HHS that was consistently late or requesting additional time. The last two years, they've reported on time and were working on that accuracy. And another item, in terms of accuracy, now with the staff that we have, it's allowing additional review work, actually looking at some of the support that the agencies are providing, allowing two additional people to review and, and approve a procedure once it's prepared by one of our staff. So we've got that working across the board and are still able to thus far get all of the items into the APA on time.

STINNER: Senator Wishart.

WISHART: What are the-- let's say an agency says, I'm not going to make it on time, or they produce something for you that is not accurate. What are the accountability measures that your office have-- has in saying, like, this cannot happen again and these are the-- like, what, what teeth do you have to say, like, you have to get me the information on time, it has to be accurate?

PHILIP OLSEN: Yeah, great question. I will tell you, this year, working with the agencies on where they were, we had an offer from the Governor to personally call the director of that agency if there was an issue with timeliness. It didn't-- we didn't make it to that, to that level. Also, I report to Director Jackson, and, you know, he made that same offer, of course. And so having that and then having the sign-off of the directors-- you know, Dannette Smith herself is signing off on the HHS accruals-- that has been, you know, just a big push by us to say, we've gotta have this. We've got the statutory deadline. And if you put us behind on something, that puts every subsequent-- you know, I said there's 244 items, right? Every subsequent item after that is going to be behind because you're late.

WISHART: And then just a follow-up question, do you know, are there other states in which offices like yours get to be a very influential role in the hiring of each agency's lead, in, in terms of the financials?

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PHILIP OLSEN: You know, I belong to the National Association of State Comptrollers, and so we meet once a year. I've not heard of them going into other agencies and hiring. Most typically they don't have, like, a large, centralized, you know, accounting group. It's, it's typically much an arrangement like ours is.

WISHART: OK.

STINNER: How many other states have had a modified opinion during COVID? Any idea?

PHILIP OLSEN: I know a handful: Colorado, Nevada. There are still two states have yet to, to publish their '21 ACFR, which is probably indicative of potential modifications there, so.

STINNER: What's the response-- have you had any response from the feds, saying, what's this? You know, you got a modified opinion. I can't rely on the information that I'm seeing.

PHILIP OLSEN: We have, we have had no correspondence from the federal government in that respect. They primarily look at the single audit side of things, which is a-- more, more focused audit on federal grant awards by CFDA. And-- and then, you know, the Auditor has comments in regards to those federal programs, and they may have question costs. And then, you know, that cognizant federal agency will work through my office and through the responsible agency to clear that, nothing in particular on the, on the ACFR.

STINNER: Does, does anybody from the feds come in, like the-- from the Inspector General's Office, to take a look at DHHS, which is-- really does the largest amount of federal funds that we get? There's a lot of grants in there as well.

PHILIP OLSEN: Yeah. You know, besides the process that I mentioned of the single audit and, you know, the federal HHS staff would be looking at that, there is, you know, OIG responsible for, like, COVID funding, for example. I've not heard of any of that going on in the state.

STINNER: Any additional-- Senator Clements.

CLEMENTS: Thank you. Thank you, Mr. Olsen. The Department of Labor, was part of their problem with unemployment being expanded by the federal government and they contracted a bunch of extra employees, did that contribute to their information problems?

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PHILIP OLSEN: I can offer my opinion on that. They, they saw a, a 10x in unemployment claims as a result of COVID, and part of the federal rules that allowed to get that money or the preference to get that money out in a expedited fashion, loosen controls. And when you loosen controls, you have errors, you have potential for fraud, right? And so nationwide, that was the result of how the federal government implemented that additional code money for unemployment insurance. And so that was the largest factor.

CLEMENTS: And we're going to have a billion dollars of ARPA money distributed, a lot of it through DED. And do you-- have you worked with agencies to ensure that they don't end up with problems like that going forward?

PHILIP OLSEN: Yeah, so we, we have been working with agencies and my office is responsible for the federal reporting on that, on that particular pot of money, the billion dollars. There are others involved, you know, military budget, Deloitte. So we have, you know, a large group of individuals with eyes on that. We've gone through the guidance and prepared forms for them to report back to us their, their federal spend.

CLEMENTS: Will that be something Appropriations Committee could find out how the process is working if, you know, money is, is being distributed properly and accounted for?

PHILIP OLSEN: Yeah, so the Appropriations Committee and the larger senate body appropriated that billion dollars across 19 different agencies. And, and when I say agency, I include the university and state colleges in that. We file quarterly reports on obligated and spent amounts by program. So some of those agencies have multiple programs, like you mentioned DED. And so certainly those would be available to view kind of, you know, how much you've appropriated by fiscal year. You can see how the-- the trend is going in terms of obligation and spend. Is that kind of what you're after?

CLEMENTS: Yes.

PHILIP OLSEN: Yeah. Yep, that information is available.

CLEMENTS: OK. Thank you.

STINNER: Senator Wishart.

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WISHART: I'm glad that Senator Clements brought up just the, the amount of ARPA funds that are sitting in, in, in different departments and that sort of sunset date that's coming up, and to the, the quickness with which they're going to need to spend those dollars. What-- you know, understanding what happened to the Department of Labor and, and the fact that when you are not staffed up, because this is one-time funding, to handle the amount of money-- I mean, DED has a significant amount of money and a small team. I'll put them as an example. How do-- how does your office help these departments prepare so that what happened with the Department of Labor doesn't happen in any of these instances? And how, how can you flag and what are the systems in place for understanding when a department might be getting overwhelmed with the amount of money they have and the staff that they have and the quickness with which those dollars need to go out?

PHILIP OLSEN: Yeah, a couple of comments on that. As it relates to unemployment insurance, that was, you know, a turnaround time of months. You know, we have people who need to buy basic needs because they're out of work. The ARPA funds, by federal rule, they have to be obligated by December of 2024 and spent by December of 2026. So there's a longer runway there to help, you know, account for what do we need for staffing requirements, what do we need for subrecipient monitoring and who's going to do it, right? And so, as I mentioned, we have-- all the funds are residing in military funds so we have everything consolidated. And from a reporting perspective, that lets us control and manage that much better than having, you know, 30 different pots of money distributed to all the agencies, and so that's one step we're taking. Everything funnels through one central point and fund and we split that out by business unit so we can-- we set a control in the system, a grant level. So whatever you've appropriated, they can't exceed that by an appropriation level or a grant level when it's split out into multiple buckets. And then you, you appropriated money to the military department for administrative funds, and so some of that administrative funding is being used to help bolster anything we need from, you know, any outside assistance from, you know, a consultant or that sort of thing.

WISHART: So do you anticipate that there will be departments that will come in this next-- with this next year's budget and say, we're going to need to staff up for these next two years to meet the obligations?

PHILIP OLSEN: I don't know that I can answer that question on behalf of the agencies. I think a lot of the money may be pivoting into like kind of programs that they're already generally used to implementing

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and running. And so if they have the staff in place, you know, they may be able to manage it. There may be others that are requesting, you know, additional FTE for a short term.

WISHART: OK.

STINNER: Any additional questions? Senator Dorn.

DORN: Yeah, you brought along the contract for the Deloitte or whatever.

PHILIP OLSEN: Yes.

DORN: I guess talk a little bit about that, what the main reason is because-- basically to make sure that they help, that the work is done properly, or is it because of shortage of staff or what was the general concept?

PHILIP OLSEN: Yeah, it's a little bit of both. So as we were going through, you know, COVID-19 for the 2021 audit, we were already engaging to get a contract signed so that they could assist with the staffing needs because our bandwidth was, was stretched thin. In between that interim time, we then had our ACFR manager who left her position. And so they came in about October, same time we, we lost that position as well, both to help review, give recommendations, and just be support for getting into our software and helping us to, you know, reconcile things and get the-- the--

DORN: So their main scope of work, though, is going to be to make sure that you get your, your report on time and that hopefully we won't have issues with the audit going forward or--

PHILIP OLSEN: Well, again, we were at the midpoint, and so they came in, you know, not at an ideal time to make the December deadline. And so they were there to help, help get the work done, but in 2021, without, you know, our manager, where we were on staff, it wasn't realistic to hit that December 15 goal. This year, now having full staff from the get-go, their focus has been on a new GASB standard for accounting for leases.

DORN: Thank you.

STINNER: Senator Kolterman.

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KOLTERMAN: Yeah, sorry I had to leave a few minutes ago, but I have just a basic question for you. It's my understanding that Jason Jackson is not working at the present time at DAS. Who's in charge?

PHILIP OLSEN: I still have calls and talk with Director Jackson. He keeps up on this project in particular. But the interim acting director is the Budget Administrator, Lee Will.

KOLTERMAN: Lee Will, OK.

PHILIP OLSEN: Yes, that's correct.

KOLTERMAN: And how long will Jason Jackson be gone?

PHILIP OLSEN: I think for the next about two months and then he'll be returning.

KOLTERMAN: How long has he been gone?

PHILIP OLSEN: His, his overall leave is, is about four months, I believe. So he's been gone about two months.

KOLTERMAN: OK. Thank you.

STINNER: On the contract that you entered into with Deloitte, I never saw a request for an appropriation. Is there a scope on when you have to come to Appropriations and get approval for an expenditure such as this? I always thought you had to come to talk to us about it.

PHILIP OLSEN: So we have one fund and it's a internal service fund. And so our revenue comes from rates that we charge to operate our operations from IT, central finance, internal control, payroll, reporting.

STINNER: So that's your slush fund that you can use [INAUDIBLE]

PHILIP OLSEN: No, sir. It's just our, our internal operating funds.

STINNER: I'm sorry. Yeah, the other thing that caught my eye, and this makes no sense to me, is why you can't keep your fixed asset accounting right. It's called capital assets, I guess, to be accurate. There are, there's programs out there.

PHILIP OLSEN: Yeah. Yeah. Capital assets has been a pain point. When they're in the system, they generally work fine. We have a lot of

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projects ongoing in the state, so part of it's IT projects. That can be a--

STINNER: Capital item or not?

PHILIP OLSEN: It can be a capital item and it depends on whether it's off the shelf or whether you're internally developing it. And then, of course, you have your buildings and your equipment. So we've worked a lot with agencies on understanding that GASB says when something is substantially completed, that is the time frame in which you need to capitalize it. That involves an entry into the accounting system. We've, you know, struggled with getting them to do that timely where, hey, this is-- you've been occupying this building for 18 months, why is it not in the accounting system? So we've been more on top of them this year. We've got-- actually, Caleb Witt, our manager of this project, he personally put together that information and he actually is the one that audited it last year. So he's got a great acumen for all things capital assets. And so we've had training over the last couple of years particularly on that focus on when something is substantially completed. You know, you turn on production in, in an IT system, you occupy a building, that's when you need to be reporting it to us. And there are other components that have been sources of errors, such as, what is your retainage payable on a project; you know, we need that AIA document that says you're 80 percent completed and you owe \$20-- you know, \$20,000 of already-completed work that you're not going to pay us till the end because it's retainage. So we-- we've been--

STINNER: Just don't let them change the beginning balances anymore, would you, without--

PHILIP OLSEN: Yeah.

STINNER: --without somebody telling you what to do.

PHILIP OLSEN: Yep.

STINNER: In any event, any additional questions? I appreciate you being here. I appreciate your patience with us. I'm sure you're as frustrated as we are, maybe even more. And I appreciate all the work that you've done in the interim.

PHILIP OLSEN: Thank you. Appre-- I greatly appreciate the opportunity.

STINNER: Hopefully, it will be really smooth, right?

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PHILIP OLSEN: We've got the best team in place that I've ever seen in state accounting.

STINNER: Well, you stole them from the State Auditor's Office.

PHILIP OLSEN: Yeah, I know. I hope we can still be friends, but I have stole a couple from them.

STINNER: I got an X on your picture.

PHILIP OLSEN: Dartboard, right? Thank you.

STINNER: Thank you. State Auditor, please. He's coming up next. He's going to sabotage you.

PHILIP OLSEN: Let me get out of the way.

STINNER: Well, it's still morning, so good morning.

CRAIG KUBICEK: I was just going to look. I have "good morning" in my notes. I was going to check to see.

STINNER: It's close, yeah.

CRAIG KUBICEK: Well, good morning, Appropriations Commi-- Committee. For the record, my name is Craig Kubicek, C-r-a-i-g K-u-b-i-c-e-k, and I am the Deputy State Auditor for the Nebraska Auditor of Public Accounts. We were asked to be available for just some discussion items and then any questions that you may have regarding the 2021 ACFR and then the 2022 ACFR that's current-- currently going on. With me today, I have Kris Kucera-- she is a manager with our office and also signs the ACFR for our office-- and Russ Karpisek, who is our legislative liaison. If there's some specific questions that I can't answer, I might relay those to Kris, but I'll do my best to answer those questions on the '22. You know, just our staff's working hard on the on the '22 audit. There has been some things that has caused us some issues. Phil has alluded to several of those as just staffing. You know, we lost 25 years of experience on our ACFR team going to DAS. We also lost another member of our ACFR team from last year. They went to a private CPA firm. And so those three people alone was 3,600 hours. I looked this morning; 3,600 hours was spent on the ACFR team and those three people. So as you can imagine, you know, Phil alluded to it takes three years-- I would say it's probably a little more with all the GASB stuff going on-- to get new people trained. And, you know, we're struggling to, you know, not only retain people but hire

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qualified CPAs from schools and those sort of things. So just getting new people on that ACFR audit has kind of been a struggle for our office, just-- yeah, I think, you know, like Phil added to, their-- their side is going to be better, but it did put a-- kind of a dent into our ACFR team and that testing.

STINNER: How short are you on your staff?

CRAIG KUBICEK: I mean, we're about five or six and I'm doing everything--

STINNER: We approve-- we appropriated five more positions.

CRAIG KUBICEK: You did and I asked for a couple more this year, and that seems kind of weird, but the need is there. I mean, it's just trying to get people. I'd present at pretty much every school there is, you know, college in Nebraska, do some fraud, kind of get them excited about auditing in school and those sort of things, and then, you know, going to different meet-the-firm events and, you know, we increased our starting wage to try and, you know, promote that. But I think, you know, part of our budget request is, is to, you know, not only retain people, but, you know, up some of those amounts because CPAs right now and-- and qualified accountants is down. I mean, you look-- I presented at the Society of CPAs a few months ago and, you know, they raised-- asked, who is, who's struggling hiring? And I don't think anybody did not raise their hand. So there is a big need. And, you know, we're constantly having to balance agencies, DAS, university, and then other private CPA firms from, you know, coming to get our people because, you know, they know of-- you know, we have great people. We have great training. We still have great people, but it's hard when we lose, you know, two great people to the ACFR team as well as, you know, to others. So, you know, Phil mentioned just a little bit on the, on the getting us stuff timely and I would agree with that. The only part of that is, you know, is some of the dates that we agreed to get pushed back. DAS is giving us stuff basically twice a month in batches. And so, you know, for example, we're-- in the past, we'd get something on September 2, now that's 9/15, September 15. And so that's caused a little bit of a problem in our office, just we're now getting stuff bi-monthly as opposed to throughout the month and that can be kind of a staffing-- you know, if we get through this set of stuff early in the month and then we gotta wait till the 15th, for example, or the 30th for the next set of information. So while we haven't fully tested a lot of things, I think that, you know, yes, it's probably-- on their side, the stuff's going

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to be more accurate, but it has been-- it can cause us problems just because of, you know, the delay in getting that information.

STINNER: Is the information you're getting so far accurate?

CRAIG KUBICEK: I don't know if I can say that. I mean, we, we have to be a little careful, you know, discussing our work papers since this is a public meeting.

STINNER: Right.

CRAIG KUBICEK: We can have some discussions off to the side, and-- and like I said, just getting our new people on the ACFR process and so we haven't fully, you know, tested the accruals and the fixed assets and all that stuff to get a good idea of the accuracy. But I know they've upped their team so they're, you know, doing a lot better review of the information that's provided to our office.

STINNER: I'm less concerned about the report and the timeliness as I am what's happening that you have seen at agency level and what needs to be done, especially in some of the large-- all the agencies, but definitely in the larger agencies. And maybe comment on where a lot of the ac-- where a lot of those errors that you cited and material weaknesses you may-- probably ought to ask you to, to actually elaborate on what a material weakness is, mostly for the record and for the folks up here.

CRAIG KUBICEK: Yeah, just the-- I mean, I think you alluded to it earlier. You just can't rely on the information. And so if you can't do that, you have a material weakness in the financials and the materiality is a pretty big number.

STINNER: Is there agencies that you can point to where the information was, was less accurate?

CRAIG KUBICEK: I mean, I think, as Phil alluded to, Labor was the big one and--

STINNER: Yeah.

CRAIG KUBICEK: --can possibly cause issues, you know, in this year's ACFR as well. The-- the biggest thing I think we're running into, at least this year from an agency perspective, and I can allude to the past issues as well, but is just the timeliness of getting information from agencies. You know, we do testing at multiple agencies for the

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ACFR and some of those big agencies, they pretty much have an automatic response that, hey, we'll get this to you in three weeks. There is a statute that requires them to get us information in three weeks so that's their automatic response. And it's like, well, if you can get it to us sooner, why are you just automatically responding, you know, that it's when-- with the three-week deadline? I just had to email a director this week because we have several things that are outside that three-week period. And so that's caused, you know, delays, as well, as far as, you know, we send a request out, now we gotta move on to something else, and then wait, oh, now it's four weeks later, I got, you know, this question that I asked and now I'm getting a response to it.

STINNER: That's disappointing. Bottlenecks, tell me where the bottlenecks were of the-- in, in your process as you related to this, this particular--

CRAIG KUBICEK: Yeah, I think Phil alluded to many of them. I think, you know, the, the information flowing upstream to DAS and the lack of staffing over there to whether it was-- was there an adequate review of the information prior to it being submitted to our office in the past? And I think the staffing and those issues that Phil brought up probably, you know, a lot of that information wasn't being fully checked prior to being submitted to us in the past, which I think, you know, taking 25 years of experience from my staff has probably--

STINNER: Yeah.

CRAIG KUBICEK: --helped in that area.

STINNER: Yeah, we'll put a moratorium on that. Questions? Any questions? You know, I think you and I have communicated almost on a continuing basis. We've all read the report and we're all pretty disappointed. I think Phil will agree to that. He's probably more disappointed than anybody. But I guess for this committee's purpose, they have got to stay on top of is this system working or isn't it working, and then we need to really kind of focus on, at an agency level, what is needed there. The idea that we're still doing things with paper, the idea that we can't balance or don't balance or don't catch an entry that's put, put in the wrong place or put in just flat-out wrong, we've got to catch those. I mean, it's got to be timely. People trying to make, trying to make decisions and can't rely on the information, I don't understand that, so.

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CRAIG KUBICEK: Yeah, and I think, you know, just like us, I think there's turnover in those accounting departments as well. And I'm sure they struggle just like we do trying to find qualified, you know--

STINNER: Yeah.

CRAIG KUBICEK: --staff, so.

STINNER: Any additional questions?

DORN: Oh, I do.

STINNER: Go ahead, Senator Dorn.

DORN: Thank you. Thank you for being here. You talked about-- do you still expect your audit report this year to be out on time? Do-- you just talked about staffing and [INAUDIBLE]

CRAIG KUBICEK: At this time, I-- it would be very hard for us to get it done on time with, with the current-- you know, there was close to 200 findings last year that we have to respond by-- you know, we lost 3,600 hours of qualified staff hours.

DORN: Yeah.

CRAIG KUBICEK: I-- DAS we'll probably meet their deadlines, but I've alluded to Phil, you know, just based on these timeliness of getting the information, it's, it's very hard to. And we're doing our best. We're-- you know, we're, we're doing everything we can to-- we're putting-- taking people away, but there's-- this is not just the one audit we do. You know, right now we're doing university, colleges. You know, they pushed back the budget deadline for everybody in the state to submit their budget to our office to September 30. So we got over 2,000 budgets on September 30 that we got to review by November 1. And so obviously, as you can imagine, that takes more than one person to do, so. We'll do our best, but--

STINNER: Why did they push it back 30 days?

CRAIG KUBICEK: Several different issues, but they added a hearing, that you had to have a new--

DORN: Pink--

CRAIG KUBICEK: --public hearing, joint public hearing.

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DORN: The pink cards at the hearing. That's one of the, one of the-- yeah.

CRAIG KUBICEK: And so, yeah, I mean, we lost ten days there, as-- and so as you, as you can probably imagine, you know, it takes several staff of ours just to try and get those timely.

STINNER: OK. I do not have any additional questions. Anyone else? Anybody on the phone? Seeing none, thank you for your time.

CRAIG KUBICEK: Thank you.

STINNER: Any additional testifiers? And I waive my closing and that concludes our hearing on LR405. Thank you again, Phil, for your efforts and being patient with us.

PHILIP OLSEN: No, thank you.